

# PROPOSED SHORT TERM RENTAL ORDINANCE

Shall an ordinance entitled “An act to establish a Short-Term Rental Ordinance” be enacted?

[Note of explanation: This amendment seeks to require disclosure and licensing of short-term rentals operated within the Town of Kennebunkport, and ensure that residential neighborhoods are not unduly impacted by the operation of short-term rentals within the Town.]

## Kennebunkport Short-term Rental Ordinance

### A. Purpose:

The purpose of this ordinance is to require the disclosure and licensing of short-term rentals operated within the Town of Kennebunkport. Furthermore, this Ordinance is intended to ensure that residential neighborhoods are not unduly impacted by the operation of short-term rentals within the Town. This will be accomplished by a licensing program that enables the Town to monitor and track the proliferation of short-term rentals within its borders, includes modest performance standards intended to protect property owners, renters, and neighbors along with limits to the numbers of short-term rentals within the community. Due to the historic nature and longstanding tradition of short-term rentals within the Goose Rocks Beach neighborhood, this limited area will not be subject to licensing limits; it will, however, still be subject to all other requirements in this ordinance.

### B. Applicability:

1. Permitted short-term Rentals. Legally existing residential dwelling units may be used as short-term rentals upon the issuance of a short-term rental license for the premises in accordance with the requirements of this Ordinance.
2. Prohibited short-term Rentals. No person may offer for rent, operate, or otherwise use any dwelling unit in the Town of Kennebunkport for short-term rentals if:
  - (a) Such person has not secured or maintained a valid short-term rental license for the premises; or
  - (b) The accommodations are an accessory apartment constructed or permitted after November 3, 2009, or a recreational vehicle, trailer or tent.
3. Lodging Establishments Exempt. The following lodging establishment uses are exempt from the licensing requirements and standards of this Ordinance: hotels, motels, bed and breakfasts, inns, seasonal rental accommodation complexes, and residential rental accommodations.

### C. Definitions:

Advertising: Any 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 various media, including, but not limited to, newspapers, magazines, flyers, handbills, television commercials, radio, signage, direct mail, websites or text messages.

Dwelling unit: One or more rooms arranged for complete, independent housekeeping purposes with space for living and sleeping; space or facilities for eating or cooking; and provisions for sanitation. For purposes of this regulation Recreational vehicles are not considered dwelling units.

Good Neighbor guidelines: A document prepared by the town that summarizes the general rules of conduct, consideration, and respect, including, without limitation, provisions pertaining to the use and occupancy of a dwelling unit used or occupied as a short-term rental.

Goose Rocks Beach Neighborhood: (See the area defined on Exhibit A).

Owner: An individual person or persons or an entity that is the owner of record of real property as documented by deed or other document evidencing ownership recorded at the York County Registry of Deeds.

Residential rental accommodations: The permitted accessory use of no more than two bedrooms in a legally existing dwelling or dwelling unit. This dwelling unit shall be an owner-occupied dwelling. Rooms rented may be for either short term or long-term rental to a roomer who may be unrelated to the owner or occupant of the unit. Individual rooms shall be rented no more than once per week. For purposes of this definition, a week shall be defined as Monday through Sunday.

Seasonal rental accommodation complex: a lodging business located on one parcel of land that makes a room, a group of rooms, and/or cottages available for a tenancy of less than 30 days on a seasonal basis.

Short-term rental: The use, control, management or operation of a legally existing residential dwelling unit offered for rent for transient occupancy for dwelling, sleeping or lodging purposes by short-term rental guests for a tenancy of less than 30 consecutive days, for compensation, directly or indirectly, excluding motels, hotels, bed and breakfasts, inns, seasonal rental accommodation complexes, and residential rental accommodations.

Short-term rental guest: Any person who rents, licenses, occupies or has the right to occupy a dwelling unit for less than 30 consecutive days.

#### **D. General Requirements:**

**1. License Required:** No short-term rental shall be advertised, rented, or operated without first obtaining a short-term rental License. A short-term rental license shall be valid for the calendar year for which the license is issued. The property must remain

in compliance with the short-term rental license for the calendar year in which the license is issued.

a. Short-term rental license renewal. Short-term rental licenses shall expire on December 31st of each calendar year, and short-term rental license holders may renew such license by submitting a renewal application, via a renewal process established by the Town. After the effective date of this Ordinance, any duly licensed short-term rental may continue operating as long as the license is current and renewed on or before the annual renewal deadline established by the Town. If the license is not renewed within the prescribed timeframe, the license expires, and this protection clause no longer applies. Any renewal application received after the advertised deadline for submission shall be considered late and deemed a new application.

b. The Board of Selectmen shall establish fees for the licensure of short-term rentals. Licensing fees for short-term rentals shall be assessed based upon the following criteria:

- i. Tier I: Short-term rentals with 0-3 bedrooms.
- ii. Tier II: Short-term rentals with 4+ bedrooms.

**2. Non-transferability.** Short-term rental licenses issued under this Ordinance shall not be transferable to a new Owner or location. Any Change of Ownership shall require a new license, except transfers of the real estate and related license in a Permitted Transfer. A "Permitted Transfer" is a transfer of the subject real estate and the related license to a Permitted Transferee. A "Permitted Transferee" includes (1) another current Owner of the subject real estate; (2) the spouse, child(ren) and/or grandchild(ren) of a current Owner; (3) a trust for the benefit of a current Owner, a current Owner's spouse, a current Owner's child(ren) and/or grandchild(ren) of a current Owner; or (4) for estate planning purposes, a trust, limited liability company ("LLC"), corporation or other entity, as long as the beneficiaries of the trust or owners of the entity, as applicable, are a current Owner, a current Owner's spouse, a current Owner's child(ren) and/or grandchild(ren) of a current Owner. In the case of a transfer to a Permitted Transferee, the Permitted Transferee shall become a "Licensee" and an "Owner", and the definition of "Permitted Transferee" shall apply to the new Licensee/Owner.

Licensees/Owners shall be required to certify that they comply with the provisions of this section annually and that they have not engaged in any transfers, or been transferees in any transfers, that are not Permitted Transfers. See Section F.3 herein.

Licenses are limited to the dwelling unit for which they are issued and shall not be transferable to a different dwelling unit.

**3. Advertising:** It shall be unlawful to advertise occupancy or use of a short-term rental that has not been licensed. Licensed short-term rentals in good standing may advertise for beyond the current licensing year. For the purposes of this section, the term "advertise" shall mean any 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 various media included, but not limited

to newspapers, magazines, flyers, handbills, television commercials, radio, signage, direct mail, websites or text messages. The short-term rental advertising must be consistent with the terms of the short-term rental license, and all advertisements of the short-term rental must include the current short-term rental license number.

**4. Registration record:** The short-term rental owner must (a) maintain accurate, up-to-date records of all rental transactions involving the short-term rental, including the number of tenants and the length of their stays, and upcoming reservations; and (b) present said information to Town inspection officials upon request. Failure of the short-term rental owner to provide this information within 5 business days of a Town request for the same shall be considered a violation of this section.

**5. Notice:** The short-term rental license holder must post in plain sight near the entrance to the short-term rental a notice that identifies the short-term rental license number, and the name, address, phone number(s), and email address of the owner of the short-term rental, and/or the owner's local contact person. Such notice may be posted in plain sight in the interior of the short-term rental. The short-term rental license holder shall also post the license provided by the Town.

#### **E. Review Procedure:**

##### **Issuance procedure:**

1. Application submission; completeness. short-term rental License applications shall be submitted to the Town Clerk. Applications for licenses for the upcoming calendar year may be submitted beginning in October of the previous license year. The Town Clerk, or the Town Clerk's designee, shall review all applications for completeness and accuracy and in the order that they were received.

2. Application, License fee. The Town Clerk shall provide a short-term rental application to be completed by the applicant and submitted to the Town Clerk accompanied by the short-term rental license fee as established by the Board of Selectmen. The short-term rental application shall include a non-exclusive checklist of code requirements that the property owner shall demonstrate compliance with.

3. Town clerk authority. The Town clerk shall have the authority to issue a short-term rental license. The Town Clerk, or the Town Clerk's designee, shall determine if the application has been properly completed before any license is issued.

4. Inspection.

Anytime that a short-term rental application is submitted for a property, the short-term rental applicant shall certify on the short-term rental application that the proposed short-term rental property complies with the short-term rental standards in section G, and with building code requirements.

The Code Enforcement Officer shall inspect the licensed premises once every five years, to determine compliance with the short-term standards in Section G.

5. Transitional Provisions for Licensing of Pre-Existing short-term Rentals. Persons or entities who operated a legally-existing residential dwelling unit as a short-term rental and who received reservations for short-term rentals at the same premises prior to the

Effective Date of this Ordinance shall be required to obtain a Short-term rental license for said premises by submitting an application to the Town Clerk by the advertised date which application must contain an affidavit or other sworn statement by the Owner, along with documented evidence, certifying that the premises were previously used for short-term rental use by one or more tenants for a period of less than 30 consecutive days per tenancy and for at least fourteen (14) total days in a calendar year in any one of the following years: 2019, 2020, or 2021.

Upon review and approval of a timely application submitted for a license containing sufficient evidence of previous short-term rental use as required above, the Town Clerk shall issue a license for each such premises, without the need for a prior inspection of said premises by the Code Enforcement Officer or designee as is otherwise required in section E(4).

6. Issuance. If the Town Clerk, or the Town Clerk's designee, in consultation with the Code Enforcement Officer, determines that the proposed short-term rental application complies with the short-term rental Standards, the Town Clerk shall issue the applicant a short-term rental license in accordance with the limits established in Section I below.

#### **F. Submission Requirements:**

The short-term rental license application shall include the following information:

1. Location. The street address and map/ block/lot number of the short-term rental property.
2. Contact Person/Owner Responsibility. The name of the owner of the short-term rental property and contact information, including address and telephone number. If the owner is anything other than a natural person, then the following information must also be included: the name of each individual person who has an ownership interest in any entity that is the record owner, including, without limitation, all beneficiaries of any trust, and all members and shareholders of a limited liability company, corporation or other entity. In addition, if someone other than the owner is acting as the local contact person, contact information for that person shall also be provided. Regardless of who enters the short-term rental agreement, or who may be designated as the owner's contact person, the property owner shall be responsible for compliance with the short-term rental Ordinance provisions.
3. For renewal applications, Licensees/Owners shall be required to certify annually that they have not engaged in any transfers of the licensed premises, or been transferees in any transfers, that are not Permitted Transfers under Section D.2 of this Ordinance.
4. All information needed to demonstrate compliance with the standards listed below.

#### **G. Standards:**

The Town Clerk shall issue a short-term rental license upon the applicant satisfying the above requirements if the following standards are met:

1. Code compliance. An applicant's property, without limitation, shall comply with the following building safety requirements.

a. Smoke Alarms: Smoke alarms shall be installed in the following locations:

1. In each bedroom.

2. Outside each separate sleeping area in the immediate vicinity of the bedrooms.

3. On each additional story of the dwelling, including basements and habitable attics.

b. Carbon Monoxide Alarms: If a house has an attached garage or a fuel fired appliance, a carbon monoxide alarm shall be installed outside each bedroom in the immediate vicinity of the bedrooms.

c. Portable Fire Extinguishers: At least one portable fire extinguisher shall be mounted in a prominent location. One size/type 2/A is required or two size/type 1/A extinguishers.

2. The applicant shall provide floor plans of the dwelling unit that shows the location of the alarms and fire extinguisher(s).

3. Sanitary waste disposal. The applicant shall submit information demonstrating that adequate sanitary waste disposal is available in compliance with the Maine Subsurface Wastewater Disposal Rules, or that the property is served by public sewer. This shall include the total number of bedrooms included in the property, any additional sleeping space, and the total number of tenants that the property accommodates. The total number of tenants used to determine adequacy of sanitary waste disposal shall not be less than the total number of tenants that the property is advertised to accommodate. For the purpose of evaluating the adequacy of a subsurface disposal system, every two tenants shall be equivalent to one bedroom.

4. Parking. The applicant shall include a depiction designating parking spaces that will be provided for tenants and guests on the same lot where the short-term rental is located. Guest parking at the short-term rental shall occur in parking spaces designated by the applicant, and the number of guest vehicles allowed at the short-term rental shall be limited to the number of on-site parking spaces designated by the applicant. Garage parking spaces not allowed for tenant use shall not be used to meet the short-term rental parking requirement. Tenants and guests of short-term rentals are prohibited from parking in a manner that impedes access by emergency vehicles to the property or any other dwelling in the neighborhood.

5. Good neighbor guidelines.

6. Occupancy limits.

The maximum tenant occupancy of a short-term rental shall be limited to no more than 2 tenants per bedroom, plus 2 additional tenants total for the entire dwelling unit. By way of example, the maximum tenant capacity for a three-bedroom dwelling short-term rental is eight (8) tenants (i.e., 3 bedrooms multiplied by 2 tenants, plus an additional 2 tenants for a total of 8).

## **H. Suspension and Revocation of License:**

A license for a short-term rental may be conditioned, suspended, or revoked by the Board of Selectmen after a public hearing if the Board of Selectmen determine that a violation of this ordinance, any applicable statute, ordinance, or regulation, or short-term rental license certification, condition, or criteria has occurred.

1. Violations of this Ordinance. Violations of this ordinance include, but are not limited to, the following:

- a. Providing false or misleading information on an application, or renewal application, for a short-term rental license;
- b. Failure to provide the registration records as provided in Section D(4) within 5 business days of a Town request for such records;
- c. Failure to comply with the parking provisions of Section G(5) of this Ordinance;
- d. Failure to comply with the rental occupancy limits of Section G(7) of this Ordinance;
- e. Failure to acquire and/or display the required short term rental license number or include the license number in any advertising of the licensed premises;
- f. Violation of any short-term rental license certification, condition, or criteria;
- g. Violation of any statute, ordinance, or regulation applicable to the short-term rental property.

2. Complaints Concerning short-term rentals. The Code Enforcement Officer shall establish and maintain a log of all complaints for each short-term rental received and substantiated by the Town. The Code Enforcement Officer shall seek the correction of all substantiated complaints by the short-term rental license holder.

3. Suspension or Revocation of License. When, in the judgement of the Code Enforcement Officer, the nature and/or number of complaints warrants further review of the short-term rental license, the Code Enforcement Officer shall provide a report of the same to the Board of Selectmen for its consideration. The Board of Selectmen may condition, suspend, or revoke a short-term rental license, following a public hearing, on the basis of the licensee's non-compliance with this ordinance, any applicable law, ordinance, or regulation, or short-term rental license certification, condition, or criteria.

4. Appeal. Any person aggrieved by the decision of the Board of Selectmen to suspend or revoke a short-term rental license may appeal the decision of the Board of Selectmen to Superior Court, pursuant to Maine Rule of Civil Procedure 80B, within thirty (30) days of the Board of Selectmen's decision.

## **I. Limitations on Annual Licenses for Short-term Rental Units:**

The Town Clerk shall issue short-term rental licenses on an annual basis. The total number of licenses issued in each calendar year shall be set annually by the Board of

Selectmen. The limitation on the total number of licenses set by the Board of Selectmen shall first go into effect on January 1, 2023.

1. Formula. The total number of licenses issued in each calendar year shall be set by the Board of Selectmen annually according to a formula based in part upon a percentage of the total number of residential dwelling units in the Town of Kennebunkport.

2. Goose Rocks Beach Neighborhood. No short-term rental located in the Goose Rocks Beach Neighborhood [as depicted on the attached map] shall be advertised, rented, or operated as a short-term rental without first obtaining a short-term rental license. Licensed short-term rentals located in the Goose Rocks Beach Neighborhood [as depicted on the attached map] shall not be counted towards the total number of short-term rental licenses to be set annually by the Board of Selectmen under Section I.1 herein, and to be issued on an annual basis thereafter by the Town.

3. Effective Date. This Ordinance and all the licensing standards contained herein shall go into effect on January 1, 2022.

#### **J. Penalties for Violations; Enforcement**

In the event the Owner or Owner's short-term rental guests violate this Ordinance or the terms and conditions of the license, the Town, in addition to the suspension or revocation of the then-current license pursuant to Section H above, may also prohibit the Owner from licensing the dwelling unit for 12 months following the current licensing expiration date, after which the owner may submit a new application for licensure.

Violations shall also be subject to fines and penalties as set forth in this section and in a penalty, schedule established by the Board of Selectmen.

Any such fines or penalties may be in addition to any suspension or revocation imposed in accordance with the provisions of Section H of this Ordinance.

The Town may institute or cause to be instituted any and all actions, legal or equitable, that may be appropriate or necessary for the enforcement of the provisions of this Ordinance. In any court action, the Town may seek injunctive relief in addition to or instead of fines/penalties. The Town shall be entitled to recover its costs of enforcement, including its reasonable attorneys' fees.

#### **K. Additional Regulations**

The Board of Selectmen may adopt regulations implementing the provisions of this Ordinance.