

**Ordinance No. 1 for the Year 2002 Amendment to the
Town of Inlet Zoning Ordinance of 1966 Town of Inlet, Hamilton County, NY**

Pursuant to Article 16 of the Town Law of the State of New York and Section 23 of the Zoning Ordinance of the Town of Inlet of 1966, the Town Board of the Town of Inlet, Hamilton County, New York, does hereby ordain and enact the following Amendment to the Town of Inlet Zoning Ordinance of December 7, 1966.

§ 9(B)(2)(I): Title of Amendment

This Amendment shall be known as “Article V, Section 9(B)(2), Legal Rental of a Non-Owner Occupied Rental Dwelling in the R1 District.”

§ 9(B)(2)(II): Legislative Intent and Purpose

A. The intent and purpose of this Amendment is to preserve the aesthetic integrity of our residential neighborhoods, prevent neighborhood blight, encourage residential property maintenance, protect residential property values, permit the more efficient use of the Town’s existing stock of dwellings to provide economic support of resident families, and enhance the quality of life in our residential neighborhoods.

B. This Amendment is intended to apply only to non-owner occupied rental dwelling(s) in the R1 Residence District. The Town Board of The Town of Inlet has determined that the potential exists in the Town of Inlet for serious conditions arising from non-owner occupied rental dwellings which are substandard or in violation of the New York State Uniform Fire Building Code, Building Rehabilitation Code, Electrical Code, Fire Prevention Code, and other codes and ordinances of the Town. Non-owner occupied rental dwellings may be inadequate in size, overcrowded and dangerous, and such rental dwellings pose hazards to life, limb and property of residents of the Town, create blight and excessive vehicle traffic and parking problems, and overburden municipal services. The Board finds that current code provisions are inadequate to halt the proliferation of such conditions and that the public health, safety, welfare and good order and governance of the Town will be enhanced by enactment of this Amendment, which is remedial in nature and effect.

C. The purpose of this Amendment is to establish a permit process to allow the legal rental of non-owner occupied rental dwellings in the R1 Residence District, provided that the Zoning Board of Appeals determines that such use is appropriate after considering the characteristics of the surrounding neighborhood and the impacts on surrounding uses in the R1 District, and by placing any restrictions and/or conditions on such use as may be applicable and appropriate.

§ 9(B)(2)(III): Definitions

As used in this Amendment, the following terms shall have the meanings indicated:

RENT -- a return, in money, property or other valuable consideration (including payment in kind or for services or other thing of value), for use and occupancy or the right to use and occupancy of a structure or building, whether or not a legal relationship of landlord and tenant exists between the owner(s) and the occupant(s) thereof.

RENTAL DWELLING -- any structure or building, or portion thereof, including, but not limited to, dwellings, housekeeping cottage(s), camp(s), or roominghouse(s), which is used by one or more persons as living quarters for less than four continuous months under an arrangement whereby the occupant or occupants pay rent for such use or occupancy.

§ 9(B)(2)(IV): Exemptions

A. Any building or structure, or portion thereof, which is used as a renter's home or residence is exempt from this Amendment.

B. Any property owner who has obtained a permit from the New York State Department of Health for the rental of a building(s) is exempt from this Amendment, solely with respect to those building(s) upon which the Health Department's jurisdiction applies.

§ 9(B)(2)(V): Application and Five-Year Permit Required

A. It shall be unlawful and a violation of this Amendment for any person or entity who owns a building or structure in the R1 Residence District, but is not occupying that building or structure, to use, establish, maintain, operate, lease, rent or suffer or permit the occupancy and use thereof, for a period of less than four continuous months, as a rental occupancy, without first having applied for and obtained a special use permit (hereinafter "permit"). Failure or refusal to procure a permit hereunder shall be deemed a violation.

B. The owner(s) of any real property located in the R1 Residence District desiring to rent a non-owner occupied building or structure thereon shall submit an application to the Zoning Enforcement Officer for a revocable, five-year permit that allows the legal rental of a building or structure on said property. The application must include the following:

- (1) A non-refundable processing fee of not less than \$75.00 dollars per application;
- (2) The full name, legal address and telephone numbers of the property owner(s);
- (3) A plot plan showing, at the time of the application, the dimensions of the lot, all buildings, driveways and parking areas situate on the lot, and property line setbacks;
- (4) The number of actual bedrooms, not including living areas that may be used for sleeping, with the dimensions of each bedroom;

(5) A diagram of the septic system showing, at minimum, septic tank location and capacity, leach field location and date of system installation or most recent system test;

(6) Water sample test results taken within 30 days of the application;

(7) A signed statement from the property owner(s) attesting that the rental dwelling is equipped with a functioning smoke-detector device, and that the electrical, plumbing, and septic systems are in good-working order; and

(8) If the property owner(s) is not a full-time resident of the Town of Inlet, the name, address and telephone number(s) of the property owner's local agent who shall reside within the Town of Inlet, or an adjoining town, and may be contacted by the Town as set forth in §9(B)(2)(VII)(3).

C. The Zoning Enforcement Officer or his designated agent shall have the right to inspect any or all parts of any rental dwelling for purposes of inspection pertinent to any rental application and/or permit granted thereto, except that the owner, agent or person in charge thereof shall have the right to insist upon the procurement of a search warrant from a court of competent jurisdiction by the Zoning Enforcement Officer in order to enable such inspection. Absent an emergency situation, the official charged with conducting the rental dwelling inspection pursuant to this Ordinance shall be required to obtain a search warrant whenever an owner, agent or person in charge refuses to permit a warrantless inspection of the premises after having been advised that he or she has a constitutional right to refuse entry of the of the official without a search warrant. A nonconsensual, warrantless search can be made in emergency situations.

§ 9(B)(2)(VII): Minimum Requirements

A. The property owner(s) shall provide a minimum of one parking space per each bedroom.

B. The property owner(s) shall not be permitted to place a rental sign of any kind.

C. The property owner(s), if not a full-time resident of the Town of Inlet, shall designate on the permit application a local agent who shall reside in the Town of Inlet, or an adjoining town, and shall be authorized, by the owner(s), to act as necessary to preserve the health and safety of the renters and to preserve the character of the neighborhood. If the owner(s), or their agent, is not available in the event of emergency, any necessary actions may be taken by the Town of Inlet and back charged to the owner(s).

D. In the event that a permit granted pursuant to this Amendment is subsequently revoked under § 9(B)(2)(XII), the property owner(s) shall indemnify and hold harmless the Town of Inlet, its employees, agents and servants, including, but not limited to, the Zoning Board of Appeals, and the Zoning Enforcement Officer against any claims of lost income.

§ 9(B)(2)(VIII): Zoning Enforcement Officer's Review

The Zoning Enforcement Officer, upon inspection of the property and review of the completed permit application, shall notify the Zoning Board of Appeals of any property and neighborhood characteristics which the Officer deems pertinent to the Board's determination of the application.

§ 9(B)(2)(IX): Zoning Board of Appeals' Action and Determination

A. The Zoning Board of Appeals shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed rental permit, including, but not limited to, restricting the number of renters per [bedroom and] rental dwelling, requiring water and septic system testing, and/or by placing conditions to regulate traffic and noise. Upon its granting of any rental permit, any such conditions must be met in connection with the issuance of the permit. Unless a waiver, as set forth below, is granted, the Zoning Board of Appeals shall not issue a permit for rental occupancy that allows for more than two persons per bedroom. Any permit issued shall be posted in a conspicuous place on the premises.

B. The Zoning Board of Appeals is hereby authorized to, [when reasonable], when there is significant reason for doing so, waive any requirement for the approval, or approval with conditions, of rental permit applications. Any such waiver may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety or general welfare or inappropriate to a particular rental permit.

C. Any such waiver must be specifically requested and justified by the applicant, and may be subject to any reasonable conditions and restrictions imposed by the Zoning Board of Appeals, including, but not limited to, requiring annual review of any such waiver.

§ 9(B)(2)(X): Public Hearing and Decision

The Board of Appeals, prior to making a determination on the permit, shall hold a public hearing within 62 days of receipt of the completed application and, unless otherwise extended by mutual consent of the applicant and Board, shall decide upon the application within 62 days after the hearing.

§ 9(B)(2)(XI): Notice of Public Hearing

Notice of public hearing shall be published at least 5 days prior to the public hearing in the official newspaper of the Town of Inlet. Written notice of the public hearing shall be mailed to all property owners within 200 feet of the subject property. The notice shall be mailed to the address shown on the latest property tax assessment roles of the Town of Inlet.

§ 9(B)(2)(XII): Enforcement

A. The Zoning Enforcement Officer shall revoke any permit where he or she finds that a permit holder has caused, permitted, suffered or allowed to exist and remain upon the premises for which such permit has been issued, for a period of 14 business days or more after written, return receipt requested notice and opportunity to be heard has been given to a permit holder, or the managing agent of such premises, a violation of the New York State Uniform Fire Prevention and Building Code or a violation of this Amendment or other provision of the Town Code, or any conditions set forth in the Zoning Board of Appeals' permit approval. If the violations are corrected to the satisfaction of the Zoning Enforcement Officer, the permit may be reinstated. In the case of a permit being permanently revoked, the property owner(s) shall remedy all violations before applying for a new permit.

B. An appeal from such revocation may be taken by the property owner(s) to the Zoning Board of Appeals, by written request, made within thirty 30 days from the date of such revocation. The Zoning Board of Appeals shall hold a public hearing on such appeal after receipt of written request of such appeal, and after such hearing shall make written findings and conclusions and a decision either sustaining such permit revocation or reinstating such permit within 30 days after close of such public hearing. Unless the Town Board directs otherwise in circumstances constituting serious threats to health and safety, the filing of an appeal shall stay the effectiveness of a permit revocation until the Zoning Board of Appeals has considered and ruled upon the issue.

§ 9(B)(2)(XIII): Disclaimer

The approval of a permit by the Zoning Board of Appeals and the issuance of a permit by the Zoning Enforcement Officer in no way constitutes an endorsement of the quality or fitness or habitability of the property. Property owner(s) and renters shall indemnify and hold harmless the Town of Inlet, its employees, agents and servants, including, but not limited to, the Zoning Board of Appeals and the Zoning Enforcement Officer as to any claims resulting from the rental(s) of said property.

§ 9(B)(2)(XIV): Penalties for Offenses:

Any person, association, firm or corporation which violates any provision of this Amendment or assists in the violation of any provision of this Amendment shall be guilty of a violation, punishable:

(1) By a fine not less than \$250.00 and not exceeding \$1000.00 or by imprisonment for a period not to exceed 15 days, or both, for conviction of a first offense.

(2) By a fine not less than \$1,000.00 nor more than \$3,000.00 or by imprisonment for a period not to exceed 15 days, or both, for conviction of a second of the two offenses, both of which were committed within a period of five years.

(3) Each week's continued violation shall constitute a separate additional violation.

§ 9(B)(2)(XV): Nonconforming Rentals

A. Intent. This Ordinance is intended to encourage the eventual elimination of rentals which do not comply with this Ordinance. The elimination of nonconforming rentals is important to the purpose and intent stated in § 9(B)(2)(II) of this Ordinance. However, it is also the intent of this Ordinance to avoid unreasonable invasion of property rights while accomplishing the elimination of nonconforming rentals.

B. Amortization. Any rentals which do not conform to the provisions of this Ordinance shall be deemed a nonconforming use and shall cease on or before the expiration of 18 months from the effective date of this Ordinance, and such lapse of time shall be deemed sufficient to amortize the cost thereof, provided, however, that the owner(s) of any such nonconforming rental(s) may apply to the Zoning Board of Appeals for permission to operate such nonconforming use beyond the 18-month amortization period where it can be shown that the owner(s) have made substantial expenditures related to the nonconforming use, that such expenditures cannot be recouped within 18 months and that the requested extension is the minimum necessary to allow such recoupment.

§ 9(B)(2)(XVI): Broker's Responsibility

Broker's responsibility prior to listing. It shall be unlawful and a violation of this Amendment and an offense within the meaning of the Penal Law of the State of New York for any broker or agent to list, show or otherwise offer for lease or rent on behalf of the owner(s) any rental dwelling for which a current rental permit has not been issued. It shall be the broker's or agent's duty to verify the existence of a valid permit before acting on behalf of the owner(s).

§ 9(B)(2)(XVII): Effective Date

This Ordinance shall take effect 10 days following publication in the official newspaper of the Town of Inlet. No violation of this Amendment shall be charged prior to November 1, 2002.

§ 9(B)(2)(XVIII): Severability

If any clause, sentence, paragraph, section or part of this Amendment shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in said judgment.