

MEMORANDUM

TO: City of Beacon City Council
FROM: Keane & Beane, P.C.
RE: Short Term Rental Legislation
DATE: January 18, 2018

The City Council has been considering whether to adopt legislation to regulate Airbnb rentals or other short term rentals. Please find attached the following documents for the Council's consideration:

EXHIBIT	Article	Description
A	New York State Bill No. S07182	This legislation regulates short-term rental units; authorizes short-term rental units and requires short-term rental units and requires short-term rental hosts to register each unit with the division of housing and community renewal; establishes that occupancies of a short-term rental unit shall be subject to taxes and fees.
B	Town of Huntington, Chapter 160, Article IV. Short Term Rentals	The Town of Huntington requires owners of short-term rental properties to obtain permits and sets forth conditions and restrictions pertaining to the use of property for short-term rentals.
C	City of Beacon Code Section 223-24.4. Bed-and breakfast establishments	This is a provision in the current City of Beacon Code that regulates bed and breakfast establishments. It is important to review and differentiate bed and breakfast facilities from short-term rentals.
D	City of Beacon Code Section 223-20. Hotels	It is also important to review the definition of Hotel as it compares to Bed and Breakfasts and Short-Term Rentals.

E	N.Y. Appeals Court Ruling on Short-Term Rental Lodging May Have Implications for Airbnb and Other “Sharing Economy” Companies (January 8, 2016), Ballard Spahr, LLP, Legal Alert	Property owner brought an Article 78 proceeding and action for a declaratory judgment to review determination of Town's Zoning Board of Appeals (ZBA) requiring owner to obtain special use permit for renting out residence. The Appellate Division held that the property owners use of his property for short-term lodging did not fall within the definition of activities requiring a special use permit, and the Town Code at the time did not otherwise expressly prohibit the property owner from renting his residence to vacationers. The town had not updated its ordinances to address the ramifications of the emerging “sharing economy.”
F	<i>In the Matter of Fruchter v. Zoning Board of Appeals of the Town of Hurley</i> , 133 A.D.3d 1174 (3d Dep’t 2015).	
G	Mark A. Cuthbertson, <i>The Municipal Official’s Guide to Short-Term Rental Regulations</i> , The New York Law Journal (October 20, 2017)	
H	Alexis Brachel, <i>5 Legal and Regulatory Considerations for Short-Term Rentals</i> , Wolters Kluwer (July 12, 2017)	
I	<i>Five things every local government leader needs to know about short-term vacation rentals</i> , Host Compliance	

Cc: Anthony Ruggiero
Tim Dexter
John Clarke

EXHIBIT A

S07182 Text:

STATE OF NEW YORK

7182

IN SENATE

(Prefiled)

January 3, 2018

Introduced by Sen. BONACIC -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT to amend the multiple dwelling law and the tax law, in relation to the regulation of short-term rental units; and to amend chapter 161 of the laws of 1970, relating to enabling any city having a population of one million or more to impose and collect taxes on the occupancy of hotel rooms in such city, in relation to authorizing any city agency administering certain taxes to enter into voluntary agreements to permit the collection and remittance of such taxes

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Subparagraph 1 of paragraph a of subdivision 8 of section 4
- 2 of the multiple dwelling law, as amended by chapter 225 of the laws of
- 3 2010, is amended to read as follows:
- 4 (1) (A) occupancy of such dwelling unit for fewer than thirty consec-
- 5 utive days by other natural persons living within the household of the
- 6 permanent occupant such as house guests or lawful boarders, roomers or
- 7 lodgers; ~~or~~
- 8 (B) incidental and occasional occupancy of such dwelling unit for
- 9 fewer than thirty consecutive days by other natural persons when the
- 10 permanent occupants are temporarily absent for personal reasons such as
- 11 vacation or medical treatment, provided that there is no monetary
- 12 compensation paid to the permanent occupants for such occupancy; or
- 13 (C) occupancy of such dwelling as a short-term rental unit pursuant to
- 14 article seven-D of this chapter.
- 15 § 2. The multiple dwelling law is amended by adding a new article
- 16 seven-D to read as follows:
- 17 ARTICLE 7-D
- 18 SHORT-TERM RENTAL UNITS
- 19 Section 288. Definitions.
- 20 289. Short-term rental units authorized.
- 21 290. Registration.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD11126-01-7

291. Requirements of hosting platforms.

292. Regulations.

§ 288. Definitions. For the purposes of this article, the following terms shall have the following meanings:

1. "Short-term rental unit" means an entire dwelling unit, or a room, group of rooms, other living or sleeping space, or any other space, made available for rent by guests for less than thirty consecutive days.

2. "Short-term rental host" means an owner or tenant of a short-term rental unit who rents such unit to guests.

3. "Hosting platform" means a person or entity who, pursuant to an agreement with a short-term rental host:

(a) provides a platform for compensation through which unaffiliated third party short-term rental hosts can offer to rent short-term rental units; and

(b) collects a fee in connection with either:

(i) providing the forum in which, or by means of which, the offer of occupancy of a short-term rental unit is accepted; or

(ii) providing the forum in which a short-term rental host can list or advertise space in a short-term rental unit.

§ 289. Short term rental units authorized. 1. A short-term rental host may operate a dwelling unit as a short-term rental unit provided such dwelling unit:

(a) is registered in accordance with section two hundred ninety of this article;

(b) is not used to provide single room occupancy as defined by subdivision sixteen of section four of this chapter;

(c) includes a conspicuously posted evacuation diagram identifying all means of egress from the unit and the building in which it is located;

(d) includes a conspicuously posted list of emergency phone numbers for police, fire, and poison control; and

(e) is insured for at least two hundred fifty thousand dollars to protect against third party claims of property damage or bodily injury that arise out of the operation of a short-term rental unit. Insurance provided by hosting platforms can satisfy this requirement.

2. A short-term rental host may only operate a rent-stabilized dwelling unit as a short-term rental unit if the annual rent generated from short-term rent does not exceed the annual legal rent for the unit as defined by the division of housing and community renewal; provided however, that a violation of this subdivision shall not be a ground for eviction under the rent stabilization code unless the short-term rental host has received two prior violations under the rent stabilization code.

3. A short-term rental host may not operate a dwelling unit as a short-term rental unit if the unit is a rent-controlled unit subject to the local emergency rent control act or chapter seven of subtitle 5 of title nine of New York's compilation of codes, rules, and regulations, an income-based public housing unit, or a dwelling unit paid for with vouchers or other monetary subsidies, in whole or in part, from a government entity.

4. A short-term rental host shall not operate more than one class A multiple dwelling unit as a short-term rental unit unless the units are at the same address, including apartment number, if applicable.

5. Occupancies of a short-term rental unit shall be subject to taxes and fees pursuant to articles twenty-eight and twenty-nine of the tax law and applicable local laws.

6. Short-term rental hosts shall maintain records related to guest stays for one year, including the date of each booking and the identity and number of guests, and records related to their registration as short-term rental hosts with the division of housing and community renewal.

7. Hosting platforms shall maintain records related to guest stays for one year, including the date of each booking and the identity and number of guests. Hosting platforms shall make all relevant records available to the division of housing and community renewal consistent in response to valid legal process.

§ 290. Registration. 1. Short-term rental hosts shall be required to register each short-term rental unit with the division of housing and community renewal.

2. Registrations shall be valid for two years, after which time the short-term rental host may renew his or her registration in a manner prescribed by the division of housing and community renewal. The division of housing and community renewal may revoke the registration of a short-term rental host upon a determination that the short-term rental host has violated any provision of this article at least three times in two calendar years, and may determine that the short-term rental host shall be ineligible for registration for a period of up to twelve months from the date the third violation is determined to have occurred.

3. The division of housing and community renewal shall set a fee for short-term rental registration not to exceed one hundred dollars, with revenue dedicated to enforcement of short-term rental laws.

4. Hosting platforms are authorized to facilitate the registration process by collecting the required information and transmitting it to the division of housing and community renewal for processing.

§ 291. Requirements of hosting platforms. Hosting platforms shall:

1. create a dedicated means by which complaints can be submitted by short-term rental hosts, guests, and community members. These means shall be available twenty-four hours a day, seven days a week.

2. provide the division of housing and community renewal and the New York city mayor's office of special enforcement with anonymized statistics on a quarterly basis regarding the short-term rental of properties on their platforms in cities with a population of one million or more. Such report shall be submitted within thirty days following the end of each calendar quarter in which it operates as a hosting platform in a manner to be determined by the division of housing and community renewal. The information to be disclosed shall include:

(a) statistics regarding each short-term rental unit that was rented on the platform during the previous quarter, including city, borough, zip code, listing type (such as whether the listing is for an entire or shared property), the number of nights rented for the reporting period, the number of nights rented for the calendar year, and the total amount of revenue submitted to the short-term rental host in connection with the rental of the unit in question. Information regarding the number of nights rented shall be reported in ranges of twenty-five. Information regarding the total amount of revenue shall be reported in ranges of ten thousand dollars; and

(b) statistics regarding each short-term rental host who rented a short-term rental unit on the platform during the previous quarter, including:

(i) the number of distinct addresses simultaneously advertised as short-term rentals during the prior reporting period for each short-term

1 rental host simultaneously advertising more than one distinct address as
2 a short-term rental during the reporting period; and
3 (ii) the number of such distinct addresses simultaneously rented as
4 short-term rentals during the reporting period for each short-term
5 rental host simultaneously advertising more than one distinct address as
6 a short-term rental during the reporting period. Hosting platforms
7 shall not have the obligation to disclose any listing or host-level
8 information if the disclosure could reasonably lead to the identifica-
9 tion of a specific property or short-term rental host.
10 3. maintain records of all transactions in cities with a population of
11 a million or more for a period of twelve months.
12 4. inform short-term rental hosts of the registration requirement and,
13 if requested to do so, collect and transmit the required information to
14 the division of housing and community renewal on behalf of the short-
15 term rental host.
16 § 292. Regulations. The division of housing and community renewal
17 shall promulgate regulations necessary and appropriate to enforce this
18 article, including regulations to facilitate the registration of short-
19 term rental hosts and to facilitate information sharing between and
20 among the division, hosting platforms, and other enforcement agencies.
21 § 3. Section 304 of the multiple dwelling law is amended by adding a
22 new subdivision 1-b to read as follows:
23 1-b. a. Every person who shall violate or assist in the violation of
24 any provision of sections two hundred eighty-nine or two hundred ninety
25 of this chapter shall be guilty of an offense, and any person found to
26 have committed three or more offenses of such sections may be prohibited
27 from operating a short-term rental unit for a period of one year.
28 b. The maximum fine for violating subdivision four of section two
29 hundred eighty-nine of this chapter shall be one thousand dollars for a
30 first offense; four thousand dollars for the second offense; and seven
31 thousand five hundred dollars for the third or any subsequent offense.
32 The maximum fine for violating subdivision two of section two hundred
33 eighty-nine of this chapter shall be the difference between the annual
34 rent generated by the short-term rental and the annual legal rent, plus
35 an additional fine of fifty dollars for the first offense, one hundred
36 dollars for the second offense, and two hundred fifty dollars for the
37 third offense. The maximum fine for violating subdivision three of
38 section two hundred eighty-nine of this chapter shall be the amount of
39 revenue generated from the short-term rental plus an additional fine of
40 fifty dollars for the first offense, one hundred dollars for the second
41 offense, and two hundred fifty dollars for the third offense. The maxi-
42 mum fine for all other provisions of sections two hundred eighty-nine or
43 two hundred ninety of this chapter shall be fifty dollars for a first
44 offense; one hundred dollars for the second offense; and two hundred
45 fifty dollars for the third or any subsequent offense.
46 c. Any violation under this subdivision shall not be a crime and the
47 penalty or punishment imposed therefor shall not be deemed for any
48 purpose a penal or criminal penalty or punishment, and shall not impose
49 any disability upon or affect or impair the credibility as a witness, or
50 otherwise, of any person convicted thereof.
51 § 4. Subdivision (c) of section 1101 of the tax law, as added by chap-
52 ter 93 of the laws of 1965, paragraphs 2, 3, 4 and 6 as amended by
53 section 2 and paragraph 8 as added by section 3 of part AA of chapter 57
54 of the laws of 2010, and paragraph 5 as amended by chapter 575 of the
55 laws of 1965, is amended and two new paragraphs 9 and 10 are added to
56 read as follows:

1 (c) When used in this article for the purposes of the tax imposed
2 under subdivision (e) of section eleven hundred five, and subdivision
3 (a) of section eleven hundred four, the following terms shall mean:

4 (1) Hotel. A building or portion of it which is regularly used and
5 kept open as such for the lodging of guests. The term "hotel" includes
6 an apartment hotel, a motel, boarding house or club, whether or not
7 meals are served, and short-term rental units.

8 (2) Occupancy. The use or possession, or the right to the use or
9 possession, of any room in a hotel. "Right to the use or possession"
10 includes the rights of a room remarketer as described in paragraph eight
11 of this subdivision.

12 (3) Occupant. A person who, for a consideration, uses, possesses, or
13 has the right to use or possess, any room in a hotel under any lease,
14 concession, permit, right of access, license to use or other agreement,
15 or otherwise. "Right to use or possess" includes the rights of a room
16 remarketer as described in paragraph eight of this subdivision.

17 (4) Operator. Any person operating a hotel. Such term shall include a
18 room remarketer and such room remarketer shall be deemed to operate a
19 hotel, or portion thereof, with respect to which such person has the
20 rights of a room remarketer.

21 (5) Permanent resident. Any occupant of any room or rooms in a hotel
22 for at least ninety consecutive days shall be considered a permanent
23 resident with regard to the period of such occupancy.

24 (6) Rent. The consideration received for occupancy, including any
25 service or other charge or amount required to be paid as a condition for
26 occupancy, valued in money, whether received in money or otherwise and
27 whether received by the operator ~~[or]~~, a hosting platform, a room
28 remarketer or another person on behalf of ~~[either]~~ any of them. Rent
29 shall not include a separately stated fee or similar charge paid by the
30 occupant to the hosting platform for: (i) providing the forum in which,
31 or by means of which, the offer of occupancy is accepted, including an
32 internet website or similar forum; (ii) arranging for the exchange of
33 information or messages between the occupant and the operator of the
34 hotel; or (iii) facilitating payment between the occupant and the opera-
35 tor of the hotel.

36 (7) Room. Any room or rooms of any kind in any part or portion of a
37 hotel, which is available for or let out for any purpose other than a
38 place of assembly.

39 (8) Room remarketer. A person who reserves, arranges for, conveys, or
40 furnishes occupancy, whether directly or indirectly, to an occupant for
41 rent in an amount determined by the room remarketer, directly or indi-
42 rectly, whether pursuant to a written or other agreement. Such person's
43 ability or authority to reserve, arrange for, convey, or furnish occu-
44 pancy, directly or indirectly, and to determine rent therefor, shall be
45 the "rights of a room remarketer". A room remarketer is not a permanent
46 resident with respect to a room for which such person has the rights of
47 a room remarketer. This term does not include a hosting platform.

48 (9) Short-term rental unit. A room, group of rooms, or other living or
49 sleeping space, or any other space let to occupants, including but not
50 limited to private dwellings, residences, or buildings used as resi-
51 dences.

52 (10) Hosting platform. A person or entity who, pursuant to an agree-
53 ment with an operator of a hotel:

54 (i) provides a platform for compensation through which an unaffiliated
55 third party hotel operator offers to rent space in a hotel; and
56 (ii) collects a fee in connection with either;

1 (A) providing the forum in which, or by means of which, the offer of
2 occupancy of a hotel room is accepted; or

3 (B) providing the forum in which a hotel operator can list or adver-
4 tise space in a hotel for occupancy.

5 § 5. Subdivision (e) of section 1105 of the tax law is amended by
6 adding a new paragraph 3 to read as follows:

7 (3) The rent for every occupancy of a room or rooms in a hotel offered
8 for rent through a hosting platform, as defined in paragraph ten of
9 subdivision (c) of section eleven hundred one of this article, regard-
10 less of whether it is furnished, limited to a single family occupancy,
11 or provides housekeeping, food, or other common hotel services, includ-
12 ing, but not limited to, entertainment or planned activities.

13 § 6. Subdivision (a) of section 1104 of the tax law, as added by chap-
14 ter 3 of the laws of 2004, is amended to read as follows:

15 (a) Imposition. In addition to any other fee or tax imposed by this
16 article or any other law, on and after April first, two thousand five,
17 there is hereby imposed within the territorial limits of a city with a
18 population of a million or more and there shall be paid a unit fee on
19 every occupancy of a unit in a hotel in such city subject to tax under
20 paragraphs one through three of subdivision (e) of section eleven
21 hundred five of this part at the rate of one dollar and fifty cents per
22 unit per day, except that such unit fee shall not be imposed upon (1)
23 occupancy by a permanent resident or (2) where the rent per unit is not
24 more than at the rate of two dollars per day.

25 § 7. Subdivision 1 of section 1131 of the tax law, as amended by chap-
26 ter 576 of the laws of 1994, is amended to read as follows:

27 (1) "Persons required to collect tax" or "person required to collect
28 any tax imposed by this article" shall include: every vendor of tangible
29 personal property or services; every recipient of amusement charges;
30 ~~and~~ every operator of a hotel~~[-]~~; and hosting platforms where the
31 hosting platform voluntarily consents to assume the tax collection and
32 remittance responsibilities of an operator of a hotel unless relieved of
33 such obligation pursuant to paragraph four of subdivision (1) of section
34 eleven hundred thirty-two of this part. Said terms shall also include
35 any officer, director or employee of a corporation or of a dissolved
36 corporation, any employee of a partnership, any employee or manager of a
37 limited liability company, or any employee of an individual proprietor-
38 ship who as such officer, director, employee or manager is under a duty
39 to act for such corporation, partnership, limited liability company or
40 individual proprietorship in complying with any requirement of this
41 article; and any member of a partnership or limited liability company.
42 Provided, however, that any person who is a vendor solely by reason of
43 clause (D) or (E) of subparagraph (i) of paragraph (8) of subdivision
44 (b) of section eleven hundred one shall not be a "person required to
45 collect any tax imposed by this article" until twenty days after the
46 date by which such person is required to file a certificate of registra-
47 tion pursuant to section eleven hundred thirty-four of this part.

48 § 8. Section 1132 of the tax law is amended by adding a new subdivi-
49 sion (1) to read as follows:

50 (1)(1) A hosting platform may enter into a voluntary agreement with
51 the commissioner, under which the hosting platform shall collect and
52 remit taxes on occupancies of rentals of hotels on or after the effec-
53 tive date of the voluntary agreement; provided however, that when a
54 hosting platform enters into such a voluntary agreement, it shall be
55 required to (i) collect from the occupants the applicable taxes arising
56 from such occupancies; (ii) comply with all the provisions of this arti-

1 cle and article twenty-nine of this chapter and any regulations adopted
2 pursuant thereto; (iii) register to collect tax under section eleven
3 hundred thirty-four of this part; and (iv) retain records and informa-
4 tion as required by the commissioner and cooperate with the commissioner
5 to ensure the proper collection and remittance of tax imposed,
6 collected, or required to be collected under this article and article
7 twenty-nine of this chapter.

8 (2) In carrying out the obligations imposed under this section, a
9 hosting platform shall have all the duties, benefits, and entitlements
10 of a person required to collect tax under this article and article twen-
11 ty-nine of this chapter with respect to the occupancies giving rise to
12 the tax obligation, including the right to accept a certificate or other
13 documentation from an occupant substantiating an exemption or exclusion
14 from tax, as if such hosting platform were the operator of the hotel
15 with respect to such occupancy, including the right to receive the
16 refund authorized by subdivision (e) of this section and the credit
17 allowed by subdivision (f) of section eleven hundred thirty-seven of
18 this part.

19 (3) No hosting platform shall be required to list any operator of a
20 hotel on any return required to be filed under this article and article
21 twenty-nine of this chapter or under any regulations adopted pursuant
22 thereto. Audits of any hosting platform shall be conducted solely on the
23 basis of the tax identification number associated with each hosting
24 platform and shall not be conducted directly or indirectly on any opera-
25 tor of a hotel or any occupant to whom occupancy is rented from an opera-
26 tor of a hotel, nor shall any hosting platform be required to disclose
27 any personally identifiable information relating to any operator of a
28 hotel or occupant to whom occupancy is rented from an operator of a
29 hotel.

30 (4) An operator of a hotel is not a person required to collect tax for
31 purposes of this part with respect to taxes imposed upon occupancies of
32 hotels if:

33 (i) the operator of the hotel can show that the occupancy was facili-
34 tated by a hosting platform who is registered to collect tax pursuant to
35 section eleven hundred thirty-four of this part; and

36 (ii) the operator of the hotel accepted from the hosting platform a
37 properly completed certificate of collection in a form prescribed by the
38 commissioner certifying that the hosting platform has agreed to assume
39 the tax collection and filing responsibilities of the operator of the
40 hotel; and

41 (iii) any failure of the hosting platform to collect the proper amount
42 of tax with respect to such occupancy was not the result of the operator
43 of the hotel providing incorrect information to the hosting platform,
44 whether intentional or unintentional.

45 This provision shall be administered in a manner consistent with
46 subparagraph (i) of paragraph one of subdivision (c) of this section as
47 if a certificate of collection were a resale or exemption certificate
48 for purposes of such subparagraph, including with regard to the
49 completeness of such certificate of collection and the timing of its
50 acceptance by the operator of the hotel; provided however, that with
51 regard to any occupancies sold by an operator of the hotel that are
52 facilitated by a hosting platform who is affiliated with such operator,
53 the operator shall be deemed liable as a person under a duty to act for
54 such hosting platform for purposes of subdivision one of section eleven
55 hundred thirty-one of this part.

(5) The commissioner may, in his or her discretion, (i) develop standard language, or approve language developed by a hosting platform, in which the hosting platform obligates itself to collect the tax on behalf of all the operators of hotels; and (ii) provide by regulation or otherwise that the inclusion of such language in an agreement between a hosting platform and the commissioner as provided for in paragraph one of this subdivision shall, upon notice to the operator, have the same effect as an operator's acceptance of a certificate of collection from a hosting platform under paragraph four of this subdivision.

(6) In the event an operator of a hotel is a room remarketer, and all other provisions of this subdivision are met such that a hosting platform is obligated to collect tax, and does in fact collect tax as evidenced by the books and records of such hosting platform, then the provisions of subdivision (e) of section eleven hundred nineteen of this article shall be applicable.

(7) Information provided by a hosting platform to the commissioner shall be confidential. Such confidential information shall not be disclosed by the commissioner unless the hosting platform has given written consent to make such disclosure or there is an agreement between the hosting platform and the commissioner to make such disclosure. Notwithstanding any law to the contrary, information provided by a hosting platform shall not be subject to article six of the public officers law and shall not be provided to any other agency of the state, locality, or any other government entity or political subdivision.

§ 9. Section 1202 of the tax law is amended by adding a new subdivision (h) to read as follows:

(h) It is expressly recognized that any county authorized and empowered to impose hotel, motel, or occupancy taxes pursuant to subpart A of part one of this article has the authority to permit the county agency that administers such taxes to enter into voluntary agreements with any person or third party, including but not limited to hosting platforms, to permit such person, third party, or platform to collect and remit such taxes on behalf of the party or parties required to collect and remit them under the applicable statutes. The voluntary agreement shall be evinced by a signed, written agreement between the county agency that administers such taxes and the person or third party assuming the obligation to collect and remit the taxes.

§ 10. Section 1 of chapter 161 of the laws of 1970, relating to enabling any city having a population of one million or more to impose and collect taxes on the occupancy of hotel rooms in such city, is amended by adding a new subdivision 11 to read as follows:

(11) It is expressly recognized that any city agency administering the taxes authorized by this act is permitted to enter into voluntary agreements with any person or third party, including but not limited to hosting platforms, to permit such person, third party, or platform to collect and remit such taxes on behalf of the party or parties required to collect and remit them under the applicable statutes. The voluntary agreement shall be evinced by a signed, written agreement between the city agency responsible for administering the taxes and the person or third party assuming the obligation to collect and remit the taxes.

§ 11. This act shall take effect on the one hundred twentieth day after it shall have become a law.

EXHIBIT B

Town of Huntington, NY
Thursday, January 18, 2018

Chapter 160. Registration and Permitting of Property

Article IV. SHORT TERM RENTALS

[Added 7-11-2017 by L.L. No. 29-2017^[1]]

[1] *Editor's Note: This local law also repealed former Art. IV, Denial and Revocation Proceedings, added 5-10-2016 by L.L. No. 22-2016, and the content of said article (§§ ~~160-36~~ through 160-47) was moved to Art. III, Residential Rental Permits, at the direction of the Town. This local law also redesignated former §§ 160-48 and 160-49 as §§ ~~160-72~~ and ~~160-73~~, respectively.*

§ 160-48. Definitions.

As used in this article, the following words shall have the meanings indicated:

ASSEMBLY

Shall include but not be limited to a wedding, bachelor or bachelorette party, or similar party activity.

DIRECTOR

The Director of the Department of Public Safety or his or her designee.

DWELLING UNIT

A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

OWNER

An individual or group of individuals who are in possession of and have a fee interest in real property. The term "owner" shall not include a business entity or association, a trustee, receiver or guardian of an estate, or a mortgagee or lien holder.

OWNER-OCCUPIED

A one or two family house or multiple dwelling building used by the owner as his or her or their principal residence (domicile).

ROOM OR ROOMS

A bedroom or group of bedrooms in a one or two family house or multiple dwelling building used for short term rentals, where there are no provisions for eating or cooking, but may include the use of private or shared bathroom facilities.

SHORT TERM RENTAL

Can be comprised of dwelling unit(s), a room, or a group of rooms legally established within one or two family residences that are owner-occupied, including one-family, owner-occupied residences having valid accessory apartment permits, where the dwelling unit(s), room or group of rooms are rented, leased or otherwise assigned for a tenancy of less than thirty (30) consecutive days, and where no meals are served. The term "short term rental" does not include mixed-use buildings, multiple dwelling buildings, dormitories, hotel or motel rooms, bed and breakfast inns, or boarding or lodging houses.

§ 160-49. Prohibited Acts.

- (A) Permit required. It shall be unlawful to use, establish, maintain, operate, occupy, rent or lease any property as a short term rental without first having obtained a short term rental permit. The failure or refusal to obtain a short term rental permit shall be deemed a violation of this Article.
- (B) Owner-occupancy. It shall be unlawful to use, establish, maintain, operate, occupy, rent or lease any property as a short term rental if the property is not owner occupied. The failure of the owner to occupy the property as his principal residence (domicile) shall be deemed a violation of this Article.
- (C) Advertisement. An application for a short term rental permit shall be filed before the room(s) or dwelling unit(s) are advertised for short term rental, and if the spaces are not advertised, then such permit shall be obtained before the room(s) or dwelling unit(s) are leased or rented. The short term rental permit number shall be noted on the advertisement. Any person who advertises the space for rent or lease, or rents the room(s) or dwelling unit(s) as short term rentals without first having obtained a short term rental permit shall be deemed to be in violation of this Article.
- (D) Signage. It shall be unlawful to place signage on property advertising or identifying any portion of the property as a short term rental. Any person who violates the provisions of this section shall be deemed to be in violation of this Article.
- (E) Parking. All vehicles attributable to short term rentals shall be parked on-site in parking spaces provided for such purpose when the vehicles are not in use. All parking shall comply with the provisions of § 160-54(5). Any person who violates the provisions of this section shall be deemed to be in violation of this Article.
- (F) Permitted number of days. It shall be unlawful for the property owner to use, establish, maintain, operate, occupy, rent or lease any portion of his property as a short term rental for more than one hundred and twenty (120) days out of a calendar year. A property owner may apply to the Director for a hardship exemption. Any person who violates the provisions of this section shall be deemed to be in violation of this Article.
- (G) Number of bedrooms. It shall be unlawful for the property owner to use, establish, maintain, operate, occupy, rent or lease more than two (2) bedrooms within a dwelling unit. Any person who violates the provisions of this section shall be deemed to be in violation of this Article.
- (H) Cooking and sleeping facilities. It shall be unlawful to have cooking facilities in rooms used for short term rental, except for those premises having a valid accessory apartment permit pursuant to Chapter 198. There shall not be any rooms for overnight guests other than in the main building on the lot. Any person who violates the provisions of this section shall be deemed to be in violation of this Article.
- (I) Assembly. It shall be unlawful for a short term rental property to be utilized for assembly between 10:00pm and 7:00am. Any person who violates the provisions of this section shall be deemed in violation of this article.
- (J) Conditions and restrictions. It shall be unlawful for a property owner to violate, fail, neglect or refuse to fully comply with any condition, restriction or requirement of the short term rental permit. Any person who violates the provisions of this section shall be deemed to be in violation of this Article.

§ 160-50. Presumptive Evidence.

The presence or existence of any of the following shall create a rebuttable presumption that a property is being utilized as a short term rental:

- (A) The property is offered for lease or rent on a short term rental website, including but not limited to Airbnb, HomeAway, VRBO and similar websites; or
- (B) The property is offered for lease or rent by the use of any other advertising mechanism for a period of less than thirty (30) days.

§ 160-51. Term of Permit.

A short term rental permit shall be valid for a period of one (1) year from the date of issuance unless sooner terminated or revoked.

§ 160-52. Application for permit.

- (A) Application. Applications for short term rental permits shall be on forms provided by the Department of Public Safety and signed by each property owner. A non-refundable application fee of fifty (\$50.00) dollars per property shall be payable upon application. In no instance shall the filing of an application and payment of fees be construed as to exonerate the property owner of responsibility for compliance with the building, housing, fire and maintenance requirements of any local, county, state or federal agency having jurisdiction. Each application shall include the following:
- (1) The name and address, e-mail address, and contact numbers of all property owners; and
 - (2) Government issued proof of residency of each owner with picture ID (driver's license, passport, etc.); and
 - (3) The property address; the total number of dwelling units located within the building; the total number of bedrooms and bathrooms inside the building; the total number of dwelling units and individual bedrooms proposed for short term rental use; the location of each such dwelling unit or individual bedroom within the building; and the number of persons to be accommodated in each short term rental area; and
 - (4) The number of existing on-site parking spaces, and the number of available on-site parking spaces for short term rentals; and
 - (5) A signed and notarized certification in a form acceptable to the Director of Public Safety by each property owner attesting to the fact that no meal service is being provided; that the owner resides at the property and it is the owner's domicile (primary residence); that the property is fit for human habitation and safe; that the property owner will comply with all of the conditions and restrictions of the permit; that no portion of the area used for short term rentals will utilize a cellar or attic, or any portion thereof, as habitable space unless it meets the requirements of the International Fire and Building Code or successor law; that the property is in compliance with all the provisions of this Article, the applicable provisions of the town code, the International Fire, Building and Maintenance Codes; and the required building permits, certificates of occupancy and/or letters- in-lieu are in place for all existing structures on the property; and
 - (6) Such other information and/or documentation deemed necessary by the Director.
- (B) Duty to amend. If the status of the information changes during the course of any calendar year, it is the responsibility of the owner to submit such changes to the Department of Public Safety in writing within thirty (30) days of the occurrence of such change. Failure to do so shall be deemed a violation of this article.

§ 160-53. Renewal of permit.

A short term rental permit may be renewed by application to the Department of Public Safety as in the case of an original permit application, with payment of a non-refundable renewal fee of twenty-five (\$25) dollars and the production of any documents deemed necessary by the Director. All applications for a renewal of a permit shall be filed before the expiration of the original permit. A property owner whose permit has expired and has failed to file for a renewal of the permit shall be required to pay the amount of fifty (\$50) dollars as in the case of an original application, and a late fee of twenty-five (\$25) dollars. A permit may only be renewed by the same owner for the same property upon the payment of the requisite fees.

§ 160-54. Issuance of permit; conditions and restrictions.

- (A) Transferability. Short term rental permits are not transferable. Any person who transfers a permit or uses a permit that has been transferred shall be in violation of this Article.
- (B) Authority of Director. The Director may issue a permit upon such restrictions and conditions he deems reasonable and necessary under the circumstances.
- (C) Conditions and restrictions of permit. All permits issued pursuant to this Article shall be subject to the following conditions and restrictions, whether or not they are itemized on the permit:
- (1) The property used for short term rental shall be the principal residence (domicile) of the owner at all times during the term of the permit; and
 - (2) There shall be no signage on the property advertising or identifying the short term rental; and
 - (3) The property shall have no commercial-type lighting outside the building; and
 - (4) All outward appearances of the property in which the short term rental will be located must remain as it was before the permit was issued. A new entrance (doorway) shall not be installed by the applicant to accommodate the short term rental. Landscaping around the house may be changed to accommodate the new use; and
 - (5) Sufficient on-site parking must be provided. Said parking shall be in a driveway or behind the main residence on the property that is under review for the permit. Accommodations for one (1) car per short term rental stay and two (2) cars for the owner's family shall be the minimum off-street parking to be provided; and
 - (6) Every bedroom in a short term rental occupied by one (1) person shall contain at least seventy (70) square feet of floor area and every bedroom in a short term rental occupied by more than one (1) person shall contain at least fifty (50) square feet of floor area for each occupant thereof. Children under five (5) years of age shall not be included in the definition or calculation of occupancy; and
 - (7) No more than two bedrooms with separate or shared bathrooms within a dwelling unit shall be utilized for a short term rental; and
 - (8) There shall be no cooking facilities in rooms, except for those premises having a valid accessory apartment permit pursuant to Chapter 198. There shall not be any rooms for overnight guests, other than in the main building on the lot. There shall be no structural alterations that prevent the building from being used as a residence; and
 - (9) No more than a total of one hundred twenty (120) days of short term rentals shall occur within a calendar year; and
 - (10) Traffic attributed to the short-term rental must not result in significant adverse impacts to existing traffic patterns nor create a hazard to pedestrians in the neighborhood; and
 - (11) Compliance with the Provisions of Chapter 141 (Noise), Chapter 117 (Waste Management), and Chapter 124 (Housing Standards and Property Maintenance) of the Huntington Town Code shall be required; and
 - (12) There shall be no assembly at the short term rental property between 10:00pm and 7:00am; and
 - (13) The property owner shall maintain a registry of the names and dates of occupancy of the short-terms rental occupants. This registry may be produced for review upon request of the Director.
- (D) Notification Requirements. The Director shall provide a packet of information with the issuance with each permit summarizing the restrictions, guidelines, and requirements applicable to the short term rental use. The property owner of the short term rental shall provide a copy of the information packet to the occupant(s) of the short term rental property.

§ 160-55. Denial of application; Procedure.

See Article III § 160-28 of this Chapter as to procedure for denial of application.

§ 160-56. Final order.

See Article III § 160-29 of this Chapter as to final order.

§ 160-57. Reapplication for a permit.

Once an application has been denied, no reapplication for a permit or a renewal of the permit shall be accepted for filing until the applicant has remedied the conditions that formed the basis for denial to the satisfaction of the Town.

§ 160-58. through § 160-60. (Reserved)

§ 160-61. Basis for denial of a permit.

An application for the issuance of a short term rental permit, or renewal thereof, may be denied under the following circumstances.

- (A) Failure of the owner to file a full, true and complete application; or
- (B) Failure of the property to be owner-occupied as the owner's principal residence (domicile); or
- (C) Occupancy of the property or the short term rental area(s), by the persons using the premises, creates a hazard or public nuisance or other condition which negatively impacts the use and/or enjoyment of surrounding properties, or threatens the peace and good order, or quality of life in the surrounding community.

§ 160-62. Revocation of a permit.

The grounds upon which a permit can be revoked shall include but shall not be limited to:

- (A) The permit was issued in error, or issued in whole or in part as a result of a false, untrue, or misleading statement on the permit application or other document submitted for filing, including but not limited to the schematic or certification; or
- (B) The permit has been issued and the Town either has or is in the process of suspending or revoking the certificate of occupancy or letter in lieu for the rental property; or
- (C) A short term rental permit has been issued and the owner fails to continue to occupy the premises on a continuous basis as his primary residence (domicile); or
- (D) Failure to comply or violating the conditions and restrictions of the permit as established by the Director or Town.

§ 160-63. Revocation or suspension of the certificate of occupancy or letter in lieu for rental property.

See Article III § 160-37 of this Chapter as to such revocation or suspension.

§ 160-64. Written notice.

- (A) Written notice of the Town's intention to revoke a permit shall be served by registered or certified mail, return receipt requested, and by regular mail, to the applicant at the address shown on the application. If the notice is returned by the Post Office as undeliverable for any reason, as long as it was properly addressed, service of the notice shall be valid. Said notice shall state that the applicant is entitled to be represented by legal counsel at the hearing and may present the testimony of witnesses and such other evidence in his or her own behalf as may be deemed relevant or necessary.

§ 160-65. Conduct of hearing.

- (A) At the administrative hearing the applicant shall be entitled to be represented by legal counsel and provided with an opportunity to be heard. He may present the testimony of witnesses, experts and other evidence in his own behalf as he deems necessary and relevant. The code officer or other person may appear and give testimony or submit evidence in support of the proposal to revoke the permit. All hearings shall be recorded and may be adjourned by the Hearing Officer upon good cause shown.
- (B) Administrative Hearing Officer. The Hearing Officer shall consider the evidence presented and shall submit his or her findings in writing within fifteen (15) days of the close of the hearing or sooner. A copy of the Hearing Officer's report shall be filed with the Department of Public Safety and Huntington Town Clerk and served on the applicant or applicant's attorney in the same manner as the original notice. The Hearing Officer's report shall be final as to the Town of Huntington.

§ 160-66. Final order.

The failure of the applicant or his attorney to appear at the administrative hearing shall result in the automatic revocation of the short term rental permit. The order of revocation shall be mailed to the applicant or his attorney in the same manner as the original notice.

§ 160-67. Effect of Revocation.

If a permit is revoked, no application for a new permit will be accepted for filing until the applicant has remedied the conditions that formed the basis of the revocation to the satisfaction of the Director, if applicable. Once remedied, the applicant will have to apply for a new permit and pay a one-hundred and fifty (\$150) dollar application fee.

§ 160-68. through § 160-71. (Reserved)

EXHIBIT C

City of Beacon, NY
Thursday, January 18, 2018

Chapter 223. Zoning

Article III. General Regulations

§ 223-24.4. Bed-and-breakfast establishments.

[Added 3-18-2002 by L.L. No. 9-2002]

- A. The minimum lot size for the establishment of this use shall be 40,000 square feet.
- B. Off-street parking accessory to this use shall be screened from adjacent residential properties.
- C. The outward appearance of the use shall be that of a one-family dwelling and there shall be no indication of the bed-and-breakfast establishment from the exterior of the building, except for the sign. A separate entrance into the building for the bed-and-breakfast use shall not be permitted.
- D. Seating for food and beverage service shall be limited to the maximum occupancy of the bed-and-breakfast establishment.
- E. The lodging provided shall be for periods of less than two weeks in duration.
- F. The maximum number of guest bedrooms at a bed-and-breakfast establishment shall be six, except that the City Council may, at its discretion, allow additional guest bedrooms up to a maximum of 10 where the Council determines that the size and shape of the lot on which the establishment is proposed can accommodate the additional patrons and parking.
- G. Renewal inspections. Each bed-and-breakfast establishment shall be inspected by the Building Department every two years in order to determine whether the establishment remains in compliance with this section. Upon a satisfactory inspection report, the bed-and-breakfast establishment owner shall be reissued a certificate of occupancy. In the event that the inspection indicates that the bed-and-breakfast establishment is no longer in compliance, the certificate of occupancy shall be revoked until the violations are cured.

EXHIBIT D

City of Beacon, NY
Thursday, January 18, 2018

Chapter 223. Zoning

Article III. General Regulations

§ 223-20. Hotels.

[Amended 6-17-2013 by L.L. No. 11-2013]

- A. Permitted uses. If a site is to be used for a hotel, use of the site and any buildings or structures on the site shall be limited to usual hotel activities and accessory uses incidental to the operation of a hotel and of the same general character, provided that all such accessory uses shall be planned as an integral part and located on the same site with the hotel.
- (1) Such accessory uses may include the following:
 - (a) Dining facilities providing food and drink.
 - (b) Newsstands, gift shops and other shops.
 - (c) Recreation facilities which shall be for the exclusive use of guests or members.
 - (d) Employees' quarters and facilities.
 - (e) Spa facilities.
 - (f) Conference center facilities.
 - (2) All hotels shall include the following:
 - (a) A lobby, registry desk, manager's office and public rest room facilities.
 - (b) Off-street parking facilities.
 - (c) Access to all guest rooms from an interior hallway.
- B. Screening. Outdoor parking areas and recreational facilities shall be screened with fencing, landscaping and/or buildings on all sides toward adjoining residential lots. Where hotel buildings are set back less than 100 feet from one-family residential lots, such buildings shall be suitably screened with planting.
- C. Minimum off-street parking.
- (1) For hotel rooms: One parking space shall be provided for each hotel guest room.
 - (2) For restaurants, bars and other public rooms, and for recreation facilities and other permitted uses, other than lobbies: The number of parking spaces required in accordance with § 223-26 of this chapter shall be provided.
 - (3) For employees: One parking space shall be provided for each employee for the maximum number of employees working at the hotel at any one time.
- D. No kitchen facilities. There shall be no kitchen facilities in the hotel rooms except for a coffeemaker, a microwave oven and a small refrigerator.

EXHIBIT E

January 8, 2016

N.Y. Appeals Court Ruling on Short-Term Rental Lodging May Have Implications for Airbnb and Other “Sharing Economy” Companies

by Andrew J. Petrie and Christopher W. Payne

The New York Appellate Division’s recent decision that blocked a municipality’s attempt to regulate a homeowner’s renting out of his individual residence as short-term lodging demonstrates challenges that may face municipalities and the commercial hospitality industry in trying to curtail such uses in the new “sharing economy.”

While the ruling in *In the Matter of Fruchter v. Zoning Board of Appeals of the Town of Hurley* hinged on specific definitions in town zoning ordinances, the ruling has wider potential implications for the tension between emerging economies and local land use law. The Court’s clarification of the rights of municipalities to use zoning ordinances to regulate short-term rental lodging in residences potentially extends to “sharing economy” companies such as Airbnb, Inc., HomeAway, and VRBO.

Citing a ruling in an earlier case, the Appellate Division held that, because Fruchter’s use of his residence did not fall within the definition of activities requiring a special use permit, and the Town Code does not otherwise “expressly prohibit[] petitioner[] from renting [his] residence to vacationers[,] . . . we cannot say that petitioner[s]’ decision to do so placed [his] otherwise obviously residential structure outside the Town’s definition of a [residential one-family dwelling].”

Fruchter owns a two-bedroom, single-family residence located in an area zoned A-4 residential, which he considers his permanent residence. In 2012, he began listing the property on unspecified Internet sites, offering to rent it for terms ranging from one night to a month to an entire season. Fruchter asserted that he always rented the entire residence and did not stay there when it was rented, and that he did not serve or offer any food or beverages.

Hurley’s code enforcement officer issued an order to remedy to Fruchter for illegally operating a bed-and-breakfast or hotel. Fruchter appealed to the town’s Zoning Board of Appeals. The board determined that, under the Town Code, his short-term rentals were not allowed unless he obtained a special use permit. Fruchter then commenced a combined Civil Practice Law and Rules (CPLR) article 78 proceeding (used to appeal decisions of New York state or local agencies to the state courts) and action for declaratory judgment in the Supreme Court (New York’s state trial court). The Supreme Court dismissed his petition, and declared that his due process and equal protection rights had not been violated.

Fruchter appealed, contending that the Town Code did not require a special use permit for the type of short-term rentals he provides.

Emphasizing the importance of the specific language of the ordinance, the Appellate Division noted that while the courts were generally deferential to Zoning Board of Appeals’ determinations, it need not be deferential where addressing, as here, a purely legal interpretation of a zoning law or ordinance. In that latter circumstance, it noted “zoning restrictions are in derogation of the common law . . . [and they] are strictly construed against the regulating municipality.”

The Court noted the town had not updated its ordinances to address the ramification of the emerging “sharing economy.” As such, “[t]he issue thus distills to whether the rentals removed the property from the definition of residential one-family dwellings and whether such activity fits under another definition in the Town Code.” The Appellate Division found these rentals did not remove his property from the definition of a single family residence, and did not fit within the definitions of a hotel, motel, or bed-and-breakfast. Accordingly, the Court vacated the Zoning Board of Appeals’ determination. (It did find, however, that the Supreme Court correctly found there had been no denial of Fruchter’s due process or equal protection rights.)

The clash between the emerging sharing economies and the language of local land use ordinances affects both homeowners’ rights and the hospitality industry’s responses to these new competitors. This case provides useful guidance to municipalities drafting ordinances, homeowners seeking to participate in the sharing economy, homeowners’ associations seeking to

regulate owner uses of property to residential uses, and hospitality industry members seeking to challenge non-conforming competitors.

Attorneys in Ballard Spahr's New York office represent clients in all aspects of real estate transactions and disputes. The firm's practice groups dedicated to Real Estate and Construction Litigation and Resort and Hotel regularly counsel clients in New York and nationally on transactions and disputes involving the hospitality industry. For more information or questions about the New York ruling or other real estate issue, please contact Andrew J. Petrie, who is admitted to practice in New York state courts as well as other state and federal courts, at 303.299.7339 or petrica@ballardspahr.com, Michael Pollack at 212.346.8030 or pollackmv@ballardspahr.com, or Resort and Hotel Practice Group Leader Christopher W. Payne at 303.299.7345 or payne@ballardspahr.com.

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EXHIBIT F

133 A.D.3d 1174

Supreme Court, Appellate Division,
Third Department, New York.

In the Matter of David FRUCHTER, as
Trustee of the Healy Family Trust, Appellant,
v.

ZONING BOARD OF APPEALS OF the
TOWN OF HURLEY, et al., Respondents.

Nov. 25, 2015.

Synopsis

Background: Property owner brought article 78 proceeding and action for a declaratory judgment to review determination of town's zoning board of appeals (ZBA) requiring owner to obtain special use permit for renting out residence. The Supreme Court, Melkonian, J., dismissed petition. Owner appealed.

[Holding:] The Supreme Court, Appellate Division, Lahtinen, J.P., held that owner's use of property did not require special use permit.

Reversed.

West Headnotes (3)

[1] Zoning and Planning

⚙ Construction by board or agency

Zoning and Planning

⚙ Decisions of boards or officers in general

Judicial review of a determination of a zoning board of appeals is generally deferential, and that body is accorded reasonable discretion in interpreting an ordinance that addresses an area of zoning where it is difficult or impractical for a legislative body to lay down a rule which is both definitive and all-encompassing; however, where the issue presented is one of pure legal interpretation of the underlying zoning law or ordinance, deference is not required.

3 Cases that cite this headnote

[2] Zoning and Planning

⚙ Strict or liberal construction in general

Since zoning restrictions are in derogation of the common law they are strictly construed against the regulating municipality.

2 Cases that cite this headnote

[3] Zoning and Planning

⚙ Hotels, lodging, and short-term rentals

Activity of property owner in renting out two-bedroom single-family residence for one night, one month, or entire season, did not fit neatly into definitions in town code of either bed and breakfast or hotel, and thus use did not fall within definition of activities requiring special use permit; property was not owner-occupied dwelling in which only rooms were being rented as provided in definition of bed-and-breakfast, and residence did not have common exterior entrance or entrances as set forth in definition of hotel, and town code did not otherwise expressly prohibit rental of residence.

1 Cases that cite this headnote

Attorneys and Law Firms

****702** Law Offices of Jeffrey P. Siegel, Woodstock (Jeffrey P. Siegel of counsel), for appellant.

Law Offices of John J. Darwak, Shokan (John J. Darwak of counsel), for respondents.

Before: LAHTINEN, J.P., GARRY, EGAN JR. and CLARK, JJ.

Opinion

LAHTINEN, J.P.

***1174** Appeal from a judgment of the Supreme Court (Melkonian, J.), entered June 2, 2014 in Ulster County, which dismissed petitioner's application, in a combined

proceeding pursuant to CPLR article 78 and action for a declaratory judgment, to, among other things, review a determination of respondent Zoning Board of Appeals of the Town of Hurley requiring petitioner to obtain a special use permit.

Petitioner owns and considers as his permanent residence a two-bedroom single-family residence located on about four acres in the Town of Hurley, Ulster County. The residence is in an area zoned A-4 residential. In 2012, he began listing the property on the Internet offering to rent it for terms ranging from one night to a month or an entire season. According to petitioner, he always rents the entire residence, he does not stay there when the residence is rented, and he does not serve or offer any food or beverages. Respondent Glenn Hofstatter, the code enforcement officer for the Town, issued petitioner an order to remedy for illegally operating a bed-and-breakfast or *1175 hotel. Petitioner appealed to respondent Zoning Board of Appeals of the Town of Hurley (hereinafter ZBA), which determined that, under the Town Code, petitioner's short-term rentals were not allowed unless he obtained a special use permit. He commenced this combined CPLR article 78 proceeding and action for declaratory judgment. Supreme Court dismissed the petition and declared that petitioner's due process and equal protection rights were not violated. Petitioner appeals contending that the Town Code does not require a special use permit for the type of short-term rentals that he provides.

[1] [2] Judicial review of a determination of a zoning board of appeals is generally deferential (*see Matter of Meier v. Village of Champlain Zoning Bd. of Appeals*, 129 A.D.3d 1364, 1365, 11 N.Y.S.3d 743 [2015]), and that body is accorded reasonable discretion in interpreting an ordinance that addresses an area of zoning "where it is difficult or impractical for a legislative body to lay down a rule which is both definitive and all-encompassing" (*Matter of Frishman v. Schmidt*, 61 N.Y.2d 823, 825, 473 N.Y.S.2d 957, 462 N.E.2d 134 [1984]). However, where, as here, " 'the issue presented is one of pure legal interpretation of the underlying zoning law or ordinance, deference is not required' " (*Matter of Albany Basketball & Sports Corp. v. City of Albany*, 116 A.D.3d 1135, 1137, 983 N.Y.S.2d 337 [2014], *lv. denied* **703 23 N.Y.3d 907, 2014 WL 2934459 [2014], quoting *Matter of Subdivisions, Inc. v. Town of Sullivan*, 92 A.D.3d 1184, 1185, 938 N.Y.S.2d 682 [2012], *lv. denied* 19 N.Y.3d 811,

2012 WL 3931116 [2012]). Since "zoning restrictions are in derogation of the common law ... [they] are strictly construed against the regulating municipality" (*Matter of Saratoga County Economic Opportunity Council, Inc. v. Village of Ballston Spa Zoning Bd. of Appeals*, 112 A.D.3d 1035, 1036, 977 N.Y.S.2d 419 [2013]; *see FGL & L Prop. Corp. v. City of Rye*, 66 N.Y.2d 111, 115, 495 N.Y.S.2d 321, 485 N.E.2d 986 [1985]).

[3] Petitioner's activity does not fit neatly into the definitions in the Town Code. The Town Code does not appear to have been updated to consider the ramifications from the emergence of the so-called "sharing economy," which includes the type of house sharing or short-term rentals recently made popular by various platforms on the Internet (*see generally The Rise of the Sharing Economy*, *The Economist*, March 9, 2013, <http://www.economist.com/news/leaders/21573014> [accessed Oct. 26, 2015]; Jamila Jefferson-Jones, *Airbnb and the Housing Segment of the Modern "Sharing Economy"*, 42 *Hastings Const. L.Q.* 557 [2015]; *cf. Matter of Atkinson v. Wilt*, 94 A.D.3d 1218, 1219, 941 N.Y.S.2d 798 [2012]). Residential uses of one-family dwellings are permitted *1176 in the relevant A-4 district under the Town Code. And, absent the challenged short-term rentals, petitioner's property is undisputedly a one-family dwelling. The issue thus distills to whether the rentals removed the property from the definition of residential one-family dwellings and whether such activity fits under another definition in the Town Code.

Although the ZBA did not determine the category of use that petitioner's activity constituted under the Town Code, it upheld Hofstatter's determination, which had labeled the use as either a bed and breakfast or hotel. However, petitioner's use of the property does not fall under the definitions in the Town Code of either of these. Petitioner's residence, among other things, did not have "a common exterior entrance or entrances" as set forth in the definition of a hotel. Moreover, since petitioner always rented the entire premises and he did not remain on the premises when rented, it was not an "owner-occupied dwelling" in which only "rooms" were being rented as provided in the definition of a bed-and-breakfast. Although the definitions of "dwelling" and "residences" excluded various activities, including motel, hotel and "transient" occupancy, the term transient is not defined and, when considered in the context of the entire Town Code, does not clearly apply to petitioner's activity.

Fruchter v. Zoning Bd. of Appeals of Town of Hurley, 133 A.D.3d 1174 (2015)

20 N.Y.S.3d 701, 2015 N.Y. Slip Op. 08689

Inasmuch as petitioner's use does not fall within the definition of activities requiring a special use permit, and the Town Code does not otherwise "expressly prohibit[] petitioner[] from renting [his] residence to vacationers[.] ... we cannot say that petitioner[s] decision to do so placed [his] otherwise obviously residential structure outside the Town's definition of a [residential one-family dwelling]" (*Matter of Atkinson v. Wilt*, 94 A.D.3d at 1221, 941 N.Y.S.2d 798). We do, however, agree with Supreme Court that petitioner failed to establish a denial of due process or equal protection.

ORDERED that the judgment is modified, on the law, without costs, by reversing so much thereof as dismissed the petition; petition granted to the extent of annulling the determination of respondent Zoning Board of Appeals of the Town of Hurley; and, as so modified, affirmed.

GARRY, EGAN JR. and CLARK, JJ., concur.

All Citations

133 A.D.3d 1174, 20 N.Y.S.3d 701, 2015 N.Y. Slip Op. 08689

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EXHIBIT G

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The Municipal Official's Guide to Short-Term Rental Regulations

By Mark A. Cuthbertson | October 20, 2017 at 02:03 PM

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Mark A. Cuthbertson ()

Local governments often have to regulate rental properties, driven by constituents concerned about the impact that both long and short-term tenants will have on the quality of life in their communities. With the rise of homestay companies like AirBnB, there has been an explosion in the number of short-term rentals (i.e., rentals for less than 30 days), putting many municipalities under pressure from both sides to reexamine their regulatory schemes. This pressure comes from both those who would like to avail themselves to homestay companies as a source of revenue, and those who have concerns about the impact of allowing such uses.

This column will examine the arguments for and against short-term rentals, using AirBnB as an example, and discuss different regulatory tools available to municipal officials to regulate such activity.

Homestay Companies

Homestay companies like AirBnB provide a peer-to-peer platform for property owners (or "hosts") to list and rent accommodations to other individuals. Such rentals can range from an entire single-family home to a spare couch, on anywhere from a nightly to monthly basis. Hosts set their own prices, and the company takes a percentage fee from both host and renter (or "guest") for each transaction.

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The AirBnB model has proved incredibly popular. In 2016, AirBnB was valued at \$31 billion. The company reported over three million listings in 191 countries, and nearly two million guests stayed with 48,600 hosts in New York state alone.

Benefits and Criticisms

To advocates of AirBnB, short-term rentals benefit all involved. The median earnings for a host in New York are \$5,468, and \$9,800 for hosts on Long Island. This supplemental income can offset rent, property taxes, or just put extra money in an owner's pockets. For hosts, AirBnB is an alternative to traditional hotels that can better fit a guest's needs for cost or location. Thus, advocates claim short-term rentals are good for both users and the economy.

Critics see matters differently. Common complaints include excessive noise, large public gatherings, reduced parking availability, and other impacts affecting quality of life. Critics also allege that homestay companies adversely impact local housing stock and rental prices, as some investors will buy multiple homes or apartments for full-time use as short-term rentals. As a result, many municipalities are reexamining how they regulate short-term rentals.

Regulatory Responses

Municipalities have adopted a wide range of regulations for short-term rentals. At one extreme, municipalities like the Town of Hempstead have imposed a total ban on short-term rentals. At the other end of the spectrum, some municipalities have opted against imposing short-term rental regulations at all. Yet many municipalities take a middle road, allowing some short-term rentals subject to certain limitations. The hope is that with thoughtful regulation, users can continue to reap the benefits of homestay companies, while mitigating any negative impacts.

Very often, a regulation will be adopted requiring that any rented dwellings be owner-occupied (i.e., the owner's primary residence). This serves two purposes. First, an owner-occupancy requirement limits the ability of individuals to purchase multiple properties for use as short-term rentals, and may mitigate the impact short-term rental regulations have on local housing stock and rental prices. In addition, owner-occupancy creates a level of accountability as the owner can observe the guests and respond to complaints from authorities or neighbors if prohibited or disruptive conduct occurs. A less restrictive version of this requirement allows the owner to be absent from the property, provided that a local contact is available at all times to address complaints.

Another requirement commonly used to regulate short-term rentals are durational limits. Such limits can include caps on the length of any individual rental, limits on the number of consecutive days a dwelling may be rented out, or aggregate limits on how many days per month or year that the dwelling may be used as a short-term rental. Durational limits primarily serve to protect the residential character of a neighborhood, ensuring that residences do not become full-time commercial uses.

Finally, municipalities can regulate short-term rentals through permit conditions, which are undoubtedly the broadest and most versatile regulatory tool that municipalities have at their disposal. Specifically, a municipality may require that property owners acquire rental permits, and then condition the issuance and

renewal of such permits on the property owner's compliance with various regulations. By doing so, municipalities can address many of the quality of life concerns expressed by local property owners. Permit requirements can also provide ancillary benefits to a municipality, such as information about the properties being used as short-term rentals.

The specific permit conditions imposed by a municipality can vary between jurisdictions. However, as many municipalities are confronted with similar issues regarding short-term rentals, there is significant overlap in the broad strokes of their regulatory responses. For example, municipalities nearly always include some form of noise restrictions on short-term rentals. These noise limits can be applied generally or limited to specific hours of the day (e.g., 10:00 p.m. to 8:00 a.m.), and even vary between weekdays and weekends. Moreover, the noise limit can be framed objectively, using volume as measured in decibels, or using a discretionary standard based upon reasonableness in light of the particular time and location.

Another common permit condition is a limitation on assembly. Regulations may prohibit certain types of gatherings, such as wedding parties, or generally limit the number of non-residents on the property. One approach caps the number of guests that a tenant can invite to the property. Alternatively, the property owner can be prohibited from having a certain number of non-residents on the property at any given time. This can also be coupled with limits on the number of rentals per property at any given time, and off-street parking requirements to blunt the impact of multiple guests with respect to on-street parking.

Municipalities can also benefit financially from imposing permit requirements. The clearest example is additional revenue raised by permit application and renewal fees. Such fees can range from modest amounts to substantial annual fees of \$300 or more, based upon the administrative expense of the program and whether the municipality wishes to deter the number of renters.

Finally, the permit application process itself can provide a significant amount of information. A municipality can use this information to track the number and distribution of short-term rentals in its jurisdiction, and, if necessary, limit the issuance of new permits to stop or slow the growth in short-term rentals.

The Bottom Line

For some municipalities, the favored approach to homestay companies will always be a flat-out prohibition on short-term rentals. There is an attractive simplicity in banning short-term rentals, or even avoiding the issue entirely by declining to impose regulations. However, such options inherently require rejecting one side's viewpoint in favor of another. Given the strong emotions that homestay companies evoke on both sides, an absolutist approach will often not end debate on the issue.

Permitting short-term rentals, while subjecting them to reasonable regulations, may be the only viable, long-term approach that municipalities have. Accordingly, municipalities should carefully consider how to best craft regulations that fit with the needs of both their constituents and communities.

EXHIBIT H

5 Legal and Regulatory Considerations for Short-Term Rentals

Alexis Brachel, Senior Manager, Business Licenses
July 12, 2017

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Short-term rental business opportunities such as Airbnb, HomeAway and VRBO are a great way for homeowners to earn money. Whether you're looking to subsidize your income or defray the costs of owning a second home or vacation property, it's a hot market. According to Research and Markets, the global vacation rental market will reach \$169.7 billion by 2019.

But as short-term rentals have grown beyond a cottage industry, regulators are playing catch-up. Spurred by complaints from neighboring residents and the traditional hotel industry, cities are enacting laws to regulate short-term rentals across the nation. The fines for non-compliance can be substantial. Last year, the city of Miami Beach, FL, issued fines of \$1.59 million from the period March through August alone, with fines for a first violation starting at \$20,000.

With such costly and ever-evolving regulatory dynamics, it's important that property owners understand the legal considerations for short-term rentals. Below are answers to five commonly asked questions about the laws and regulations that govern short-term rental businesses:

1. What's the Definition of a Short-Term Rental?

Sounds straightforward, right? You rent a room or your entire property to a guest for a short period of time. However, it's not quite that simple. The definition of a short-term rental can vary based on two key factors:

- **The Type of Structure**

Each city or county has varying definitions of what constitutes a "short-term rental property".

In Nashville, TN, for example, a short-term rental property (STRP) is defined as "a residential dwelling unit, containing more than four sleeping rooms, that is used and/or advertised through an online marketplace for rent for transient occupancy by guests."

However, head on over to the Rockies where in Denver, CO you'll come across a different definition of a short-term rental: "the rental of a shared room, a single room, multiple rooms or an entire property for a period ranging from 1-29 days."

The definition is important because it doesn't just impact how you rent out your space, but also the types of licenses and permits you need and other laws that may apply. Check with your city or county website to find out more.

- **Length of Stay**

How long you open your property to renters is also key in defining it as a short-term rental or not.

In the Nashville example above, the length of stay must be limited to a period between 1-29 days. However, in Santa Monica, CA, short-term rental regulations are much stricter and prohibit the rental of an entire unit for less than 30 days. Similarly, in New Jersey, the state government recently moved to regulate short-term rentals to require a minimum stay of 30 consecutive days so as to avoid a negative impact on the quality of life in residential neighborhoods.

2. What Are the Legal Restrictions for Short-Term Rentals?

In addition to regulating the type of structure and length of stay, there are several other legal restrictions that short-stay rental

businesses are subject to. Again, these vary by city and/or state.

Here are just some of the common restrictions:

- **Prohibition of Short-Term Rental** – Some cities completely prohibit short-term rentals. In California, the City of Santa Barbara defines short-term rentals as “hotels” that can only operate in designated zones and then only if all necessary approvals are obtained. In San Diego, short-term rentals are prohibited in any zone.
- **Limits to the Number of Rental Properties in a Location** – Large cities and tourist destinations tend to have strict rules, such as placing limits on the number of short-term rentals in any given zone. For example, New Orleans, LA, bans short-term rentals in the French Quarter, except for certain areas. The city even has the cooperation of Airbnb and city enforcement officers to track down violations and complaints.
- **Multiple Dwelling Laws** – New York City has some of the toughest restrictions on short-term lets. To prevent disruption to residents and help prop up its hotel industry, New York’s Multiple Dwelling Law (MDL) only permits rentals of less than 30-days in “Class A” multiple dwellings (buildings with three or more families living independently) if a permanent resident is present. Violations are up to \$2,500 a day. Another law makes it illegal to advertise a rental that is prohibited by the MDL.

Be sure to check the laws in your city or state. If you intend to rent condo or co-op space, consult your association rules to see if anything limits your ability to rent space as well as HOA bylaws or timeshare ownership rules. If you rent your property from a landlord, be sure to get his ok too.

3. What Licenses and Permits are Required?

Here’s a checklist of what licenses or permits you may need to obtain:

- **A General Business License.** If you’re operating any sort of a business, including renting property, your city or county will likely require you to obtain a license or permit.
- **Short-Term Rental License** – You may also need a short-term rental license or permit. Applications typically require you to attest that the property meets health and safety requirements (such as smoke detectors and fire extinguishers), is up to code, compliant with zoning laws and that adjoining properties have been notified. Proof may also be required that the unit being rented is your primary or secondary residence.

Check your local government website for details or refer to the “Getting Started” information through your online rental company

(Airbnb, VRBO, etc.) for license and permit requirements in your area.

4. What About Zoning Rules?

We've mentioned zoning laws already, don't skip this important step in your business planning. If your property is not zoned for short-term rentals, your options are very limited. Don't take the risk, all it takes is a complaint from a disgruntled neighbor to trigger a cease and desist notice from the zoning department.

5. How to Pay Taxes on Short-Term Rentals?

Taxes are a critical part of regulatory compliance. In addition to paying income tax and self-employment taxes, some local governments impose a short-term rental occupancy tax (lodging or hotel tax). It's a good idea to consult your tax advisor to see which tax deductions you can claim. For example, the IRS lets you claim rental expenses for property and rooms rented (such as rental fees charged by short-term rental companies) if you meet certain criteria. Be sure to keep thorough records of all rental periods and any expense incurred throughout the year.

Conclusion

The laws and regulations that govern the short-term rental market are constantly changing. As demand grows, more and more cities and vacation destinations are taking steps to protect residential neighborhoods and guests alike.

It's a fluid situation and many state and local lawmakers are trying to ease regulations. In Texas, senators are working to prevent Texas cities from banning short-term rentals of less than 30-days and bring state-wide uniformity to laws. As short-term renting becomes mainstream, expect other states to follow suit.

EXHIBIT I

Five things every local government leader needs to know about short-term vacation rentals

The rise and growth of short-term rental platforms has created plenty of debate amongst local governments, the hotel industry, the real estate lobby and local residents about what to do with it. From a local government perspective, there is no single universal regulatory approach that works, but a number of key factors to consider in developing a strategy. In this short article, you'll find five of the most important facts local government officials need to know about short-term vacation rentals.

1. IT'S ALREADY BIGGER THAN THE HOTEL INDUSTRY

Short-term vacation rental platforms, like Airbnb, Homeaway and Flipkey, have been emerging in the last ten years and growing rapidly since their inceptions. The biggest player in the field, Airbnb, has been valued at \$30 billion surpassing major hotel chains such as Hilton, Marriott and Intercontinental. And by all indications, there's no end in sight to the growth of the short-term vacation rentals industry.

In the early phases, short-term vacation rentals were mainly used by some early-adapting millennials looking for an authentic and cheap way to travel, by now it is serving around 5 million guests in different segments ranging from business travelers to young families with children. Some property owners are even turning residential housing into vacation rentals making a full-time business out of short-term rentals. With the huge success of the platform, Airbnb is now expanding its services even further into new markets and is expected to hit the milestone of one million bookings a year worldwide by 2025. Meanwhile other platforms such as HomeAway continue to grow as well with an expected rate of 24% in revenue annually.

2. SHORT-TERM RENTALS IMPACT COMMUNITIES OF ALL SIZES

For some cities the arrival of short-term vacation rentals is seen as a way to stimulate tourism, for local families to generate some extra income and for the city as a whole to benefit from increased tourism spending. For other cities it has been accompanied with stories about neighborhood-related challenges and reductions in long-term rental availability, especially in urban areas. One of the major impacts of short-term vacation rentals is that they are moving visitors into residential areas that were never meant for such an influx of travellers. In this respect popular tourist destinations like San Francisco, New York, Barcelona and Berlin have been battling with Airbnb because of the impacts on the housing market. At the same time nuisance related complaints and commercialization of neighborhoods are fueling the debate even more.

Short-term vacation rentals however are not only found in bigger cities, they are present in all types of places creating an impact on each and every one of them. At the moment over 1000 local governments in the United States have more than 100 unique short-term vacation rental listings and it's not just

vacation destinations and big cities, but increasingly small towns and rural areas as well. Whether the impact is considered positive or negative, big or small, it is definitely something you can't ignore.

3. IT AFFECTS HOUSING AVAILABILITY AND AFFORDABILITY

What has sparked most of the debate is the effects of short-term vacation rentals on the housing market. Visitors are now staying in apartments or houses reducing already diminished long-term rental stocks. As a consequence, housing affordability also becomes an issue. New York for example claims that short-term rentals have reduced housing stocks by 10% and in San Francisco short-term rentals are being blamed for driving housing prices up and availability down. Smaller cities like Madison and Long Beach City have also been wrestling with similar issues on housing availability and affordability.

4. THEY OPERATE IN A VAGUE AREA OF THE LAW

The pace at which the short-term vacation rental industry is growing is far greater than government's ability to regulate. Many existing ordinances related to accommodation were developed long before the existence of websites like Airbnb - as a result short-term vacation rentals are operating in many communities with no concrete laws, and even for those with updated regulations, many don't have an effective way to enforce these rules or collect taxes.

Several cities have come up with ways of regulating short-term vacation rentals in the form of restricting or sometimes even banning short-term vacation rentals from the city. But those cities that have taken a firm stance banning short-term vacation rentals have faced legal action from Airbnb. Santa Monica, CA for example was sued by Airbnb after instituting a ban. Best practice is quickly becoming to pass fair regulations that balance the rights of homeowners, while protecting neighborhoods from common short-term vacation rental issues like parking, noise and diminishing long-term rental stocks.

5. THE SHORT-TERM RENTAL INDUSTRY WON'T SHARE LISTINGS INFORMATION

Companies such as Airbnb, Flipkey and Homeaway refuse to share listings data with governments citing host privacy concerns. Unless local governments are prepared to make major investments in staff, to comb through listings to identify non-complying hosts and drive through city streets to identify them - enforcing short-term rental regulations becomes a nearly impossible task.

Not even major cities have succeeded in obtaining listings information. San Francisco for example gets data from Airbnb about the amount of listings per person but does not get insights to the number of hosts or where they are located. In Amsterdam listings are removed from the website automatically after the rental limit of 60 days has been reached, but no other information is shared. Without address data, all local governments have to go on is pictures on a listing and a rough idea of where that property is located.