

Local Law Filing

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Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County
City of Kendall, Orleans County, New York
Town
Village

FILED
STATE RECORDS
JUL 14 2023

DEPARTMENT OF STATE

Local Law No. 3 of the year 2023.

A local law known as A Local Law A Local Law Regulating the Use of Transient or Short-Term Rentals Within The Town of Kendall

(Insert Title)

Be it enacted by the Town Board of the
(Name of Legislative Body)

County
City of Kendall, Orleans County, New York as follows:
Town
Village

SECTION 1: Purpose, Intent, and Findings.

Background. It is the legislative determination of the Town of Kendall Town Board (“Town Board”) that the proliferation of short-term rentals of non-owner-occupied properties in the Waterfront Residential (“WR”) and Waterfront Development (“WD”) Districts (together, “Waterfront Districts”) has presented negative impacts to the health, safety, and welfare of the Town of Kendall (“Town”), and as a result, new short-term rental uses shall be prohibited in the Waterfront Districts. However, this prohibition shall not apply to Bed-and-Breakfasts, as defined in the Town of Kendall Zoning Code (“Zoning Code”), that receive a special use permit from the Town of Kendall Planning Board (“Planning Board”) pursuant to Section 265-69 of the Zoning Code. The fact that owner occupancy is required for this use mitigates many of the impacts from Transient or Short-Term Rentals. This prohibition shall also not apply to new or preexisting short-term rental uses in residential districts other than the Waterfront Districts.

The residential uses permitted as of right in the Town’s Waterfront Districts are one- and two-family dwellings and the specially permitted residential uses in the Town’s Waterfront Districts are multiple-family dwellings and Bed-and-Breakfasts. See Zoning Code §§ 265-28, 265-29. In adopting the Zoning Code, the Town Board intended residential uses in the Waterfront Districts to be owner-occupied.

Findings. New York State has long recognized the difference between transient rentals and longer-term rentals, specifically by classifying transient and non-transient uses differently in the Multiple Dwellings Law. See N.Y. MULT. DWELL. LAW §§ 4(8)(a) (McKinney 2012) (“A ‘class A’ multiple dwelling is a multiple dwelling that is occupied for permanent residence purposes.”), 9 (“A ‘class B’ multiple dwelling is a multiple dwelling which is occupied, as a rule, transiently, as the more or less temporary abode of individuals or families who are lodged with or without meals.”) (emphasis added). The Town Board finds that it is in the public interest that new Transient or Short-Term Rentals be prohibited in the Waterfront Districts due to certain safety concerns with utilizing non-owner-occupied residential structures for Transient or Short-Term Rentals. The non-owner-occupied Transient or Short-Term Rental use brings with it certain impacts that are best kept away from permanent residential and commercial uses, such as: noise, damage to personal and real property, poor upkeep of structures, large gatherings and/or parties, debris, late night activities, and use of property in a manner that is not permitted by applicable law. The Town Board has seen evidence of these effects in the Waterfront Districts.

Further, the use of Transient or Short-Term Rentals in the Waterfront Districts has also presented parking and traffic impacts. Many roads in the Waterfront Districts are private, single lane roads that are not designed to handle excess vehicle traffic or street parking. There has also been increased speeding on these roads amplifying safety concerns. The Town Board also finds that water safety is a significant issue. Substantial flooding in 2017 and 2019 lead to installation of large stone protection barriers at the waterfront, creating potentially dangerous barriers to accessing the lake. A proliferation of Transient or Short-Term Rentals in the area will increase the number of people trying to access the waterfront, increasing the possibility of injury. Additionally, the Town Board finds that potential contamination to the lake and surrounding area is threatened due to overuse of septic systems in the Waterfront Districts, which were not designed to handle more than one- or two-family use. However, the use of Transient or Short-Term Rentals in residential districts other than the Waterfront Districts has not presented the same negative impacts to the health, safety, and welfare of the Town because of the nature and character of these other districts. For instance, the lot sizes in the other residential districts are typically larger and these districts tend to have a lower density. This creates more suitable space between the Transient or Short-Term rentals and traditional residential uses in these districts, leading to less impact on neighbors. The concerns regarding waterfront safety, flooding, and the health of the lake are also not present in the other districts.

Nevertheless, the Town Board notes the unique tourist opportunities that the Town’s location provides. The Town Board also finds that current owners or operators of Transient or Short-Term Rental in the Waterfront Districts may contend that they are pre-existing, legal nonconforming uses and may continue regardless of any change to the local law to reaffirm the Town Board’s intent as stated herein. For that reason, and because of the critical public interest involved with this issue, the Town Board determines that pre-existing Transient or Short-Term Rentals in the Waterfront Districts may continue operation as legal non-conforming uses. Such pre-existing Transient or Short-Term Rentals in the Waterfront Districts must obtain a license pursuant to Local Law No. 2 of 2023 (Chapter 235 of the Town Code) in order to continue operating.

Lastly, New York law permits the Town Board to put a definitive end to nonconforming uses, even if they existed lawfully at the time the Town Code was changed. The Town Board, however, determines to allow pre-existing Transient or Short-Term Rentals with a license, as stated herein, and to prohibit such use if it is discontinued for a period of one (1) year. This adequately balances protection of the Town from the concerns identified above, with the potential impacts to the property owner as a result of eliminating the use.

SECTION 2: Section 9, Definitions, of Chapter 265 of the Town Code of the Town of Kendall is hereby amended to include the following definitions:

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

TRANSIENT OCCUPANCY. Living and/or sleeping accommodation provided for compensation for any period of less than thirty (30) consecutive calendar days. Bed-and-breakfasts, motels, and transient short-term rentals shall individually and collectively be considered types of transient occupancies.

TRANSIENT or SHORT-TERM RENTAL. A dwelling or dwelling unit, including associated appurtenant facilities, used for transient occupancy by one or more guests, boarders or tenants, where the record owner of the premises is not physically present upon the premises during the transient occupancy, and whether or not meals or cooking facilities are provided for the guests, boarders or tenants, but excluding motel and bed-and-breakfast uses.

PREEXISTING TRANSIENT OR SHORT-TERM RENTAL. A Transient or Short-Term Rental that was in operation before the effective date of this Local Law No. 1 of 2023.

SECTION 3: Article XII, Transient or Short-Term Rentals, is hereby added to Chapter 265 of the Town Code of the Town of Kendall, to read in its entirety as follows:

Section 265-107: Regulation of Transient or Short-Term Rentals in the Waterfront Districts.

- A. With the exception of Bed-and-Breakfasts, as defined in the Zoning Code, that have received a special use permit from the Planning Board pursuant to Section 265-69 of the Zoning Code, no new Transient or Short-Term Rental shall be permitted in the Waterfront Residential or Waterfront Development Districts within the Town.
- B. Notwithstanding any other law or provision of the Town Code to the contrary, Preexisting Transient or Short-Term Rentals shall be considered legal non-conforming uses, and may continue to operate as such. Such Preexisting Transient or Short-Term Rentals must apply for and obtain a license pursuant to Local Law No. 2 of 2023 (Chapter 235 of the Town Code).
- C. If a Preexisting Transient or Short-Term Rental operating pursuant to a valid license issued by the Town Clerk as required in Subsection B above ceases to be utilized for Transient or Short-Term Rental purposes for one (1) year, the use will no longer be deemed legal non-conforming and any resumed Transient or Short-Term Rental use shall be prohibited.

Section 265-108: Regulation of Transient or Short-Term Rentals in All Other Districts.

- A. New Transient or Short-Term Rentals are permitted in all residential districts other than the Waterfront Districts, subject to obtaining a special use permit and site plan approval from the Planning Board and obtaining a license to operate a Transient or Short-Term Rental pursuant to Local Law No. 2 of 2023 (Chapter 235 of the Town Code). Applicants for a special use permit and site plan approval to own/operate a Transient or Short-Term Rental must comply with Town Code Chapter 265, Article IX (“Special Permits”) and Chapter 265, Article X (“Site Plan”).

B. Preexisting Transient or Short-Term Rentals are permitted to continue operating in all residential districts other than the Waterfront Districts, subject to obtaining a license to operate a Transient or Short-Term Rental pursuant to Law No. 4 of 2022 (Chapter 235 of the Town Code).

SECTION 4: Severability. 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 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 5: Effective Date. This local law shall be effective immediately upon filing with the office of the New York Secretary of State.

1. (Final adoption by local legislative body only.)

X I hereby certify that the local law annexed hereto, designated as local law No. 3 of 2023, of the ~~(County)~~ (City) (Town) (Village) of Kendall, New York was duly passed by the Town Board on 3/21, 2023, in accordance with the applicable provisions of law.

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20__ of the ~~(County)~~ (City) (Town) (Village) _____ was duly passed by the _____ on _____ 20____, and was (repassed after disapproval) by the _____ and was deemed duly adopted on _____ 2022, in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20__ of the ~~(County)~~ (City) (Town) (Village) of _____ was duly passed by the _____ on _____ 20__, and was by the _____ on _____ 20__. Such local law was submitted to the people by reason of a (mandatory) (permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general) (special) (annual) election held on _____ 20____, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20__ of the ~~(County)~~ (City) (Town) (Village) of _____ was duly passed by the _____ (Name of Legislative Body) on _____ 2022, and was (approved) ~~(not disapproved)~~ ~~(repassed after disapproval)~~ by the _____ on 2022. Such local law was subject to permissive referendum and no valid petition requesting such

referendum was filed as of _____ 20____, in accordance with the applicable provisions of law.

*** Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairman of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.**

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36) (37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special) (general) election held on _____ 20____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the County of _____, State of New York, having been submitted to the electors at the General Election of November _____ 20____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and of a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1, above.

(SEAL)

Amy K Richardson
Amy Richardson
Town Clerk, Town of Kendall

Date: 03-21-23

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized Attorney of locality.)

STATE OF NEW YORK
COUNTY OF ORLEANS

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.



Andrew W. Meier
Attorney for the Town of Kendall

Date: 3/21/23