

TOWN OF LEWISTON, NEW YORK

LOCAL LAW No. 2 of 2024

A Local Law Regulating the Use of Transient
or Short-Term Rentals within the Town of Lewiston

The Town of Lewiston Town Board hereby adopts amendments to the Code of the Town of Lewiston, Section 360 – Zoning, as follows:

SECTION 1: Background, Findings, and Authority.

Background. It is the legislative determination of the Town of Lewiston Town Board (“Town Board”) that the unauthorized proliferation of prohibited short-term rentals of non-owner-occupied and owner-occupied properties has resulted in significant negative impacts to the health, safety, and welfare of the residents of the Town of Lewiston (“Town”), and accordingly, Transient or Short-Term Rental uses are and shall be prohibited in the R-1 Districts – One-Family Residence Districts, RRT Districts: Rural Residential Transition Districts, RR Districts: Rural Residential Districts, R-2 Districts, Cluster Developments and Planned Unit Development Districts (collectively referred to herein as “Residential/Agricultural Districts”). Any unauthorized, prohibited, pre-existing non-conforming short-term rental uses including but not limited to Transient or Short-Term Rentals and Bed and Breakfasts in these Residential/Agricultural Districts shall be given a grace period of 30 (thirty) days from the adoption of this local law to cease all non-conforming uses. The Town Board recognizes that, although unauthorized, said non-conforming uses may require time to notify consumers and cancel any pending reservations.

The residential uses permitted as of right in the Residential/Agricultural Districts are one-, two-, and multiple-family dwellings. *See* Zoning Code, Chapter 360, Art. V, Art. VI, Art. VII, Art. VIII, Art. IX and Art. XII. It is specifically acknowledged, that the Town Board, in adopting the existing Zoning Code, intended residential uses in the existing Residential/Agricultural Districts to be owner-occupied.

Findings. New York State has long recognized the difference between transient rentals and longer-term rentals, specifically by classifying transient and non-transient uses differently in the Multiple Dwellings Law. *See* N.Y. MULT. DWELL. LAW §§ 4(8)(a) (McKinney 2012) (“A ‘class A’ multiple dwelling is a multiple dwelling that is occupied for permanent residence purposes.”), 9 (“A ‘class B’ multiple dwelling is a multiple dwelling which is occupied, as a rule, transiently, as the more or less temporary abode of individuals or families who are lodged with or without meals.”). The Town Board finds that it is in the public interest that Transient or Short-term Rentals be prohibited in the Residential/Agricultural Districts due to certain safety concerns with utilizing non-owner-occupied residential structures for Transient or Short-term Rentals. The non-owner-occupied Transient or Short-term Rental use brings with it certain impacts that are best kept away from permanent residential uses, such as: noise, damage to personal and real property, poor upkeep of structures, large gatherings and/or parties, parking issues, debris, garbage left out at the curb for long periods, late night disturbances and other public nuisances and uses of property that are otherwise not permitted by applicable law. Furthermore, based on literature

review and review of other similarly situated jurisdictions, the Town Board recognizes the following significant potential impacts of unregulated short-term rentals on a community.

- A. Housing shortages in local markets impacting home affordability.
- B. Increasing long-term rents resulting from incentivizing short-term rentals.
- C. Short-term rentals contribute to the “hotelization” of residential communities.
- D. Increases in crime.
- E. Negatively impacting a neighborhood’s social organization and often leading to changes in services provided in the community.
- F. Loss of revenue to community businesses resulting from the loss of long-term residents with transient populations.
- G. Neighbors typically become responsible for policing the short-term rental properties in their neighborhood.

The Town Board, however, does recognize the financial opportunities that Transient or Short-term Rentals may provide. As such, Transient or Short-term Rentals shall be permitted within the Village of Lewiston, as regulated under the Village of Lewiston Code, together with the B Districts: Business Districts, RB Rural Business Districts and Traditional Neighborhood Design Districts (hereinafter collectively referred to as the “Business Districts”), with a special use permit. Said special use permit shall be renewed on an annual basis.

Lastly, it is the position of the Town Board that any current use of property as a Transient or Short-Term Rental in the Town is both unauthorized and prohibited anywhere in the Town under current Town Code. Furthermore, it is recognized that New York law permits the Town Board to put a definitive end to nonconforming uses. With an interest in balancing the equities for all affected parties, the Town Board resolves that this law shall not be enforced as against pre-existing unauthorized Transient or Short-term Rentals operating in the Residential/Agricultural Districts until 30 (thirty) days from the adoption of this local law. It is the recognition of the Town Board that, although unauthorized and operating illegally, short term rentals and bed and breakfasts, require a 30 (thirty) day grace period to cancel and refund pending reservations. This grace period does not signify or represent, in any way, an endorsement, authorization or approval of unauthorized, pre-existing, non-conforming short-term rentals and bed and breakfasts or their right to operate in unauthorized districts.

Authority

This Short Term Rental Law is adopted pursuant to New York State Municipal Home Rule section 10(ii)(a)(12) which authorizes the Town of Lewiston (“Lewiston” or the “Town”) to adopt and amend local laws that are not inconsistent with the State Constitution or general law and that are related to the government, protection, order, conduct, safety, health, and well-being of persons or property of the Town. In the alternative, this Short Term Rental Law is adopted pursuant to the Town’s general power to enact local laws relating to the government, protection, order, conduct, safety, health, and well-being of persons or property within a municipality granted directly to local governments by the People of the State of New York through Article IX, Sections 1(a) and 2(c) of the New York State Constitution. The law is also adopted pursuant to the supersession authority granted by New York Municipal Home Rule Law, § 10, Subdivision (1)(ii)(d)(3).

SECTION 2: Zoning Code Amendments

The following are amendments to the Town Zoning Code relating to Transient or Short-Term Rentals and Bed-And-Breakfast Establishments.

“Article I Title and Purpose General Administrative Provisions Section 360-18 (A) Definitions.” of the Town Zoning Code is hereby amended to remove, in its entirety, the following definition:

“TOURIST HOME

A dwelling in which overnight accommodations are provided as offered for transient guests for compensation.”

“Section 360-18 (A) Definitions.” of the Town Zoning Code is hereby amended to include the following additional definitions:

BED-AND-BREAKFAST ESTABLISHMENT

A private, owner-occupied residential dwelling in which a portion of the residential dwelling is provided or offered to tourists or transient guests with overnight accommodations in exchange for compensation, with or without the inclusion of one meal, where said owner of the residential dwelling is present during all periods of overnight accommodations. This use is subordinate and incidental to the main residential use of the dwelling.

BUSINESS DISTRICTS

Business Districts shall include the following zoning districts: B District, RB Rural Business District and Traditional Neighborhood Design District.

DEVELOPMENT DISTRICTS

Development Districts shall be reserved for the Town of Lewiston’s future use.

RESIDENTIAL/AGRICULTURAL DISTRICT

Residential/Agricultural Districts shall include the following zoning districts: R-1 Districts - One-Family Residence Districts; RRT Districts: Rural Residential Transition Districts; RR Districts: Rural Residential Districts; R-2 Districts; Cluster Developments and Planned Unit.

TOURISTS OR TRANSIENTS

Individuals occupying a dwelling unit or sleeping unit for less than thirty (30) continuous days.

TRANSIENT OCCUPANCY

Living and/or sleeping accommodation provided for compensation for any period of less than thirty (30) consecutive calendar days. Hotels, motels, and transient short-term rentals shall individually and collectively be considered types of transient occupancies.

TRANSIENT or SHORT-TERM RENTAL

A dwelling or dwelling unit used for transient occupancy; where the record owner of the premises is not physically present upon the premises during the transient occupancy, and whether or not meals or cooking facilities are provided for the guests, boarders or tenants, but excluding hotel and motel uses.

Article I (Title and Purpose; General Administrative Powers), 360-14 shall be amended to add the following:

- F. Moreover, the Town of Lewiston Town Board may authorize the commencement of an action in any court of competent jurisdiction to enforce any provision of this Article. Any such enforcement action shall be in addition to, and not in lieu of, any other enforcement mechanism available to the Town, at law or equity.

- G. Notwithstanding the foregoing, any violation of Town of Lewiston, New York Local Law No. 1 of 2024 (“A Local Law Regulating the Use of Transient Or Short-Term Rentals within the Town Of Lewiston the Town of Lewiston”) by any property owner operating a Bed and Breakfast and/or Short-Term Rental with a Special Use Permit shall be punishable by:
 - a. **First Violation:** a fine of no less than \$100 and no more than \$150 per week.
 - b. **Second Violation:** any violation which occurs within three (3) years of the first violation, a fine of no less than \$300 and no more than \$500 per week.
 - c. **Third Violation:** any violation which occurs within three (3) years of the second violation, a fine of no less than \$1,000 and no more than \$2,000 per week.
 - d. **Willful and Persistent:** any violation which occurs within three (3) years of the third violation, a fine of no less than \$5,000 per week and shall subject the property owner to an immediate loss of Special Use Permit. A determination of willful and persistent behavior and potential forfeiture of a Special Use Permit shall result from a majority vote of the Town Board of the Town of Lewiston after receiving an informal application to be heard from the Office of the Building Inspector. Any property owner found to be a willful and persistent violator under this section shall forfeit any and all Special Use Permits held in the property owner’s name for the purpose of operating either a Bed and Breakfast and/or a Short-Term Rental in the Town of Lewiston for a period of ten (10) years.
 - e. This fine schedule shall be independently enforced for each residence covered under this section.

- H. Any violation of Town of Lewiston, New York Local Law No. 1 of 2024 (“A Local Law Regulating the Use of Transient Or Short-Term Rentals within the Town Of Lewiston the Town of Lewiston”) by any property owner and/or agent operating a Bed and Breakfast or Short-Term Rental without a Special Use Permit and in violation of this local law shall be punishable by the following:
 - a. **First Violation:** a fine of no less than \$500 and no more than \$1,000 per week.
 - b. **Second Violation:** any violation which occurs within three (3) years of the first violation, a fine of no less than \$1,000 and no more than \$1,500 per week.
 - c. **Third Violation:** any violation which occurs within three (3) years of the second violation, a fine of no less than \$3,000 and no more than \$5,000 per week.

- d. **Willful and Persistent:** any violation which occurs within three (3) years of the third violation, a fine of no less than \$10,000 per week. A determination of willful and persistent behavior shall result from a majority vote of the Town Board of the Town of Lewiston after receiving an informal application to be heard from the Office of the Building Inspector. Any property owner found to be a willful and persistent violator under this section shall forfeit any and all previously issued Special Use Permits held in the property owner's name for the purpose of operating either a Bed and Breakfast and/or a Short-Term Rental in the Town of Lewiston for a period of ten (10) years.
- e. This fine schedule shall be independently enforced for each residence covered under this section.

- I. The Town of Lewiston reserves the right and may authorize the filing of a municipal lien on non-compliant properties for the non-payment of fines.

“Section 360-41 Article VI – RRT Districts: Rural Residential Transition Districts §360-41” shall be removed in its entirety and substituted by the following:

“§360-41 Uses Permitted.

Permitted uses shall be as follows:

- A. One-family detached dwellings.
- B. Places of worship.
- C. Parish houses or convents.
- D. Community facilities, public parks, playgrounds and recreation areas.
- E. Schools.
- F. Colleges and universities.
- G. Governmental buildings owned and operated by a federal, state, county or other municipal government, governmental agency or public utility.
- H. Customary agricultural operations, including truck gardening, nurseries or greenhouses, now in lawful existence.
- I. Private stables, provided that the parcel is a minimum of 10 acres in size.”

“Section 360-42 Article VI – RRT Districts: Rural Residential Transition Districts §360-42” shall be removed in its entirety and substituted by the following:

“§360-42 Uses Permitted with Special Use Permit.

The following shall be permitted within RRT Districts only after submission of a special use permit application in accordance with § 360-132 and approval is received from the Planning Board.

- A. Private stables on lots from five to 10 acres in size.
- B. Roadside stands for the sale of farm products on properties that are not active farms.
- C. Cluster development, subject to Article IX of the Code of the Town of Lewiston.

- D. Bed-and-breakfast establishments.
- E. Forestry and conservation uses, activities and structures.”

“Section 360-55 Article VIII – R-2 Districts: §360-55” shall be removed in its entirety and substituted by the following:

“§360-55 Uses Permitted.

Permitted uses shall be as follows:

- A. One-family detached dwellings.
- B. Two-family dwellings.
- C. Places of worship.
- D. Community facilities, public parks, playgrounds and recreation areas.
- E. Schools.
- F. Colleges and universities.
- G. Government buildings owned and operated by a federal, state, county or other municipal government, governmental agency or public utility.”

“Section 360-71 Article X – B Districts: Business Districts: §360-71” shall be removed in its entirety and substituted by the following:

“§360-71 Uses Permitted by Special Permit.

Permitted uses shall be as follows:

- A. Gasoline service stations.
- B. New and used automotive sales and service establishments.
- C. Small animal hospitals or veterinary clinics.
- D. Lumber and building supply companies.
- E. Child-care centers and nursery schools.
- F. Commercial car washes.
- G. Machine and tool sales, rental and service establishments.
- H. Commercial recreation facilities.
- I. Drive-through establishments.
- J. Multifamily dwellings.
- K. Outdoor seating for restaurants.
- L. Bed-And-Breakfast Establishments.
- M. Transient or Short-Term Rentals.”

“Section 360-81 Article XI – RB Districts: Rural Business Districts: §360-81(A)” shall be removed in its entirety and substituted by the following:

“§360-81(A) The following uses are permitted in accordance with the Town's special use permit requirement as specified in Article XXI of this chapter:

- (1) Child-care centers and nursery schools.
- (2) Small animal hospitals and veterinary clinics.
- (3) Multifamily dwellings.
- (4) Outdoor seating for restaurants.

- (5) Other uses, not listed as permitted and not expressly prohibited that are compatible with the intent of the RB District.
- (6) Bed-And-Breakfast Establishments.
- (7) Transient or Short-Term Rentals.”

“Section 360-89 Article XII – Traditional Neighborhood Design Districts: §360-89” shall be removed in its entirety and substituted by the following:

“§360-89 Uses permitted with a Special Use Permit.:

The following uses are permitted in accordance with the Town's special use permit requirements:

- A. Small animal hospitals or veterinary clinics.
- B. Child-care centers and nursery schools.
- C. Bed-and-breakfast establishments.
- D. Multifamily dwellings.
- E. Outdoor seating for restaurants.
- F. Transient or Short-Term Rentals.”

“Section 360 Article XXI Special Use Permits §360-135” shall be removed in its entirety and substituted by the following:

“§360-135 Bed-And-Breakfast Establishments and Transient or Short-Term Rentals

A. Bed-And-Breakfast Establishments

- a. No special use permit for a Bed-And-Breakfast Establishment shall be authorized unless the applicant's project meets the following requirements:
 - i. The applicant shall be the fee title owner and full-time resident of the premises, and the Bed-And-Breakfast use shall be subordinate and incidental to the residential use of the structure. Parameters for establishing full-time residential status and ultimate determination of said full-time residential status shall be established and published by the Office of the Building Inspector, to be determined in its sole discretion.
 - ii. All guest rooms shall be contained within the principal structure and limited to the first and second floors of said structure. No attic or basement lodgings shall be authorized.
 - iii. Guest stays shall be no fewer than two (2) nights and no longer than thirty (30) days.
 - iv. No external modifications of the structure shall be allowed in conjunction with the creation of a Bed-And-Breakfast.
 - v. No visible evidence of the conduct of the Bed-And-Breakfast Establishment shall be present.
 - vi. The architectural integrity and arrangement of interior spaces must be maintained and the number of guest rooms shall not be increased, except as required to meet health, safety and sanitation requirements.
 - vii. If rooms are individually rented, each room must have a locked entry.
 - viii. Guest room living quarters shall not constitute a separate dwelling unit and shall not be leased or rented as such.

- ix. No cooking or cooking facilities shall be permitted in individual guest rooms.
- x. Operational smoke detectors and carbon monoxide detectors shall be installed in each guest room and in adjacent hallways and corridors. All emergency exits shall be obvious and clearly identified.
 - 1. Each bedroom shall have a fire extinguisher and if located on the second floor, an escape ladder.
- xi. Outside activities shall not be permitted by guests where it will create a nuisance or in any way alter the character of the neighborhood. All outdoor activities shall be constrained to the hours of 8:00 a.m. to 10:00 p.m.
- xii. Off-street parking for guests shall be provided. All off-street parking shall be regulated in accordance with Section § 360-200 of the Town Code.
- xiii. Guest Rules shall be posted and provided in a binder and shall, at a minimum, include quiet hours, parking, garbage disposal requirements, check-in/out times, Emergency Escape Plan and emergency contact numbers.
- xiv. All Bed and Breakfast special use permit application packets shall include, at a minimum, the following:
 - 1. Application for Special Use Permit.
 - 2. Copy of Proof of Payment of application fee.
 - 3. Map of interior building layout denoting all designated living/sleeping/cooking/bathroom spaces.
 - 4. Copy of Emergency Escape Plan.
 - 5. Map of exterior with designating guest parking.
 - 6. Copy of Guest Rules.
- xv. The title owner and full-time resident must allow the Town of Lewiston Building Inspector access to the property to conduct a visual inspection prior to the public hearing and prior to the Town of Lewiston Town Board approval.
- xvi. The special use permit shall be issued only after a public hearing before the Town of Lewiston Town Board and upon the determination that the proposed use is in compliance with the conditions and limitations of this section.
- xvii. The special use permit shall be valid for a period of one year from the date of issuance and shall be renewed for an annual fee as established by resolution of the Town of Lewiston Town Board.
- xviii. A certificate of occupancy shall be issued by the Building Inspector only after it has been determined that the structure meets the current New York State Uniform Building and Fire Prevention Code, and after the special use permit has been issued by the Town Board.
- xix. The Building Inspector and/or agents have the right to spot inspections and/or re-inspection of all permitted Bed and Breakfasts.
- xx. Noncompliance with any condition and/or limitations set forth in this section or in the special use permit itself shall subject the special use permit holder to a suspension and/or revocation of said special use permit, after an appropriate public hearing on the subject, by a majority vote of the Town of Lewiston Town Board after receiving a referral or recommendation from the Office of the Building Inspector.

B. Transient or Short-Term Rentals

- a. Not permitted in Residential/Agricultural Districts.
- b. No special use permit for a Transient or Short-Term Rental shall be authorized unless the applicant's project meets the following requirements:
 - i. Residential/Agricultural Districts.
 - 1. No Transient or Short-Term Rentals shall be permitted in the Residential/Agricultural Districts within the Town.
 - ii. Business Districts/Rural Business District/Transient Neighborhood District.
 - 1. New Transient or Short-term Rentals are permitted, subject to obtaining a special use permit and site plan approval from the Town Board, after review and recommendation by the Planning Board.
 - 2. The applicant shall be the fee title owner of the premises.
 - 3. Only one housing unit per property may be utilized as a short-term rental.
 - 4. All guest rooms shall be contained within the principal structure (no sheds, garages, outbuildings, campers/trailers, guest houses, etc.) and limited to the first and second floors of said structure. No attic or basement lodgings shall be authorized.
 - 5. Guest stays shall be no fewer than two (2) nights and no longer than thirty (30) days.
 - 6. No visible evidence of the conduct of the Transient or Short-Term Rental shall be present.
 - 7. The architectural integrity and arrangement of interior spaces of the premises at issue must be maintained and the number of guest rooms shall not be increased, except as required to meet health, safety and sanitation requirements.
 - 8. No more than four (4) bedrooms shall be rented/occupied individually. For example, a six (6) bedroom house may only rent four (4) individual bedrooms at a time.
 - 9. Guest room living quarters shall not constitute a separate dwelling unit and shall not be leased or rented as such.
 - 10. No cooking or cooking facilities shall be permitted in individual guest rooms.
 - 11. Operational smoke detectors and carbon monoxide detectors shall be installed in each guest room and in adjacent hallways and corridors. All emergency exits shall be obvious and clearly identified.
 - a. Each bedroom shall have a fire extinguisher and if located on the second floor, an escape ladder.
 - 12. Outside activities shall not be permitted by guests which will create a public nuisance or in any way alter the character of the neighborhood. All outdoor activities shall be constrained to the hours of 8:00 a.m. to 10:00 p.m.
 - 13. Off-street parking for guests shall be provided. All off-street parking shall be regulated in accordance with Section § 360-200 of the Town Code.
 - 14. All transient or Short-Term Rental special use permit application packets shall include, at a minimum, the following:
 - a. Application for Special Use Permit as written by the Lewiston Building Department and adopted by the Town of Lewiston.

- b. Copy of Proof of Payment of application fee.
 - c. Map of interior building layout denoting all designated living/sleeping/cooking/bathroom spaces.
 - d. Copy of Emergency Escape Plan.
 - e. Map of exterior with designating guest parking.
 - f. Copy of posted Guest Rules.
15. The title owner and/or agent must allow the Town of Lewiston Building Inspector access to the property to conduct a visual inspection prior to the public hearing before the Town of Lewiston Town Board.
 16. The special use permit shall be issued only after a public hearing before the Town of Lewiston Town Board and upon the determination that the proposed use is in compliance with the conditions and limitations of this section.
 17. A Certificate of Occupancy shall be issued by the Building Inspector only after it has been determined that the structure meets the current New York State Uniform Building and Fire Prevention Code, and after the special use permit has been issued by the Town Board.
 18. The Building Inspector and/or agents have the right to spot inspections and/or re-inspection of all permitted Transient and/or Short-Term Rentals.
 19. Noncompliance with any condition and/or limitations set forth in this section or in the special use permit itself shall subject the special use permit holder to a suspension and/or revocation of said special use permit, after an appropriate public hearing on the subject, by a majority vote of the Town of Lewiston Town Board after receiving a referral or recommendation from the Office of the Building Inspector.
- iii. The special use permit shall be valid for a period of one year from the date of issuance and shall be renewed for an annual fee as established by resolution of the Town of Lewiston Town Board in its published fee schedules.
- c. No person or agent shall either offer or book reservations for any dwelling subject to this Law unless the dwelling has a valid Special Use Permit. Bookings and/or reservations are only permitted during the life of the issued Special Use Permit.

C. Exempted Uses

- a. The regulation of Bed-And-Breakfast Establishments and/or Transient or Short-Term Rentals under this section shall not apply to the short-term rental of residences and/or rooms appurtenant to the operation of "Parish Houses or Convents" and/or "Colleges and Universities" as contemplated under §360-32, §360-41, §360-49, §360-50 and §360-55.

D. Penalties for offenses; additional remedies; violations of special permit regulations.

All Special Use Permits granted under this section are specifically subject to the penalties and remedies contemplated under §360-14 hereof." Moreover, the Town of Lewiston Town Council may authorize the commencement of an action in Supreme Court, Niagara County, to enforce any provision of this Article. Any such enforcement action shall be in addition to, and not in lieu of, any other enforcement mechanism available at law or equity."

Article XXI (Special Use Permits) Section 360-133 shall be amended as follows:

SECTION 3: Severability.

If any provisions of this local law are for any reason held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the local law shall remain in effect. Such decision shall not affect the remainder of this local law.

SECTION 4: Effective Date.

This local law shall be effective immediately upon filing with the office of the New York Secretary of State.