

Amendment of the Whole 8-30-2021

Amended from Joint Planning Board & Planning and Development Committee on October 20, 2021 and
P&D committee on November 3, 2021

P&D committee on November 17, 2021

Reconciliation with general law ordinance December 2, 2021

Amended Version Distributed on 2/11/2022

Amended Version Reviewed in Committee on 2/16/2022

Amended Version Distributed on 4/25/2022

Amended Version Reviewed in Committee on 5/2/2022

With floor amendments by Councilor Preston 8/29/2022

Comment [Andy Port1]: All changes from this version/date have been accepted in the underlying Word version and therefore do not appear as markup in this version.

ORDERED:

A ZONING AMENDMENT TO ALLOW SHORT-TERM RENTAL UNITS IN SPECIFIED DISTRICTS

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

THAT the Zoning Ordinance of the City of Newburyport, Massachusetts (the “Zoning Ordinance”) be amended to insert a new row within Section V-D (Table of use regulations), as follows, with deletions ~~double-stricken through~~, and additions double-underlined:

USE	NUM	CON	HSR-A, HSR-B	R-1	R-2	R-3	B-1	B-2	B-3	I-1	I-1B	I-2	M	WMD	WMU
Short Term Rental Unit (STRU) ^(m)	111	NP ^(l)	SP ^(k)	P ^(l)	P ^(l)	P ^(l)	P ^(l)	P ^(l)	P ^(l)	NP	NP	NP	NP	NP ^(l)	NP ^(l)

Comment [Andy Port2]: Missing footnote reference inserted here for clarity.

(k) The Zoning Board of Appeals shall be the Special Permit Granting Authority (SPGA) for this use in accordance with Section V-G. All STRU special permits shall lapse

automatically after a period of three (3) years, shall be personal to the applicant, shall not be transferable, and shall not run with the land. In this context, "personal to the applicant" means that the special permit shall lapse sooner than the normal three-year duration if the applicant ceases to have a substantial ownership and use interest, direct or beneficial, in the STRU.

- (l) "P" for this use does not equate simply to Permitted "by-right." Applicants for a Permit to operate a STRU shall submit an online application for a Request for Zoning Review by the Zoning Administrator. Only upon the approval and issuance of a positive written Zoning Determination by the Zoning Administrator, which determination shall constitute an order or decision of an administrative official, as set forth in MGL Chapter 40A Section 8 is this may the use be initiated valid at a given location. This approval (Determination) shall lapse every three (3) years annually. Any person aggrieved may appeal applicant, or abutter within three hundred (300) feet consistent with MGL Chapter 40A Section 11, may appeal the a Zoning Administrator's Determination to the Zoning Board of Appeals via the Appeals process contained within Section X-H.5 of this Ordinance, and in accordance with MGL Chapter 40A, Sections 8 and 15. Additionally, as further noted in Section V-G, this use requires the issuance of a valid License from the Licensing Commission pursuant to a related General Ordinance (Chapter 9, Article XI of the Newburyport Code of Ordinances).

Comment [Andy Port3]: Language/edit suggested by KP Law. (8/26/2022)

- (m) Notwithstanding any conflicting provisions elsewhere in this Zoning Ordinance, including Section XXI (Plum Island Overlay District), a STRU shall be permitted "by right" within the Plum Island Overlay District, provided such STRU is consistent with the terms of Section V-G.

Comment [Andy Port4]: Language/edit suggested by KP Law. (8/26/2022)

THAT the Zoning Ordinance further be amended to insert a new Section V-G, as follows, with deletions ~~double stricken through~~, and additions double-underlined:

V-G – ~~RESERVED~~ SHORT-TERM RENTAL UNITS.

1. Purposes. The purposes of this Section V-G 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, do not create additional adverse impacts on neighborhood character or property values.

2. Definitions. Except as otherwise specified herein, all terms used in this Section V-G 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.

Enforcement Agent: The person duly appointed by the City of Newburyport to investigate complaints and issue violation notices pursuant to the provisions of this Section V-G.

Home-Share Rental Unit: An STRU that is 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 the Operator's Primary Residence, and is rented 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. The operator and guests shall both have access to the same cooking facilities to be eligible.

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 Section V-G.

Owner-Adjacent Rental Unit: An STRU that is not the Operator's Primary Residence but 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 multi-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.

Registration Number: A unique identification number generated by the Licensing Board for each registered 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 identified in this Zoning Ordinance: One-family (Use 101), Two-family (Use 102), Multifamily (Use 103), or such uses if contained within a mixed-Use structure (Use 405) in which the occupants must all have shared access to the same primary kitchen facility. For purposes of this Section V-G, the term "Residential Unit" shall not include any other use under this Zoning Ordinance, including, without limitation, Hotel, Lodging House, or Bed and Breakfast use.

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.

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, except as otherwise provided in Subsections 7 and/or 8 of this Section V-G. 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. For purposes of this Zoning Ordinance, STRU

Comment [Andy Port5]: This cross-reference is intended to acknowledge and address the legality of STRUs which may be authorized on Plum Island (under Section 7) and any pre-existing STRUs (which are addressed by Section 8) regardless of the owner's/operator's primary residence.

use is an accessory use distinct from all other uses, including, without limitation, Hotel, Lodging House, and Bed and Breakfast use, and no portion of an STRU may also be classified as Hotel, Lodging House, or Bed and Breakfast use.

Zoning Administrator (ZA). The Zoning Enforcement Officer of the City of Newburyport has the authority to review a Request for Zoning Review and to issue a Zoning Determination in accordance with this Section.

3. Specific districts where permitted. STRU use meeting the definition of either Home-Share Rental Unit, Limited-Share Rental Unit, or Owner-Adjacent Rental Unit may be permitted by the ZA with the issuance of a positive Zoning determination, solely within those zoning districts so noted in the Section V-D “Table of use regulations” and may be permitted by special permit from the Zoning Board of Appeal solely within those zoning districts so noted within said Section V-D, all in accordance with this Section V-G. All STRU special permits shall lapse automatically after a period of three (3) years, shall be personal to the applicant, shall not be transferable, and shall not run with the land. In this context, “personal to the applicant” means that the special permit shall lapse sooner than the normal three-year duration if the applicant ceases to have a substantial ownership and use interest, direct or beneficial, in the STRU.

4. Requirements and restrictions. Each STRU shall comply with the following requirements:

a. **Application for either a Request for Zoning Review or a Special Permit.** Each application for an STRU Zoning Review and/or special permit shall include all of the following information, as applicable:

- i. Name, address, primary phone number and secondary phone number of both the Operator and the Emergency Contact, if different;
- ii. Evidence that the Operator is the record owner of the STRU (e.g. an Assessors Card), or is legally authorized to act in relation to the STRU as the record owner;
- iii. Address of the STRU;
- iv. The zoning district(s) of the STRU;
- v. STRU category: Limited-Share Rental Unit; Home-Share Rental Unit; or Owner-Adjacent Unit;
- vi. Massachusetts Department of Revenue identification number, if already obtained;
- vii. Public record site plan (e.g. an export from the online municipal Geographic Information System or “GIS”) that indicates:
 1. Existing structure(s) at the property;

2. Location of any proposed STRU; and
 3. Off-street (on or off-site) parking area(s) to accommodate all uses of the property, including the proposed STRU, with documentation of adequate control over any parking spaces proposed off-site (e.g. lease agreement, easement, etc.);
- viii. Interior layout plan(s) (e.g. a marked up Assessors Card with schematic floor plan), showing:
1. The bedroom(s) proposed for use by STRU guests, the Operator, and any other person occupying the proposed STRU; and
 2. The location of kitchen facilities and/or bathrooms for use by occupants; and

b. **Approval Criteria for either a Request for Zoning review or a Special permit.**
Following the review procedures listed in section X-H, the Zoning Board of Appeal may approve an STRU special permit if it determines that the project meets the following criteria specific to STRUs, and also the special permit criteria of Section X-H.7:

- i. The Operator has certified, on and as part of the applicable application form, under penalty of perjury, that all of the following are true:
 1. Except within the Plum Island Overlay District (PIOD), in the case of a Home Share Rental Unit or 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;
 - A. The Operator has established Primary Residence by submitting to the Zoning Board of Appeal a certification signed under penalty of perjury that the Operator either (I) has resided in the Residential Unit for no fewer than 183 days of the previous year, or (II) intends to reside in the Residential Unit for no fewer than 183 days of the year-long period of registration;
 - B. Such certification has been 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;
 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;
- ii. The Operator has provided 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.
- iii. No STRU subject to the application is 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 Section V-G, Article XI of Chapter 9 of the Newburyport Code, and all permits and approvals issued thereunder;
- iv. The Operator will make those specific physical improvements within the structure, or otherwise on the premises, as identified in the drawings submitted with the special permit application, and as required by the Building Commissioner, Fire Prevention Officer, Board of Health and/or Zoning Administrator to achieve compliance with applicable law
- v. In the B-2 and B-3 zoning districts, the STRU subject to the application will be located solely above the first floor of the structure.
- vi. There will be no external, physical evidence of the STRU to differentiate it in appearance from the single-family, two-family, or multi-family residential premises in which it is located , nor from other residential properties similarly situated.
- vii. The STRU will not create excessive noise, fumes, odor, dust, vibration, heat, glare, or electrical interference.
- viii. The parking requirements for a Short Term Rental Unit shall be in accordance with the following:
 1. Where the existing Residential Use is legally nonconforming as to the off-street parking requirements of this ordinance, such nonconformity may be maintained and only the additional parking spaces required for the STRU guest bedroom(s) need be provided. In such instances no Special Permit for nonconformities shall be required for the alteration of said parking count in conjunction with a valid STRU.

2. Within the Plum Island Overlay District (PIOD) no additional off-street parking shall be required to operate a STRU use.
 3. All required parking for STRU use shall be located off-street and on-site, except that off-site, off-street parking may be allowed in the Downtown Overlay District as provided under Section VI-A of this ordinance.
 4. An "Owner-Adjacent Rental Unit" shall have one additional parking space for the STRU use, regardless of the number of guest bedrooms, in addition to any parking required for the underlying use (including any legally preexisting parking nonconformity pursuant to subsection V-G(4)(b)viii(1) above).
 5. For a "Home-Share Rental Unit" no additional parking shall be required beyond the underlying single-family use (including any legally preexisting parking nonconformity pursuant to subsection V-G(4)(b)viii(1) above).
 6. A "Limited-Share Rental Unit" shall have one additional parking space per guest bedroom, in addition to any parking required for the underlying use (including any legally preexisting parking nonconformity pursuant to subsection V-G(4)(b)viii(1) above).
- ix. The Operator has demonstrated their ability to comply with all requirements of this Section V-G.
- c. **No visible advertising.** All forms of display and/or advertising of the STRU use open to view from outside the lot shall be prohibited
- d. **Operator mandatory.** Only an Operator may offer an STRU for rent.
- e. **No more than one STRU at once.** Except in the PIOD, and as is otherwise provided for Owner-Adjacent Rental Units, no Operator may offer more than one STRU at a time. Multiple bedrooms within the same dwelling unit may not be listed as separate STRU listings.
- f. **No parking variances.** Parking requirements for STRUs are expressly deemed to be a defining characteristic of the use, and accordingly may not be altered by Variance. Notwithstanding anything in this Zoning Ordinance to the contrary, variances regarding parking for STRU use are forbidden.
- g. **Compliance with all applicable laws.** The Operator shall comply with all applicable federal, state and local laws and regulations, including, but not limited to: the Fair Housing Act, M.G.L .c. 151B and local equivalents and regulations related thereto; fire codes; health codes; the Commonwealth's lodging house licensing statutes; Article XI of Chapter 9 of the Newburyport Code; and all other regulations applicable to residential dwellings and the provision of lodging.

Comment [Andy Port6]: Language/edit suggested by KP Law. (8/26/2022)

h. **No discrimination.** The Operator 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;

i. **Registration number.** The Operator shall include the registration number issued by the Licensing Board 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

j. **Occupancy and use limitations.**

i. **Limited-Share Rental Units:**

1. A Limited-Share Rental Unit shall be the Operator's Primary Residence.
2. There is no limitation on the number of days per year that an Operator may make a Limited-Share Rental Unit available for occupancy.
3. 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 during the pendency of the use by STRU guests.

ii. **Home-Share Rental Units:**

1. A Home-Share Rental Unit shall be the Operator's Primary Residence.
2. Except within the PIOD, the total number of days the Home-Share Rental Unit is occupied when the Operator is not physically present overnight shall not exceed a total of ninety (120) days per each calendar year.
3. Occupancy of a Home-Share Rental Unit shall be limited to a maximum of four (4) bedrooms and a maximum of eight (8) people.

iii. **Owner-Adjacent Rental Units:**

1. The STRU shall be located on the same lot as the Operator's Primary Residence.
2. There is no limitation on the number of days per calendar year that an Operator may make an Owner-Adjacent Rental Unit available for occupancy.

3. 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.
4. Except within the PIOD, 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 no more than one (1) Owner-Adjacent Rental Unit as an STRU.
5. Except within the PIOD, the Operator of an Owner-Adjacent Rental Unit shall be personally and physically present overnight at all times that such STRU is occupied.

5. Ineligible residential units. Notwithstanding anything in this Zoning Ordinance to the contrary, the following dwelling units shall be ineligible for STRU accessory use.

- 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. "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; and
- e. Campers, trailers, recreational vehicles, mobile homes, tents, lean-tos, or any other similar space, or structure, whether temporary or permanent.
- f. A Residential Unit located within the Smart Growth District.
- g. Any portion of a Hotel, Lodging House, or Bed and Breakfast use.

6. Exemptions. The following uses of a Residential Unit shall be exempt from this Section V-G, to the extent specified:

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 submit a certification letter as required under Section 9-306(f) of the Newburyport Code and obtain a Zoning Determination indicating that the unit being rented is eligible for such use as a STRU.

b. **Residential 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. **Residential 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.

7. Exception for Plum Island. STRUs located within the Plum Island Overlay District (PIOD) shall be subject to this Section V-G as a “by right” use, 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 not be limited in the number of 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.

Comment [Andy Port7]: Language/edit suggested by KP Law. (8/26/2022)

8. Exception for Pre-Existing STRUs. Notwithstanding any conflicting provisions within this Section V-G, any STRU in existence prior to the adoption of this Section V-G may continue as a permitted use, subject to the following provisions:

- a. This exception shall apply only to the owner/operator of such STRU as of ~~May 31, 2022~~ and shall not be transferable to any future owner/operator;
- b. This exception shall only apply where the subject STRU was properly registered with the Commonwealth of Massachusetts (and only as it then existed) as of ~~May 31, 2022~~;
- c. The owner/operator of such STRUs need not utilize the subject property as their primary place of residence, regardless of STRU type;
- d. Continued operation of such STRUs shall be considered “as of right” and shall not require a Special Permit, however such use shall require the issuance of a valid License from the Licensing Commission pursuant to a related General Ordinance (Chapter 9, Article XI of the Newburyport Code of Ordinances) and continual registration with the Commonwealth of Massachusetts; and
- e. The owner/operator of such STRUs shall be limited to the operation of a maximum of one (1) total STRUs within the City of Newburyport. Excluded from this count shall be any units located within the Plum Island Overlay District (PIOD) per Section 7 of this Section V-G.

8.9. Effective Date & Enforcement. The provisions of this Section V-G shall take effect on ~~July-December 1, 2022~~ for the purposes of permitting, with all other provisions fully enforceable beginning, AprilJanuary 1, 2023.

9.10. Severability. The provisions of this section are severable and, in the event that any provision of this section is determined to be invalid for any reason, the remaining provisions shall remain in full force and effect.

THAT the Zoning Ordinance be further amended to insert a new row within Section VII-B (parking requirements), as follows, with deletions ~~double-stricken through~~, and additions double-underlined:

1. RESIDENTIAL		
USE	NUM	PARKING REQUIREMENT
Short Term Rental Unit	<u>111</u>	<u>See Section V-G(4)(b)(viii) for parking requirements.</u>

Councillor James J. McCauley

Comment [Andy Port8]: New provision/subsection proposed by Councilor Preston to address preexisting STRUs and operators.

Comment [AP9]: This is **first date of advertisement** for the **most recent public hearing process** and may be more defensible and easier to understand than picking a date from 2021 or earlier. Consistency would be maintained between typical “grandfathering” of uses under MGL 40A (the Zoning Act) and the amnesty exemption proposed here (i.e. use of the date of first advertisement of the subject zoning amendment).

Comment [AP10]: Same date suggested here for consistency with above.

Councillor Heather L. Shand