

**SUBSTITUTE NO. 1 TO ORDINANCE NO. 24-068**

**AN ORDINANCE TO AMEND CHAPTER 34 OF THE CITY CODE TO ESTABLISH SHORT-TERM RESIDENTIAL RENTAL REGULATIONS**

**Rev. 1**

**#0509**

**Sponsor:**

**Council  
Member  
Fields**

**Co-  
Sponsor**

**Council  
Member  
Cabrera**

**WHEREAS**, short-term rentals used to be confined to beach and mountain towns; now, the popularity of various online platforms has caused short-term rentals to proliferate in communities across the country, including the City of Wilmington; and

**WHEREAS**, short-term rentals have created problems for communities such as noise, trash, parking and traffic, as well as more serious issues like adversely impacting affordable housing and neighborhood character; and

**WHEREAS**, the regulation of short-term residential rentals will preserve and protect the City’s neighborhoods and provide standards and procedures for short-term rentals, as well as inform prospective guests on City regulations and expected conduct; and

**WHEREAS**, the regulation of short-term residential rentals will also ensure that owners and operators of short-term rental properties, and online platforms engaged in the business of facilitating or booking short-term rentals pay their fair share of taxes and fees; and

**WHEREAS**, Governor John C. Carney, Jr. recently signed House Substitute 2 to House Bill 168, as amended by House Amendment 1, into law, which established a state lodging tax on short-term rentals; and

**WHEREAS**, the City is able to implement its own tax under its City Charter’s “all powers” provisions; and

**WHEREAS**, City Council believes that the health, safety, and welfare of City residents will be better served through the passage of this Ordinance, which will address the critical need to regulate short-term residential rental properties.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON  
HEREBY ORDAINS:**

**SECTION 1.** A new article, Article V (Short-Term Residential Rental Properties), is hereby added to Chapter 34 (“Housing Code”), by adding the following underlined language to read as follows:

**ARTICLE V. – SHORT-TERM RESIDENTIAL RENTAL PROPERTIES**

**DIVISION 1. – IN GENERAL**

**Sec. 34-344. – Purpose and Intent.**

The purpose and intent of this article is to establish comprehensive regulations for the use of short-term residential rental properties, thereby enabling the city to preserve the public health, safety, and welfare, and ensuring that owners and operators of said properties and platforms engaged in the business of short-term rentals pay their fair share of taxes and fees.

**Sec. 34-345. – Applicability.**

Short-term residential rentals that are not otherwise exempted hereunder shall be subject to the provisions of this article. Short-term residential rentals that are occasionally or incidentally booked on a platform for more than thirty (30) consecutive days shall continue to be subject to the provisions of this article.

**Sec. 34-346. - Exemptions.**

This article shall not apply to:

- (a) Hotels, motels, bed and breakfast facilities, rooming houses and other land uses explicitly defined and/or regulated in the city code separately from short-term residential rentals.
- (b) Condominium buildings, cooperative buildings or buildings governed by a homeowners or condominium association that expressly prohibit short-term or transient rentals.
- (c) Income-restricted affordable housing, including public housing.
- (d) Sleeping quarters in vans or recreational vehicles.
- (e) Commercial office/retail or industrial (warehouse) spaces.
- (f) Non-residential areas withing dwelling units, such as garages, storage areas, closets, halls or utility spaces.

**Sec. 34-347. -Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Booking transaction* means any contractual agreement (other than a residential lease agreement) between a guest and an owner relative to a short-term rental.

Department means the department of land use and planning.

Dwelling unit means a room, or group of rooms, providing complete, independent living facilities, including permanent provisions for living, sleeping, eating, cooking and sanitation for one or more persons.

Guest means any person who occupies a dwelling unit pursuant to a short-term rental.

Noise monitoring device means a device capable of measuring sound levels consistent with the requirements of City Code section 11-65(c).

Occupancy means no more than two (2) guests per bedroom.

Operator means a natural person or entity designated by the owner to oversee management of a short-term rental.

Owner means a natural person (including a single-member LLC), or a locally-owned artificial entity (multiple-member LLC or corporation) that is not publicly traded, is not a subsidiary of a publicly-traded company, and primarily operates within New Castle County. This restriction is intended to prevent the concentration of short-term rental ownership by a single entity or associated businesses, this limiting the potential for market dominance or monopolistic practices. The term owner shall not include a person holding only a leasehold interest in the property. All owners must have a valid Delaware ID or Driver's License.

Platform means one or more portals, listing services, or websites under common ownership or control through which a person, other than an owner, collects or receives a fee, directly or indirectly, for facilitating booking transactions. A platform shall not include a service that merely posts advertisements for short-term rentals.

Rent means rent, and its exclusions, as defined by 30 Del. C. §6201(2)a.-g.

Short-term residential rental or short-term rental means all or any portion thereof of a residential dwelling unit which is advertised or held out to the public as a place regularly rented for dwelling, lodging or sleeping purposes with a duration of occupancy of thirty (30) consecutive days or less. Hotels, motels, and other land uses specifically exempted from the provisions of this article are not considered to be short-term rentals.

### **Sec. 34-348 – Minimum Standards.**

A dwelling unit may be used as a short-term residential rental property subject to compliance with all the following minimum requirements:

- (a) Short-term residential rentals may not result in changes to or adversely affect the residential character of the residential building and/or neighborhood.
- (b) No separate building entrance that is visible from the street may be provided for the sole use of the limited lodging.
- (c) Accessory signs are prohibited.
- (d) Dwelling units shall comply with all applicable zoning, health, fire, and related safety codes.

- (e) Guests shall be notified of the trash and recycle collection days for the property and any applicable rules and regulations pertaining to leaving or storing trash on the exterior of the property.
- (f) Guests shall be notified that they are prohibited from creating a “noise disturbance” as defined in City Code sections 11-56 and 11-65(b) and are subject to the specific noise prohibitions set forth in City Code section 11-60(c).
- (g) The owner or operator shall provide contact information to guests for the purpose of responding to complaints regarding the condition, operation, or conduct of the guests and/or the dwelling unit and have the responsibility to take action to resolve such complaints.

## **DIVISION 2. – SHORT-TERM RENTAL OWNER PERMIT**

### **Sec. 34.349. – Short-term residential rental owner permit - Requirements.**

- (a) No dwelling unit in the city may be used as a short-term rental unless:
  - (1) An owner of the dwelling unit possesses a valid and current short-term rental owner permit issued for the dwelling unit in accordance with this article, and all owners fully comply with all legal requirements and duties imposed herein; and
  - (2) An owner has designated an operator, who shall fully comply with all legal requirements and duties imposed herein.
- (b) The permits required by this article are regulated privileges, not rights, and can be revoked or suspended by the city in accordance with the provisions provided herein.
- (c) Any permit issued pursuant to this article is strictly personal and may not be transferred or assigned.
- (d) In the event the holder of a short-term rental owner's permit ceases to own the property or fails to renew the permit timely, the permit shall be immediately void, and short-term rental use shall be prohibited on the property.
- (e) If any required contact information changes for any permit, the person possessing the permit shall immediately notify the department in writing, and the department shall issue a revised permit to reflect the updated contact information.

### **Sec. 34.350. – Short-term residential rental owner permit and application – Eligibility.**

- (a) No dwelling unit may be used as a short-term rental unit unless an owner possesses a short-term rental owner permit issued in accordance with this article. Issuance of a short-term rental owner permit shall be subject to the following rules and criteria:
  - (1) No natural person under the age of 18 may own a property used as a residential short-term rental.
  - (2) Entity ownership
    - a. Ownership by an artificial entity (multiple-member LLC or corporation must meet the following criteria:

- i. Local ownership: The entity must be locally owned, not publicly traded, and not a subsidiary of a publicly-traded company.
  - ii. Primary operation: The entity's primary operations must be within New Castle County.
- (3) A short-term rental owner permit shall be valid for one year from the date of issuance, and shall be reapplied for annually.
- (4) A separate short-term rental owner permit shall be required for each dwelling unit used as a short-term rental.
- (5) A short-term rental owner permit shall be consistent with the dwelling-unit-per-lot-of-record, guest bedroom, guest occupancy, and any other applicable density limitations set forth in the zoning code.
- (6) Any dwelling unit permitted for short-term rental use must meet all applicable building, zoning, and applicable regulations, as determined by the department.
- (7) An owner of a property with outstanding taxes, fines, fees or penalties levied by the city, or that has been found to be liable of an unabated violation of the city code by an administrative hearing officer or court shall not be eligible for a short-term rental owner permit with respect to said property.
- (8) An owner of a property with open permits for new construction, structural or non-structural renovation, or electrical or mechanical work, or open violation cases for electrical or mechanical code violations or work without permits, shall not be eligible for a short-term rental owner permit with respect to said property without the written approval of the department.
- (9) The owner or resident of a dwelling unit required to be affordable by any mandatory inclusionary zoning, or affordable housing planned development shall not be eligible for a short-term rental permit for that dwelling unit.
- (b) Ownership Limits: A maximum of three short-term rental units may be owned by any combination of individual and/or artificial entity. This limit cannot be circumvented by creating multiple artificial entities. Grandfathered operators or properties are not included in the ownership limit.
- (c) Grandfather Clause: Any residential short-term rentals operating before the enactment of this legislation will be grandfathered, provided the grandfathered operators obtain the necessary licenses and comply with all regulations. Documentation of property listed on a public site in the year 2024 or earlier required for grandfather status.
- (d) The application for a short-term rental owner permit shall be on forms created by the department, which shall, at a minimum, require the following information from applicants:
  - (1) The name, age, address, phone number, and email contact information of all owners;

- (2) The municipal address of the dwelling unit associated with the short-term rental owner permit;
  - (3) The total number of dwelling units located on the lot-of-record containing the dwelling unit associated with the short-term rental owner permit application; and
  - (4) The name, address, local phone number, email contact information, of the operator designated by the owner to satisfy the requirements of this article with respect to the dwelling unit associated with the short-term rental owner permit.
- (e) The following additional documentation shall be submitted to the department, along with the application, prior to processing:
- (1) A floor plan depicting all:
    - a. Entrance and exit doors;
    - b. Windows;
    - c. Bedrooms, including an indication of which are used for guests, and for non-commercial short-term rentals, the bedroom reserved exclusively for the use of the operator;
    - d. Bathrooms;
    - e. Kitchens; and
    - f. Interior doors.
  - (2) An evacuation plan indicating:
    - a. The fire exits and escape routes;
    - b. The location of smoke detectors;
    - c. The location of fire extinguishers; and
    - d. The location of carbon monoxide detectors.
  - (3) A site plan indicating the location of any required parking.
  - (4) A noise abatement plan that provides, at a minimum, a noise monitoring device.
  - (5) A sanitation plan that provides, at a minimum, for daily visual inspections on the property, as well as regular litter and trash collection and procurement of an adequate number of trash bins to securely hold all trash generated by the property in a lidded container.
  - (6) An attestation signed by the owner providing that:
    - a. the dwelling unit has no outstanding property taxes or city liens associated with the lot-of-record, nor do any of its owners owe any other outstanding taxes to the city, including taxes and fees owed in connection with short-term rentals;

- b. the dwelling unit complies, and will comply during any short-term rental of the dwelling unit, with all standards contained in the city's property maintenance code and all health safety requirements contained in the building code;
  - c. the dwelling unit has working smoke detectors inside and outside every bedroom, carbon monoxide alarms outside every bedroom, and a properly maintained and charged fire extinguisher on all habitable floors;
  - d. the dwelling unit is not subject to any contractual restrictions precluding the dwelling unit from being used for short-term rentals, including, but not limited to, homeowner association agreements, condominium bylaws, restrictive covenants, or building restrictions;
  - e. the owner and operator read, understands, and agrees to comply with all legal duties imposed by this article.
  - f. the owner possesses insurance that meets the requirements of this article; and
  - g. the owner and operator will not discriminate in guest use or rental of a short-term rental, and will comply with all applicable anti-discrimination laws, including, but not limited to, Title VII of the Civil Rights Act of 1968, the Fair Housing Act (FHA), and the Americans with Disabilities Act (ADA).
- (7) Proof of completion of a short-term rental course, to be provided by the department and made available virtually.
- (f) Every short-term rental owner permit issued by the department shall contain the following information:
- (1) Short-term rental owner permit number;
  - (2) Municipal address of the dwelling unit associated with the permit;
  - (3) Owner's name and contact information;
  - (4) Operator's name and contact information;
  - (5) Permit type;
  - (6) The permit's effective and expiration dates;
  - (7) The guest bedroom and occupancy limit of the dwelling unit associated with the permit; and
- (g) Renewals shall be obtained in the same or substantially similar form and manner as the initial permit, and shall also require:
- (1) Completion and submission of a form created by the department of finance providing the associated short-term rental taxes and fees paid to the city for the previous permit year. The form shall include at a minimum:

- a. A statement indicating if the required taxes and fees were paid by the owner, a platform, or both, for the preceding tax year and in what total amounts;
  - b. The total number of nights the dwelling unit used as a short-term rental was rented in the previous calendar year;
  - c. The rates charged for each nightly rental; and
  - d. Any IRS Forms 1099 or other financial reports or documents provided to owners or operators by any platform related to rental activity on each platform used.
- (2) Updated owner and operator contact information, if applicable;
  - (3) An attestation signed by the owner providing, in addition to the continued compliance with the items specified in this subsection, that the short-term rental owner permit has not been revoked in the previous year;
  - (4) An updated list of platforms that are used to solicit booking transactions for the dwelling unit associated with the short-term rental owner permit, and correlating print-outs of the URL(s) soliciting the short-term rental; and
  - (5) Proof of completion of a short-term rental course, to be provided by the department and made available virtually, within the previous permit year.
- (h) For co-owned property, only one owner's permit shall be required, provided that the applicant certifies to the department that all owners independently meet the requirements for an owner's permit and that the applicant has secured all necessary approvals from the other owners to obtain a short-term rental permit.

**Sec. 34.351. – Short-term rental owner permit holder - Legal duties.**

- (a) Legal duties. An owner possessing a short-term rental owner permit shall comply at all times with the following requirements:
- (1) Insurance. The owner shall maintain in full force and effect at all times:
    - a. Individual Homeowners: The individual owner shall maintain a homeowner's insurance policy (which may include an umbrella policy) with a short-term rental endorsement. The total policy limits must be a minimum of \$1,000,000.00 in liability coverage per occurrence for bodily injury, personal injury, and property damage arising in any way from the issuance of the permit or activities conducted pursuant to the permit, for each dwelling unit used as a short-term rental.
    - b. Artificial Entities: The owner shall maintain, in full force and effect at all times, a commercial general liability insurance policy with a minimum of \$1,000,000.00 in coverage per occurrence, combined single limit, for bodily injury, personal injury, and property damage arising in any way from the issuance of the permit or activities conducted pursuant to the permit, for each dwelling unit used as a short-term rental.



- (2) Records. The owner shall maintain guest registration records, which shall contain the actual dates of occupancy, total number of guests per party per stay, the rate(s) charged, rental income, and taxes remitted. Such records shall be maintained for three years and shall be provided to the city upon request, in accordance with applicable law. Personally identifiable guest information may be redacted.
- (3) Short-term rental advertisements. The owner shall ensure that the following information be provided in connection with any short-term rental advertisement and shall ensure, in any event, that each short-term rental listing advertises only one dwelling unit permitted as a short-term rental:
  - a. The short-term rental owner permit number;
  - b. Whether the dwelling unit is wheelchair accessible or otherwise compliant with the ADA;
  - c. The number of available guest bedrooms as indicated on the owner permit; and
  - d. The maximum available occupancy of the dwelling unit as indicated on the owner permit.
- (4) Adherence to dwelling and occupancy limits. Short-term rentals shall be subject to, and may not exceed, the dwelling-unit-per-lot-of-record, guest bedroom, guest occupancy, and density limitations set forth in the zoning code.
- (5) Required postings at the short-term rental.
  - a. The owner shall ensure that a copy of the owner permit is displayed in a location clearly visible from the street and legible to both guests and neighbors.
  - b. The owner shall ensure that the following are displayed in a location clearly visible and legible to guests:
    - i. An evacuation diagram identifying fire escapes and all means of egress from the dwelling unit and the building in which the dwelling unit is located;
    - ii. Trash disposal and recycling collection days; and
- (6) Health and safety. The owner shall ensure that each dwelling unit governed by this article complies with the following standards:
  - a. Walls, ceilings, floors, windows, fixtures and furnishings throughout the dwelling unit shall be maintained in a clean condition at all times and shall be in good repair.
  - b. All rooms shall be adequately lighted and properly ventilated by natural or artificial means or both, and shall be provided with adequate heating and air-conditioning facilities. All natural gas fired heaters shall be vented to the outside atmosphere.

- c. Each guest shall be furnished with clean towels, washcloths, and bed linens. Sheets must be of sufficient width and length to completely cover the mattress and be turned under the mattress so as to properly secure the sheet. All towels, washcloths and bed linens shall be kept in good repair and changed between rentals.
  - d. All dishes, utensils, pots, pans and other cooking utensils shall be provided to guests in a safe and sanitary condition. The permittee shall ensure that all perishables left by the guests are disposed of at the conclusion of a short-term rental.
  - e. Each dwelling unit shall have a working fire extinguisher, smoke alarms, and carbon monoxide detectors and shall comply with all applicable fire codes;
  - f. The dwelling unit shall have working locks, operable by guests, at all points of ingress and egress.
  - g. Every dwelling unit shall comply with applicable provisions of the zoning code, property maintenance code, and the building code.
- (7) Short-term rental guest use limitations. The owner shall ensure that no dwelling unit used as a short-term rental is used as a reception facility, or any other commercial use during guest use of the short-term rental.
- (8) Criminal activity. The owner shall timely report any known or suspected criminal activity by a guest to the police department.
- (9) Reasonable inspections. The owner shall submit to inspections if requested by the department.
- (10) Owner/operator availability. The owner shall:
- a. Ensure the operator is available during all periods of guest occupancy, including nights and weekends, to facilitate compliance with this article. Availability requires, at a minimum, that the operator be:
    - i. Accessible by telephone; and
    - ii. Able to resolve complaints within a reasonable time, not to exceed three hours.
  - b. Serve as the point of contact for guests, in addition to the operator, and be able to resolve complaints within a reasonable amount of time, not to exceed three hours.
  - c. Receive and resolve complaints from neighbors regarding disruptive short-term rentals.
  - d. Receive and resolve complaints from the city and any of its departments regarding disruptive short-term rentals.
- (b) Prohibited acts. The following acts shall be prohibited and may be grounds for suspension or revocation of a short-term rental owner permit, or any other remedy authorized by the article. Each instance of a prohibited act may be cited separately in any enforcement action.

- (1) Advertising an illegal short-term rental.
  - (2) Exceeding in any advertisement, the legally available dwelling-unit-per-lot-of-record limitation set forth in the zoning code.
  - (3) Exceeding in any advertisement, the legally available guest bedroom limitation set forth in the zoning code.
  - (4) Exceeding in any advertisement, the legally available guest occupancy limitations set forth in the zoning code.
  - (5) Exceeding the dwelling-unit-per-lot-of-record limitation set forth in the zoning code.
  - (6) Exceeding the guest bedroom limitation set forth in the zoning code.
  - (7) Exceeding the guest occupancy limitations set forth in the zoning code.
  - (8) Using a dwelling unit as a reception facility, or for any other commercial use defined by the zoning code, during a short-term rental. No special event permit shall be obtained for an event occurring at a dwelling unit during any period of guest occupancy.
  - (9) Rental of the dwelling unit by the hour or for any period less than one night.
  - (10) Rental of a single dwelling unit to more than one party of guests at one time.
  - (11) Short-term rental use that generates (i) noise disturbances as defined in City Code sections 11-56 and 11-65(b), (ii) offensive odors, (iii) public drunkenness, (iv) unlawful loitering, (v) litter, (vi) lewd conduct by guests or (vii) any effect that otherwise unreasonably interferes with neighbors' quiet enjoyment of their properties.
  - (12) Short-term rental use that places loads on structural elements or components of buildings, including, but not limited to, porches, balconies, and roof decks, in excess of the minimum design loads required by the building code.
  - (13) Violations of the submitted noise abatement plan, security and operation plan, or sanitation plan.
  - (14) Discriminating against any guest, or potential guest, because of race, color, sex, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status or source of income.
  - (15) Failure to comply with any other legal duty imposed by this article or correlating provisions in the zoning code, and all other applicable laws.
  - (16) Failure to ensure that the licensed operator is available as required by this article.
  - (17) Advertising more than one dwelling unit for short-term residential rental in a single advertisement or listing.
- (c) Ongoing duty. An owner possessing a short-term rental owner permit may delegate the performance of any duties set forth in this section to the operator identified in the owner's application to the department. Notwithstanding that delegation, the

owner remains principally responsible for the performance of all duties created hereunder, and may not assert the non-performance of a short-term rental operator as a defense to any action arising from a breach of the owner's duties under this article.

## **DIVISION 5. – TAXES AND PERMIT FEES**

### **Sec. 34.352. – Taxes and permit fees.**

- (a) There is hereby imposed a short-term rental lodging tax at the rate of two percent (2%) of the rent upon every occupancy of a short-term rental in the City.
- (b) The lodging tax collected pursuant to this section is imposed on the guest of the short-term rental and collected and remitted monthly by the owner of the short-term rental to the department of finance within 20 days after the end of each calendar month.
- (c) The lodging tax imposed under this subsection is in addition to any amounts imposed by the state pursuant to state law.
- (d) Annual permit fees for owners of short-term residential rentals shall be \$75.00.

## **DIVISION 6. – ADMINISTRATION AND ENFORCEMENT**

### **Sec. 34.353. – Administration and enforcement.**

- (a) *Applications.* The department of land use and planning shall receive and process all applications required under this article and determine applicant eligibility. The department shall issue permits only to eligible applicants, as determined by the department. The department is further authorized to cancel, rescind or suspend a permit issued under this article whenever a permit so issued is in error, was issued on the basis of inaccurate or misleading information, or contravenes this article or the zoning code.
- (b) *Reporting.* The department of land use and planning shall prepare a database of (i) all owners who are ineligible to have applicable permits for short-term rentals; and (ii) addresses of all buildings whose owner(s), including any applicable homeowners association or board of directors, who prohibit short-term residential rentals to operate anywhere in the building. The database shall be updated annually.
- (c) *Rules and regulations.* The department may issue rules and regulations related to the implementation and administration of this this article and enforcement of short-term rental laws.
- (d) *Routine Inspections.* Owners and/or operators of short-term residential rentals shall provide access to all required areas of the dwelling unit for inspection within 21 calendar days of an inspection request by the department. This time period may be extended upon approval by the department. If the short-term rental unit is legally occupied by a guest or other occupant, the owner or operator shall provide at least 24 hours' notice to the guest or occupant. The owner or operator shall not be in violation of this section if the guest or occupant refuses to allow the inspection.

- (e) Emergency Inspections. If the department has reasonable cause to believe that the short-term residential rental unit is so hazardous, unsafe, or dangerous as to require immediate inspection to safeguard the public health or safety, the department shall have the right to immediately enter and inspect the premises and may use any reasonable means required to effect the entry and make an inspection.
- (f) Violations and penalties. Violations of the requirements in this chapter shall be subject to the penalties set forth in City Code section 48-31(a). Noise disturbances shall be enforced pursuant to City Code section 11-58 and shall be subject to the penalties set forth under City Code section 11-59.
- (g) Additional remedies. The remedies provided for herein are not exclusive and shall not preclude the city from any other remedy or relief to which it is entitled to under law or equity.

**SECTION 2.** This Ordinance shall become effective immediately upon its date of passage by the City Council and approval by the Mayor.

First Reading.....November 21, 2024  
 Second Reading....November 21, 2024  
 Third Reading.....

Passed by City Council,

\_\_\_\_\_  
 President of City Council

ATTEST: \_\_\_\_\_  
 City Clerk

Approved this \_\_\_\_\_ day of \_\_\_\_\_ ,  
 2024

\_\_\_\_\_  
 Mayor

**SYNOPSIS:** This Ordinance amends Chapter 34 of the City Code by establishing comprehensive regulations for short-term residential rentals, which is defined to mean all or any portion thereof of a residential dwelling unit which is advertised or held out to the public as a place regularly rented for dwelling, lodging or sleeping purposes with a duration of occupancy of thirty (30) consecutive days or less. Hotels, motels, and other land uses specifically exempted from the provisions of this article are not considered to be short-term rentals.

**FISCAL IMPACT:** [TBD]