



Zoning & Planning Committee Agenda

City of Newton In City Council

Monday, May 13, 2024

7:00 pm
Room 204

The Zoning and Planning Committee will hold this meeting as a hybrid meeting on Monday, May 13, 2024 at 7:00 PM that the public may access in-person or virtually via Zoom. To attend this meeting via Zoom use this link: <https://newtonma-gov.zoom.us/j/84587587627> or call 1-646-558-8656 and use the following Meeting ID: 845 8758 7627.

Item Scheduled for Discussion:

- #23-24 Update on Short-term rental ordinance compliance and enforcement**
COUNCILORS MALAKIE, WRIGHT, KELLEY, LAREDO, LIPOF, HUMPHREY, LUCAS, ALBRIGHT, DANBERG, AND OLIVER requesting an update on Short-term Rental ordinance compliance and enforcement, including data on registrations, complaints, investigations and fines issued; types of violations being found (e.g. non-owner occupied, room limits, annual time limits, other code violations like noise, health & safety, trash); ability to compare STRs registered with the city vs registered with the state vs listings on public platforms; ability to obtain listing information from STR companies; adequacy of resources or other obstacles to enforcement.
Zoning & Planning Held 8-0 on 01/08/24
Zoning & Planning Held 8-0 on 01/22/24
Zoning & Planning Held 8-0 on 04/08/24
- #225-24 Requesting possible amendments to the short-term rental ordinances**
COUNCILORS BAKER AND OLIVER on behalf of the Zoning & Planning Committee, requesting amendments to the short-term rental ordinance to require that the property owner be listed as the operator, and other amendments to strengthen the ordinances relating to short-term rentals.

The location of this meeting is accessible and reasonable accommodations will be provided to persons with disabilities who require assistance. If you need a reasonable accommodation, please contact the city of Newton's ADA Coordinator, Jini Fairley, at least two business days in advance of the meeting: jfairley@newtonma.gov or (617) 796-1253. The city's TTY/TDD direct line is: 617-796-1089. For the Telecommunications Relay Service (TRS), please dial 711.

#24-24 Request for discussion and possible ordinance amendments relative to aiding small businesses impacted by development

COUNCILORS ALBRIGHT AND KELLEY request the Planning Department with the assistance of the Economic Development Commission, research and develop mechanisms including ordinance changes or other means to assist local businesses impacted by development similar to the Somerville work. The goal of this docket item will be to help small commercial/retail/independent and locally-owned businesses remain in Newton as development occurs.

Zoning & Planning Held 8-0 on 01/08/24

Zoning & Planning Held 8-0 on 01/22/24

Zoning & Planning Held 8-0 on 03/25/24

Chair's Note: The Chair will entertain a motion to split the item to hold a public hearing on having building height being measured from original grade as opposed to finished grade while allowing staff to work on other proposed changes.

#76-24 Discussion and possible ordinance amendment to deal with grade changes created during construction causing stormwater runoff on neighboring properties

COUNCILORS ALBRIGHT, LIPOF, WRIGHT, AND LEARY requesting a discussion with the Planning Department to address concerns relative to the trend of significantly raising grade elevations on lots, using retaining walls, terracing and other means to add soil to conceal a raised basement, which can lead to new buildings that are significantly taller than nearby existing houses in the area and cause denuding of wooded areas and increase stormwater runoff. This discussion may result in an ordinance change to Chapter 30 section 5.4.2 which would require a special permit or other means of city review of all retaining walls over 4 feet on a site.

Zoning & Planning Held 7-0 on 02/15/24

Zoning & Planning Held 7-0 on 03/11/24

Chair's Note: Discussion regarding the following two items will be limited to informing Councilors that a discussion will be held at the June 10th meeting regarding potential amendments to the zoning ordinance.

#85-24 Request for discussion and possible amendments to enhance the preservation of existing homes.

COUNCILORS BAKER, OLIVER, MALAKIE, KALIS, GETZ, LUCAS, LOBOVITS, AND WRIGHT requesting a discussion and possible amendments to Chapter 30 Zoning or other City Ordinances to enhance the preservation of existing homes over their replacement by larger and more expensive structures.

Zoning & Planning Held 7-0 on 02/15/24

Zoning & Planning Held 6-0 (Councilor Albright Not Voting) on 03/11/24

Zoning & Planning Held 8-0 on 04/08/24

#41-24 Amend the setbacks in the MR zones to encourage preservation of existing buildings

COUNCILORS ALBRIGHT, DANBERG, KRINTZMAN, AND LEARY seeking a discussion with the Planning Department to consider ordinance amendments that would revise the metrics in the multi-residence (MR1, MR2 and MR3) zones, to regulate the size of new buildings better, enable a wider range of housing options close to public transit, and better incentivize preservation and renovation of existing housing stock.

Zoning & Planning Held 7-0 on 02/15/24

Zoning & Planning Held 6-0 (Councilor Albright Not Voting) on 03/11/24

Zoning & Planning Held 8-0 on 04/08/24

Chair's Note: *The Chair will entertain a motion of No Action Necessary (NAN) on the following item.*

#182-24 Request for discussion and possible amendments to allow for-profit schools by-right

COUNCILORS LUCAS, KELLEY, LAREDO, AND LOBOVITS requesting a discussion with the Planning and Development Department to possibly amend Newton's Zoning Ordinance to allow Schools or other educational purposes, for-profit to be allowed by right.

**Respectfully Submitted,
R. Lisle Baker, Chair**

TO: Zoning and Planning Committee

FROM: Anthony Ciccariello, Commissioner of Inspectional Services
Andrew S. Lee, Senior Assistant City Solicitor

SUBJECT: Proposed Amendments to the Short Term Rental Ordinance
City Council Docket #23-24 and #225-24

DATE: May 10, 2024

The Zoning and Planning Committee requested that the Inspectional Services Department (“ISD”) identify issues with enforcement of the City’s Short Term Rental Ordinance and for ISD to work with the Law Department to recommend updates to the ordinance addressing such issues. ISD has encountered two primary hurdles in administering the ordinance. First, allowing a lessee to operate a Short Term Rental has allowed a single person or entity to own several properties used as a Short Term Rentals which are purportedly occupied and used as residences of the lessee. The second hurdle concerns difficulties in identifying properties that are being operating as an unregistered Short Term Rental and, once the property is identified, finding the party responsible for the violation. Attached is a draft of proposed updates to the ordinance. These suggested changes accomplish the following:

1. The “Operator” of the Short Term Rental must be the owner of the property, not a lessee.
2. Clarify and bolster the requirement that the operator post the ISD-issued registration number in any and all advertisement for the short-term rental, including online advertisements.
3. Clarify the residency requirement when the Short Term Rental is owned by an entity.
4. Add language holding the owner of the property liable if the property is offered or operated without an ISD-issued certificate of registration.

(b) In addition to the penalties for code and ordinance violations established by the Commonwealth of Massachusetts and City of Newton, the Licensing Board shall have the authority to issue the following penalties for violations of these regulations after notice of hearing and opportunity to be heard.

- (1) More than three (3) code violations not addressed within 30 days of inspection unless a correction plan is approved by the Inspectional Services Department or Fire Prevention Bureau as appropriate \$300 Fine
- (2) More vehicles stored on the premises than allowed on the premises by zoning on (3) or more occasions as recorded by the Inspectional Services Department.....\$300 Fine
- (3) More residents on the premises than allowed on two (2) or more occasions as recorded by the Inspectional Services Department..... \$300 Fine
- (4) If two (2) or more of the above fines are warranted in any 12-month period or if three (3) or more of the above fines are warranted in a 36-month period Denial of License Renewal.

Sec. 20-159. Reserved.

**Article IX
SHORT TERM RENTALS**

Sec. 20-160. Definitions.

The meaning of the terms used in this article shall be as follows:

- (a) *Commissioner*: The commissioner of inspectional services.
- (b) *Operator*: A person or persons offering a dwelling unit or bedroom for short-term rental in the City, who ~~may be either~~ must be the record owner ~~or the primary leaseholder~~ of the dwelling unit, with the written permission of the ~~property owner and the~~ condominium association if applicable.
- (c) *Occupancy*: The use or possession or the right to the use or possession of a room in a Short Term Rental normally used for sleeping and living purposes for a period of not more than 30 consecutive calendar days to one person or party, regardless of whether such use and possession is as a lessee, tenant, guest or licensee.
- (d) *Occupant or Guest*: A person who uses, possesses or has a right to use or possess a room in a Short Term Rental for rent under a lease, concession, permit, right of access, license or agreement.
- (e) *Short Term Rental*: The rental of one or more bedrooms (along with any associated living areas) within a dwelling unit on an overnight or short-term basis of less than 30 days to guests. The use is accessory to the primary residential use of the dwelling unit.

Any terms not expressly defined in this article shall have the meaning prescribed by Massachusetts General Laws Chapter 64G, Section 1.

Sec. 20-161. Requirements for Short Term Rentals

- (a) Compliance. No Residential Unit shall be offered as a Short Term Rental except in compliance with the provisions of this article.

- (b) Registration. Operators of any Short Term Rental located in the City of Newton must register with the City in accordance with Sec. 20-162 of this article.
- (c) No Outstanding Code Enforcement or Inactive Building Permits. Operators are prohibited from renting any Short Term Rental if the property is subject to an outstanding building, electrical, plumbing, mechanical, fire, health, housing, trash, noise or zoning code enforcement, including notices of violation, notices to cure, orders of abatement, cease and desist orders or correction notices, unpaid fines or if there are any inactive outstanding building permits for the property.
- (d) Three or More Violations in a Twelve Month Period. Should a property receive three or more violation notices within any twelve month period under this article, or of any municipal ordinance, state law, or building code, any residential unit within the property shall be ineligible to be used as a Short Term Rental for a period of six months from the third or subsequent violation.
- (e) Annual Certification. All Operators must file with the Inspectional Services Department a sworn certification attesting to continued compliance with the requirements of this article and all applicable public safety codes. Such certification shall be filed annually on the first business day of January.
- (f) Annual Notice to Abutters. The Operator must, within thirty (30) days after registration of a Short Term Rental, provide notice of such registration to all abutters, owners of land directly opposite any public or private street or way, and abutters to the abutters. Such notification shall include the contact information of the Operator and the local contact, the Operator's state registration number, the Operator's Inspectional Services Department issued registration number, and a reference to this article. This notice must thereafter be provided annually on the first business day of January to all abutters, owners of land directly opposite any public or private street or way, and abutters to the abutters. Failure to provide such notice shall constitute a violation of this ordinance.

Sec. 20-162. Registration Requirements.

Operators must register with the Inspectional Services Department prior to the occupancy of any Short Term Rental that commences after January 1, 2020 by submitting the following:

- (a) State Certificate. A copy of the State certificate of registration issued in accordance with Massachusetts General Laws Chapter 62C, Section 67.
- (b) Local Operator Affidavit. A completed sworn Local Operator Affidavit, in a form established by the Inspectional Services Department, that at minimum contains the following information:
 - 1) Contact information of Operator and Local Contact;
 - 2) Proof of ownership and Residence;
 - 3) Description of operation and number of rooms/units that will be rented;
 - 4) Confirmation that there is no outstanding code enforcement or outstanding building permits;
 - 5) Signature of Operator certifying that the Short Term Rental conforms to this article.
- (c) Smoke and Carbon Monoxide Certificate of Compliance. All Short Term Rentals must comply with the applicable smoke detector and carbon monoxide requirements for residential units set forth in Sec. 10-11 of these Ordinances and Massachusetts General Laws Chapter 148, Section 26E. Operators must schedule an inspection with the Fire Department and receive a Certificate of Compliance indicating that the property

meets the smoke detector and carbon monoxide requirements prior to the first occupancy commencing after January 1, 2020. Operators shall be responsible for the smoke detector inspection/permit fee to be paid directly to the Fire Department as set forth in Sec. 17-10 of these Ordinances.

- (d) House Rules. A copy of the House Rules required to be posted and distributed in accordance with Sec. 20-164 of this ordinance.
- (e) Registration Filing Fee. At the time of registration, Operators must pay a filing fee of \$100, an amount established by the City Council. All applicable inspection fees shall be paid directly to the inspecting department at the time of inspection.
- (f) Local Contact Information. When registering, an Operator must provide his or her name and contact information, and, in the event that 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 short term rental occupants and public safety agencies. This phone number shall be included in the registration of the Short Term Rental unit at the time of registration. Failure of the local contact to respond within the stated period shall constitute a violation of this ordinance.

(g) Proof of Residence. A property owner or indirect property owner must reside in the dwelling unit operated as a Short Term Rental for a minimum of 9 out of 12 months during each calendar year. Indirect ownership includes but is not limited to a beneficiary of a trust holding record title to the property and a majority owner of the voting stock of a corporation or the membership units of a limited liability company holding record title to the property. When registering a Short Term Rental, an Operator must provide evidence that the property owner or indirect owner ~~he or she~~ resides in the dwelling unit for a minimum of 9 out of 12 months during each calendar year, as demonstrated by at least two of the following: utility bill, voter registration, motor vehicle registration, ~~deed, lease,~~ driver’s license or state-issued identification.

~~(g) All Short Term Rentals registered with the Inspectional Services Department under the provisions of this article shall be issued a certificate of registration and registration number.~~

- (h)
- ~~(i) Permission of Owner. An Operator must certify at the time of registration that he or she is the owner of the Short Term Rental or as the lessee has permission from the owner to operate the Short Term Rental.~~

Sec. 20-163. Inspections.

- (a) The Inspectional Services Department, Health and Human Services Department, and Fire Department may conduct inspections of any Short Term Rental as may be required to ensure safety and compliance with all applicable ordinances and local, state, and federal codes, including but limited to the provisions of this article. All inspecting departments shall keep records of inspections and visits to the property throughout each year.

Sec. 20-164. Responsibilities of Operators.

- (a) General Responsibility. The Operator shall be responsible for the proper supervision, operation, and maintenance of the Short Term Rental in accordance with the requirements of this article and all other pertinent laws, regulations, and codes. The Operator shall also be responsible for the behavior and activity of guests that results in a violation of this ordinance. The appointment of an agent shall in no way relieve the Operator from responsibility for full compliance with the law.
- (b) No Nuisance. Short Terms Rentals shall not result in the disruption of the peace, tranquility, or safety of

the immediate residential neighborhood through the production of noise, vibration, light, glare, trash, fumes, odors, traffic, parking congestion, or any other nuisance beyond that which normally occurs in the immediate residential area.

- (c) Compliance with City Ordinances and State and Local Laws. All Short Term Rentals shall comply with all applicable ordinances and local, state, and federal codes applying generally to residential properties in the City, including but not limited to the City’s Zoning Ordinance, Chapter 30 of the Revised Ordinances of the City.
- (d) Commercial Events Prohibited. A Short Term Rental property shall not be used for a commercial event during its occupancy as a Short Term Rental. Commercial events include luncheons, banquets, parties, weddings, meetings, charitable fundraising, commercial or advertising activities, or other gatherings for direct or indirect compensation.
- (e) Agreements with Occupants. Operators may not enter into any rental or use agreements that are inconsistent with the terms of this article.
- (f) Minors. No Short Term Rental shall be rented to any unemancipated person who is younger than eighteen (18) years of age.
- (g) Occupant Registries. The Operator of every Short Term Rental must maintain, in permanent form, a registry log of occupants. It must include the names and home addresses of occupants, occupant’s license plate numbers if traveling by car, dates of stay, and the room assigned to each occupant. The registry log must be available for inspection by any City official upon request.
- (h) Fire Prevention Notice. Operators shall post in a visible place inside the short-term rental unit information regarding the location of any fire extinguishers, gas shut off valves, fire exits and fire alarms in the unit and building.
- (i) Notice of Registration. The Operator of every Short Term Rental shall post in a prominent place within the rental the house rules below as well as the certificate of registration with the City of Newton. The Operator shall clearly display the Newton Registration number in all advertisements, postings or notices offering use of the short term rental, including but not limited to online advertisements.
- (j) House Rules. Operators shall institute house rules to prevent the Short Term Rental from being a cause of complaint to the Police Department or a cause of nuisance or annoyance to the neighbors or neighborhood.
 - 1) House rules must make occupants aware of the City’s ordinances and the Operator’s policies, which shall be in writing. At a minimum, house rules shall adequately address the following:
 - i. Noise control, including use of audio equipment that may disturb the peace
 - ii. Adherence to laws regarding disorderly behavior
 - iii. Proper garbage disposal
 - iv. Location of parking stalls on the property
 - v. Neighborhood parking regulations and restrictions

- vi. Occupancy limits according to the City’s Zoning Ordinance
- vii. Any other provisions as may be required by City Officials.

2) Operators shall ensure all occupants are aware of the house rules by distributing them prior to the date of occupancy and posting them in a visible place.

~~(j)~~(k) Egress and Access. Operators of short term rentals, classified as one-family or two-family dwellings for the building code, shall be responsible for ensuring that adequate egress is provided in accordance with the the appropriate section of Massachusetts State Building Code, 780 CMR.

~~(h)~~(l) Maintenance. The building and all parts thereof shall be kept in good general repair and properly maintained.

~~(i)~~(m) Burden of Proof and Cooperation. The burden of proof is placed on the Operator to demonstrate that they are operating within the limits of this article. Operators must cooperate with any enforcement or investigation proceedings under this article.

~~(m)~~(n) False Information. Submission of false information shall constitute a violation of this ordinance.

Sec. 20-165. Enforcement, Violations and Penalties.

- (a) Enforcement. The Inspectional Services Department and the Newton Police Department or their designees shall be responsible for enforcement of this ordinance, including any rule or regulation promulgated hereunder, and shall institute all necessary administrative or legal action to assure compliance.
- (b) Notice of violation. The Commissioner or designee shall issue a written notice of any violation of this article ~~to the Operator.~~ Said notice shall describe the prohibited condition and order that it be remedied within thirty (30) days of receipt of the notice.
- (c) Penalties. Any Operator who violates any provision of this ~~article ordinance~~ shall be subject to suspension or termination of the certificate to operate a Short Term Rental and a fine of not more than three hundred dollars (\$300.00) for each violation. Each day a violation occurs shall be a separate offense. The Commissioner shall notify the Massachusetts Commissioner of the Department of Revenue of all such suspensions or terminations. Where non-criminal disposition of this section by civil fine has been provided for in sections 17-22 and 17-23 of these revised ordinances, as amended, pursuant to the authority granted by G.L. c. 40, section 21D, said violation may be enforced in the manner provided in such statute. The civil penalty for each such violation is set forth in section 17-23(c).
- (d) Violations of building, health, or fire code. Any action by the Commissioner to suspend, terminate or issue fines under this section shall not bar any other separate action by any other City Department for health, fire safety, building code or any other violations.
- (e) Failure to Register. Any person who offers or operates a Short Term Rental without ~~first registering with thea valid and current certificate of registration from the Inspectional Services Department pursuant to this article, and the record owner of the property offered or operated as a Short Term Rental, City~~ shall be fined three hundred dollars (\$300.00) per violation ~~per day.~~ Each day’s failure to comply with a notice of violation or any other order shall constitute a separate violation. Where non-criminal disposition of this section by civil fine has been provided for in sections 17-22 and 17-23 of these revised ordinances, as amended, pursuant to the authority granted by G.L. c. 40, section 21D, said violation may be enforced in the manner provided in such statute. The civil penalty for each such violation is set forth in section 17-23(c).

Sec. 20-166. Effective Date.

The provisions of this Article IX shall take effect on January 2, 2020.

Sec. 20-167. Severability.

The provisions of this article are severable. If any provision, paragraph, sentence, or clause, of this article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this article.

Sec. 20-168. Reserved.

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