Town of Wilmington
Short Term Rental Law

A LOCAL LAW CREATING CHAPTER ___ Rental Properties
TOWN OF WILMINGTON, ESSEX COUNTY, NEW YORK

1. Purpose and Intent

The purpose of this Local Law is to address the operation of short-term rentals within the Town of Wilmington in an effort to mitigate the impact of short-term rentals by protecting neighborhood character and quality of life; to protect and encourage traditional long-term housing through rental property availability and ownership; to establish comprehensive permitting regulations to safeguard the public health, safety, and welfare by regulating and controlling the use, occupancy, oversight, and maintenance of short-term rental properties.

To the extent an ambiguity of meaning arises in the implementation or enforcement of this local law, the purpose and intent described herein shall guide the decision-making.

The Town of Wilmington reserves the right to adopt regulations to carry out the provisions and purposes of this law.

2. Definitions

A. Short term rental (STR) - A business within a residential building, apartment, single or two family dwelling, accessory dwelling unit, condominium, townhouse, guest house, cottage, cabin, converted hotel/motel or portion of any of the afore listed; and that is rented or leased to a turnover of transient guests for fewer than 30 days per rental and/or lease occurrence; is listed on STR platforms such as, but not limited to Airbnb, VRBO, HomeToGo, through a realtor, etc..

B. Owner - Individual(s) or entities who are in possession of and have ownership interest in the STR property.
    i. Owner/Primary - Owner whose primary residence is on the STR property.
    ii. Owner/Secondary - Owner whose primary residence is in the Town of Wilmington but not on the STR property.
    iii. Owner/Non-Resident - Owner whose primary residence is outside the Town of Wilmington.
    iv. Owner Occupied - A full time occupant of the residence who resides on the premises 184 days or more of the year.
    v. Part-Time Resident - A part time occupant of the residence who resides on the premises fewer than 184 days of the year.

C. Cap - The maximum number of short-term rental units within the Town of Wilmington allowed to operate at any given time or the maximum number of permits that can be active at any given time.

D. Property Manager/Host - A designated adult over the age of 21 who shall respond to a complaint within 30 minutes by phone and if the complaint is not resolved shall respond, in person, within 1 hour to the STR site.

E. Occupant/Guest(s) - A renter and all other persons of any age who occupy an STR on an overnight basis (10:00 p.m. to 7:00a.m.) for a period of fewer than 30 days.

F. Bedroom - An interior room that functions as a sleeping room, with at least two means of egress. The area of a bedroom shall not be less than 70 square feet if occupied by a single person or not less than 50 square feet per occupant if there is multiple occupancy.

G. Full Bathroom - A room within a rental space used for personal hygiene that contains a sink, toilet, and a bathtub and/or shower.

H. Half Bath - A room within a rental space used for personal hygiene that contains a sink and a toilet but does not include a bathtub or shower.

I. Tiny House - A dwelling unit with a maximum of 400 square feet of floor area, excluding lofts.

J. Lean-To - A shelter with three walls and a roof.

K. Membrane Structure (Tent, Yurt, etc.) - A temporary shelter consisting of sheets of fabric or other material draped over or attached to a frame of poles.

L. Wastewater - Includes, but is not limited to, blackwater discharged from toilets and graywater discharged from sinks, laundry, showers, hot tubs/spas and other similar sources.

M. Code Enforcement Officer (CEO) - A person who enforces the STR codes of the Town of Wilmington, inspects the premises of all residences that are being considered for rentable STR permits, including all safety codes such as emergency exits, wastewater and sewage disposal, location of fireplaces/pits/rings, fire extinguishers, as well as smoke alarms and carbon monoxide detectors as required.

N. Application Fee - A fee charged when applying for a short-term rental permit.

O. Permit Fee - An annual fee for the operation of a short-term rental in the Town of Wilmington, which varies according to size/occupancy statistics.

3. Short-Term Rental (STR) Regulations

Permit Requirements: An owner shall obtain a revocable short-term rental permit whenever a dwelling will be used for short-term rental purposes. No property may be used as a short-term rental without first applying for and obtaining a short-term permit.

A. Permit applications may be obtained from the Town of Wilmington code enforcement officer, town clerk, or from the town of Wilmington website. The form shall be completed and submitted to the Wilmington town clerk either in person, by email or through the USPS.

B. An application for a short-term rental permit shall be signed by all persons and entities that have ownership interest in the subject property; shall be accompanied by the application fee; shall be accompanied by a copy of the current vesting deed showing how title to the property is held; shall include a completed copy of all forms provided by the town; and shall provide the following information:

    i. Owner Information: A list of all property owners of the short-term rental, including names, addresses, telephone numbers, and e-mail addresses.
    ii. Building Permits: Any upgrades/updates/and/or renovations to the property will be disclosed prior to application, and the proper open permits will be taken. Failure to do so will result in fines, fees, or legal action.
    iii. Proof of Insurance: An insurance certificate of property and liability insurance, including any applicable umbrellas, will be provided with the Town of Wilmington listed as Additional Insured.

C. A short-term rental permit shall be valid for one (1) year from the date of issuance; shall expire on the anniversary date of issuance; must be renewed on or before the anniversary date for as long as the unit is used as a short-term rental and for as long as the owner/owners remain the same. Failure to renew by the anniversary date shall result in revocation of the permit.

D. Permits are non-transferrable. A change of ownership (excluding familial transfers) resulting from sale of the rental unit or change to an LLC voids an existing STR permit. If the new owner(s)' intent is to continue the use of the unit as a Short-Term Rental, said person(s) must apply for a new permit in the name(s) on the deed and with all pertinent information as stated above.

E. Separate permit applications and fees payable must be submitted for each individual STR location whether they be situated on the same lot or separate locations. Separate units shall not be listed on one permit. If any of the shareholders listed have been issued an STR permit for any other property or properties within the Town of Wilmington, that information must be disclosed at the time of application for a permit.

F. No permit shall be issued or reissued, unless and until the property complies with the Town of Wilmington Zoning Code, expressly including the terms of this section, the New York State Building Code and all fees and penalties have been paid.

G. Occupancy Tax Registration. No permit shall be issued unless the short-term rental property is registered with the Occupancy Tax Program administered by the Essex County Treasurer's Office.

H. The applicant shall submit a floor plan of the rental unit that shows all rooms (including their dimensions) and the method of ingress and egress (examples: doors and windows). The location of each bedroom and all other sleeping spaces shall be clearly identified on the floor plan. The floor plan may be hand-drawn with dimensions noted.

I. The applicant shall submit a plat of the property showing approximate property boundaries, vicinity of the well, if applicable, and vicinity of the fire pit, if applicable. Other buildings on the property should be included as well as neighboring buildings within two hundred (200) feet of the short-term dwelling. The location of available vehicle parking should be noted on the plat and the septic system should also be marked on the plat to avoid any vehicles in that area. The property plat may be hand-drawn with dimensions noted.

J. If the property is served by a private septic system, a septic inspection report dated within 90 days of the date of an application for a new permit or the renewal of an existing permit must be submitted, 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 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 New York State Department of Health, Appendix 75-A of Part 75 of Title 10 of the New York Codes, Rules and Regulations, as amended, and regulations and/or standards applicable to aerobic septic systems. The application should indicate the presence of a garbage disposal, spa, whirlpool bath or hot tub connected to the septic system, as well as sleeping spaces other than bedrooms. Each of these features counts as a "bedroom" in determining the number of bedrooms allowed by the size of the septic system. 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.

K. Upon receipt of a completed application accompanied by all required documents and the completion of the inspection by the CEO, the CEO shall determine if the applicant has complied with all the requirements of this local law as well as any federal, state, or county laws. If the applicant has fully complied, the permit fee shall be paid, and the permit shall be issued within 30 days.

L. If an application is non-compliant and has not been resolved according to the current regulations, the CEO may refer non-compliant applications to the Planning Board for review and resolution. A copy of the documented resolution shall be sent to each of the owners and/or the manager(s), and the CEO. If or when the application complies with all regulations, the CEO shall proceed with issuing a permit. If the number of permits has reached the cap number before the compliancy has been met, the approved application will be put on the wait list.

M. The Town Board shall limit (cap) the number of STR permits that may be active at any given time. Applicants shall be informed of this cap and if such limit has already been met. An applicant can, at that time, be added to a wait list for a STR permit. When either the limit (cap) is changed or any existing permits are not renewed, are canceled, or are revoked, the first applicant on the wait list will be notified. If that applicant or representative does not respond within five (5) business days, the next applicant on the wait list will be contacted and issued a permit if their application has been approved. The non-responding applicant will remain at the top of the wait list for an additional ten (10) business days in wait of a response. If no response is received in

that period of time, the applicant will be moved to the bottom of the wait list. Additional applicants from that point on will be added to the list after that applicant.

4. Additional Regulations

A. For STRs that are not owner occupied, an emergency contact document bearing the name and contact information for the Owner/Host, as well as the emergency 911 address for the STR, shall be posted in a conspicuous location in the STR that is readily accessible for all guests. If or when any contact information changes, the Owner or Property Manager shall update the posted renter notices accordingly and notify the CEO of such changes via email within five (5) business days.

B. Maximum Occupancy -The maximum occupancy for each short-term rental unit shall be the smaller of: (1) the maximum number of people allowed based on the septic inspection report, if applicable, with the determination of number of bedrooms as described above in section 3J; or (2) calculated as two persons per sleeping room (unless the room size is below 100 square feet), plus an additional two persons. For this purpose, a sleeping room is defined as a fully enclosed habitable space of at least 70 square feet for one person and 100 square feet for two persons, with two means of egress. The number of bedrooms shall include only bedrooms that are in compliance with the New York State Building Code. The CEO shall limit the number of occupants based on the number, size, configuration, and furnishings of the bedrooms, as well as additional rooms containing sleeper sofas, futons, day beds, etc..

C. Any signage advertising a short-term rental unit shall not be visible from the road.

D. Complaints – Short-term renters shall direct complaints to the owner, host, or caretaker of the residence via the information supplied to them. Depending on the complaint, the person in charge will address their needs. Neighbors within a distance that noise, smoke, or anything that may disrupt their sleep or conditions that are normal for them, shall notify the same. Such disruptions shall be addressed within an hour and then remedied. If a complaint is not addressed and if there is a total of three legitimate unaddressed complaints within a six (6) month period, the complainant may contact the CEO to request a meeting to request the suspension of the permit for the operation of the STR for a period of time decided by the review board.

5. Inspection

Each unit shall be inspected by a Licensed Building Inspector, and/or a Certified Fire Inspector, to determine compliance with the New York State Uniform Fire Prevention and Building Code. Inspections shall be done for the initial permitting and should be inspected every two years thereafter. No permit or renewal permit shall be issued without compliance with all elements of the submitted application. To comply, the following requirements shall be met:

A. There shall be one functioning smoke detector in each bedroom and at least one functioning smoke detector in at least one other room, one functioning fire extinguisher in the kitchen and at each primary exit, and at least one carbon monoxide detector located in the rental unit.

B. Exterior doors shall be operational, and all passageways to exterior doors shall be clear and unobstructed. No fold out beds/sofas should obstruct traffic flow in the case of an emergency.

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.

E. Each bedroom/sleeping areas shall have an exterior exit that opens directly to the outside, an emergency escape or egress window large enough and low enough for easy exiting. Egress window openings should be at least nine (9) square feet in size with the bottom of the window no higher than four (4) feet from the floor. Basement windows that are small and close to the ceiling cannot be considered as egress.

F. If the Code Enforcement Officer reasonably believes there is a violation of the State Uniform Code, the CEO may make inspections to ensure compliance with this Chapter and the State Uniform Code. For the purpose of performing inspections, the CEO or representative may request and be granted entry to examine and survey the entirety of the STR premises on presentation of the proper credentials. The Owner/Property Manager of an establishment, or the person in charge, shall give the CEO free access to the building. The CEO will schedule such inspection in advance, unless in the case of imminent danger, in which case the CEO may request access without an advance appointment.

G. Waste Removal - The CEO shall check to see if adequate refuse containers are being used. Guests must be provided with a waste removal plan by the owner, host, or manager. Garbage shall be placed inside a suitable container that adequately prevents animals from disturbing. Garbage shall not remain outside at curbside for a time greater than twenty-four (24) hours. The Owner and/or Host are responsible for the clean-up of any garbage or debris that has been strewn about by animals or high winds.

H. Outdoor Fire areas shall be inspected for safety by the CEO. Fuel used shall be local firewood only. There shall be no burning of trash or any chemical liquids or solids that can release hazardous fumes. Wood to be used shall be piled and located no closer than five feet from the fire pit or ring. All dry debris shall be raked away from the surrounding area of the fire, whether by property manager or guests. Fires shall not be left unattended, must have a water supply available, and shall be fully extinguished when unattended. If a fire ban has been declared by state or local authorities because of excessively dry weather, outdoor fires are not permitted.

I. The location of a STR shall be easily identified by a renter either by house number clearly visible from the street or by house number posted at the entrance of the driveway.

6. Fees

A. An application fee of $35.00 shall be remitted with an application.

B. If a permit is granted, the fee is as follows:
$300.00 annually plus $50.00 fee for each bedroom/sleeping area, including rooms with sleeper sofas, futons, daybeds, and/or inflatable/non-inflatable mattresses.

C. Change of Ownership
   i. Permits are non-transferable. If a new owner of a residence that was formerly used as an STR wishes to continue using the residence as an STR, a new permit must be applied for by said new owner(s). The fees will be the same as any other new permit. The applicant will go to the next spot on the waiting list if one exists.
   ii. If an LLC is formed while a residence has an existing permit to operate an STR, a new permit must be issued since the ownership name will be changed. The fees will be the same as any other new permit.

D. If an owner wishes to use, as a short-term rental, a room(s) or studio apartment within their personal space, they are required to register and pay an application fee but not required to pay a permit fee. Registering that type of rental space is only for record keeping. The same regulation shall be applied for those STRs that are only available for thirty (30) days or less in one (1) year. As with all STRs within the town of Wilmington the CEO shall inspect and assure the residence meets all requirements to be a STR. These permits do not count toward the cap.

7. Limitations on the Number of Permits per Owner

Although any person(s) from anywhere can purchase buildings/homes/dwellings that are for sale within the Town of Wilmington, certain limitations have been placed on the number of STR permits allowed per owner as follows:

A. Any full-time resident of the Town of Wilmington for two years or more may obtain permits for a short-term rental unit in each of two single-unit dwellings. That may include two of any of the following: full house, partial house, apartment, condominium, studio apartment, cabin, or cottage.

B. A part-time resident or non-resident of the Town of Wilmington may obtain a permit for one (1) short-term rental unit unless or until said person(s) become(s) a full-time resident of the Town of Wilmington for two years, at which time the resident will be permitted to register a second short-term rental unit.

C. The STRs that were issued a permit prior to the enactment of this regulation shall be grandfathered. If, at the time of enactment, any owner(s) hold(s) more active permits than are allowed by this regulation that is: two (2) for full-time residents and one (1) for part-time residents and non-residents, the owner(s) shall not be required to surrender any of their excess permits.

However, if an owner holding excess permits sells a residence as/for an STR or transfers its ownership for any reason the grandfathered status of the STR will be revoked. You shall not maintain the exceeded number of permits that were grandfathered by selling some and buying other dwellings to use as STRs.

8. Limitations of What Shall Be Used for Short-Term Rentals and Minimum Conveniences

A. A building that contains five or more apartments may use one (1) apartment as a STR for every four apartments that are rented for long term (30 days or more), i.e., only one out of five apartments can be used as a STR. This regulation is to maintain the lifestyle that the long-term residents have become accustomed to without constant disruptions by guests moving in and out on a regular basis.

B. Those dwellings, structures, etc., that are not suitable for a STR and shall not be made available for occupancy by STR guests include tents, yurts, camper trailers, boats, lean-tos, sheds, barns, or any other mobile recreational units not already listed.

C. At a minimum, all STRs: (1) shall have at least one bathroom facility, whether the toilet be connected to a sewage system or be a compost toilet; (2) shall have a bathtub and/or a shower; (3) shall have a full, usable kitchen that includes a working refrigerator, a stove for cooking, a sizable sink, and countertop workspace; (4) shall have solid doors that open and close to each bedroom and bathroom; and (5) shall have adequate dishes, cooking pans, utensils, and linens for guests use.