

REGULATING SHORT-TERM RENTAL PROPERTIES

CDRPC FALL PLANNING & ZONING WORKSHOP – October 28, 2022



INTRODUCTIONS



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AGENDA

- Defining the Short-Term Rental Unit
- A Brief History of Short-Term Rentals
- Current Trends & Challenges
- Variation by Situation
- Regulatory Pitfalls & Triumphs
- Case Study: North Elba & Lake Placid
- Recommended Minimum Requirements
- Discussion

DEFINING THE SHORT-TERM RENTAL UNIT

- Any rental of an entire or partial dwelling unit.
- Including Houses, Apartments, Villas, Condos, Townhouses, Cabins, Guest Houses, Yurts, Mobile Homes, or Boats.
- Typically for less than 30 days.
- Online facilitation with little to no interaction with the owner or host.



A BRIEF HISTORY OF SHORT-TERM RENTALS

- Not a new phenomenon.
- Traditional process.
- Expansion and ease of booking is what's new.



Google Maps Street View

A BRIEF HISTORY OF SHORT-TERM RENTALS

TOP PLATFORMS



A BRIEF HISTORY OF SHORT-TERM RENTALS

- Municipalities have the authority to regulate short-term rentals under the police powers of Town Law.
- A Town Board may permit and otherwise regulate hotels, inns, boarding houses, rooming houses, lodging houses, associations, clubs or any building or part of a building used in the business of renting rooms.

***Town Law
§130(20)***



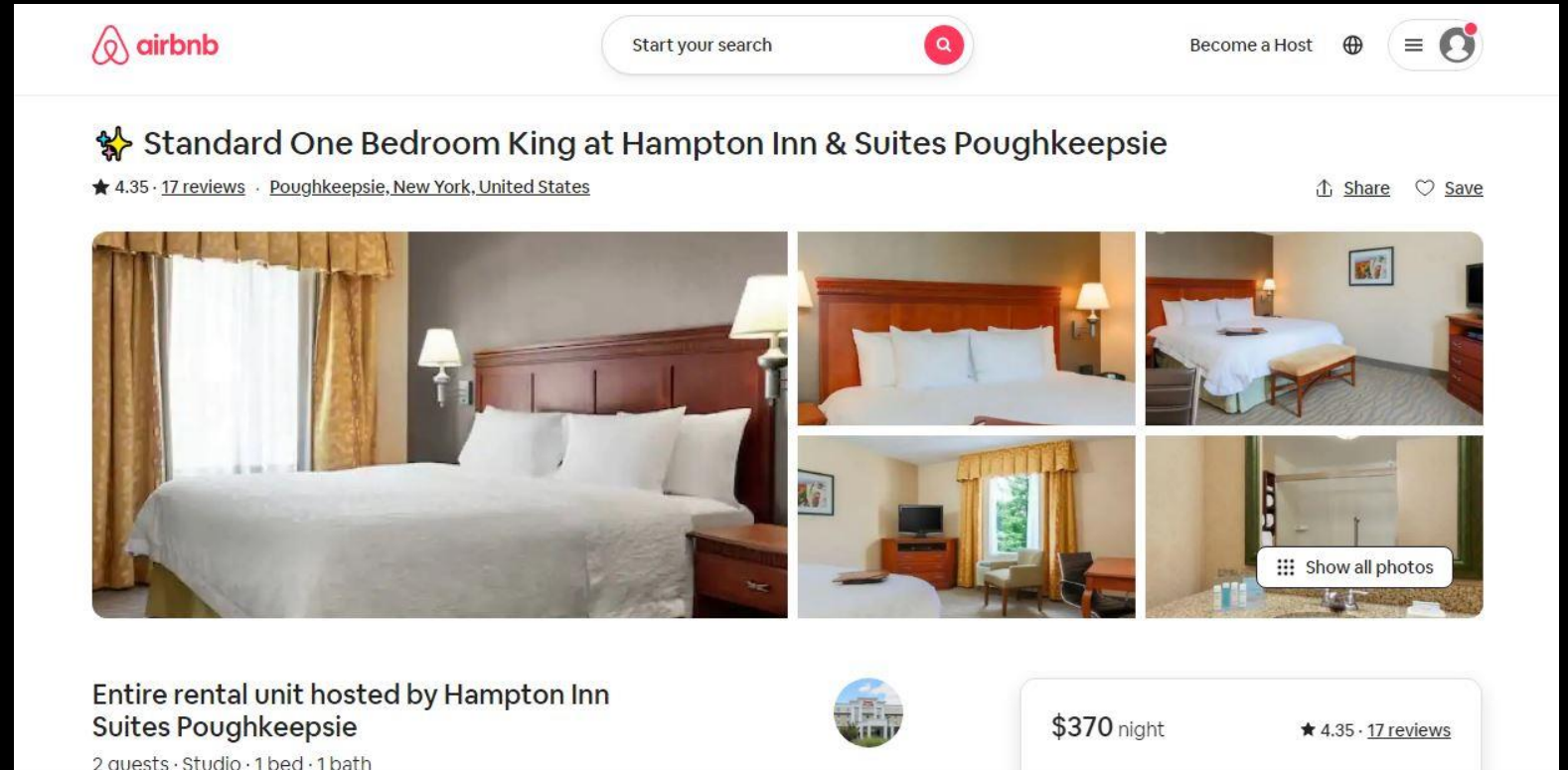
CURRENT TRENDS

- Scaled up.
- Increased independence
- Increased customization.
- Decreased regulation.
- Rapid Change > Challenges.



CURRENT TRENDS

- Hotel companies and professional property managers capitalizing on the home rental space market.



CURRENT CHALLENGES



NOISE



TRAFFIC



COMPETITION



TRASH



TRESPASSING



SAFETY



**AFFORDABLE
HOUSING**

CURRENT CHALLENGES



SEASONAL



RURAL



SUBURBAN



URBAN

CURRENT CHALLENGES

SEASONAL COMMUNITIES



- Higher percentage of short-term rentals than a suburban, bedroom community.
- Contend with parking, noise, trash, events, and infrastructure issues on a much larger scale.
- Inadequate supply of owner-occupied housing and rental properties is felt more acutely - workforce and residence are priced out of housing.

CURRENT CHALLENGES

RURAL COMMUNITIES



- Tend to have the issue of population increases per unit with large-scale events allowed at single properties.
- Properties may allow for well over the reasonable ratio of beds to guests.
- These types of units also tend to overtax the private well and septic.

CURRENT CHALLENGES

SUBURBAN COMMUNITIES



- More likely to have conflicts.
- High rate of transient neighbors with concerns of safety, noise, trespassing, and trash.

CURRENT CHALLENGES

URBAN COMMUNITIES



- Tend to have a greater number of mixed-use areas where short-term rentals tend to conflict less.
- For business owners, competition from short-term rentals is of great concern; most are looking for a level playing field.
- Traditional hotels, motels, inns, bed and breakfasts, and seasonal rental agencies are at disadvantage to online, peer-to-peer short-term rental companies since they are subject to business taxes and Department of Health regulations.

VARIATION BY SITUATION



- Regulations regarding short-term rental units can vary widely depending on whether your community is seasonal, rural, urban, suburban, or a mix.
- After community type, the reason **why** a regulation is needed is the most important factor for determining which type of law will be needed for a municipality.
- The “why” is the catalyst which starts the process of enacting a new law; it represents the primary conflict(s) and demonstrates that regulation of this use is necessary.

REGULATORY ISSUES

No matter which type of community, short-term rentals are primarily taxing to local code enforcement.

WITHOUT REGULATION

- Code enforcement lacks any true power in dealing with these types of uses.
- Can only rely on the property maintenance code or the limited powers of a noise ordinance.

WITH REGULATION

- With an enacted regulation, code enforcement is often the front line for compliance; in some communities this task can become burdensome to take on for a department that is typically just one person.

REGULATORY ISSUES

- **Definitions:** Courts have sided with the owner of a rental property when the definition is unclear and clearly meant for outdated uses.
 - Atkinson v. Wilt, 94 A.d.3d 1218 (3d Dept. 2012)
- **Inspection:** Can be time consuming and costly.
- **Violations:** May be difficult to discern if reliant on complaints.
- **Noise:** Ordinances are historically difficult to enforce and measure.
- **Compliance:** Police power and monitoring is generally limited.



REGULATORY MEASURES

- Regulatory measures vary widely between municipalities.
- Avoid the temptation to adopt another municipality's regulation and tailor the law to your own circumstances.
- The regulations should directly correlate to the type and scale of the issue(s) the community is dealing with and/or trying to prevent.

COMMUNITY-SPECIFIC SOLUTIONS



PARKING

- If parking or overpopulation is an issue, then set a vehicle limit per bed or per bedroom.



TRASH

- If trash is a major issue, then include regulations on collection and screening.

REGULATORY MEASURES

- Implementation of a permit process allows for a community to:
 - Collect fees which will provide enforcement funding.
 - Provide a mechanism of consequence.
- A permit must be obtained for operation.
- A permit gives residents and customers legal documentation to refer if an issue were to arise.
- A permit can be revoked due to non-compliance.



REGULATORY MEASURES

PERMIT REGULATIONS COULD INCLUDE:

Parking Limit
Occupancy Limit
Building Code Compliance
Fire Code Compliance
Annual Rental Day Cap
Guest Registry



Local Contact Person
Clear Signage
Fencing
Nuisance Law Adherence
HOA Rules

REGULATORY MEASURES

BASIC PERMIT INFORMATION:

Number of beds

Number of bedrooms
meeting minimum state
code (70 square feet)

Number of parking spaces



Total square feet of
rental unit

Provision for waste
removal

Fire safety
compliance

REGULATORY MEASURES


INSPECTIONS

BUILDING INSPECTIONS

May be desired by some municipalities in order to verify the information provided on a permit application.

STATE FIRE CODE INSPECTIONS

Fire Code compliance may be included as part of the permit approval process, but will require inspection.



REGULATORY MEASURES

LOCAL OCCUPANCY TAX

- Legislation imposing a tax on all transient accommodations (typically 3-5%).
- Any municipality in NYS may charge an additional tax on occupancy; including counties, towns, cities, and villages.
- Many counties have passed this type of legislation which creates greater uniformity between its resident communities.
- Property owners are required to register with the County Treasurer's Office.
- They must collect and remit the tax per guest stay to the County Treasurer.
- Short-Term Rentals are subject to these laws and a municipal regulation should include registration as a requirement of a permit.
- STR service providers may not collect the County Occupancy Tax on behalf of the property owner.
- This registration system not only collects revenue for the local economy, but also provides for an additional layer of compliance.

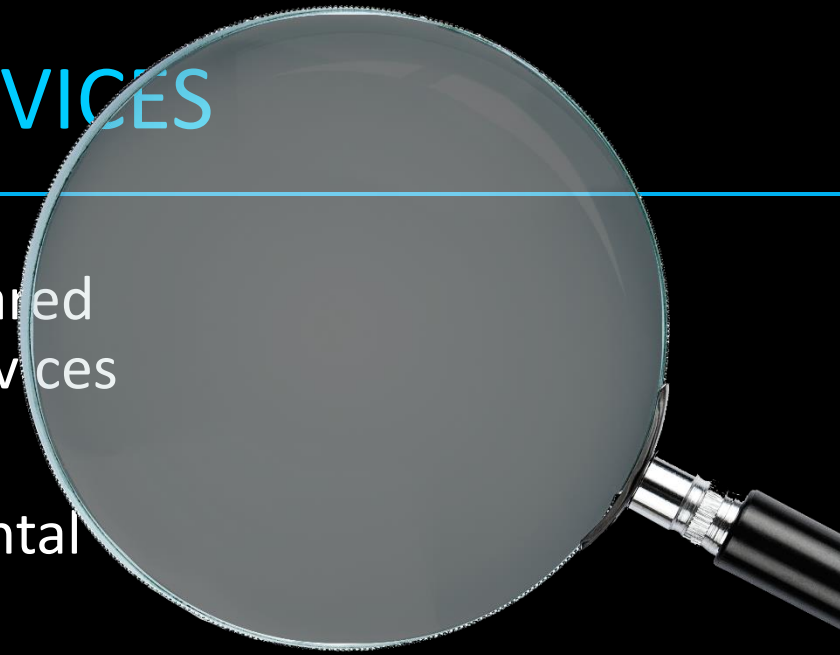
RECOMMENDED MINIMUM REQUIREMENTS

- The cost of a permit should directly correlate to housing unit dimensions (unit size, number of bedrooms, number of parking spaces, etc.).
- Periodic renewal of a permit allows for an additional mechanism to track short-term rental properties.
- The permit should be displayed within the unit and neighboring properties should be provided a copy.
- The permit should include contact information for a local property manager who can respond to the property within a reasonable amount of time.

**COST
RENEWAL
DISPLAY
CONTACT**

COMPLIANCE MONITORING SERVICES

- For communities that have only part-time, shared enforcement staff, compliance monitoring services are a great alternative.
- These services are able to track short-term rental properties within a community in real time.
- They can provide weekly reports to the municipality so that the units locations are known and can be regulated through the local permitting process.
- They can also provide customized noticing services to both the community and the property owner.



CASE STUDY: NORTH ELBA & LAKE PLACID

The screenshot displays the Vrbo website interface. At the top, the Vrbo logo is on the left, and navigation links for Trip Boards, Log in, Sign up, Help, Feedback, USD (\$), and EN are on the right. Below the navigation bar is a search bar with the following fields: 'Where' (set to 'Town of North Elba, New York, Uni...'), 'Check-in' (06/06/22), 'Check-out' (06/13/22), and 'Guests'. Below the search bar are filter buttons for Filters, Popular, Price, and Rooms & spaces. The main content area shows two property listings. The first listing is for a 'Cottage' titled 'Coyote Cottage on 78 Acres 3 BR, 2Bath Mt Views', which sleeps 6, has 3 bedrooms, and 5 beds. It features a '5.0 (27 reviews)' rating and a price of '\$288 /night' with a total of '\$2,449 total'. The second listing is for a 'Condo' titled 'Cozy Adirondack Condo- sunrise views of Lake Placid - lakeside!', which sleeps 5, has 2 bedrooms, and 3 beds. It is marked as a 'New listing' with 'Free cancellation up to May 23' and a price of '\$325 /night' with a total of '\$2,526 total'. To the right of the listings is a map showing the locations of the properties in the Lake Placid area, with blue pins indicating specific locations near North Elba and Lake Placid. The map also shows the McKenzie Mountain Wilderness area.

CASE STUDY: NORTH ELBA & LAKE PLACID

PURPOSE



- Amend the Village of Lake Placid/Town of North Elba Land Use Code to regulate short-term rentals via comprehensive registration and licensing regulations.
- Safeguard public health, safety and welfare by regulating and controlling the use, occupancy, oversight and maintenance of short-term rental properties.
- Preserve the historical, natural, and cultural character of the community and the peace and enjoyment of neighboring homeowners.
- Strive for a balanced approach that respects the property rights and interests of all homeowners – those who offer their homes as short-term rental properties and those who choose not to do so.

CASE STUDY: NORTH ELBA & LAKE PLACID



DEFINITION OF 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 quarters with kitchen for any period less than 30 consecutive nights.
- This definition expressly includes Rooming/Boarding house as 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.

CASE STUDY: NORTH ELBA & LAKE PLACID

CHECKLIST FOR SHORT-TERM RENTAL PERMIT APPLICATION



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APPLICATION REQUIREMENTS

- ✓ I certify I have notification from an insurance company acknowledging the property is used as a short-term rental.
- ✓ I certify street side emergency address numbers are displayed in accordance with 911 regulations.
- ✓ I certify all smoke alarms and carbon monoxide detectors are in correct working order and that the correct number of devices are installed per the New York State Building Code. (Include date of device).
- ✓ I certify a working fire extinguisher is located in each cooking area and in close proximity to each open flame source.
- ✓ I certify all chimney flues have been cleaned during the last 12 months.
- ✓ I certify the trash containers are of sufficient size to accommodate the maximum occupancy allowed and that a collection plan is in place.
- ✓ I certify I will notify tenants of noise and parking regulations in accordance with the applicable Town or Village Laws.
- ✓ I certify there are (#)____ bedrooms in the rental unit.
- ✓ I certify there are (#) ____ bathrooms and (#)____ ½ baths in the rental unit.
- ✓ I certify there are _____ on-site parking spaces available.
- ✓ If the rental unit is supplied by a municipal water source, I certify a meter is being monitored by the Village Water Department.
- ✓ Owner supplied advertisement for unit being considered for short-term rental.
- ✓ I certify the property complies with the New York State Property Law.
- ✓ I certify that the property is registered with County Treasurer's Office Occupancy Tax Program.
- ✓ I, _____ (print name), certify that the Short-Term Rental Permit for which I am applying meets all of the criteria described above. I acknowledge that failure to comply with the short-term rental requirements may result in revocation of the Short-Term Rental Permit.

CASE STUDY: NORTH ELBA & LAKE PLACID

MAXIMUM OCCUPANCY



The maximum occupancy for each short-term rental unit shall be the most restrictive of the following:

- Maximum occupancy shall be calculated as 2 times the number of bedrooms that are in compliance with the New York State Building Code plus 2 additional occupants.
- 2 Bedroom unit = 4 occupants for 2 bedrooms + 2 additional = 6 maximum
- 4 Bedroom unit = 8 occupants for 4 bedrooms + 2 additional = 10 maximum
- 6 Bedroom unit = 12 occupants for 6 bedrooms + 2 additional = 14 maximum
- Maximum occupancy for studio apartment shall be 2 occupants for the first 220 sq. ft. with 1 additional occupant for each additional 100 sq. ft. of living space.
- Ex.: 550 sq. ft. studio = 2 for first 220 sq. ft. + 3 for 330 remaining sq ft. = 5 max.
- Maximum capacity of the septic system for properties serviced by a septic system

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VIOLATIONS / PUNITIVE MEASURES



Any person, association, firm, company or corporation which violates any provision of this section or assists in the violation of any provision of this section shall be guilty of a violation punishable:

1. By a fine or penalty of not less than \$350.00 and not exceeding \$1,000.00 for a first offense or, if greater, the maximum amount allowed under the Municipal Home Rule Law, the Town Law or the Village Law.
2. By a fine or penalty of not less than \$1,000.00 and not exceeding \$3,000.00 for a second offense both of which were committed within a period of five (5) years or, if greater, the maximum amount allowed under the Municipal Home Rule Law, the Town Law or the Village Law.
3. Each week's continued violation constitutes a separate additional violation.

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SHORT-TERM RENTAL PERMIT FEE SCHEDULE



Studio/Efficiency – 2 Bedrooms \$200

3-5 Bedrooms \$500

6-8 Bedrooms \$900

9+ Bedrooms \$1,200

*14 days or less rentals do not pay a fee.

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SHORT-TERM OUTCOMES



- Due to the strict nature of the municipal ordinance, a lawsuit was filed against the town and village.
- The suit claimed that the law violated:
 - An owners right to equal protection.
 - An owners right to be free of unreasonable search and seizure by allowing the code enforcement officer to inspect the property without warrant or reason.
 - An owners right to due process by instating a 90-day cap on renting, requiring a permit to operate, and allowing code enforcement to impose conditions.
 - Their first amendments rights under the US Constitution.

CASE STUDY: NORTH ELBA & LAKE PLACID

SHORT-TERM OUTCOMES



- Out of the 13 legal actions brought before the municipalities, three were not dismissed by the federal court.
- Only one action required revision in the code; code enforcement will require permission from a property owner prior to inspection.
- Currently, there is a moratorium in place on new applications for short-term rental permits within both municipalities.

CASE STUDY: NORTH ELBA & LAKE PLACID

CONCLUSIONS



- The case shows that balancing the needs of all parties is necessary to solve the challenges of short-term rental properties.
- An overly strict or complicated law will most likely be challenged, while an overtly simplistic law may not garner the intended outcome.
- The target outcome is a law that allows a community to know the location and number of short-term rental units, have contact information for a local property representative, regulate and enforce the properties similar to commercial businesses, and create a mechanism to fund enforcement and permitting.

DISCUSSION

HOW ARE SHORT-TERM RENTAL PROPERTIES AFFECTING YOUR COMMUNITY?



REGULATING SHORT-TERM
RENTAL PROPERTIES
October, 2022

Thank you!



*TO REQUEST A COPY OF THESE SLIDES
OR SET UP A MEETING TO DISCUSS YOUR COMMUNITY'S NEEDS
SURROUNDING SHORT-TERM RENTAL PROPERTIES,
PLEASE VISIT*

labergegroup.com/2022/05/17/shorttermrental