

July 16, 2020

Via E-mail

Ann Arbor Mayor and City Council
c/o Jacqueline Beaudry, City Clerk
301 E. Huron
Third Floor
Ann Arbor, MI 48104
cityclerk@a2gov.org

Re: Proposed Short-Term Rental Ordinance and Legal Non-Conforming Use Rights

Dear Mayor and Council Members:

Our Firm represents Noah Hoffman, Heidi Mitchell and other residents that rent homes within the City of Ann Arbor (the “City”) on a short-term basis. Our clients have provided us with a copy of the City’s proposed Short-Term Rental ordinance and have shared their respective histories of communicating with the City with respect to the ordinance. As discussed herein, if the City proceeds with imposing the proposed ordinance, it should modify it to treat existing short-term rental properties as legal non-conforming uses and allow them to continue.

We will begin with the observation that the proposed ordinance is not fair to our clients (or to others) that have used, and continue to use, their properties for short-term rental purposes. These citizens invested in their properties in reliance on their rights to rent them and have paid higher taxes due to their quasi-commercial status. The income from short-term rentals has been, and continues to be, a critical part of their livelihoods and a critical source for maintaining their properties. In some cases, the loss of rental income could lead to a decline in maintenance and repairs. In other cases, the loss of the income stream could be devastating and lead to foreclosure.

Beyond the obvious fairness issues, the proposed ordinance and its impact on our clients also raises legal issues. Specifically, our clients (and others that can document the lawful use of their properties for short-term rental purposes) should be entitled to continue their use of their properties as legal non-conforming uses. We are informed that City representatives have told our clients that their short-term rental uses would not qualify as legal non-conforming uses. We disagree with this position and urge the City to modify the proposed ordinance to clearly exempt properties that are currently used for short-term rental purposes.

We have attached the recently decided Michigan Supreme Court case *Reume v Spring Lake* which speaks directly to this issue. At its core, *Reaume* holds that existing, lawful, short-term rental properties are entitled legal non-conforming use status. In *Reaume*, the Supreme Court concluded that if the use of a property for short-term rentals *actually was lawful* prior to the adoption of a new ordinance, then the property owner *has a right* to continue using their property

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for short-term rentals after imposition of the ordinance¹. In this case, the involved short-term rental properties are all currently lawful uses and they should all be entitled to legal non-conforming use status should the ordinance be enacted. As such, they should be permitted to continue short-term rental uses based on the reasoning in *Reaume* and based on the fairness principals set forth above.

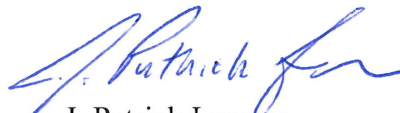
As mentioned above, the right to continue to use their properties for short-term rental purposes is critical to our clients. They are all long standing supporters of the City and its policies and they all hope the City will respect their right to continue the current use of their properties. Unfortunately, if the City takes away their rights, they may have no choice but to consider legal actions against the City. Such actions would likely commence by seeking a referendum on the new ordinance. If a referendum does not overturn the ordinance, our client may be compelled to take formal legal actions to protect their rights.

As stated throughout, we all obviously hope that the City can find a place for these ongoing uses as part of the proposed ordinance. Our clients stand ready to assist the City with this process and to provide additional information. You may look forward to hearing from them at the upcoming City Council meeting and you may contact me if I can assist in any way, shape or form. In the meantime, we would like this letter distributed to the Mayor and the City Council members and included in the record of the City Council meeting.

Please pass this on to the Mayor and City Council and please thank them for their time and consideration of this important matter.

Very truly yours,

HONIGMAN LLP



J. Patrick Lennon

cc: Stephen Postema, City Attorney
Noah Hoffman
Heidi Mitchell

¹ We note that the short-term rental property in the *Reaume* case was not a lawful use prior to the short-term rental ordinance and the court held in favor of the municipality on those grounds. In this case, the short-term rental properties are all lawful uses and should receive legal non-conforming use status.