

MEMO

TO: CITY COUNCIL

FROM: SHARIF ZEID

DATE: 2/21/23

Dear Colleagues,

I wanted to include a brief statement with this Short-Term Rental (STRU) ordinance submission to provide some context:

Why?

I am bringing forward this ordinance to try and provide a framework and structure for short-term rentals in the City. I have four primary, high-level goals for this proposal:

- 1) *To honor the previous work that was done*
With gratitude to the Ward 5 Councillor and the City Council, previous policy debate is honored herein.
- 2) *Simplification*
To shorten and make the ordinance simpler so that it would be more easily understood.
- 3) *To create logical and clearer terminology*
Clearer definitions for STRUs that serve as a platform to drive logical policy now and in the future.

Fourth, and finally, my overarching goal was to balance several divergent and challenging public policy goals that have been the center of the debate.

How?

Over the past many months, I have spoken with many stakeholders including those who generally favor STRUs, those who disfavor STRUs, Mayor Reardon, the Chief of Staff, the Planning Office (Director and Zoning Enforcement Officer), the City Solicitor, members of the City Council, and members of our land-use boards. This has resulted in numerous drafts and edits based on feedback received. This is not meant imply an endorsement by any of these individuals, but that a lot of groundwork has been done.

Specifically, the language of this proposed legislation has been passed through the City Solicitor, KP Law, for numerous rounds of review and edits.

About the proposal:

Philosophically, this proposal tries to separate the “residential” and “business” aspects of STRUs and pinpoint the nexus between them. I have found that some level of intertwining is unavoidable. Further, this proposal seeks to protect neighborhood residents by disallowing investor-owned STRUs and requiring parking. At the same time, this proposal allows for investor units (a “business” use) in the R3 district, which is a mixed-use district, centered on State Street, designed to reconcile business and residential uses. Finally, this proposal calls for permitting procedures that treat owner-occupied STRUs more simply (“by right”) than investor STRUs (special permit required). I ask you to consider this proposal through that lens.

Please know that this zoning proposal will still need the licensing (general law) ordinance as a companion. Based upon the response to this zoning proposal, I intend to reenergize the conversation about licensing.

I thank you, in advance, for your consideration of this proposal. I look forward to working together to come to a positive outcome for the benefit of the City.

Respectfully Submitted,
Sharif Zeid
Ward 1 City Councillor

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

February 27, 2023

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 new rows within Section V-D (Table of use regulations), and to add new definitions of allowable uses in Section V-E, as follows:

List of allowable uses:

Owner-Occupied Short-Term Rental Unit (OO-STRU) 111A: An STRU occupied by the Operator as the Operator’s Primary Residence or located on the same lot as the Operator’s Primary Residence and under common ownership. When required by this Ordinance, the Operator must be physically present at the Operator’s Primary Residence when the OO-STRU is occupied by renters.

Investor Short-Term Rental Unit (INV-STRU) 111B: An STRU located outside of the Plum Island Overlay District (PIOD) and not occupied by the Operator as the Operator’s Primary Residence. The Operator may be physically present at the lot when the INV-STRU is occupied by renters, but is not required to be so present, as set forth in this ordinance.

Plum Island Short-Term Rental Unit (PI-STRU) 111C: An STRU located within the Plum Island Overlay District (PIOD). The Operator may be physically present at the lot when the PI-STRU is occupied by renters, but is not required to be so present, as set forth in this ordinance.

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
Owner-Occupied Short-Term Rental Unit (OO-STRU) ^(m)	111A	NP	p ^(l)	p ^(l)	p ^(l)	p ^(l)	p ^(l)	p ^(l)	p ^(l)	NP	NP	NP	NP	NP	NP
Investor Short-Term Rental Unit (INV-STRU) ^(m)	111B	NP	NP	NP	NP	SP ^(k)	SP ^(k)	SP ^(a)	SP ^(k)	NP	NP	NP	NP	NP	NP
Plum Island Short-Term Rental Unit (PI-STRU) ^(m)	111C	NP	NP	NP	NP	p ⁽ⁿ⁾	NP	NP	NP	NP	NP	NP	NP	NP	NP

- (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 interest, direct or beneficial, in the STRU. By definition, all STRU use terminates after three (3) years, therefore, such use cannot become a lawful nonconforming use beyond that such time period.
- (l) Persons wishing to operate an OO-STRU, INV-STRU, or a PI-STRU use shall submit an online application for a Zoning Review by the Zoning Administrator. Only upon the issuance of a written Zoning Determination by the Zoning Administrator that “no zoning relief is required” shall this use be deemed allowed at a given location. By definition, all STRU use terminates after three (3) years, therefore, such review and approval shall be completed upon the earlier of (i) three (3) years since the date of the prior written Zoning Determination, and (ii) immediately upon any change-of-use, issuance of a building-permit requiring zoning relief, request for any other zoning relief such as Special Permits or variance, request for subdivision, approval not required (“Form A”) plan, or application to the Newburyport Conservation Commission, for the subject lot. Such Zoning Determination shall constitute a decision of the Zoning Administrator appealable to the Zoning Board of Appeals pursuant to MGL Chapter 40A Section 8 and Section X-H.5 of this Ordinance, and if so appealed, and if such use is approved by the Zoning Board of Appeals, the three (3) year life of such use shall begin from the date of such board’s decision, rather than that of the appealed Zoning Determination.
- (m) In addition to approval under the Zoning Ordinance, as further noted in Section V-G, all short-term rental uses require the issuance and maintenance of a valid License from the Licensing Commission pursuant to a related General Ordinance (Chapter 9, Article XI of the Newburyport Code of Ordinances).
- (n) Plum Island Overlay District only.

THAT the Zoning Ordinance further be amended to insert a new Section V-G, as follows:

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. With the overall well-being of residents and neighborhoods in mind, to strike a balance between competing interests such as the need for long-term rental housing and the benefits of STRUs
 - c. To minimize the adverse effects on residential properties and neighborhoods that may arise from residential properties being used as STRUs.
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).

Certified Plot Plan: A stamped drawing, drawn to a measurable scale by a state-registered engineer or a state-registered land surveyor that shows a parcel of land, its boundary lines and total square footage, and locates all existing structures (e.g. house, decks, pools, garages, fences, driveways, sheds, and parking spaces).

Short-Term Rental Unit (“STRU”): A Residential Unit used for residential occupancy for a period of fewer than thirty-one (31) consecutive days per occupancy, and more than fourteen (14) cumulative days of per year, by a person or persons who do(es) not reside in the Residential Unit as their Primary Residence, in exchange for monetary payment or any other form of consideration.

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 the Operator of any given STRU.

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.

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 (i) holds a valid Massachusetts Driver’s License or state-issued identification card, (ii) registers their automobiles, and (iii) is registered to vote in governmental elections.

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), and Multifamily (Use 103), or any such lawful 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.

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

	Operator Residency	Operator Presence When Guests Present	Max Occupancy	STRU Parking Requirement (parking variances strictly are forbidden)	Max Days Per Year STRU may be used	Max number STRUs per Operator
Owner-Occupied Short-Term Rental Unit (OO-STRU)	Operator’s Primary Residence	No presence requirement for up to 120 days of short-term rental, must be physically present overnight for any night in excess of 120 days.	3 bedrooms, and 6 guests	1 bedroom offered = 0 additional spaces required 2 or 3 bedrooms offered = 1 added space required	No Limit, provided Operator is present as required	One (1) cumulatively
Investor Short-Term Rental Unit (INV-STRU)	No restriction	No presence requirement				
Plum Island Short-Term Rental Unit (PI-STRU)	No restriction	No presence requirement	6 bedrooms, and 12 guests	None	No Limit	No Limit

For clarity, any OO-STRU parking requirements, shown above, are separate and distinct from parking requirements for other uses at the same lot. For example, a single-family home that requires two (2) parking spaces, would require one (1) additional parking spaces, for a total of three (3) parking spaces, if a 2- or 3-bedroom STRU were to operate at the same lot.

4. Application Requirements for Any STRU. Each application for an STRU Zoning Review and/or special permit shall include all the following information, as applicable. Additional information may be required by the non-zoning, licensing process provided for elsewhere the Newburyport Code of Ordinances:

- i. 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;
- ii. Address of the STRU and proposed STRU type (OO-STRU, INV-STRU, or PI-STRU);
- iii. For OO-STRUs and PI-STRUs – 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 parking area(s) to accommodate all uses of the property, including the proposed STRU.
- iv. For INV-STRUs – (A) A Certified Plot Plan, (B) proposed site plan that indicates: (1) proposed structure(s) at the property; (2) location of any proposed STRU; and (3) off-street parking area(s) to accommodate all uses of the property, including the proposed STRU, and (C) interior floor plan(s) that indicate (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
- v. For any OO-STRU application, the applicant must provide a minimum of two (2) forms of valid proof of residency consistent with the definition of Primary Residence provided herein.

5. General Requirements for any STRU

- a. The Operator shall make those specific physical improvements as required by the Building Commissioner, Fire Prevention Officer, Board of Health and/or Zoning Administrator to achieve compliance with applicable law, prior to initiating such STRU use on the subject property.
- b. In the B-2 and B-3 zoning districts, each STRU shall be located solely above the first floor of the structure.
- c. There shall be no external, physical evidence (including any signs or other advertising) of the STRU to differentiate it in appearance from the single-family, two-family, multi-family residential or mixed-use premises in which it is located, nor from other residential properties similarly situated.
- d. The STRU shall not create excessive noise, fumes, odor, dust, vibration, heat, glare, or electrical interference nor shall they create litter or other common nuisances.
- e. Using an Operator's Agent does not relieve the Operator of any of their duties to comply with every provision of this Section V-G, nor their legal liability for any failure to so comply, including the limitation on number of STRU's per Operator. An Operator's Agent is not limited in how many STRU's they may manage for different Operators.
- f. The Operator shall comply with all applicable federal, state and local laws and regulations.

6. Ineligible residential units. Notwithstanding anything in this Zoning Ordinance to the contrary, the following dwelling units shall be ineligible for any STRU 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), or any such lawful uses if contained within a mixed-use structure (Use 405);
- 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 inclusionary or 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, boats, tents, lean-tos, or any other similar space, or structure, whether temporary or permanent.
- f. Any Residential Unit located within the Smart Growth District.
- g. Any portion of a Hotel, Lodging House, or Bed and Breakfast use.
- h. Any dwelling unit where STRUs have been prohibited by a legally binding agreement, such as a condominium bylaw.

7. Effective Date & Enforcement. The provisions of this Section V-G shall take effect upon adoption of this ordinance, with all provisions becoming enforceable against all property located within the City one-hundred and eighty (180) calendar days after such effective date.

8. 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.