

Amendment 8-30-2021

Reconciliation with zoning ordinance December 1, 2021

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

AN ORDINANCE TO LICENSE SHORT-TERM RENTAL UNITS

Be it ordained by the City Council of the City of Newburyport as follows:

THAT the Code of Ordinances, City of Newburyport, Massachusetts, is hereby amended as follows, with deletions ~~double-stricken-through~~, and additions double-underlined:

Chapter 9: LICENSES, PERMITS AND BUSINESS REGULATIONS

ARTICLE XI: SHORT-TERM RENTAL UNITS

Sec. 9-300 Purposes.

The purposes of this Article XI include:

- a. To define short-term rental use and regulate the use of short-terms rentals in the City;
- b. To incorporate responsibly the growth of the so-called home-share industry into Newburyport's existing neighborhoods by striking a fair balance between the preservation of permanent housing, including affordable and moderately priced housing (with or without deed restrictions), and the flexibility required for residents to benefit from this new industry; and
- c. To ensure that potential negative impacts from the use of residential properties as STRUs, including, but not limited to, impacts upon public health and fire safety, and due to increased trash, noise, traffic, and parking, are mitigated to avoid adverse impacts on overall neighborhood character or property values.

Sec. 9-301 Definitions.

Except as otherwise specified herein, all terms used in this Article XI shall be as defined in 830 CMR 64G.00 (Room Occupancy Excise).

Booking Agent: Any natural person who, or entity that, facilitates reservations or collects payments for an STRU on behalf of or for an Operator.

Emergency Contact: A natural person who, in addition to the Operator, will be responsible to receive and act on complaints, problems or emergencies at an STRU, as described in Section 9-306(g).

Enforcement Agent: The person duly appointed by the City of Newburyport to investigate complaints and issue violation notices pursuant to the provisions of this Article XI.

Home-Share Rental Unit: An STRU that is a Residential Unit and the Operator's Primary Residence and is rented as an STRU while the Operator is not personally and physically present overnight. The allowable occupancy of a Home-Share Rental Unit for use as an STRU shall be limited to a maximum of four (4) bedrooms and a maximum of eight (8) people.

Licensing Board: The Licensing Board of the City of Newburyport.

Limited-Share Rental Unit: An STRU that is a Residential Unit and the Operator's Primary Residence, of which only a portion is offered to guests as an STRU while the Operator is personally and physically present overnight. Occupancy of a Limited-Share Rental Unit shall be limited to a maximum of three (3) bedrooms for guests and a maximum of six (6) guests, and at least one (1) additional bedroom shall be exclusively used and occupied by the Operator while the STRU is in use by any guests.

Operator: A natural person who is an owner of record of the Residential Unit, or is legally authorized to act in relation to the STRU as the owner of record. Such owner may be, without limitation, an individual owner, alone or together with others, a trustee of a trust, a manager of an LLC, or an officer of a corporation. A natural person legally authorized to act for the record owner shall be duly designated by the licensing authority as the responsible party for an STRU. Only one natural person may be an Operator.

Operator's Agent: Any natural person who or entity that manages an STRU on behalf of an Operator, including a property manager, property management company, or real estate agency. Using an agent does not relieve the Operator of any of their duties to comply with every provision of this Article.

Owner-Adjacent Rental Unit: A Residential Unit that is not the Operator's Primary Residence and is offered as an STRU, but that is located on the same Lot as the Primary Residence of, and is owned by, said Operator, and is rented as an STRU while the Operator is personally and physically present overnight. The use of an Owner-Adjacent Rental Unit as an STRU shall be allowed in two-family or three-family dwellings solely where all dwelling units making up such use are owned by the same owner-occupant who also serves as the Operator of the Owner-Adjacent Rental Unit. For owner-occupied multifamily residential dwellings with three (3) or more dwelling units, in addition to the

Residential Unit in which the Operator resides and uses as a Home Share and/or Limited-Share Rental Unit, the Operator shall offer only one Owner Adjacent Rental Unit as an STRU.

Primary Residence: The Residential Unit in which the Operator resides for no fewer than 183 days of every year and at which such residence the Operator holds a valid Massachusetts Driver's License or state-issued identification card, registers automobiles, and is registered to vote. The Operator shall demonstrate Primary Residence by submitting to the Licensing Board their certification signed under penalty of perjury that as of the date of registration of the Residential Unit on the Short-Term Registry, the Operator either (a) has resided in the Residential Unit for no fewer than 183 days of the previous year, or (b) intends to reside in the Residential Unit for no fewer than 183 days of the year-long period of registration. Such certification shall be accompanied by at least two (2) of the following documents: evidence of valid voter registration, evidence of valid motor vehicle registration, a valid driver's license, or a valid state-issued identification card

Registration Number: A unique identification number generated by the Licensing Board for each registered STRU. Registration numbers shall be valid for one (1) year from the date of issuance, and shall be assigned to both a single STRU and a single Operator. The registration number shall be included on any listing or advertisement for the rental of the STRU.

Residential Unit: A Residential Unit is a lawful dwelling unit that makes up all or part of the three (3) following principal residential uses as defined under the Newburyport Zoning Ordinance: One-family (Use 101), Two-family (Use 102) or Multifamily (Use 103). For purposes of this Article XI, the term "Residential Unit" shall not include any other use under the Newburyport Zoning Ordinance, including, without limitation, Hotel, Lodging House, or Bed and Breakfast use.

Short Term Rental Unit ("STRU"): A Residential Unit used for residential occupancy for a period of fewer than thirty-two (32) consecutive days by a person or persons who do(es) not reside in the Residential Unit as their primary residence, in exchange for payment or other consideration. An STRU may or may not be offered or leased through a Booking Agent, and falls within one of three (3) exclusive categories: Home-Share Rental Unit, Limited-Share Rental Unit, or Owner-Adjacent Rental Unit.

Short-Term Rental Registry: The database of STRUs located within Newburyport and maintained by the Licensing Board in coordination with registration or other regulation of such use by the Commonwealth of Massachusetts. The location of STRUs within the City shall be made public, as may additional information in the Short-Term Rental Registry as required by law, or otherwise at the reasonable discretion of the Licensing Board.

Sec. 9-302 Short Term Rental Units generally.

No dwelling unit within the City of Newburyport shall be offered as an STRU except in compliance with the provisions of the Newburyport Zoning Ordinance, this Article XI, and the terms of any license issued for said STRU by the Licensing Board pursuant thereto. A resident who rents their Primary Residence for a total of no more than fourteen (14) days during a calendar year is exempted from the application and licensure process set forth herein, but must still comply with any state law or regulation relative to Short Term Rentals and obtain a modified certification letter as required under Section 9-306(f).

Sec. 9-303 Ineligible dwelling units and applicants.

The following types of dwelling units and applicants shall not be eligible to be applied for, apply, be offered, or offer, as Short-Term Rentals or Operators:

- a. A dwelling unit that makes up all or part of a residential use as defined under the Newburyport Zoning Ordinance other than One-family (Use 101), Two-family (Use 102), or Multifamily (Use 103);
- b. A dwelling unit that has been designated as below-market or income-restricted subject to affordability covenants, or that is otherwise subject to housing or rental assistance under local, state or federal law, including, without limitation, so-called Section 8 housing;
- c. A dwelling unit subject to any requirement of local, state or federal law that prohibits the leasing or sub-leasing of the unit or use of the unit as an STRU;
- d. A dwelling unit that itself, or whose owner or Operator, is the subject of three (3) or more findings by the Licensing Board or its designee of violations of this Article XI within any six- (6-) month period, or three (3) or more violations within any six- (6-) month period of any state or municipal law or regulation relating to excessive noise, improper disposal of trash, disorderly conduct, or other nuisances, private or public;
- e. "In-law apartments" as that term is defined in the Newburyport Zoning Ordinance, or successor or similar uses, such as so-called accessory dwelling units or secondary dwelling units;
- f. Campers, trailers, recreational vehicles, mobile homes, tents, lean-tos, or any other similar space, or structure, whether temporary or permanent;
- g. A Residential Unit located within the Smart Growth District regulated under the Zoning Ordinance.
- h. Any portion of a Hotel, Lodging House, or Bed and Breakfast use.

Sec. 9-304 Exemptions

The following uses of a dwelling unit shall be exempt from the requirements of this Article XI:

- a. **Up to 14 days per calendar year.** A resident who rents out all or any portion of their Primary Residence for a total of no more than fourteen (14) days during a calendar year is exempted from the special permit process set forth herein, but must still comply with any state law or regulation relative to Short Term Rentals and also obtain a modified certification letter as required under Section 9-306(f).
- b. **Dwelling units contracted for hospital or convalescent stays.** The use of a dwelling unit or portion thereof (1) under a written contract between the owner of such dwelling unit and a health-care facility, government entity, non-profit organization registered as a charitable organization with the Secretary of the Commonwealth of Massachusetts or classified by the United States Internal Revenue Services as

a public charity or private foundation, or (2) for the temporary housing in such unit of natural persons who are being treated for trauma, injury, or disease, or of their family members; and

- c. **Dwelling units used for furnished institutional or business stays:** The use of a dwelling unit or portion thereof under a written contract between the owner of such dwelling unit and an institution or business, for the temporary housing of employees or other individuals affiliated with such institutions or business, provided, however, that the minimum duration of such stay shall be ten (10) days.

Sec. 9-305: Exception for Plum Island.

STRUs located within the Plum Island Overlay District (PIOD) regulated under the Zoning Ordinance shall be subject to this Article XI, including having to obtain an operator's certification letter as required under Section 9-306(f); provided, however, that.

- a. Such STRUs may be used for any number of days (consecutive or non-consecutive);
- b. Such STRUs need not provide off-street parking in addition to that required for the Residential Use to which the STRU is an accessory use;
- c. An Operator of such STRUs within the PIOD need not meet any Primary Residence requirement under this Section V-G, and is not limited in the number of STRU's said Operator may make available within the PIOD at the same time;
- d. The Operator of a Home Share Rental Unit and/or Limited Share Rental Unit within an owner-occupied multifamily residential dwelling with three (3) or more dwelling units, shall be not be limited in the number Owner-Adjacent Rental Units they may offer as an STRU; and
- e. The Operator of an Owner-Adjacent Rental Unit need not be personally and physically present overnight at all times that such STRU is occupied.

9-306 Requirements

- a. **All STRUs.** The STRU has been registered pursuant to Section 9-307.
- b. **Limited-Share Rental Units.** An Operator may offer a Limited-Share Rental Unit as an STRU for some or all days of its year of registration.
- c. **Home-Share Rental Units.** An Operator may offer a Home-Share Rental Unit as an STRU for some or all days of its year of registration; provided, however, that at all locations within the City except within the PIOD, the total number of days during which the Operator is not physically present for an overnight stay shall not exceed a cumulative ninety (90) (consecutive or nonconsecutive) days per each licensing year.

- d. **Owner-Adjacent Units.** An Operator may offer their Owner-Adjacent Unit as a Short-Term Rental for some or all days of its year of registration, provided, however, that at all locations within the City except within the PIOD, the Operator is personally and physically present overnight.
- e. **Lodging House and Bed and Breakfast.** A Licensed Lodging house and/or Bed and Breakfast cannot be an STRU.
- f. **Operator certification.** An Operator shall certify under penalty of perjury at the time of registration of a Short-Term Residential Unit that the following facts are true:
 - 1. In the case of the Home Share Rental Unit and Limited Share Rental Unit, the Residential Unit is the Operator's Primary Residence, and in the case of the Owner Adjacent Rental Unit, the STRU is located on the same Lot as the Operator's Primary Residence;
 - 2. The Operator is the record owner of the Residential Unit offered as an STRU, or is legally authorized to act in relation to the STRU as the record owner; and
 - 3. Offering the Residential Unit as an STRU complies with all applicable deed restrictions, mortgage covenants, condominium bylaws, or other governing legal documents.
- g. **Local contact.** At the time of registration of an STRU, the Operator shall provide their name and contact information (including a telephone number), and, in the event the Operator is unable to respond in person to any problems or emergencies that may arise regarding the STRU when it is being occupied by guests, the name and contact information (including a telephone number) of the Emergency Contact. The Operator or Emergency Contact shall be available 24-hours per day to respond to guests, neighbors, and City officials, and it shall be a violation of this Article if the Operator or Emergency Contact does not respond within 1 hour of being contacted by a City official or the police department.
- h. **No outstanding violations.** AN STRU shall not be subject to any outstanding building, sanitary, zoning, or fire code notices of violation, orders of abatement, stop work orders, or other any requirements, laws or regulations that concerns the STRU or may in any manner impede or prohibit the Operator from offering the Residential Unit as a Short-Term Rental in compliance with this Article, the Newburyport Zoning Ordinance, and all permits and approvals issued thereunder. If a notice of such violation or other order is duly issued after the Residential Unit has been listed on the Short-Term Rental Registry, the Licensing Board or its designee may suspend registration of such Residential Unit on the Short-Term Rental Registry until the corresponding violation has been cured or such order is otherwise resolved to abate any violations of law or regulation. Any City officer or department issuing said notice of violation or other order shall notify the Licensing Board and the Enforcement Agent in writing of the nature of the violation and its resolution, if any, within five (5) business days of such issuance and/or resolution.
- i. **Compliance and relationship with other laws.** Operators shall comply with all applicable federal, state and local laws and regulations, including, but not limited to, the Fair Housing Act, G.L .c. 151B and local

equivalents and regulations related thereto, fire codes, health codes, zoning ordinances, the Commonwealth's lodging house licensing statutes, and all other regulations applicable to residential dwellings and the provision of lodging.

- j. **No illegal discrimination between or against guests.** Operators shall not discriminate between or against guests on the basis of race, color, religious creed, national origin, immigration status, sex, age, ancestry, sexual orientation, gender identity and expression, marital, family or military status, or source of income or disability with respect to housing, employment, education, public accommodations, City services, insurance, banking, credit, and healthcare.
- k. **Retention of records.** The Operator shall retain and make available to the Licensing Board, or its designee, upon written request, documents that demonstrate compliance with all provisions this Article, including but not limited to: documentation of the number of days that Operator has resided during the past year or will reside in the Residential Unit in the year of registration; legal instruments evidencing that the Operator is the record owner of the Residential Unit offered as an STRU; and documentation of the number of days during the year of registration that the Residential Unit was: (i) offered, and (ii) rented, as an STRU. The Operator shall retain such records for a period of three (3) years from expiration of the yearly license to which they relate.
- l. **Special conditions.** The Licensing Board may require, as a condition of any license issued under this Article, that specific improvements be made within the structure, or otherwise on the premises, as identified in the drawings submitted pursuant to section 9-307, below, and as required by the Building Commissioner, Fire Prevention Officer, and/or Zoning Administrator to achieve compliance with applicable law.
- m. **Registration number.** The Operator shall include the registration number issued by the City on any listings offering the Residential Unit as an STRU, including by Booking Agents when their policies so permit, and shall, in all cases, post a sign inside such Residential Unit providing information on the location of all fire extinguishers, fire exits, and pull fire alarms in such Residential Unit.

Sec. 9-307 Registration process, certifications, and fee.

- a. **Registration process.** No Operator shall offer a Residential Unit as an STRU without having first filed an application for approval therefor with the Licensing Board and obtaining the Licensing Board's final approval under this Section 9-307.
 - 1. A license for operation of said STRU shall be valid for one (1) year from the date of issuance.
 - 2. The Operator shall also certify under penalty of perjury that he/she and the Residential Unit complies with all the requirements of this Article.
 - 3. An Operator registered with the Licensing Board may only hold and operate one (1) STRU license during any licensing year.

4. Upon approval by the Licensing Board, the Residential Unit approved as an STRU shall be issued a registration number by the Licensing Board.
5. Upon submission of license applications, and from time to time, as deemed necessary by the Licensing Board or its designee, the Licensing Board may compare registration information to other information managed and maintained by the City, in order to effectively verify compliance with the provisions of this Article.
6. The Licensing Board shall make each approval of an STRU, and related documentation including the application, decision, and any supplemental documents, available electronically via the City website within thirty (30) days of such addition.

b. Application for Registration. Each application for registration of an STRU shall include the following information:

1. Name, address, primary phone number and secondary phone number of both the Operator and the Emergency Contact, if different;
2. Evidence that the Operator is the record owner of the STRU, or is legally authorized to act in relation to the STRU as the record owner;
3. Address of the STRU;
4. The zoning district(s) of the STRU, and evidence of a valid STRU special permit or that an STRU special permit application is pending;
5. STRU category: Limited-Share Rental Unit; Home-Share Rental Unit; or Owner-Adjacent Unit;
6. Massachusetts Department of Revenue identification number, if already obtained;
7. Survey and/or plot plan that indicates:
 - i. Existing structure(s) at the property;
 - ii. Location of any proposed STRU; and
 - iii. Off-street (on or off-site) parking area(s) to accommodate all uses of the property, including the proposed STRU;
8. Interior layout plan(s), showing:
 - i. The bedroom(s) proposed for use by STRU guests, the Operator, and any other person occupying the proposed STRU; and
 - ii. Life safety measures for the STRU, including, but not limited to, access/egress points, location of bathrooms for use by guests, location of all smoke and carbon monoxide detectors, location of all fire extinguishers, evacuation route(s), designated location(s) within the unit for the posting of the evacuation route(s), and any other information deemed necessary by the Building Commissioner and/or Fire Prevention Officer to establish compliance with applicable building, sanitary, and/or fire safety codes; and
9. Evidence of a valid liability insurance policy.

- c. **Application Fees.** A fee of two-hundred dollars (\$200) per STRU shall be due with each application to register Rental Units as STRUs.
- d. **Action Upon application.** Upon submission of a complete application, including all required materials and payment of the required fee:
 - 1. The Licensing Board shall notify the applicant in writing of the place, date, and time of the public meeting at which it will consider and act on the application. Such meeting will be held within sixty (60) days after the date upon which the Licensing Board determines that the application is complete.
 - 2. The Licensing Board shall approve or approve with conditions those applications for registration that meet the requirements of this Article, and shall issue written notice of its decision within seven (7) days of its meeting, which notice shall be both (1) posted on the City website, and (2) sent by U.S. Mail to the applicant.
 - 3. Upon approval, the STRU shall be added to the Short-Term Rental Registry.
- e. **Annual registration.** Each STRU shall apply for approval annually prior to the expiration of its annual registration, in the same manner as the original application.
- f. **Registration upon sale or change of ownership.** Registration of an STRU shall not automatically transfer upon any sale or other transfer in ownership of such Residential Unit to a new Operator. If a new Operator wishes to continue to list such Residential Unit as an STRU, such new Operator shall apply to the Licensing Board pursuant to this Article to obtain a new, unique registration number. This requirement applies regardless of whether such sale or other transfer in ownership occurs before expiration of such Residential Unit's year of registration as an STRU.
- g. **Amending registration upon change in primary residence.** Unless an exception applies under Section 9-305, if an Operator offering a Residential Unit as an STRU ceases to be a Primary Resident of such unit, then such Operator shall immediately notify the Licensing Board, which shall cancel the license of the Residential Unit and remove the same from the Short-Term Rental Registry.
- h. **Registration by booking agent.** Nothing herein shall prohibit a Booking Agent from providing registration services on behalf of an Operator with such Operator's written consent.

Sec. 9-308 Room occupancy excise.

A Residential Unit subject to the provisions of this Article that is also subject to the Room Occupancy Excise under chapter 64G of the General Laws, or to any other excise tax or surcharge applicable to STRUs, shall comply with the provisions of said statutes.

Sec. 9-309 Complaint process; violations.

- a. **Complaint.** A complaint alleging that an STRU duly registered as provided herein is being operated in violation of the terms of its registration may be filed by any person with the Enforcement Agent, which

complaint shall be mailed at the same time by such complainant to the Operator of the STRU at the address set forth in the Short-Term Rental Registry. The complaint shall be in writing and contain the address of the STRU, the date and nature of the alleged violation(s), and the name and contact information of the complainant, and shall certify that such complaint was mailed to the Operator as required .

- b. Review of complaint.** Within seven (7) days after receipt of a complaint under this section 9-308, the Enforcement Agent shall investigate the circumstances of such complaint. Within fourteen (14) days of receipt of such complaint, the Enforcement Agent shall determine if a violation has occurred, and shall provide written notice of her determination to the complainant, the Operator, and the Licensing Board. The Enforcement Agent shall keep records of all complaints received, a summary of the investigation into the same, and the determination made and reasons therefor.
- c. Appeal.** An Operator may appeal a determination of violation to the Licensing Board by filing a written notice of appeal with the Board no later than fourteen (14) days following issuance of the determination.
- d. Public hearing.** Upon the filing of an appeal from the Enforcement Agent's determination of violation, the Licensing Board shall conduct a hearing on such appeal.
 - 1.** The Licensing Board shall notify the Operator in writing of the place, date, and time of the public hearing no less than seven (7) days prior to the hearing date, and no later than twenty-eight (28) days after receipt of the Enforcement Agent's determination;
 - 2.** Upon holding a public hearing, the Licensing Board shall determine if a violation occurred and issue a written decision giving the Licensing Board's reasons for its decision, which decision shall be (1) posted on the city website, and (2) sent by U.S. Mail to both the applicant and the Complainant.
 - 3.** If the Licensing Board determines a violation has occurred, in issuing its decision the Licensing Board may issue a warning, suspend the use of the STRU until the violation is corrected, condition the use of the STRU upon the completion of remedial action determined by the Board, or make such other order as is reasonably calculated to achieve compliance.
- e. Judicial appeal.** Any person aggrieved by a final decision of the Licensing Board may seek relief therefrom in any court of competent jurisdiction, as provided by the laws of the Commonwealth.

Sec. 9-310 Penalties

- a. Offering an ineligible unit as an STRU.** Any person who offers an STRU, or any Booking Agent who accepts a fee for so booking such real property, where such STRU is not listed on the Short-Term Residential Registry and is not eligible for such listing, shall be subject to a fine of three-hundred dollars (\$300) per day. Each day's failure to so comply with Section 9-303 or any other order in connection with the violation described in this subsection (a) of Section 3-309 shall constitute a separate violation. The City may also seek an injunction from a court of competent jurisdiction prohibiting the offering of the STRU.

- b. **Failure to register.** Any person who offers an STRU eligible for registration under this Article without having registered the STRU, or any person who offers or rents a registered STRU that has been suspended pursuant to any applicable federal, state, or municipal law, code, or regulation, shall be fined one-hundred dollars (\$100) per violation per day. Each day's failure to comply with a Violation Order or any other order in connection with the violation described in this subsection (a) of section 9-309 shall constitute a separate violation.
- c. **Failure to comply with Violation Order.** Any person who fails to comply with any notice of violation or other order issued pursuant to this Article by the Licensing Board or its designee may be fined one hundred dollars (\$100) per violation per day. Each day's failure to comply with a notice of violation or any other order shall constitute a separate violation.

Sec. 9-311 Enforcement

- a. **Enforcement by the City.** The provisions of this section may be enforced in accordance with the noncriminal disposition process of MGL Chapter 40, Section 21D, and if applicable, by seeking to restrain a violation by injunction in any court of competent jurisdiction.
- b. **Enforcement by Booking Agent.** The City of Newburyport may enter into agreements with Booking Agents for assistance in enforcing this Article, including, but not limited to, covenants whereby the Booking Agent shall agree: (1) to remove a listing from its platform if such listing exceeds the maximum number of days that an STRU may be offered under the provisions of this Article; (2) to remove a listing from its platform that is deemed ineligible for use as an STRU under the provisions of this Article; and (3) to prohibit an Operator from listing any STRU in the City without having first obtained a valid registration number from the Licensing Board.

Sec. 9-312 Data sharing

A Booking Agent shall provide to the Licensing Board, on a quarterly basis, an electronic report of the listings maintained, authorized, facilitated, or advertised by such Booking Agent within the City of Newburyport during the applicable reporting period.

Sec. 9-313 Effective date.

The provisions of Article XI shall take effect on June 1, 2022.

Sec. 9-314 Severability.

The provisions of Article XI are severable. In the event that any provision of Article XI is determined by a court of competent of jurisdiction to be invalid for any reason, the remaining provisions of Article XI shall remain in full force and effect.

Councillor James J. McCauley

Councillor

In City Council January 27, 2020:

Motion to refer to License & Permit by Councillor Devlin, seconded by Councillor Zeid. So voted.

In City Council December 13, 2021:

Motion to invoke Rule 7H to move to the next City Council Session by Councillor Devlin, seconded by Councillor Tontar. So Voted.