

Local Law Filing

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Town of Colonie
LOCAL LAW NO. 8 FOR 2009

HOTELS AND MOTELS

GENERAL REFERENCES

Town Law §§130 and 136; Town of Colonie Land Use Law Chapter 190

§ 119-1 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 located within the town and that of the general citizenry of the town.

§ 119-2 Definitions.

A. As used in this chapter, the following terms shall have the meanings indicated:

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.

HOTEL or MOTEL

Any hotel or motel, as defined in the Town of Colonie Land Use Law, and, in addition, any other inn, tourist home, trailer park, trailer camp, boarding house, 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 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.

LICENSE

A registered sex offender occupancy license issued under this chapter.

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.

LICENSEE

The holder of the license to conduct such hotel or motel business.

PERSON

Includes an individual, or any firm, partnership, corporation, limited liability company or association of persons or entity of any kind.

REGISTER

The register required to be maintained under §119-11 of this chapter and §204 of the New York General Business Law.

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 one, 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.

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

§ 119-3 License required.

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 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 Colonie as hereinafter provided.

§ 119-4 Application for license.

- A. Each applicant for a license under this chapter 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 § 119-5 of this chapter, 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 §119-5 of this chapter, 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 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 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 chapter in operation on the effective date of this chapter 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.

§119-5 Criminal convictions barring issuance of 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 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.

§ 119-6 Investigation; issuance of license.

The Director of the Building Department or designee and the Fire Inspector 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 Director of the Building Department or designee and/or Fire Inspector 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.

§ 119-7 License fee.

The annual fee per year for said license for licensed premises with fifty (50) or fewer units and for licensed premises with fifty-one (51) or more units shall be as set by resolution of the Town Board and on file in the Clerk's office. The fee is due upon application and is nonrefundable.

§ 119-8 Term of license; display required.

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 chapter.

B. All licenses shall be prominently displayed in a conspicuous place in the lobby or registration area of the licensed premises. The license shall be denominated as the Registered Sex Offender Occupancy License.

§ 119-9 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 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 chapter.

§ 119-10 Inspections of premises.

The Director of the Building Department or designee and the Fire Inspector and the Police Department of the Town of Colonie 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 chapter are followed.

§ 119-11 Register

Any licensed premises as defined herein shall keep for a period of three 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 Director of the Building Department or designee, the Fire Inspector and the Police Department of the Town of Colonie, 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 chapter are followed.

§ 119-12 Occupancy Points.

A. There is hereby established in the Town of Colonie 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 Correction Law §168-n. For the purposes of this chapter, a Level 1 sex offender is hereby assigned 1 occupancy point; a Level 2 sex offender is hereby assigned 2 occupancy points; and, a Level 3 sex offender is hereby assigned 3 occupancy points.

B. Hotels, motels and other licensed premises as defined in this chapter with fifty (50) or fewer units are granted a total of 6 occupancy points. Hotels, motels and other licensed premises as defined in this chapter with fifty-one (51) or more units are granted a total of 9 occupancy points.

C. Hotels, motels or other licensed premises as defined in this chapter may provide accommodations to registered sex offenders up to the maximum allowable occupancy points per day. For the purpose of example only, a licensed premise with fifty (50) or fewer units may only provide accommodations to no more than two (2) Level 3 registered sex offenders at any one time or no more than three (3) Level 2 registered sex offenders at any one time.

§ 119-13 Prohibited uses.

It shall be a violation of this chapter to knowingly provide accommodations to persons who are registered sex offenders in any hotel or motel or other licensed premises in the Town of Colonie if the occupancy by such registered sex offender results in the hotel, motel or other licensed premises to exceed the maximum number of assigned occupancy points at any one time on any given day.

§ 119-14 Suspension or revocation of license; hearing.

A. Any license issued under this chapter 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 or its designee and notice of such hearing prior to such a 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 licensee of any provision of this chapter or §204 of the General Business Law of the State of New York.

(2) Upon the recommendation of the Director of the Building Department or designee or Fire Inspector, 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 Town of Colonie Land Use Law or other applicable code after notification to the licensee of such violation by the Director of the Building Department or designee or Fire Inspector.

(3) Upon the recommendation of the Chief of Police, 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 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 Director of the Building Department or designee, Fire Inspector or Chief of

Police, the nature of the violation of this chapter 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.

§ 119-15 Posting of chapter.

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

§ 119-16 Penalties for offenses.

A. Any licensee or person acting on behalf of a licensee who violates any provision of this chapter shall, upon conviction thereof, be punished as follows:

i. 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 days, or by both such fine and imprisonment.

ii. Upon a second conviction, by a fine not less than \$100 and not more than \$250 or by imprisonment for a period not to exceed 10 days, or by both such fine and imprisonment.

iii. Upon a third or subsequent conviction, by a fine not less than \$250 or by imprisonment for a period not to exceed 15 days, or by both such fine and imprisonment.

iv. Notwithstanding a conviction for an offense against any provisions or sections hereof, a person, association or corporation convicted shall be subject to revocation of any license herein granted without reimbursement of fees paid therefor.

v. Any penalties provided for in Town Law §135.

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.

B. An action or proceeding in the name of the Town of Colonie may be commenced in any court of competent jurisdiction to compel compliance with or restrain by injunction the provisions of this chapter.

§ 119-17 Grandfather Provision

Any hotel or motel or other premises required to be licensed pursuant to this chapter in operation on the effective date of this chapter shall have thirty (30) days after the issuance of a license hereunder to comply with the terms of this chapter.

§ 119-18 Interpretation

This chapter shall be liberally construed so as to effectuate the purposes described in this chapter. Nothing herein shall abridge the powers and responsibilities of any police department or law enforcement agency to enforce the provisions of this chapter. 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.

§ 119-19 Conflicts

If this chapter 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 chapter.

§ 119-20 Records

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

§ 119-21 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.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No.8 of 2009 of the **Town of Colonie** was duly passed by the Town Board on August 6, 2009, in accordance with the applicable provisions of law.

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. ____ of 2009 of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 2009, and was (approved)(not approved)(repassed after disapproval) by the _____ and was deemed adopted on _____ 2009, in accordance with applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. ____ of 2009 of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 2009, and was (approved)(not approved)(repassed after disapproval) by the _____ and was deemed adopted on _____ 2009. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 2009, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. ____ of 2009 of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 2009, and was (approved)(not approved)(repassed after disapproval) by the _____ and was deemed adopted on _____ 2009. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 2009, in accordance with the applicable provisions of law.

***Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairman of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.**

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 2009 of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 2009, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 2009 of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 2009, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and of a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

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 _____, above.

Clerk of county legislative body, City, Town or Village Clerk
or officer designated by local legislative body

(Seal)

Date:

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized Attorney of locality.)

STATE OF NEW YORK
COUNTY OF ALBANY

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.

Town of Colonie Town Attorney
Date: