

# CITY OF NEWBURYPORT



IN CITY COUNCIL

February 27, 2023

**ORDERED:**

**A ZONING AMENDMENT TO ALLOW REGULATED 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), as follows:

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) <sup>(m)</sup>	111A	NP	P <sup>(l)</sup>	P <sup>(l)</sup>	P <sup>(l)</sup>	P <sup>(l)</sup>	P <sup>(l)</sup>	P <sup>(l)</sup>	P <sup>(l)</sup>	NP	NP	NP	NP	NP	NP
Investor Short-Term Rental Unit (INV-STRU) <sup>(m)</sup>	111B	NP	SP <sup>(k)</sup>	SP <sup>(k)</sup>	SP <sup>(k)</sup>	SP <sup>(k)</sup>	SP <sup>(k)</sup>	SP <sup>(k)</sup>	SP <sup>(k)</sup>	NP	NP	NP	NP	NP	NP
Plum Island Short-Term Rental Unit (PI-STRU) <sup>(m)</sup>	111C	NP	NP	NP	NP	P <sup>(n)</sup>	NP	NP	NP	NP	NP	NP	NP	NP	NP

- (k) Subject to the STRU special permit provisions set forth in Section V-G.
- (l) Requires application for a Zoning Review and issuance of a Zoning Determination as set forth in Section V.G.
- (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 be further amended to insert new rows within Section V-E (List of allowable uses), as follows:

<b>1. RESIDENTIAL</b>		
USE	NUM	DESCRIPTION
Owner-Occupied Short-Term Rental Unit (OO-STRU)	111A	An STRU, as defined in Section V-G, in a dwelling unit 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, as defined in Section V-G, in a dwelling unit located outside of the Plum Island Overlay District (PIOD) and not occupied by the Operator as the Operator’s Primary Residence and that has been registered with the State of Massachusetts’s Public Registry of Lodging Operators as of February 27th, 2023. 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, as defined in Section V-G, in a dwelling unit 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.

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

**V-G 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. 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).

**Short Term Rental Unit (STRU):** Use of a dwelling unit, or portion thereof, consistent with Section V-G, for residential occupancy for a period of fewer than thirty (30) consecutive days per occupancy, and more than fourteen (14) cumulative days of occupancy per year in exchange for monetary payment or any other form of consideration. An STRU shall not include any other transient occupancy use listed in this Ordinance, including, without limitation, Hotel, Lodging House, or Bed and Breakfast.

**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).

**Operator:** A natural person who is an owner of record of the dwelling 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 dwelling unit in which the Operator resides for no fewer than 183 days of every year and at which such residence the Operator certifies, under pains and penalties of perjury, that they occupy the subject property for the prescribed period. Said certification shall be submitted with any Request for Zoning Review pursuant to this section, accompanied by two (2) forms of documentation to substantiate the certification such as a valid Massachusetts Driver's License or state-issued identification card, valid motor vehicle registration, current voter registration card, or current census listing.

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

	<b>Operator Residency</b>	<b>Operator Presence When Guests Present</b>	<b>Max Occupancy</b>	<b>Max Days Per Year STRU may be used</b>	<b>Max number STRUs per Operator</b>
Owner-Occupied Short-Term Rental Unit (OO-STRU)	Operator’s Primary Residence	Owner must be physically present overnight for any short-term rental night in excess of 120 short-term rental nights during any licensed year.	3 bedrooms, and 6 guests	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	No Limit	No Limit

**4. STRU Zoning Review by Zoning Administrator.** When Section V-D lists an STRU use as permitted by right (“P”), such use shall require the issuance in writing of a Zoning Determination as follows:

- a. Persons wishing to operate an OO-STRU, INV-STRU, or 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 permitted at a given location.
- b. A Zoning Determination under this provision shall lapse automatically after a period of three (3) years, after which the STRU use shall terminate unless a new Zoning Determination has previously been issued to allow the STRU use to continue. In order to avoid a lapse in STRU use, such review and approval by the Zoning Administrator 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-ownership or use or issuance of a decision granting zoning relief, such as Special Permits or variances, for the subject lot or (iii) the issuance of any building permit exceeding 50% of the value of the assessed value of the structures on the subject lot.
- c. A Zoning Determination for an STRU 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. 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.

**5. STRU Special Permit.** When Section V-D lists an STRU use as permitted by Special Permit (“SP”), the Zoning Board of Appeals shall be the Special Permit Granting Authority (SPGA), and the following provisions shall apply:

- a. The final deadline to apply for a Special Permit hereunder shall be six (6) months from the effective date of this Ordinance.
- b. An STRU special permit 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. In every instance, and notwithstanding the aforementioned three (3) year term, all Special Permits issued pursuant to this section shall automatically expire

on June 30th, 2030~~27~~ and may not be extended by Variance or any other means. No Special Permit shall be issued hereunder after said date or for any period extending beyond said date.

- c. In accordance with the above all Special Permits for STRU use hereunder require renewal of Special Permit approval after three (3) years, and as such said use cannot become a lawful nonconforming use beyond said three (3) year term, unless a new STRU Special Permit is applied for and approved in accordance with this Section.
- d. In order to avoid a lapse in STRU use, a new STRU special permit must be granted prior to the expiration of the special permit or change in ownership.

**6. 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) interior floor plan or sketch 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 (4) 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.

**7. General Requirements for any STRU**

- a. An STRU may only be established in conjunction with a lawful dwelling unit within one of the following four principal residential uses: One family (Use 101), Two-family (Use 102), Multifamily (Use 103), and Mixed Use (Use 405).
- b. All occupants of the STRU and of the dwelling unit within which the STRU is located must have shared access to the same primary kitchen facility.
- c. The STRU shall comply with any applicable requirement for off-street parking as set forth in Section VII-B.
  - i. When the principle residential use to which the STRU is to be established in conjunction with is lawfully nonconforming as to the off-street parking requirements of this ordinance, such lawful nonconformity may continue and the addition of an STRU shall only require any additional parking spaces required by Section VII-B for the applicable STRU.
  - ii. No Variance from any off-street parking requirement shall be granted for an STRU use.

- d. 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.
- e. In the B-2 and B-3 zoning districts, each STRU shall be located solely above the first floor of the structure.
- f. 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.
- g. 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.
- h. 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.
- i. The Operator shall comply with all applicable federal, state and local laws and regulations. Notwithstanding this requirement, an STRU may be established on a lot or within a building that is lawfully nonconforming to a provision of this zoning ordinance (including off-street parking requirements) without being required to fully conform to such provision.

**8. Ineligible dwelling units.** Notwithstanding anything in this Zoning Ordinance to the contrary, the following dwelling units shall be ineligible for any STRU use.

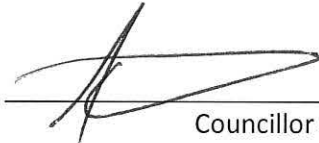
- a. A dwelling unit that makes up all or part of a residential use as defined under the Newburyport Zoning Ordinance other than One-family (Use 101), Two-family (Use 102), or Multifamily (Use 103), or any such lawful uses if contained within a mixed-use structure (Use 405);
- b. A dwelling unit that 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 dwelling 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.

**9. 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.

**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 new rows within Section VII-B (Parking requirements), as follows:

USE	NUM	PARKING REQUIREMENT
Owner-Occupied Short-Term Rental Unit (OO-STRU)	111A	The minimum parking required for the principal residential use <i>(including recognition of any preexisting nonconformity for same)</i> , plus 1 additional parking space for the STRU use, except that the renting of only 1 or 2 bedrooms shall not require the additional space.
Investor Short-Term Rental Unit (INV-STRU)	111B	The minimum parking required for the principal residential use <i>(including recognition of any preexisting nonconformity for same)</i> , plus 1 additional parking space for the STRU use, except that the renting of only 1 or 2 bedrooms shall not require the additional space.
Plum Island Short-Term Rental Unit (PI- STRU)	111C	The minimum parking required for the principal residential use <i>(including recognition of any preexisting nonconformity for same)</i> .



Councillor Sharif I. Zeid

**In City Council February 27, 2023:**

Motion refer to Planning & Development COTW by Councillor Zeid, seconded by Councillor Cameron. Roll call vote. 11 yes. Motion passes.

**In City Council October 30, 2023:**

Motion to approve ODNC00141\_02\_27\_2023 on 1<sup>st</sup> reading by Councillor Zeid, seconded by Councillor Preston.  
Motion to amend by striking 111B and all language related to 111B as noted in draft amendment by Councillor Cameron, seconded by Councillor Donahue.

10-minute recess to review the draft amendment.

Motion to amend the amendment to remove the removal of 111B and all language related to it, and to change V-G 5b from June 30<sup>th</sup>, 2030 to June 30<sup>th</sup>, 2027 by Councillor Zeid, seconded by Councillor Lane. Roll call vote. 9 yes, 2 no (Donahue, Preston). Motion passes.

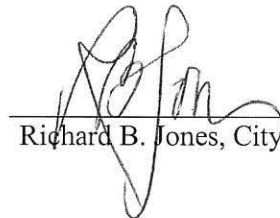
Motion to move the question by Councillor Zeid, seconded by Councillor Lane. Roll call vote. 7 yes, 4 no (Wallace, Cameron, Donahue, Shand). Motion fails.

Motion to approve as amended on 1<sup>st</sup> reading by Councillor Zeid, seconded by Councillor Preston. Roll call vote. 10 yes, 1 no (Donahue). Motion passes.

**In City Council November 13, 2023:**

Motion to approve on 2<sup>nd</sup> Reading by Councillor Zeid, seconded by Councillor Wright. Roll call vote. 11 yes. Motion passes.

Approve:   
Sean R. Reardon, Mayor

Attest:   
Richard B. Jones, City Clerk

Date: 11/20/23