



Legislative Committee Meeting
Thursday, June 13, 2019 – 5:30PM
Downstairs Conference Room

Agenda:

- 1) No marijuana zones**
- 2) Air BNB discussion**
- 3) Review Elected Official Code of Conduct**
- 4) Other Business**

Adjournment

The City Council of the City of Franklin reserves the right to enter into non-public session when necessary according to the provisions of RSA 91-A.

This location is accessible to the disabled by stairwell elevator. Those wishing to attend who are hearing or vision impaired may make their needs known by calling 934-3900 (voice), or through "Relay New Hampshire" 1-800-735-2964 (T.D./TRY)

Short-Term Lodging Proposal to City Council

Definition: Add to 235-13

181 or less

Short-Term Lodging or Lodging, Short-term (confirm time 181 vs 185)

A dwelling unit where transient lodging is provided for compensation for stays of between one and 181 consecutive nights, and where the dwelling unit would normally be considered a residential living unit not associated with regulated commercial activities such as a hotel, motel or bed-and-breakfast.

New Zoning Section

235-41 Residential Accessory Uses

Add new section M or reuse section J

impacted

M. Short-term Lodging. The use is regulated to preserve the traditional character of residential neighborhoods that can be negatively altered by this type of use and to help preserve the quality and quantity of the housing stock for year-round residential use. Permitted in all zones except IP, I, and AI, providing the following conditions are met:

(1) A Short-Term Lodging application must be approved by the Planning Department as an Administrative Decision using a defined process and criteria to determine suitability for this use in a particular dwelling unit. → objection by abutters & approx

(2) Denial of an application or direct abutter objection to an approved application may be appealed to the Planning Board, which shall have the authority to make a final decision on the application. (maybe to ZBA) or proximate abutter

(3) Approval for Short-Term Lodging use will be in effect for one year from date of approval and must be renewed annually from date of first approval according to fee schedule defined in section 235-92 of this chapter. Within the approval term the dwelling unit can be used for Short-Term Lodging a maximum of 12 separate rentals or a maximum of 150 nights, whichever occurs first. (or 181 or 185?) Keep track?

(4) As part of the application approval process the dwelling unit must pass a joint inspection by the Fire Department and the Building Code Department using defined criteria established by the Planning Department.

(5) Using a dwelling unit for Short-Term Lodging without an Administrative Approval or after a previous approval has expired or was revoked will subject the property owner to fines and penalties outlined in section 235-82 of this chapter.

(Note: See RSA676:17 and RSA676:17-a. \$275 first offense, \$550 each subsequent offense with each day being a subsequent offense, right to collect filing fees and other legal costs including attorney fees. Must go to court.)

Planning Department Administrative Approval Form

The Planning Department will create a form specifically for Short-Term Lodging application/approval and will outline the process, fees, and inspection criteria and renewal process. It will also outline the enforcement process. **Suggest** first complaint is a warning, second complaint of a different nature a warning, second complaint of same nature or third (or more) overall complaint of any type a violation with revocation of approval. Change of ownership requires new application/approval. If approval is revoked need to determine process and timeframe for re-instatement, suggest one year prohibition.

Complaints MUST be made to a proper authority and can NOT be anonymous. Noise to police, trash to DPW, parking (on city accepted streets) to police or (on private roads) to condo/homeowner's association. **Must be a record** of complaint as it was happening for noise or parking, or as soon as can be reasonably expected to DPW or associations. This will be outlined to abutters when they are notified. Maybe notification to property management company? Database shared between city departments (police/DPW)

Inspection Criteria to be determined: Smoke/CO detectors, windows in bedrooms must be functional (must open!), windows in other rooms 7 feet or more above ground must function, visible fire extinguisher in kitchen, no basement use unless proper egress window/door is present. Safety concerns reported by renters or abutters could require a re-inspection.

Trash to be removed by property owner or a third party provider at checkout time. No curbside placement/pickup.

Parking to be determined. All parking must be in driveway or defined parking spaces. NO on-street parking.

Occupancy to be determined. Up to 200 sq ft max 2 people (cottage/motel units converted to condo?), each additional person requires additional 200 sq ft.

Contact Info must be on file with Planning Department, as part of application.

Must be posted in unit with other "Rules of the House." Can be provided to abutters and other city agencies (Police/Fire/DPW etc). Define info for Rules of the House posting...parking restrictions, trash, noise, etc.

Planning Department to create and **manage a database** to manage renewal notices and for information to be shared with other city departments.



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Airbnb dispute headed to NH Supreme Court

By Elizabeth Dinan

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Posted Apr 24, 2019 at 12:38 PM

Updated Apr 24, 2019 at 3:56 PM

PORTSMOUTH -- The Supreme Court should affirm a lower court order, and the city's two cease-and-desist orders, all barring Barbara Jenny and Matthew Beebe from using their "Lilac House" as a short-term rental, the city argues.

In a 33-page brief to the Supreme Court, the city asks it to answer two questions. The first is whether use of the Lilac House as a short-term rental, in a general residence district, is "a prohibited transient occupancy." The second question is whether the city's applicable ordinance is constitutional, as applied to the couple.

Last June, Rockingham County Superior Court Judge Andrew Schulman published an order stating Jenny and Beebe cannot lawfully operate their second, adjacent home as a short-term rental property through Airbnb, upholding the city's two prior cease-and-desist orders.

"The only pertinent permitted principal use for (the couple's) property is as a dwelling," under regulations for the General Residence A District, the judge wrote, while noting the scope of his review was narrow and he had to dismiss the appeal unless the ZBA's decision was unlawful or unreasonable.

The couple's rental home, advertised as Lilac House, is at 87 Lincoln Ave. and is "not a business use," they argued. Jenny previously said they bought the house next door to their own home to make it available for their children in the future, while renting it through Airbnb and using it as a guest house.

After Jenny and her husband were served the cease-and-desist orders, they appealed to the Zoning Board of Adjustment which, in November 2017, unanimously voted to deny their appeal. They next appealed to the Superior Court.

After hearing counter arguments, Schulman ruled the Lilac House owners had argued their Airbnb rentals were no different from month-to-month rentals and long-term leases, but the ZBA disagreed and found Airbnb use to be “transient occupancy,” prohibited by city ordinance. The couple’s Supreme Court appeal followed.

In response, City Attorney Robert Sullivan and Assistant City Attorney Jane Ferrini argue in their brief that the couple rented the four-bedroom, single-family home to paying guests, paid the state meals and rooms tax on the rentals and the city got involved when it received neighbor complaints. The city’s Supreme Court brief reports the lower court already found the ordinance is permissive, meaning any use of a property, that is not explicitly allowed, is prohibited.

Not only does the ordinance not allow short-term rentals in residential districts, it “explicitly prohibits the transient, short-term rental use of property in the” general residence district, according to the city’s Supreme Court brief.

The ordinance specifically prohibits inns, hotels, motels, boarding houses, as well as bed-and-breakfasts with five or more guest rooms, but permits B&Bs with special exception, according to the city’s argument. The primary function of residential districts, the city argues, “is to create and preserve residential neighborhoods” and they are maintained by prohibiting transient occupancies.

Jenny and Beebe’s argument that a building’s internal layout, or its structure, defines its use ignores activity at and in a building, the city argues.

The city also reports in his brief that Schulman had turned to a dictionary to define the word transient. That judge summarized the Lilac House owners had argued their Airbnb rentals were no different from month-to-month rentals and long-term leases, but the ZBA disagreed and found Airbnb use to be “transient occupancy,” prohibited by city ordinance.

“The trial court and the cease and desist orders are limited to prohibiting the short-term rental of the Lilac House to paying guests,” the city concludes in its Supreme Court brief. “This does not apply to other, hypothetical uses of Lilac House, all of which would be evaluated on a case-by-case basis on the full record of that case and subject to administrative and court review. Because this is an as applied challenge, the decision in this case holds no precedential value to any other use, even of the same property.”

The Herald will report about Jenny and Beebe's legal brief to the Supreme Court online April 25 and in the April 26 print edition of the Portsmouth Herald.

Sullivan said no date has been set by the Supreme Court for oral arguments in the case.

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CITY OF FRANKLIN
CODE OF CONDUCT
FOR
ELECTED OFFICIALS
AND
APPOINTED BOARD
MEMBERS

Date Approved: April 1, 2002
Revised: September 8, 2015

TABLE OF CONTENTS

	Page
Preface.....	1
Attendance	1
Conduct as a Public Official	2
Conduct at Meetings	4
Conflict of Interest	4
Legal Communications	6
Non-Public Sessions	6
Sale and Use of Public Property	8
Sexual Harassment	8
Code Review.....	9

PREFACE

The purpose of the Code of Conduct is to assist Elected officials and appointed board members in performing their duties for the public. The Code of Conduct is a guide for the members to follow during their term in office. This Code does not reduce the authority granted to Elected officials and appointed board members by the laws of the United States and the State of New Hampshire, as well as the Charter for the City of Franklin.

We remember that we are, first and foremost, servants of the people and treat them with the highest respect and dignity in our public meetings and outside of those meetings. Further, Franklin's public officials should educate themselves on the requirements of the law and ordinances to ensure that they are never using their position to avoid either.

The Code of Conduct will be distributed to all City Council and board members annually in January, and new board members as they are appointed during the year.

ATTENDANCE

Elected officials and appointed board members should make every effort to notify the Mayor, or City Manager (in the case of the City Council), or the Chairman of their respective board, if they will be unable to attend or will be late to a meeting. In the event a member needs to leave a meeting, while the meeting is in session, the member should receive acknowledgement of their departure from the presiding officer.

CONDUCT AS A PUBLIC OFFICIAL

Public service is a public trust, requiring elected officials and appointed board members to place loyalty to the constitution of the United States and the New Hampshire Constitution, federal and state laws, city ordinances and Charter provisions and ethical principles above private gain for themselves or others.

Elected officials and appointed board members shall not, except as otherwise permitted by ordinance, solicit or accept any gift, service or favor from any person or entity seeking official action from, doing business with, or conducting activities regulated by the City of Franklin, whose interests may be affected by the performance or non-performance of the elected official's or appointed board member's duties.

Elected officials and appointed board members shall never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept favors or benefits under circumstances which might be construed as influencing the performance of their public duties.

Elected officials and appointed board members shall put forth honest effort in the performance of the public duties, remaining impartial and responsible to the public.

Elected officials and appointed board members shall make no promises of any kind binding upon the duties of their office, since an elected official or appointed board member only have authority to make binding decisions, when voting at a legally posted meeting of their board or committee, when a quorum is in attendance.

Elected officials and appointed board members shall not interfere with the powers and duties of the City Manager, as set forth in the Franklin City Charter, or interfere with the powers and duties of the Superintendent of Schools, as set forth by the laws in the State of New Hampshire. Interference by elected officials or appointed board members with the City Manager or Superintendent's powers and duties could

constitute immediate forfeiture of their office and criminal charges.

CONDUCT AT MEETINGS

At City meetings a councilor or board member shall be recognized to speak by the Mayor or chair or in his/her absence the person appointed by the Mayor/Chair. The behavior of an elected official/board member both in public and in private should reflect the trust placed in them as leaders of the community.

The goal of a Franklin elected official or board member is to provide the highest quality leadership for all its citizens, to be fiscally responsible and to be dedicated while listening to the needs of others.

CONFLICT OF INTEREST

Elected officials and appointed board members of the City of Franklin shall avoid conflicts of interest when conducting City business – even the appearance of a conflict of interest.

State law demands that City officials, and board members, not participate in any matter in which they (or a member of their family) have a personal interest, which may directly or indirectly influence the impartial performance of their duties. In such instances, officials

shall recuse themselves from discussion and decision-making.

If an elected or appointed office holder insists upon participation when there is a clear and serious conflict of interest, the Franklin City Council will consider this misconduct and may take corrective action allowable under State law and the City Charter.

Recusal means to remove oneself completely from all further participation in the matter. In the setting of a meeting, an official or board member who has been recused shall immediately leave the meeting room or seat themselves with other members of the public who are present. The person recused shall not participate in further discussions, unless it is clearly stated for the record that such comments are made only as a member of the public. A recused person may not deliberate or vote on the matter in question.

Immediate uncertainty about conflicts and recusal can be resolved by majority vote of the board or committee. Any such vote would be non-binding, but can assist the official's decision regarding participation.

LEGAL COMMUNICATIONS

Designate legal counsel shall attend any meetings of the Council when requested by the Mayor or City Manager. Any member of the Council (through the City Manager when possible) may call upon Counsel for an oral or written opinion to decide any question of law or parliamentary procedure.

All boards in the City of Franklin shall direct all communications to Counsel through the Chairperson of their respective boards, and the Chairperson shall go through the City Manager when possible.

Legal communications received from the City Attorney are not public information and will not be shared with the public unless authorized by the City Manager.

NON-PUBLIC SESSION

The meetings of all governmental bodies are open to the public, in accordance with the State of New Hampshire "Right-To-Know Law", RSA 91-A. There are occasions when governmental bodies need to conduct business in non-public sessions, as allowed under the provisions of RSA 91-A. The intent of non-public sessions, or "non-meetings" to meet with legal council are to allow for the governing bodies to discuss confidential information, that could affect someone's

reputation, or releasing the information would make the action taken ineffectual.

The confidential information discussed, or actions taken in non-public sessions are to remain confidential. No elected official or appointed board member in the City of Franklin shall violate the confidentiality of non-public sessions by publicizing, gossiping or discussing the information acquired in the course of official duties without a legitimate reason to do so. No elected official or appointed board member in the City of Franklin shall use any confidential information acquired by virtue of the individual's official position for personal benefit, or for the benefit of any other person or business. This does not apply to information, which is readily available to the general public.

The misuse of confidential information by any elected official or appointed board member in the city of Franklin could lead to the forfeiture of their office, or even criminal charges.

SALE AND USE OF PUBLIC PROPERTY

Elected officials shall protect and conserve City property and services and shall not use them for other than authorized purposes or for personal benefit and or gain. No elected or appointed official shall devote any City property or labor to private use, except as may be provided by Law or Ordinance.

SEXUAL HARASSMENT

All officials and board members of the City of Franklin are entitled to operate in an environment free of sexual harassment. History has shown that public entities are far from immune to this illegal behavior. This City is committed to preventing such misconduct. To accomplish these goals, the City's policy against sexual harassment shall be clearly communicated to all officials and board members. In addition, this policy will be reinforced through a complaint investigation procedure.

All complaints of sexual harassment or retaliation shall be promptly and thoroughly investigated by the City Manager or by the Mayor or his/her appointed designee when necessary. While it can never be completely guaranteed, particular care shall be taken in the course of investigations to protect confidentiality. Should it be

determined through investigation that an elected or appointed City official has committed sexual harassment; their immediate removal from office may be considered by the City Council. The reason for removal shall be brought to the attention of the Superior Court, who holds jurisdiction over removal proceedings.

CODE REVIEW

The Code of Conduct can be amended any time by the City Council. The Code should be reviewed and approved by the City Council annually.