

TOWN OF KENDALL, NEW YORK

Local Law No. 2 of 2023

A Local Law Regulating the Issuance of Licenses for Transient or Short-Term Rentals Within The Town Of Kendall

Be it hereby enacted by the Town Board of the Town of Kendall as follows:

SECTION 1: Purpose, Intent, and Findings.

Background. It was legislatively determined by the Town of Kendall Town Board (“Town Board”) via passage of Local Law No. 1 of 2023 that the proliferation of Transient or Short-Term Rentals in the Waterfront Residential (“WR”) and Waterfront Development (“WD”) Districts (together, “Waterfront Districts”) has presented negative impacts to the health, safety, and welfare of the Town of Kendall (“Town”). As a result, the Town Board has prohibited such uses in the Waterfront Districts not in existence prior to the effective date of Local Law No. 1 of 2023 (“Effective Date”) and has required all owners and/or operators of Transient or Short-Term Rentals in the Waterfront Districts operating before the Effective Date (“Preexisting Transient or Short-Term Rentals”) to apply for and obtain a license pursuant to this Local Law within 120 days of the Effective Date. The Town Board has also required owners and/or operators of new Transient or Short-Term Rentals in all other residential districts in the Town to obtain a license pursuant to this Local Law as well as special use and site plan approval from the Town of Kendall Planning Board (“Planning Board”) pursuant to Chapter 265 of the Town of Kendall Zoning Code (“Zoning Code”). Lastly, the Town Board has required owners and/or operators of Preexisting Transient or Short-Term Rentals in all other residential districts in the Town to obtain a license pursuant to this Local Law as well. These restrictions and requirements shall not apply to Bed-and-Breakfasts, as defined in the Zoning Code, that have received a special use permit from the Planning Board pursuant to Section 265-69 of the Zoning Code.

Findings. The Town Board finds that it is in the public interest that new Transient or Short-Term Rentals be prohibited in the Waterfront Districts due to certain impacts to the health, safety, and welfare of the Town’s residents from utilizing typical residential structures for Transient or Short-Term Rentals. Transient or Short-Term Rental uses present certain impacts that are best kept away from permanent residential and commercial uses, such as: noise, damage to personal and real property, poor upkeep of structures, large gatherings and/or parties, debris, late night activities, and use of property in a manner that is not permitted by applicable law. These impacts are also experienced at unpredictable intervals given the intermittent nature of Transient or Short-Term Rental use. The Town Board has seen evidence of these effects. The Town Board has also found that proximity of these uses to the lake has presented additional concerns regarding water safety, flooding, and contamination that are not being observed in other districts.

However, the Town Board also finds that current owners of Preexisting Transient or Short-Term Rentals may contend that they are pre-existing, legal nonconforming uses and may continue regardless of any change to the local law. For that reason, and because of the critical public interest involved with this issue, the Town Board determines that owners of Preexisting Transient or Short-Term Rentals in the Waterfront Districts may continue operation upon receipt of a license issued pursuant to this Local Law. The Town Board determines to allow Preexisting Transient or Short-Term Rentals with a license, but to prohibit such use if it is discontinued for a period of six months. This adequately balances protection of the Town from the concerns identified by the Town Board, with the potential impacts to owners of Preexisting Transient or Short-Term Rentals as a result of eliminating the use entirely.

The Town Board also determines that owners/operators of new and Preexisting Transient or Short-Term Rentals in all other residential districts must also obtain licenses issued pursuant to this Local Law in order to operate in the Town.

SECTION 2. Chapter 235, Transient or Short-Term Rentals, is hereby added to the Town Code of the Town of Kendall, to read in its entirety as follows:

Article I: General Provisions

Section 235-1. Title.

This chapter shall be referred to as the “Transient or Short-Term Rental Licensing Law.”

Section 235-2. Authority.

The Town Board has the power and authority pursuant to Municipal Home Rule Law § 10 and Town Law §§ 136 and 137 to require and issue licenses for the operation of Transient or Short-Term Rentals in the Town within the limits of this Local Law.

Section 235-3. Purpose.

The purpose of this chapter is to provide for the licensing of permitted Transient or Short-Term Rentals within the Town by establishing requirements for obtaining such licenses and creating a fee structure for such licenses.

Section 235-4. Application.

This chapter shall apply to property located within the Town and used for Transient or Short-Term Rental use.

Article II: Terminology

Section 235-5. Definitions.

Preexisting Transient or Short-Term Rentals. A Transient or Short-Term Rental that was in operation before the effective date of Local Law No. 1 of 2023 and which has received a license to continue operation from the Town Clerk pursuant to this chapter.

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

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

Transient or Short-Term Rental. A dwelling or dwelling unit, including associated appurtenant facilities, used for transient occupancy by one or more guests, boarders or tenants, 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 motel, hotel, and bed-and-breakfast uses.

Article III: General Procedures for Licensure of Transient or Short-Term Rentals.

Section 235-6: License Required.

- A. A Transient or Short-Term Rental is classified as a use requiring a license because of the potentially unpredictable intensity of use and resulting conflicts with other adjoining and nearby uses.

- B. No person, firm, or entity shall own, operate, or manage a new or Preexisting Transient or Short-Term Rental in the Town and no person, firm, or entity shall permit the operation of a new or Preexisting Transient or Short-Term Rental on premises owned by him, her, or it, without a duly issued license from the Town Clerk to operate such a use (“Short-term Rental License” or “STR License”). All Transient or Short-Term Rentals shall be required to obtain an STR License annually from the Town Clerk, the original or copy of which shall be prominently displayed in a front window of the subject residence in such manner so that it is clearly visible from the public sidewalk, or from the street if there is no sidewalk. STR Licenses issued for Transient or Short-Term Rentals shall be valid for one year and shall be renewed annually.

Section 235-7: License Application.

- A. Application for an STR License.
 - (1) Procedure. All owners or operators of Preexisting Transient or Short-Term Rentals shall submit an application to the Town Code Enforcement Officer for an STR License no later than 120 days from the Effective Date. All owners or operators of new Transient or Short-Term Rentals proposed to be located in a residential district other than the Waterfront Districts shall also submit an application to the Town Code Enforcement Officer for an STR License before operation. Once the application for a license to operate a new or Preexisting Transient or Short-Term Rental is submitted, the applicant shall schedule with the Town Code Enforcement Officer the necessary inspection of the Transient or Short-Term Rental not less than 60 days prior to the effective date of the STR License.
 - (a) Following review of a timely application and inspection, and upon a finding of full and proper compliance with all provisions of this chapter, and all other relevant provisions of the Town Code, the Town Code Enforcement Officer shall recommend approval of the STR License application by the Town Clerk. The Town Clerk shall thereafter issue an STR License to the applicant.
 - (b) However, upon a finding of violation(s) of this chapter or other relevant provision of the Town Code, the Town Code Enforcement Officer shall recommend denial of the STR License application to the Town Clerk. Thereafter, the Town Clerk shall submit the application to the Town Board for a final determination on the application, which must be in writing,

following notice to the applicant, and giving the applicant an opportunity to be heard.

B. Application for an STR License renewal.

- (1) An application for an STR License renewal shall be submitted to the Town Code Enforcement Officer not less than ninety (90) days prior to the expiration date of the STR License. Once submitted, the applicant shall also schedule with the Town Code Enforcement Officer the necessary inspection of the Transient or Short-Term Rental not less than 60 days prior to the effective date of the STR License. Failure to comply with this provision may result in a delay of operation of the use.
 - (a) Following review of a timely renewal application and inspection, and upon a finding of full and proper compliance with all provisions of this chapter, and all other relevant provisions of the Town Code, the Town Code Enforcement Officer shall recommend approval of the STR License renewal application by the Town Clerk. The Town Clerk shall thereafter issue an STR License renewal to the applicant.
 - (b) However, upon a finding of violation(s) of this chapter or other relevant provision of the Town Code, the Town Code Enforcement Officer shall recommend revocation of the STR License pursuant to Section 235-8(B), below.

C. All applications for an STR License shall include the following information:

- (1) Current and accurate site plan of the premises (as approved by the Town Board), showing all property lines, building lines, driveways, sidewalks, parking spaces, garbage and recycling storage areas, and any outbuildings and outdoor gathering areas such as patios and decks;
- (2) Floor plans, as determined adequate by the Town Board and which need not be prepared by a licensed design professional, for each building floor level containing space for Transient use, which specifically depict all room sizes and locations, common areas, exits and other facilities;
- (3) A copy of the recorded deed showing all current owners of the premises, and a list of the names, addresses, phone numbers, and e-mail addresses of all property owners and managers of the Transient or Short-Term Rental;
- (4) The number of permanent residents, if any, and the number of Transients proposed to reside on the premises (as authorized per the conditions of the license granted by the Town), including the number assigned to each bedroom shown on the building floor plans;
- (5) The number of available parking spaces for Transient use shown on the site plan as well as the number of vehicles belonging to the owners/permanent residents proposed to be parked on the premises during periods of Transient use;
- (6) If applicable, documentary proof of operation as a Preexisting Transient or Short-Term Rental dated before the Effective Date, which may include, but is not

limited to, a copy of the Orleans County occupancy tax certificate for the premises, proof of website hosting of the property, proof of earnings from operation of the Transient or Short-Term Rental on the property, the adequacy of which shall be subject to Town approval;

- (7) A copy of the house rules provided to all Transients at the time of rental and proof that such house rules are posted on the premises; and
 - (8) Such other information as the Town Code Enforcement Officer may reasonably require for the premises in question.
 - (9) All applications for an STR License or STR License renewal shall be signed by all record owners of the premises. The application shall include an accurate list of all property owners within 150 feet of the subject premises as indicated on the most recent real property tax assessment roll, including their addresses and phone numbers, and accompanied by a statement that all such owners have been provided a copy of the application.
- D. Each signatory to the application for an STR License or renewal shall swear or affirm to the truth and accuracy of the information contained in the application.
- E. Upon submission of an STR License application and or renewal application, the applicant shall be required to pay a license administration fee to the Town in the amount of \$1,000, which may be modified from time to time by resolution of the Town Board.
- F. Inspections. All Transient or Short-Term Rentals seeking an STR License or STR License renewal shall be physically inspected by the Town Code Enforcement Officer, or his or her designee, for proper maintenance of the premises, and for general code compliance prior to issuance of an STR License or STR License renewal, in accordance with this chapter.

Section 235-8: License Denial or Revocation.

- A. Grounds for denial or revocation of license. Any Transient or Short-Term Rental that is not in compliance with the requirements of this chapter, or any other applicable laws or standards, shall not be granted an STR License, and, in the event an STR License has been issued, such license shall be subject to revocation, as herein provided, and the owner(s)/operator(s) of the Transient or Short-Term Rental shall be subject to such other penalties and/or remedies as may be applicable. The existence of any of the following conditions and circumstances shall be deemed violations:
- (1) Indications of improper maintenance or operation of the property and/or failure to maintain and keep the premises consistent with the character of the neighborhood and in a healthy, safe, and sanitary condition, which shall include, but not be limited to:

- (a) Exposed garbage or litter on the premises, the placing of trash containers at curbside more than 18 hours prior to pickup, and/or failure to return emptied trash containers to their storage location on the day of pickup;
- (b) Failure to maintain the buildings and grounds in a neat and orderly fashion, including painting and maintenance of exterior surfaces and windows and maintaining and trimming of grass and other vegetation;
- (c) Parking of vehicles on or about the premises in undesignated and/or unapproved parking areas, such as on the lawn;
- (d) The occurrence of parties or other gatherings of individuals upon the premises wherein the number of persons gathered upon the premises exceeds the number of persons authorized to be at the premises under the terms of the license;
- (e) Failure to adhere to quiet hour restrictions between 10:00 pm and 8:00 am;
- (f) The occurrence of excessive noise and/or other nuisances at any time;
- (g) Improper use of accessory structures for Transient or Short-Term Rental use;
- (h) The occurrence of Transients trespassing on other properties. The owner of the Transient or Short-Term Rental shall provide clear definition of property boundaries and state the requirement that Transients are to not trespass on other properties; and
- (i) Failure to adhere to any other provisions of the laws of the Town of Kendall.

(2) The occurrence of any acts, incidents, or events upon the premises that constitute violations of any provision of this chapter, or any other provision of the Town Code and/or the New York State Penal Law.

(3) The conviction upon any formal charges as described in Subsection A(2) shall be prima facie evidence of improper operation of a Transient or Short-Term Rental, and shall constitute grounds for immediate revocation of an STR License, as well as for automatic denial of an STR License renewal application.

B. Procedure for Revocation. Upon determining that the owner or operator of a Transient or Short-Term Rental has committed two or more of the above offending conditions at any time during operation of the Transient or Short-Term Rental, the Town Code Enforcement Officer shall recommend to the Town Board revocation of the STR License relating to the offending Transient or Short-Term Rental. Following such recommendation, the Town Board shall cause the holder of the STR License (“STR Licensee”) to be served with written notice of the offending conditions identified by the Town Code Enforcement Officer and the date and time for a hearing which shall be held by the Town Board to consider revocation of the STR License. Following the public hearing, the Town Board shall issue its determination on revocation of the STR License by resolution.

Article IV: Standards.

Section 235-9: General Standards for Transient or Short-Term Rentals.

All new and Preexisting Transient or Short-Term Rentals operating under an STR License issued pursuant to this chapter shall abide by the following standards:

- A. The maximum number of persons permitted to occupy any Transient or Short-Term Rental shall be two persons per sleeping room, with an overall maximum of eight persons, subject to available parking, in compliance with all applicable provisions of the New York State Uniform Fire Prevention and Building Code (“Building Code”). The Town Code Enforcement Officer may determine a lower maximum occupancy limit is needed if he or she determines that the number of parking spaces appropriately devoted to the use is insufficient to support the number of intended occupants without adversely affecting adjoining property owners and/or the surrounding neighborhood.
- B. No recreational vehicles, campers, trailers, or motor vehicles larger than a one-ton pickup truck, other than trailers for boats or jet skis to be launched at nearby ramps, may be parked upon the premises during any Transient Occupancy. The number of automobiles, light duty (pickup) trucks, and/or boat and jet ski trailers that may be parked onsite in association with any Transient Occupancy shall be limited to the number of off-street parking spaces designated on the site plan approved by the Planning Board, if applicable. No vehicles may be parked on lawns or in other areas not specifically approved as parking spaces under the provisions of this chapter.
- C. No Transient or Short-Term Rental shall be located above the second floor of any building unless such floor has a fire sprinkler system or has been otherwise constructed in accordance with requirements of the Building Code for residential occupancy of such floors. All Transients must reside in the structure which received the STR License issued by the Town Clerk. Accessory structures and/or vehicles of any type shall not be used for Transient Occupancy.
- D. Each sleeping room within a Transient or Short-Term Rental shall have affixed to the occupied side of the entrance door to the sleeping room a written notice stating the means of egress from the room in case of fire or other emergency, the location of means for transmitting fire alarms, if any, and the evacuation procedures 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.
- E. Dwellings and/or dwelling units used as a Transient or Short-Term Rental shall have no exterior commercial signage or other indication of such use. The dwelling and/or dwelling unit used as a Transient or Short-Term Rental shall, from all exterior indications, be indistinguishable from any conventional dwelling.

- F. All Transient or Short-Term Rental uses shall be limited to the temporary lodging of registered guests (*i.e.*, Transients), and no commercial activities or public or private parties, receptions, meetings, or similar social gatherings or events shall be permitted. Transient Occupancy shall be limited to the number of persons permitted under the STR License issued by the Town Clerk, and the operator of the Preexisting Transient or Short-Term Rental shall maintain a register of all Transients staying at the facility, their permanent addresses, and the dates of their stay. This register shall immediately be made available to the Town Code Enforcement Officer and/or Sheriff Department as part of any Town investigation of complaints regarding the behavior of any Transients or to determine compliance with requirements of an STR License issued for the premises.
- G. Owners/operators of Transient or Short-Term Rentals shall reside in such proximity to the subject premise so as to permit him or her at all days and times to physically be at the subject premise within a reasonable time, but not more than 30 minutes, of acknowledging receipt of a complaint relating to the premises. If the owner of the Transient or Short-Term Rental is unable to meet this requirement themselves, such owner shall have a designated property manager who resides in such proximity to the premises as required herein. If a property manager is so employed, the current contact information for this person(s) shall be kept on file with the Town Code Enforcement Officer and Town Clerk at all times.
- H. Owners/operators of Transient or Short-Term Rentals must at all times be current in the payment of all real property taxes and special assessments, and shall be responsible for complying with other applicable legal and regulatory requirements, including, but not limited to, compliance with New York State building, property maintenance, and safety codes and registration and collection of state and local sales taxes and county occupancy taxes. If available, applicants may register to have applicable taxes and fees collected and remitted by an online host platform.
- I. Owners/operators of Transient or Short-Term Rentals shall provide to the Town proof of general liability insurance against claims for personal injury, death, or property damage occurring on, in, or about the subject premises in an amount not less than \$3,000,000 with respect to personal injury or death, and in an amount of not less than \$300,000 with respect to property damage, which may be modified from time to time by resolution of the Town Board.
- J. Septic systems. If a Transient or Short-Term Rental is located on property that is not on a central sewer system, the applicant for an STR License or STR License renewal shall provide the location, approximate age, and capacity of the sewage system servicing the property at issue to the Town Clerk for approval by the Town Code Enforcement Officer. The applicant shall also submit satisfactory proof that the septic system is in good working order and has been pumped within the past three years, the adequacy of which shall be subject to Town approval. The owner of the Transient or Short-Term Rental, or

the owner of the property if not the owner of the Transient or Short-Term Rental, shall maintain the property's septic system on an inspection and pumping schedule of not more than once every three years, and the owner of the Transient or Short-Term Rental shall provide the Town Clerk with satisfactory proof of compliance with this provision upon its request, or at the time an application for an STR License renewal is submitted.

Article V: Violations and enforcement.

Section 235-10:

- A. The Town Code Enforcement Officer is hereby authorized to issue appearance tickets, summonses, or other similar notices of violations to STR Licensees in the event the Town Code Enforcement Officer determines the existence of violations of this chapter or any other provision of the Town Code relevant to the Transient or Short-Term Rental.
- B. As noted above in Section 235-8(B), if the Town Code Enforcement Officer recommends revocation of an STR License, the holder of the STR Licensee shall be served with written notice of the offending conditions identified by the Town Code Enforcement Officer and the date and time for a hearing to be held by the Town Board. Following a hearing, the Town Board shall issue its determination on revocation of the STR License by resolution.
- C. Any violation of the provisions of this chapter shall constitute a misdemeanor punishable by a maximum fine of \$3,000, or by imprisonment for not more than six months, or by both such fine and imprisonment. Each day of continued violation shall constitute a separate and additional offense.

SECTION 3: Severability. If any part of this local law is for any reason held to be unconstitutional or invalid, such decision shall not affect the remainder of this local law. The Town Board hereby declares that it would have passed this local law and each section and subsection thereof, irrespective of the fact that any one or more of these sections, subsections, sentences, clauses, or phrases may be declared unconstitutional or invalid.

SECTION 4: Effective Date. This local law shall be effective immediately upon filing with the office of the New York Secretary of State.