

Short Term Rentals

Regulating short term rentals (STR) at the local level has garnered increased attention recently. Communities are examining the pros and cons of residential housing being rented on a short-term basis. The Hudson Valley region is most traveled Airbnb corridor in NY. The COVID19 public health crisis has an impact on the short term rental market as it has had on all aspects of the economy.

Benefits of Short Term Rentals

There are many potential benefits associated with property owners being able to provide a STR. There is the opportunity to supplement income, with a potentially higher return than a long term rental. It is way for property owners to fill gaps in-between long-term tenants. The availability of STRs can provide a wider variety of lodging options to tourists with less expensive options compared to traditional lodging.

For municipalities short term visitors can provide an influx of tourism spending, create development opportunities in otherwise underdeveloped or blighted areas which may incentivize future development and create other opportunities for commerce. STRs also have the potential to extend the vibrancy of existing popular areas into nearby neighborhoods. A municipality can generate revenue through taxes and fees on STRs.

Challenges of Short Term Rentals

While there are many benefits, STRs also present a variety of challenges. Essentially STRs have become commercial uses in residential areas and in many places are not regulated as an allowable land use in non-commercial areas.

STRs have become associated with a rise of nuisances, including parking problems, noise and light pollution as well as trash and waste management concerns. In some places, STRs have a detrimental affect on the housing supply and the availability of long-term rentals and workforce housing. Overall STRs can also negatively impact the overall character of a community or neighborhood. For communities and neighborhoods, there can be an increase in the number of absentee landlords. STRs can have a detrimental impact on the existing hospitality industry, as STRs have a competitive advantage based on lower costs of doing business. There are also assessment related issues as a property is not assessed as a for-profit business, but rather assessed as residential.

Things to Consider When Regulating Short Term Rentals

There are many issues for local governments to think about when addressing STRs in their community. How does a community want to define and classify short-term rentals ; as a commercial or residential use? Is it a change of use if a resident begins to use their home for short-term rentals? How is the housing addressed in your most recent comprehensive plan? Does the community have a shortage of affordable housing? What might be the impact on local housing? Will STRs drive up the costs of housing and reduce the availability of housing for long term rental. It will be important to address housing priorities and goals to protect housing in the community.

How might this change of use impact community character and the quality of life? What are the potential impacts to the neighborhood and neighbors and how are they going to be addressed, including trash collection and disposal and parking infrastructure. Are neighbors protected from repetitive nuisances such as excessive lighting and noise?

Most municipalities have some form of regulation and code requirements for traditional lodging such as hotels, motels, and B&Bs. This may include zoning approval, inspection requirements, and compliance with health, fire safety and building codes, insurance, and remittance of a occupancy/hotel or other tax to the municipality. STRs are not regulated like tradition lodging, therefore a number of safety concerns arise. Are short term visitors aware of emergency evacuation plans, fire safety, are there working fire extinguishers? Are well and septic adequate for the number of visitors? How are occupancy thresholds set and enforced? STRs are not taxed as traditional lodging therefore there is the potential loss of tax revenue from lodging taxes if a visitor chooses a STR over more traditional lodging such as a hotel or motel.

When considering regulating STRs, municipalities also want to think about how STRs will be identified and tracked and how local regulations will be enforced. Setting up a registration process for STRs can be useful in gathering necessary data, tracking and monitoring enforcement. Some municipalities have tried to apply existing regulations for hotels to STRs. This essentially can result in the outright prohibition of STRs and by placing a heavier cost – burden can promote non-compliance. Outright prohibition of STRs is not likely to eliminate them, just create an illegal activity and enforcement issue.

Regulating STRs at the local level

When proposing to regulate any land use, it will be important to engage interested stakeholders including residents and local businesses to identify issues of concern and common ground and creation of a regulatory structure that benefits the community.

A municipality will want to review the housing component of their Comprehensive Plan when regulating STRs. Regulation should be done in a manner that is consistent with the municipalities housing goals. In addition the local socio-economic conditions and priorities should be taken into account. Does a municipality want a prescriptive strict approach or a more moderately lenient approach, keeping in mind compliance and the ability to enforce the local rules? Key consideration in regulating short term rental will be off-street parking, garbage/trash removal and occupancy limits.

Defining STRs

A municipality will want to clearly define STRs and distinguish them from other lodging options such as hotels, motels and BnBs. STRs basically fit into two categories – hosted and unhosted. A host can be owner or some other type of person involved in the rental property such as a property manager. Important elements of defining an STR will be whether or not there is a residency requirement and a provision of proof of residency such as a driver's license or voter registration. The local regulation will want to define primary and non-primary residence and if the STR must be hosted or can be unhosted.

Village of Athens definition:

Standard Short-Term Rental (SSTR): The rental or lease of any dwelling, dwelling unit or other establishment to a Visitor for a period of less than thirty days. This definition specifically excludes hotels, motels, inns, bed and breakfasts, investment properties and commercial wedding or party event venues. SSTRs shall be allowed in all zoning Districts of the Village as defined in the Village of Athens Zoning Law subject to the provisions of this local law. June 2020

Keep in mind that simpler regulations can encourage participation and ensure greater compliance. A simple STR registration requirement can open communication, keep costs low and make enforcement more feasible. Registration should at a minimum require a contact name, phone, and the address being rented. The name and contact information of the party responsible for addressing violations can also be part of the registration. Some municipalities require hosts to share the contact information with neighbors to facilitate the reporting of violations. Registration should be renewed on an annual or bi-annual basis. A potential incentive program can be to allow a second year of registration with no fee if the STR has received no complaints in the first year.

A registration process can help in the creation of a recording keeping and reporting process. Such record keeping and reporting of data will be important for compliance and enforcement and tax collection. Potential information to collect includes guest names, guest contact info, rental dates, guest license plates #s Assigned rooms, hosted or unhosted, revenue earned , keeping in mind privacy issues and concerns.

A municipality may want to provide 'Basic Health and Safety Policy Guidelines' requiring property owners to file emergency evacuation plans and diagrams and to require rental property owners to acknowledge the provision of emergency equipment such as smoke and CO detectors and fire extinguishers. These guidelines can include

'House Rules 'which lay out an acceptable behavior policy regarding noise and respecting neighbors etc., that must be acknowledged by the renter. These should be filed with the local government.

Partnerships can be formed to help with collecting data and with compliance of a Short term Rental Program. There are 29 counties in New York that partner with Airbnb to collect occupancy taxes <https://www.airbnb.com/help/article/2319/occupancy-tax-collection-and-remittance-by-airbnb-in-new-york>. Occupancy taxes range from 3-6% in New York. These partnerships can also help in collecting aggregate data.

Advertising

Local regulations might also need to address how STRs can be advertised in the community. For example will advertising be allowed on-site? Is a registration/permit # required to be posted on all advertisements?

Short-term Rental Regulations

Many communities throughout New York State, including a few in Greene County, have developed some sort of regulation at the local level to address STRs. Many communities are looking to the State for guidance. Below are highlights of the regulations that some communities have put in place, which may be useful to review to determine the best regulatory fit for your community.

Village of Athens

The Village just recently (June 2020) adopted a local Short Term Rental law which requires an annual permit with an annual registration fee. The local law provides separate definitions for a short term rental, a short term rental investment property as well as separately defining a 'lodging facility'.

A 'Standard Short-Term Rental (SSTR): The rental or lease of any dwelling, dwelling unit or other establishment to a Visitor for a period of less than thirty days. This definition specifically excludes hotels, motels, inns, bed and breakfasts, investment properties and commercial wedding or party event venues. SSTRs shall be allowed in all zoning Districts of the Village as defined in the Village of Athens Zoning Law subject to the provisions of this local law.'

A 'Short Term Rental Investment Property: A property that is not occupied by the owner and is primarily used for income generation. Short Term Rental Investment properties shall require a Special Use Permit.'

The maximum occupancy of the rental must be listed on the permit based on the number of conventional bedrooms. There are occupancy limits of a maximum of two persons within each rental unit per night plus an amount not to exceed two persons per bedroom as well as vehicle limit of one vehicle per two occupants. The ordinance incorporates some safety standards and makes the owner responsible for responding to any complaints, requiring action in a timely manner. A local contact person must reside within 20 miles of rental unit.

A violation process is outlined with fines or penalties, issued in accordance with Village Code and applicable State or Federal laws. Three violations in any twenty-four-month period can result in the rental registration certificate being suspended or revoked and can result in an owner being ineligible to apply for a rental registration certificate for three years.

Town of Athens, Greene County

The Town code adopted in 2017 sets up a registration process. If the owner of the unit does not have a primary residence in the county, the owner must provide a designated person responsible for the management and maintenance of the unit. The owner or designated person must be available at all times to handle complaints. The rental registration must be renewed annually which includes a fee.

The ordinance also provides occupancy limits of a maximum of two persons within each rental unit per night plus an amount not to exceed two persons per bedroom as well as vehicle limit of one vehicle per two occupants.

The ordinance defines a short-term residential rental as *“Use of a rental unit by fee-paying guests for the purpose of overnight lodging for a period of eight consecutive days or less, other than ongoing month-to-month or annual tenancy pursuant to a valid lease agreement.”*

The Athens law also provides advertising requirements as well as a fee schedule for violations.

<https://ecode360.com/33820615>

Town of Jewett, Greene County

The Town of Jewett has set up a simple annual registration process that requires the owner or representative to obtain a ‘Registration Certificate’ from the Town Code Enforcement Officer for any property advertised in any fashion including on the internet, for rent for a period less than one month.

<https://townjewett.digitaltowpath.org:10570/content/Laws/View/1>

Village of Rhinebeck, Dutchess County

In Rhinebeck an annual permit, annual inspection and planning board approval is required for short term rentals. The owner of the property of the short term rental must use the property as a primary residence. If a unit is unhosted, there is a requirement that a property manager be available 24 hours a day. There is a cap of 15 short term rental permits annually and there is a limit of 6 guests per 2 bedrooms , a rental limit of 16 days per/year , including a 7 day gap between rentals. There is a prohibition of on-premise advertisements

There is a \$1,000 fine for a first violation of the ordinance. A second violation results in a permit being revoked.

<https://ecode360.com/35551330>

Village of Queensbury, Warren County

The Queensbury law does not require a permit or registration process. Voluntary compliance is up to the owner of the short term rental who can be subject of fines up to \$950 for non-compliance.

This local law incorporates safety standards and requires STR owners to establish written rules that 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. These rules must address the prohibition of the following behaviors: fighting, violence, tumultuous or threatening behavior, unreasonable noise, abusive or obscene language or gestures in public and renter must sign acknowledgement of these rules. Weekly garbage removal during rental periods is required. Occupancy limits are 2 people per bedroom, plus 2 with parking limits based on number of available number of spaces, 1.5 vehicles per bedroom. Overnight on-street parking is prohibited.

Queensbury requires that the rental contact person be provided to adjacent property owners and made available upon demand by law enforcement or code officials and complaints must be addressed within 1 hour of receipt. Responses must be documented and submitted to town within 24 hours.

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