



CITY OF BOSTON • MASSACHUSETTS

OFFICE OF THE MAYOR
MARTIN J. WALSH

January 19, 2018

TO THE CITY COUNCIL

Dear Councilors:

I hereby transmit for your approval an Ordinance Allowing Short-Term Residential Rentals in the City of Boston. This ordinance provides a process through which certain dwelling units may be registered with the City for use as short-term rental units.

The rapid rise of short-term rentals, facilitated through the use of online platforms that have made it fast and simple for travelers to connect with hosts, has forced policymakers all over the world to rethink the way housing units are regulated. In Boston, we know that emerging industries that use innovative platforms to make on-demand consumer connections have forced us to re-work long established regulatory systems that do not fully incorporate the way people live and conduct business in the 21st century.

This ordinance is the result of nearly three years of policy development work, involving over one dozen different City departments and agencies, and collaboration with a diverse network of stakeholders across all spectrums of the long- and short-term housing and rental industries. Our goal was two-fold. First, we acknowledge that when used under certain circumstances, short-term residential rentals can provide economic opportunities for residents and added capacity to the market of short-term accommodations for travelers. This ordinance creates tools for the City to ensure that units used as short-term rentals are safe and that basic information about their location, their frequency of use, and the individuals who operate them is available to City.

Second, we know that the unchecked commercialization of short-term rental uses in residential properties has potential to increase pressure on our already strained housing market. Losing long-term housing units to a commercialized short-term rental market effectively negates the work we have done over the years to rapidly expand Boston's housing stock. In addition, the use of entire dwellings exclusively for short-term rentals may be in conflict with the dwelling's existing occupancy, zoning or property tax classification, and this ordinance creates a system to monitor these potential conflicts and tools to address them when they arise. This ordinance outlines reasonable restrictions on short-term rental uses designed to mitigate the loss of long-term housing units to a short-term market. It creates categories of short-term rental housing units, based on the space used, the frequency of use, and the nature of the relationship between the unit and its host.

I urge your Honorable Body to adopt this Order as soon as possible.

Sincerely,

Martin J. Walsh
Mayor of Boston

CITY OF BOSTON
IN CITY COUNCIL

AN ORDINANCE ALLOWING SHORT-TERM RESIDENTIAL RENTALS IN THE CITY OF BOSTON.

Be it ordained by the City Council of Boston, as follows:

SECTION 1. City of Boston Code, Ordinances, Chapter IX is hereby amended by inserting the following section after Section 9-13:

9-14 SHORT-TERM RESIDENTIAL RENTALS.

9-14.1 Purpose.

The purpose of this section is to set forth a process through which certain dwelling units may be registered with the City of Boston for use as short-term rental units under the stipulations set forth within the ordinance.

9-14.2 Definitions.

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

Code. Boston Zoning Code.

Commissioner. The Commissioner of the Inspectional Services Department or his or her designee.

ISD. The Inspectional Services Department of the City of Boston.

Operator. A natural person who is the owner, lessee, or authorized representative of the owner of the Residential Unit that he or she seeks to offer as a Short-Term Rental.

Home Share Unit. A Residential Unit offered as a Short-Term Rental that is the Operator's Primary Residence. Occupancy shall be limited to five bedrooms or ten guests in a Home Share Unit, whichever is less.

Investor Unit. A Residential Unit offered as a Short-Term Rental that is not the Primary Residence of the Operator. Occupancy shall be limited to five bedrooms or ten guests in an Investor Unit, whichever is less.

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 six guests in a Limited Share Unit, whichever is less. One bedroom must be reserved for the Operator.

Primary Residence. A Residential Unit in which the Operator resides for at least nine months out of a twelve-month period. Primary residence is demonstrated by showing that as of the date of registration of the Residential Unit on the Short-Term Rental 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 two of the following: utility bill, voter registration, motor vehicle registration, deed, lease, driver's license or state-issued identification, or proof of residential exemption.

Residential Unit. A Residential Unit is a dwelling unit within a dwelling classified as a residential use, as those terms are defined in the Code, but excluding: a congregate living complex; elderly housing; a group residence, limited; a homeless shelter; an orphanage; a 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(s). The use of a Residential Unit for its intended purposes for a tenancy of thirty or fewer consecutive calendar days for a fee. A Short-Term Rental may or may not be facilitated through a Booking Agent.

Short-Term Rental Registry. The database maintained by ISD that includes information on Operators who are permitted to offer their Residential Units as Short-Term Rentals. The Short-Term Rental Registry may be a stand-alone registry or may be incorporated into the electronic database maintained by ISD pursuant to City of Boston Code, Section 9-1.3, *Inspection and Reinspection of Rental Units*.

9-14.3 Short-Term Residential Rentals in the City of Boston.

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

9-14.4A Ineligible Residential Units.

- a. The following Residential Units are not eligible to be offered as Short-Term Rentals:
 - (i) Residential Units designated as below market rate 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;

(ii) Residential Units subject to any requirement of local, state, or federal law that prohibits the leasing or subleasing of the unit or use of the unit as a Short-Term Rental.

(iii) Residential Units that are located within properties designated as “Problem Properties” or “Public Nuisance Properties” by the Mayor’s Problem Properties Task Force, or properties owned by property owners that own any property that is currently designated as a “Problem Property” or a “Public Nuisance Property,” as defined in City of Boston Code of Ordinances, Chapter 9-13.1(e), City of Boston Code of Ordinances, Chapter 16-57.2.

(iv) Residential Units that are the subject of three or more findings of violations of this section within a six-month period, or three 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.

9-14.4B Residential Units Not Subject to Certain Provisions of this Chapter.

- a. ***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 from the Inspectional Services Department and a lodging house license from the Boston Licensing Board as of the effective date of this Section 9-14 shall be subject to the registration requirements contained herein, but shall not be subject to the limitations contained in Section 9-14.5 (b), (c), or (d).
- b. ***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 from the Inspectional Services Department as of the effective date of this section 9-14 shall be subject to the registration requirements contained herein, but shall not be subject to the limitations contained in section 9-14.5, (b), (c), or (d).
- c. ***Residential Units Contracted for Hospital Stays.*** The use of a dwelling unit or portion thereof for which a contract exists between the owner of the dwelling unit and a health-care facility or government entity or non-profit organization registered as a charitable organization with the Secretary of the Commonwealth of Massachusetts or classified by the Internal Revenue Service 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.

9-14.5 Requirements for Short-Term Rentals.

- a. **Registration.** Registration pursuant to Section 9-14.6.
- b. **Short-Term Rental of a Limited Share Unit.** An Operator may offer his or her Limited Share Unit as a Short-Term Rental for 365 days per year.
- c. **Short-Term Rental of a Home Share Unit.** An Operator may offer his or her Home Share Unit as a Short-Term Rental for 365 days per year provided that the total number of booked days during which the Operator is not present shall not exceed ninety consecutive or nonconsecutive days per year.
- d. **Short-Term Rental of an Investor Unit.** An Operator may offer his or her Investor Unit as a Short-Term Rental for up to ninety consecutive or nonconsecutive days per year.
- e. **Permission of Owner.** An Operator must certify at the time of registration that he or she has the following permissions to offer his or her Residential Unit as a Short-Term Rental:
 - (i) Operator is the owner of the Residential Unit offered as a Short-Term Rental;
or
 - (ii) Operator is a tenant of the Residential Unit and has obtained the consent of the Residential Unit's owner to offer the Residential Unit as a Short-Term Rental; or
 - (iii) Operator is neither the owner nor tenant of the Residential Unit but has been authorized by the owner of the Residential Unit to offer the unit as a Short-Term Rental; and,
 - (iv) that offering the Residential Unit as a Short-Term Rental complies with applicable leases and/or condominium documents, bylaws, or other governing documents.
- f. **Local Contact.** When registering, an Operator must provide his or 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 unit at the time of registration.

- g. ***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 a violation or other order is issued after the Residential Unit has been listed on the Short-Term Rental Registry, ISD shall suspend the Residential Unit's registration on the Short-Term Rental Registry until the violation has been cured or otherwise resolved.
- h. ***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, and all other regulations applicable to residential dwellings. The Residential Unit offered as a Short-Term Rental shall be in compliance with City of Boston Code of Ordinances Section 9-1.4, Rental Dwelling Unit Delivery Standards. Those Residential Units offered as Short-Term Rentals that are subject to City of Boston Code of Ordinances Section 9-1.3, Inspection and Reinspection of Rental Units, shall continue to be subject to the requirements of that section, including the payment of fees.
- i. ***Retention of Records.*** The Operator shall retain and make available to ISD, upon written request, records to demonstrate compliance with this section, including but not limited to: records demonstrating the number of months that the Operator has resided or will reside in Residential Unit, if applicable; records showing consent of the owner of the Residential Unit to the Unit's use as a Short-Term Rental, if applicable; and records demonstrating number of days per year that the Residential Unit is offered as a Short-Term Rental. The Operator shall retain such records for as long as he or she desires to use the Unit as a Short-Term Rental.
- j. ***Notifications.***
 - (i) The Operator shall include the registration number issued by ISD on any listing offering the Residential Unit as a Short-Term Rental and shall post a sign on the inside of the Residential 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.
 - (ii) The Booking Agent shall permit an Operator to include the registration number issued by ISD on any listing offering the Residential Unit as a Short-Term Rental.

9-14.6 Short-Term Rental Registration Process; Certifications; Fee.

- a. ***Registration Process.*** An Operator who wishes to offer his or her Residential Unit as a Short-Term Rental shall register with ISD, online or in a paper form

prescribed by ISD, to be listed on the Short-Term Rental Registry. A registration shall be valid for a one-year term, from January 1 through December 31 of each year or for such alternative twelve-month period as the Commissioner shall determine. An Operator shall provide information to be listed on the Registry, including: Operator name, address of Residential Unit, Operator's relationship to the unit, whether Residential Unit is being offered as a Limited Share, Home Share or Investor Unit, and other information as required by ISD. The Operator shall also certify that he or she and the Residential Unit comply with the requirements of this section. An Operator who successfully registers his or her Residential Unit as a Short-Term Rental shall be issued a registration number.

- b. ***Fees.*** Units shall be annually recorded in the Short-Term Rental Registry pursuant to the following:
 - (i) The annual registration fee for Limited Share Units shall be twenty-five dollars (\$25.00).
 - (ii) The annual registration fee for Home Share Units shall be one-hundred dollars (\$100.00).
 - (iii) The annual registration fee for Investor Units shall be five-hundred dollars (\$500.00).
- c. ***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 or lease of the unit. New Operators are responsible for ensuring that they re-register with ISD to obtain a new registration number if they wish to continue to list the Residential Unit on the Short-Term Rental Registry.
- d. ***Amending Registration Upon Change in Primary Residence.*** If an Operator's relationship to a registered Residential Unit changes with respect to primary residence, the Operator shall notify ISD to amend the Operator's registration to reflect this change via a form approved and issued by the Commissioner of Inspectional Services.
- e. ***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.

9-14.7 Room Occupancy Excise.

A Residential Unit subject to the provisions of this ordinance that is also subject to the Room Occupancy Excise under G.L. c. 64G or any other excise or surcharge pertaining to short-term rentals or transient occupancy 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 applicable room occupancy excise tax to the Commonwealth.

9-14.8 Complaint Process; Violations.

- a. ***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 ISD. The complaint must contain the Residential Unit's address, unit number, date and nature of alleged violation(s), and name and contact information of complainant.
- b. ***Review of Complaint.*** Within thirty (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 or state or federal agency, the Commissioner shall refer the complaint to such agency for further action. Upon a finding of a potential violation, the Commissioner or designee shall serve notice of the violation upon the owner of record and the Operator of the Residential Unit at issue, if such unit is listed on the Short-Term Rental Registry, and upon the owner or resident agent of record of the Residential Unit at issue, if such unit is not listed on the Short-Term Rental Registry. The Commissioner shall keep records of all complaints received and determinations made.
- c. ***Right to Hearing.*** A person upon whom a notice of violation has been served may request a hearing from ISD by filing a written petition requesting a hearing on the matter with ISD within fourteen (14) days after the day the notice of violation was served. Upon receipt of a petition for hearing, ISD shall notify the complainant of the place, date and time of the hearing. The hearing shall occur no later than two (2) weeks after the date ISD 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 or designee has issued a decision.
- d. ***Decision.*** Within seven days after the conclusion of the hearing, the Commissioner or his or her designee shall sustain, modify, or withdraw the notice of violation and shall inform the person upon whom a notice of violation has been served, in writing, of its decision and the reasons therefor. If ISD sustains or modifies the notice of violation, said violation shall be remedied within the time period allotted as issued or in the modification.

If a written petition for a hearing is not filed with ISD within fourteen (14) days after the notice of violation has been served, or 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 or modified shall constitute a separate violation.

- e. ***Judicial appeals.*** Any person aggrieved by a final decision of ISD 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.

9-14.9 Penalties

- a. ***Offering an Ineligible Unit as a Short-Term Rental.*** Any person who offers a unit that is not an eligible Residential Unit as a Short-Term Rental shall be fined three hundred dollars (\$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 a designee may also seek an injunction from a court of competent jurisdiction prohibiting the offering of the unit as a Short-Term Rental.
- b. ***Failure to Register.*** Any person who offers an eligible Residential Unit as a Short-Term Rental without registering with ISD, or any person who offers an eligible Residential Unit as a Short-Term Rental while the unit's registration on the Short-Term Rental Registry is suspended, 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.
- c. ***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 Commissioner 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.

9-14.10 Enforcement.

- a. ***Enforcement by City.*** The provisions of this section may be enforced in accordance with the noncriminal disposition process of M.G.L. c. 40, s. 21D, and, if applicable, by seeking to restrain a violation by injunction. The provisions of this section may also be enforced according to M.G.L. Chapter 40U as accepted by the City of Boston, also known as the "Green Ticket" law.
- b. ***Enforcement by Booking Agent.*** The Commissioner may 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.

9-14.11 Data Sharing.

A Booking Agent shall provide to the City, on a monthly basis, an electronic report, in a format determined by the City, of the listings maintained, authorized, facilitated or advertised by the Booking Agent within the City of Boston for the applicable reporting period. The report shall include a breakdown of where the listings are located, and shall include the number of nights each unit was reported as occupied during the applicable reporting period.

9-14.12 Regulations.

The Commissioner may promulgate regulations to carry out the provisions of this section.

9-14.13 Severability.

If any provision in this section shall be held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions, which shall remain in full force and effect.

SECTION 2. The provisions of this section shall take effect one hundred and eighty days after passage.

I HEREBY CERTIFY THAT
THE FOREGOING, IF PASSED IN
THE ABOVE FORM, WILL BE IN
ACCORDANCE WITH LAW.
BY Eugene L. O'Flaherty
EUGENE L. O'FLAHERTY
CORPORATION COUNSEL *EO*