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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.

Town of Brookhaven

Local Law No. 13 of the year 2023

A local Law amending Chapter 85 entitled "Zoning" and Chapter 82 entitled "Neighborhood Preservation" of the Town Code of the Town of Brookhaven entitled

Be enacted by the Town Board of the Town of Brookhaven as follows:

LOCAL LAW #13 OF 2023

Amend Chapter 85 entitled "Zoning" and Chapter 82 entitled "Neighborhood Preservation" of the Town Code of the Town of Brookhaven

Section 1. Legislative Intent. It is the intent of this amendment to Chapter 85 entitled "Zoning" and Chapter 82 entitled "Neighborhood Preservation" of the Town Code of the Town of Brookhaven to provide clarification on the regulation of Transient Residential Occupancies and Transient Recreational Uses within residential dwellings and adding specific penalties for same. It is the intent of this amendment to Chapter 82 entitled "Neighborhood Preservation" to amend the regulations regarding Rental Registrations.

Section 2. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-1 entitled "Definitions" is as follows:

§ 85-1 Definitions.

B. For the purposes of this chapter, the following terms, phrases, words and their derivations shall have the meanings given herein:

TRANSIENT RECREATIONAL USE

1. A parcel situated in a residential zone or a portion thereof, or any building or structure thereupon or portion thereof, rented or leased by any owner or occupant of the parcel, to a third party for recreational use including but not limited to pool or hot tub rentals, party or yard rentals, or sport court rentals.

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2. Presumption of transient recreational use: Any land or portion thereof, or any building or structure thereupon or portion thereof subject to this chapter, shall be presumed to be occupied as a transient recreational use if offered as such for rent to a third party in an advertisement or solicitation listed, placed, posted or submitted for inclusion on any website, in any mass media, or in any printed materials; or offered for lease through any medium. This presumption shall be rebuttable.

TRANSIENT RESIDENTIAL OCCUPANCY

(1) A dwelling unit which is occupied for habitation as a residence by persons, other than the owner or a family member of the owner, and for which rent is received by the owner, directly or indirectly, in exchange for such residential occupation for a period of less than 28 nights. For the purposes of this chapter, the term "transient residential occupancy" shall mean all non-owner-occupied, single-family residences, two-family residences, and townhouses rented for a period of less than 28 nights and shall not include:

(a) Properties used exclusively for nonresidential commercial purposes in any zoning district as otherwise provided for in this chapter; or

(b) Any hotels, motels or bed-and-breakfast establishments operating with the benefit of a certificate of occupancy or its equivalent.

(c) A dwelling unit located on Great South Beach (Fire Island).

(2) Presumption of transient residential occupancy: Any dwelling, dwelling unit, or any part of a dwelling unit, shall be presumed to be occupied as a transient residential occupancy if offered for rent for a period of less than 28 nights in an advertisement or solicitation listed, placed, posted or submitted for inclusion on any website, including but not limited to Airbnb, HomeAway, VRBO, in any mass media, or in any printed materials; or offered for lease or rent through any medium for a period of less than 28 nights. This presumption shall be rebuttable.

It shall be unlawful and a violation of this article for any person, corporation, limited liability corporation (LLC), company, broker, agent or other entity to cause an advertisement or solicitation for a rental dwelling to be listed, placed, posted or submitted for inclusion on any website, in the mass media, or in printed materials, including flyers, without such person, broker or agent first verifying the existence of a valid rental registration.

Section 3. Text Amendment. Chapter 85 entitled "Zoning", Section 85-2 entitled "Interpretation" hereby amended as follows:

§ 85-2 Interpretation.

A. In interpreting and applying the provisions of this chapter, they shall be held to be the minimum requirements adopted for the promotion of the public health, safety, morals, comfort, convenience and general welfare. Whenever the provisions of this chapter impose or prescribe any greater requirements or higher standards on premises, buildings or structures or on the use thereof than are imposed or prescribed by any other laws, local laws, rules or regulations, grants or permits or by easements, covenants or agreements, the provisions of this chapter shall govern.

B. Whenever the provisions of this chapter impose or prescribe any greater requirement or higher standards on premises, buildings or structures or on the use thereof by reason of such

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premises, building or structure or use abutting a residence district, the greater requirements or higher standards shall also govern when the premises, building or structure or use thereof either abuts lands owned and maintained by the Long Island State Park Commission as a state park or parkway or abuts lands which are within the boundaries of a residence use district of another municipality.

C. Singly and separately owned lots.

(1) Whenever a single lot which has been excepted from the area, width and yard requirements of a particular district by reason of such lot being in single and separate ownership on a certain date is joined by common ownership to an abutting lot, the greater area, width and yard requirements for the particular district shall apply to the increased size lot.

(2) Notwithstanding the provisions of Subsection **C(1)** hereinabove, where a legally existing standard lot comes into the same record ownership as one or more adjacent lots solely by reason of the death of a previous record owner, the owner of said lots in the same record ownership shall have two years from the date of death of the previous owner causing the lots to be in the same ownership to place the lots into single and separate ownership. Failure to place lots in single and separate ownership within said parcel shall result in the merger of such substandard lots for zoning purposes.

D. It shall be unlawful for either an entire dwelling unit or a portion thereof, including but not limited to a residence with an accessory apartment, to be occupied by a transient residential occupancy.

Section 4. Text Amendment. Chapter 85 entitled "Zoning" Section 85-158 entitled "Penalties for offenses." hereby amended as follows:

§ 85-158 Penalties for offenses.

G. The owner, or owners of any building or premises or part thereof violating any provision of § 85-884 subsection (b) related to transient residential occupancies or (c) related to transient recreational uses, shall be guilty of a violation of such ordinance, which shall be punishable for a first offense by a fine of \$500 to \$4,000 or by imprisonment not exceeding 15 days, or by both such fine and imprisonment; upon a second or subsequent conviction, by a fine of \$1,000 to \$6,000 or by a maximum period of imprisonment not to exceed six months, or by both such fine and imprisonment. For purposes of this subsection, a second violation or subsequent offense shall be prosecuted as an unclassified misdemeanor. Each week's continued violation shall constitute a separate additional violation.

H. This section is enacted pursuant to Municipal Home Rule Law § 10, Subdivision 1(ii)a(9-a), and § 10, Subdivision 1(ii)d(3), and pursuant to § 10(5) of the Statute of Local Governments, and is intended to supersede Town Law § 268 and any other statute or local law to the extent necessary to increase the minimum and maximum penalties contained therein.

Section 5. Text Amendment. Chapter 85 entitled "Zoning" Section 85-884 entitled "Uses prohibited in all districts; advertising nonpermitted uses." hereby amended as follows:

§ 85-884. Uses prohibited in all districts; advertising nonpermitted uses.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

- A. No building, structure or premises shall be used in any district for any trade, business, industry, use or industrial process that is injurious, hazardous, noxious or offensive to the surrounding area by reason of the emission of odor, dust, light, smoke, soot, gas fumes, vibration, noise or similar substances or conditions, or that is detrimental to the public health, morals, safety or general welfare. No person shall solicit, offer or advertise the use, sale or rental of any building, lot or premises or portion thereof for the purposes of any use not permitted by this chapter.

- B. No building, structure, premises or portion thereof shall be occupied or used in any district as a transient residential occupancy, except where otherwise provided for in this chapter. _

- C. Transient recreational use. No land situated in a residential zone and no building, structure or portion thereof shall be occupied, used, established, maintained, operated, occupied, rented, leased or advertised on any website, in any mass media, or in any printed materials for rent or lease, as a transient recreational use.

Section 6. Text Amendment. Chapter 82 entitled "Neighborhood Preservation" Section 82-2 entitled "Definitions" hereby amended as follows:

§ 82-2 Definitions.

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

CODE ENFORCEMENT OFFICER

Chief Building Inspector, Principal Building Inspector, Senior Building Inspector, Building/Zoning Inspector, Building Inspector, Zoning Inspector, Recycling and Sustainable Materials Management Inspectors, Housing Inspectors, Building Permits Coordinator, Electrical or Plumbing Inspector, Chief Fire Marshal, Assistant Chief Fire Marshal, Senior Fire Marshal, Police Officer, Town Investigator or Ordinance Inspector of the Town of Brookhaven and other law enforcement officers.

DWELLING UNIT

A structure or building, one-, two-, or three-family dwelling, or multi-unit apartments, condominiums or cooperatives, occupied or to be occupied by one or more persons as a home or residence.

IMMEDIATE FAMILY

The immediate family of the owner of a housing unit consists of the owner's spouse, children, parents, grandparents or grandchildren, siblings, uncles, aunts, nieces, nephews, cousins and in-laws.

OWNER

Any person, partnership, corporation or other entity who, alone or jointly with others, shall have legal title to any premises, with or without accompanying actual possession thereof; or who shall have charge, care or control of any dwelling unit as a cooperative shareholder or as executor, administrator, trustee, receiver or guardian of the estate or as a mortgagee in possession, title or control; including but not limited to a bank or lending institution, regardless of how such possession, title or control was obtained.

RENT

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A return, in money, property or other valuable consideration (including payment in kind or for services or other thing of value), for use and occupancy or the right to use and occupancy of a dwelling unit, whether or not a legal relationship of landlord and tenant exists between the owner and the occupant or occupants thereof.

RENTAL DWELLING

A dwelling unit established, occupied, used or maintained for rental occupancy as a one, two, or three family dwelling or multiple apartment units or condominiums or cooperatives.

RENTAL OCCUPANCY

The occupancy or use of a dwelling unit by one or more persons as a home or residence under an arrangement whereby the occupant or occupants thereof pay rent for such occupancy and use.[1]

RENTAL REGISTRATION

A registration which is issued upon application to the Chief Building Inspector and shall be valid for 15 months from the date of issuance.

TRANSIENT RESIDENTIAL OCCUPANCY

(1) A dwelling unit which is occupied for habitation as a residence by persons, other than the owner or a family member of the owner, and for which rent is received by the owner, directly or indirectly, in exchange for such residential occupation for a period of less than 28 nights. For the purposes of this chapter, the term "transient Residential Occupancy" shall mean all non-owner-occupied, single-family residences, two-family residences, and townhouses rented for a period of less than 28 nights and shall not include:

(a) Properties used exclusively for nonresidential commercial purposes in any zoning district as otherwise provided for in chapter 85; or

(b) Any hotels, motels or bed-and-breakfast establishments operating with the benefit of a certificate of occupancy or its equivalent.

Section 7. Text Amendment. Chapter 82 entitled "Neighborhood Preservation" Section 82-10 entitled "Rental registration required" hereby amended as follows:

§ 82-10. Rental registration required.

A. It shall be unlawful for any rental occupancy to exist in any dwelling without the owner's first having obtained a rental registration from the Chief Building Inspector.

(1) It shall be an affirmative defense to a violation of Subsection A of this section that the rental occupant or occupants is/are immediate family members of the owner of the subject premises, as defined in this chapter.

(2) A rental registration shall not be issued to a transient residential occupancy.

Section 8. Text Amendment. Chapter 82 entitled "Neighborhood Preservation" Section 82-12 entitled "Broker's/Agent's responsibility" hereby amended as follows:

§ 82-12 Broker's/Agent's responsibility.

A. Broker's/Agent's responsibility prior to listing. It shall be unlawful and a violation of this chapter and an offense within the meaning of the Penal Law of the State of New York for any broker or

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agent to list, solicit, advertise, exhibit, show, or otherwise offer for lease, rent or sale, on behalf of the owner any dwelling unit for which a current rental permit has not been issued by the Chief Building Inspector. It shall be the broker's or agent's duty to verify the existence of a valid rental registration before acting on behalf of the owner.

B. It shall be unlawful and a violation of this article for person, corporation, limited liability corporation (LLC), company, broker, agent or other entity to cause an advertisement or solicitation for a rental dwelling to be listed, placed, posted or submitted for inclusion on any website, in the mass media, or in printed materials, including flyers, without such person, broker or agent first verifying the existence of a valid rental registration.


~~B. C.~~ C. It shall be unlawful and a violation of this chapter to accept a deposit of rent or security, or a commission, in connection with the rental of a rental dwelling unit located within the Town of Brookhaven where no valid rental registration has been issued as required under this chapter.

~~C—D.~~ D. In the event that a person convicted of a violation of this section shall have been a real estate broker or salesperson licensed by the State of New York, at the time such violation was committed, the Town Clerk shall transmit a record of such conviction to the Division of Licensing Services of the Department of State and make complaint thereto against such licensee on behalf of the Town of Brookhaven, pursuant to the provisions of Article 12-A of the Real Property Law.

Section 10. Authority. The Town Board is vested with the authority to make these amendments pursuant to Town Law Section 130 and in conformance with Municipal Home Rule Law Sections 10 and 20. The Town Board hereby intends to supersede Town Law § 268 and any other statute or local law to the extent necessary to increase the minimum and maximum penalties and is vested with the authority to supersede same pursuant to Municipal Home Rule Law §10(1)(ii)(d)(3).

Section 11. Effective date. This local law shall become effective immediately upon filing with the Secretary of State of the State of New York.

Dated: December 19, 2023
Farmingville, New York


Kevin J. LaValle, Town Clerk
Town of Brookhaven

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