

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.

To provide process, rules, and procedure for licensing short-term rental units within the City of Newburyport in concert with the associated zoning ordinance.

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) OR defined in the Newburyport Zoning Ordinance.

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.

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

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.

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.

Sec. 9-303 Automatic revocation of license.

A dwelling unit that itself, or whose owner or Operator, is the subject of three (3) or more findings by the Enforcement Agent that are not appealed or 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;

9-306 License Requirements

- a. **All STRUs.** The STRU has been registered pursuant to Section 9-307, excepting those to be rented for 14 days a year or fewer annually.
- b. **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. 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
 - 2. Offering the Residential Unit as an STRU complies with all applicable deed restrictions, mortgage covenants, condominium bylaws, or other governing legal documents.
- c. **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 3 hours of being contacted by a City official or the police department.
- d. **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.
- e. **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.
- f. **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.
- g. **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.

- h. 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.
- i. 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 (if applicable);
 - 5. STRU category: Owner Occupied (OO-STRU), Investor (INV-STRU), or Plum Island (PI-STRU)
 - 6. Massachusetts Department of Revenue identification number, if already obtained;
 - 7. Evidence of zoning determination and allowance (e.g. special permit)
 - 8. Evidence of a valid liability insurance policy (INV-STRU only).

- 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 thirty (30) 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 owner occupancy.** 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 (including any local option) 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 therefore.
- 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 Deregistration

In the event that a Residential Unit will cease to be offered as a residential unit, such holder of the license may contact the Licensing Board in writing to be removed. Residential units attached to licenses that are not renewed shall be removed from the registry upon expiration of said license.

Sec. 9-313 Data sharing

A Booking Agent shall provide to the Licensing Board, upon request, 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. 9-314 Effective date.

The provisions of Article XI shall take effect one-hundred and eighty (180) calendar days after the date of adoption.

Sec. 9-315 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 Sharif Zeid