



City of Niagara Falls, New York

P.O. Box 69, Niagara Falls, NY 14302-0069

AUGUST 19, 2020

NIAGARA FALLS PLANNING BOARD

DENIAL OF RECOMMENDATION TO CITY COUNCIL:
REVISION OF SHORT TERM RENTAL ORDINANCE

Pursuant to action taken by the Niagara Falls Planning Board on the 19th day of August 2020 your request is hereby DENIED.

NAME OF OWNER: City of Niagara Falls

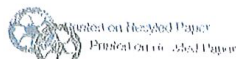
PURPOSE: REVISION OF SHORT TERM RENTAL
ORDINANCE.

Recommendation to Council is Denied .

DATE: August 19th, 2020


Tony M. Palmer, Chairman
Niagara Falls Planning Board

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TO: Niagara Falls City Council

FROM: Niagara Falls Planning Board
Thomas J. DeSantis, AICP, Planning Board Secretary
James Bragg, Associate Planner

DATE: August 19, 2020

RE: RECOMMENDATION to CITY COUNCIL -- On the Proposed Amendment to Chapter 1328.13 "Short-Term Rental Units"

The Restaino Administration proposed amending Chapter 1328.13 of the Niagara Falls codified zoning ordinance, entitled "Short-Term Rental Units," due primarily to the proliferation of housing units utilized for short-term rental (STR), with the primary purpose being to better regulate the short-term rental of dwelling units within the City through a comprehensive registration and licensing scheme, and by prohibiting the use from most neighborhoods, not within the Core City. The Administration's proposed changes were an attempt to balance the interests between those who offer their homes as STR properties and those adjacent property owners who do not. The Administration expected that the proposed changes would result in more robust safeguards for public health and welfare through better oversight of STR properties and generally better enforcement capabilities.

The City recognizes that an explosion of short-term rentals throughout the City can endanger the residential character of the community and can cause disruption to the peace, quiet and enjoyment of neighboring homeowners --particularly when enforcement of STR regulations is made more difficult with each new STR that is advertised in this growing online marketplace.

The NF Planning Board heard from the Niagara County Planning Board (NCPB) on its referral on the issue (Case #6655 on 7/02/2020), where it advised against the proposed changes, citing the "impacts relating to the inconsistencies with the current comprehensive plan and unresolved issues including legal issues." The ordinarily stoic NCPB had an extraordinarily animated discussion. In particular, NCPB member Mr. Walter Garrow characterized the proposal as being detrimental -- not just to Niagara Falls, but adverse to the image of Niagara County as a whole. Mr. Garrow had problems with how the proposal segregated short-term rentals into an area with a known higher crime rate, which would seem to diminish potential returns for operators and potential force

visitors to avoid the city altogether. NCPB Chair Joseph Kibler stated that the inability of Niagara Falls to establish a demonstrative rational basis for the geographic exclusion made him ponder that the genuine motivation for the proposed limited STR district had political roots rather than a sound foundation in public policy.

After hearing from many in the community, primarily, but not exclusively, at the Public Hearing held on August 5, 2020, on the appropriateness of the proposed changes, it became clear that the overwhelming majority of comments were opposed to the proposed changes to the existing ordinance on STRs.

Moreover, the primary and nearly universal complaint with the proposed law and the current ordinance was the weak oversight of STRs and the lack of meaningful code enforcement. Those with legal operations did not oppose regulation or fees but did not see how limiting the number of locations addressed the more significant issues, which are the unresolved illegal STRs that operate without penalty, or the meaningful follow up of complaints by the community when those occur. Operators also did not see how adding more stringent regulations and higher fees addressed the underlying lack of enforcement. The proposed steps did not aid in identifying and/or eliminating illegal operators and 'bad actors' who already take advantage of an underperforming regulatory regime.

Specifically, the geographic limiting of STR units into the restricted area, within the Core City, was not seen as solving perceived failures or lack of proper enforcement. This limitation on the spread of STRs into more diverse parts of the City could create a greater "mass" of STRs in neighborhoods in proximity to downtown tourist zone where commercial lodging and hospitality properties are already, but it was noted by many that in so doing it puts a far more significant burden on those neighborhoods to function in an unexpected and undesired way. There are of course other unintended consequences. The limiting of potential locations increases cost-to-entry; higher levels of regulation and compliance requirements increases operating-costs, which would discourage compliance or locating STRs within the City altogether while encouraging STRs to locate in neighboring communities. All of which seems counterproductive and a general disincentive to increasing private investment in the City. It must be noted that the STR market is, in large part, not subsidized by public incentives or tax breaks. Capital investments in legal STRs often represent an over-investment when compared to typical home-owner improvements and/or surrounding property values generally. All of which can ultimately raise residential property values higher—more quickly, than without such capital investments.

Additionally, the proposed chapter amendment, while continuing to require the basic standards featured in the existing ordinance, would require an annually renewable STR license and a one-time non-renewable (permanent) special-use permit –instead of a special permit renewable every four (4) years. STRs would additionally be required to maintain at least \$1 million' worth of liability insurance coverage (and provide evidence to that effect each year), and; STRs would pay a new fee of \$250.00 for single unit dwellings and \$400.00 for two-unit rental dwellings before the issuance of a special permit and annual license (which is a comparable rate with other STR licensing fees). The proposed creation of an annual licensing requirement would require an STR owner/operator to submit documentation regarding building/safety code compliance in order to obtain the special permit (initial application) and then yearly for the STR license and be subject to an annual inspection. Again, these specific new regulations have questionable value in promoting the City of Niagara Falls STR market and appear to add to the City's already considerable enforcement burden. It should be noted here that while the objection to new annual licensing regulations, and new insurance requirements, were generally questioned and considered objectionable, the desire to institute new fees was seen as being better understood in principle and less offensive overall. Therefore, these provisions should be dropped in its current form and if modified could be brought back later for further consideration.

Under the proposed chapter amendment, owners of an STR would be required to register with Airbnb and only Airbnb to force the collection of taxes and fees. This mandate is not seen as viable and would likely be met with a legal challenge if adopted. Hotels are a fundamentally different land use than an STR. Therefore, this provision should be dropped altogether from further consideration.

It is our general understanding that under current local laws, an owner of an STR can be held responsible for any nuisance violation at their property and must take all reasonable steps to ensure that all occupants of the dwelling unit refrain from making any disturbing, offensive, or excessive noise, which would annoy or disturb the neighborhood. This point is already a criteria – if not adhered to, can then result in the suspension or revocation of the STR special permit. Therefore, this reference should be dropped as there is no need to add to the responsibility of code enforcement officers under this ordinance.

However, the provision to formally designate a responsible local contact who shall be available twenty-four (24) hours per day, seven (7) days per week with the ability to respond to any complaint regarding the condition, operation, or conduct of occupants of the STR unit and take immediate action to resolve any such complaints, which is similar to landlord licensing provisions, is a worthy amendment proposal to this ordinance.

The 'enhanced enforcement and penalties,' should the STR unit fail to comply with all applicable codes and regulations, is a worthy amendment to this ordinance. Likewise, the proposed enhanced due process provision, which adds an appeals procedure which could be exercised before the imposition of a suspension or revocation of the subject license, is also a worthy amendment proposal to this ordinance.

The Administration may have proposed this chapter amendment in an attempt to protect the city's neighborhoods and to concentrate like uses to boost our tourist industry. Yet we heard no substantive testimony that those neighborhoods outside of the proposed permitted STR zone would be better off without STRs. We could not substantiate arguments that concentrating lodging opportunities in the downtown area promotes fair and equal opportunities for STR operators or prospective operators. Nor were we convinced that instituting such changes would enhance the lodging experience of our visitors. Therefore, this provision should be dropped altogether from further consideration.

On the issue of locational preference, and while not a recommendation at this time, it might be more equitable to institute a sliding scale of fees depending on each neighborhood or based on zoning classifications.

The citizens of this City, as well as the STR community itself, generally desire that STR businesses be well-regulated and that the regulations enacted by the City Council are capably and vigorously enforced. It makes sense that the Administration is seeking to establish and implement the highest standards possible and that it expects the same from every hospitality business operating in the City, certainly including STR operators. Yet, we are unconvinced that this specific set of proposals is the most appropriate path forward.

In conclusion, the proposed ordinance amendment does not address the overarching issue raised by the community at the public hearing—proper code enforcement. Neither did the proposed ordinance amendment adequately address those issues identified by the Administration as lacking in the current ordinance or the concerns raised by those living in zones targeted for STR concentration. Still, there are several potential remedies available to the City that can simultaneously protect every neighborhood from unscrupulous operators, enhance and cultivate a higher caliber STR industry, and assist in the management and enforcement of any regulations

currently adopted as well as those that may be adopted in future. Such possible solutions that could be pursued, and in our opinion should be.

1. Procurement of a specialized STR compliance service provider or vendor (*Host Compliance, LodgingRes, et al.*), as utilized in other resort/tourist cities, which would streamline the application and management of STR regulations, and more efficiently bring operators into compliance. These service-vendors provide essential specialized technical services that monitor all listings, identify properties/verify legal listings, calculate/collect bed tax monies, permit and license operators, and offer a 24-hour hotline for complaints.
2. Training for the Zoning Board of Appeals. The ZBA is comprised of dedicated individuals who dedicate their time to making Niagara Falls a better place to live. Unfortunately, the lack of comprehensive and ongoing training of members in complex and sophisticated land use regulations has impaired its ability to adjudicate fair and balanced decisions. A review of the records of the ZBA illustrates an almost universal approval rate of applications. This approval record grossly deviates from the norms experienced in other New York municipalities. Members desperately need training on how to adjudicate cases appropriately under the law. They need training on how and when to disapprove/deny applications that come before them.
3. STR operators should have business licenses. STR operators need to be responsible for all applicable taxes including, but not limited to, the six-percent (6%) bed tax.

Therefore, it is the respectful recommendation of the Niagara Falls Planning Board that the Administration's proposal to amend Chapter 1328.13 "Short-Term Rental Units" not be adopted in its current form and without modification.