

## Local Law 3 of 2021

A Local Law amending Chapter 140 of the Code of the Town of Rochester

### Section 1. Chapter 140 Amendment

There shall be added to Chapter 140 of the Code of the Town of Rochester a new §140-26A entitled “**Short-Term Transient Rentals**” to read as follows:

#### §140-26A Short-Term Transient Rentals (STR)

- A. Purpose. With the increase in tourism over the past several years in the Town of Rochester and adjacent areas, there has been an increase in the number of property owners renting to tourists on a short-term transient basis. Many residents list their properties as short-term transient rentals on web-based booking sites such as AirBnB and VRBO. Short-term transient rentals offer many benefits to property owners and residents in our town such as increased income, however, they also create potential health, safety, and quality of life detriments to the community. In recognition of the widespread popularity of short-term transient rentals, and in recognition that many short-term transient rentals are already operating in the town, the purpose of this local law is to regulate the safety and use of short-term transient rentals as home businesses in line with the goals of the Town Comprehensive Plan.

The following local law imposes mandatory regulations and requirements on all Town of Rochester property owners that desire to rent on a short-term transient basis their property. The purpose of such regulations and requirements are to assure that the properties being rented meet certain minimum safety and regulatory requirements which are proportional to those imposed on similar uses such as beds and breakfasts, inns, motels, and hotels thereby protecting the property owners, occupants of such housing and the residents of the Town of Rochester.

- B. Authorization. This Local Law is adopted in accordance with Article 16 of the Town Law of the State of New York which grants the Town of Rochester the authority to enact local laws for the purpose of promoting the health, safety, and welfare of the Town, and in accordance with Municipal Home Rule Law, Article 2, Section 10, that gives the Town of Rochester the power to protect and enhance its physical environment. The Town Board authorizes the Code Enforcement Officer to issue permits to property owners to use their properties as a short-term transient rental per the provisions of this local law. Applications for a permit to operate a short-term transient rental shall be processed under the procedures set forth in this local law.
- C. Zoning. The use of a property for Short Term Transient Rental shall be strictly considered **an accessory use to residential use single family and two-family dwelling units** and allowable **only** upon receipt of a short-term transient rental permit in the AR-3, AB-3, R-1, R-2, R-5, H, and B zoning districts. To apply for a permit, a parcel must contain a residential dwelling unit.
- D. Density. Existing short-term transient rental units shall meet all density and setback requirements for the zoning district unless they are pre-existing nonconforming structures. New construction dwelling units shall meet density and setback requirements for the zoning district.

E. Prohibitions. The following parcels shall be prohibited from being issued permits to operate short-term transient rentals.

- (1) Parcels utilized for multifamily dwelling units.
- (2) Parcels utilized for commercial or industrial purposes.
- (3) Vacant property which does not contain a residential dwelling unit. Applicants who wish to utilize vacant parcels for the purpose of short-term transient rental use shall apply for a campground use, as defined in §140-2 of this code.

F. Definitions. As specifically apply to this subsection

Access - The place, means, or way by which pedestrians and/or vehicles shall have safe, adequate, and usable ingress and egress to a property, structure, or use.

Camping - The use of a property as a site for sleeping outside; or the parking of travel trailers or similar equipment, the erection of tents or other shelters, to serve as temporary residences.

Density - The number of families, individual dwelling units or principal structures per unit of land.

Dwelling Unit - A building or entirely self-contained portion thereof containing complete housekeeping facilities for only one family, including any domestic servants employed on the premises, and having no enclosed space (other than vestibules, entrance or other hallways or porches) or cooking or sanitary facilities in common with any other dwelling unit.

Existing Short-Term Transient Rental – A short-term transient rental, as defined herein, which is in operation as of December 31, 2021 and meets all criteria of §140-26 (K) of this code.

House Rules - A set of rules that applies to renters of short-term transient rentals while occupying the unit.

Local Manager - The person specifically named on the application and permit that is responsible for the day-to-day operation of the short-term transient rental, and who may be contacted, day or night, if there is a problem at the short-term transient rental. The local manager may be either the owner or an agent of the owner. The local manager must reside within thirty (30) miles of the Town of Rochester Town Hall.

NEW Operating Short-Term Transient Rental – A Short-Term Transient Rental not in operation prior to December 31, 2021

Non-Owner Occupied – A STR unit that does not qualify as owner-occupied.

Owner Occupied –A STR unit that is the primary residence of the owner for at least 180 days in the calendar year, or the owner is present in the dwelling or is present on the same parcel while the residence is being used as a short-term rental.

Primary Residence – A person’s domicile where they usually live in the Town of Rochester, whether on a full-time or part-time basis for at least 180 days in the calendar year, typically a house including any habitable accessory structures on the same property. This includes secondary dwelling units located on the same parcel.

Rental - An agreement granting use or possession of a residence, in whole or in part, to a person or group in exchange for consideration valued in money, goods, labor, credits, or other valuable consideration.

Rented in Part – An STR in a Primary Residence, as defined above, that is being occupied in part by the owner and in part by STR guest(s), simultaneously.

Rented in Whole – An STR in a dwelling unit that is being occupied entirely by STR guests for the rental duration.

Secondary Dwelling Unit (ADU) – An attached or detached secondary residential dwelling unit that shares the building lot of a larger, primary home, including having separate cooking and sanitary facilities.

Short-Term Transient Rental (STR) - The use of a parcel for the rental or lease of any or part of any **residential use single family and two-family** dwelling unit , for a period of less than thirty (30) days , to one entity Motels, hotels, resorts, inns, and bed & breakfasts, as defined in this chapter are excluded from this definition.

Short-Term Transient Rental Unit – A dwelling unit utilized for the purposes of short-term transient rentals

Sleeping Room - An interior room other than a bedroom, as defined under the NYS Uniform Fire Prevention and Building Code, that may serve to afford sleep to a person, however, sleep shall not be the primary function of the room. Examples include, but are not limited to, a living room, family room, den or great room which may be furnished with a futon, convertible couch, or other sleeping surface. All sleeping rooms shall meet NYS Uniform Fire Prevention and Building Code mandates for bedrooms. (i.e., size, ceiling height, access, egress, lighting and ventilation, electrical outlets, heat, and smoke and carbon monoxide alarms).

Vacant Property – A parcel which does not contain a residential dwelling unit.

#### G. Applicable Law.

- (1) All property owners desiring to rent on a short-term transient basis must comply with the regulations of this local law. However, nothing in this local law shall alter, affect, or supersede any regulations or requirements of the Town of Rochester Zoning Code, any regulations or requirements imposed by the County of Ulster, or any State or Federal regulations or requirements, and all property owners must continue to comply with such regulations or requirements.

- (2) All short-term transient rental property owners shall obtain a valid permit from the Code Enforcement Officer before operation. Such permits shall be applicable for a two-year period, subject to annual fire and safety inspection.

#### H. Ownership of Properties

- (1) Properties must be owned by an individual, individuals, sole proprietorship, general partnership, limited liability partnership, or a limited liability company. No property owned by a corporation or other business entity shall qualify for a permit.
- (2) A general partnership, limited liability partnership or a limited liability company must disclose names of all partners and/or members when applying. Any changes in partners and/or members shall be provided to the code enforcement department within thirty (30) days of change. For a **non-grandfathered permit** (see §(K) of this code) general partnership, limited liability partnership or limited liability company to qualify as an owner of a property a resident of the property must have at least 51% ownership in the general partnership, limited liability partnership or limited liability company.
- (3) No owner entity composed of similar individuals may hold permits for greater than two properties at any given time, one owner-occupied and one non-owner-occupied STR. Multiple permits on the same property shall count as one for the purposes of this section of the code.

#### I. Designation of STR Properties. All short-term transient rentals shall be designated as Owner Occupied, or Non-Owner Occupied, as defined herein.

#### J. Ulster County Hotel and Motel Occupancy Tax. All short-term transient rentals shall comply with the Ulster County Hotel and Motel Room Occupancy Tax (Local Law Number 5 of 1991). An operator of a hotel or motel may be responsible for the collection of tax on occupancy of Hotel/Motel room rentals. Included in the definition of Hotel/Motel rooms are short term and/or vacation rentals and properties typically listed on sites like Airbnb, Home Away, and VRBO.

#### K. Application of Law to Existing Short Term Rentals

- (1) Property owners who operate an existing short-term transient rental shall have 90 days from the effective date of this law to apply for a valid permit.
- (2) They shall be allowed to continue operation until such time as a permit is issued or denied by the Code Enforcement Officer.
- (3) Grandfathering  
The Town of Rochester will offer a one-time grandfathering opportunity recognizing existing STR units operating prior to December 31, 2021. This is for BOTH owner-occupied and non-owner occupied STR units.

To qualify for “grandfathering” of existing use, a property owner shall meet the standards and produce documentation of compliance of (a), (b), and (c) below. Any property owners who fail to produce such documentation shall be required to file and be considered a NEW operating short-term transient rental.

- (a) Provide an Ulster County Department of Finance Certificate of Authority dated prior to

December 31, 2021.

AND

(b) Provide proof of operation as an STR between December 31, 2016 and December 31, 2021.

AND

(c) Have submitted a complete application and be subject to Section (T), General Permit Regulations and an annual fire and safety inspection.

(4) Grandfathered STR Units shall be allowed to operate, subject to biennial application renewal and annual fire and safety inspection, until such use ceases to exist or the property changes ownership.

(5) Grandfathered units which exceed §H(3) of this code shall be considered non-conforming and be allowed to continue.

L. Cap of Number of New, Non-Grandfathered, Non-Owner Occupied STR Permits

(1) The Town of Rochester Town Board has determined a cap shall be established on the number of NEW short-term transient rental non-owner-occupied permits. There will be no cap on owner occupied units. This is to maintain the permanent housing stock availability for all income levels of residents.

(2) The initial cap shall be established for the year 2022 at the Town Board 2022 Organizational Meeting after the initial grandfathering period of registration.

(3) Henceforth, the cap number of available permits (not including those that have been grandfathered) shall be established for the following year by the Town Board annually on or before August 1 of each calendar year, utilizing a percentage of the number of housing units on the Town of Rochester Assessor Final Tax Roll for that year and the number of grandfathered permits for that same year.

(4) Grandfathered STR units and owner-occupied units shall not be cap restricted.

M. Fee. A nonrefundable permit application fee and inspection fee shall be established by resolution of the Town Board for each dwelling unit that functions as or contains a short-term transient rental unit. Such permit fee shall be submitted with each new application and each biennial renewal application.

N. Application Forms. Application forms for a permit to operate a short-term transient rental shall be developed by the Code Enforcement Office.

O. Applicants must file a separate application and tender a separate application fee and obtain a separate permit and inspection for each dwelling unit which contains or functions as a short-term transient rental.

P. Application Process.

Applications to operate a new STR shall be available as of January 10, 2022.

The initial permit application to operate a short-term transient rental shall be submitted to the Code Enforcement Officer along with the applicable application fee, prior to operation.

Property owners shall register with the County's Commissioner of Finance and receive a Certificate of Authority empowering such operator to collect the tax from the occupant pursuant to Section 312-8 of the Code of Ulster County, and provide documentation relating thereto to the Municipality to be eligible for any such permit.

- (1) The initial permit application shall include the following:
  - (a) Contact information. The names, addresses, email address(es) and day/night telephone numbers of the property owners and local managers shall be included on the application.
  - (b) Designation of the STR as Owner Occupied or Non-Owner Occupied, as defined herein.
  - (c) Designation of the STR as Rented in Part and/or Rented in Whole, as defined herein.
  - (d) Hosting Platform information. The applicant shall provide the names and URLs for all hosting platforms or other advertising platforms, such as but not limited to AirBnB, VRBO or other hosting websites; and Facebook, Instagram, or other social media postings used by the applicant for advertisement of the short-term transient rental unit. Any changes or additions to the listed hosting/advertising platform shall be reported on the applicant's renewal permit.
  - (e) Parking. The number of off-street parking spaces to be provided shall be stated on the application. Off street parking shall be provided to accommodate the occupancy of the short-term transient rental unit, one parking space for each sleeping room in the dwelling plus other parking as required by §140-17. Vehicles shall not be parked on front lawns. There shall be no on-street parking allowed. No parking shall be allowed outside of the parking spots designated and detailed on the permit.
  - (f) Maximum Occupancy. The maximum desired occupancy by the operator shall be stated on the application. The Code Enforcement Officer shall establish the maximum occupancy. The Code Enforcement Officer shall limit the number of occupants based on the number, size, configuration, and furnishings of the bedrooms and/or sleeping rooms, and per the provisions of NYS Uniform Fire Prevention and Building Code.
  - (g) Water and septic. The source of the water supply shall be stated on the application and the permit. The septic system shall be functioning, and the type, size, and location of the septic system shall also be stated on the application. New permit applications shall require documentation as determined acceptable to the Code Enforcement Officer, indicating that the septic system is found to be currently working properly and is adequate for the Short-Term Transient Rental maximum occupancy.
  - (h) Fire Safety. Documentation of location and existence of fire extinguishers in compliance with NYS Uniform Fire Prevention and Building Code

- (i) Description. State the occupancy of each bedroom and sleeping room and the methods of ingress and egress (examples: doors and windows) shall be included with the application. No kitchen shall be occupied for sleeping purposes.
- (j) Plat. The applicant shall submit an aerial plat of the property showing approximate property boundaries and existing features, including buildings, structures, well, septic system, parking spaces, firepits/outdoor fireplaces, driveways, streets, streams and other water bodies, and neighboring buildings within one hundred (100) feet of the short-term transient rental unit. This does not need to be a survey. This is easily obtained free of charge from many online sources.
- (k) Garbage Removal. The applicant shall state how garbage is to be removed from the property. The applicant is responsible for all refuse and garbage removal. The applicant shall be responsible for either (a) contracting with a refuse company or (b) the owner or property manager shall remove garbage on a weekly basis. If there is a dumpster located on the property, the location of the dumpster shall be depicted on the plat submitted with the application.
- (l) House Rules. The applicant shall submit a copy of the house rules (see below Section T for required House Rules.
- (m) Jurisdiction. If a property owner does not reside within thirty (30) miles of the Town of Rochester Town Hall, then they must designate the Local Manager, as an agent.
- (n) A copy of the Ulster County Commissioner of Finance Certificate of Authority

Q. Inspections.

- (1) Each short-term transient rental unit shall be inspected by the Code Enforcement Officer or Fire Inspector to determine compliance with New York State Uniform Fire Prevention and Building Code. Inspections shall be done for the initial permitting and annually, thereafter.
- (2) All STR units must comply with NYS Building Code requirements and shall have no open violations. No initial or renewal permit shall be issued without compliance with the elements of the submitted application.

R. Application Review. Upon receipt of the application and fee, the Code Enforcement Officer shall determine if the applicant has complied with all the requirements of this local law as well as any federal, state, county, or local laws. If the applicant has fully complied, then the Code Enforcement Officer shall issue the property owner a short-term transient rental permit so long as Code Enforcement Officer inspections have been completed and approved. No permit shall be issued until inspection is completed and the short-term transient rental unit is approved by the Code Enforcement Officer. Notification of the initial permit shall be sent to neighbors within 500 ft of the property by the Code Enforcement Office upon permit approval.



S. Renewal permits. The applicant will provide the Town of Rochester with any changes to the original underlying application for a Short-Term Transient Rental Permit, together with such additional documentation as determined by the Code Enforcement Officer, all of which will be on forms prescribed by the Code Enforcement Office, along with the current application fee. Renewal applications shall never be subject to any cap, provided the property remains under the same ownership. Any applicant who applies for a short-term transient rental permit and did not hold a permit for the immediate prior year, shall be considered a new applicant and not a renewal applicant. Permit holders shall be able to apply for Renewal Permits beginning October 1st through December 1st.

T. General Permit Regulations.

- (1) The permit to operate a short-term transient rental in any given year will expire on December 31, except an initial permit approved after September 1<sup>st</sup> of a calendar year shall be allowed to run through December 31<sup>st</sup> of the subsequent year. All renewal permits shall run from January 1<sup>st</sup> to December 31<sup>st</sup> of a calendar year.
- (2) Copies of the permit must be displayed in the dwelling unit in a place where it is easily visible to the occupants
- (3) Permits for operation of a short-term transient rental may not be assigned, pledged, sold, or otherwise transferred to any other persons, businesses, entities, or properties.
- (4) All short-term rental properties shall have posted on or about the inside of the front or main door of each dwelling unit a card listing emergency contact information. Such information shall include, but not be limited to the name, address, email, and phone numbers of the building owner, if local, or of a local manager and instructions on dialing 911 for emergency/fire/ambulance assistance. A local manager shall be able to respond in person within one hour.
- (5) Exterior advertising signs are prohibited except an STR may have one nonilluminated accessory use freestanding or wall sign not to exceed 12 square feet in area to identify the STR
- (6) No person or persons shall be housed separately and/or apart from the approved dwelling unit in any temporary structure, tent, trailer, camper, lean-to, recreation vehicle, 'tiny-house', boat, or non- dwelling unit.



#### U. House Rules

- (1) All short-term rental properties shall post for renters of each dwelling unit a listing of House Rules. House Rules shall incorporate, but not be limited to, the following:
  - (a) An emergency exit ingress and egress plan
  - (b) The location of fire extinguishers
  - (c) Identify the property lines and a statement emphasizing that unit occupants may be liable for illegal trespassing.
  - (d) Identify the procedures for disposal of refuse/garbage.
  - (e) If allowed by the property owner, specify outdoor fires shall be made solely within a fireplace or fire pit in accordance with all New York State burning regulations.
  - (f) If allowed by the property owner, instructions for fires in fireplaces or wood stoves. If not allowed by the property owner, a statement stating as such
  - (g) Short Term Transient Rentals shall not be permitted to be used for any commercial use or commercial event space.
  - (h) No outdoor camping shall be allowed.
  - (i) Parking shall be allowed solely in the designated parking spaces.

#### V. Complaints

- (1) Complaints regarding the operation of a short-term transient rental shall be in writing to the Code Enforcement Officer.
- (2) Upon receipt of a complaint of violation, the Code Enforcement Officer shall investigate to determine the presence of a violation, and upon finding to his/her satisfaction that a violation was or is currently occurring, he/she shall issue to the property owner and the local manager a notice detailing the alleged violation(s) as determined by the Code Enforcement Officer. Such notice shall also specify what corrective action is required of the property owner, and the date by which action shall be taken.
- (3) Notices required by this section shall be issued by the Code Enforcement Officer either by personal service to the property owner and/or the local manager, if applicable, or by certified mail to the address of the property owner and/or local manager as shown on the permit application.
- (4) If the landowner does not comply with corrective action by the date given by the Code Enforcement Officer, the Town of Rochester may initiate procedures to revoke the permit, or the Town of Rochester may begin a criminal action against the property owner or pursue any other relief permitted by law.
- (5) The Code Enforcement Officer shall refer to the Town Board any property owners whom they believe to be in violation of this Local Law. The Town Board shall determine whether the permit in question shall be revoked. A revocation of a permit requires a public hearing by the Town Board. The referral to the Town Board may be done in addition to any other penalties permitted by law.
- (6) Complaints can further lead to a denial of a renewal permit until the violation is resolved.

## **Section 2. Schedule of District Regulations Amendment**

Chapter 140, Attachment 1, of the Code of the Town of Rochester entitled “Schedule of District Regulations” shall be amended to add in the column labeled Accessory Uses the use “Short-Term Transient Rental“ in the following zoning districts.

AR-3, AB-3, R-1, R-2, R-5, H, and B zoning districts

## **Section 3. Severability**

If any part or provision of this local law is judged invalid by any court of competent jurisdiction, such judgment shall be confined in application to the part or provision directly on which judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Law or the application thereof to other persons or circumstances. The Town hereby declares that it would have enacted the remainder of this Law even without such part or provision or application.

## **Section 4. Effective Date**

This local law shall become effective the later of September 1, 2021 or upon the filing in the office of the New York Secretary of State pursuant to Section 27 of the Municipal Home Rule Law.