

## SHORT TERM RENTAL LAW TOWN OF MARLBOROUGH

### A LOCAL LAW AMENDING CHAPTER 155 ZONING LAW THE TOWN OF MARLBOROUGH, ULSTER COUNTY, NEW YORK TO PERMIT AND REGULATE SHORT-TERM RENTALS.

Be it enacted by the Town Board of the Town of MARLBOROUGH as follows:

#### SECTION 1 PURPOSE

This Local Law is enacted to allow the use of housing units in the Town of MARLBOROUGH for short term rental purposes so as to enhance the tourism economy of the Town while protecting the safety of renters and the privacy for residences and freedom from nuisances; ensuring that the value of housing is tied to its use for residential purposes, helping to maintain the affordability of both home ownership and rental units; encouraging the development of appropriate sized short term rental facilities where allowed; and, continuing the use of housing for traditional accommodations.

#### SECTION 2 INTENT AND AUTHORITY

The intent of this Local Law is to regulate the use of residential structures for short term rental purposes by defining such uses in § 155

of the Town of ~~Marlborough~~ Zoning Law, and providing quality of life, environmental, land use, building code safety and STR operational requirements to be met in permitting these uses to be established. This Local Law is intended to apply to all existing and future housing units in the Town as the requirements for the establishment of a short term rental.

This Local Law is adopted in accordance with Articles 9 and 16 of the Town Law of the State of New York which grants the Town of ~~Marlborough~~ <sup>??</sup> 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 ~~Marlborough~~ <sup>?</sup> the power to protect and enhance its physical environment.

### SECTION 3 ZONING AMENDMENTS

Chapter <sup>155</sup> Zoning Law is hereby amended as follows:

~~ADDING TO~~

• *existing § 155-23 HOME Occupations, with the following:*

*§ 155-23.1 SHORT TERM RENTALS*

STR non-owner occupied establishments as defined in § 155-1 of this Chapter, require property owner application for an annual operating permit from the Building Department, including any related permitting/inspection fees, submittals and compliance with the following:

A. Application process and required submittals:

- (1) Provide a completed annual permit application.
- (2) Provide a safety/egress plan, to be posted in rental unit in a visible location and on the back of each bedroom door.
- (3) A parking layout plan identifying where parking is to be located as required, in accordance with standards set forth in § 155-27 of this chapter is to be submitted.
- (4) Provide garbage removal plan (garbage receptacles will not be left out for more than 24 hours).
- (5) For STR's, the name and contact information of the designated ~~owner~~ shall be provided to the Building Department and shall be posted in the STR. Both the property owner and the ~~renter~~ will be responsible for addressing issues and compliance with STR requirements within 24 hours. When ~~renter~~ contact information changes the Building Department will be notified and STR posted Renter Notices shall be revised accordingly.
- (6) Occupancy shall be limited to 2 guests per bedroom and total maximum house occupancy shall be posted in the STR. Children twelve years old and under are not counted as guests.

B. STR's must register with Ulster County (per Ulster County Local Law #5 of 1991) and a copy of said registration is to accompany STR Applications to the Town of ~~Marlborough~~ Building Department. Property Owners in ~~Marlborough~~, that are listed on an Ulster County maintained list of homes used for STR's shall receive notification by the Town of the ~~Marlborough~~ STR Law including that Law's registration and operational requirements.

- C. STR's must pass a yearly fire/safety inspection and the report of said inspection is to be attached to STR annual renewal permit applications. All STR units must comply with NYS Building Code requirements.
- D. STR's may be rented out a ~~minimum~~ of 30 days per calendar year
- E. Only the property owner is permitted to register an STR. And ~~that~~ individual property owner ~~must BE A RESIDENT OF THE TOWN OF MARLBOROUGH.~~ Registration by a corporation whose owners have an interest in more than one (1) STR's is prohibited in residential districts. Registrations are transferable ~~with a new application.~~ Transfer must be applied for within 30 days of sale. > ??
- F. The Town Board will set caps on the number of STR's permitted within the Town and the fee schedule on an annual basis.
- G. ~~Owner~~ will provide guests with copies of local laws, especially the noise, fire, safety ordinances and requirements. ~~Owner~~ will also provide emergency contact information as well as address of property and will ensure the property address is clearly identifiable from the street. ~~Owner~~ will provide guests with a property map that shows the property boundaries.
- H. Approved STR's will be assigned a registration number that must be included in all rental listings, both print and on-line and posted within the STR. On site advertising is prohibited.

- J. Failure to comply with these standards will result in denial of STR Applications.
- K. Three or more violations of Local Laws may lead to revocation of an approved STR operating permit.

## *SECTION 155-1 DEFINITIONS*

### **SHORT TERM RENTAL (STR) NON-OWNER OCCUPIED**

C. A supplementary business in a private home or habitable accessory structure in which the entire private residence is rented for less than 30 days and no host/owner is present, and in which no public restaurant is maintained and no other commercial services are offered. Each STR occupied unit shall have no more than 2 guests per bedroom as lodgers. Children twelve years old and under are not counted as guests. STR non-owner occupied establishments must have a designated local Host as defined herein; and must comply with the other STR Standards in or referred to in § 155.23. ~~STR Non-owner Occupied shall be rented for no more than 180 days per calendar year with no more than 26 weekends or parts of weekends included in that total. Weekends include any time between Friday evening and Monday morning.~~

# Town of MarbOROUGH

## Application for Short Term Rental Certification

### Contact Information:

#### Property Owner Contact:

Owner's Name: \_\_\_\_\_ Home Phone: \_\_\_\_\_

If LLC, provide names of all people in the LLC: \_\_\_\_\_

Street Address: \_\_\_\_\_ Cell Phone: \_\_\_\_\_

Mailing Address: \_\_\_\_\_ Email: \_\_\_\_\_

### TENANT Contact:

Name: \_\_\_\_\_ Home Phone: \_\_\_\_\_

Street Address: \_\_\_\_\_ Cell Phone: \_\_\_\_\_

Mailing Address: \_\_\_\_\_ Email: \_\_\_\_\_

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### Property Information:

Non-Owner Occupied (\$250): \_\_\_\_\_

Section-Block-Lot: \_\_\_\_\_

Zoning District: \_\_\_\_\_

ADDRESS \_\_\_\_\_

Is this a single family home? YES NO If no, number of dwelling units: \_\_\_\_\_

Number of Bedrooms : \_\_\_\_\_ number of overnight guests: \_\_\_\_\_

*\*Please note that the term bedrooms does not include, living rooms, dens, family rooms, lofts, etc..*

How many bathrooms are in the structure? \_\_\_\_\_

Number of Parking Spaces AVAILABLE : \_\_\_\_\_

What other structures are on the property? \_\_\_\_\_

## **Required Submittals:**

- Must Provide to scale Site Plan that includes:
  - All Existing Structures
  - Parking Layout
  - Location of well, septic and reserve field
  - Garbage Location
  - Property Boundaries
- Floor Plan of Home
- Garbage Removal Plan
- Safety/Egress Plan – To be posted in rental unit on the back of each bedroom door with Emergency Contact information and E911 Address
- Self-Inspection Checklist
- A copy of proof of registration of the STR with Ulster County
- Must Comply with **State Building Code** Requirements

Notice: Only those structures and uses that have received a Certificate of Occupancy may be legally occupied pursuant to the Marborough Town Code. The issuance of a Short-Term Rental Certificate for a property does not mean that all structures, or portions thereof, on said property may be legally occupied. Please consult the Building Department as to any questions about open building permits and legal uses.

Under penalties of perjury, I declare that I have completed this application and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this application and that I am the owner of said property.

Print Name: \_\_\_\_\_

Signature of Owner: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Signature of Tenant: \_\_\_\_\_ Date: \_\_\_\_\_

**DO NOT WRITE BELOW THIS LINE**

This property has no outstanding violations: \_\_\_\_\_

This property approved for rentals to no more than \_\_\_\_\_ persons staying overnight

This property has \_\_\_\_\_ parking spots

Certificate approved by: \_\_\_\_\_ Date: \_\_\_\_\_

Fees Paid: \_\_\_\_\_

Received by: \_\_\_\_\_

County Registration Number: \_\_\_\_\_

STR Number: \_\_\_\_\_

## **Short Term Rental Self Inspection Checklist**

*Please check first column if condition is met*

Owner      Code Officer

### **EXTERIOR OF HOUSE:**

1. House # is posted in numerals a minimum of 4 inches tall \_\_\_\_\_
2. House # is visible from the street \_\_\_\_\_
3. Is there a swimming pool? \_\_\_\_\_
4. There is a code compliant fence around pool. \_\_\_\_\_
5. Pool gates are self-closing, self-latching and lockable. \_\_\_\_\_
6. There is a working alarm on every door to the pool area \_\_\_\_\_
7. There is an alarm in the pool \_\_\_\_\_

### **INTERIOR OF HOUSE:**

8. Are there handrails on all stairways? \_\_\_\_\_
9. The electrical panel is properly marked \_\_\_\_\_
10. Smoke detectors are installed and working on every level \_\_\_\_\_
11. Carbon monoxide detectors are installed and working on every level \_\_\_\_\_
12. Smoke detectors are installed and working in every bedroom \_\_\_\_\_
13. Smoke detectors are installed and working in every sleeping area \_\_\_\_\_
14. Smoke detectors within 10 feet of any bedroom door in the hallway \_\_\_\_\_
15. Smoke and carbon monoxide detector batteries are replaced regularly \_\_\_\_\_
16. Is there a burglar/fire alarm system? \_\_\_\_\_
17. Is the ingress/egress plan posted on the back of every bedroom door? \_\_\_\_\_

### **FIREPLACE/WOOD BURNING STOVE:**

18. Does your home have a fireplace or wood-burning stove? Yes      No
19. How many fireplaces or wood burning stoves does your home have? \_\_\_\_\_
20. The fireplace or wood burning stove has a door(s) or screens(s) \_\_\_\_\_

\*We recommend having a Fire Extinguisher in the structures. 5 pound or 2A 10BC.

## **Short-term rental - Wikipedia**

### **What is short term housing ?**

Short-term rental describes furnished self-contained apartments that are rented for short periods of time, usually by the month as opposed to annual rentals in the unfurnished apartment rental market. They are seen as an alternative to hotels. 'Short Stay' rental is an offshoot of the corporate housing market.

### **How many days is a short term rental ?**

Most short-term rental laws only apply to stays of less than 30 days. Hosts who set their minimum stay length at 30 days don't need to worry about such laws. In most cases, landlords sign a lease with the tenants. With such an agreement, it is easier for landlords to give tenants notice that they need to move out.

### **Why short term rentals are bad ?**

Missed TAX Revenues. Since short-term vacation rentals are not taxed in many cities, local governments are missing out on millions of dollars. When allowing but regulating short-term vacation rentals, local governments can increase their revenue through taxes, permits and business licenses.

### **Short-term rental regulations**

The MDL ( Multiple Dwelling Law ) prohibits renting out apartments in Class A buildings ( residential Building with three or more units ) for fewer than 30 days unless a "permanent resident" is present during the rental period. Basically, this makes it illegal to rent out an entire unit for fewer than 30 days in these types of buildings.

**Ulster County** requires everyone who regularly offers a room for short-term rental to register with the Department of Finance, collect the occupancy tax from their guests, and remit it to the county. ... That county has an agreement with Airbnb to collect the tax on properties booked through its website.

## Legal Background

### Multiple Dwellings Law

In 2010 the Multiple Dwelling Law was amended to change, among other things, the definition of a Class A multiple dwelling. The MDL applies to cities with populations of more than 325,000, although any city, town or village may adopt its most of its standards or those that are more stringent (see MDL § 3 [1],[2]). Before it was amended, MDL § 4(8)(a) required that a class A multiple dwelling be “occupied, as a rule, for permanent residence purposes”. The First Department found that the statute's use of the phrase ‘as a rule’ “indicates that a secondary use of the building, different from the specified primary use [such as transient rentals], is permitted” (City of New York v 330 Cont. LLC, 60 AD3d 226, 231 [1st Dept 2009]). The 2010 amendment clarified that class A multiple dwellings can be used for permanent residence purposes only which means occupying a unit by a natural person or family for 30 consecutive days. Thus, under the MDL, a person may not rent out their unit for less than 30 days unless a permanent resident is present.

Most recently, in October 2016, new legislation was passed amending the MDL yet again by creating MDL § 121, which makes it illegal to advertise units for occupancy that would otherwise violate New York State law. Violators are subject to a \$1000 fine for the first violation and up to \$7500 for the third and more. This legislation resulted in Airbnb commencing a lawsuit against New York State and New York City wherein Airbnb argued that the law was essentially attempting to hold Airbnb responsible for third-party content. The case was settled in December 2016.

### Special Use Permits

One way to regulate short-term rentals if you're in a municipality that has zoning is to make them subject to a special use permit. A special use permit allows the under the code, but subjects the property more review and more conditions, potentially (see generally Town Law § 274-b; Village Law § 7-725-b; General City Law § 27-b). For example, in a special use permit

situation, an area may be zoned residential, and “short-term rentals” as defined in the code are allowed in residential zones, but they need special use permit. As a condition of obtaining the special use permit, the municipality could require a certain amount of parking spaces per lot. However, the conditions have to be reasonable, so you probably wouldn’t be allowed to require something like ten onsite parking spots on a three bedroom house. Furthermore, these conditions must relate to how the land is used, and not the conduct of individuals or operations on the premises (see e.g. Old Country Burgers Co., Inc. v Town Bd. of Town of Oyster Bay, 160 AD2d 805, 806 [2d Dept 1990]). Thus, you probably cannot regulate things like noise with a special use permit.

### Importance of Definitions

Definitions are of utmost importance when regulating short term rentals. Fruchter v Zoning Bd. of Appeals of Town of Hurley, 133 AD3d 1174 (3d Dept 2015) illustrates this perfectly. In *Fruchter* petitioner owned a two bedroom, single-family home in an area zoned residential and he would rent out the entire house and the entire property. Petitioner got an order for remedy from the town code enforcement officer for running a bed and breakfast in a residential neighborhood without a special use permit that was required under the town code to run a B&B or hotel. Petitioner appealed the order to the zoning board of appeals, which determined that petitioner did, in fact, need a special use permit. When the matter went before the Third Department Appellate Division the court noted that the town code defined a “bed and breakfast” as an “owner-occupied dwelling” where “rooms” were available for rent. The court said petitioner did not fit that definition because he rented out the entire house and he did not live in the structure. The court also found that the property did not fit under the definition of “hotel” because under the town code, hotel was defined as something having “a common exterior entrance or entrances,” and here, petitioner rented out his entire property.

Another case, Atkinson v Wilt, 94 AD3d 1218 (3d Dept 2012) further demonstrates the need for definitions that work. In *Atkinson* petitioner owned a six bedroom, single-family house in an area zoned for single and multifamily residential use. He advertised renting the home on the internet and also belonged to the town chamber of commerce. He was told by the zoning enforcement officer that he could not rent out his home because it was a “tourist accommodation,” and that was not a permitted use in a single or multifamily residential area. The town code

defined tourist accomodation as “any hotel, motel, resort, tourist cabin or similar transient facility used to house the general public, including accessory restaurant” and defined “single-family residence” as “a detached building, not including a mobile home, used as a living quarters for one family. The court said the fact that the owner advertised the property online and was a member of the chamber of commerce did not change what was a single-family residence to a tourist accomodation. It noted that the owner carefully screened who they rented to, and thus, the property was not open to the general public, and even though the town argued that it fell under “similar transient facility” when you looked at the code as a whole and saw how the word transient was used elsewhere, it didn’t make any sense. The court also rejected the argument “single-family residence” meant only one family could stay there.