

LAWS & RULES COMMITTEE MEETING

Wednesday December 15th 6:30pm.

- 1 – Open Meeting Law Amendment Memorializing Resolution – E. Flynn
- 2 – Management Handbook – Alderman Davis

OLD BUSINESS

1. Local Law 1 of 2022- Good Cause Eviction

(LIR)

CITY OF KINGSTON
Department of Health and Wellness
eflynn@kingston-ny.gov

Emily Flynn, Director



Steven T. Noble, Mayor

December 2, 2021

Honorable Andrea Shaut
President/Alderperson-at-Large
Kingston Common Council
420 Broadway
Kingston, NY 12401

Re: Open Meetings Law Amendment Memorializing Resolution

Dear President Shaut,

As you know, the Live Well Kingston Commission, and all of the City of Kingston's Boards and Commissions are operating under the New York State Open Meetings Law. During COVID, Governor Cuomo issued Executive Order 202.1, which authorized meetings to be held remotely, and under Chapter 417 of the S.50001/A.40001 legislation extended that provision. As of the time I am writing this, Chapter 417 is set to be repealed on January 15th, 2022.

The Live Well Kingston Commission has penned a letter to our State representatives asking them to amend the Open Meetings Law to allow Chapter 417 to be extended indefinitely.

Today we are respectfully requesting that this be placed on the agenda of the next appropriate Committee of the Common Council to discuss a memorializing resolution in favor of an amendment to the Open Meetings Law and ask the City Clerk to send a copy to our State Senator Michelle Hinchey and State Assemblymember Kevin Cahill.

Attached is Live Well Kingston's letter and a proposed resolution from the New York State School Boards Association about the same matter.

Sincerely,

Emily Flynn
Director of Health & Wellness

CC: Troy Ellen Dixon, Chair, Live Well Kingston
Steven T. Noble, Mayor, City of Kingston
Barbara Graves-Poller, Corporation Counsel



Live Well Kingston Commission
420 Broadway, Kingston, NY 12401
LiveWellKingston.org
845-334-3909

December 1, 2021

Re: Open Meetings Law Amendment

Dear State Senator Michelle Hinchey and State Assemblymember Kevin Cahill,

We have all learned many things since the start of the COVID pandemic. In this letter, we are focusing on one lesson: that inaccessibility to the physical presence of any member of a public body does not preclude or hinder a citizen's right to be "fully aware of and able to observe the performance of public officials" or a citizen's right "to attend and listen to the deliberations and decisions that go into the making of public policy." And that what we have known as 'business as usual' may actually be counterproductive.

This point was made first under Executive Order 202.1 (March 12, 2020) and under Chapter 417 of the S.50001/A.40001 legislation (September 2, 2021), during which public business of boards, commissions, councils, etc. was conducted via teleconference and/or videoconference and members of the citizenry were able to listen to or view such public meetings. In Kingston NY, and throughout New York State, public bodies noted and reported an increase in the number of citizens who attended these virtual meetings, versus the number present at meetings held in person.

There was a two-month period between the lapse of Executive Order 202.1 and extension of virtual access to public meetings under New York State's Open Meetings Law with Chapter 417, during which time the Live Well Kingston Commission, a body appointed by the mayor, was unable to conduct official business that required a vote for the following reasons:

- A quorum of the commissioners was not present at the July and August meetings.
- A quorum was not present because several commissioners, citing concerns about increases in COVID infections due to the Delta variant, chose to attend the meetings remotely.
- Because commissioners chose to attend remotely, most from their homes, and did not want to publish the address of their location so that any member of the public would have "an opportunity to attend, listen and observe at any site at which a [commissioner] participates," those commissioners did not count toward a quorum. (N.B. Under current socio-political pressures, the thought of publishing the address of a private residence for the purpose of allowing any member of the public to "attend, listen and observe" at that site is chilling.)

This may be unique to this particular commission. It is also possible that other public bodies composed of appointed or elected members have faced the same conundrum.

For the moment, Chapter 417 has solved the quorum issue. But it is scheduled to be repealed on January 15, 2022. At that time Live Well Kingston commissioners will be faced with a difficult decision. With COVID case numbers continuing to increase, then decrease, then increase, etc., long(er)-term vaccine efficacy still being monitored, and whether commissioners have been able to get a booster shot, depending on the vaccine they received originally, some may choose to forego in-person attendance, even if their colleagues are vaccinated and masked, due to concerns about their personal health and well-being. And with that, it is likely that the commission will not have a quorum.

The Live Well Kingston Commission promotes the advancement of a healthy and active community by bringing partners and residents together to facilitate policy, environmental and systems changes.



Live Well Kingston Commission
420 Broadway, Kingston, NY 12401
LiveWellKingston.org
845-334-3909

There are two possible solutions to address this:

- Extend Chapter 417 indefinitely, until such time that the WHO, CDC, and NYS DOH conclude that COVID is contained and we can all return to 'business as usual'.
[or]
- If COVID is not contained and we must return to 'business as usual', eliminate the requirement for members of the public body who are participating remotely to publish the address of their location so that any citizen would have "an opportunity to attend, listen and observe at any site at which a member participates."

If the latter, Kingston City Hall provides accessibility to the public according to the following requirements: *It is essential that public business be performed in an open and public manner and that the citizens be "fully aware of and able to observe the performance of public officials" and citizens have the right "to attend and listen to the deliberations and decisions that go into the making of public policy."*

To wit, if a public location (Kingston City Hall) is available for citizens to gather and observe the proceedings of the Live Well Commission, some of whose members may be participating remotely and are able to be seen and heard by members of the public in attendance at that single location, there should be no need for individual commissioners to publish the addresses of and/or make their private homes available to the public. And without that need, those commissioners participating remotely would be counted toward the quorum so that official business may be conducted.

Since March 2020, whether using a fully remote or hybrid model, private and public business has been getting done.

We respectfully request that consideration be given to amending the Open Meetings Law to reflect what we have learned during the pandemic and to ensure that public business is performed in an open and public manner, while providing for the full and fair participation of public body members.

Cordially,

Emily Flynn
Director, Health and Wellness
City of Kingston

Troy Ellen Dixon
Chair, Live Well Kingston Commission

PROPOSED RESOLUTION RE AMENDMENT OF OPEN MEETINGS LAW

RESOLVED, that the New York State School Boards Association supports legislation to amend the Open Meetings Law (the "OML") to (a) provide enhanced opportunities for the conducting of business at a meeting of a public body through the use of remote meeting technology; (b) authorize committees of a public body to meet through the use of videoconferencing without a fixed location for the meeting, and (c) eliminate the requirement that a public body subject to the OML identify the location(s) from which a member of the public body will be attending the meeting remotely and eliminate the requirement that members of the public be accorded the right to attend such meetings at those remote locations.

RATIONALE

School boards strongly support the purpose and intent of the OML (Article 7 of the Public Officers Law) because it is essential that the public have an opportunity to observe discussions and deliberations of school boards and other public bodies. Further, school boards desire to conduct their business meetings in person. However, as recognized by the OML, circumstances may arise in which a member of a public body is unable to attend a meeting in person. Current law states: "A public body that uses videoconferencing to conduct its meetings shall provide an opportunity for the public to attend, listen and observe at any site at which a member participates." [Public Officers Law, §103(c)] Current law also states: "If videoconferencing is used to conduct a meeting, the public notice for the meeting shall inform the public that videoconferencing will be used, identify the locations for the meeting, and state that the public has the right to attend the meeting at any of the locations." [Public Officers Law, §104(4)]

On March 7, 2020, because of the coronavirus pandemic, Governor Andrew Cuomo issued Executive Order 202, which among other emergency measures suspended the OML requirements that public bodies conduct in-person meetings and that they provide notice of the locations from which members of the public body were attending such meetings. For more than one year after the issuance of Executive Order and its extension by orders of the Governor, until the Governor's order of June 25, 2021 cancelling the suspension of the OML requirements of in-person meetings, public bodies conducted business remotely, with full opportunity for the public to attend, listen and observe, using videoconferencing technology such as Zoom, Google Meets, and Microsoft Teams. Public bodies, including school boards, have gained valuable knowledge and experience in utilizing videoconferencing technology to make meetings more accessible to the public and more efficient for members of those public bodies.

Upon the expiration of the suspension of these OML provisions, public bodies (including school boards) are no longer be able to utilize videoconferencing technology as they did during the period of the pandemic emergency. The OML should be amended to enable public bodies to

utilize this technology in the conduct of meetings in a manner that ensures that the public has appropriate opportunity to observe, attend, and participate.

The use of videoconferencing technology was particularly useful to enable school boards committees and subcommittees to engage in their work. The OML defines “public body” to include a “committee or subcommittee or other similar body of such public body.” [Public Officers Law, §102(2)] Thus, board committees and subcommittees (other than advisory committees and task forces that include non-members) are subject to the OML’s location and notice provisions. [See OML-AO-5331 (Committee on Open Government, Dec. 11, 2012)(“the legislative history of [the OML] clearly indicates that a committee or subcommittee consisting solely of members of a governing body is itself a public body.”)] During the suspension of the OML, school board committees functioned effectively through the use of videoconferencing technology, since board members were able to participate remotely without needing to travel to a designated meeting location and without disruption to work or family obligations. Similarly, school administrators were able to participate in committee discussions from their respective offices or other locations (including from home if the administrator was working remotely). Members of the public were accorded full opportunity to attend, listen to and observe committee meetings remotely through the use of videoconferencing technology. The OML should be amended to enable public bodies to conduct committee meetings entirely by videoconferencing, with appropriate opportunity for members of the public to attend the remote meetings in the manner that worked so effectively for school board committees and those of other municipalities for well over a year.

Additionally, during the suspension of the OML, members of public bodies participated in meetings from remote locations without identifying their location. Members of the public have attended numerous meetings remotely in the more than one year that the OML notice and location provisions were suspended—and with only a very few exceptions such meetings have been conducted efficiently and with full opportunity for the public to observe the conduct of public business. Almost all school districts and other public bodies have long provided live stream access to their meetings through videoconferencing and/or social media platforms, even as members of the public attend meetings in person at their noticed location. The past year and a half has demonstrated how remote participation in meetings of public bodies has enhanced the conducting of public business without limiting the access of members of the public to such meetings.

Revealing the location of members participating remotely is not necessary to ensure that the public can attend and observe a meeting. Since meetings of a public body are noticed and conducted at a designated location, members of the public can attend the meeting at the designated location, in the same manner as they would if every member of the public body is present—and the member or members participating remotely will be seen by everyone attending at the meeting location (as well as those who are watching the proceedings through live-streaming). Thus, requiring members of public bodies to open their homes, offices, or other

remote location is unnecessary to ensure the public has full opportunity to attend. Further, and of major concern, revealing remote locations of participating members of a school board or other public body creates a safety or security risk to those members who are participating from their residences or other unprotected locations, and public notice of a member's participation from a location outside the community signals that their residence is likely unoccupied, thereby inviting unlawful entry of their homes. Members of public bodies should not be forced to place their (and their families') personal safety or property in jeopardy when they engage in their civic duty through videoconferencing. For this additional reason, the OML should be amended to remove the requirement that a participating member's remote location be publicized and that the public be permitted to attend the meeting at this remote location.

THE CITY OF KINGSTON COMMON COUNCIL

LAWS & RULES
COMMITTEE REPORT

DEPARTMENT: Health & Wellness

DATE: _____

Description:

A memorializing resolution that supports legislation to amend the Open Meetings Law (the "OML") to (a) provide enhanced opportunities for the conducting of business at a meeting of a public body through the use of remote meeting technology; (b) authorize committees of a public body to meet through the use of videoconferencing without a fixed location for the meeting, and (c) eliminate the requirement that a public body subject to the OML identify the location(s) from which a member of the public body will be attending the meeting remotely and eliminate the requirement that members of the public be accorded the right to attend such meetings at those remote locations.

Signature: _____

Motion by _____

Seconded by _____

Action Required:

SEQRA Decision:

Type I Action _____

Type II Action _____

Unlisted Action _____

Negative Declaration of Environmental Significance: _____

Conditioned Negative Declaration: _____

Seek Lead Agency Status: _____

Positive Declaration of Environmental Significance: _____

<u>Committee Vote</u>	<u>YES</u>	<u>NO</u>
Jeffrey Ventura Morell, Chairman		
Patrick O'Reilly Ward 7		
Rennie Scott-Childress, Ward 3		
Don Tallerman, Ward 5		
Rita Worthington, Ward 4		

(L+R)

Tinti, Elisa

From: Shaut, Andrea
Sent: Thursday, December 02, 2021 7:53 AM
To: Tinti, Elisa
Cc: Davis, Tony
Subject: FW: Management Handbook

Good morning Elisa,

Can you put the following communication from Alderman Davis in my folder? I will assign it to December committee.

Thank you,
Andrea

From: Davis, Tony
Sent: Thursday, December 2, 2021 7:07 AM
To: Shaut, Andrea <ashaut@kingston-ny.gov>
Subject: Management Handbook

Good morning,

Could you add this communication to the appropriate committee.

Modified the Management Handbook to include that evaluations must be in writing and both parties will receive a copy.

Also, per John Tuey's request add the position of Director of Housing Initiatives to the list of Management/Confidential.

OLD BUSINESS

**LOCAL LAW 1 OF 2022 OF THE CITY OF KINGSTON, NEW YORK,
AUTHORIZING THE AMENDMENT TO CHAPTER 332 OF THE CODE OF
THE CITY OF KINGSTON ENTITLED "RENTAL PROPERTIES" TO
PROHIBIT EVICTIONS WITHOUT GOOD CAUSE**

Sponsored By: Laws & Rules Committee: Alderman:
Ventura Morell, Worthington, Scott-
Childress, O'Reilly, Tallerman

WHEREAS, renters in the City of Kingston, especially low and moderate income renters are increasingly faced with the refusal of landlords to continue to rent to otherwise credit-worthy tenants and tenants who are otherwise following all applicable laws. Tenants throughout the City have experienced steeply increased rents that threaten the general welfare of our City. We have seen large numbers of our neighbors displaced because they cannot afford increasing rents. The purpose of this law is to protect tenants from exorbitant rent increases that could result in increased homelessness and further displacement within the City.

NOW THEREFORE, BE IT ENACTED AS FOLLOWS:

SECTION 1. That the Common Council authorizes the amendment of Chapter 332 entitled Rental Properties of the Code of the City of Kingston as annexed hereto.

SECTION 2. If any provisions of this local law are held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the local law shall remain in effect.

SECTION 3. This local law shall take effect upon filing with the Secretary of State.

Submitted to the Mayor this ____ day of _____, 2021

Approved by the Mayor this ____ day of _____, 2021

Elisa Tinti, City Clerk

Steven T. Noble, Mayor

Adopted by Council on _____, 2021

THE CITY OF KINGSTON COMMON COUNCIL

LAWS & RULES
COMMITTEE REPORT

DEPARTMENT: Common Council

DATE: 11-17-21

Description: Common Council adopts an amendment to chapter 332 of the Code entitled "Rental Properties" to prohibit evictions without good cause or per attached.

Signature: _____

Motion by RW

Seconded by RS-C

Action Required:

SEQRA Decision:

Type I Action _____

Type II Action _____

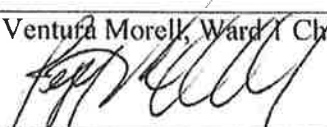
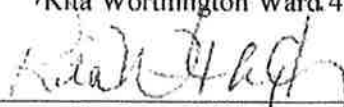
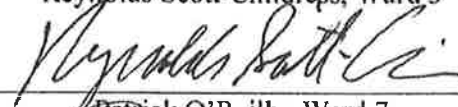
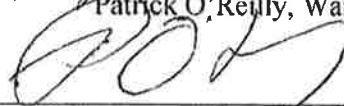

Unlisted Action _____

Negative Declaration of Environmental Significance: _____

Conditioned Negative Declaration: _____

Seek Lead Agency Status: _____

Positive Declaration of Environmental Significance: _____

<u>Committee Vote</u>	<u>YES</u>	<u>NO</u>
Jeffrey Ventura Morell, Ward 1 Chairman 	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rita Worthington Ward 4 	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Reynolds Scott-Childress, Ward 3 	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Patrick O'Reilly, Ward 7 	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Donald Tallerman, Ward 5 	<input type="checkbox"/>	<input checked="" type="checkbox"/>

ARTICLE 2.

332-13. Definitions

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

DISABLED PERSON means as applied according to the definition set forth in the New York State Public Housing Law §14(4)(c)(iii).

HOUSING ACCOMMODATION means residential premises, including a dwelling, dwelling unit, or rooming unit as defined in this Chapter, located in the City of Kingston.

LANDLORD means any owner, lessor, sub-lessor, assignor, or other person receiving or entitled to receive rent for the occupancy of any housing accommodation or the agent of any the foregoing.

RENT means any consideration, including any bonus, benefit, or gratuity, demanded or received for or in consideration with the possession, use, or occupancy of housing accommodations or the execution or transfer of a lease for such housing accommodations.

TENANT means a tenant, sub-tenant, lessee, sub-lessee, assignee, manufactured home tenant as defined in paragraph one of subsection (A) of section two hundred thirty-three of the New York State Real Property Law, an occupant of a rooming house or hotel as defined in section seven hundred eleven of the New York State Real Property Actions and Proceedings Law, or any other person entitled to the possession, use or occupancy of any housing accommodation.

Section 332-14. Applicability.

This article shall apply to all housing accommodations except:

- A. Premises with less than four units.
- B. Premises where the possession, use or occupancy of which is solely incident to employment and such employment is being lawfully terminated.

Section 332.15 Grounds

A. Grounds for removal of tenants. No landlord shall remove a tenant from any housing accommodation, or attempt such removal or exclusion from possession, notwithstanding that the tenant has no written lease or that the lease or other rental agreement has expired or otherwise terminated, except upon order of a court of competent jurisdiction entered in an appropriate judicial action or proceeding in which the petitioner or plaintiff has established one of the following grounds as good cause for removal or eviction:

- (1) The tenant has failed to pay rent due and owing, provided, however, that the rent due and owing, or any part thereof, did not result from a rent increase or pattern of rent increases which, regardless of the tenant's prior consent, if any, is unconscionable or imposed for the purpose of circumventing the intent of this article. In determining whether all or part of the rent due and owing is the result of an unconscionable rent increase or pattern of rent increases that is imposed for the purpose of circumventing this article, the Court may consider, among other factors:
 - i) the rate of the increase relative to the tenant's ability to afford said increase; ii) improvements made to the subject unit or common areas serving said unit; iii) whether the increase was precipitated by the tenant engaging in the activity described at section 223-b (1)(a) (c) of the Real Property Actions and Proceedings Law; iv) significant market changes relevant to the subject unit; and v) the condition of the unit or common areas serving the unit, and it shall be a rebuttable presumption that the

rent for a dwelling not protected by rent regulation is unconscionable or imposed for the purpose of circumventing the intent of this article if said rent has been increased in any calendar year by a percentage exceeding five percent;

(2) The tenant is violating a reasonable obligation of their tenancy, other than the obligation to surrender possession, and has failed to cure such violation after written notice that the violation cease within ten days of receipt of such written notice, provided however, that the obligation of tenancy for which violation is claimed was not imposed for the purpose of circumventing the intent of this article;

(3) The tenant is committing or permitting a nuisance in such housing accommodation, common areas, or other areas of the property, or is maliciously or by reason of negligence damaging the housing accommodation, common areas, or other areas of the property; or the tenant's conduct is such as to interfere with the comfort of the landlord or other tenants or occupants of the same or adjacent buildings or structures, including but not limited to, smoking inside the residential unit where smoking inside the residential unit has been prohibited by the landlord and such prohibition has been communicated to the tenant, failing to dispose of waste created by the tenant's pet(s) from the property on which the residential unit is located in accordance with relevant laws, repeatedly engaging in activities that cause an unreasonable amount of noise or allowing others to do so without taking appropriate steps to mitigate such noise, and causing the accumulation of excessive rubbish and/or garbage in the residential unit and common areas;

(4) Occupancy of the housing accommodation by the tenant is in violation of or causes a violation of law and the landlord is subject to civil or criminal penalties therefor; provided however that the City of Kingston or other qualified governmental entity has issued an order requiring the tenant to vacate the housing accommodation. No tenant

shall be removed from possession of a housing accommodation on such ground unless the court finds that the cure of the violation of law requires the removal of the tenant and that the landlord did not, through neglect or deliberate action or failure to act, create the condition necessitating the order to vacate. In instances where the landlord does not undertake to cure conditions of the housing accommodation causing such violation of the law, the tenant shall have the right to pay or secure payment in a manner satisfactory to the court, to cure such violation provided that any tenant expenditures shall be applied against rent to which the landlord is entitled. In instances where removal of a tenant is absolutely essential to their health and safety, the removal of the tenant shall be without prejudice to any leasehold interest or other right of occupancy the tenant may have and the tenant shall be entitled to resume possession at such time as the dangerous conditions have been removed. Nothing herein shall abrogate or otherwise limit the right of a tenant to bring an action for monetary damages against the landlord to compel compliance by the landlord with all applicable laws;

(5) The tenant is using or permitting the housing accommodation to be used for an illegal purpose;

(6) The tenant has unreasonably refused the landlord access to the housing accommodation for the purpose of making necessary repairs or improvements required by law or for the purpose of showing the housing accommodation to a prospective purchaser, mortgagee, or other person having a legitimate interest therein;

(7) The landlord seeks in good faith to recover possession of a housing accommodation located in a building containing fewer than twelve units because of immediate and compelling necessity for their own personal use and occupancy as their principal residence, or the personal use and occupancy as principal residence of their partner, spouse, parent, child, stepchild, father-in-law or mother-in-law, when no other suitable housing accommodation in such building is available. This paragraph shall permit

recovery of only one housing accommodation and shall not apply to a housing accommodation occupied by a tenant who is sixty-two years of age or older or who is a disabled person with one or more disabilities;

(8) The landlord seeks in good faith to recover possession of any or all housing accommodations located in a building with less than five units to personally occupy such housing accommodations as their principal residence;

(9) Where the tenant has refused in bad faith to enter into a written lease which has been offered in good faith to the tenant by the landlord, subject to the following:

(a) The proposed written lease must have been offered to the tenant in writing on at least two occasions at least two weeks apart; and such written offer shall include:

(i) an original and one copy of the proposed written lease, executed by the landlord or their designee;

(ii) notice of the landlord's intention to pursue eviction if the tenant rejects the proposed written lease and/or does not enter into said lease within forty-five days of the initial offer and specifying that the landlord may pursue eviction at any time between the expiration of the 45 days and 120 days of the date of such offer;

(iii) clear instructions to the tenant concerning the manner in which the tenant is to communicate to the landlord acceptance or rejection of the written lease: and

(iv) Notice of any proposed increase in rent equal to or greater than 5Yo shall be provided in compliance with RPL sect 226-C; (b) the proposed written lease shall not supersede an existing, active lease to which the landlord and the tenant are parties;

(b) The terms of the proposed written lease may not:

(i) be unconscionable and/or mandate or proscribe activities not rationally related to the regulation of activities-that would create a nuisance at the property or cause discomfort to the tenants or occupants of the same or adjacent buildings or structures, including, but not limited to activities described in subdivision (3) of subsection A-above; or

(ii) substantially alter the terms of any existing lease other than to provide reasonable clarification of the terms and conditions of the tenancy;

(c) the proposed written lease shall not be offered for the purposes of circumventing this article;

(d) the tenant shall be entitled to dismissal of any eviction petition brought for the tenant's refusal to enter into a lease according to these terms if:

(i) the tenant consents to enter into the proposed written lease presented in the first offer pursuant to subsection 1 (a) at any time prior to the earlier of the execution of the warrant of eviction or the good faith execution of an enforceable lease agreement between the landlord and a different party in an arms-length transaction for the premises occupied by the tenant regardless of landlord's willingness to accept said consent at the time it is communicated; and/or

(ii) prior to the commencement of the eviction proceeding the tenant attempted in good faith to negotiate the terms of the proposed written lease without substantially altering the terms of the prior lease agreement and that the landlord refused in bad faith to engage in such negotiation; and/or

(iii) the tenant's failure to enter into the proposed written lease was due to a good faith failure to comprehend the terms of the proposed written lease;

(iv) the tenant is a victim of domestic violence as defined by NY Social Service Law §459- A and is unable to safely enter into the proposed written lease due to good faith concerns for the tenant's personal safety; and/or

(v) the proposed written lease includes an increase in rent or increase in the tenant's responsibility for recurring payments associated with the tenancy would violate the terms or intent of subdivision (I) of subsection (A) above;

(e) that any proceeding for eviction pursuant to this subsection shall have been commenced within 120 days of the proposed written lease first having been offered to the tenant, provided, however, the landlord may commence the process for execution of a lease pursuant to this subdivision by submitting a new or revised lease to the tenant that would recommence the 120-day time period for a potential eviction action pursuant to this subdivision.

B. Nothing in this section shall abrogate or limit the tenant's right, pursuant to section seven hundred fifty-one of the New York State Real Property Actions and Proceedings Law, to permanently stay the issuance or execution of a warrant or eviction in a summary proceeding, whether characterized as a nonpayment, objectionable tenancy, or holdover proceeding, the underlying basis of which is the nonpayment of rent, so long as the tenant complies with the procedural requirements of section seven hundred fifty-one of the New York State Real Property Actions and Proceedings Law.

Resolution XX of XXXX

RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF KINGSTON, NEW YORK TO
ADOPT A MEMORIALIZING RESOLUTION TO CALL UPON OUR STATE REPRESENTATIVES
TO AMEND THE OPEN MEETINGS LAW

Sponsored by: Laws & Rules Committee:

WHEREAS, The City of Kingston's Boards and Commissions are operating under the New York State Open Meetings Law (Article 7 of the Public Officers Law) and the City strongly supports the purpose and intent of the Open Meetings Law; and

WHEREAS, On March 7, 2020, due to COVID-19, Governor Andrew Cuomo issued Executive Order 202.1, and Chapter 417 extended that provision, which, among other emergency measures, suspended the Open Meeting Law requirements that public bodies conduct in-person meetings and provide notice of the locations from which members of the public body were attending such meetings; and

WHEREAS, Revealing the location of members participating remotely is not necessary to ensure that the public can attend and observe a meeting. Since meetings of a public body are noticed and can be viewed at a designated location (City Hall), members of the public can attend the meeting in the same manner as they would as if every member of the public body is present; and

WHEREAS, The Live Well Kingston Commission has penned a letter to our State representatives asking them to amend the Open Meetings Law to allow Chapter 417 to be extended indefinitely;

BE IT FURTHER RESOLVED that the City of Kingston call upon our state representatives to amend the Open Meetings Law to provide enhanced opportunities for the conducting of business at a meeting of a public body through the use of remote meeting technology; authorize committees of the public body to meet through the use of videoconferencing without a fixed location for the meeting; and eliminate the requirement that a public body subject to the Open Meetings Law identify the location(s) from which a member of the public body will be attending the meeting remotely; and eliminate the requirement that members of the public be accorded the right to attend such meetings at those remote locations.

BE IT FURTHER RESOLVED that the City Clerk is directed to send a copy of this resolution to State Senator Michelle Hinchey and State Assemblymember Kevin Cahill.

A Local Law Amending Ch. 332 Entitled "Rental Properties" of the Code of the City of Kingston to Prohibit Evictions Without Good Cause

Section 1 - Title

This Local Law shall be known as Law No. XX for the year 2021.

Section 2. Legislative Findings, Intent, and Purpose

Renters in the City of Kingston, especially low- and moderate-income renters are increasingly faced with the refusal of landlords to continue to rent to otherwise credit-worthy tenants and tenants who are otherwise following all applicable laws. Tenants throughout the City have experienced steeply increased rents that threaten the general welfare of our City. We have seen large numbers of our neighbors displaced because they cannot afford increasing rents. The purpose of this law is to protect tenants from exorbitant rent increases that could result in increased homelessness and further displacement within the City.

Section 3. Statement of Authority

This local ordinance is authorized by the Municipal Home Rule Law (chapter 36-a of the Consolidated Laws of the State of New York) and the General City Law (chapter 21 of the Consolidated Laws of the State of New York).

Section 4. Definitions

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

DISABLED PERSON means as applied according to the definition [set forth in the New York State Public Housing Law §14(4)(c)(iii)]. SUGGESTED AMEND: "set forth in the New York State Human Rights Law and ADA."

HOUSING ACCOMMODATION means residential premises, including a dwelling, dwelling unit, or rooming unit as defined in this Chapter, located in the City of ~~Newburgh~~ Kingston.

LANDLORD means any owner, lessor, sub-lessor, assignor, or other person receiving or entitled to receive rent for the occupancy of any housing accommodation or the agent of any the foregoing.

RENT means any consideration, including any bonus, benefit, or gratuity, demanded or received for or in consideration with the possession, use, or occupancy of housing accommodations or the execution or transfer of a lease for such housing accommodations.

TENANT means a tenant, sub-tenant, lessee, sub-lessee, assignee, manufactured home tenant as defined in paragraph one of subsection (A) of section two hundred thirty-three of the New York State Real Property Law, an occupant of a rooming house or hotel as defined in section seven hundred eleven

of the New York State Real Property Actions and Proceedings Law, or any other person entitled to the possession, use or occupancy of any housing accommodation.

Section 5. Applicability.

This article shall apply to all housing accommodations except:

A. ~~Owner-occupied premises with fewer than four total units including that of the owner--that is a property comprised of one owner-occupied unit and either one or two rental units. Premises with less than four units.~~

B. Premises where the possession, use or occupancy of which is solely incident to employment and such employment is being lawfully terminated.

Section 6. Grounds

- A. Grounds for removal of tenants: No landlord shall remove a tenant from any housing accommodation, or attempt such removal or exclusion from possession, notwithstanding that the tenant has no written lease or that the lease or other rental agreement has expired or otherwise terminated, except upon order of a court of competent jurisdiction entered in an appropriate judicial action or proceeding in which the petitioner or plaintiff has established one of the following grounds as good cause for removal or eviction:

(1) The tenant has failed to pay rent due and owing, provided, however, that the rent due and owing, or any part thereof, did not result from a rent increase ~~or pattern of rent increases~~ which, regardless of the tenant's prior consent, if any, is ~~unconscionable or imposed through~~ fraud, duress, or conditions of direct control for the purpose of circumventing the intent of this article. In determining whether all or part of the rent due and owing is the result of an ~~unconscionable a rent increase or pattern of rent increases~~ that is imposed through fraud, duress, or conditions of direct control for the purpose of circumventing this article, the Court may consider, among other factors, i) the rate of the increase relative to the [tenant's ability to afford said increase] SUGGESTED AMEND: tenant's income, ii) improvements made to the subject unit or common areas serving said unit, iii) whether the increase was precipitated by the tenant engaging in the activity described at section 223-b (1(a)-(c)) of the Real Property Actions and Proceedings Law, iv) significant market changes relevant to the subject unit, and v) the condition of the unit or common areas serving the unit, and it shall be a rebuttable presumption that the rent for a dwelling not protected by rent regulation is unconscionable or imposed for the purpose of circumventing the intent of this article if said rent has been increased in any calendar year by a percentage exceeding five percent (5%);

(2) The tenant is violating a reasonable obligation of their tenancy, other than the obligation to surrender possession, and has failed to cure such violation after written notice that the violation cease within ten days of receipt of such written notice, provided however, that the obligation of tenancy for which violation is claimed was not imposed for the purpose of circumventing the intent of this article;

(3) The tenant is committing or permitting a nuisance in such housing accommodation, common areas, or other areas of the property, or is maliciously or by reason of negligence damaging beyond ordinary wear and tear the housing accommodation, common areas, or other areas of the property; or the tenant's conduct is such as to interfere with the comfort of the landlord or other tenants or occupants of the same ~~or adjacent buildings~~ or structures, including but not limited to, smoking inside the residential unit where smoking inside the residential unit has been prohibited by the landlord and such prohibition has been communicated to the tenant, failing to dispose of waste created by the tenant's pet(s) from the property on which the residential unit is located in accordance with relevant laws, repeatedly engaging in activities that cause an unreasonable amount of noise or allowing others to do so without taking appropriate steps to mitigate such noise, and causing the accumulation of excessive rubbish and/or garbage in the residential unit and common areas;

(4) Occupancy of the housing accommodation by the tenant is in violation of ~~or causes a violation of law~~ or makes the accommodation inhabitable and the landlord is subject to civil or criminal penalties therefor; provided however that the City of Kingston or other qualified governmental entity has issued an order requiring the tenant to vacate the housing accommodation. No tenant shall be removed from possession of a housing accommodation on such ground unless the court finds that the cure of the violation of law requires the removal of the tenant and that the landlord did not, through neglect or deliberate action or failure to act, create the condition necessitating the order to vacate. In instances where the landlord does not undertake to cure conditions of the housing accommodation causing such violation of the law, the tenant shall have the right to pay or secure payment in a manner satisfactory to the court, to cure such violation provided that any tenant expenditures shall be applied against rent to which the landlord is entitled. In instances where removal of a tenant is ~~absolutely~~ essential to their health and safety, the removal of the tenant shall be without prejudice to any leasehold interest or other right of occupancy the tenant may have and the tenant shall be entitled to resume possession at such time as the dangerous conditions have been removed. Nothing herein shall abrogate or otherwise limit the right of a tenant to bring an action for monetary damages against the landlord to compel compliance by the landlord with all applicable laws;

(5) The tenant is using or permitting the housing accommodation to be used for an illegal purpose;

(6) The tenant has unreasonably refused the landlord access to the housing accommodation for the purpose of making necessary repairs or improvements required by law or for the purpose of showing the housing accommodation to a prospective purchaser, mortgagee, or other person having a legitimate interest therein;

(7) The landlord seeks in good faith to recover possession of a housing accommodation located in a building containing fewer than twelve units because of immediate and compelling necessity for the ~~landlord's~~ own personal use and occupancy as their principal residence, or the personal use and occupancy as principal residence of their ~~landlord's~~ partner, spouse, parent, child, stepchild, father-in-law or mother-in-law, when no other suitable housing accommodation in such building is available. This paragraph shall permit recovery of only one

housing accommodation and shall not apply to a housing accommodation occupied by a tenant who is sixty-two years of age or older or who is a person with one or more disabilities;

(8) The landlord seeks in good faith to recover possession of any or all housing accommodations located in a building with less than five units to personally occupy such housing accommodations as their landlord's principal residence;

(9) Where the tenant has refused in bad faith to enter into a written lease which has been offered in good faith to the tenant by the landlord, subject to the following:

(a) The proposed written lease must have been offered to the tenant in writing on at least two occasions at least two weeks apart; and such written offer shall include:

(i) an original and one copy of the proposed written lease, executed by the landlord or their landlord's designee;

(ii) notice of the landlord's intention to pursue eviction if the tenant rejects the proposed written lease and/or does not enter into said lease within forty-five days of the initial offer and specifying that the landlord may pursue eviction at any time between the expiration of the 45 days and 120 days of the date of such offer;

(iii) clearly written instructions (including such information as contact information, best times for contact, and any deadlines) to the tenant concerning the manner in which the tenant is to communicate to the landlord acceptance or rejection of the written lease: and

(iv) Notice of any proposed increase in rent equal to or greater than five percent (5%) shall be provided in compliance with Real Property Law § sect-226-C; (b) the proposed written lease shall not supersede the terms of an existing, active lease to which the landlord and the tenant are parties;

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(be) The terms of the proposed written lease may not:

(i) be unconscionable and/or mandate or proscribe activities not rationally related to the regulation of activities-that would create a nuisance at the property or cause discomfort to the tenants or occupants of the same or adjacent buildings or structures, including, but not limited to activities described in subdivision (iii) of subsection A-above; or

(ii) substantially alter the terms of any existing lease other than to provide, as a result of a written request by either party delivered in a timely fashion to the other, reasonable clarification of the terms and conditions of the tenancy;

(d) the proposed written lease shall not be offered for the purposes of circumventing this article;

(e) the tenant shall be entitled to dismissal of any eviction petition brought for the tenant's refusal to enter into a lease according to these terms if:

- (i) the tenant consents to enter into the proposed written lease presented in the first offer pursuant to subsection 1(a) at any time prior to the earlier of the execution of ~~the~~ a warrant of eviction or the good faith execution of an enforceable lease agreement between the landlord and a ~~different third~~ party in an arms-length transaction for the premises occupied by the tenant ~~regardless of landlord's willingness to accept said consent at the time it is communicated; and/or~~
- (ii) prior to the commencement of the eviction proceeding the tenant attempted in good faith to negotiate the terms of the proposed written lease without substantially altering the terms of the prior lease agreement and that the landlord refused in bad faith to engage in such negotiation; and/or
- (iii) the tenant's failure to enter into the proposed written lease was due to the tenant's a good faith legitimate failure to comprehend the terms of the proposed written lease;
- (iv) the tenant is a victim of domestic violence as defined by NY Social Service Law §459-A and is unable to safely enter into the proposed written lease due to good faith concerns for the tenant's personal safety; and/or
- (v) the proposed written lease includes an increase in rent or increase in the tenant's responsibility for recurring payments associated with the tenancy would violate the terms or intent of Section 6, A (1) subdivision (i) of subsection (A) above;
- (f) that any proceeding for eviction pursuant to this subsection shall have been commenced within 120 days of the proposed written lease as stipulated in Section 6, A(9)(a) ~~lease~~-first having been offered to the tenant, provided, however, the landlord may commence the process for execution of a lease pursuant to this subdivision by submitting a new or revised lease to the tenant that would recommence the 120-day time period for a potential eviction action pursuant to this subdivision.

B. Nothing in this section shall abrogate or limit the tenant's right, pursuant to section seven hundred fifty-one of the New York State Real Property Actions and Proceedings Law, to ~~permanently~~ stay the issuance or execution of a warrant or eviction in a summary proceeding, whether characterized as a nonpayment, objectionable tenancy, or holdover proceeding, the underlying basis of which is the nonpayment of rent, so long as the tenant complies with the procedural requirements of section seven hundred fifty-one of the New York State Real Property Actions and Proceedings Law.

Section 7. Severability

The provisions of this Local Law are separable and if any provision, clause, sentence, section, subsection, word or part thereof is held to be illegal, invalid, or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity, or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this Local Law or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Local Law would have been adopted is such illegal, invalid, or unconstitutional provision, clause, sentence, subsection, word, or part had not been included therein, and if such person or circumstance to which the Local Law or part here of is held inapplicable had been specifically exempt therefrom.

Section 8. This local law/ordinance shall take effect after final passage, public hearing, approval by the Mayor of the City of Kingston, and filing with the Secretary of State.