

CITY OF NEWBURYPORT



IN CITY COUNCIL

January 27, 2020

ORDERED:

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF THE CITY OF NEWBURYPORT

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:

Chapter 9: Licenses, Permits and Business Regulations

Article X: License Required for Short Term Rental Units

Insert a new Section, Article X, entitled "License Required for Short Term Rental Units" as follows:

Sec. 9-300 Purposes.

The purpose of this Section is to:

1. Provide a clear and consistent process through which certain dwelling units may be registered within the City of Newburyport for use as Short Term Rental Units (STRUs) subject to compliance with requirements as specified herein; and
2. To responsibly incorporate the growth of the home-share industry into Newburyport's existing neighborhoods by striking a fair balance between the preservation of long-term year-round housing, including affordable and moderately priced housing (*with or without deed restrictions*) and the flexibility required for residents to benefit from this new industry.
3. To ensure that neighborhood concerns with STRUs, including, but not limited to trash, noise and parking, are addressed so as to avoid adverse impact on overall neighborhood character or property values.

Sec. 9-301 Definitions.

Unless specified herein, all terms used in this Section XXXIII shall be as defined in Massachusetts General Laws (MGL) Chapter 94G Section 1, entitled "Definitions."

Booking Agent: Any Person or entity that facilitates reservations or collects payments for a Short-Term Rental on behalf of or for an Operator.

Code: City of Newburyport Zoning Code

Commissioner: Chairman of the Newburyport Licensing Commission

Operator: A natural person who is the owner of the Residential Unit that he or she seeks to offer as a Short-Term Rental. Only one owner may be registered as an Operator on the Short-Term Rental Registry for a Residential Unit, and it shall be unlawful for any other person, even if that person is a co-owner and meets the qualifications of Primary Resident, to offer a Residential Unit for Short-Term Residential Rental.

Home Share Unit: A Residential Unit offered as a Short-Term Rental that is the Operator's Primary Residence. Short Term Rental Unit Occupancy shall be limited to four (4) unrelated guests (whichever is less) in a Home Share Unit. An owner may offer the Home Share Unit as a short-term rental for thirty (30) days or less, provided that the total number of booked days during which the owner is not present shall not exceed one hundred twenty (120) consecutive or nonconsecutive days per year.

Limited Share Unit: A Residential Unit that is the Operator's Primary Residence, a portion of which is offered as a Short-Term Rental while the operator is present. Occupancy shall be limited to three bedrooms or four (4) unrelated guests (whichever is less) in a Limited Share Unit. One bedroom must be reserved for the Operator.

Owner Adjacent Unit: A Residential Unit offered as a Short-Term Rental that is not the Owner's Primary Residence but that is located within the same dwelling as the Primary Residence of, and is owned by, said Owner; provided that, Owner-Adjacent Units used as Short-Term Rentals shall only be allowed in two-family or three-family dwellings where all units are owned by the same unique owner-occupant who serves as the Operator; provided that further that, for the purposes of owner occupied three-family residential dwellings, in addition to the unit in which they reside and use as a Home Share or Limited Share Unit, an Operator of an Owner-Adjacent Unit may only register and use one Owner Adjacent Unit as a Short-Term Rental. A permitted Accessory Dwelling Unit (use #109) shall be allowed as an Owner Adjacent Unit.

Primary Residence: The Residential Unit in which the Operator resides for at least nine (9) months out of a twelve (12) month period. Primary residence is demonstrated by showing that as of the date of registration of the Residential Unit on the Short-Term Registry, the Operator has resided in the Residential Unit for nine of the past twelve months or that the Operator intends to reside in the Residential Unit for nine of the next twelve months, as demonstrated by at least 2 of the following: Voter registration, motor vehicle registration, drivers' license or state-issued identification.

Registration Number: A unique identification number generated for a single Residential Unit registered as a Short-Term Rental. Registration numbers shall be valid for one (1) year from the date that a license is issued, and shall be associated with both a single Residential Unit and a single Operator. The registration number must be included on any listing or advertisement offering a unit as a Short-Term Rental.

Residential Unit: A residential Unit is a dwelling unit within a dwelling classification as a residential use, as those terms are defined in the Code, but excluding: a congregated living complex; elderly housing; a group residence, limited; a homeless shelter; orphanage; temporary dwelling structure; and transitional housing. The term "Residential Unit" shall not include a hotel, motel, executive suite, or other non-residential use.

Short Term Rental Unit or Short-Term Rental: The use of a Residential Unit for residential occupancy by a person or persons for a period of fewer than thirty (30) consecutive days for a fee. A Short Term Rental Unit may or may not be facilitated through a Booking Agent.

Short-Term Registry: The database maintained by the City of Newburyport License Commission in conjunction with MA State DOR. The location of Short-Term Rentals may be made public.

Sec. 9-302 Short Term Residential Units (STRUs) within the City.

No Residential Unit within the City of Newburyport shall be offered as a Short Term Rental Unit (STRU) except in compliance with the provisions of this Section, and in accordance with any License issued for said STRU by the Newburyport Licensing Commission pursuant thereto.

Sec. 9-303 Ineligible Residential Units.

The following Units are not eligible to be offered as Short-Term Rentals:

1. Residential Units designated as below market or income restricted, that are subject to affordability covenants, or that are otherwise subject to housing or rental assistance under local, state or federal law;
2. Residential Units 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 a Short-Term Rental; and
3. Residential Units that are the subject of 3 or more findings of violations of this section within a six-month period, or 3 or more violations of any municipal ordinance or state law or code relating to excessive noise, improper disposal of trash, disorderly conduct or other similar conduct within a six month period.
4. Campers, trailers, or any other similar temporary space that does not possess or otherwise qualify for an Occupancy Permit.

Sec. 9-304 Residential Units not Subject to Certain Provisions of this Section

The following provisions and/or exemptions apply to the specified types of residential units under this Section XXXIII.

1. **Currently Licensed Lodging Houses:** A Residential Unit offered as a Short-Term Rental that is located in a dwelling holding a current and valid Certificate of Occupancy as a lodging house as of the effective date of this section shall be subject to the registration requirements contained herein, but shall not be subject to the limitation contained in sections 9-305 (2), (3) or (4).

2. **Existing Bed and Breakfasts:** A residential Unit offered as a Short-Term Rental that holds a current and valid Certificate of Occupancy as a Bed and Breakfast as of the effective date of this section shall be subject to the registration requirements contained herein, but shall not be subject to the limitation contained in sections 9-305 (2), (3) or (4).
3. **Residential Units Contracted for Hospital Stays.** The use of a dwelling unit or portion thereof which a contract exists between the owner of the dwelling unit and a health-care facility or government entity of non-profit organization registered as a charitable organization with the Secretary of the Commonwealth of Massachusetts or classified by the Internal Revenue Services as a public charity or private foundation that provides for the temporary housing in such unit of individuals who are being treated for trauma, injury, or disease, or their family members, shall not be considered a Short-Term Rental.
4. **Residential Units Used for Furnished Institutional or Business Stays:** The use of a Residential Unit for which a contract or an agreement exists between the building owner, a corporate housing operator, and an institution or business for the temporary housing of employees or individuals affiliated with such institutions or business, where the minimum stay is at least ten days, shall not be considered a short-term rental.
5. **House Boats.** A houseboat which is licensed by the City, may offer itself as a Home Share Unit provided it hold a current and valid Certificate of occupancy as a houseboat as of the effective date of this section, and shall be subject to the registration requirements contained herein. A houseboat will be governed as a Home Share Unit with the exception of the primary residence requirement of Section 9-305(3), and the restriction of a single unit. An operator may not have more than 3 houseboat units.
6. **Plum Island.** An Operator who's primary residence is in Newburyport, and who owns a secondary unit on Plum Island may list both units within the Short-Term Registry under the following conditions:
 - a) The Secondary Unit listed as a Home share for not more than 120 days/year; and
 - b) Primary Unit cannot be used as a Home Share during this period, but may be offered as a Limited Share. Operator may not have a Secondary and Primary Unit as Home Share at the same time.

Sec. 9-305 Requirements & Restrictions for all Short Term Rental Units (STRUs)

With the exception of Short Term Rental Units on Plum Island, an Operator may only offer one (1) whole unit listing at any given time subject to compliance with the following provisions:

1. Registration pursuant to Section 9-306.
2. Short-Term Rental of a Limited Share Unit: An Operator may offer his/her Limited Share Unit as a Short-Term Rental for 365 days a year.

3. Short-Term Rental of a Home Share Unit: AN Operator may offer his/her Home Share Unit as a Short-Term Rental for up to 365 days a year, but the total number of booked days during which the owner is not present shall not exceed one hundred twenty (120) consecutive or nonconsecutive days per year.
4. Short-Term Rental of an Owner-Adjacent Unit. An Operator may offer his/her Owner-Adjacent Unit as a Short-Term Rental for 365 days a year.
5. Maximum Number of Occupants: No more than five (5) unrelated persons may utilize any portion of a unit as a Short Term Rental Unit (STRU), or four (4) unrelated guests in the case of a Home Share Unit.
6. Permission of Owner. An Operator must certify at the time of registration that he/she has the following permission to offer his/her Residential Unit as a Short-Term Rental:
 - a) Operator is the owner of the Residential Unit offered as a Short-Term Rental
 - b) That offering the Residential Unit as a Short-Term Rental complies with applicable condominium documents, bylaws or other governing documents.
7. Local Contact. When registering, an Operator must provide his/her name and contact information, and, in the event the Operator is not present during the Short-Term Rental, the name and contact information of an individual who is able to respond in person to any issues or emergencies that arise during the Short-Term Rental within two (2) hours of being notified, Contact Information must include a telephone number that is active 24 hours per day to tenants, Short-Term rental occupants and public safety agencies. This phone number shall be included in the registration of the Short-Term Rental at the time of registration.
8. No Outstanding Violations. The residential unit offered as a Short-Term rental shall not be subject to any outstanding building, sanitary, zoning, or fire code violations, orders of abatement, or stop work orders, or other requirements, laws or regulations that prohibit the Operator from offering the Residential Unit as a Short-Term Rental. If violation or other order is issued after the Residential Unit has been listed on the Short-Term Rental Registry, the Licensing Commission or its designee shall suspend the Residential Units registration on the Short-Term Rental Registry until the violation has been cured or otherwise resolved. The person/department issuing said violation notice shall notify the Licensing Commission of the violation and its resolution within five (5) business days of issuance and/or resolution of said violation.
9. Compliance and Interaction with other Laws. Operators shall comply with all applicable federal, state and local laws and codes, including but not limited to the Fair Housing Act, G.L.c.151B and local equivalents and regulations related thereto fire codes, health codes, and all other regulations applicable to residential dwellings. The Residential Unit shall be in compliance with all applicable ordinances and regulations.

10. Retention of Records. The Operator shall retain and make available to the Newburyport Licensing Commission, or its designee, upon written request, records to demonstrate compliance with this section, including but not limited to: records demonstrating number of months that Operator has resided or will reside in Residential Unit; records showing that Operator is the owner of Residential Unit offered as Short-Term Rental; and records demonstrating number of days per year that Residential Unit is offered as a Short-Term Rental. The Operator shall retain such records for a period of 3 years from the date the Residential Unit is registered with the City.
11. Special Conditions. The License Commission may require, as a condition of any License issued hereunder, that specific improvements be implemented within the structure, or on the premises, as identified in the plans submitted pursuant to Section 9-306(2) or as further requested by the Building Commissioner, Fire Prevention Officer and/or Zoning Administrator.
12. Notifications:
 - a) The Operator shall include the registration number issued by the City on any listings offering Residential Unit as a Short-Term Rental and shall post a sign inside the Unit providing information on the location of all fire extinguishers in the unit, and, if applicable, the location of all fire extinguishers, fire exits and pull fire alarms in the dwelling.
 - b) The Booking agent shall permit an Operator to include the registration number issued by the City on any listings offering the Residential Unit as a Short-Term Rental.
 - c) The Operator shall, within 30 days of approved registration, provide notice to abutters of a Residential Unit that the Residential Unit has been registered as a Short-Term Residential Rental. For the purposes of this section an abutter shall be identified as any residential dwelling located within 300 feet of said Residential Unit.

Sec. 9-306 Short-Term Rental Registration Process, Certifications, Fee.

1. Registration Process. An Operator who wishes to offer his/her Residential Unit as a Short-Term Rental shall file an application therefor with the Newburyport Licensing Commission to be listed on the Short-Term Registry. A License for operation of said Short-Term Rental shall be valid for a one-year term, from the date of issuance. An Operator shall provide information to be listed on the Registry, including: Operator name, address of the Residential Unit, Operator's relationship to the unit, whether Residential Unit is being offered as a Limited Share, Home Share or Owner-adjacent Unit, MA DOR ID and other information as require by the City. The Operator shall also certify that he/she and the Residential Unit complies with the requirements of this section. An Operator who successfully obtains a License for his/her Residential Unit as a Short-Term Rental shall be issued a registration number.

Upon submission of License applications, and routinely as deemed necessary by the Licensing Commission or its designee, registration information shall be compared to information managed and maintained by the City, in order to effectively verify compliance with the provisions of this ordinance. The Licensing Commission shall make additions to the Short-Term Registry, or data contained within such additions, available electronically via the City website within 30 days.

2. Application. An owner who wishes to offer his/her/their residential unit as a short-term rental shall submit an application to be listed on the Short-Term Rental Registry to the Newburyport Licensing Commission.

Said application shall include the following information:

- a) Name of owner
- b) Address of residential unit
- c) Applicable zoning districts for the subject property
- d) Rental unit category (Limited Share, Home Share, or Plum Island Unit)
- e) MA Dept of Revenue ID number
- f) Lot layout and/or surveyed plot plan that includes:
 1. Existing structure(s) on the property;
 2. Location of short-term rental unit (if unit is only a portion of the property); and
 3. On-site parking area(s) to accommodate the short-term rental unit and portions of the structure that are not to be used as the short-term rental, if applicable, in accordance with the underlying zoning district, and without displacing the applicable parking requirements for any other uses located on the premises;
- g) Interior layout plan(s) highlighting:
 1. The bedroom(s) to be used in the short-term rental unit; and
 2. Proper fire detection for the short-term rental unit, including, but not limited to, access/egress points, location of fire detectors and extinguishers, evacuation route(s), designated location(s) within the unit for the posting of the evacuation route(s) and *[other information deemed necessary by the Building Commissioner and/or Fire Prevention Officer]*.

3. Fees. Units shall be annually recorded in the Short-Term Registry pursuant to the following:

- a) The annual registration fee for a Limited Share Unit shall be \$90.
- b) The annual registration fee for Home Share Units shall be \$200.
- c) The annual registration fee for Owner-Adjacent Units shall be \$200.

4. Re-registration Upon Unit Turnover. A registration shall be tied to both the Residential Unit and the Operator and will not automatically transfer upon the sale of the unit. New Operators are responsible for ensuring that they re-register with the City to obtain a new registration number if they wish to continue to list the Residential Unit in the Short-Term Registry.
5. Amending Registration Upon Change in Primary Residence. If an Operator offering a Residential Unit ceases to be a Primary Resident of the unit, the Operator shall immediately notify City to remove the unit from the Short-Term Rental Registry.

6. Bulk Registration by Booking Agent. Nothing herein shall prohibit a Booking Agent from entering into an agreement with the City to provide registration services for Short-Term Rental Operators.

Sec. 9-307 Room Occupancy Excise.

A Residential Unit subject to the provisions of this ordinance that is also subject to the Room Occupancy Excise under M.G.L.c.64G or any other excise or surcharge pertaining to Short-Term Rentals shall comply with the provisions of said statutes. Notwithstanding any provision or requirement to the contrary, an Operator may use a Booking Agent for the purposes of collecting and remitting the applicable room occupancy excise to the Commonwealth, and said Booking Agent shall enter into an agreement with the City for the collection and remittance of such tax. If an Operator does not use a Booking Agent to collect payment for a Short-Term Rental, the Operator shall be responsible for collecting and remitting the application room occupancy excise tax to the Commonwealth.

Sec. 9-308 Complaint Process; Violations

1. Complaint. A complaint alleging that a Residential Unit is in violation of this section or any applicable law, code or regulation may be filed with License Commission. The complaint must be written and contain the applicable Residential Unit's address, unit number, date and nature of alleged violation(s), and name and contact information of the complainant.
2. Review of Complaint. Within 30 days after receipt of a complaint, the Commissioner or a designee shall investigate the complaint and shall determine whether there may be a violation., If the alleged violation is under the jurisdiction of another city/state/federal agency, the Commissioner shall refer the complaint to such agency for further action. Upon a finding of a potential violation, the Commissioner shall serve notice of the violation upon the Operator of the Residential Unit at issue as listed in the Short-term Rental Registry. The commissioner shall keep records of all complaints received and determinations made.
3. Right to a Hearing. A person upon whom a notice of violation has been served may request a hearing from City by filing a written petition requesting a hearing on the matter with City within 14 days after the day the notice of violation was served. Upon receipt of a petition for hearing, City shall notify the complainant of the place, date and time of the hearing. The hearing shall occur no later than 2 weeks after the date City receives the petition for hearing. The time period in which violations must be remedied shall be stayed upon receipt of the petition for a hearing until such time as the hearing is held and the Commissioner has issued a decision.
4. Decision. Within 7 days after the conclusion of the hearing, the Commissioner or designee, shall sustain, modify, or withdraw the notice of violation and shall inform the person upon whom notice of violation has been served, in writing, of its decision and the reasons therefor. If City sustains or modifies the notice of violation, said violation shall be remedied within the time period allotted as issued or in the modification. No Short-Term rentals may occur until violations remedied. If a written petition for a hearing is not filed with City within 14 days after the notice of violation has been served, of if, after a hearing, the notice of violation has been sustained in any part, each day's failure to comply with the notice of violation within the time allotted as issued shall constitute a separate violation.

5. Judicial Appeal. Any person aggrieved by a final decision of City with respect to a notice of violation or any other order issued under this section may seek relief therefrom in any court of competent jurisdiction as provided by the laws of the Commonwealth.

Sec. 9-309 Penalties

1. Offering an Ineligible Unit as a Short-Term Rental. Any person who offers a unit as a Short-Term Rental, or any Booking Agent who accepts a fee for booking a unit, where such unit is not an eligible Residential Unit, shall be fined \$300 per violation per day. Each day's failure to comply with a notice of violation or any other order shall constitute a separate violation. The commissioner or designee may also seek an injunction from a court of competent jurisdiction prohibiting the offering of the unit as a Short-term Rental.
2. Failure to Register. Any person who offers an eligible Residential Unit as a Short-Term Rental without registering with City, or any person who offers an eligible Residential Unit as a Short-Term Rental while the unit's registration is suspended shall be fined \$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.
3. Failure to Comply with Notice of Violation. Any person who fails to comply with any notice of violation or other order issued pursuant to this section by the Commission or a designee shall 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. 9-310 Enforcement

1. Enforcement by the City. The provisions of this section may be enforced in accordance with the noncriminal disposition process of M.G.L.40.c.21D, and if applicable, by seeking to restrain a violation by injunction.
2. Enforcement by Booking Agent. The commissioner shall enter into agreements with Booking Agents for assistance in enforcing the provisions of this section, including but not limited to an agreement whereby the Booking Agent agrees to remove a listing from its platform for exceeding the maximum number of days a Residential Unit may be offered as a Short-Term Rental, whereby Booking Agent agrees to remove a listing from its platform that is deemed ineligible for use as a Short-Term Rental under the provisions of this Ordinance, and whereby the Booking Agent agrees to prohibit a host from listing any listings without a valid registration number from the City. Any Booking Agent that fails to enter into such agreements to actively prevent, remove or de-list any ineligible listings shall be prohibited from conducting business in the City.

Sec. 9-311 Data Sharing

A Booking Agent shall provide to the City, on a Quarterly basis, an electronic report of the listings maintained, authorized, facilitated, or advertised by the Booking Agent with the City of Newburyport for the applicable reporting period. The report shall include a breakdown of Unit Address, Registration number, Type of Rental and the number of nights each unit was reported as occupied during this period.

Sec. 9-312 Effective Date

The provisions of this Ordinance, Section XXXIII, shall take effect on June 1, 2020 with full enforcement and applicable fines for non-compliance to be effective beginning on January 1, 2021.

XXXIII-N 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.

Councilor James J. McCauley
Councilor Charles F. Tontar