

MEMORANDUM

TO: George Lahanas, City Manager

FROM: Thomas M. Yeadon, East Lansing City Attorney *TMY*

RE: **House Bill 4046**

DATE: May 1, 2019

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Pursuant to your request I have reviewed and analyzed the Substitute for House Bill 4046 along with its recent legislative analysis. Along with a number of provisions that just have a troubling lack of clarity, there are some very concerning provisions in this Bill. Frankly, it is somewhat difficult to discern if the concerns I have are the intent of the legislation or simply a large number of unintended consequences resulting from the Bill. Since the legislative analysis does not discuss them, I am assuming the latter.

At the outset, I would note that while the intent appears to be limited to permitting short-term rentals (or at least prohibiting zoning restrictions that might prevent them), it is actually drafted much broader than that so the provisions apply to the rental of any dwelling "including, but not limited to, short-term rental." As such the opening statement of the summary in the legislative analysis is misleading as it states that the Bill would amend the Zoning Enabling Act (ZEA) "to create new zoning requirements specific to short-term rental." In actuality, the Bill would create new zoning requirements for all rentals of all dwellings throughout the State.

After this broad provision, the Bill then declares that the rental of a dwelling "is a residential use and a permitted use in all residential zones" and that "it is not a commercial use of property." The term "dwelling" is undefined in the Bill. "Short-term rental" is later defined but this definition does nothing to define a "dwelling." The ZEA also does not define the term "dwelling." Declaring all rentals of all "dwellings" to be a non-commercial permitted use in all residential zones is not only inaccurate, it disrupts the very essence of zoning regulations. Clearly there are some rentals of "dwellings" that are more commercial than residential and they should be treated differently under local zoning regulations.

The purpose of zoning is to separate incompatible uses. Not all residential uses of "dwellings" are compatible. As an obvious example you clearly would not want a hotel or motel to be able to go into any residential neighborhood, just as you would not always want an apartment building, townhomes or even duplexes to go into all residential neighborhoods. Along with the above, rooming houses, boarding houses, fraternities and sororities are all properly

distinguished dwellings in the City's zoning code. Placing the rental of dwellings on equal footing as a permitted use with all other rentals of dwellings is simply bad law.

This Bill actually goes further to prohibit the rental of any dwelling from being subject to a special use permit, conditional use permit "or procedure different from those required for other dwellings in the same zone." While this probably is not the intent, if passed, the Bill would prohibit a special use permit for any rental including fraternities and sororities, hotels, motels, apartments, etc. As you know, special use permits are designed to allow regulations to be put into place for uses that might not otherwise be fully compatible the other uses that are permitted by right. As such restrictions of this kind, which would prohibit special use regulations for any type of rental of any type of dwelling, also subvert the very essence of zoning regulations.

This particular limitation would be troublesome enough alone but it is combined with the limitation of stating the rental of a dwelling cannot be subject to "a procedure different from those required for other dwellings in the same zone." It is hard to know exactly what the intent of this provision is due to how broadly it is drafted but if we assume the intent of this provision is to restrict regulatory provisions and require equality in treatment of all rentals, this is also contrary to generally accepted zoning principles.

The interpretation that this is designed to make all regulations equal for all dwellings is consistent with the next section which explains the type of regulations this does not prohibit. This provision goes even farther though by requiring equal regulation in owner-occupied properties as well. The problem is that, again, because dwelling is undefined, this restriction on not having different procedures is not limited to similar dwellings. Rather, it applies to any dwellings in the same zone. So, for instance, to enforce any requirement for the inspections of any rental dwelling, you would also have to require the same procedures for inspections for all other dwellings. This would include owner-occupied dwellings, apartment complexes, hotels and motels, fraternity and sorority houses when those properties shares zones. So despite having obvious distinguishing characteristics and clearly different regulatory needs, local governments will have to apply the same regulations to all dwellings if they want to enforce any regulations.

Even if the legislation were corrected somehow to address these concerns, there remains an alarming amount of lack of clarity with regard to the intent of the provisions and the effect they may have on existing regulations. For instance, it is unclear how the requirement of consistent application of certain regulations between rentals and owner-occupied residences would work and what local regulations would be affected by this. This requirement for consistency is not limited to rental and owner-occupied properties in the same zone but applies to all rental and owner-occupied properties and, as such, can create a wide variety of issues. For example:

1. East Lansing's noise ordinance differentiates between "residential neighborhoods" and business districts. Since there are rental properties currently in both, arguably the City's noise ordinance would no longer be valid because this Bill requires rental dwellings to be treated on a consistent basis with owner-occupied dwellings.

2. The City does not regulate “advertising” for owner-occupied residences that are not rental properties. Arguably many provisions of the City’s Sign Code would be rendered invalid because the Bill requires the regulations be applied on a consistent basis to both there as well.

3. The City has certain parking requirements for rental properties based on occupancy, but none for owner-occupied residences that are not rental properties. These are common sense provisions to ensure enough off-street parking for rental uses. Those provisions would now be invalidated because we do not regulate all owner-occupied properties the same as required by the Bill.

4. The Bill requires consistency between rental and owner-occupied residences with regard to “other conditions to prevent nuisances.” Most of the City’s regulations of rental properties are designed to prevent nuisances that arise because of the nature of the use. Arguably this provision does away with most of those as well.

5. The Bill requires consistency between rental and owner-occupied regulations with regard to the number of individuals that may occupy a dwelling. Some of the City’s owner-occupied properties are rentals and others are not. In owner-occupied properties that are not rental properties, there is no limit on numbers as long as the occupants constitute a family or domestic unit. It is difficult to know how this provision will be interpreted since it appears that the Bill assumes owner-occupied residences are not rental properties.

6. The Bill requires consistency between rental and owner-occupied residences with regard to inspections and inspection fees. The same concerns exist here as in paragraph 5 above. While we distinguish between owner and non-owner occupied inspection schedules, we do not inspect or require inspections of non-rentals. It is hard to know how this will be interpreted.

7. The Bill requires consistency between rental and owner-occupied residences with regard to “taxes otherwise permitted by law.” Depending how this is interpreted, it could have a significant if not profound effect on the taxing of certain properties. Owner-occupied non-rental properties can have a very different assessment of value than a licensed rental property. If local governments are now required to treat them equally there could be a very large fiscal impact on local governments despite the legislative analysis statement to the contrary.

8. Finally, the Bill requires consistency between rental and owner-occupied residences with regard to “requirements to notify a local unit of government of association or condominium regulations or other private agreement that may affect the use of a dwelling.” It is not really clear what the intent of this provision is. In East Lansing, applicants for rental licenses in condominium units have to get approval from the condominium association for their license but this just speaks to notification of regulations.

The Bill defines a “short-term rental” as a rental for terms of less than 28 days at a time. It does not, however, restrict consecutive occupancies by the same tenant or tenants. As such,

landlords could easily draft a 27 day lease with a carry-over provision that would turn short-term rentals into long-term stays.

Finally, as you are aware, the City adopted an ordinance quite some time ago in which residents can petition to have their neighborhood established as one of three “rental restriction overlay districts.” These overlay districts restrict the ability of property owners to rent their property. This has been a success in preventing the spread of rental housing into many of the City’s residential districts and our residents have vigorously defended the ordinance when Council considered relaxing some of its provisions in the past. Obviously this Bill would significantly affect this overlay districts and residents who thought they were protected from a rental property popping up in their neighborhood would no longer have these safeguards.

As you can see, I have a number of significant concerns regarding this Bill. From my perspective, it could not easily be fixed to correct the number of deficiencies and problems it creates. There are simply too many variables to try to correct this particular piece of legislation and accomplish its intended goal without significantly harming the regulatory authority of local governments and the health, safety and welfare of the community that those regulations protect.

As always, if you have questions or concerns, please contact me.