



CITY OF PORTSMOUTH

Municipal Complex
1 Junkins Avenue
Portsmouth, New Hampshire 03801
mayor@cityofportsmouth.com
(603) 610-7200

Deaglan McEachern
Mayor

April 6, 2022

Chairman Tom Dolan
House Municipal and County Government Committee
107 North Main Street
Concord, NH 03301

Re: The City of Portsmouth's written testimony in opposition to SB 249

Chairman Dolan and Members of the House Municipal and County Government Committee:

The City of Portsmouth is grappling with rising real estate costs and limited workforce housing. Every community is trying to encourage economic opportunity and address the housing needs of our residents while keeping the character of our neighborhoods intact. However well-intentioned this bill may be, if passed, it would have the unintended consequence of changing the character of every residential neighborhood in the state and reducing the supply of affordable housing. For these reasons, I am submitting written testimony in opposition to SB 249.

The benefit this bill might create for some citizens to offset their property tax bill through short-term rental income does not outweigh the problems this bill will create. By removing all restrictions on short-term rentals through local zoning, some communities, particularly those that attract tourists, would see a decrease in rental property and affordable housing stock. This would be an unintended consequence of the bill. In Portsmouth, we recently had a restaurant owner survive COVID-19 only to sell their property, in part, due to the inability to retain staff. SB 249, if passed, would contribute to the removal of rental property and affordable housing from the system and exacerbate the affordable housing shortage. Another unintended consequence of this bill would be that residential properties would be converted to commercial use as income producing property for out of town investors. This will contribute to the ever-increasing cost of homes and property taxes associated with those increased values. Again, these unintended consequences are not in the best interest of the City and the state.

In addition, SB 249 removes local control by prohibiting municipalities from restricting short-term rentals under local zoning ordinances. This is contrary to present law. The Legislature has recognized that each community is uniquely qualified to assess the suitability of the use of its land. (RSA 674: 16, I and RSA 674:17, I). The City has long supported legislative principles that include support for legislation which protects local decisions about zoning and advocates to maintain local authority. SB 249 violates both of these legislative principles and as such, the City does not support SB 249.

The New Hampshire Supreme Court recognized the City of Portsmouth's right to regulate short-term rentals through zoning in the matter of *Working Stiff Partners, LLC v. City of Portsmouth*, 172 N.H. 611 (2019). The Court reviewed the definitions in the City's zoning ordinance and found:

...when we consider the ordinance as a whole, we conclude that the plaintiff's use of property for daily rentals to paying guests constitutes a "transient occupancy" similar to a hotel, motel, rooming house, or boarding house. Because the ordinance expressly excludes "such transient occupancies" from the definition of a "dwelling unit" this use is not as a "dwelling unit."

The Court further found:

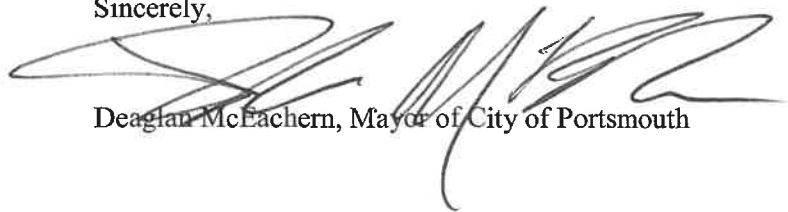
Furthermore, it is a familiar principle of statutory construction that one should not construe a statute or ordinance that lead to an absurd result that the legislative body could not have intended... The plaintiff acknowledged to the trial court that, under its interpretation, there would be no impediment to every home in the GRA district being used exclusively for short-term rentals... However, as noted, the stated purpose of the GRA district is “[t]o provide areas for single-family, two-family and multifamily dwellings.” ... In light of this purpose, it would seem absurd that by (1) drafting the ordinance to exclude “such transient occupancies as” hotels and motels from the definition of “[d]welling unit”; (2) largely limiting permissible principal uses in the GRA district to dwelling units; and (3) expressly prohibiting hotels, motels, inns, boarding houses, and bed and breakfasts with more than five rooms in the district, the ordinance’s drafters intended for there to be no limitations on the use of homes for “transient occupancies” that are materially similar to hotels, motels, or boarding houses. (Citations omitted).

The practical application of SB 249 as written would lead to the Court’s above referenced “absurd result”, in that there would be no way for a municipality to regulate short-term rentals by zoning to protect residential neighborhoods. The bill would not simply rewrite the definition of every residential zoning district in the state but it would have the effect of eliminating every residential zoning district in the state.

The bill does include limited provisions that would help municipalities regarding registering and inspecting short-term rentals, but it does not go far enough. Permitting registration of short-term rentals would give municipalities a better sense of who owns the property and how property in the City is being used. However, it is important for municipalities to have contact information for owners, not just for service of process, but to have an immediate contact person who is able to react and solve issues that arise with the property and tenants immediately during each short-term rental stay. The bill provides limited inspections of short-term rentals but these inspections are too restrictive and not protective enough of public health and safety. A short-term tenant may only be renting the premises for a weekend and they may have vacated the premises by the time an administrative inspection warrant has been granted. It is important for municipalities to be able to conduct limited inspection of residential property for life safety issues. This would not only protect renters but it would also protect property owners and local citizens.

For the reasons set forth above, I urge this Committee to vote SB 249 Inexpedient to Legislate. Thank you for your consideration.

Sincerely,



Deaglan McEachern, Mayor of City of Portsmouth

c: Portsmouth City Council
Portsmouth Legislative Delegates
Karen Conard, City Manager