

Senate Local Government Committee
Proponent Testimony
Senate Bill 104

Senator O'Brien, Senator Gavarone, Senator Smith, Senator Hicks-Hudson, Senator Koehler, Senator Landis and Senator Wilkin,

As a former mayor of the City of Dayton, Ohio, I am familiar with how local government community development staff think, or don't think. The most common flaw is their inability to anticipate the unintended consequences of their actions. Regarding SB 104, I have read through the 110 page draft and have discovered several flaws in the legislation. First I would like to remind you that when you were elected, you swore an oath to uphold the Ohio Constitution. The first amendment reads as follows: Inalienable Rights.

All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.

All Ohioans have the right to acquire, possess and protect their real property. You have sworn an oath that you will uphold that right. The first flaw in the draft of SB 104 is on page 5 line 132 where a "short term rental" has the same meaning as a hotel. According to Ohio Revised Code (ORC) 3731.01 a hotel is defined as follows (pay attention to 9 B):

(1) "Hotel" means a transient hotel, extended stay hotel, or residential hotel.

"Hotel" includes any structure consisting of one or more buildings containing any combination of more than five guestrooms that are each approved by the building code official having jurisdiction and the state fire marshal as meeting the requirements for transient sleeping rooms or extended stay temporary residence dwelling units, or as having features of such sleeping rooms and dwelling units within the same room, and such structure is specifically constructed, kept, used, maintained, advertised, and held out to the public to be a place where transient sleeping accommodations or temporary residence is offered for pay to persons, but such structure does not otherwise meet the definition of a transient hotel or an extended stay hotel as defined in this section. "Hotel" does not include agricultural labor camps, apartment houses, apartments or other similar places of permanent personal residence, lodging houses, rooming houses, or hospital or college dormitories.

(2) "Transient hotel" means any structure consisting of one or more buildings, with more than five sleeping rooms, that is specifically constructed, kept, used, maintained, advertised, or held out to the public to be a place where sleeping accommodations are offered for pay to transient guests for a period of thirty days or less, including, but not limited to, such a structure denoted as a hotel, motel, motor hotel, lodge, motor lodge, bed and breakfast, or inn.

(3) "Extended stay hotel" means any structure consisting of one or more buildings, with more than five dwelling units, and to which all of the following apply:

(a) The dwelling units in the structure are specifically constructed, kept, used, maintained, advertised, and held out to the public to be a place where temporary residence is offered for pay to persons.

(b) The structure is approved pursuant to a valid certificate of occupancy issued by the building official having jurisdiction as having dwelling units that have both of the following types of features:

(i) The required dwelling unit features for non-transient residence purposes in accordance with the residential group R-2 use and occupancy classification adopted by the board of building standards pursuant to section 3781.01 of the Revised Code, or any subsequent classification established by the board that is substantially similar to that classification;

(ii) All of the transient residential occupancy features of a transient hotel in accordance with the residential group R-1 use and occupancy classification adopted by the board pursuant to that section, or any subsequent classification established by the board that is substantially similar to that classification.

(c) The valid certificate of occupancy indicates the specific rooms within the structure that can be used as dwelling units.

(d) The structure is approved by the state fire marshal for extended stay temporary residence purposes.

(4) "Residential hotel" means any structure or structures consisting of one or more buildings, with more than five dwelling units, that are specifically constructed and approved through a valid certificate of occupancy issued by the building official having jurisdiction, as having both dwelling unit features for non-transient residence purposes and all of the transient residential occupancy features of a transient hotel in accordance with the residential group R-1 use and occupancy

classification adopted by the board of building standards pursuant to Chapter 3781. of the Revised Code, and that are kept, used, maintained, advertised, operated as, or held out to the public to be a place where non-transient dwelling units are offered for pay to persons for a minimum stay of more than thirty days.

(5) "Temporary residence" means a dwelling unit accommodation room within a hotel that is used by its occupants but is not used as the permanent or principal residence of its occupants.

(6) "Transient" means not more than thirty days.

(7) "Dwelling unit" means an accommodation room within a hotel that contains independent provisions for living, eating, cooking, sleeping, and sanitation.

(8) "SRO facility" means a facility with more than five sleeping rooms that is kept, used, maintained, advertised, or held out to the public as a place where sleeping rooms are offered on a single room occupancy (SRO) basis and that is intended for use as a primary residence for residential guests for a period of more than thirty days.

"SRO facility" does not include agricultural labor camps, apartment houses, lodging houses, rooming houses, or hospital or college dormitories.

(9) "Single room occupancy (SRO) basis" means one occupant per room.

(B) This chapter does not apply to apartment buildings and other structures in which all of the units are residential premises.

Moving on to page 13 where the current draft defines a "short term rental" I feel the need to remind you that I own a residential rental property as defined on ORC 5323.01.

(E) "Residential rental property" means real property that is located in a county that has a population of more than two hundred thousand according to the most recent decennial census and on which is located one or more dwelling units leased or otherwise rented to tenants solely for residential purposes, or a mobile home park or other permanent or semipermanent site at which lots are leased or otherwise rented to tenants for the parking of a manufactured home, mobile home, or recreational vehicle that is used solely for residential purposes. "Residential rental property" does not include a hotel or a college or university dormitory.

I also need to point out that ORC 5321.06 clearly states the following:

A landlord and a tenant may include in a rental agreement any terms and conditions, including any term relating to rent, the duration of an agreement, and any other provisions governing the rights and obligations of the parties that are not inconsistent with or prohibited by Chapter 5321. of the Revised Code or any other rule of law.

So according to existing Ohio code my property rights are already protected regardless of who I rent to and for how long. The terms "short term rental", "mid term rental" and "long term rental" need to be dismissed. So we can conclude that local governments that have imposed bans on residential rental property through the use of "Home Rule" are already in violation of current law. So to protect the property rights of all Ohioans equally Page 13 of the draft should then read something along these lines:

(1)"Local government" means a township, county, or municipal corporation.

(2) A residential rental property is defined in ORC 5323.01.

(B) No local government shall adopt or enforce a regulation, requirement, restriction, or other resolution or ordinance concerning residential rental properties that relates to any of the following: (1) Prohibiting residential rental properties; (2) Creation of a lottery system to be eligible for residential rental property registration; (3) Use of zoning requirements to prohibit or limit residential rental properties in areas that are zoned to allow for residential use; (4) Restricting the number of residential rental properties a person may operate; (5) A requirement that an owner of a residential rental property occupy the rental property.

Now for the tax portion of the bill. Residential rental property is not subject to "hotel tax" or "lodging tax" (both are mentioned in the current draft). Since the Ohio revised code 3731.01 clearly states that property used for residential purposes are not hotels (which are in areas zoned for commercial structures). Spot zoning is not permitted in many jurisdictions that would classify a unit of less than 4 dwelling spaces a commercial building. Therefore a single family unit can not be considered a commercial building. Are we engaged in a commercial business? All rental property is a commercial business regardless of the length of stay. I already pay real estate taxes, utilities, insurance and upkeep costs. If you feel the need to charge a lodging tax on visitors to my residential rental property based on their length of stay then it should be through a centralized

system. However, if you are going to tax my residential rental property, you should consider taxing all residential rental property.

With regard to rental registration under ORC 5323.02 and ORC 5323.03. I can tell you those ordinances are not being enforced. I have presented my county treasurer with maps showing registered and unregistered rentals in my neighborhood. From those, it shows that 50 to 60% of all rental property in Dayton are not registered with the county as required by law. The owner of a property next door to me has 38 unregistered properties. Many properties owned by real estate agents that are rental properties are not registered in Montgomery County.

So, in conclusion it would appear that defining a residential rental property based on length of tenancy is a form of discrimination and my property rights are no longer equal to the rights of other property owners. You should also review ORC 5323.20 and determine whether taxing residential rental property of any sort could be construed as a form of rent control.

I would be happy to meet with any of you to go over the legislation but I think the information I have provided here demonstrates that it needs to be re written.

Sincerely,

Gary D. Leitzell