

TOWN OF GRAND ISLAND, NEW YORK

Local Law Intro No. ____ of 2015

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A Local Law Clarifying That Short-Term Rentals, Transient Rentals, And Tourist Homes Are Not Permitted Within The Town Of Grand Island's Residential Zoning Districts And Providing A One-Year Amortization Period For Any Short-Term Rentals, Transient Rentals, And Tourist Homes Which Purport To Be Non-Conforming Uses

Be it hereby enacted by the Town Board of the Town of Grand Island as follows:

Section 1: Purpose, Intent, And Findings.

Background. The Town of Grand Island (the "Town") has developed a comprehensive statutory scheme regulating short-term rentals. The Town does not allow transient rentals in residential zones except for owner-occupied bed-and-breakfasts that have received a special use permit. This represents the Town Board's legislative determination to lessen impacts by limiting transient rentals to owner-occupied properties. The relevant use permitted as of right in the Town's residential zoning districts is a "single family detached dwelling." *See, e.g.,* Town Code § 407-26(A). Section 407-10 of the Zoning Code defines a "Dwelling" as "[a]ny building or portion thereof designed or used exclusively as the residence or sleeping place of one or more persons, erected on a permanent foundation." A "Dwelling Unit" is similarly defined as "[a] residential unit other than a mobile home, with one or more rooms, including cooking facilities and sanitary facilities in a dwelling structure, designed as a unit for occupancy by not more than one family for living and sleeping purposes." Town Code § 407-10. In adopting the Zoning Code, the Town Board intended residential district to be just that, residential districts, where the occupants of structures in residential districts use the structures as their residence.

Because non-owner-occupied short-term rentals, transient rentals, and tourist homes are not specifically allowed by the Zoning Code in residential districts, they are prohibited. Section 407-8(C) of the Town's Zoning Code states: "Prohibited uses: any use not specifically listed as an approved as-of right or specifically permitted use is not allowed in the Town of Grand Island." Thus, if the Zoning Code doesn't specifically allow the use of property, the use is excluded. The Board has extensively evaluated this issue and determined to allow one type of short-term, transient rentals: owner-occupied bed-and-breakfasts. The rationale for allowing this type of short-term, transient rentals is that the presence of the owner works to mitigate some of the impacts resulting from transient rental (*e.g.,* debris, loud parties, use of the property for improper purposes).

Moreover, short-term rental of a dwelling customarily used as a residence constitutes the operation of a Tourist Home, a use that is specifically defined and regulated in Chapter 351 of the Town Code, and prohibited in residential zoning districts. Chapter 351 provides that Tourist Homes may only be located in areas where they are permitted by Chapter 407, the Zoning Code. *See* Town Code §§ 351-5(A), 351-11. In addition, there are certain safety concerns with utilizing typical non-owner-occupied residential structures for short-term or transient rentals. New York State has long recognized the difference between transient rentals and longer rentals, specifically

defining transient in the New York Uniform Fire Prevention and Building Code (the "Uniform Code") and requiring different standards than for properties used by non-transients. 19 N.Y.C.R.R. § 1221.1, § 310.2 ("TRANSIENT. Occupancy of a dwelling unit or sleeping unit for not more than 30 days The intent of this definition is to establish a time parameter to differentiate between transient and nontransient as listed under Groups R-1 and R-2. Real estate law often dictates that a lease must be created after 30 days and 30-day time periods are typically how extended-stay hotels and motels rent to people. Such a time period gives the occupant time to be familiar with the surroundings and, therefore, become more accustomed to any hazards of the built environment than an overnight guest would be or a guest who stays for just a few days. Since nontransient occupancies do not have the same level of protection in the code as transient occupancies, it is important to determine what makes an occupancy transient so as to provide consistency in enforcement."). The Town fulfills its obligation pursuant to State law by requiring a certificate of occupancy and by requiring a new certificate of occupancy for change in a property's use, from residential to transient-rental. See Town Code §§ 125-7 and 407-6(A).

Litigation. Certain property owners in the Town, who faced enforcement for violating Town Code provisions prohibiting short-term, transient rental in residential zoning districts in violation of Town Code Chapters 125, 351, and 407, commenced litigation against the Town arguing that the Town Code does not prohibit this use. The Town Board joined additional property owners who were violating those same chapters of the Zoning Code. In a decision that has been appealed by the Town, Supreme Court, Erie County (J. Devlin) held that there is ambiguity in the Zoning Code with respect to whether short-term, transient rental of non-owner occupied dwellings in residential zoning districts was prohibited and that the issue must be decided in favor of the property owner. Among other things, Justice Devlin held that Section 407-8(C) of the Town Code cannot be used to prohibit such rentals and that no new certificate of occupancy is required to change the use from residential to transient use and that non-owner-occupied transient rental of a single family residence did not fall within the definition of a "Tourist Home." The Town Board disagrees with this interpretation and has filed and served a notice of appeal to the Appellate Division, Fourth Department. Justice Devlin, however, noted that the Town has the authority to limit such uses, and the property owners agree; she merely held that in her view, the Town Code did not restrict non-owner-occupied transient, short-term rentals in residential zoning districts.

Findings. The Town Board finds that its initial scheme, and the intent thereof, remains in the public interest and that non-owner occupied, short-term, transient rentals should not be permitted in residential zoning districts. While it disagrees with Justice Devlin's decision and has appealed, the Town Board has determined to take action to protect the integrity of the Zoning Code and the Town's residential zoning district. The Town Board hereby finds that residential zoning districts should be limited, primarily, to residential uses. Property owners utilizing their properties as residences builds a community and reduces certain impacts. The commercial short-term, transient, non-owner-occupied rental use brings with it certain impacts that are best kept away from residential uses. Among these impacts are: noise, damage to property, poor upkeep of structures, large gatherings and/or parties, debris, use of property in a manner that is not permitted by applicable law, and late-night activities. The Board has seen evidence of these impacts, especially as of late. This use is not compatible with the Town's comprehensive plan and its residential zoning districts. However, the Town Board notes the unique tourist opportunities that the Town's location provides and determines to continue allowing short-term,

transient rentals in the form of owner-occupied bed-and-breakfasts, subject to a special use permit from the Town Board. The fact that owner occupancy is required mitigates many of the impacts from short-term, transient rental. The Board also finds that because of Justice Devlin's decision, current violators may contend that they are pre-existing, legal nonconforming uses and may continue regardless of any change to the local law to reaffirm the Board's intent. For that reason, and because of the critical public interest involved with this issue, the board determines to set a one-year amortization period after which all such alleged pre-existing, legal nonconforming uses must cease, unless extended by the Town Zoning Board of Appeals.

New York law permits the Town to put a definitive end to nonconforming uses, even if they existed lawfully at the time the Code was changed. Non-conforming uses are not allowed to continue in perpetuity, unless allowed to do so by the local zoning code. Town Board determines to eliminate these alleged pre-existing non-conforming uses in a reasonable way, with an amortization period, which would allow any impacted property owner to recoup some of his/her investment, to the extent any investment is lost as a result of eliminating the use. The Town Board does not believe that any amortization period is required because the use of the property has not been disallowed; it may still be utilized as a single-family residence. Any loss of investment to the property owner resulting from prohibiting transient rentals, if anything, is relatively slight and insubstantial. Nonetheless, the Board determines to allow a one-year amortization period. The Board further determines to provide for a hardship extension for up to three (3) years, provided the property owner meets the standard.

Section 2: Section 351-3 of the Town Code of the Town of Grand Island is hereby amended to read in its entirety as follows:

§ 351-3 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

BED-AND-BREAKFAST An owner-occupied private single-family dwelling customarily used as a residence which regularly or seasonally offers overnight accommodations in not more than five bedrooms to not more than 10 tourists or transients, which includes one off-street parking space (not located in the required front yard) for each bedroom. *See* § 407-10.

TOURIST HOME A structure typically used as a residence which provides overnight accommodations to tourists or transients, including non-owner-occupied rental of single-family or multi-family dwellings for a period of less than thirty (30) continuous days.

MOTEL Any room or rooms with ready access by car, attached or detached from one another, which regularly or seasonally offer overnight accommodations to tourists or transients.

TOURISTS OR TRANSIENTS Individuals occupying a dwelling unit or sleeping unit for less than thirty (30) continuous days.

UNIT Any room or rooms containing living, sanitary and sleeping facilities, with or without cooking facilities, arranged for the use of one family.

Section 3. Section 407-10 of the Town Code of the Town of Grand Island is hereby amended to add the following:

TRANSIENT RENTAL, SHORT-TERM RENTAL Rental of any portion of a residential structure, including single-family and multi-family dwellings, for a period of less than thirty (30) continuous days.

Section 4. Section 407-167.2 Transient Rentals is hereby added to the Town Code of the Town of Grand Island, to read in its entirety as follows:

A. With the exception of bed-and-breakfasts as specifically authorized in this Chapter, transient rentals or short-term rentals are not permitted in the following zoning districts: R-1A, R-1B, R-1C, R-1D, R-1E, R-2, R-2A, and R-3.

Section 5: Section 407-105(D) is hereby added to the Town Code of the Town of Grand Island, to read in its entirety as follows:

D. Termination of nonconforming transient rentals or short-term rentals after amortization.

1. Notwithstanding any other law or provision of the Town of Grand Island Code to the contrary, nonconforming transient rentals or short-term rentals shall terminate automatically within one (1) year of the effective date of this local law.
2. Upon application and after a public hearing pursuant to Town Law § 267-a(7), the Zoning Board of Appeals may permit a nonconforming transient, short-term rental to continue for up to three (3) years after automatic termination, provided that:
 - (a) the applicant demonstrates, with dollar-and-cents proof, that he/she made, prior to the nonconformity, substantial financial expenditures related to the nonconformity;
 - (b) the applicant has not recovered substantially all of the financial expenditures related to the nonconformity;
 - (c) the applicant will not realize a reasonable rate of return on his/her investment in the property; and
 - (d) the period for which the nonconforming use is permitted to continue is the minimum period sufficient for the applicant

to recover a reasonable amount of its financial expenditures incurred related to the nonconformity.

Section 6. Severability Clause. If any part of this local law is for any reason held to be unconstitutional or invalid, such decision shall not affect the remainder of this local law. The Town Board of the Town of Grand Island hereby declares that it would have passed this local law and each section and subsection thereof, irrespective of the fact that any one or more of these sections, subsections, sentences, clauses, or phrases may be declared unconstitutional or invalid.

Section 7. Effective Date. This local law shall be effective immediately upon filing with the New York Secretary of State.