

ISSUE PAPER SERIES

Short-Term Rentals

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NEW YORK STATE TUG HILL COMMISSION

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The Tug Hill Commission's Technical Papers and Issue Papers are written to help local officials and citizens in the Tug Hill region and other rural parts of New York State. Technical papers provide guidance on procedures based on questions frequently received by the commission. Issue papers provide background on key issues facing the region without taking advocacy positions. Other papers are available from the Tug Hill Commission. Please call us or visit our website for more information.



Regulating Short-Term Rentals

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What is a Short-Term Rental?

A short-term rental (or 'STR') sometimes called a vacation rental, is typically considered the rental of a residential dwelling unit for a period of less than 30 days. STRs usually fall into three subcategories: those where the owner or host is present on the property when part of it is rented, those where the owner/host vacates the property for the renter, and those where the owner/host is never present on the property while it is rented. Short-term rentals provide a different and often cheaper experience for guests than a hotel or motel stay. It is more likened to a bed and breakfast accommodation but has the privacy characteristics of a home or vacation home. Online listing companies like Airbnb and Vrbo serve as a platform to connect homeowners who want to rent their property to vacationers or business travelers looking for lodging. The ease of those transactions made possible by the internet has resulted in a boom in this industry. Short-term rentals are tricky to regulate since they are both residential and somewhat commercial in nature. This issue paper outlines community considerations for regulating this unique and growing use.

Benefits and Costs of Short-Term Rentals

Short-term rentals provide new and diverse lodging options in places where alternatives may not exist, may be costly, or do not provide the desired guest experience. Short-term rental guests contribute to the economies of host communities, especially the dining, entertainment, and recreation sectors. Communities hosting large gatherings, such as concerts, festivals, and sporting events, can gain extra beds for out of town attendees through the use of STRs. According to listing agencies, short-term rental tourists tend to stay longer and spend more money at local businesses than traditional tourists, increasing the multiplier effect and creating jobs, which is often considered desirable in rural areas. Guests tend to feel less like tourists and more like 'locals' by staying in a residential dwelling unit. Owners of short-term rental properties may use the additional income they receive to pay property taxes and make improvements that they otherwise would not be able to afford.

On the negative side, this trend can cause a shift in local housing occupancy from full-time resident occupancy to short-term transient occupancy. The supply of affordable housing and rental stock can become limited, lowering supply—and potentially pricing—for long-term rentals and owner-occupied homes. So, although access to short-term rentals can reduce costs to visitors and increase income for homeowners, it can also increase the costs for local full-time renters and homebuyers. Additionally, short-term rentals can potentially transform a residential community into a tourist area. Some unintended consequences of this transformation include increased noise, litter, traffic, parking issues, and concerns such as property damage and theft. Communities with thriving hotel/motel industries may also see impacts where business is drawn away from this sector.

What Do Listing Companies Require of Renters?

Listing companies like Airbnb and Vrbo typically have internal policies to promote responsible operations. For instance, according to Airbnb's resource center, hosts can set restrictions on the number of guests and rules regarding safety, mindfulness of neighbors, and others identified by the host community. Airbnb provides host guarantee and host protection insurance for every booking, which includes coverage up to \$1,000,000, which can protect residents offering short-term rentals. It is important for local officials to be familiar with the different short-term rental platforms and how they operate.

How Have Communities Regulated Short-Term Rentals?

Short-term rental regulations and policies are in effect across the country, especially in large cities and popular tourist destinations. It is possible to control and even prohibit short term rentals entirely through zoning if a community desires this. There are also non-zoning solutions that municipalities have used to control the negative impacts of short-term rentals. One approach is to create an official registry of short-term rental units. Municipalities may require a business registration certificate, a short-term residential rental certificate, a business license, or any combination of these to monitor and control the number of STRs in the community. New York City requires hosts to provide all contact info, such as name, address, phone number, email address, and web URL for each listing. Many communities require the specification of a local contact person that is available at all times when a property is rented. Neighbors can also be required to be notified as to the existence and whereabouts of these operations.

There are some financial requirements that can be used to ensure that short-term rentals are treated like genuine businesses. In San Francisco, a 14% transient occupancy tax is applied to all short-term rental reservations. Occupancy taxes are most successful when used in cooperation with STR listing companies. In Lewis County, New York, a 5% bed tax on short term rentals was adopted in 2019. As a safety measure, it is recommended that short-term rental hosts have liability insurance - \$500,000 minimum is common in many places.

Lastly, based on lessons learned in other communities, it is important that code enforcement officers understand their responsibilities and rights to enforce any regulations relating to short-term rentals. If code enforcement officers do not understand what they can enforce or refuse to enforce the regulations, then laws become much less effective at achieving their purposes. In communities where there are housing, affordable housing, and rental shortages, short-term rental regulations should be implemented in tandem with discussions on how to address the overarching problem of housing and rental shortages.

Regulation

While regulations might not be necessary in all circumstances, in communities where there have been complaints from property owners, it may make sense to consider short-term rental regulations. If no issues have arisen and the community is generally in favor of short-term rentals, then the municipality might not want to invest time and energy into drafting and adopting STR regulations. In some cases, municipalities can effectively lessen impacts of STRs by adopting new or bolstering existing nuisance laws, such as noise ordinances and property maintenance laws. To begin, municipal leaders should discuss the following questions:

- Does the municipality want short-term rentals?
- Are short-term rentals mentioned in the comprehensive plan or any particular meeting minutes in which the municipal board or community members have discussed how they impact the character of the municipality?
- What are existing rental housing market concerns (availability/affordability)?
- What are the costs/benefits of STRs in the community?
- What anecdotal evidence regarding experiences with STRs needs further investigation?
- If a potential negative impact has been identified, would that negative impact be felt in all areas of the community? If not, where should potential regulations apply?
- If the municipality allows short-term rentals, how should they be regulated, enforced, and what should happen to existing short-term rentals?

With NYS Town Law Article 16, Article 10, and Article 9, which establish zoning, planning, police, ordinance, and license authorities (and the equivalent articles of NYS Village Law), municipalities have many tools in their toolbox to regulate short-term rentals when necessary. Regulations should be specific, unambiguous, and serve a legitimate governmental purpose. By applying any of the regulatory actions outlined below, a municipality can create a strong basis for local enforcement and clarity for STR property owners, guests, and listing companies.

Definitions

A good place to start when thinking about regulating short-term rentals is how the municipality wants to define them. There are many approaches and the one that a municipality chooses should reflect the unique characteristics and issues within that community. For instance, definitions can vary based on types of dwellings, hosted versus un-hosted rentals, and rental periods. However STRs are defined, it should be clear what is and is not included in the definition.

With regard to the actual definition of short-term rentals, the three basic types based on host occupancy highlighted at the beginning of this paper could be used. Under that schema, a short-term rental can include an on-premises host, a host who vacates the premises when

rented, and off-premises hosts who do not reside on the premises at any point. Lastly, regarding rental periods, less than 30 consecutive days is a common rental period used in definitions. Some North Country short-term rental definitions are highlighted in the table below for reference.

<u>LOCATION</u>	<u>SHORT-TERM RENTAL DEFINITION(S)</u>
Warrensburg	<p>SHORT-TERM RENTAL OWNER: All entities having an ownership interest in a Dwelling Unit which is used as a Short-Term Rental.</p> <p>SHORT-TERM RENTAL PROPERTY: The entire area which is under the ownership or control of the Short-Term Rental Owner including, as applicable, the parcel of land on which a Short-Term Rental is located together with the dwelling in which it is located and any other structures on the parcel.</p>
Lake Placid/North Elba	<p>SHORT-TERM RENTAL: A dwelling unit that is rented, in whole or part, to any person or entity for a period of less than 30 consecutive nights, and includes any residential building or apartment, single- or two-family dwelling, condominium, townhouse, guest house, cottage, cabin, or accessory dwelling which is rented as a living quarter with kitchen for any period less than 30 consecutive nights. This definition expressly includes Rooming/Boarding house as that term is defined in Section 10.2 of the Village of Lake Placid Town of North Elba Land Use Code. This definition excludes timeshare, hotels, bed and breakfast establishments and school or non-profit dormitories. "Rental" means an agreement granting use or possession of a residence, in whole or part, to a person or group in exchange for consideration valued in money, goods, labor, credits, or other valuable consideration. Use of a short-term rental by a record owner of a property shall not be considered to be a rental under this section.</p>
Schroon	<p>RENTAL: Granting use or possession of a Dwelling Unit in whole or in part to a person or group in exchange for some form of valuable consideration.</p> <p>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</p>

	<p>for a period of less than thirty (30) consecutive days to any person(s) or entity; but shall not include motels, hotels, bed & breakfasts, inns and campgrounds.</p> <p>SHORT-TERM RENTAL OWNER/OWNER: All persons or entities having an ownership interest in a Dwelling Unit which is used as a Short-Term Rental.</p> <p>SHORT-TERM RENTAL PROPERTY: The entire area which is under the ownership or control of the Short-Term Rental Owner including, as applicable, the parcel of land on which a Short-Term Rental is located together with the dwelling in which it is located and any other structures on the parcel.</p>
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Moratoria

An option for communities that have received inquiries from property owners looking to start short-term rental operations that have no provisions for reviewing them is to adopt a moratorium by local law. A moratorium prohibits a particular land use for a set period of time (typically six months) which gives the municipality time to write and adopt standards and reviewing procedures for short-term rentals either in its zoning law or in a stand-alone short-term rental law. In New York State, moratoria are required to be reviewed by the county planning board under General Municipal Law Section 239 and a public hearing must be held.

Zoning and Land Use Regulations

If a municipality has a zoning law, then the board or committee developing the short-term rental regulations can identify zoning districts where they should be allowed and zoning districts where they should be prohibited. Municipalities can also prohibit STRs outright in all areas. When considering the zoning districts where short-term rentals would be most appropriate, the board or committee should think about potential negative impacts such as noise and other nuisances, such as increased traffic, garbage collection, and trespassing. Parking can be problematic, especially if short-term renters overwhelm on-street parking spaces on public streets or mistakenly park on neighboring properties. To lessen these impacts, a town or village could limit the maximum number of motor vehicles permitted per short-term rental to one per bedroom. With regards to garbage collection, a provision can be added requiring weekly garbage removal when the rental unit is being used. For littering and trespassing, the zoning regulations can include a provision that requires short-term rental property owners to develop property rules and regulations that would be posted in the house and a renter could be required to sign an acknowledgement. These rules and regulations should include quiet hours, prohibited behaviors, and other health and safety considerations. In

addition to requiring property rules and regulations, the municipality can adopt “good neighbor guidelines” that short-term rental property owners can provide to their guests.

Furthermore, there are specific duration limitations than can be placed on short-term rentals. A municipality can cap the number of days within a yearly or monthly period that a dwelling unit can be used as an STR. It can also create a minimum stay duration for renters and a minimum ‘vacancy’ period between rentals (i.e., limits on turnover). Lastly, municipalities can limit the number of guests permitted per rental unit and can require that the host occupy the property during rentals.

Short-term rental permitting can take several forms, depending on standard procedures within a municipality. Levels of permitting requirements can vary from a simple zoning permit to a more complex and involved process of site plan review or special use permit review.

Administration

There are several approaches for keeping track of all approved short-term rentals for enforcement and compliance. For instance, a municipality can require a license to operate, which could be required to be renewed after a specified time period to ensure compliance with the local regulations and building codes. A municipality can also create a registry of short-term rentals. In the case of Lewis County, a law was passed to impose an occupancy tax on short-term rentals. Every short-term rental property owner is required to file a certificate of registration with the county treasurer. Additionally, in the case of an approved permit, the short-term rental property owner can be required to notify neighbors of the short-term rental status as well as upload the permit to an online platform or registry to provide notice to neighbors. Similarly, the complaint procedure should be clear and transparent to neighbors and short-term rental property owners.

Code enforcement officers will have a strong role to play in the enforcement of the regulations and compliance thereof. A code enforcement officer can be involved from permit review to property inspection to permit revocation for violations, and when necessary in between these events. However, a code enforcement officer does not have unlimited power to enter a short-term rental owner’s property to inspect or enforce compliance. They must follow due process under local, state, and federal laws.

Conclusion

Short-term rentals are becoming more popular over time. Many communities have already tackled the issue, and there are some lessons learned from those examples and from New York State case law that can be used to guide municipalities decision-making processes. Short-term rentals are not an issue everywhere and regulations may not be necessary for every community.

However, in places where regulations would benefit the community, there are many factors that should be considered before, during, and after adopting zoning regulations or standalone local laws. When in doubt, reach out to the Association of Towns of the State of New York, NY Conference of Mayors, NYS Department of State, the NYS Tug Hill Commission, county planning departments, the municipal attorney, or other trusted partners for planning and technical assistance.

Relevant New York Case Law Highlights

Atkinson v. Wilt

Petitioners purchased a six-bedroom seasonal home in the town of Arietta. During the summer, they rented the property (through the internet) for a total of seven weeks and used it as their second home for the remainder of the time. This was found to be in violation of the town's zoning ordinance as operating a tourist accommodation in a zoning district where such uses were not permitted. Petitioners requested an interpretation from the zoning board of appeals who agreed with the enforcement officer that the use constituted a tourist accommodation, which was defined as a structure "used to house the general public." Petitioners initiated an Article 78 proceeding and the Supreme court sided with them, stating that the zoning board of appeals' decision was irrational in that, even though the rentals were advertised on the internet, the property was clearly a single-family residence, not open to the general public and that nothing in the zoning ordinance prohibited rental of a single family residence to vacationers. The municipality appealed this decision and the Appellate Division (Third Department) affirmed the Supreme Court's ruling. This case demonstrates that any ambiguity in short term rental regulations would be construed in favor of the property owner.

Fruchter v. Zoning Bd. of Appeals of the Town of Hurley

Petitioner owned a two-bedroom, single family residence in the town of Hurley and offered the entire property for rent for periods ranging from one night to several months. Petitioner never stayed on the property with guests and never served food or drink to them. The zoning enforcement officer found the property to be in violation for operating as a bed and breakfast or hotel. Petitioner appealed to the zoning board of appeals, who determined that a special use permit would be required to rent the property as had been done. After an ensuing Article 78 proceeding, Supreme Court agreed with the zoning board of appeals that the use would require a special use permit. Petitioner appealed to the Appellate Division (Third Department), who annulled the ruling of the Supreme Court that the property was being used as a hotel or a bed and breakfast. The court found that the property in question did not have "a common exterior entrance or entrances" as was part of the code's definition of hotel. Because the petitioner never stayed on the premises with guests, it was also not "owner occupied" as was part of the code's definition of bed and breakfast. Because the code did not expressly prohibit the property

from being rented to vacationers, the court ruled that the use did not fall outside the definition of a single-family residence.

Devogelaere v. Webster Zoning Bd. of Appeals

Petitioner owned a property in the town of Webster and rented it out for periods of between one night and approximately three months. Around three years after petitioner began renting the property, the town amended its zoning ordinance to prohibit any rentals of less than 28 days. The code enforcement officer ordered rentals of the property in question to cease and the zoning board of appeals upheld this determination after it was appealed to them. Petitioner commenced an Article 78 proceeding in which the Supreme affirmed the zoning board of appeals' ruling. Upon further appeal, the Appellate Division (Fourth Department) affirmed the Supreme Court's ruling, stating that this particular use was properly prohibited by the zoning ordinance and did not become a legal nonconforming preexisting use when the ordinance was amended.

Wallace v. Town of Grand Island

Petitioner purchased a single-family residence in the town of Grand Island and used it as a short-term rental (less than 30 days) property, never residing there personally. Around three years later, the town amending its zoning code to prohibit short term rentals where the owner does not reside on the property. The amendment included a one-year amortization period with possible extensions. The town did this to curb negative impacts felt in the community due to this type of use. Petitioner was denied an extension and was also denied a use variance by the zoning board of appeals. After an ensuing Article 78 proceeding, Supreme Court ruled in favor of the town. Upon further appeal, the Appellate Division (Fourth Department) affirmed the decision of the Supreme Court, finding that the prohibition on short term rentals where the owner does not occupy the property did not constitute a regulatory taking requiring just compensation in this case. The court also found that a use variance was correctly denied due to the failure to show that the property was not capable of producing a reasonable return on investment from the establishment of other permitted uses in the subject zoning district.

In sum, it is important for a municipality to be clear about its intentions to regulate short-term rentals in residences. If a zoning or land use law has not been updated to reflect the community's desires to control short-term rentals, then most likely courts will rule in favor of the property owner. Thus, it is important to take a hard look at a municipality's regulations and make appropriate updates to address concerns within the community.