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TOWN OF HERKIMER
LOCAL LAW NO. 9 OF 2019

LOCAL LAW AMENDING THE TOWN OF HERKIMER ZONING ORDINANCE TO
ESTABLISH REGULATIONS CONCERNING THE LICENSING OF HOTELS AND
MOTELS

BE IT ENACTED by the Herkimer Town Board as follows:

Article One: Title.

This Local Law may be cited as the "Local Law Amending the Town of Herkimer Zoning Ordinance to Establish Regulations Concerning the Licensing of Hotels and Motels."

§1. Purpose and Intent

It is the purpose and intent of this chapter to promote the public health, safety and general welfare of the guests of hotels and motels and transient lodging providers located within the Town of Herkimer and that of the general citizenry of the Town, and to ensure the continued availability of safe, sanitary and code-compliant transient lodging within the Town.

§2. Definitions

As used in this Local Law, the following terms shall have the meanings indicated:

- A. High Managerial Agent – The same meaning as set forth in New York State Penal Law Section 20.20
- B. Hotel or Motel – Any Hotel or Motel as defined in the Town of Herkimer Zoning Ordinance, and, in addition, any other hotel, motel, inn, tourist home, rooming house, boardinghouse or 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.
- C. License – means a hotel or motel license issued pursuant to this Local Law.
- D. Licensed Premises – includes the hotel or motel 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.
- E. Licensee – The holder of the license to conduct such hotel or motel business.
- F. Person – Includes an individual, or any firm, partnership, corporation or association of persons or entity of any kind.
- G. Register – The register required to be maintained under subsection 10 of this Local Law and Section 204 of the New York General Business Law.

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.

Article Two: Hotel/Motel License.

§1. License Required.

No person shall engage in the business of owning or operating a hotel or motel without first obtaining a license therfor from the Town Clerk of the Town of Herkimer as hereinafter provided.

§2. 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 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 any 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 principal of any other applicant that is not a natural person; has ever been convicted of any crime listed in Section 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. 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 applicant.
 - b) A copy of the applicant's certificate of incorporation, partnership agreement, articles of organization, 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. 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.

§3. Criminal Convictions Barring Issuance of a License.

No such 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, 160, 220, 225, or 230 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 in which any stockholder holding five percent (5%) or more of any 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, 160, 220, 225 or 230 of the New York Penal Law, subject in each case to the rehabilitation procedures under Article 23-A of the New York Correction Law.

§4. Investigation, Issuance of License.

The Codes Enforcement Officer or designee and Fire Commissioners 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 Codes Enforcement Officer or designee and/or Fire Commissioners 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 reinspection for the purpose of securing a license.

§5. License Fee.

The annual fee for said license for licensed premises shall be established by the Town Board in the Annual Fee Schedule.

§6. Term of License.

- A. All licenses issued under the provisions of this chapter 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 the lobby or registration area of the licensed premises.

§7. Transfer of License.

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 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.

§8. Inspection of Premises.

The Codes Enforcement Officer, the Fire Commissioners, and any duly empowered peace officer of the State of New York having jurisdiction within the Town of Herkimer shall have the authority to inspect the public area 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.

§9. Keeping and Inspection of Register.

Any licensed premises as defined herein 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 the Codes Enforcement Officer or designee, the Fire Commissioners or designee, and any peace officer of the State of New York, 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.

§10. Prohibited Uses

- A. It shall be a violation of this Local Law for any person to reside in any unit of any hotel or motel unless such unit and the hotel or motel comply with all aspects of applicable section of the Town Code, local laws and ordinances, including but not limited to all bulk and district regulations pertaining to dwelling units.
- B. It shall be a violation of this Local Law for any person or entity to occupy a unit at any hotel or motel for the primary purpose of operating a business from such unit or for any licensee to knowingly permit such use. Notwithstanding the foregoing, business use of a hotel or motel unit that is incidental to the use of such unit for lodging purposes shall not constitute a violation of this Local Law.

§11. 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 said licensee shall be afforded a hearing before the Town Board and notice of such hearing prior to such a revocation:
 1. The violation by the licensee or any member, partner, officer, director, five-percent-or-greater shareholder, high managerial agent or other principal or licensee of any provision of this Local Law or Section 204 of the General Business Law of the State of New York.
 2. Upon the recommendation of the Codes Enforcement Officer or designee or Fire Commissioners, for the failure to cure any violation of any applicable health, fire, safety, construction or zoning ordinance, law, regulation or statute within thirty (30) days of the licensee being notified of such violation by the Codes Enforcement Officer or designee or Fire Commissioners.
 3. Upon the recommendation of a duly empowered peace officer with jurisdiction within the Town of Herkimer, 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 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 his or her last known address 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 Codes Enforcement Officer or designee, or Fire Commissioners, or peace officer, 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.

Article Three: Occupancy.

§1. Occupancy Limits.

- A. Occupancy of any hotel/motel, bed-and-breakfast, inn or boardinghouse by any individual shall be limited to no more than 28 consecutive days unless such hotel/motel, bed-and-breakfast, inn or boardinghouse has an attached restaurant; provided that same complies with all applicable New York State and Town of Herkimer codes.
- B. Occupancy of any hotel/motel, bed-and-breakfast, inn or boardinghouse by any individual shall be limited to no more than sixty (60) days in any one hundred eighty (180) day period.
- C. Re-registering any guest or any person sharing or staying in the same room as a guest in the same or a different room in the same hotel/motel, bed-and-breakfast, inn or boardinghouse or in a hotel/motel, bed-and-breakfast, inn or boardinghouse owned and operated by the same entity or an entity with any of the same members having an interest of 5% or more shall be considered a single occupancy for the purpose of these time limits.
- D. The occupancy limitations set forth under subsection "A" above shall not apply if an individual provides photo identification as required herein, that shows that the individual has a permanent place of residence other than the hotel/motel, bed-and-breakfast, inn, or boardinghouse at which the individual is registering. The owner or operator of any hotel/motel, bed-and-breakfast, inn or boardinghouse shall photocopy the identification and shall keep such record for a minimum of one (1) year. This record must be available for inspection by the Town of Herkimer Codes Enforcer or any peace officer of the State of New York with jurisdiction within the Town of Herkimer, or any of their designees who shall have the authority to inspect the records from time to time, without prior notice.

- E. No person or entity owning, leasing, operating or managing any hotel/motel, bed-and-breakfast, inn, or boardinghouse shall charge or accept money or other consideration by an hourly rate or any increment less than one full day's room rental.
- F. In extraordinary circumstances, a person or entity owning, leasing, operating or managing any hotel/motel, bed-and-breakfast, inn, or boardinghouse, together with the occupancy at issue, may apply to the Codes Enforcement Officer in writing, by submitting a written request, for an extension of the twenty-eight (28) day limitation period upon a showing by clear and convincing evidence that a time extension is required for humanitarian reasons. The application must show not only that an extraordinary circumstance exists by clear and convincing evidence but also must show all steps that have been taken to find the occupant suitable permanent housing elsewhere.

Said determination of the Codes Enforcement Officer may be appealable to the Town Board of the Town of Herkimer at a regular meeting of the Board. The appellant must advise the Town Clerk to add the matter to the agenda for the meeting no later than three (3) business days prior to said meeting.

§2. Photo Identification Required.

Every hotel/motel, bed-and-breakfast, inn, or boardinghouse must require all adult guests to produce a government-issued photo identification at the front desk immediately upon arrival.

§3. Age Restriction.

Any individual occupying any hotel/motel, bed-and-breakfast, inn, or boardinghouse for any length of time must be at least eighteen (18) years of age, unless accompanied by a parent or legal guardian. However, a hotel/motel, bed-and-breakfast, inn, or boardinghouse may rent, lease or sign a contract for the use of the unit, room, or suite to a person under the age of eighteen (18) if the individual is part of a school group, sports or extracurricular team, convention, corporate meeting, pageant, or other similar major contracted booking at the hotel/motel, bed-and-breakfast, inn, or boardinghouse and a copy of the contract is on file at the establishment available for inspection by the Town of Herkimer Codes Enforcement Officer or designee or any New York State peace officer with jurisdiction within the Town of Herkimer.

§3. Occupancy Points.

- A. There is hereby established in the Town of Herkimer 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 One Sex Offender is hereby assigned one occupancy point; a Level Two Sex Offender is hereby assigned two occupancy points; and a Level Three Sex Offender is hereby assigned three occupancy points.
- B. Hotels, motels and other licensed premises as defined in this local law with fifty (50) or fewer units are granted a total of four (4) occupancy points. Hotels, motels and other licensed premises as defined in this local law with fifty-one (51) or more units are granted a total of six (6) 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. For the purpose of example only, a licensed premises with fifty (50) or fewer units may only provide accommodations to no more than two Level Three registered sex offenders at any one time or no more than three Level Two registered sex offenders at any one time.

D. A licensee under this local law shall be required to affirmatively inquire whether any guest is a registered sex offender at the time of registration.

§3. 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 Herkimer 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 at any one time on any given day.

Article Four: General Provisions.

§1. Posting of this Local Law.

Every licensee shall post in a public and conspicuous manner in the registration office or lobby of the licensed premises a notice that a printed copy of this Local Law is available for inspection by the public in such registration office.

§2. Grandfather Provision.

Any hotel or motel in operation on the effective date of this Local Law shall apply for a license pursuant to Article Two herein within thirty (30) days of such effective date. Such application shall comply with the terms of this Local Law.

§3. Penalties for Offenses.

The Zoning Ordinances of the Town of Herkimer applies to violations of this Local Law.

§4. 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 peace officer of the State of New York 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.

§5. 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.

§6. 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 the reports of violation relative thereto.

§7. 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.

§8. Effective Date.

This Local Law shall be effective upon its filing with the Secretary of State in accordance with the Municipal Home Rule Law.

1. I hereby certify that the local law annexed hereto, designated as Local Law No. 9 of 2019 of the Town of Herkimer, was duly passed by the Town Board on December 9, 2019 in accordance with the applicable provisions of law.
2. I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1 above.

(SEAL)

Jennifer DeMetro

Jennifer DeMetro, Town Clerk
Dated: 12/10/2019

STATE OF NEW YORK
COUNTY OF HERKIMER

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Christopher R. Bray
Christopher R. Bray, Esq.
Town Attorney
Town of Herkimer
Dated: 12/10/19