

BE IT RESOLVED, That the Town Board hereby calls for a public hearing to be held at 4:48 p. m., prevailing time on the 14th day of June, 2019 in the Shelter Island Town Hall, Shelter Island, New York, for all interested persons to be heard in favor of or in opposition to a proposed Local Law entitled **CHAPTER 105 - RENTAL OF REAL PROPERTY**, to wit:

Be it enacted by the Town Board of the Town of Shelter Island, as follows:

SECTION 1. BE IT RESOLVED, That Chapter 133-14.1 – Vacation Rentals is hereby repealed in its entirety; and

BE IT FURTHER RESOLVED, That Chapter 75 – Group Rentals is hereby repealed in its entirety

SECTION 2. BE IT FURTHER RESOLVED, That Chapter 105 is hereby created as follows:

CHAPTER 105 - RENTAL OF REAL PROPERTY

105-1 – Title:

This chapter shall be known and may be cited as the "Rental Law of the Town of Shelter Island."

105-2 – Authority:

This chapter is adopted as a local law pursuant to the authority conferred in Article IX of the New York State Constitution; Article 2, § 10, of the New York Municipal Home Rule Law; and Article 4 of the New York Town Law.

105-3 – Applicability:

This Chapter applies to all residential properties which are used as rentals, regardless of whether such use had been ongoing prior to adoption of these regulations.

105-4 - Exemption from liability:

This chapter shall not be construed to subject the Town of Shelter Island, any Fire District or Fire Department therein or any officers or employees thereof to any civil or other liability for any damage to persons or property.

105-6 – Severability:

If any provision of this chapter or its application to any person or circumstances is held invalid, such portion shall be deemed a separate, distinct and independent provision, and such finding shall not affect the validity of the remaining portions of this chapter.

105-7 – Definitions:

ADVERTISING: Any and all advertising or any other form of communication for marketing that is used to encourage, persuade, or manipulate viewers, readers, or listeners into contracting for goods and/or services as may be viewed through any media, including but not limited to newspapers, magazines, flyers, handbills, television commercials, radio, direct mail, websites, emails, or text messages by owner and/or owner's agent or representative.

GOOD NEIGHBOR BROCHURE: A document prepared by the Town that summarizes the general rules of conduct, consideration, and respect.

OWNER: The person, partnership, corporation, LLC, trust or other legal entity that holds title and/or is the legal owner of any property including the domestic partner and minor children of any natural person; the settlor, trustees and beneficiaries of any trust; the officers directors and shareholders of any corporation; and/or the members of any partnership or LLC.

RENTAL: The right to the use, possession and enjoyment of a property or any portion thereof granted to a TENANT by the OWNER in return for rent or other compensation or consideration.

TERM: The period of time a tenant rents or leases a portion or all of a premises.

IMMEDIATE FAMILY: Individual Owner and his or her domestic partner, children, step-children, foster children, grandchildren, siblings, parents, grandparents, mothers-in-law, fathers-in-law, brothers-in-law, sisters-in-law, aunts, uncles and/or first cousins.

NUCLEAR FAMILY: Individual and his or her domestic partner and minor children, minor step children and/or minor foster children.

TENANT: A person to whom an owner or owner's agents and/or representatives grant temporary use of land or of the whole or a part of a building, usually in exchange for rent or other compensation or consideration.

VACATION RENTAL: The RENTAL of any property to be used as a temporary living space by a TENANT for a period of fourteen (14) days or less.

ARTICLE I – RENTALS GENERALLY

105-10 - Rental Regulations Generally

A. The following regulations apply to all rentals of real property on Shelter Island regardless of rental term

1. **Code Compliance:** Any property offered for rent on Shelter Island shall have a valid and current certificate of occupancy or certificate of compliance and shall be in compliance with the New York State, Suffolk County and Shelter Island Town Building and Fire Codes.

2. **Bedrooms Limited:** The total number of rooms utilized as bedrooms in any property offered for rent on Shelter Island shall not exceed the number indicated on the building plans filed with the Building Department for the structure(s) in which the rental is located.

3. **Occupancy:** The total occupancy of any rental shall not exceed two times the number of conventional legal bedrooms except that children of the age of 3 years of age shall not count toward the total.

4. **Good Neighbor Brochure:** The Owner shall provide a copy of the then current Good Neighbor Brochure, as published in PDF format on the Town website, to each lessee prior to or at the commencement of the rental term and the same shall be considered part of the rental agreement.

ARTICLE II – REGISTRATION, NOTIFICATION & LICENSING

105-20 - Rental Registry Required

A. **Information Required:** All Owners who rent or advertise for rent any property on Shelter Island for residential use shall register the rental property with the Department of Code Enforcement of the Town of Shelter Island on a form to be made available in PDF on the Town website and which will contain the following information:

1. Name and contact information of Owner; and

2. Street Address and Suffolk County Tax Map Number of Property to be rented; and

3. Number of bedrooms (not to exceed the amount shown on the building plans filed in the office of the Shelter Island Building Department); and

4. Any claim of a license or exemption under section 105-30.

B. **Exceptions:** This section does not apply to:

1. A legally operating and currently licensed commercial hotel/motel, Inn or Bed-and-Breakfast establishment; or

2. Rentals during a declared emergency; or

3. Non-paying guests.

C. **Registration Term:** Registration is valid for two calendar years at which time it must be renewed.

D. No Fee: There shall be no fee to register.

105-21 – Rental Notification Required

A. Notification Required: Each time a property on Shelter Island is rented the Owner must notify the Department of Code Enforcement of the Town of Shelter Island prior to the commencement of the rental term.

B. Information Required: The notification must include the following information:

1. Rental registration number
2. Dates (Term) of rental

C. No Fee: There shall be no fee to file a notification.

ARTICLE III – VACATION RENTALS

105-30 Vacation Rentals

A. Vacation Rentals Generally Prohibited: It shall be unlawful and a violation of this chapter for any person or entity that owns, rents or manages property on Shelter Island to rent, lease, or advertise for rent any such property or any portion thereof (including any Accessory Apartment or Accessory Sleeping Quarters) in any Residential (A, AA & C) Zone for a period of fourteen (14) days or less unless specifically permitted under section 105-30(B) or (C) below:

B. Permitted Vacation Rentals: The following shall be permitted notwithstanding section 105-30(A) above so long as the property is properly registered under section 105-20; proper notification is made under section 105-21; and at registration the Owner selects one of the following:

1. Owner Occupied Premises: A residential property on Shelter Island may be rented as often as desired and without limit as to frequency or duration of term where one of the following is simultaneously domiciled on the same or immediately adjacent lot (including a legal accessory structure or bedroom) with tenant or tenants during a rental term:

- a) Owner (or an uncompensated member of the owner's Immediate Family)
- b) Trustee or Settlor, if a trust;
- c) President or majority shareholder, if a corporation; or
- d) Member, if an LLC or partnership.

2. Homesteader's Hardship License: A residential property on Shelter Island that is the Owner's primary residence may be rented one (1) time in each seven (7) day period between and including Memorial day weekend and Labor Day weekend and one (1) time in every fourteen (14) day period at all other times pursuant to the Homesteaders Hardship License provided that:

a) At the time of registration the Owner submits proof of the following:

1) That the property to be rented is receiving a basic or enhanced star exemption; and
The Owner has an annual Gross income (less net rental income) of less than 500% of the United States Department of Health and Human Services Poverty Guidelines which must be verified each registration period by submission of federal income tax returns (tax returns shall be reviewed to determine eligibility then returned or destroyed. No income tax records will be maintained by the Town.); and

a) Each qualifying Owner and such person's Nuclear Family (including Owner, domestic partner and minor children) is collectively limited to one Homesteader's Hardship License.

b) The Homesteader's Hardship License may not be combined with other permitted Vacation Rentals to increase the number of rentals allowed:

1. Limited Commercial Vacation Rental License: Vacation Rentals are permitted pursuant to a Vacation Rental License as follows:

- a) License: An Owner (to include his or her Nuclear Family) not exempted by section 105-30(B) (1) or (2) above and who has not had a previous license suspended or revoked on Shelter Island, upon application, may obtain to license one (1) property on Shelter Island for use as a Vacation Rental; and
- b) Frequency of Rental: A Vacation Rental License permits the Owner to rent the licensed premises one time in any 14 day period; and
- c) Commencement of Rental Period: The 14 day period referenced above shall commence on the first day of the Term of the initial rental and continue for the 13 following days; and
- d) License Term: A Vacation Rental License shall be valid for two calendar years to run concurrent with property registration at which time it must be renewed.
- e) License Fee: The fee for the Vacation Rental License shall be set by the Town Board.
- f) Multiple Licenses Prohibited: No Owner may be issued a Vacation Rental License if such person (or any member of his or her Nuclear Family) owns any interest in another property on Shelter Island for which they have already received or applied for a Vacation Rental License.
- g) Corporate Ownership: Any legal entity other than a natural person (including but not limited to a corporation, LLC, trust or partnership) may not be issued a Vacation Rental License on Shelter Island, if any Owner, partner, member, settlor, trustee, beneficiary, shareholder, officer, or director of that entity already holds or has applied for a Vacation Rental License for another property.
- h) Corporate Disclosure: Any partnership, trust, LLC or corporate applicant for a vacation rental license must provide documentation naming all partners, members, settlors, trustees, beneficiaries, shareholders, officers and directors, and submit a statement verifying that none of those named are partners, members, settlors, trustees, beneficiaries, shareholders, officers and directors, of any other corporation or partnership, or an individual Owner that already holds or has applied for a Vacation Rental License on Shelter Island.
- I) Non-Transferable: The Vacation Rental License is specific to the property described on the license and to the individual or entity named on the permit. The Vacation Rental License may not be transferred, assigned or passed through an estate and does not authorize any person, other than the person named therein, to permit or arrange vacation rentals on the licensed property.
- j) Agent Required: The owner(s) of the vacation rental property must execute a written statement, which designates an agent for service for criminal and civil process pursuant to Section 318 of the Civil Practice Law and Rules and must be either:
 - 1. A person, firm, partnership or corporation with an actual place of business, or usual place of residence located within the boundaries of the Town of Shelter Island; and/or
 - 2. The Town Clerk of the Town of Shelter Island
- k) Obligation to Update Address: Every Owner of vacation rental property shall ensure that the address for service of process is current and shall advise the Town Clerk whenever the address is changed.
- l) Neighbor Contact: The Owner must provide the Town of Shelter Island and to all neighbors within 200 feet of the property line of the Vacation Rental with:
 - 1. Owner's personal cell phone number to call in the event of problems with the vacation rental; and/or

2. The name and telephone number of a local contact person including name, address, phone number, and email address designated as the Owner or Owner's agent or representative who resides on Shelter Island.

m) Self-Checklist: Every applicant for a Vacation Rental License must a notarized Self Checklist to be available on the Town website verifying the property's compliance with relevant Federal, New York State, Suffolk County and Shelter Island Town regulations.

2. Fund Raising Rentals: Vacation Rentals are permitted without limitation for the purpose of fundraising on the premises of Taylor's Island Foundation; the Nature Conservancy (Mashomack); Sylvester Manor or any other nonprofit charitable organization that seeks and obtains a waiver from the town board.

A. Exemptions:

1. A legally operating commercial hotel/motel, Inn or bed-and-breakfast is not subject to Section 105-30 and may let rooms pursuant to the terms of their existing license; or

2. Emergencies: Short term rentals of property during emergencies affecting Shelter Island declared by any Federal, State, County or Town authority shall be exempt from the prohibition set forth in Section 105-30; or

3. Non-Paying Guests: Friends and family who are granted the use of premises without charge are not subject to the requirements of this section.

ARTICLE IV - ADVERTISING

105-40 - Rental Advertising.

A. Required Information: Advertisement of any property listed for rent on Shelter Island must include:

1. Registration number assigned by the Town; and

2. The total number of rooms utilized as bedrooms in the property offered for rent which must not exceed what is indicated on the building plans filed with the Building Department for the structure in which the rental is located; and

3. Minimum permitted rental term.

ARTICLE V – ENFORCEMENT & PENALTIES

105-50 - Complaints

A. All complaints regarding violations of this section are to be made or directed to the Code Enforcement Department of the Town of Shelter Island for which a form shall be maintained on the Town website; and

B. Complaints made to other departments of the Town shall be referred to the Code Enforcement Department for investigation.

C. The Code Enforcement Department of the Town of Shelter Island shall maintain a record of all complaints.

105-51 – Proof of Facts

A. Proof of Rental: The presence or existence of any of the following shall constitute *prime facie* evidence that a dwelling unit is being used as a rental property.

1. The investigation determines that the property is occupied by someone other than the Owner or his/her immediate family; or

2. Persons residing in the dwelling unit represent that they pay rent to occupy the premises; or

3. The dwelling unit has been advertised as being available for rent or lease.

B. This presumption may be rebutted by documentary evidence or a signed statement on the record from the occupant or Owner indicating that the occupant paid no rent for the use of the premises and that evidence is presented to:

1. The enforcement authority during investigation; or
2. To any court of competent jurisdiction.

105-52 - Penalties

A. Offenses Deemed Misdemeanors: For the purpose of conferring jurisdiction upon courts and judicial officers in general, violations of this chapter shall be deemed unclassified misdemeanors, and, for such purpose only, all provisions of law relating to misdemeanors shall apply.

B. Continuing Violations: Each day or portion of a day that a violation exists shall constitute a separate and distinct offense.

C. General Penalties for Violations: A violation of any provision of this Chapter is hereby declared to be an offense pursuant to New York Penal Law § 80.10(2)(a) for corporations and New York Penal Law § 80.05(3) for individuals and all other entities, the penalties for which are to be fixed by the court as follows:

1. For a first violation, the Court may fix a maximum fine of no more than \$250.00 except that, the fine may be waived by the Town of Shelter Island upon proof that the Owner has complied with the statute.
2. For a second violation, the Court may fix a maximum fine of \$2,000.00 and or imprisonment not to exceed a period of fifteen (15) days.
3. For any subsequent violations, the Court may fix a maximum fine of \$5,000.00 and or imprisonment not to exceed a period of thirty (30) days.

D. Forfeiture of Gain From Commission of Offense: In lieu of imposing the fines authorized in §105-42 (C), and in accordance with

1. Penal Law § 80.05(5), for individual defendants the fine fixed by the court shall be no more than the amount specified in section 105-42(C) or any higher amount not exceeding double the amount of the defendant's gain from the commission of the offense;
2. Penal Law § 80.10(2)(b), for corporate defendants the fine fixed by the court shall be no more than the amount specified in section 105-42(C) or any higher amount not exceeding double the amount of the defendant's gain from the commission of the offense;

E. Civil Action: Where authorized by a duly adopted resolution of the Town Board, the Town Attorney may bring and maintain a civil proceeding, in the name of the Town, in the Supreme Court, to temporarily, preliminarily and permanently enjoin the person, persons, trust or corporation conducting, maintaining or permitting said violation. The owner and tenants of the residence wherein the violation is conducted, maintained or permitted may be made defendants in the action.

F. Fraud: Any person, partnership, LLC, trust or corporation that knowingly provides false information to Town of Shelter Island officials investigating any violation under this section or that provides materials or support to assist any person to use false information to circumvent this section is guilty of Providing Fraudulent Information. The offense of Providing Fraudulent Information shall be a misdemeanor with a fine of no more than \$5,000.00 and with a prison term of no more than three (3) months.

105-43 - Suspension and Revocation of Vacation Rental License

A. Suspension: In addition to the financial penalties set forth above, the Town Board may suspend or revoke the Vacation Rental License following a public hearing before the Town Board wherein the Owner or licensee has been given a reasonable opportunity to appear and be heard:

1. For a period up to six (6) months for the second offense in a calendar year; or
2. For a period of up to twelve (12) months for the third offense in a calendar year; or
3. Permanently for a fourth offense in a calendar year or for an egregious violation of this section-

105-43 - Quality of Life Enforcement Enhancement for Vacation Rentals

Non-Delegable Duty: It shall be the non-delegable duty of the Owner who rents property subject to a Vacation Rental License, to ensure compliance with all noise, lighting, occupancy and parking regulations set forth in the Shelter Island Town Code; and

A. Joint & Several: The Owner and the tenant of a Vacation Rental shall be jointly and severally liable and responsible for all penalties resulting from tenant's violation the Shelter Island Town Code sections set forth above; and

B. Service of Violation: Service of the notice of violation upon the Owner or his/her representative shall be made within thirty (30) days of the violation; and

C. Subsequent Violations: The progressive and increasing penalties set forth in the Shelter Island Town Code sections covering the above referenced sections shall run with the property, be imposed for any violations occurring on the same property during the relevant time period notwithstanding that the violations shall have been incurred by different persons or tenants; and

D. Indemnification: Nothing in this section shall prohibit the parties from seeking restitution of any fines from the each other or from requiring indemnification in any lease or rental agreement.

105-45 - Enforcement. Violations of this Chapter may be enforced by any representative of the Town authorized to issue an appearance ticket under Section 26-2 of the Shelter Island Town Code.

105-46 – Grace Period – There will be a thirty (30) day grace period upon the enactment of this Chapter during which anyone found in violation will receive a letter requiring registration rather than an appearance ticket.

SECTION 3. 105-50 - When effective.

This local law shall take effect immediately upon filing with the Secretary of State as provided for by law.