

Memo

TO: Schodack Town Board

FROM: David L. Gruenberg

DATE: October 17, 2017

SUBJECT: *Proposed Local Law for Registration of SORA Motels and Hotels*

Attached is a proposed local law to address the issue of motels in the Town of Schodack that are providing housing to SORA registrants. The local law is adapted directly from similar local laws adopted by the Towns of Greenport and Colonie. Basically, it is a licensing scheme. The bite of the local law is in Section 12, which restricts a limit for SORA registrants to a total of six (6) points. Under that provision, a motel could have two level three offenders, or three level two offenders. Based upon my conversations with Officer Eckel, this provision would have a substantial impact, particularly on the Hostfield Motel. I would anticipate push back from the owner of that motel, since I think the proposed local law would impact his operation quite significantly.

If Board members are interested, we could discuss this proposed local law at our meeting on October 26.

**TOWN OF SCHODACK
LOCAL LAW NO. ___ OF 2017**

**HOTELS AND MOTELS REGISTERED SEX OFFENDER
OCCUPANCY LICENSE LAW**

Section 1. Purpose and intent.

It is the purpose and intent of this Local Law to promote the public health, safety and general welfare of the guests of hotels and motels located within the town and that of the general citizenry of the town.

Section 2. Definitions.

A. As used in this Local Law the following terms shall have the meanings indicated.

- (1) **HIGH MANAGERIAL AGENT:** The same meaning as set forth in § 20.20 of the Penal Law of the State of New York and, in addition, means a member of a limited-liability company or any other agent in a position of comparable authority with respect to the formulation of corporate policy or the supervision in a managerial capacity of subordinate employees.
- (2) **HOTEL OR MOTEL:** Any tourist accommodation or housekeeping cottage and any other inn, tourist home, trailer park, trailer camp, boardinghouse, rooming house, halfway house, rehabilitation facility, prison transitional facility, or any other structure, building or part of a building used in the business of renting rooms, individual or several, or a similar establishment where sleeping accommodations are furnished for pay to guests, lodgers, tourists, transients or travelers, whether meals are served therein, or not, to such guests, lodgers, tourists, transients or travelers, intending to include but not be limited to all of those facilities described in New York State General Business Law § 204.
- (3) **INSPECTION AGENT:** Includes the Town Board, the Schodack Building Inspector or Code Enforcement Officer, or a representative of the Police Department of the Town of Schodack.
- (4) **LICENSE:** A Registered Sex Offender Occupancy License issued under this Local Law.
- (5) **LICENSED PREMISES:** Includes the hotel or motel as defined above, together with all other real property and improvements appurtenant thereto, owned or leased by the licensee or one (1) or more of its officers, directors, shareholders, partners or other principals.

- (6) **LICENSEE:** The holder of the license to conduct such hotel or motel business.
- (7) **PERSON:** Includes an individual, or any firm, partnership, corporation, limited-liability company or association of persons or entity of any kind.
- (8) **REGISTER:** The register required to be maintained under § 11 of this Local Law and § 204 of the New York General Business Law.
- (9) **REGISTERED SEX OFFENDER:** A person who has been convicted of a violation of a sexual offense, as defined by the New York State Penal Law or Federal Law, and who has received a Level Two or Three designation as described in Article 6-C of the New York State Correction Law, or under any other state or federal law which would require that individual to register as a sex offender under such respective state or federal law.

B. Unless specifically defined above, all terms used in this Local Law shall be interpreted to give them the meanings they have in common usage and to give this Local Law its most reasonable application.

Section 3. License required to house registered sex offenders.

- A. No person shall engage in the business of owning or operating a hotel or motel as defined herein that accepts placements, referrals or payment by or on behalf of any federal, state or local government or any subdivision thereof, or from any not-for-profit group, association or entity of any type or nature, on account of providing accommodations to one (1) or more registered sex offenders without first obtaining a License therefor for each hotel or motel owned or operated by the said person from the Town Clerk of the Town of Schodack as hereinafter provided.
- B. In addition to all the other enforcement provisions in this law if it is determined by the Inspection Agent that the operation of a hotel or motel requiring such a License is continuing in the Town of Schodack without such License or if any such hotel or motel is operated after the determination or revocation or expiration of such License the Town Board may direct Town Counsel to seek Injunctive Relief in Supreme Court and secure an Order directing that the operation of such hotel or motel be immediately terminated pending whatever further directions may be given by the Court issuing the Injunction.

Section 4. Application for license.

- A. Each applicant for a license under this Local Law shall make a written application on a form supplied by the Town Clerk setting forth:
 - (1) The name, residence and postal address of the applicant and the name under which the applicant intends to do business, if different.

- (2) The exact location of the proposed licensed premises.
- (3) A description of the buildings, structures and accommodations that comprise the licensed premises.
- (4) A statement of the number of lawful housing or lodging units at said hotel or motel and the maximum number of persons that can lawfully be accommodated in the licensed premises and each individual unit thereof at any given time.
- (5) The number and location of the automobile parking spaces and parking facilities at the licensed premises.
- (6) The name and address of the owner of the licensed premises.
- (7) The name or names of the person or persons on the licensed premises upon whom process may be served.
- (8) A detailed description of the register or system used for the registration of persons to whom accommodations are extended as required by the General Business Law of the State of New York.
- (9) Whether the applicant, or any partner of a partnership applicant, or any officer, director, high managerial agent or stockholder of a corporate applicant holding five percent (5%) or more of the stock thereof, or any member of a limited-liability company, or any principal of any other applicant that is not a natural person, has ever been convicted of any crime listed in § 5 of this Local Law, and if so, the details thereof, including, with respect to each conviction, the name of the person convicted, the date thereof, the nature of the crime, the court in which the conviction was entered and the punishment imposed.
- (10) If applicable pursuant to § 5 of this Local Law, a certified copy of a certificate of relief from disabilities or certificate of good conduct granted to the applicant pursuant to Article 23-A of the New York State Correction Law.
- (11) In the case of any applicant that is a corporation, limited-liability company, partnership or other entity:
 - a. The place of incorporation or establishment of the applicant.
 - b. A copy of the applicant's certificate of incorporation, limited liability organizational instruments, partnership agreement or other organizational documentation.
 - c. Any fictitious or assumed name under which the applicant does business.

- d. The names and residences of all stockholders, partners, members or other principals holding five percent (5%) or more of any stock or other interest of the applicant.
 - e. The names and residences of all officers, directors and high managerial agents of the corporation and the office held by each.
- B. Any hotel or motel required to be licensed pursuant to this Local Law which are in operation on the effective date of this Local Law shall apply for a License hereunder within thirty (30) days of such effective date. Such application shall include all information set forth in Subsection "A" above.
- C. The Licensee shall notify the Town Clerk, in writing, of any change in information provided by the Licensee in the License application during the term of the License within ten (10) business days of such change.

Section 5. Criminal convictions barring issuance of license.

No License shall be issued to any person who has been convicted of any crime defined as a felony or a Class A misdemeanor under Articles 120, 125, 130, 135, 140 or 160 of the New York Penal Law, subject in each case to the rehabilitation procedures under Article 23-A of the New York Correction Law, nor shall any such License be issued to any partnership in which any general partner shall have been convicted or to any corporation or limited-liability company in which any stockholder holding five percent (5%) or more of any of the stock thereof or any director, officer or high managerial agent thereof, or any other applicant other than a natural person, any owner or other principal of which shall have been convicted of any crime defined as a felony or a Class A misdemeanor under Articles 120, 125, 130, 135, 140 or 160 of the New York Penal Law, subject in each case to the rehabilitation procedures under Article 23-A of the New York Correction Law.

Section 6. Inspection for securing license; Denial for noncompliance.

The Inspection Agent or his or her designee shall inspect the premises within thirty (30) days of application to determine whether or not the licensed premises and operation thereof comply with all applicable health, fire, safety, construction and zoning ordinances, laws, regulations and statutes. If the licensed premises do not comply with such regulations, the Inspection Agent or his or her designee shall so notify the Town Clerk within ten (10) days of such inspection, who shall notify the applicant that the application is denied, setting forth the reasons for the denial. The applicant shall have thirty (30) days to correct any deficient condition and request a re-inspection for the purpose of securing a license.

Section 7. License fee.

The annual fee per year for the License required by this Local Law shall be set by Resolution of the Town Board and will be on file in the Town Clerk's Office. The fee is due upon application and is nonrefundable.

Section 8. Term of license; Display required.

- A. All licenses issued under the provisions of this Local Law shall be for a term of one (1) year commencing on the date of their issuance, unless sooner revoked pursuant to this Local Law.
- B. All licenses shall be prominently displayed in a conspicuous place in the lobby or registration area of the licensed premises.
- C. Licenses shall be in a form approved by the Town Board and will be issued by the Town Clerk. The License shall be at least 11 x 17 and will include the name of the licensed premises, the words "HOTEL AND MOTEL REGISTERED SEX OFFENDER OCCUPANCY LICENSE" and reference the NY State Registry. The Town Board may designate the color of the License and may change such color from year-to-year. Every License shall state that a printed copy of this Local Law is available for inspection by the public in such registration office.
- D. A License may not be altered in any manner.

Section 9. Transfer of license prohibited.

A license shall be valid only to the applicant to whom it is issued and for the licensed premises stated on the License. No transfer of any License issued hereunder shall be permitted. Any sale of all or substantially all of the licensed premises or the assets of or merger or other consolidation of or any transfer of more than fifty percent (50%) in ownership or voting interest in any Licensee that is a corporation, partnership or other entity shall be deemed a transfer for purposes of this Local Law.

Section 10. Inspection of licensed premises without notice.

The Inspection Agent or his or her designee shall have the authority to inspect the public areas of the licensed premises from time-to-time, at any hour of the day or night without prior notice, to determine that the provisions of this Local Law are followed.

Section 11. Keeping and inspection of register.

Any licensed premises shall keep for a period of three (3) years a register which shall show the name, residence, date of arrival and departure of all persons provided with sleeping accommodations at the licensed premises. The said register must be available for inspection by any representative of the Town of Schodack, including but not limited to, the Inspection Agent or his or her designee, who shall have the authority to inspect the register from time-to-time, at any hour of the day or night without prior notice, to determine that the provisions of this Local Law are followed.

Section 12. Occupancy points.

- A. There is hereby established in the Town of Schodack an occupancy point system applicable to licensed premises based upon and equal to the risk level designation assigned to a sex offender by the sentencing court pursuant to New York State Correction Law § 168-n. For the purposes of this Local Law, a Level Two sex offender is hereby assigned two (2) occupancy points and a Level Three sex offender is hereby assigned three (3) occupancy points.
- B. Hotels, motels and other licensed premises as defined in this Local Law with 50 or fewer units are granted a total of six (6) occupancy points. Hotels, motels and other licensed premises as defined in this Local Law with 51 or more units are granted a total of nine (9) occupancy points.
- C. Hotels, motels or other licensed premises as defined in this Local Law may provide accommodations to registered sex offenders up to the maximum allowable occupancy points per day.

Section 13. Exceeding Occupancy Points prohibited

It shall be a violation of this Local Law to knowingly provide accommodations to persons who are registered sex offenders in any hotel or motel or other licensed premises in the Town of Schodack if the occupancy by such registered sex offender results in the hotel, motel or other licensed premises exceeding the maximum number of assigned occupancy points within a single twenty-four (24) hour period.

Section 14. Suspension or revocation of license; hearing.

- A. Any License issued under this Local Law shall be revoked by the Town Clerk for any of the following causes, provided that the Licensee shall be afforded a hearing before the Town Board or its designee and notice of such hearing prior to the revocation:
 - (1) The violation by the Licensee, or any officer, director, member, partner, five-percent-or-greater shareholder, high managerial agent or other principal of the Licensee, of any provision of this Local Law or § 204 of the General Business Law of the State of New York.
 - (2) Upon the recommendation of the Inspection Agent or his or her designee for the failure to cure any violation of any applicable health, fire, safety, construction or zoning ordinance, law, regulation or statute within the time provided in the Schodack Town Code or other applicable code after notification to the Licensee of such violation.

- (3) Upon the recommendation of the Inspection Agent or his or her designee for knowingly permitting the licensed premises to be used, alone or in association with others, for acts constituting violation of Articles 220, 225 or 230 of the Penal Law of the State of New York or failure to make reasonable effort to abate such use by ejecting such occupants or other persons on or about the licensed premises, notifying law enforcement authorities or other legal means.
 - (4) False statements made in an application for a license.
- B. Notice of the hearing for revocation of a License shall be given in writing, setting forth specifically the grounds of complaint and the time and place of the hearing. Such notice shall be given personally or mailed by first-class mail, postage prepaid, to the Licensee at the address provided in the application for the License at least five (5) days prior to the date set for such hearing.
- C. Such License may, pending revocation proceedings, be suspended by the Town Clerk if, in the opinion of the Inspection Agent or his or her designee the nature of the violation of this Local Law by the Licensee is such that operation of the hotel or motel may be detrimental to the health, safety and welfare of guests of said hotel or motel or the inhabitants of the Town. In the event of any such suspension, the Licensee shall be entitled to a hearing before the Town Board within twenty (20) days after the suspension.

Section 15. Penalty for offenses.

- A. Any person, including but not limited to any Licensee or person acting on behalf of a Licensee, who violates any provision of this Local Law shall, upon conviction thereof, be punished as follows:
- (1) Upon a first conviction: by a fine not less than \$50 and not more than \$250 or by imprisonment for a period not to exceed seven (7) days, or by both such fine and imprisonment.
 - (2) Upon a second conviction: by a fine not less than \$100 and not more than \$500 or by imprisonment for a period not to exceed ten (10) days, or by both such fine and imprisonment.
 - (3) Upon a third or subsequent conviction: by a fine not less than \$500 or by imprisonment for a period not to exceed fifteen (15) days, or by both such fine and imprisonment.
 - (4) Notwithstanding a conviction for an offense against any provisions or sections hereof, a person, association or corporation convicted shall be subject to the

immediate revocation of any license herein granted without reimbursement of fees paid therefor.

- (5) Any penalties provided for in the Schodack Town Code.
- B. The continuation of a violation on each successive day shall constitute a separate offense, and the person or persons allowing or permitting the continuation of the violations may be punished as provided for above for each separate offense.
- C. An action or proceeding in the name of the Town of Schodack may be commenced in any court of competent jurisdiction to compel compliance with or restrain by injunction the provisions of this Local Law.

Section 17. Interpretation.

This Local Law shall be liberally construed so as to effectuate the purposes described herein. Nothing herein shall abridge the powers and responsibilities of any police department or law enforcement agency to enforce the provisions of this Local Law. Nothing herein shall be construed to abridge the emergency powers of any health department or the right of such department to engage in any necessary or proper activities.

Section 18. Conflicts.

If this Local Law conflicts with any federal, state or local legislation, then, in that instance, the more stringent law shall apply. A law shall be determined to be more stringent if it limits the allowable number of registered sex offenders that may reside at a hotel, motel or other licensed premises at any one time to a lesser number of registered sex offenders than allowed by this Local Law.

Section 19. Records.

The Town Clerk shall keep a record of all applications, the determinations thereon and all licenses issued and their date of termination and/or revocation and shall maintain a record for each license issued and/or the reports of violation relative thereto.

Section 20. Severability.

If any clause, sentence, paragraph, section, article or part of this Local Law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section, article or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Section 21. Effective Date.

This Local Law shall take effect immediately.