

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

www.dos.state.ny.us/corps

LOCAL LAW FILING

(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 underling to indicate new matter.

FILED
STATE RECORDS

JUL 17 2023

DEPARTMENT OF STATE

~~County~~

~~City~~ of DUNKIRK

Town

~~Village~~

Local Law No. 1 of the year 2023.

A LOCAL LAW to enact a new Article to Town of Dunkirk Zoning Law, Local Law #1 of 1998, for the purpose of regulating Transient and Short-Term Rentals entitled "Short Term Rentals."

Be it enacted by the Town Board of the

~~County~~

~~City~~ of DUNKIRK

Town

~~Village~~

Section 1 – Purpose and Intent

The Town Board of the Town of Dunkirk has determined that short-term rentals can be incompatible with the sense of privacy, community and ambiance currently enjoyed in residential neighborhoods in the Town and has the potential to create significant issues with respect to the public health, safety, and welfare within the Town. The Board also recognizes that short-term rentals can attract visitors to the Town and provide and additional source of income to Town residents. Accordingly, the Board wishes to provide regulations to protect against adverse impacts of this type of use while allowing it under appropriate circumstances.

Section 2 – Authority

This Local Law is adopted pursuant to the provisions of the Municipal Home Rule Law of the State of New York and Article 16 of the Town Law of the State of New York.

Section 3 – Definitions

Dwelling - A building, or portion, designed or used exclusively as the residence or sleeping place of one (1) or more persons. The word dwelling shall not include boarding houses or rooming houses, tourist homes, motels, hotels or other structures designed for transient residence.

Dwelling Unit - One (1) or more rooms designed for occupancy for cooking, living and sleeping purposes.

Dwelling, Single Family - A building containing one (1) dwelling unit and designed or used exclusively for occupancy by one (1) family.

Dwelling, Two Family - A building containing two (2) dwelling units and designed or used exclusively for occupancy by two (2) families living independently of each other or two (2) one family dwellings having a party wall in common.

Dwelling, Multi Family - A building, or portion, containing three (3) or more dwelling units and designed or used for occupancy by three (3) or more families living independently of each other.

Dwelling, Condominium, Row House or Townhouse - A dwelling accommodating or designed to accommodate a single family in a single dwelling unit, the walls on two (2) sides of which may be in common with the walls of adjoining dwellings and are party and/or lot line walls.

Dwelling, Two Family Attached - A building containing dwelling units, each of which has primary ground floor access to the outside and which are attached to each other by party walls without openings. The term is intended primarily for such dwelling types as townhouse, row or group homes.

Dwelling, Semi-detached - A detached building containing two (2) dwelling units separated by a party wall and/or lot line, each having one (1) side yard.

Primary Residence - A dwelling unit in which an owner or lessee resides for a minimum of 6 non-consecutive months of the year.

Short-Term Rental – Any portion of a real property rented for compensation in exchange for lodging for a period of not more than 31 consecutive days. For the purpose of this Chapter, the term “Short-Term Rental” shall not include a bed and breakfast, boarding/lodging house, hotel, motel, or ongoing month to month tenancies. The presence of any of the following shall create a presumption that all or part of a dwelling unit is being used as a short-term rental unless rebutted by evidence presented to the Code Enforcement Officer that the dwelling is not used as such:

- a. All or a part of the dwelling unit is offered for lease on a short-term rental website, including but not limited to Airbnb, Home Away, VRBO and the like for a period of not more than 31 consecutive days; and/or
- b. All or a part of the dwelling unit is offered for lease in any medium for a period of not more than 31 consecutive days.

- c. Rental of all or any portion of a residential structure, including single-family and multi-family dwellings, for a period of less than thirty-one (31) continuous days.

Section 4 – Regulation of Short-Term Rentals

A. Districts permitted. Short-term rentals shall be permitted in the Agriculture/General Residential (AR-1), General Residential (R-2), Tourism Commercial (C-1), and Highway Business (C-2) districts. Short-term rentals are not permitted in (R-1) Single Family Residential.

B. Property Standards:

- a. Dwelling units shall have a valid certificate of occupancy on file with the Town of Dunkirk and shall comply with all requirements of the Town and NYS building, fire, safety, and other such regulations (i.e. Uniform Code), in addition to the following:
 - i. There shall be one working smoke detector in each sleeping room and one additional smoke detector on each floor. Carbon monoxide detectors shall be installed as required by the New York State Uniform Fire Prevention and Building Code.
 - ii. Evacuation procedures must be posted in each sleeping room to be followed in the event of a fire or smoke condition or upon activation of a fire or smoke detecting or other alarm device.
 - iii. There shall be an ABC fire extinguisher on each floor and in the kitchen. Fire extinguishers shall be inspected prior to a renter occupying the property and no less than monthly by the permit holder(s) to ensure each contains a full charge. A record of the date inspected initialed by the permit holder shall be maintained and made available to the Code Enforcement Officer upon request.
 - iv. The house number shall be located both at the road and on the dwelling unit so that the house number is clearly visible from both the road and the driveway.
 - v. Exterior doors shall be operational and all passageways to exterior doors shall be clear and unobstructed.
 - vi. Electrical systems shall be in good operating condition, labeled, unobstructed and shall be visible for the Code Enforcement Officer during the permitting process. Any defects found shall be corrected prior to permit issuance.
 - vii. All fireplaces shall comply with all applicable laws and regulations.

- b. The property shall be maintained and operated so as to preserve and complement the residential appearance of the site and the existing character of the surrounding area. There shall be no change permitted to the residential character of the outside appearance of the building, either by the use of colors, materials, signage, or lighting.
 - c. Parking shall be consistent with the standards set forth in the Zoning Code for the district which the short-term rental is located. Any additional parking requested and approved by the Town of Dunkirk shall not be allowed in front of a principal structure by expanding use of an existing driveway. No overnight on-street parking is permitted.
 - d. The use shall not cause an increase in the use of water, sewage, garbage, public safety or any other municipal services beyond that which is normal for the residences in the neighborhood.
 - e. Water supply and/or septic system at the property must meet all state requirements.
 - f. Said system must have been pumped within the past four years and proof of pumping and satisfactory inspection by a qualified septic disposal firm shall be available to the Code Enforcement Officer. Once a Short-Term Rental permit is issued, the septic system must be pumped at least once every four years.
 - g. In the event that the property has a septic system, the maximum occupancy shall be defined by the capabilities of the septic system, but in no event shall overnight occupancy for any Short-Term Rental Unit exceed twelve (12) people total.
 - h. Maximum occupancy for each Short-Term rental unit shall not exceed two (2) people per bedroom shown on the application and two (2) people per full size convertible sleeping accommodation furniture (i.e. futon, hide-a-bed).
- C. Minimum lot setbacks: Lots upon which short-term rentals are proposed shall have a minimum side yard setback of 25 feet.
- D. Insurance Standards. All applicants and permit holders must provide "Evidence of Property Insurance" and a "Certificate of Liability Insurance" indicating the premises is rated as a Short-Term Rental and maintain such insurance throughout the Term of the Short-Term Rental permit. Said insurance must also be included on the permit.
- E. Rental Contract - All applicants and permit holders must have a rental contract, which includes the following:
- a. Maximum property occupancy;

- b. Maximum on-site parking provided;
- c. Good Neighbor Statement stating:
 - i. The Short-Term Rental is in a residential area in the Town of Dunkirk and renters should be considerate of the residents in neighboring homes.
 - ii. Guests are requested to observe quiet hours from 11:00 p.m. – 7:00 a.m.
 - iii. All renters will be subject to New York Penal Law §240.20 or any successor statute regarding disorderly conduct.
 - iv. Littering is illegal; and
 - v. Recreational campfires must be attended and are subject to the annual Burn Ban as set forth by the NYS DEC.

Section 5 – Required Permit

- A. Owners shall not use their property as a Short-Term Rental without obtaining a revocable Short-Term Rental permit.
- B. A Short-Term Rental Permit shall be valid for one (1) year and must be renewed thirty (30) days prior to expiration of current permit if the premises is to continue to operate as a Short-Term Rental.
- C. The Short-Term Rental permit is not transferable to a new owner. The new owner of the premises subject to a Short-Term Rental permit must file a new permit application.
- D. Notwithstanding the foregoing, those properties with Short-Term Rental commitments existing on the date this section takes effect shall be permitted to honor such existing commitments and continue to make commitments for Short-Term Rentals, but must apply for a permit within 180 days of the Local Law's effective date for all future Short-Term Rental commitments. In the event such application is denied, all commitments shall be cancelled.

Section 6 – Short-Term Rental Permit Application Requirements

- A. Applications for a Short-Term Rental Permit may be obtained from the Town of Dunkirk Code Enforcement Office. Short Term Rental permit shall be submitted to the Code Enforcement Officer, accompanied by payment of a nonrefundable permit fee to be determined from time to time by resolution of the Town Board. The application shall include the following:
 - a. General location of the Short-Term Rental (e.g., whole house, certain portion of a dwelling, an accessory dwelling, etc.)
 - b. The signatures of all owners or their designated agents.

- c. A statement authorizing the Code Enforcement Officer to inspect the property to ensure compliance with all requirements and standards contained within this chapter.
- d. An acknowledgement of present and ongoing compliance with the Short-Term Rental Standards as defined in this chapter.
- e. A list of each property owner and the name of any manager or management agency managing the property, including names, addresses, telephone numbers and email addresses of each.
- f. The name, address, telephone number and email address of a contact person, who shall be responsible and authorized to act on the owners' behalf to promptly remedy any violation of the standards outlined in this Section. The contact person may be an owner, or an agent designated by the owner(s) to serve as a contact person, and shall respond to any correspondence or concern from the Town Code Enforcement Officer within 24 hours.
- g. A statement that none of the owners of the subject property have had a Short-Term Rental permit revoked within the previous year for any rental properties owned individually or together with others.
- h. All completed applications are subject to an approval by the Code Enforcement Officer or designee.

Section 7 – Procedure Upon Filing Application

- A. Short-Term Rental permit applications shall be filed with the Town of Dunkirk Code Enforcement Officer with all supporting documentations and the nonrefundable permit fee. Only completed applications will be accepted by the Town's Code Enforcement Officer. The Code Enforcement Officer may decline to accept an application for consideration for any of the following reasons:
 - a. The application, documentation required by this Section was not included or the full permit fee was not paid.
 - b. A previously issued Short-Term Rental permit was revoked within the past year and defects and/or violations have not been corrected and inspected by the Code Enforcement Officer
- B. Upon receipt of a completed Short-Term Rental permit application, adjacent property owners of the Short-Term rental will be notified of the application by the Town of Dunkirk via mail.
- C. Upon approval of the Short-Term Rental Application by the Code Enforcement Officer, a Short-Term Rental Permit will be issued. Short-Term Rental permits issued pursuant to this Section shall state the following:
 - a. The names, addresses and phone numbers of each person or entity that has an ownership interest in the Short-Term Rental property.

- b. The name, address and phone number of a primary contact person who shall be available during the entire time the Short-Term Rental property is being rented.
- c. The maximum occupancy and vehicle limits for the Short-Term Rental property.
- d. Identification of the number of and location of parking spaces available.
- e. Any conditions imposed by the Zoning Board of Appeals and/or Code Enforcement Officer.

Section 8 – Application for Renewal of Permit

Renewal permits will be granted for an additional one (1) year term if the following conditions are met:

- A. Application for renewal of the Short-Term Rental permit shall be made thirty (30) days prior to the expiration of the current permit and requires payment of renewal fee as set forth by the Town Board.
- B. At the time of application for renewal, the owner or designated agent must present the previous short-term rental permit.
- C. The property must have undergone an inspection performed by the Code Enforcement Officer.
- D. Any violations must be remedied prior to renewal of a permit for Short-Term Rental.

Section 9 – Conformity and Display of Permit

- A. Short-Term Rental permits are subject to continued compliance with the requirements of these regulations.
 - a. If the Code Enforcement Officer or designee has probable cause to believe that the homeowner is not in compliance with the provisions of this Law, the Code Enforcement Officer may request permission from an owner of the Short-Term Rental permit to enter the premises and to conduct an inspection of the Short-Term Rental property for purposes of ensuring compliance with this Section. If the property owner refuses to permit the Code Enforcement Officer to inspect the property, the permit will be revoked. If an inspection authorized herein is conducted, the Code Enforcement Officer shall use the results of such inspection in determining whether to revoke the permit.
 - b. The Short-Term Rental permit, maximum occupancy limit, maximum parking, contact form and standards shall be prominently displayed inside and near the front entrance of the Short-Term rental; and
 - c. The Short-Term Rental permit holder shall ensure that current and accurate information is provided to the Code Enforcement Officer or designee and that they notify the Code Enforcement Officer immediately of any change in the information displayed on the permit. If, based on such changes, the Code Enforcement Officer or designee issues an amended Short-Term Rental permit; the owners must immediately post the amended permit inside and near the front entrance of the Short-Term Rental.
 - d. The Short-Term Rental permit holder must conspicuously display the Short-Term Rental permit number in all advertisements for the applicable Short-Term Rental.

Section 10 – Compliance and Enforcement

A. Owner responsibility.

- a. The owner or local designated contact shall use reasonably prudent business practices to ensure that the occupants and/or guests of a short-term rental property do not create unreasonable noise or disturbances, engage in disorderly conduct or violate any applicable law, ordinance, rule or regulation pertaining to the use and occupancy of the short-term rental property.
- b. The owner or local designated contact shall, upon notification that any transient, occupant or guest of the short-term rental property has created unreasonable noise or disturbances, engaged in disorderly conduct or committed a violation of any applicable law, ordinance, rule or regulation pertaining to the use and occupancy of the short-term rental property, respond in a timely and appropriate manner to immediately halt or prevent reoccurrence of such conduct. Failure of the owner or local contact to respond to such calls or complaints regarding the condition, operation or conduct of the occupants and/or guests of a short-term rental property in a timely and appropriate manner shall be grounds for revocation of the short-term rental permit and shall subject the owner to all administrative, legal and equitable remedies available to the Town.

B. Enforcement. The provisions of local law may be enforced by any police agency, the Code Enforcement Officer, or other officials designated by the Town Board. Upon witness by the Code Enforcement Officer or receiving a written complaint of an alleged violation of this chapter or of any Short-Term Rental permit issued pursuant to this Chapter, the Code Enforcement Officer shall properly record such complaint and immediately investigate the report thereon. If the Code Enforcement Officer determines there is a violation of this code, the owners shall be notified in writing by first class mail and certified return receipt mail of said violations and the Code Enforcement Officer may take any or all of the following actions:

- a. Attach conditions to the existing Short-Term Rental permit.
- b. Suspend the Short-Term Rental permit. The Notice of Suspension shall be provided to the property owner and a copy filed with the Town Clerk.
- c. Require corrective action that remedies the violation(s). The corrective action must be completed and approved within 30 days of Notice from the Code Enforcement Officer or the owner risks revocation of the Short-Term Rental permit.
- d. Issue a court appearance ticket for violation of a Town law.
- e. Revoke the Short-Term Rental permit. Should a permit be revoked, all owners of the Short-Term Rental are prohibited from obtaining a Short-Term Rental permit on the property for one (1) year after the date of revocation. The Code

Enforcement Officer shall send Notices of Revocation to property owners and shall file a copy with the Town Clerk.

- C. Grounds for Suspension or Revocation of Permit. The Code Enforcement Officer may immediately suspend a Short-Term Rental permit based on any of the following grounds:
- a. Applicant has falsified or failed to provide information in the application for a permit or the application for permit renewal.
 - b. Applicant failed to meet or comply with any of the requirements of this Chapter.
 - c. Owner is in violation of any provision of the Code of the Town of Dunkirk.
 - d. Owner has violated any provision of the Penal Code of the State of New York, which violation occurred at, or related to the occupancy of the Short-Term Rental.
 - e. Any conduct on the premises, which disturbs the health, safety, peace or comfort of the neighborhood or which otherwise creates a public nuisance.
 - f. Removal or disrepair of any safety devices such as, but not limited to, smoke and carbon monoxide detectors, fire extinguishers and egresses.
- D. Appeals. The property owner is entitled to appeal the Code Enforcement Officer or Designee's determination in accordance with NYS Town Law section 267-A. An appeal shall be filed with the Town clerk within 60 days of the denial or revocation.
- E. Violations. Any person, firm or corporation who, after revocation or suspension of a Short-Term Rental permit as noted herein, and continues to operate said use shall be subject to a fine of not more than \$250, or to imprisonment for not more than 15 days, or both such fine and imprisonment. The imposition of all penalties for any violation of this Chapter shall not excuse the violation or permit it to continue.

Section 11 – Termination of nonconforming uses

Legal, prior existing, nonconforming, short-term rentals may be continued for a reasonable period of useful life as set forth in this law, provided that after the expiration of that period such nonconforming uses shall terminate in accordance with the provisions set forth herein.

- A. Notwithstanding any other law or provision of the Town of Dunkirk code to the contrary, nonconforming short-term rentals shall terminate automatically within one (1) year of the effective date of this local law.
- B. Upon application and after a public hearing pursuant to Town Law § 267-a(7), the Zoning Board of Appeals may permit a nonconforming short-term rental to continue for up to one (1) year after automatic termination, provided that:
- a. The applicant demonstrates, with financial proof, that he/she made, prior to the nonconformity, substantial financial expenditures related to the nonconformity;

- b. The applicant has not recovered substantially all of the financial expenditures related to the nonconformity;
- c. The applicant will not realize a reasonable rate of return on his/her investment in the property; and
- d. The period for which the nonconforming use is permitted to continue is the minimum period sufficient for the applicant to recover a reasonable amount of its financial expenditures incurred related to the nonconformity.

Section 12 – Severability

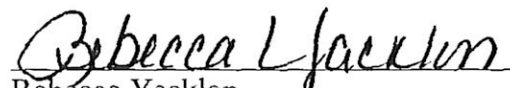
If any part or provision of this local law or the application thereof to any person or circumstance be adjudged invalid by any court or competent jurisdiction, such judgement shall be confined in its operation to the part or provision or application directly involved in which such judgement shall have been rendered and shall not affect or impair the validity of the remainder of this local law or the application thereof to other persons or circumstances, and the Dunkirk Town Board hereby declares that it would have passed this local law or the remainder therefor had such invalid application or invalid provision been apparent.

Section 13 – Effective Date

This Local Law shall become effective upon filing with the Secretary of State of the State of New York subsequent to having been duly adopted by the Dunkirk Town Board.

1. I hereby certify that the local law annexed hereto, designated as local law No. 1 of 2023 of the Town of Dunkirk was duly passed by the Town Board of the Town of Dunkirk on July 7, 2023, in accordance with the applicable provisions of law.

(Seal)


Rebecca Yacklon,
Clerk of the Town of Dunkirk

Date: July 7, 2023