



# SHORT-TERM RENTAL REGULATION

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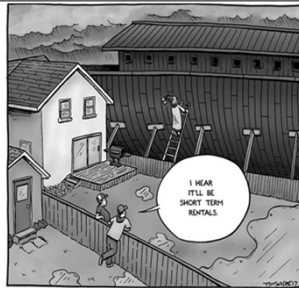
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## Overview

- Definition
- Trends
- Challenges
- Approaches to regulation
- Sample regulations
- Case law
- Resources



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## Short-Term Rental

Short-term rental aka **STR** or vacation rental

- Rental of **all or part** of a residential dwelling for a period of 30 days or less
- Includes traditional and non-traditional housing types
- Offered by property owners and renters that lease property



Tree House, Washington County



Watkins Glen, Schuyler County

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### More definitions and important distinctions

- **Host:** person/entity offering the unit or bedroom for rent
- **Hosted:** host is on-site during rental and resides at property
- **Un-hosted:** host does not live on-site; host is not on-site during rental period
- **Primary vs. Non-primary residence:** refers to whether property being rented is host's main residence
  - Regulating based on where owner lives has been found to be unconstitutional

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### From No Tech to High Tech

#### Time-honored practice + Tech

- **Yesterday:** community bulletins
- **Today:** cellphone apps
- Widespread marketing across platforms
- Connects travelers to hosts with ease
- Online-only interactions for negotiation, most communication, payment and mutual evaluation
- 100%+ market growth of STRs from 2016-2019 in US



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### Benefits of Short-Term Rentals

- Potential for revenue for homeowners
- Fun for guests to experience living in other places
- Potential improvement of blighted properties



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### Challenges of Short-Term Rentals

#### For competitors (hotels/B&B's):

- Lower cost to do business
- Location

#### For local governments:

- Nuisances: parking, noise, waste, light
- Loss of long-term rentals
- Real estate speculation
- Loss of neighborhood character from displacement



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### What makes a place right for short-term rentals?

- Location
- Shortage of traditional lodging
- High-cost traditional lodging
- Lack of regulation of short-term rentals



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## NYS Multiple Dwellings Law

- Prohibits rentals of less than 30 days in "Class A" multiple dwellings (buildings occupied by three or more families living independently) without a host present

### NYC Administrative Code

- Prohibits changes to use, occupancy or egress of a building; STRs in non-Class A buildings are illegal, unless expressly authorized



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## Short-Term Rental Regulation Outside NYC

- As for other uses, no requirement for local government to acknowledge short term rentals as a use
- Definitions vary from place to place
- Up to each municipality to define, prohibit and/or regulate short term rentals as they choose



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## NYS Short-Term Rental Law

- Established rental registry to be administered by counties; information shared with municipalities and NYS
  - Stay dates, number of guests and fees charged
- Counties have 9 months from the effective date of Real Property Law § 447-c to pass a local law to opt out or collaborate with other counties on registries
- In those that don't opt out, either host or hosting service will have to register with the county
  - If they don't register, county will be able to impose fines on host and booking agency with assistance of the NYS Attorney General
- Those that opt out will receive sales taxes but not occupancy taxes for STRs
- Law includes some fire safety and emergency requirements and additional insurance

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### What Local Govs Need to Know

- Existing local registries can still be utilized
- New local registries may not be created unless the county has opted out
- Local laws should include the fire safety and emergency requirements, and additional insurance measures provided in the state law
- Local zoning and permitting policies may continue to be implemented and adopted

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### LOCAL REGULATION TIPS

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### Start with clear objectives

Consider comprehensive plan objectives and goals

- Provides a foundation

Agree on goals short-term rental regulations should accomplish

- Before discussing technical details
- Evaluate draft against these goals

**Simpler regulations  
can more easily be  
enforced!**

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### Clear Definitions

Define short-term rental, include:

- Rental period (e.g. up to 30 nights)
- Distinguish from similar uses (e.g. hotels, motels, B&B's, etc.) with clear definitions for each
- Or specifically include among "lodging" uses
- Define terms used (e.g. hosted, un-hosted, etc.)



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### Clear Definitions

#### Town of Queensbury

- SHORT-TERM RENTAL – A dwelling unit, which may or may not be inhabited by the owner of record or their immediate family, that is rented, in whole or in part, for a period of less than thirty (30) consecutive days to any person or entity, but not including a Hotel, Motel, Inn, Campground, Bed and Breakfast as defined in Town Code Chapter 179.

#### Village of Skaneateles

- DWELLING – Any building or structure, or part thereof, used and occupied for human habitation or intended to be so used. The terms "dwelling," "dwelling unit," "one-family dwelling," "two-family dwelling," "multifamily dwelling" and "townhouse dwelling" shall not be deemed to include motel, hotel, rooming house or other accommodations used for more or less transient occupancy of less than 30 days.

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### Sample Restrictions

Quantitative	Operational
<ul style="list-style-type: none"><li>• Restrict by zoning district<ul style="list-style-type: none"><li>◦ As of right or with a special use permit</li></ul></li><li>• Cap total annual number of rental nights</li><li>• Cap number of permits</li><li>• Restrict by proximity</li></ul>	<ul style="list-style-type: none"><li>• Advertisements, signage</li><li>• Rental period &amp; frequency</li><li>• Noise, Trash disposal</li><li>• Emergency access</li><li>• Mandatory designated representatives</li><li>• Occupancy Limits</li><li>• Parking</li></ul>

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### Health and safety, nuisance standards

- Emergency evacuation plan and diagrams required for permit\*
- Provision of emergency equipment:
  - Smoke and carbon monoxide detectors, and fire extinguishers\*
  - Inspections
- Prohibit nuisance behavior by renters
  - Provided to renters, enforced by owner/agent
  - Rules filed with enforcement official

**\*Required in NYS Short Term Rental Registry Law**

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**SAMPLE  
REGULATIONS**

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### Village of Rhinebeck, Dutchess County

Key features:

- Permitted in R, VC and MP districts
- STR distance requirements
- Must be owner's primary residence
  - Has been found an impermissible restriction
- Un-hosted units require a property manager available 24 hours a day
- Caps # of permits at 15 annually
- Limits:
  - 6 guests with 2 per bedroom max.
  - Rental to 16 days per year – including a 7-day gap between rentals



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## Village of Rhinebeck

### Key features (continued):

- Prohibits:
  - On-premise advertisements
  - Driveway expansions
- Requires:
  - Annual inspection
  - Annual permit
  - Planning Board approval
- Violations:
  - First: \$1,000 fine
  - Second: permit revoked



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## City of Buffalo

### Key features:

- **Defined as:** "rental of a dwelling unit for... 1 to 30 days with no in-room cooking facilities, but may include dining facilities and common meeting rooms"
- **Specifically excludes:** hotels, motels, B and B's, boarding houses, or dwellings that include medical services
- Non-owner-occupied rentals require approval via Special Use Permit



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## City of Buffalo

### Requires:

- Annual registration of property
- STR certificate
- Annual inspection and renewal fee
- Rental agreements must include:
  - A smoking policy (if, where and when it is allowed or prohibited)
- Violations:
  - Up to a \$1,500 fine and/or up to 15 days imprisonment
  - Doubled renewal fee
  - Fine of \$75 in addition to revocation of certificate



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### City of Buffalo

License may be revoked if:

- Issued in error
- Conditions are unfulfilled, including correction of violations
- If the structure, use or occupancy is altered without required permits
- More than 3 noise violations in one year
- Includes path for suspension of license and process, how property owners will be notified of violations, and appeals
- Includes obligations of tenants during rental:
  - Proper trash disposal, maintaining clear access to exits, controlling domestic animals, and maintenance of the property in a sanitary manner

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### Village of Cooperstown, Otsego County

- Regulations cited the comprehensive plan objective **“to update zoning regulations to ensure that a diversity of housing types is permitted within the village”**

Key features:

- Allowed in Residential Conservation (R1), Business, and Commercial districts
- In R1, allowed only in SF, ADU in an SF previously approved accessory apt.
- In Commercial or Business districts, permitted in any building type



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### Village of Cooperstown

Requires:

- Annual inspection & registration
- Submittal of a Floor Plan
- Special Use Permit by ZBA
- May include conditions:
  - Valid until end of current year **plus** 2 yrs
  - Followed by registration w/ ZEO
- An operator who must be:
  - Owner or min. 25% owner in R1
  - Owner or agent in Business or Commercial districts
  - Must be present on sight each day/night while rented



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### Village of Cooperstown

Includes provisions for:

- Parking, Access & Circulation
- Site Lighting
- Requires a plan including each
- Maximum occupancy in residential districts (10 persons)
- Proof of compliance w/ county bed tax requirement (renewal)
- Provisions for termination of registration and use permit
- Conversion to long-term occupancy
- **Key Exception: Hall of Fame Induction Weekend**



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### Town of Queensbury, Warren County

**A different approach: No permit – “self regulating”**

Key features:

- Defines short-term rental
- Limits rentals that are not primary residence/directly adjacent primary residence and un-hosted, sets 4-night minimum May 1-September 15
- Incorporates safety standards
- Owners must establish written rules
- Quiet hours between 10:00 pm – 8:00 am
- Weekly garbage removal during rental periods
- Occupancy limits: 2 people per bedroom, plus 2



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### Town of Queensbury

Other standards:

- Parking limits
  - Parking limited to available number of spaces
  - 1.5 vehicles per bedroom; Overnight on-street parking prohibited
- Contact person
  - Provided to adjacent property owners, and made available upon demand by law enforcement or code officials
  - Must address complaints within 1 hour of receipt
  - Responses documented and submitted to town within 24 hours
- Violations:
  - Fines no more than \$950

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### Town of Woodstock, Vermont

- Very restrictive of total number of rental nights
- Less restrictive during leaf peeping season
- Pilot program by economic development commission to pay owners \$3,000 for one-year leases and \$7,000 for two-year leases
- Vermont Edition Podcast, April 6, 2023



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### Questions for Regulating Seasonal Rentals

- Lakeside or tourist areas with a tradition of families renting for a week or part of a summer
- Online booking has made shorter stays more lucrative for owners
- Short Term Rentals – Shorter than 7 days, treated as hotels and motels
- Medium Term Rentals – One week to three months



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### LEGAL CHALLENGES TO LOCAL SHORT-TERM RENTAL REGULATIONS

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## Definitions

### **Fruchter v. Zoning Board of Appeals of the Town of Hurley (Appellate Division, 3rd Department, 2015)**

- Board treated STRs as a bed and breakfast, but lacked a proper definition to require a Special Use Permit



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## Short-Term Rental Ban

### **“Webster Case” – Matter of DeVogelaere v Town of Webster ZBA (Appellate Division, 4th Department, 2011)**

- Town amended zoning to prohibit rental of a dwelling of less than 28 days



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## Short-Term Rental Ban – Not a taking

### **Wallace v. Town of Grand Island (Appellate Division, 4th Department, 2020)**

- Town changed zoning to prohibit short-term rentals, with amortization periods. Owner applies for a use variance to continue operation; ZBA denied. Court: property owner not “constitutionally entitled to most beneficial use.”

### **Credit v. Town of Southold ZBA (Appellate Division, 2nd Department, 2020)**

- ZBA Interpretation: Short-term rentals were never permitted in the residential district because they are similar to commercial hotel/motel definition. Courts agreed.

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### Lake Placid and North Elba

- Vacation rentals inflated real estate for years
- Increased with online rental platforms, affordable housing crisis
- Following a study, town and village passed a shared short-term rental law in 2020, delayed enforcement
- 90 days maximum short-term rental does not apply to owner-occupants; condominiums or townhouses with homeowners' associations; and rentals in Village Center and Gateway zones
- Requires local manager



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### Calvey et al. v. T of North Elba & V of Lake Placid

Out of town owners immediately filed in federal court challenging law's violation of:

- Equal protection
- **Unreasonable search and seizure**
- Property rights
- Due process
- Taking
- Contract clauses in state and federal constitutions
- First Amendment Rights

**Court dismissed nearly all, owners dropped, law in revision**

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### Hignell-Stark et al. v. City of New Orleans (2022)

Constitutional challenges to New Orleans restrictions on short term rentals:

1. Takings for non-renewal;
2. Residence requirement violation of Commerce Clause

Fifth Circuit of US Court of Appeals ruled:

1. No, permit is a privilege not a right
2. Residence requirement violates interstate commerce because of difference in treatment of economic interests

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## Conclusion

- Zoning regulates impact to surroundings
- What does your town, village, or city want to regulate?
- Short term rentals have contributed to housing inflation and shortage
- Case law reminds us of how the ability of local governments to regulate this use is evolving



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## Resources

- NYS Department of Taxation and Finance Short-Term Rental Sales Tax guidance: [https://www.tax.ny.gov/pubs\\_and\\_bulls/publications/sales/short-term-rental.htm](https://www.tax.ny.gov/pubs_and_bulls/publications/sales/short-term-rental.htm)
- NYS Department of State Short-Term Rental Quarterly Report filing information for booking service platforms: <https://dos.ny.gov/short-term-rental-quarterly-report>

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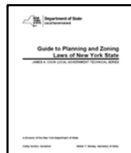
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