



## CITY OF PORTSMOUTH

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Rick Becksted  
Mayor

February 20, 2020

Chair Melanie Levesque  
Senate Election Law and Municipal Affairs Committee  
107 North Main Street  
Concord, NH 03301

Re: The City of Portsmouth's written testimony in opposition to SB 458.

Chair Levesque and Members of the Senate Election Law and Municipal Affairs Committee:

The City of Portsmouth opposes SB 458 which creates enabling legislation for municipalities to register and inspect short-term rentals. The City of Portsmouth supports the concept of enabling legislation that would permit municipalities to register and inspect this fast growing sharing economy but SB 458 as written does not protect New Hampshire citizens, visitors and municipalities.

SB 458 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 adopted Legislative Principles that include support for legislation that protects local decisions about zoning and advocates to maintain local authority. SB 458 violates both of these legislative principles and as such, the City does not support SB 458.

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, No. 2018-0491*. 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 458 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 because the bill would essentially rewrite the definition of every residential zoning district in the state.

It is important for a municipality to be able to conduct limited inspections of residential property used as short term rentals for fire and life safety issues. However the limited inspections permitted by SB 458 are too restrictive and not protective of public health and safety. This Committee has already received a separate letter from Deputy Fire Chief Pat Howe from the City of Portsmouth that illustrates ways in which SB 458 would not protect the health and safety of residential property owners, those who rent from them and local citizens. Because SB 458 does not supports the City’s Legislative Principles of maintaining and improving life safety issues, the City does not support it.

All municipalities are grappling with rising real estate costs and limited workforce housing. It is important to encourage economic opportunity and address housing needs of our residents. However well -intentioned this bill may be, if passed, it would have the unintended consequence of changing the character of every residential neighborhood throughout the state.

SB 458 does not supports several of the City’s Legislative Principles so for the reasons set forth above, I urge this Committee, on behalf of the City of Portsmouth, to vote SB 458 Inexpedient to Legislate.

Thank you for your consideration.

Sincerely,



Rick Becksted, Mayor of City of Portsmouth

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