

NEW YORK STATE OF OPPORTUNITY | Division of Local Government Services

Short-Term Rental Regulation


A Division of the New York Department of State

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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



Watkins Glen, Schuyler County



Tree House, Washington County

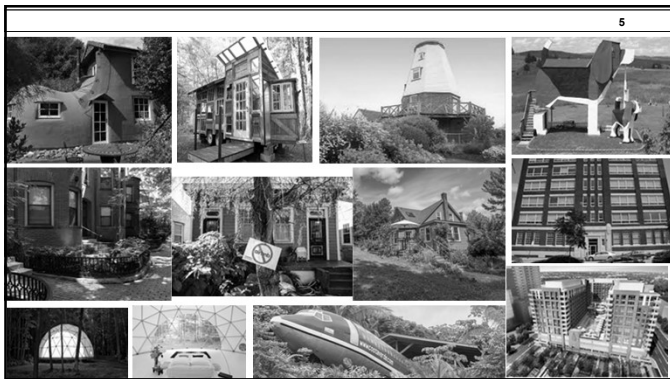
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More definitions and important distinctions

- **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



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
- Absence of statewide tax and safety framework



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



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**



Other Short-Term Rentals in NYS

- 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



Regulation Tips

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Start with clear objectives

Consider comprehensive plan objectives & 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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Registration

- Makes enforcement possible
- Keep it simple but collect:
 - Owner or local agent name
 - unit being rented
 - party responsible for addressing violations
- Require hosts to share contact information with neighbors to report violations
- Establish a renewal period. Consider automatic renewal if no complaints by neighbors
- Revoke for failure to comply with regulations

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Record Keeping, Occupancy Taxes

Data for compliance & tax collection

Host collects, stores and reports data

- Reporting period options:
 - Cyclically (Jan., April, July, Oct.),
 - Upon inspection
 - When under investigation

Collected data

- Rental dates
- Assigned rooms
- Hosted or Un-hosted stay
- Revenue earned

As recommended by the Sustainable Economies Law Center

Airbnb vs. City of New York

- Required data on hosts; Invalidated by court
- Seen as an infringement on host privacy rights

Airbnb collects occupancy taxes in 35 New York counties

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Sample Restrictions

<p>Quantitative</p> <ul style="list-style-type: none"> Restrict by zoning district Cap total annual number of rental nights Cap number of permits Restrict by proximity 	<p>Operational</p> <ul style="list-style-type: none"> Advertisements, signage Rental period & frequency Noise, Trash disposal Emergency access Mandatory designated representatives Occupancy Limits Parking
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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

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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 unconstitutional)
- 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 p/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 2yrs**
 - Followed by registration w/ ZEO
- An operator who must be:
 - Owner or min. 50% owner in R1
 - Owner or agent in Business or Commercial districts




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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
- 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 Regulation

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Definitions

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

- Board treated STR's 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 (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 and 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 reminding us of how to use zoning to regulate this use is evolving



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New York Department of State
Division of Local Government Services
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localgov@dos.ny.gov
<https://dos.ny.gov/training-assistance>

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LOCAL LAW NO. ___ OF 2020

**A LOCAL LAW REGULATING SHORT-TERM RENTALS
IN THE TOWN OF QUEENSBURY**

BE IT ENACTED BY THE QUEENSBURY TOWN BOARD AS FOLLOWS:

The Queensbury Town Code is hereby amended by adding the following new Chapter 115 entitled, “Short-Term Rentals.”

ARTICLE 1. PURPOSE AND INTENT; AUTHORITY.

The Town Board has determined that short-term, transient rentals can be incompatible with the sense of privacy, community and ambience currently enjoyed in residential neighborhoods in the Town and have the potential to create a threat to the public health, safety and well-being within the Town. The Board also recognizes that Short-Term Rentals can attract visitors to the Town and can provide an additional source of income to Town residents. Accordingly, the Board wishes to provide regulations to protect against adverse effects of this use while allowing it under appropriate circumstances. This Local Law is adopted pursuant to New York Municipal Home Rule Law.

ARTICLE 2. DEFINITIONS.

As used in this Chapter, the following words shall have the meanings indicated:

DWELLING UNIT – One or more rooms designed, occupied or intended for occupancy as separate living quarters, with provision for living, cooking, sanitary and sleeping facilities provided for the exclusive use of one family or household.

RENTAL –Granting use or possession of a Dwelling Unit in whole or part to a person or group in exchange for some form of valuable consideration.

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.

SHORT-TERM RENTAL OWNER – All entities having an ownership interest in a Dwelling Unit which is used as a Short-Term Rental.

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.

ARTICLE 3. SHORT-TERM RENTAL STANDARDS.

Short-Term Rentals shall comply with the following standards and requirements:

- A. There shall be one functioning smoke detector in each sleeping room, one functioning smoke detector and a carbon monoxide detector in another centrally-located room and one functioning and inspected fire extinguisher in the kitchen. Detectors must be in compliance with NYS Property Maintenance Code.
- B. All exterior doors shall be operational and passageways to such doors shall be freely accessible and unobstructed.
- C. Electrical systems shall be serviceable with no visible defects or unsafe conditions.
- D. All fireplaces, fireplace inserts or other fuel-burning heaters and furnaces shall be vented and properly installed. If installed, all fireplace, fireplace inserts or other types of fuel burning heaters (excluding furnaces) shall have proper written safe operating instructions provided to any party renting the Short-Term Rental.

- E. Each sleeping room shall have an exterior exit that opens directly to the outside or an emergency escape or rescue window which meets the current State and Town Building Codes requirements for an escape window.
- F. The number of vehicles permitted overnight at the Short-Term Rental Property is limited to 1.5 vehicles per bedroom (rounded to the next whole number). The number of bedrooms set forth in the Town of Queensbury's assessment records shall be used for purposes of this section. Overnight on-street parking is not allowed. Available parking spaces (one space per car) shall limit parking to such number of spaces. On-street day parking shall not impede local residents or public free entrance and exit to the neighborhood.
- G. Short-Term Rental Owners shall establish written rules and regulations for the Short-Term Rental. The rules and regulations are expected to be activated when rentals are active. The content and intent of these rules and regulations is to assure public health, safety and general welfare by promoting a clean, wholesome and attractive environment for the owner's property, adjacent property owners and the neighborhood. This document shall also list the penalties for violation of such rules or regulations. The rules will specifically address the penalties contained in this local law – see Article 5. The renter must sign acknowledgment of these rules and regulations. A copy of the signed acknowledgement statement shall be maintained on the property and made immediately available upon request from law enforcement officers or Town Buildings and Codes personnel. The rules and regulations shall be enforced by the Short-Term Rental Owner. As a minimum, the rules and regulations shall address prohibition of the following behaviors: fighting, violence, tumultuous or threatening behavior, unreasonable noise, abusive or obscene language or gestures in public. Quiet hours for the purpose of this Law shall mean between the hours of 10:00 PM and 8:00 AM and shall be maintained by all rental occupants and visitors at the rental property.
- H. Provisions shall be made by the Short-Term Rental Owner prior to actual rental for weekly garbage removal during rental periods. Garbage containers shall be

secured with tight fitting covers at all times to prevent leakage, spillage and odors, and be placed where they are not clearly visible from the street or road except as required for pick-up times.

- I. A house number visible from the street or road shall be maintained.
- J. Short-Term Rentals shall comply with all Local, State and Federal Laws and Regulations.
- K. The maximum occupancy for each Short-Term Rental shall be two (2) people per bedroom plus two (2). For example, a Short-Term Rental with three (3) bedrooms is allowed eight (8) occupants. The number of bedrooms is determined by the RPS database maintained by the Town Assessor's Office.

ARTICLE 4. CONTACT PERSON.

The Short-Term Rental Owner must provide all owners of property adjacent to the Short-Term Rental with the name, address and telephone number of a contact person or entity. Such contact person or entity must be able to address any complaint received regarding the Short-Term Rental site within one (1) hour of receiving the complaint. The contact person or entity must document all complaints and responses and submit them to the Town within 24 hours. A copy of the contact person or entity name, address and phone number shall be maintained on the property and made immediately available upon request from law enforcement officers or Town Buildings and Codes personnel.

ARTICLE 5. ENFORCEMENT AND PENALTIES.

Any individual, partnership, corporation or other firm owning, operating, occupying or maintaining Short-Term Rental Property or a Short-Term Rental shall comply with all the provisions of this Chapter and all orders, notices, rules, regulations or determinations issued in connection therewith.

- A. The Director of Building & Codes Enforcement or designee shall be granted access upon reasonable request to the Short-Term Rental Property for the purpose

of inspection and/or enforcement of compliance with Short-Term Rental regulations and/or Town and State Building Codes.

- B. Whenever it is found that there has been a violation of this Chapter or any rule or regulation adopted pursuant to this Chapter, a violation notice and/or appearance ticket or summons and complaint may be issued to the person, individual, partnership or corporation owning, operating or maintaining the Short-Term Rental or Short-Term Rental Property in which such violation has been noted.
- C. The Director of Building & Codes Enforcement or designee shall have the authority, pursuant to the Criminal Procedure Law, to issue an appearance ticket or summons and complaint, subscribed by him or her, directing a designated person to appear in court at a designated time in connection with the commission of a violation of this Chapter.
- D. Penalties. Any person who shall violate any provision of this Chapter, any order made hereunder, or any rules or regulations adopted pursuant to this Chapter in addition to other penalties provided for in this Chapter shall be guilty of an offense punishable in the following manner: A fine of not more than \$950 for each offense.
- E. A civil action or proceeding in the name of the Town of Queensbury, New York, may be commenced in any court of competent jurisdiction to compel compliance with or restrain by injunction the violation of any provision of this Chapter or any rule or regulation adopted pursuant to hereto. Such remedy shall be in addition to penalties otherwise prescribed by law and may be commenced with the consent of a majority of the Town Board.
- F. No remedy or penalty specified in this section shall be the exclusive remedy or penalty available to address any violation described in this section, and each remedy or penalty specified in this Chapter shall be in addition to, and not in substitution for or limitation of, the other remedies or penalties specified in this Chapter, or in any other applicable law. Any remedy or penalty specified in this

Chapter may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy or penalty specified in this Chapter. The Town may initiate enforcement proceedings under this Chapter at any time following receipt of a complaint or if the Director of Building and Codes determines that a violation has occurred.

ARTICLE 6. SEVERABILITY.

The invalidity of any clause, sentence, paragraph or provision of this Local Law shall not invalidate any other clause, sentence, paragraph or part thereof.

ARTICLE 7. EFFECTIVE DATE.

This Local Law shall take effect upon filing by the office of the New York State Secretary of State or as otherwise provided by law.

Town of Woodstock, Vermont

SECTION 526 SHORT TERM RENTALS (effective 02/11/2020)

The Town recognizes the benefit of Short Term Rentals to homeowners, visitors and the community. However, it is important not to create a nuisance or change the residential character of the area. A permit is not required during foliage season (September 15 - October 21) when the owner or primary tenant is in residence throughout the rental period and provisions "C. - I." are met.

The following provisions shall apply to ensure that the commercial use of residential property does not adversely affect the neighborhood in which short-term rentals are located. In addition, homeowners have the responsibility to comply with the Vermont Department of Taxes re: rooms and meals tax rules and regulations.

- A. Conditional Use Approval is required for rental periods of fewer than thirty (30) days.
- B. Short Term Rentals are allowed no more than ten (10) times in a calendar year with a two night minimum stay, excluding foliage season. When the owner is in residence, five (5) additional rentals are allowed for up to a total of 15 rentals per calendar year.
- C. In Residential Five Acre and Forestry zones, Short Term Rentals are allowed no more than 15 times in a calendar year with a two night minimum stay. When the owner is in residence, Short Term Rentals are unlimited.
- D. All Short Term Rental units shall be inspected and approved by the Fire Chief before the use is allowed.
- E. Only one Short Term Rental use is allowed per property.
- F. Occupancy shall be restricted to two persons per bedroom, with a six person maximum per household.
- G. All associated parking shall be on-site in designated spaces and comply with Section 521 Off-street Parking.
- H. Rubbish service shall be provided, and containers shall be maintained out-of-sight, not viewed from the street.
- I. Prohibitions:
 - 1. Weddings, parties, catered events, and similar events.
 - 2. Signs and other outside indications the dwelling is used as a short term rental.
 - 3. Outdoor activities between 9 PM and 7 AM.
- J. Notice to renters of house rules pertaining to parking, rubbish, noise, parties etc. shall be visibly displayed in the dwelling.
- K. Name, address and telephone number of a manager shall be filed with the application and kept up to date. The manager shall live within 30 minutes of the property and shall be able to respond 24 hours per day 7 days per week.
- L. A Section 526 report shall be filed by the permit holder with the Planning & Zoning Office by January 31 of each year. Failure to file the annual report and failure to meet the above standards shall require revocation of permit. After revocation of permit, a property owner shall not be able to reapply for one year. One may appeal a revocation notice to the TDRB via Section 817 Appeals from Decisions of Administrative Officer.