

ELAINE HARRIS, ESQ.

AMAGANSETT

October 30, 2015

Honorable Larry Cantwell, Supervisor
Honorable Peter Van Scoyoc, Deputy Supervisor
Honorable Kathee Burke-Gonzalez, Councilwoman
Honorable Sylvia Overby, Councilwoman
Honorable Fred Overton, Councilman

Re: Resolution Establishing a Rental Registry and Regulating Rental Properties

Dear Board Members:

It can not be disputed that each and every one of you has the best intentions for the good and welfare of this community and further, you each have a long record of commendable public service. Nevertheless, as a property owner, I say the above referenced proposal is contradictory to the betterment of this community and will invite serious problems, including litigation, not only in opposition to its enactment, but for each and every time that a private citizen is arrested, fined and/or jailed for what is otherwise a protected and sacrosanct right of private property ownership.

I would like to recommend that you table this ordinance indefinitely, and form an advisory board committee of interested citizens, such as myself, to redraft this proposal and eliminate the contentious and unconstitutional aspects it currently contains.

We all know our country is extraordinary due to our Constitution and our Constitutional rights. We have the right to own private property in perpetuity. Our children can inherit. Any law that attempts to interfere with this right must be challenged and nullified. The ability to rent our property is inextricably part of our ownership rights. No doubt you can require us to have smoke detectors and carbon monoxide detectors, but when you want to enter our homes and count mattresses, you have gone too far. A man's home is his castle and unless you have an invitation or a search warrant, you are not welcome inside.

What is the legitimate purpose in knowing the number of rooms and the number of bedrooms in an existing dwelling? If a house is otherwise legally existing, it is not your prerogative to search for information, and then with a **presumption of guilt, impose fines or jail on otherwise law abiding citizens.** This proposal reverses the most precious right we have, that **we are presumed innocent until proven guilty**, and it tramples on our right against self-incrimination. On this basis alone, any citizen who registers a house for rental should answer every question by invoking the Fifth Amendment: "I can not respond as the answer may incriminate me."

This proposed ordinance essentially criminalizes private property ownership rights. As such, it is fatally flawed. For example Sec. 199-1-4: If I allow my friends to stay in my house it is "presumed" rented, and I am presumed guilty. If my driver's license has a different address, it is "presumed" rented and I am presumed guilty. These presumptions assume that we no longer can own multiple properties and secondary and tertiary residences, as many people do. The ordinance also allows convictions based on hearsay from third parties simply by someone alleging they pay rent.

With respect to Sec. 199-1-5, citizens can no longer own more than four cars without risking criminal punishment. I own more than four cars, and that puts me at risk right now. How does the town intend to enter my driveway and my home without search warrants? What is the probable cause?

I understand the objective of this ordinance is to control unruly tenants and over occupied dwelling units. However, unless there is some conduct that affects the community at large (i.e. excessive noise), the problem of unruly tenants is a matter for landlords and civil tenancy courts to resolve. These issues should not be handled as criminal matters in municipal courts carrying threats of stiff fines and imprisonment. As to the population of people who live in crowded homes, this is the result of economic circumstances that we are responsible for creating. Until such time as the police have good cause to enter these homes, there is no authority to control who sleeps in the dwelling and on what mattress. Frankly, unruly tenants and overcrowded homes rely more on inflatable beds and sofas, and neither was included in this proposal.

The chilling effect that this proposed ordinance imposes on rentals is veritably a form of eminent domain. It is a taking of a property right (freedom to rent) without due compensation. It is also an infringement on the Commerce Clause by impacting on rentals to out of state persons and foreigners. It fails in providing due process, and shows no legitimate state purpose.

I urge you to reconsider this extraordinarily daunting proposal and allow your citizens time to brainstorm on alternatives that would pass Constitutional muster. I will be happy to volunteer on such a committee, and I think anyone who is interested should be welcomed.

Very truly yours,

ELAINE HARRIS

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