

ORDINANCE NO. 2020- _____

AN ORDINANCE OF THE TOWNSHIP OF TOBYHANNA, COUNTY OF MONROE, COMMONWEALTH OF PENNSYLVANIA, RELATING TO THE USE AND REGULATION OF SHORT-TERM RENTAL UNITS WITHIN THE TOWNSHIP AND ESTABLISHING APPLICATION AND PERMIT STANDARDS AND PROCEDURES, PROVIDING FOR ADMINISTRATION AND ENFORCEMENT INCLUDING PENALTIES, AND OTHER MATTERS PERTAINING THERETO.

Section 1 - Title

This Chapter shall be known as and may be cited as "The Tobyhanna Township Short-Term Rental Ordinance."

Section 2 - Scope

- A. The provisions of this Chapter shall apply to all residential dwelling units, conversions of non-residential structures to residential dwellings, and all existing premises within the Township of Tobyhanna. The owner of the subject property shall be responsible for compliance with the provisions of this Chapter and the failure of an owner, agency, managing agency, local contact person, or renting occupants to comply with the provisions of this Chapter shall be deemed noncompliance by the owner.
- B. This Chapter shall not apply to a resort, camp, hotel/motel/inn, bed and breakfast, or boarding- or rooming house, as defined within the Zoning Ordinance.
- C. The Township Supervisors, under the authority granted by Section 1506 - General Powers, Section 1517 - Building and Housing Regulations, Section 1527 - Public Safety, and Section 1529 - Nuisances, of the Pennsylvania Second Class Township Code, Act of May 3, 2016, 1933 (P.L. 103, No. 69), reenacted and amended July 10, 1947 (P.L. 1481, No. 567), as amended, hereby adopt the following rules and regulations governing Short-Term Rentals within the boundaries of the municipality.

Commented [MH1]: Changed to match Zoning Ordinance

Section 3 - Interpretation

This Chapter is not intended to, and does not, excuse any landowner from compliance with the Tobyhanna Township Zoning Ordinance, as amended from time to time. Whenever possible, this Chapter and the Zoning Ordinance should be construed and interpreted as being consistent, and not in conflict.

This Chapter is not intended to, and does not supersede the declarations or covenants in a planned community where a short-term rental may be located.

Section 4 - Definitions

For the purposes of this Chapter, words and terms used herein shall be interpreted as follows:

ANNUAL TERM - November 1st to October 31st of the following year.

BEDROOM - A room or space designed to be used for sleeping purposes with two means of egress (one of which may be a window acceptable under the building code) and in close proximity to a bathroom. Space used for eating, cooking, bathrooms, toilet rooms, closets, halls, storage or utility rooms and similar uses are not considered Bedrooms. Space used or intended for general and informal everyday use such as a living room, den, and sitting room or similar is not to be considered a Bedroom.

DAY GUEST - A visitor to the Short-Term Rental property who is neither an overnight guest, person in charge, or owner of the property on which the short-term rental is located.

Commented [MH2]: Added definition loosely based off of Middle Smithfield Township's ordinance.

DWELLING UNIT - A building or portion thereof providing complete housekeeping facilities for one family or a group of unrelated persons using such facilities in common.

OVERNIGHT GUEST - Any individual lodging overnight at a Short-Term Rental for a period of thirty (30) days or less.

Commented [MH3]: Based on the definition of Short-Term Rentals

PERSON IN CHARGE - A person or agent with actual authority to represent the owner for purposes of emergency and non-emergency contact and communication regarding the owner's Short-Term Rental. A Person in Charge must provide a 24-hour emergency contact number, be able and willing to come to the Short-Term Rental within two (2) hours following notification to address any issue that is not capable of being addressed by telephone, and be able to act as legal agent for the owner. The Person in Charge may be the owner of the Short-Term Rental. The Township must be notified, in writing, within fourteen (14) days if there is a change in the identity of the Person in Charge.

Commented [MH4]: Changed to require response within a timeframe, rather than geographical location.

SHORT-TERM RENTAL - Any Dwelling Unit utilized as a single-family residence rented for the purpose of overnight lodging for a period of thirty (30) days or less, and which meets the definition of "Hotel" for the purpose of imposing an excise tax by the County of Monroe as defined in the County of Monroe Ordinance No. 2004-03, as amended.

SHORT-TERM RENTAL PERMIT - Permission granted by the Township to utilize a Dwelling Unit for Short-Term Rental Use.

Section 5 - Permit Required

- A. No owner of any property in Tobyhanna Township shall operate a Short-Term Rental in Tobyhanna Township without first obtaining a Short-Term Rental Permit from the Zoning Officer. Operation of a Short-Term Rental without such Short-Term Rental Permit is a violation of this Chapter. Permits may be transferable to any new owner of the property

provided an application with updated contact information is submitted to the Township and all prior violations of this chapter have been remedied.

- B. The issuance of a Short-Term Rental Permit is not a warranty that the premises is lawful, safe, habitable, or in compliance with this Chapter.

Commented [MH5]: Inserted from old Section 11

Section 6 – Claim of Contract Impairment

It is not the intent of this ordinance to impair any existing contracts, leases, or reservations that are evidenced by writing. An owner who asserts the enacted ordinance impairs a short-term rental contract in effect on or before the adoption date of this ordinance shall submit the contract, lease or reservation, evidenced in writing, to the Enforcement Officer for review and consideration.

Commented [MH6]: Pulled from Indian River Shores, FL. This would allow hosts to come into compliance without jeopardizing already scheduled renters.

Section 7 - Permit Requirements

A. Short-Term Rental Permit applications shall contain all of the following information:

1. The name, address, telephone number and email address of the owner.
2. The name, address and 24-hour telephone number of the Person in Charge.
3. Floor plan identifying rooms on all floors, specific location of bedrooms, and location of any pools labeled as either in-ground or above-ground.
4. The total number of bedrooms.
5. If the building is a multi-unit structure, the total number of dwelling units in the structure and the number of dwelling units being used as Short-Term Rentals.
6. A diagram or aerial photograph showing the location and number of on-site parking spaces.
7. If not on a central sewer system, a septic system evaluation certifying the existing system is functioning as intended and proof the tank was pumped within the past three (3) years for approval by the Sewage Enforcement Officer.
8. If on a central sewer system, a “will serve” letter from the owner of the system certifying that sufficient capacity is present for use of the property as a Short-Term Rental.
9. Copy of current Monroe County Hotel Room Excise Tax Certificate.
10. Copy of current Pennsylvania Sales and Use Tax Permit or signed attestation that a third party collects this on behalf of the Short-Term Rental owner.
11. Signatures of both the owner and Person in Charge.

Commented [MH7]: Changed to reflect changes to Person in Charge requirements.

Commented [MH8]: Removed items suggested by IRC, retained items regulated by Zoning.

Commented [MH9]: Added to disallow street views.

Commented [MH10]: Removed requirement for location of all components of septic system.

Commented [MH11]: Removed reference of limitation on occupancy to avoid confusion.

Commented [MH12]: Airbnb (and possibly others) provide this service to those using the platform.

Commented [MH13]: Removed requirements for deeds and trespass waivers.

12. Each owner shall maintain at least \$500,000 in general liability insurance on the Short-Term Rentals for the full duration of their license term and provide proof of the same to the Township.
13. Written notice to the homeowners association, indicating the intent to make application for and use the subject residential property for a Short-Term Rental, when applicable.

Commented [MH14]: Not sure how commercial liability insurance works. Is it per business/owner or per property?

B. A Short-Term Rental Permit shall be issued only to the owner of the Short-Term Rental property.

1. A separate Short-Term Rental Permit is required for each Dwelling Unit; for Two-Family or Multi-Family Dwellings, a separate Permit shall be required for each Dwelling Unit being rented as a Short-Term Rental.
2. A Short-Term Rental Permit is effective for a period of one (1) year, or until any of the conditions of the Short-Term Rental which are governed by this Chapter are changed, whichever shall first occur. A Short-Term Permit must be renewed annually and also when any of the conditions of the Short-Term Rental which are governed by this Chapter are changed.
3. The Township will prescribe forms and procedures for the processing of Permit Applications under this Ordinance.

Section 8 - Short-Term Rental Standards

- A. Overnight guests of a Short-Term Rental shall be limited to two per bedroom plus four.
- B. The maximum number of day guests allowed at any one time, in addition to the overnight guests, shall be seventy-five percent (75%) of the maximum overnight occupancy of the Short-Term Rental rounded up.
- C. The number of bedrooms permitted for a Short-Term Rental shall not exceed the number of bedrooms approved for the Dwelling Unit on the sewage permit issued for such property. Where there is no sewage permit on record, the Short-Term Rental shall be limited to three (3) bedrooms unless proof is provided to the Sewage Enforcement Officer that the septic system is adequate to handle additional flows. Any Short-Term Rental advertising more than five (5) bedrooms shall provide proof that the septic system is adequate to handle such flows by having the system approved by the Sewage Enforcement Officer, or by providing a septic permit previously issued by a Sewage Enforcement Officer. If a sewage system malfunction occurs, Short-Term Rental of the Dwelling Unit shall be discontinued until the malfunction is corrected in accordance with Township and Pennsylvania Department of Environmental Protection requirements.
- D. Outdoor parking for overnight and day guests shall be limited to available parking areas on the Short-Term Rental property. In no event shall parking for Short-Term Rental guests include spaces in any private, community, or public street right-of-way or on any lawns or

Commented [MH15]: To match definitions.

Commented [MH16]: Changed due to public interest.

Commented [MH17]: To match definitions

Commented [MH18]: Revised to reflect two per bedroom plus four change.

Commented [MH19]: Changed to match Section 7.L.4

vegetated areas.

- E. Neither Short-Term Rental occupants nor guests shall engage in disorderly conduct or disturb the peace and quiet of any nearby neighborhood or person by loud, unusual or excessive noise, by tumultuous or offensive conduct, public indecency, threatening, traducing, quarreling, challenging to fight, or fighting, or creating a dangerous or physically offensive condition.
- F. The owner and/or Person in Charge shall use best efforts to assure that the occupants or guests of the Short-Term Rental do not create unreasonable noise or disturbances, engage in disorderly conduct, or otherwise violate provisions of the Tobyhanna Township Code or any state law pertaining to noise or disorderly conduct including, but not limited to, notifying the occupants of the rules regarding Short-Term Rentals and responding when notified that occupants are violating laws, ordinances or regulations regarding their occupancy.
- G. The owner and/or Person in Charge shall, upon notification that occupants or guests of the Short-Term Rental have created unreasonable noise or disturbances, engaged in disorderly conduct or otherwise violated provisions of the Tobyhanna Township Code or state law pertaining to noise or disorderly conduct, promptly use best efforts to prevent a recurrence of such conduct by those occupants or guests.
- H. Overnight occupancy of recreational vehicles, camper trailers and tents at the property where the Short-Term Rental is located shall not be allowed. Outdoor overnight sleeping of occupants or guests of the Short-Term Rental is prohibited.
- I. A Short-Term Rental shall not have any outside appearance indicating a change of use from the surrounding residential uses.
- J. Fireworks and floating lanterns are prohibited.
- K. Subleasing all or a portion of the dwelling unit is prohibited.
- L. All Short-Term Rentals shall have a clearly visible and legible notice posted within the dwelling unit on or adjacent to the front door containing the following information:
 - 1. The name of the owner of the unit or the Person in Charge and a telephone number at which that party can be reached on a 24-hour basis.
 - 2. The E-911 address of the property.
 - 3. The maximum number of occupants permitted to stay in the dwelling unit and the maximum number of day guests permitted at any one time.
 - 4. The maximum number of all vehicles allowed to be on the property and the requirement that all guest parking must be in the available parking areas on the property and not in or along any private, community or public street right-of-way or on any lawn or vegetated area on the property.

Commented [MH20]: Added

Commented [MH21]: Added

Commented [MH22]: Changed to use definitions

5. The trash pick-up day and notification that trash and refuse shall not be left or stored on the exterior of the property.
6. Notification that an occupant or guest may be cited and fined for creating a disturbance or for violating other provisions of the Tobyhanna Township Code, including parking and occupancy limits.
7. Notification that Short-Term Rental occupants and guests are required to make the property available for inspection by the Enforcement Officer upon request.
8. A full copy of The Tobyhanna Township Short-Term Rental Ordinance.

Commented [MH23]: No access inside the home, only external for enforcement. PMRPD and BCO already have investigation authority.

Commented [JH24]: Suggested at 2019.11.14 meeting

M. [DELETED]

Commented [MH25]: Removed references to UCC/ICC requirements.

M. Compliance with the requirements of this section shall be considered conditions of a Short-Term Rental Permit, the violation of which may result in a revocation of that permit by the Enforcement Officer.

Section 9 - Fees, Term and Renewal

- A. Short-Term Rental fees, payable to Tobyhanna Township upon the filing of a Short-Term Rental Permit application, shall be in such amount as may be established by resolution duly adopted by the Board of Supervisors.
- B. Any Short-Term Rental Permit is good for a period not to exceed one (1) Annual Term and must be renewed annually. Short-Term Rental Permit renewal fees, payable to Tobyhanna Township upon the filing of a Short-Term Rental Permit renewal application, shall be in such amount as may be established by resolution duly adopted by the Board of Supervisors.
- C. Short-Term Rental Permit renewal applications shall contain information regarding any changes from the immediately preceding application with respect to matters governed by this Ordinance.
- D. Verification that all owed hotel taxes have been paid shall be submitted in the form of the four most recent Monroe County Hotel Excise Tax Quarterly Reports.

E. Verification that all sales taxes have been paid.

Commented [MH26]: Not sure how to verify

Section 10 - Enforcement Officer

The Tobyhanna Township Zoning Officer and any appointed Assistant Zoning Officers are hereby appointed as the Enforcement Officers for purposes of enforcement of this article. The Zoning Officer shall have the responsibility and authority to administer and enforce all provisions of this Chapter.

Commented [MH27]: To remove any need to appoint enforcement officers.

Commented [MH28]: Deleted Section 11 A. and moved B to Section 5 and C to Section 15.

Section 11 - Marketing

The marketing of a Short-Term Rental in which the advertised occupancy exceeds the maximum occupancy requirements permitted by this Chapter, or which promotes any other activity which is prohibited by this Chapter, shall be a violation of this Chapter.

Section 12 - Notice of Violation

If it appears to an Enforcement Officer that a violation of this Chapter exists or has occurred, the Enforcement Officer shall send a written Notice of Violation to the owner by personal delivery or by both United States first class and certified mail. The Enforcement Notice shall identify the premises which is the subject of the violation, enumerate the conditions which constitute the violation, cite the specific sections of this Chapter which are violated, indicate the action required to correct the violation, and provide a time-frame (established by the Enforcement Officer based upon the nature of the violation) to correct the violation.

Section 13 - Nuisance

In the interest of promoting the public health, safety and welfare, and minimizing the burden on Township and community services and impacts on residential neighborhoods posed by Short-Term Rentals, a violation of any of the provisions of this Chapter is declared to be a public nuisance.

Section 14 - Violations and Penalties

A. If there is reason to believe that any provision of this Chapter is being violated, the Board of Supervisors may or may cause, through an Enforcement Officer or authorized representative of the Township, entry onto premises for the purpose of inspection of any and all premises, properties, buildings and/or structures located within the Township for ascertaining the existence of violations. In those matters where the nature of an alleged violation is such that an inspection of the interior of a building or structure is necessitated.

Commented [MH29]: To match Section 10

Commented [MH30]: Inserted from Old Section 11

B. This Chapter shall be enforced by action brought before a Magisterial District Judge in the same manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure. Any person, partnership, corporation or other entity who or which violates or permits a violation of the provisions of this Chapter shall, upon conviction in a summary proceeding, pay a fine of not less than \$100 nor more than \$1,000 per violation, plus all court costs and reasonable attorney's fees incurred by Tobyhanna Township in the enforcement proceedings, and/or be imprisoned to the extent allowed by law for the punishment of summary offenses. Each day or portion thereof that a violation exists or continues shall constitute a separate violation. Further, the appropriate officers or agents of Tobyhanna Township are hereby authorized to seek equitable relief, including injunction to enforce compliance with this Chapter. All fines, penalties, costs and reasonable attorney's fees collected for the violation of this Chapter shall be paid to Tobyhanna Township for its general use.

C. In addition to, but not in limitation of, the provisions of Subsection A and Section 13, the

Enforcement Officer may either revoke, or deny an application to renew, a Short-Term Rental Permit for three (3) uncured or repeated violations of this Chapter in any rolling twelve (12) calendar month period. The revocation or denial to renew a Short-Term Rental Permit shall continue for six (6) months for the first set of three (3) uncured or repeated violations, and continue for one (1) year for any subsequent sets of violations.

Section 15 - Owners Severally Responsible

If the premises are owned by more than one owner, each owner shall severally be subject to prosecution for a violation of this Chapter.

Section 16 - Appeals

- A. Appeals of a determination of the Enforcement Officer under this Chapter to deny any application for, or to renew, a Short-Term Rental Permit, or to revoke a Short-Term Rental Permit, shall be filed with the Board of Supervisors within thirty (30) days of the date of the denial of application or revocation of permit. Appeals shall be processed as follows:
1. All appeals shall be in writing and signed by the Appellant on forms prescribed by the Township, and shall be accompanied by a fee, the amount of which shall be established by resolution duly adopted by the Board of Supervisors, which may include notice and advertising costs, and necessary administrative overhead in relation to the hearing.
 2. Each appeal shall fully set forth the determination appealed from, a detailed reason or basis for the appeal, and the relief sought. Every appeal shall refer to the specific provision of circumstances of the case.
- B. Hearings. The Board of Supervisors shall conduct hearings and make decisions pursuant to the Act of December 2, 1968 (P.L. 1133, No. 353), known as the "Local Agency Law," and in accordance with the following requirements:
1. Written notice shall be given to the Appellant, the Enforcement Officer, and to any person who has made timely request for same. Written notices shall be given at such time and in such manner as shall be prescribed by rules of the Board of Supervisors, but not less than fifteen (15) days prior to the hearing.
 2. The hearing shall be held within sixty (60) days from the date the appeal is filed, unless the Appellant has agreed in writing to an extension of time.
 3. The hearings shall be conducted by the Board of Supervisors. The decision or, where no decision is called for, the findings shall be in writing by the Board of Supervisors within forty-five (45) days after the conclusion of the hearing, unless the Appellant has agreed in writing to an extension of time, and shall be communicated to the Appellant and any other parties who have entered their written appearance and requested a copy of the decisions, at the addresses provided by them either by personal delivery or by United States First Class mail postage prepaid.

Commented [MH31]: Removed reference to Boroughs

4. The Chairman or Acting Chairman of the Board of Supervisors or the hearing officer presiding shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant documents and papers, including witnesses and documents requested by parties.
5. The parties shall have the right to be represented by counsel and shall be afforded the opportunity to respond and present evidence and argument and cross-examine adverse witnesses on all relevant issues.
6. Formal rules of evidence shall not apply, but irrelevant, immaterial or unduly repetitious evidence may be excluded.
7. The Board of Supervisors may, but is not required to, make a stenographic record of the proceedings. In the event a stenographic record of the proceedings is not provided by the Board of Supervisors, a stenographic record shall be made and kept at the request of any party agreeing to pay the costs thereof. Any party or other person desiring a copy of the stenographic record shall order the copy directly from the stenographer who prepared the same and shall pay the cost imposed by the stenographer for the copy directly to the stenographer.
8. The Board of Supervisors shall not communicate, directly or indirectly, with any party or any party's representatives in connection with any issue involved except upon notice and opportunity for all parties to participate; shall not take notice of any communication, reports, staff memoranda, or other materials, except advice from their solicitor, unless the parties are afforded an opportunity to contest the material so noticed; and shall not inspect the site or its surroundings after the commencement of hearings with any party or any party's representative unless all parties are given opportunity to be present.

Section 17 - Severability

If any section, provision, or portion of this Ordinance shall be held invalid or unconstitutional by any Court of competent jurisdiction, such decision shall not affect any other section, clause, provision or portion of this Ordinance so long as it remains legally enforceable minus the invalid portion. The Township reserves the right to amend this Ordinance or any portion thereof from time to time as it shall deem advisable in the best interest of the promotion of the purposes and intent of this Ordinance, and the effective administration thereof.

Section 18 - Repealer

All Ordinances or parts of Ordinances which are inconsistent herewith are hereby repealed.

Section 19 - Effective Date

This Ordinance shall become effective five (5) days after enactment.

ENACTED AND ORDAINED this ____ day of _____, A.D., 2020.

TOBYHANNA TOWNSHIP
BOARD OF SUPERVISORS

ATTEST: _____
John E. Kerrick

Crystal Butler, Township Secretary David Carbone

Brendon J. E. Carroll

John J. Holahan, III

Lloyd Vought

Commented [MH32]: Updated for 2020.

DRAFT