

STR Questions and Answers

QUESTIONS AND ANSWERS RELATING TO THE PROPOSED

SHORT-TERM RENTAL (STR) LOCAL LAW #1 OF 2024 REGULATING SHORT TERM RENTALS (STRs) IN THE TOWN OF HAGUE

**HAGUE TOWN BOARD
27 APRIL 2024**

1. Three-year waiting period impacts STR owners who want to sell to someone else who might want to operate an STR.

That is correct and is intentional. Understand that one of the main objectives of the Law is to stop (and reverse) the negative effects that STRs have (and have had) on affordable housing for Hague residents. Having the Law apply to existing rental properties, as well as to potential new ones, both levels the playing field (by not giving an unfair value advantage to current STR owners) and will help to cease the negative effects that existing rentals have already had on affordable housing.

2. Current zoning law covers existing rentals.

True, but not to the degree necessary to achieve the objectives necessary to protect our community.

3. Why does the Town need this law?

That question is answered in Article 1 of the document entitled "Purpose and Intent."

4. What documentation is there of actual complaints?

Many residents have voiced complaints. Of course, there is no documentation at the moment, for the simple reason that there is currently no way to track complaints. That will change with the enactment of this new Law. That said, complaints are not the main focus of the Law.

5. Why are the inspections not required of all owners?

Inspections are required for three reasons: 1) To ensure the safety of rental guests. 2) To protect the Town of Hague against potential lawsuits stemming from giving rental permits to unsafe properties. 3)

STR Questions and Answers

To help to level the playing field with other tourist accommodations, such as hotels and motels, who are already required to have these inspections. None of these things apply to properties that are not for rent.

6. Can the Board comment on the last sentence of the proposal - "Any change to this local law proposed by the Town Board, other than adjusting the application fee, will require notice as stated in Article 7 K, and this hearing will occur at least 30 days after such notice?" Why is there an exception for adjusting fee? Secondly, what is the proposed use of fees collected?

The fees are intended to at least partially offset the cost to the Town to regulate STRs. Only the Town (not the general public) is able to determine the fees necessary to obtain the objectives of the Law. These fees are no more subject to public comment than the fees collected for a traffic violation.

7. What about grandfathering all current owners from the law?

Any such provision would undermine the intent of the law.

8. I fully agree with the concerns regarding administration and enforcement by the ZEO office. I have had serious concerns about the Town's ability to retain a ZEO.

Administration, including enforcement, will likely require added staff, primarily in the first year. As far as enforcement is concerned, history in other towns that have passed a law or an ordinance has demonstrated that enforcement is not, in fact, an issue. The mere existence of the law itself, and the threat of possible fines and/or the revocation of the rental permit, has proven to be enough deterrent to solve the problem almost entirely. Towns that have passed an STR law or ordinance have reported very few actual issues after it was passed. Also, the Town will do whatever is necessary to staff the ZEO Office.

9. Concerned that there's only one person available to do ZEO inspections; Warren County may have the same concern for doing fire inspections.

Again, the Town will likely need to add personnel to the ZEO staff for the first year. As for Warren County, Warren County Fire Prevention and Code Enforcement has repeatedly confirmed that they are already doing required rental inspections in other towns, and recommend that Hague do such inspections as well.

10. No data were provided on whether the number of STRs is increasing and how many of the properties that have been purchased by unrelated parties in the past five years include STR operations.

It is a well-known fact that the number of STRs in Warren County has increased dramatically. A quick search online will show several articles covering this. The following quote from "Adirondack

STR Questions and Answers

Explorer” is an example – Warren County, like the rest of the Adirondacks, saw a prodigious increase in short-term rentals, up 58% between 2020 and 2023.

11. Four of the Law’s ten pages are used to describe the application requirements and process. Among the requirements are: deed, signature(s) of all owners on the deed, property survey, current Certificate of Compliance from Hague, owner's rental rules and copies of signed rental agreements. Do any of these requirements address known issues that have occurred with STRs in Hague?

They do not, nor are they intended to do so. They simply list the documentation necessary to apply for a permit.

12. Article 7H – An STR operator "... shall require that their rental occupants to conduct themselves in a manner that displays proper consideration for the peace and well-being of their neighbors and is not in violation of the Zoning Code of the Town of Hague." This is very broad language. Specific language/guidelines need to be prepared so that STR operators and their renters know what types of behaviors are problematic.

The language is intended to be broad, since there is no practical way to list every possible scenario. It is the belief of the Town Board that it is common knowledge what is (and is not) acceptable behavior. Simply being respectful of your neighbors would be a good place to start.

13. Recent reports, such as stated in the March 2024 The Hague Chronicle on the front page next to the notice of the public hearing on March 12th, highlight a significant 11% in school taxes in the last year in Hague. Is it possible that this development may encourage more homeowners, previously uninterested in short-term rentals, to explore them as a means to offset these additional financial burdens?

Yes it is, which is all the more reason it has become necessary to implement a law regulating STRs.

14. The permit process requires inspections by both the ZEO and the Warren County Department of Fire Prevention and Code Enforcement. What if we do not want to allow them access to our property? Is this legal?

The Town of Hague cannot force you to allow access to your property. However, the inspections are required to complete the permitting process, and may be required as part of an investigation into a complaint. Therefore, not allowing the inspections will result in an incomplete application and denial of a permit, or the revocation of an existing permit.

STR Questions and Answers

15. We have a question about the impact of the potential enactment of this Ordinance, to understand the feasibility of all short-term rental owners meeting the requirements by the January 1, 2025, deadline, since the involvement of the ZEO of Hague, the Warren County Fire Department, and the Lake George Park Commission will all be crucial in facilitating compliance. Can these entities adequately support owners in this transition within the proposed timeframe?

First, this does not involve the Warren County Fire Department. An inspection is required by the Warren County Department of Fire Prevention and Code Enforcement. Not the Fire Department. Second, these entities have been consulted, and are prepared to assist, as they already do in many other towns.

16. Why is this Ordinance being rushed to a vote rather secretively?

The local law has not been rushed. In fact, it is over two years in the making. The Town has in no way been secretive. Information has been posted on the Town's website for over two years, and there have been several Public Hearings concerning this Law.

17. Why is much of the Short-Term Rental Committee comprised of people who have vested interests in passing it quickly and with little input from the community? There are at least two Committee members who have long standing disputes with their neighbors who engage in limited short-term rentals. There are Committee members who have family connections to people who can financially benefit from restricting short-term rentals. Are any of the members of the Committee Short-Term Rental Owners? Do STR Owners have any representation at all in this Committee?

The Committee was, in fact, comprised of a balanced group of Hague residents. Three members lived next to, or very near to, one or more short-term rental properties. Three members were owners of short-term rental properties. Three members were not renters, nor did they live near renters.

18. What exactly is the Town of Hague Board relying upon to determine if the ZEO can be relied upon to perform the duties the proposed STR empowers and relies upon the ZEO to administer and enforce?

The Town Board will staff the ZEO Office with qualified personnel for this STR Law. Furthermore, all decisions of the ZEO regarding the proposed STR law are subject to review by the Town Board if need be.

STR Questions and Answers

19. Cathy Clark's comments recorded in the 9/8/2022 STR Committee meeting minutes specifically states: "There are multiple agencies/boards that must give approval." Clearly, she meant BEFORE adoption of STR Ordinance or Law. Why has this been ignored?

This was not ignored. The Town Board has received counsel from both the Town Attorney and Warren County as to proper procedure.

20. Why is the proposed STR Law providing exemption to Tourist Accommodations?

Tourist accommodations are governed by many laws and regulations that do not apply to STRs. STRs are exempt from these laws and regulations. Therefore, there is a clear need to govern STRs and no need to add tourist accommodations to this Law.

21. Why is the proposed STR Law providing an exemption for employee housing when there are very limited to no available jobs available in Hague?

It is a well-known fact that the lack of housing contributes to the inability to recruit even the limited number of employees needed in our town. It will be very difficult to fill jobs of any significance if there is no housing for the employees needed to support businesses.

22. I am a year-round resident. If I were to build a home on my property or buy another house, would the proposed 3-year wait time apply to me?

The Law refers to the purchase of a property. There is no mention of whether or not there is a house on the property at the time of purchase. So, if you were to purchase undeveloped land, you could build a house at any time, but would have to wait three years from the date of the purchase of the land before you could short-term rent the house. If you already own the land, and have owned it for three years or more, you could build a house and rent it immediately. If you bought another house, you would be subject to the three-year waiting period, unless you bought it from an immediate family member.

23. Through our respective attorneys, the Town of Hague informed me that there would be a blanket exemption in the STR Law for property owners who owned property prior to the effective date of the law, which was also put in an email. Why were we told that existing owners were going to be given a blanket exemption and then the modified language failed to include a blanket exemption?

The email mentioned above was in reference to Article 4 Section E, which clearly grants the exemption the Town's attorney was referring to.

24. The Town of Hague has a Code of Ethics. It prohibits every officer of the Town of Hague from holding any investment or ownership stake in a business or commercial transaction that creates a conflict of interest with his/her official duties. Hague's Code of Ethics also requires

STR Questions and Answers

disclosure of any direct or indirect financial interest in pending legislation, although the Town's Code of Ethics inexplicably refers to legislation before the Board of Supervisors. The STR Law seeks to regulate certain renters and exempt other renters. It expressly exempts tourist accommodations, without exception even though a tourist accommodation may be offering the same type of private home that would otherwise be subject to the STR Law. It creates a distinction between existing and new STRs. Both of these aspects will have the effect of funneling certain short-term renters to particular properties, and exclude them from others. The Town Board appears to be picking winners and losers in the market through the STR Law. Given the clear and significant financial implications, members of the Town Board should identify and publicly disclose whether and to what extent they, or their families, would benefit, directly or indirectly, from this STR legislation. The Town of Hague has chosen not to establish a Board of Ethics. The Warren County Board of Ethics should be consulted. It appears that the Warren County Board of Ethics rules do not allow a member of the public to seek an advisory opinion or file an ethics complaint against a Town official. So, in addition to public disclosure, each member of the Town Board with any financial interest in the STR Law should immediately request an advisory opinion from the Warren County Board of Ethics, and that advisory opinion should be available prior to any further Town Board action on the STR Law.

We assume that you are implying that these factors present a conflict of interest. That is untrue. The only obligation that any Town Board member has is to disclose that information, which they have already done. We respectfully request that you read Article 19 of the Town Code which deals with ethics and provides the Town with the citation that supports your contention. There is no conflict of interest. The person who asked this question is legally and factually wrong. Article 19-3 states as follows:

Article 19-3 Standards of Conduct.

Every officer or employee of the Town of Hague shall be subject to and abide by the following standards of conduct:

A. Gifts. He shall not, directly or indirectly, solicit any gift having a value of \$75 or more, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise, or any other form under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part.¹¹

[1]Editor's Note: Amended at time of adoption of Code (see Ch.1, General Provisions, Art.1).

B. Confidential information. He shall not disclose confidential information acquired by him in the course of his official duties or use such information to further his personal interest.

C. Representation before one's own agency. He shall not receive or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any municipal agency of which he is an officer, member or employee or any municipal agency over which he has jurisdiction or to which he has the power to appoint any member, officer or employee.

STR Questions and Answers

D. *Representation before any agency for a contingent fee. He shall not receive or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any agency of his municipality, whereby his compensation is to be dependent or contingent upon any action by such agency with respect to such matter, provided that this subsection shall not prohibit the fixing at any time of fees based upon the reasonable value of the services rendered.*

E. *Disclosure of interest in legislation. To the extent that he knows thereof, a member of the Town Board and any officer or employee of the Town of Hague, whether paid or unpaid, who participates in the discussion or gives official opinion to the Board of Supervisors on any legislation before the Board of Supervisors shall publicly disclose on the official record the nature and extent of any direct or indirect financial or other private interest he has in such legislation.*

F. *Disclosure of interest in certain applications. A member of the Town of Hague Planning Board and any officer or employee of the Town of Hague, whether paid or unpaid, who participates in the discussion or gives official opinion to the Planning Board on any application for review before the Planning Board shall publicly disclose on the official record the nature and extent of any direct or indirect financial or other private interest he has in such application.*

G. *Disclosure of employment of relatives. No person who is related by blood or marriage to a public officer or department head of the Town of Hague shall be employed by said public officer or department head before publicly disclosing the name, relationship and proposed employment to the Board of Supervisors and upon consent of a majority of said Board at a duly held meeting thereof.*

H. *Investments in conflict with official duties. He shall not invest or hold any investment, directly or indirectly, in any financial, business, commercial or other private transaction which creates a conflict with his official duties.*

I. *Private employment. He shall not engage in, solicit, negotiate for or promise to accept private employment or render services for private interests when such employment or service creates a conflict with or impairs the proper discharge of his official duties.*

J. *Future employment. He shall not, after the termination of service or employment with such municipality, appear before any board or agency of the Town of Hague in relation to any case, proceeding or application in which he personally participated during the period of his service or employment or which was under his active consideration.*

25. In New York State, an eviction of a tenant is lawful only if an owner has brought a court proceeding and obtained a judgment of possession from the court. A sheriff, marshal or

STR Questions and Answers

constable can carry out a court ordered eviction. An owner may not evict a tenant by use of force or unlawful means.

You are correct. Eviction requires that the landlord follow the procedures set out in New York's real Property Actions and Proceedings Law for the eviction of a tenant. There is no exception for short-term rentals. That said, nowhere in the local law do we state that you are required to evict your tenant.

26. Why are existing zoning laws being ignored and instead focus placed only on STR Local Law?

The Town of Hague is not ignoring any existing Laws.

Attorney Silvestri's answer:

You have correctly stated that the Town of Hague is not ignoring any existing law. If the person asking the question can cite any particular provision of the Town's Laws that they believe are being ignored, we can take a look at it, but the question, as asked is too broad and general. Does the Town have a Zoning Ordinance in place? The answer is obviously, yes, it does. The STR is carving out a particular type of rental that the Town Board, in keeping with its lawful authority, has deemed necessary to regulate. The STR is not in conflict with any of those provisions and has provision for grandfathering in pre-existing uses.

27. Prior to the 3/12/24 Town Board meeting, (Mr. Dawson's) law firm (Gilchrist Tingley, P.C) submitted a detailed 6-page letter to the Town Board. This letter raised very valid questions, concerns, legal issues, and legal deficiencies. These points should not be ignored by the Town Board. (Mr. Dawson) encourages the Town Board to have the Town Attorney review this document in detail prior to any further Town Board action.

Below is Attorney Silvestri's response to that letter:

John M. Silvestri
Attorney & Counselor at Law
P.O. Box 715
Chestertown, New York 12817
(518) 338 5182

jms@jsilvestrilaw.com

April 15, 2024

TO: Supervisor Patchett and Town Board Members:

In response to MARCH 12, 2024, letter of Andrew W. Gilchrist, Esq. in the order presented:

STR Questions and Answers

1. The Town of Hague Code will violate the basic rules of statutory construction.

Response: *The proposed STR does not violate the basic principles of statutory construction. The STR, consistent with the principles of statutory construction, must be interpreted so as to be harmonious with the Town Code Chapter 160, Article VI and Article IX. I believe the basic rule of statutory construction being referred to by Mr. Gilchrist reads as follows: "The law should be given its plain meaning wherever possible. Statutes must be interpreted so as to be entirely harmonious with all laws as a whole. The pursuit of this Harmon is often the best method of determining the meaning of specific words or provisions which might otherwise appear ambiguous." There is nothing inconsistent with defining a particular type of rental and regulating that rental and the code provisions which allow people to rent their homes in certain zoning districts. Regulation is not a deprivation of those rights.*

2. If the STR is enacted it will provide two separate and inconsistent regulatory standards and requirements for short-term-rentals in the Town of Hague.

Response: *The STR does not eliminate the rental of one-family dwellings for hire or rent. It defines a particular type of rental, I.e. Short-term rentals and merely regulates how Short-Term Rentals are to be conducted. That STR's require a permit and must follow some basic rules intended to protect those who are renters as well as neighboring parcels, does not violate any vested property rights.*

3. The Town may only amend the existing Town Code or expressly state that the proposed STR is intended to supplement or modify the existing Town Code.

Response: *Town Law Section 60, Article IX of the NYS Constitution, and the Municipal Home Rule Law Section 10 all grant the Town Board the authority to amend or adopt local laws. Mr. Gilchrist would have to site authority to support his proposition that the Town must amend the existing Town Code or state the proposed STR intends to modify, supersede or amend the existing Town Code.*

4. Mr. Dawson's property rights are vested and therefore protected as a pre-existing non-conforming use and any attempt to apply the Local STR Law would be in violation of the Federal and State Constitutions which prohibit the taking of vested property rights I.e. the due process clause of the US Constitution 14th Amendment and the taking clause of the 5th Amendment which prohibits the government from taking property without just compensation.

Response: *Mr. Gilchrist would have to be more specific as to what rights he believes have become vested and how the proposed STR constitutes an unconstitutional "taking" or "elimination" of those rights without compensation.*

The three key United States Supreme Court Cases that support the fact that there has been no violation of any landowner's property rights are as follows:

Lucas v. South Carolina, 505 US 1003 (1992) In that case, the property owner in 1986 had paid \$975,000.00 for two residential lots on the Isle of Palms in Charleston County, South Carolina (Outer Banks) in which he intended to build single family residential homes. At the time he purchased it, such construction was regulated but was allowed. In 1988, two years after he purchased, the South Carolina Legislature enacted a Beachfront Management Act which had the direct effect of barring the property owner from erecting any permanent structures on his two parcels. The question the Court wrestled with

STR Questions and Answers

was whether the Act's dramatic effect on the economic value of the property owner's lots was the taking of private property in violation of the Fifth and Fourteenth Amendments of the U.S. Constitution requiring the payment of "just compensation". The Court, in remanding the case for further consideration by the State Courts, in relevant part stated the standard for what constitutes a categorical violation of the US Constitution prohibition against taking a property right was when the regulation " ..denies all economically beneficial or productive use of land." Here Mr. Dawson, and any property owner in Mr. Dawson's position, has not alleged and cannot show that the STR will deny them of all economically beneficial or productive use of their land and buildings. Such property owners also cannot show that the STR does not substantially advance the Towns interests in protecting the people who are renters of Short-Term Rentals and surrounding property owners.

See also, **Pennsylvania Central Transportation Co. v City of New York**, 438 U.S. 104 (1978). In this case, New York City passed a Landmark Preservation Law designating certain structures and neighborhoods as landmarks. Pennsylvania Central owned Grand Central Station and they were prohibited from constructing a fifty (50) plus story addition on top of the Station. The Supreme Court held that the prohibition against constructing a fifty (50) story addition was a reasonable restriction substantially related to the general welfare of the City. The restriction did not prevent Penn Central from ever being constructed above the terminal in the future. Likewise in this case the regulations imposed on Short-term Rentals is substantially, if not directly related to the general welfare of renters and the general welfare of the Town of Hague.

See also, **Palazzolov Rhode Island et.al.** 533 US 606 (2001) In short property owned by a corporate entity was transferred to one of its shareholders. When the property was owned by the corporation, filling of marshland was permissible but before the property was transferred from the corporation to the shareholder a regulatory agency enacted regulations which greatly restricted the development of marshland. The regulatory agency argued that since the shareholder took title after the regulatory changes took effect that the shareholder took title subject to those regulations and could not claim that they had a vested property right that was lost or taken by the regulations. The Court rejected this argument and held that the property owner did have standing to argue that a vested property right had been taken without compensation but agreed with the lower court that since all the economically beneficial use of the property had not been eliminated or taken. I.e. under the regulations imposed the property still had a value of \$200,000.00 (about 6% of the property's value prior to enactment of the regulations) and therefore there was no showing of total deprivation that required compensation and the case was remanded on other grounds.

5. The STR violates the equal protection clause of the 14th Amendment of the US Constitution.

Response: *Mr. Gilchrist would have to be more specific. The standard applied by the US Supreme Court in equal protection cases is does the regulation or law have some rational relation to a legitimate exercise of the police power of the State, or here the Town of Hague. See **City of Dallas v Stanglin**, 490 US 19 (1989). Here the Town the regulation of STR's to protect renters, adjoining property owners and the general welfare of the Town of Hague is a legitimate exercise of the Town's police powers and the Proposed STR Law has a rational relationship to those goals.*

6. The STR is arbitrary and capricious.

STR Questions and Answers

Response: *The definition of arbitrary and capricious is as follows: A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational. As stated above, the proposed local law is a legitimate exercise of the police powers of the Town of Hague and the law has a rational relationship to the exercise of those powers and therefore by definition is not arbitrary or capricious.*