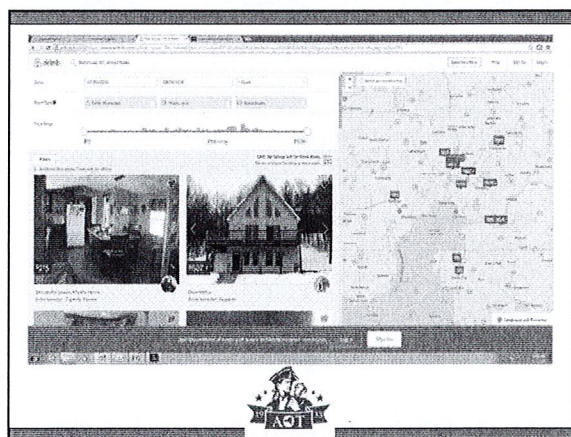
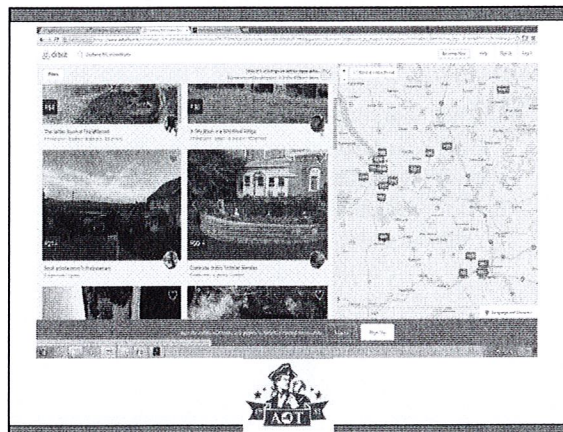




## Regulating Short Term Rentals

Sarah B. Brancatella  
Associate Counsel  
Association of Towns

Planning and Zoning School



### Why Regulate Short Term Rentals?

- Loss of residential feel of neighborhood / community feel
- Nuisances for neighbors (light, noise, trash)
- Parking Issues
- Safety Concerns
- Unfair to existing hotels / motels
- Declining year round population / largely vacant property
- Infrastructure concerns



### Where to start?

- Identify the issues you want to address in the community
- Look at your comprehensive plan
- Create clear definitions



### Definitions

Include length of time / number of times a house or part of house / property must be rented out

Could define a "vacation rental" as a residence or room available for rent for periods of less than 14 days totaling more than 30 days of a calendar year



## Definitions

“Transient rental occupancy – use of a dwelling unit by a person or group of persons who occupies it or is entitled to occupy a dwelling unit for remuneration for a period of less than 14 calendar days, counting portions of days as full days”



## Why are definitions important?

- Fruchter v ZBA of Town of Hurley
- Atkinson v Town of Arietta ZBA



## Options For Regulating

Require a special use permit

- Town Law § 274-b allows towns to require authorization of a particular use that is otherwise permitted in zoning ordinance subject to requirements imposed by such zoning ordinance
- Can place conditions on special use permit



## Options for Regulating

Town has broad authority under Town Law § 130 to pass ordinances and require permits for matters involving:

- Promotion of public welfare
- Regulating hotels, inns, boarding houses, rooming houses, lodging houses ... or any building or part of a building used in the business of renting rooms, individual or several ... rest homes or any building or part of a building used for similar purposes, containing a total number of beds, cots or similar equipment providing sleeping accommodations for more than 5 persons; specifying the type of construction, the manner of their running and operation and prescribing regulations assuring proper sanitation, cleanliness and fire protection.



## Options for Regulating

Think outside the box! Town Law § 130 allows the town to...

- Require rental properties to register
- Impose conditions not related to land use
- Require permits for rental properties (and reasonable fees associated with permits)



## Town Law §130 –Nitpicky Lawyer Stuff

- Authorizes ordinances, but anything you can do by ordinance you can do by local law using Municipal Home Rule Authority
  - Benefits of using local law over ordinance
    - Can pass is faster (7 day aging requirement vs 10 day)
    - Law law entitled to presumption of validity
    - Can supercede the 5 person requirement listed in Town Law § 130



### Important Features of Your Local Law

1. Definitions (no seriously!)
2. What will fee for license / permit be?
3. When do you need to renew?
4. What to include in application for permit?
5. Will there be a limit on amount of permits one person or entity can hold?
6. Where can complaints be filed?
7. What constitutes a violation and what are the sanctions?



Questions?

Association of Towns  
150 State St  
Albany, NY  
(518)465-7933





# Town of Geneva

## FILING LOCAL LAW

New York State Department of State  
Division of Corporations, State Records and Uniform Commercial Code  
One Commerce Plaza, 99 Washington Avenue  
Albany, NY 12231-0001

(Use this form to file a local law with the Secretary of State)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County  
City  
Town of  
Village

FILED  
STATE RECORDS

APR 19 2016

DEPARTMENT OF STATE

Local Law No. 2 of the year 2016.

A local law "Amending Chapter 165 (Zoning) of the Code of the Town of to Add Regulations  
Pertaining to Short-Term Rentals"

(Insert Title)

Be it enacted by the Town Board (Name of Legislative Body)

County  
City  
Town of  
Village

as follows:

Section 1. Section 165-3 of the Zoning Code of the Town of is hereby amended with the insertion of a new definition for "Short-Term Rental" to read as follows:

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 is not regulated by any other section of the Code of the Town of  
"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.

Section 2. Schedule I – Permitted Uses in Section 165-7 of the Zoning Code of the Town of is hereby amended by adding "Short-term rental in compliance with section 165-28.6" under the Residential Uses heading and making such Use a permitted use by right in the A, R-1 and R-2 District columns such that the letter "P" shall appear in these locations of the Schedule.

Section 3. Chapter 165 (Zoning) of the Code of the Town of is hereby amended with the insertion of a new Section 165-28.6 to read as follows:

### § 165-28.6. Short-Term Rental Regulations.

A. Permit Required. An owner shall obtain a revocable short-term rental permit whenever a dwelling unit is to be used for short-term rental purposes.

- (1) A short-term rental permit shall be obtained prior to using the unit as a short-term rental.
- (2) A short-term rental permit shall be valid for three calendar years, shall expire on December 31 of the third year it is in effect, and must be renewed upon expiration as long as the unit is used as a short-term rental.
- (3) The short-term rental permit is transferable to a new owner, so long as the owner registers with the Town, updates the short-term rental permit application, and agrees in writing to comply with the requirements of the short-term rental permit and these regulations.

- (4) If the terms of the short-term rental permit are not kept or these regulations not followed, the short-term rental permit may be revoked and the owner subject to the penalties of Chapter 1, section 1-16 of the Code of the Town of \_\_\_\_\_ and the penalties set forth below.

B. Short-Term Rental Permit Application Requirements. An application for (or renewal of) a short-term rental permit shall be submitted to the Town Code Enforcement Officer, signed by all persons and entities that have an ownership interest in the subject property, shall be accompanied by payment of a permit fee, to be determined by the Town Board, shall be accompanied by a copy of the current vesting deed showing how title to the subject property is then held, shall be completed on the form provided by the Town, and shall provide the following information:

- (1) A list of all of the property owners of the short-term rental including names, addresses, telephone numbers and email addresses.
- (2) Completion of a signed and notarized affidavit by the property owners certifying the following:
  - (a) Compliance with the following standards:
    - (i) There shall be one functioning smoke detector in each sleeping room and at least one functioning smoke detector in at least one other room, one functioning fire extinguisher in the kitchen and at each exit, and at least one carbon monoxide detector.
    - (ii) Exterior doors shall be operational and all passageways to exterior doors shall be clear and unobstructed.
    - (iii) Electrical systems shall be serviceable with no visual defects or unsafe conditions.
    - (iv) All fireplaces, fireplace inserts or other fuel burning heaters and furnaces shall be vented and properly installed.
    - (v) Each sleeping room shall have an exterior exit that opens directly to the outside, or an emergency escape or rescue window.
  - (b) The number of sleeping rooms within the short-term rental, as defined in this section.
  - (c) The number of parking spaces on the property that meet the standards set forth below.
  - (d) Affidavit certifications shall be valid during the term of the short-term rental permit, or until modifications requiring a building permit are made, or until the Town Code Enforcement Officer has reason to believe an inspection is warranted, at which point the Code Enforcement Officer shall obtain a search warrant to conduct such inspection unless an owner of the property voluntarily consents to permit the Code Enforcement Officer onto the property and into the short term rental for purposes of conducting such inspection. If relevant circumstances on the property change or for any reason the certification is or becomes inaccurate, a new certification shall be submitted.
- (3) A site plan, drawn to scale, showing the location of buildings, required parking and, if not served by a public sewer, the location of the septic system and leach field. An accurate, suitable plan need not be prepared by a professional.
- (4) If the property is served by a private septic system, a septic inspection report issued pursuant to Chapter 159 of the Code of the Town of \_\_\_\_\_ dated within 90 days of the date of the application, stating the size of the tank(s) and leach or absorption field or area, and the location and condition of all septic system components. The report must state the septic system was adequately functioning at the time of inspection. The septic system must be in compliance with Chapter 159, and the maximum occupancy of the short-term rental unit shall be limited by the number of bedrooms allowed for the size of the septic



tank and leach or absorption area, as set forth in the regulations of the N.Y.S. Department of Health (referred to in Chapter 159), Appendix 75-A of Part 75 of Title 10 of the New York Code of Rules and Regulations, as amended, and regulations and/or standards applicable to aerobic septic systems. A system failure will require a new passing inspection report. The Town Code Enforcement Officer may allow occupancy in excess of these regulations and standards if circumstances show the system will adequately function for an allowed occupancy, and may condition any variance on certain actions and safeguards by the owner, such as frequent pumping of the septic tank or further, periodic inspection by the Town Code Enforcement Officer or designee.

- (5) The name, address, telephone number and email address of a contact person, who shall be responsible, and authorized, to act on the owner's behalf to promptly remedy any violation of these standards or the permit. The contact person may be the owner or an agent designated by the owner to serve as a contact person.
- (6) A statement that the applicant has met and will continue to comply with the standards of these regulations and the permit.

C. Short-Term Rental Standards. All short-term rentals shall meet the following standards:

- (1) The maximum occupancy for each short-term rental unit shall be the smaller of:
  - (a) the maximum number of people allowed based on the septic inspection report, if applicable; or
  - (b) the number of people calculated on the basis of 2 persons per sleeping room (unless the room size is below 100 square feet), plus an additional 2 persons. For this purpose, a sleeping room is defined as fully-enclosed habitable space of at least 70 square feet for one person, and 100 square feet for two persons, with an emergency escape or rescue opening.
- (2) The property must have sufficient off-street parking spaces, in compliance with the requirements of Article VI (Off-Street Parking and Loading) of this Chapter, to accommodate the maximum occupancy.
- (3) Tenants and guests shall park in the off-street parking spaces required by Article VI (Off-Street Parking and Loading) of this Chapter and shall not park on any part of the lawn of the property nor on the street.
- (4) A house number visible from the street or road shall be maintained.
- (5) Provisions shall be made for weekly garbage removal during rental periods. Garbage containers shall be secured with tight-fitting covers at all times to prevent leakage, spilling or odors, and placed where they are not clearly visible from the street or road except around pick-up time.
- (6) Advertisements for the short-term rental must conform to what is allowed under these regulations and the short-term rental permit.

D. Procedure upon filing application.

- (1) Upon the filing with the Town Code Enforcement Officer of the permit application, permit fee, and all documents and information required by this Chapter, the Town Code Enforcement Officer shall have 30 days to review the application and then either issue the permit, with or without conditions, or notify the applicant in writing that the application has been denied along with the reason or reasons for denial. If a permit is issued, the permit shall bear the signature of the Town Code Enforcement Officer.
- (2) In reviewing the application, if the Town Code Enforcement Officer has probable cause to believe information contained in the application is inaccurate or incomplete, he may petition a court of competent jurisdiction for a search warrant to conduct an inspection of the short term rental property for purposes of ensuring compliance with this section. Alternatively, the Town Code Enforcement Officer may request permission from an owner of the short term rental to come onto the property and to conduct an inspection of the short term rental

property for purposes of ensuring compliance with this section, which permission the owners of the short term rental are under no obligation to give. If an inspection authorized herein is conducted, the Town Code Enforcement Officer shall use the results of such inspection in determining whether to issue the permit, with or without conditions, or to not issue the permit.

- (3) In issuing a short-term rental permit, the Town Code Enforcement Officer may impose such reasonable conditions and restrictions as are directly related to and incidental to the use of the property for short-term rentals so long as such conditions and restrictions are consistent with the requirements of the Town Zoning Law and the On-Site Individual Wastewater Treatment System Law of the Town of \_\_\_\_\_ and are imposed for the purpose of minimizing any adverse impact the issuance of the short-term rental permit may have on the neighborhood or community.
- (4) The Town Code Enforcement Officer may decline an application for any of the following reasons:
  - (a) If the application is incomplete, the documentation required by this Chapter was not included with the application or the full permit fee, in payment form acceptable to the Town Clerk, was not included with the application.
  - (b) If the Town of \_\_\_\_\_ issued a short-term rental permit to any of the owners needing to sign the short-term rental permit application and any of such owners had a short-term rental permit revoked within the previous year.
  - (c) If the affidavit from the owners or, if conducted, an inspection conducted by the Town Code Enforcement Officer as authorized in this section does not evidence that the subject property is in compliance with this Chapter or with the On-Site Individual Wastewater Treatment System Law of the Town of \_\_\_\_\_.
  - (d) If the site plan required to be submitted with the application does not comport with the requirements of this section.
  - (e) If a private septic inspection report is required to be submitted with the application and if such report does not comport with the requirements of this section or with the On-Site Individual Wastewater Treatment System Law of the Town of \_\_\_\_\_.
- (5) Short-term rental permits issued pursuant to this section shall state the following:
  - (a) The names, addresses and phone numbers of every person or entity that has an ownership interest in the short-term rental property and of a primary contact person who shall be available during the entire time the short-term rental property is being rented;
  - (b) The maximum occupancy and vehicle limits for the short-term rental unit;
  - (c) Identification of the number of and location of parking spaces available;
  - (d) A statement that littering is illegal;
  - (e) A statement that all fires must be attended;
  - (f) A statement that guests must comply with the Noise ordinance of the Town of \_\_\_\_\_ as set forth in Chapter 106 of the Town Code, which sets strict limits on noise levels between 10:00 p.m. and 7:00 a.m., which ordinance will be enforced by the \_\_\_\_\_ County Sheriff's Department, the New York State Police, or any law enforcement agency properly exercising jurisdiction over the premises or incident;
  - (g) A statement that the short-term rental permit may be revoked for violations; and
  - (h) Any conditions imposed by the Town Code Enforcement Officer.
  - (i) That the permit shall expire on December 31 of the third year for which it is effective.



E. Conformity and Display of Permit.

- (1) The issuance of a short-term rental permit is subject to continued compliance with the requirements of these regulations.
- (2) Prior to any tenants coming onto the short-term rental property:
  - (a) The current short-term rental permit shall be prominently displayed inside and near the front entrance of the short-term rental; and
  - (b) A copy of the current short-term rental permit shall be provided to every adjacent property owner and to every property owner within 150 feet of the short-term rental property (whether on the same side of the road, across the street or behind the subject property). A statement of compliance with this provision, stating the owners served, and their addresses, and the method of service (e.g., mail, personal delivery), shall be provided to the Town Code Enforcement Officer.
- (3) The owners must ensure that current and accurate information is provided to the Town Code Enforcement Officer and that they notify the Town Code Enforcement Officer immediately upon any information contained on the permit changing. If, based on such changes, the Code Enforcement Officer issues an amended short-term rental permit, the owners must immediately replace the permit displayed inside and near the front entrance of the short-term rental with the amended permit and must immediately provide a copy of the amended permit to every adjacent property owner and to every property owner within 150 feet of the short-term rental property (whether on the same side of the road, across the street or behind the subject property).

F. Compliance, Hearings and Penalties. Owners of short-term rental units shall obey all applicable laws, ordinances and regulations of the Town of \_\_\_\_\_ County, New York State and the United States of America, and shall be subject to the enforcement and penalty proceedings contained in this Chapter.

The following process shall be followed in the event of a complaint alleging a violation of these regulations or a permit issued under these regulations:

- (1) The complaining party shall first attempt to contact the contact person designated on the permit, describe the problem and indicate the desired remedy.
- (2) The contact person shall, within two (2) hours of receiving the complaint, respond to the complaint and remedy as soon as reasonably possible any situation that is out of compliance with these regulations or with the permit for the property.
- (3) If the response is not satisfactory to the complaining party (including the inability to promptly reach the contact person), the complaining party may file a complaint with the Town Code Enforcement Officer by submitting a written complaint including the date, time and nature of the alleged violation as well as a statement that the complainant either unsuccessfully attempted to contact the contact person or did contact the contact person but the complaint was not adequately resolved. A failure to attempt to contact the contact person will not excuse a violation.
- (4) If the Town Code Enforcement Officer finds a violation of the permit or of this section, the Code Enforcement Officer may do any of the following depending on the circumstances:
  - (a) Attach reasonable conditions to the existing short-term rental permit;
  - (b) Suspend the short-term rental permit; and
  - (c) Revoke the short-term rental permit.
- (5) Should a permit be revoked, none of the owners of the short-term rental property may obtain any short-term rental permit sooner than one year after the date of revocation.
- (6) The Town may initiate enforcement proceedings under this Chapter at any time following receipt of a complaint.

- (7) Decisions of the Code Enforcement Officer will be provided to the parties and may be appealed, within 30 days of receipt of the decision, by the owner or by the complainant to a tribunal, appointed by the Town Board, consisting of one Town Board member, one town resident who holds a short-term rental permit, and one town resident who does not hold a short-term rental permit. The appealing owner or complainant shall make a written request for a hearing to the Town Clerk, and the tribunal shall hear the appeal within 15 days of the request, during which time the decision of the Code Enforcement Officer shall be stayed. At the hearing the tribunal shall accept evidence offered by the property owner, the complaining party, the Code Enforcement Officer and any other witness with relevant evidence. The tribunal shall make its decision within 10 days of the hearing, and may uphold the Code Enforcement Officer's decision, reject it, or modify it.
- (8) Any property owner found in willful violation of the provisions of this ordinance shall be required to reimburse the Town for its reasonable costs of enforcement, including reimbursement for staff time and reasonable attorney's fees.

Section 4. Required off-street automobile parking spaces in Section 165-38 of the Zoning Code of the Town of \_\_\_\_\_ is hereby amended by adding "Short-term rental" under the "Residential Uses" heading and making the "Number of Spaces Required" for "Short-term rentals" "1 for every 2 permitted occupants".

Section 5. If any clause, sentence, paragraph, section or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been ordered.

Section 6. This local law shall take effect immediately upon filing with the Secretary of State.