

Meeting of September 4, 2018

SOUTH PORTLAND CITY COUNCIL
POSITION PAPER OF THE CORPORATION COUNSEL

SUBJECT: REFERRED ORDINANCES #22-17/18 & #23-17/18 – Public hearing and action on Referred Ordinances #22-17/18 & #23-17/18 regarding short-term residential rentals. At the conclusion of the public hearing, the Council may act to repeal the referred ordinances or to send them to a referendum vote. Passage requires majority vote.

POSITION:

Here is a brief overview of the next steps related to the referendum petition relating to Ordinances #22-17/18 & #23-17/18 regarding short-term residential rentals (the “Referred Ordinances”) that the City Clerk certified as sufficient on August 15, 2018. As required by Sec. 1107 of the City Charter, the City Council reconsidered the Referred Ordinances at its August 21, 2018 meeting, and it then scheduled a public hearing for September 4, 2018 to consider what further action to take following that reconsideration vote.

The purpose of the September 4th public hearing is to receive public input on whether the City Council should (a) repeal the Referred Ordinances, or (b) send the Referred Ordinances to a City-wide referendum vote. At the conclusion of the September 4th public hearing, the City Council is required by Sec. 1107 of the Charter to act on a motion in substantially the same form as follows: **“I move that the ordinances specified in the referendum petition (Ordinances #22-17/18 & #23-17/18) be repealed.”** (Note that because the referendum petition referred both Ordinance #22-17/18 [licensing ordinance amendments] and Ordinance #23-17/18 [zoning ordinance amendments], the City Council cannot act separately on each ordinance. It must repeal both ordinances or send both ordinances to referendum vote.)

If the repeal motion as detailed above fails, it means that the Referred Ordinances must be sent to the voters for a City-wide referendum vote. The timing of the referendum election is dictated by Sec. 1108 of the Charter: the referendum election must be held “not less than 30 days nor more than fifteen months from the date the council takes its final vote thereon” (*i.e.*, 15 months from September 4, 2018). If the City Council is then ready on September 4th to set the date for the referendum election, a motion in substantially the same form as follows ought to be made:

“I move that the ordinances specified in the referendum petition (Ordinances #22-17/18 & #23-17/18) be sent to a referendum vote to be held on November 6, 2018.”

REQUESTED ACTION:

Public Hearing and action on REFERRED ORDINANCES #22-17/18 and #23-17/18, as detailed above.

A handwritten signature in black ink that reads "Sally Daggett". The signature is written in a cursive, slightly slanted style.

Corporation Counsel



CITY OF SOUTH PORTLAND

LINDA C. COHEN
Mayor

SCOTT T. MORELLI
City Manager

SALLY J. DAGGETT
Jensen Baird Gardner & Henry

EMILY F. SCULLY
City Clerk

IN CITY COUNCIL

ORDINANCE #22-17/18

THE COUNCIL of the City of South Portland hereby ordains that Chapter 14, "Licenses, Permits and Business Regulations Generally," of the "Code of Ordinances of the City of South Portland, Maine" be, and hereby is, amended as follows (additions are underlined; deletions are ~~struck out~~):

Chapter 14

LICENSES, PERMITS AND BUSINESS REGULATIONS GENERALLY

ARTICLE I. IN GENERAL

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Sec. 14-3. License regulations; schedule.

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KEY TO SCHEDULE:

CC	Denotes license granted by City Council
CLK	Denotes license granted by City Clerk
CMR	Code of Maine Rules
MRSA	Denotes Maine Revised Statutes Annotated, as may be amended from time to time
OY	Denotes one year from date of issuance
P	Denotes Permit
L	Denotes License
<u>R</u>	<u>Denotes Registration</u>
Police	Denotes review of application by Police Department required prior to issuance or renewal, unless otherwise noted
Fire	Denotes review of application by Fire Department required prior to issuance or renewal, unless otherwise noted
Health	Denotes review of application by Health Officer required prior to issuance or renewal, unless otherwise noted
CEO	Denotes review of application by Code Enforcement Department required prior to issuance or renewal, unless otherwise noted
Finance	Denotes review of application by Finance Director required prior to issuance or renewal, unless otherwise noted
Corp	Denotes review of application by Corporation Counsel required prior to issuance or renewal, unless otherwise noted
Water	Denotes review of application by Water Resource Protection Department required prior to issuance or renewal, unless otherwise noted

District One
CLAUDE V.Z. MORGAN

District Two
KATHERINE W. LEWIS

District Three
EBEN ROSE

District Four
LINDA C. COHEN

District Five
ADRIAN T. DOWLING

At Large
MAXINE BEECHER

At Large
SUSAN HENDERSON

PW Denotes review of application by Public Works Department required prior to issuance or renewal, unless otherwise noted
 Parks Denotes review of application by Parks, Recreation & Waterfront Department required prior to issuance or renewal, unless otherwise noted

Business or Occupation	Reference	P/L/R	Granted by	Exp	Additional Review by
• • •	• • •	• • •	• • •	• • •	• • •
<u>Short-Term Residential Rental</u>					
<u>Hosted Home Stay</u>	<u>Article XVII</u>	<u>R</u>	<u>CLK</u>	<u>OY</u>	<u>Fire for three- and four-family dwelling units</u>
<u>Non-Hosted Home Stay</u>	<u>Article XVII</u>	<u>R</u>	<u>CLK</u>	<u>OY</u>	<u>Fire, if requested by Fire Chief</u>
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Sec. 14-8. Standards for denial, suspension or revocation.

(a) Generally applicable standards.

In addition to any other specific provision of this Code authorizing action, a license, ~~or permit,~~ or registration may be denied, suspended or revoked upon a determination of the existence of one or more of the following grounds:

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Sec. 14-13. Revocation of license.

A license, permit or registration (collectively “license” for purposes of this section) may be suspended or revoked by the licensing authority for any violation of these municipal ordinances, special terms attached to such license or as set forth in Section 14-8. A revocation of a license by the City Clerk may be appealed to the City Council. A revocation of a license by the City Clerk shall be in writing and shall include notification of the right to and procedure for appeal. The City Clerk may suspend a license issued by the City Council until a hearing for revocation is held by the City Council where suspension of the license is necessary to protect the health, safety or welfare of the public. Department heads are encouraged to report license compliance issues to the City Clerk as they arise, rather than waiting until license renewal. Prior to the City Clerk’s scheduling any suspension or revocation proceedings, the City Clerk may request that an appropriate department head or city official meet with the licensee to discuss license compliance issues; provided, however, that any delay in the conduct of suspension or revocation proceedings due to such a request shall not jeopardize the public health, safety or welfare. Any person aggrieved by a decision of the City Council hereunder may appeal to the Superior Court in accordance with the provisions of Rule 80B of the Maine Rules of Civil Procedure.

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ARTICLE XVII. SHORT-TERM RESIDENTIAL RENTALS

Sec. 14-800. Purpose.

The City Council hereby finds that unregulated short-term transient occupancy of dwelling units in residential neighborhoods presents a threat to the public welfare relating to compatibility with residential uses and preservation of the character of the neighborhoods in which they are located, and to the availability of housing stock in the City. The purposes of this Article are: (a) to balance the desire of property owners to rent their residential properties to short-term rental guests for compensation against the desire of residents to preserve the traditional peace and quiet of their residential neighborhoods; (b) to preserve and protect residential neighborhood character and livability from the nuisance impacts that are often associated with short-term rentals; (c) to prevent long-term rentals from being replaced with short-term rentals; and (d) to ensure the safety of occupants of short-term rentals.

Sec. 14-801. Definitions.

As used in this Article, the following words and phrases shall have the meanings ascribed to them in this section.

Advertising means any form of communication for marketing that is used to encourage, persuade or manipulate viewers, readers or listeners into contracting for goods and/or services as may be viewed through various media, including, but not limited to, newspapers, magazines, flyers, handbills, television commercials, radio, signage, direct mail, websites or text messages.

Authorized accessory dwelling unit means a residential living unit, subordinate to a one-family detached dwelling unit that (a) has been approved by the Planning Board pursuant to the Sec. 27-1576 *et seq.* of the City's Zoning Ordinance, as may be amended, and that has a valid certificate of occupancy or (b) has a valid certificate of occupancy issued prior to February 22, 2004, the effective date of Sec. 27-1576 *et seq.* of the City's Zoning Ordinance.

Apartment building means a building or portion thereof containing three or more dwelling units arranged, intended, or designed to be occupied by three (3) or more families living independently of each other in a dwelling unit.

Detached dwelling unit means a one-family dwelling unit that is not attached to any other dwelling by any physical means.

Dwelling unit means one or more rooms arranged for complete, independent housekeeping purposes with space for living and sleeping; space or facilities for eating or cooking; and provisions for sanitation.

Four-family dwelling unit means a building in single ownership that consists solely of four dwelling units.

Good Neighbor brochure means a document prepared by the City that summarizes the general rules of conduct, consideration and respect, including, without limitation, provisions of the Code of Ordinances, pertaining to the use and occupancy of a dwelling unit used or occupied as a short-term rental.

Hosted Home Stay means a dwelling unit that is the Owner's primary residence; is occupied, including overnight, by such Owner during the short-term rental period; and is used or occupied as a Hosted Home Stay as set forth in Table 14-805. In the case of a property comprised of a one-family dwelling unit and an authorized accessory dwelling unit, the unit is considered a Hosted Home Stay if the Owner is present in either unit on such property during the short-term rental period. In the case of a property comprised of a two-, three- or four-family dwelling unit in single ownership, the unit is considered a Hosted Home Stay if the Owner is present in one of the dwelling units on such property during the short-term rental period.

Non-Hosted Home Stay means a dwelling unit that may or may not be the Owner's primary residence and is used or occupied as a Non-Hosted Home Stay as set forth in Table 14-805.

One-family dwelling unit means a building that consists solely of one dwelling unit.

Owner means a person who is the owner of record of real property as documented by deed or other document evidencing ownership recorded at the Cumberland County Registry of Deeds.

Primary residence means an Owner's primary place of residence, as defined by whether the Owner carries on basic living activities at the dwelling unit and whether such dwelling unit is the Owner's usual place of return. Reasonable documentation, such as Maine homestead exemption qualification, voter registration, government ID with address, motor vehicle registration, motor vehicle excise tax payment receipt, or other documents approved by the City demonstrating that the property is the Owner's legal residence and that it is such for 183 or more days of the calendar year, shall be indicia of primary residence.

Person means a natural person, partnership, association, company, corporation, limited liability company or organization or a member, manager, agent, owner, director, servant, officer or employee thereof.

Short-term rental means the use, control, management or operation of a dwelling unit or accessory dwelling unit, in whole or in part; for dwelling, sleeping or lodging purposes by short-term rental guests, as defined herein; for compensation, directly or indirectly.

Short-term rental guest means any person who rents, licenses, occupies or has the right to occupy a dwelling unit or accessory dwelling unit, in whole or in part, for less than 30 consecutive days, such definition is to be interpreted broadly to prohibit subleases, occupancies or assignments designed to circumvent the purposes of this Article.

Single ownership means common ownership, management or control by or through a familial relationship (to the sixth degree on consanguinity), business entity relationship (i.e., common officers, directors, managers, general partners or business entities) or otherwise.

Three-family dwelling unit means a building in single ownership that consists solely of three dwelling units.

Two-family dwelling unit means a building in single ownership that consists solely of two dwelling units.

Sec. 14-802. Applicability.

- (a) Subject to the requirements and restrictions of this Chapter, short-term rentals allowed as set forth in Table 14-805.
- (b) This Article does not apply to an establishment licensed as a lodging establishment under Article V of this Chapter.

Sec. 14-803. Prohibited Activities.

- (a) The short-term rental of property to short-term rental guests that is not in compliance with this Chapter is prohibited.
- (b) Providing false information with respect to a registration is prohibited.
- (c) No detached accessory building (other than an authorized accessory dwelling unit as defined herein), vehicle (including a recreational vehicle or camper van), trailer, tent or mobile residential equipment (other than a mobile home) may be registered as a Hosted Home Stay or Non-Hosted Home Stay.
- (d) No dwelling unit (or authorized accessory dwelling unit) may be registered as a Hosted Home Stay unless the property has qualified as the Owner's homestead

under the Maine Homestead Property Tax Exemption statute, 36 M.R.S. §§ 681-689, as may be amended from time to time.

- (e) Occupancy or use of a dwelling unit within an apartment building of five or more dwelling units for rentals of less than 30 consecutive days is prohibited.
- (f) Occupancy or use of a dwelling unit within a two-family dwelling unit, three-family dwelling unit or four-family dwelling unit for rentals of less than 30 consecutive days is prohibited if the units are not all in single ownership.
- (g) Advertising any short-term rental without a City-issued registration number included in the advertisement is prohibited.
- (h) Notwithstanding any other ordinance provision to the contrary, signage identifying, advertising, providing way finding or otherwise related to use of the dwelling unit as a Hosted Home Stay or Non-Hosted Home Stay is prohibited, either on- or off-site.
- (i) Short-term rentals are prohibited in non-residential buildings, unless a specific portion of the building is authorized per the Code Enforcement Office and the Fire Chief or his/her designee for use as a one- or two-family dwelling unit.
- (j) Short-term rental guests shall not sublease, sublicense or assign all or any portion of the short-term rental to another person during the rental period.
- (k) Parties, conferences, family reunions, weddings, fundraisers or similar gatherings that are reasonably foreseeable to involve an assemblage of vehicles or persons more than maximum allowable number of short-term guests are prohibited to be conducted by short-term rental guests during a short-term rental.
- (l) No food shall be prepared for, or served to, short-term rental guests by the Hosted-Home Stay or Non-Hosted Home Stay registrant or his/her/its agent that would require an eating establishment license under either State law or Article VI of this Chapter.

Sec. 14-804. Registration Required for all Hosted-Home Stay and Non-Hosted Home Stay Rentals.

Effective January 1, 2019, no person shall operate a Hosted Home Stay or Non-Hosted Home Stay without first registering the dwelling unit (or authorized accessory dwelling unit) with the City Clerk. Registration forms and pre-registration self-inspection checklists shall be available in the City Clerk's Office.

Non-refundable fees for a Hosted Home Stay or Non-Hosted Home Stay registration shall be as set forth in the Schedule of License, Permit, Inspection and

Application Fees established by City Council order, and such fee must be submitted with the registration form at the time of registration or renewal.

A dwelling unit (or authorized accessory dwelling unit) shall not be considered registered until all information and fees are provided to the satisfaction of the City Clerk and a registration number has been assigned to the unit.

Sec. 14-805. Operating Standards and Requirements.

A Hosted Home Stay or Non-Hosted Home Stay short-term rental is allowed only if it conforms to each of the following operating standards and requirements set forth in this section.

(a) Compliance with the requirements of Table 14-805 is required.

Table 14-805

<u>Type of Rental</u>	<u>Hosted Home Stay</u>	<u>Non-Hosted Home Stay</u>
<u>Type of Structure</u>	<u>One-family dwelling unit (including an associated authorized accessory dwelling unit) or a two-, three- or four-family dwelling unit</u>	<u>One-family detached dwelling unit without any associated authorized accessory dwelling unit</u>
<u>Amount of Dwelling Unit Rented</u>	<u>Includes the rental of an entire dwelling unit OR, if only part of the unit, includes at a minimum a sleeping room and access to a bathroom</u>	<u>Whole dwelling unit</u>
<u>Owner-Occupied (i.e., Owner's primary residence)?</u>	<u>Yes, at least one dwelling unit (or an associated authorized accessory dwelling unit) is the Owner's primary residence</u>	<u>Dwelling unit may or may not be Owner's primary residence</u>
<u>Sworn Statement of Owner regarding primary residence required?</u>	<u>Yes</u>	<u>No</u>
<u>Evidence of Owner qualification for Maine homestead exemption for property required?</u>	<u>Yes</u>	<u>No</u>
<u>Owner/Host Operations</u>	<u>If a single-family dwelling unit, Owner is present in the dwelling unit (or associated</u>	<u>Dwelling unit may or may not be Owner's primary residence</u>

<u>Type of Rental</u>	<u>Hosted Home Stay</u>	<u>Non-Hosted Home Stay</u>
	<u>authorized accessory dwelling unit) during the short-term rental period; if a two-, three- or four-family dwelling unit, Owner is present in one of the dwelling units on such property during the short-term rental period</u>	
<u>Length of Guest Stay</u>	<u>Rental is on a temporary basis for periods of less than 30 consecutive days</u>	<u>Rental is on a temporary basis for periods of <i>at least 7 consecutive days</i> but less than 30 consecutive days; guests may stay for less than the minimum stay period <i>provided that</i> the rental unit remains vacant until the end of the minimum stay period (e.g., if guest stays for 4 nights, unit must remain unrented for the 3 subsequent nights)</u>
<u>Cap on # of days unit is rented per year?</u>	<u>None</u>	<u>None</u>
<u>Occupancy limits</u>	<u>Two guests per short-term rental guest bedroom and maximum of six guests total allowed per occupancy</u>	<u>Two guests per bedroom and maximum of six guests total allowed per occupancy</u>
<u>Is registration per dwelling unit or per Owner?</u>	<u>Registration is per dwelling unit (or authorized accessory dwelling unit)</u>	<u>Registration is per dwelling unit</u>
<u>Reviewing Authority</u>	<u>City Clerk</u>	<u>City Clerk</u>
<u>Notice to Neighbors?</u>	<u>For three- and four-family dwelling units, at commencement of a new non-short-term rental tenancy, Owner must acquire written acknowledgement of notice provided to tenant(s) of Owner's intent to operate a short-term rental in the building during the tenancy</u>	<u>Upon issuance of new registration per Sec. 14-805(b)(6)</u>
<u>Notice to City Clerk if sale/transfer of property?</u>	<u>No</u>	<u>Yes</u>
<u>Inspection</u>	<u>For a single-family dwelling</u>	<u>If determined to be necessary</u>

<u>Type of Rental</u>	<u>Hosted Home Stay</u>	<u>Non-Hosted Home Stay</u>
	<p><u>unit (or associated authorized accessory dwelling unit) or two-family dwelling unit, self-inspection upon registration and renewal; thereafter, at request of City inspection officials</u></p> <p><u>For a three- or four-family dwelling unit, inspection by Fire Chief or his/her designee of the entire building prior to initial registration and any renewal registration</u></p>	<p><u>by Fire Chief, inspection by Fire Chief or his/her designee prior to initial registration; thereafter, at request of City inspection officials</u></p>
<u>Locational limits</u>	<u>Allowed in all zoning districts</u>	<u>Prohibited in all residential zoning districts (at time of enactment of Ordinance #22-17/18, those districts are RF, AA, A, G, VR, RT, WR, A-1, G-1, G-2, G-3 and G-4)</u>

(b) In addition to the requirements of Table 14-805 and other applicable laws, ordinances or regulations, the following criteria apply:

1. Registration of each dwelling unit (or authorized accessory dwelling unit) to be used for short-term rental is required. A registration identification number will be given to each unit registered.
2. Only the Owner of the property can register the dwelling unit to be used for short-term rental.
3. The Owner must identify a registered agent or representative for emergency contact purposes, who may be the Owner. The emergency contact person must be able to respond within 60 minutes to complaints regarding the condition, safety or operation of the dwelling unit as a rental or the conduct of guests, and must be able to take such remedial action on behalf of the Owner, as otherwise allowed by law, to resolve such complaints.
4. At the time of registration, the Owner must provide a certificate of insurance that expressly acknowledges that the property may be used for short-term rental business activity and evidencing (a) property insurance and (b) general liability insurance appropriate to cover the rental use in the aggregate of not less than \$1 million or proof that the Owner conducts rental transactions through a hosting platform that provides equal or greater coverage. Any such hosting platform-provided insurance carrier shall defend and indemnify the Owner, as additional named insured, and

any user in the building for any bodily injury and property damage arising from the rental. Once registered, the Owner shall maintain the required insurances, or such greater amount as otherwise required by law, throughout the term of the registration.

5. For Hosted Home Stay registrations, the registrant must provide evidence that the property has qualified as the Owner's homestead under the Maine Homestead Property Tax Exemption statute, 36 M.R.S. §§ 681-689, as may be amended from time to time. In addition, the registrant must sign a sworn statement identifying the property as his/her primary residence and provide reasonable documentation, such as Maine homestead exemption qualification, voter registration, government ID with address, motor vehicle registration, motor vehicle excise tax payment receipt, or other documents approved by the City demonstrating that the property is the Owner's legal residence and that it is such for 183 or more days of the calendar year.
6. For Hosted-Home Stay registration of a dwelling unit within a three- and four-family dwelling unit, at the commencement of a new non-short-term rental tenancy, the Owner must acquire written acknowledgement of notice provided to tenant(s) of the Owner's intent to operate a short-term rental in the building during the non-short-term rental tenancy. For Non-Hosted Home Stay registrations, the City Clerk shall provide a one-time notification of the registration issuance to all owners and non-owner occupants, according to the most recent City assessment and voting records, of property located within five hundred (500) feet of the registered dwelling unit, which notice shall include the Owner's emergency contact person information.
7. The dwelling unit registration number must be displayed within the dwelling unit, in all advertising, and upon request by City officials.
8. As a condition of registration, the Owner must allow on-site inspections by City inspection officials. Failure of the registrant or his/her representative to allow a City inspection within 48 hours of a City request to conduct the same shall be considered a violation of this Article.
9. As a condition of registration, the registrant must (a) maintain accurate, up-to-date records of all rental transactions involving the dwelling unit, including the number of guests and the length of their stays, and upcoming reservations; and (b) present said information to City inspection officials upon request. Failure of the registrant or his/her representative to provide this information within 48 hours of a City request for the same shall be considered a violation of this Article.
10. Required Posting. As a condition of registration, the registrant must post in plain sight to visitors, inside the registered unit and near the entrance to

the registered unit, a notice that identifies the name, address, e-mail address and telephone number of the Owner's emergency contact person, and the following disclaimer, as applicable:

a. Disclaimer for a registered unit within a single-family dwelling unit (or associated authorized accessory dwelling unit) or two-family dwelling unit:

The Owner of these accommodations [print registrant's name] has registered this unit, Registration No. _____, pursuant to the City of South Portland Code of Ordinances, Chapter 14, Article XVII. THE OWNER'S REGISTRATION OF THIS DWELLING UNIT DOES NOT CONSTITUTE A FINDING BY THE CITY OF SOUTH PORTLAND THAT THE PREMISES ARE IN COMPLIANCE WITH APPLICABLE BUILDING, LAND USE, FIRE PREVENTION, LIFE SAFETY OR OTHER APPLICABLE CODES OR REGULATIONS. NO INSPECTION FOR COMPLIANCE WITH SUCH REGULATIONS HAS BEEN CONDUCTED, AND NONE IS REQUIRED FOR THE OWNER TO REGISTER THE DWELLING UNIT OR TO ENGAGE IN SHORT-TERM RENTAL OF THIS DWELLING UNIT SO LONG AS THE OWNER'S USE OF THE PREMISES IS IN CONFORMANCE WITH AND DOES NOT EXCEED THE SCOPE OF THE REGISTRATION.

b. Disclaimer for a registered unit within a three- or four-family dwelling unit:

The Owner of these accommodations [print registrant's name] has registered this unit, Registration No. _____, pursuant to the City of South Portland Code of Ordinances, Chapter 14, Article XVII. THE OWNER'S REGISTRATION OF THIS DWELLING UNIT DOES NOT CONSTITUTE A FINDING BY THE CITY OF SOUTH PORTLAND THAT THE PREMISES ARE IN COMPLIANCE WITH APPLICABLE BUILDING, LAND USE OR OTHER APPLICABLE CODES OR REGULATIONS.

11. Occupancy limits. For Hosted Home Stay registrations, overnight short-term guest occupancy shall be limited to two guests per short-term rental guest bedroom and a maximum of six guests total. For Non-Hosted Home Stay registrations, overnight short-term guest occupancy shall be limited to two guests per bedroom and a maximum of six guests total. A floor plan and current photographs of each room of each unit to be registered must be submitted with the registration form.

12. Parking. The Owner must submit a sketch plan identifying all on-site parking, including guest parking, as part of the registration process. The Owner must provide sufficient on-site parking to meet the parking requirements of Chapter 27 for the dwelling unit(s), as well as sufficient on-site parking for all guest vehicles. The number of guest vehicles allowed shall be restricted to the number of on-site parking spaces provided by the Owner. Parking space within a garage may be counted

for this purpose, and tandem parking is allowed. Guest parking on the street is prohibited.

13. As a condition of registration, the registrant must agree to provide the Good Neighbor brochure and a statement of conditions that are applicable to the rental to each guest. The statement of conditions must include:

- a. A maximum number of persons who may occupy the short term rental;
- b. A description of the parking that is available for guests and the parking that is not available to guests;
- c. An overview of the City's prohibition on on-street overnight parking from December 1 to April 1;
- d. An emergency contact person available to receive calls from the guest(s) at any time, day or night;
- e. Emergency exit/building evacuation information;
- f. Instructions for solid waste disposal and recycling;
- g. An overview of regulations governing dogs on Willard Beach;
- h. A statement that parties, conferences, family reunions, weddings, fundraisers or similar gatherings that are reasonably foreseeable to involve an assemblage of vehicles or persons more than maximum allowable number of short-term guests are prohibited to be conducted by short-term rental guests during a short-term rental; and
- i. A statement that Good Neighbor conduct consistent with the Good Neighbor brochure is expected and includes limiting noise, parking with consideration for neighbors who live in the area, and keeping solid waste/recycling in appropriate bins.

14. Inspections.

- a. For all Hosted Home Stay registrations of a single-family dwelling unit (or associated authorized accessory dwelling unit) or a unit within a two-family dwelling unit, the Owner must submit a completed self-inspection checklist on a form provided by the City Clerk's Office. For all Hosted Home Stay registrations of a unit within a three- or four-family dwelling unit, an inspection by the Fire Chief or his/her designee of the entire building prior to initial registration and any renewal registration is required, and the Fire Chief or his/her designee must provide a positive recommendation, in writing to the City Clerk, that the dwelling unit complies with all applicable fire prevention and life safety requirements prior to the issuance of any registration number.
- b. For Non-Hosted Home Stay registrations, prior to the issuance of an initial registration for the dwelling unit, the Fire Chief or his/her

designee may inspect the dwelling unit to ensure that all applicable fire prevention and life safety requirements are met and, if such inspection is conducted, must provide a positive recommendation, in writing to the City Clerk, that the dwelling unit complies with all applicable fire prevention and life safety requirements prior to the issuance of any registration number.

15. Failure of the registrant or his/her representative to respond to inquiries from the City within 48 hours shall be considered a violation of this Article.

16. Nothing contained in this Article shall supersede any condominium, homeowner or restrictive deed covenants that apply to the Hosted Home Stay or Non-Hosted Home Stay rental property.

17. Short-term rental registrations are limited to one registration per lot or parcel of land; provided, however, that an Owner of a four-family dwelling unit may separately register no more than two dwelling units within the building as a Hosted Home Stay.

(c) Notwithstanding any other provision of this Article to the contrary, an Owner of a one-family detached dwelling unit without any associated authorized accessory dwelling unit, which one-family detached dwelling unit serves as the Owner's primary residence, may rent his or her primary residence as a short-term rental for 14 or fewer days in any rolling 365 day period at least 7 consecutive days at a time without the Owner present in the dwelling unit during the short-term rental and without regard to the zoning district in which the dwelling unit is located. Any Owner taking advantage of this limited exemption must register the dwelling unit as a Hosted Home Stay and shall comply with all requirements of this Article for a Hosted Home Stay other than those requirements inconsistent with this limited exemption.

Sec. 14-806. Registration Expiration and Renewal.

Hosted Home Stay and Non-Hosted Home Stay registrations are valid for 12 months from the date of issuance of the registration number unless sooner suspended or revoked and must be renewed on an annual basis.

Sec. 14-807. Denial, Suspension or Revocation of Registration.

(a) The City Clerk may decline to register any dwelling unit upon failure of the registrant to meet all of the requirements of this Chapter. Any appeal of a decision of the City Clerk to decline to register any dwelling unit under the provisions of this Article shall be made to the City Council. The City Council shall conduct a *de novo* hearing in which it will hear evidence on the registration and

make its own findings of fact and conclusions of law on the issue of whether the registration meets the requirements of this Article.

- (b) Any suspension or revocation hearing shall be pursuant to Sec. 14-13 of this Chapter, with the City Clerk or his/her designee serving as the hearing officer.
- (c) A registration may be revoked or suspended for violation of any of the provisions of this Chapter. If a violation is found to exist by the City Clerk, the City Clerk, in addition to the suspension or revocation of the then-current registration, may also prohibit the Owner not only from registering that unit under this Article, but also from registering any other dwelling unit under this Article, for 12 months following the current registration expiration date.

Sec. 14-808. Transfer of Ownership.

Registrations completed under this Article are not transferable to a new Owner. Any change in ownership or change in the members/managers/officers of an Owner shall require a new registration. Registrations are limited to the dwelling unit for which they are issued and shall not be transferable to a different dwelling unit.

A Non-Hosted Home Stay registrant must give written notice to the Code Enforcement Officer and the City Clerk no later than 10 days before the conveyance, transfer or any other disposition of the ownership of, or interest in, or control of the dwelling unit. The notice must include the name and address of the person succeeding to the ownership or control of the dwelling unit.

Sec. 14-809. Enforcement.

- (a) Complaints regarding short-term rentals brought to the attention of any City Department shall be brought to the attention of the Code Enforcement Officer as soon as practicable. A person may also file a complaint with the Code Enforcement Officer. The Code Enforcement Officer shall establish and maintain a log of all complaints for each short-term rental complaint received and substantiated by the City. The Code Enforcement Office shall seek the voluntary correction of all substantiated complaints.
- (b) When, in the judgment of the Code Enforcement Officer, the nature and/or number of complaints about a registered short-term rental warrants further review of the short-term rental, s/he shall provide a written report of the same to the City Clerk and request that a public hearing be conducted on whether to suspend or revoke the registration. Any suspension or revocation hearing shall be pursuant to Sec. 14-13 of this Chapter, with the City Clerk or his/her designee serving as the hearing officer.

- (c) When, in the judgment of the Code Enforcement Officer, the nature and/or number of complaints about an unregistered short-term rental warrants further review of the short-term rental, s/he shall provide a written report of the same to the City Council for its consideration of any and all legal or equitable actions and proceedings that may be appropriate or necessary to enforce the provisions of this Chapter.
- (d) The City is committed to defending and enforcing this Article and such commitment may include, but is not limited to, retaining expert or specialized legal counsel to defend the City against challenges to this Article or the City's authority to enforce this Article.

Sec. 14-810. Violations and Penalties.

In the event the Owner or the Owner's guests violate the terms and conditions of the registration, the registration shall not be reissued, and the short-term rental shall cease for at least 12 months following its expiration date, unless good cause is shown that would prevent future violations, subject to the approval of the City Clerk.

Violations shall also be subject to fines as set forth in this Article. Each day of a violation shall constitute a separate violation. For the violation of operation of a Hosted Home Stay or Non-Hosted Home Stay short-term rental without a valid registration, the violator shall be penalized with a fine of \$1,000 per day for the first offense and an additional fine of \$1,500 per day for each additional offense, to be recovered upon complaint to Maine District or Superior Court in Portland, for use of the City. For any other violation of this Article, the violator shall be penalized with a fine of \$500 per day for each such violation, to be recovered upon complaint to Maine District or Superior Court in Portland, for use of the City.

Any such fine may be in addition to any suspension or revocation imposed in accordance with the provisions of Sec. 14-807 of this Article. In any court action, the City may seek injunctive relief in addition to penalties. The City shall be entitled to recover its costs of enforcement, including its reasonable attorney's fees.

Sec. 14-811. Reports and Review.

Commencing April 1, 2019 and until such time as the City Council by order authorizes such reporting to be reduced or eliminated, the City Clerk shall provide the City Council with quarterly reports summarizing the number of Hosted Home Stay and Non-Hosted Home Stay registrations completed in the prior quarter; the names of registrants; the location of the properties for which the registrations were completed in the prior quarter by street address, map/lot number, zoning district, and neighborhood if located within the AA, A or G zoning district; and any written complaints received by the

Code Enforcement Officer or the City Clerk about registrants or the registration process in the prior quarter.

Sec. 14-812. Construction; Severability.

This Article shall be liberally construed and applied to promote its underlying purposes as contained in Sec. 14-800 of this Article. The provisions of this Article are severable, and if any provision shall be declared to be invalid or void, the remaining provisions shall not be affected and shall remain in full force and effect.

Sec. 14-813. Other Laws.

In the event of a conflict between the provisions of this Article and any applicable State or local law, ordinance or regulation, the more restrictive provision shall control. The issuance of any Hosted Home Stay or Non-Hosted Home Stay registration pursuant to this Article shall not relieve the Owner of the obligation to comply with all provisions of the Code of Ordinances or any other applicable laws or regulations pertaining to the use and occupancy of the property on which it is located.

Sec. 14-814. Effective Date; Applicability Dates.

This Article shall become effective pursuant to Section 225 of the City Charter. In order to allow time for residents and property owners to become familiar with the requirements of this Article, the prohibitions on certain types of short-term rentals, and the penalties for violations of this Article, the requirements of this Article shall be phased in as follows:

Phase One: Notwithstanding the provisions of 1 M.R.S. § 302 or any other law to the contrary, commencing on the enactment date of the amendments to this Chapter as evidenced by Ordinance #22-17/18, no new reservations for short-term rentals that are inconsistent with this Article shall be accepted by any person nor valid.

Phase Two: Commencing on January 1, 2019, all provisions of this Article shall apply.

Fiscal Note: Less than \$1,000

Date: June 5, 2018



CITY OF SOUTH PORTLAND

LINDA C. COHEN
Mayor

SCOTT T. MORELLI
City Manager

SALLY J. DAGGETT
Jensen Baird Gardner & Henry

EMILY F. SCULLY
City Clerk

District One
CLAUDE V.Z. MORGAN

District Two
KATHERINE W. LEWIS

District Three
EBEN ROSE

District Four
LINDA C. COHEN

District Five
ADRIAN T. DOWLING

At Large
MAXINE BEECHER

At Large
SUSAN HENDERSON

**IN CITY COUNCIL
ORDINANCE #23-17/18**

THE COUNCIL of the City of South Portland hereby ordains that Chapter 27, "Zoning," of the "Code of Ordinances of the City of South Portland, Maine" be, and hereby is, amended as follows (additions are underlined; deletions are ~~struck out~~):

CHAPTER 27

ZONING

ARTICLE I. ADMINISTRATIVE PROVISIONS

• • •

GENERAL PROVISIONS

• • •

Sec. 27-112. Conformity.

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(f) Occupancy or use of dwellings for short-term rentals are subject to the requirements of Chapter 14 of the Code of Ordinances, and nothing herein shall be deemed to allow any use inconsistent with those requirements.

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ARTICLE II. DEFINITIONS

Sec. 27-201. Definitions.

Except where specifically defined herein, all words used in this Chapter shall carry their customary meanings. Words used in the present tense include the future, and the plural includes the singular; the word "lot" includes the word "plot"; the word "building" includes the word "structure"; the word "shall" is always mandatory; and "occupied" or "used" shall be considered as though followed by the words "or intended, arranged, or designed to be used or occupied."

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Bed & breakfast inn. A private residence that offers sleeping accommodations on a transient basis to the general public ~~to lodgers~~ in 12 or fewer rooms for rent, in the innkeeper's (owner or operator) principal residence while renting rooms to lodgers, and serves breakfasts at no extra cost to its lodgers. For the purpose of this definition, a lodger means a person who rents a room in a bed & breakfast establishment for fewer than 30 consecutive days. The term does not include a short-term rental as defined herein and regulated under Chapter 14 of the Code of Ordinances.

• • •

Dwelling. A building designed or used as the living quarters for one or more families. The term shall not be deemed to include a bed & breakfast inn, hotel, inn, motel, rooming house or trailer.

• • •

Home occupation. An occupation or profession which is: Customarily carried on in a dwelling unit or in a building or other structure accessory to a dwelling unit; carried on by a member of the family residing in the dwelling unit; clearly incidental and secondary to the use of the dwelling unit for residential purposes and does not detract from the basic character of the neighborhood; conforms with the following conditions:

• • •

- (e) The home occupation shall not use more than twenty-five (25) per cent of the total floor area of the residential structure.
- (f) The following are examples of permitted uses under this definition:
 - (1) Office of doctor, dentist, lawyer, engineer, or member of similar recognized profession.

- (2) Office of teacher or musician.
- (3) Office of real estate broker or salesman or insurance agent.
- (4) Use of premises for dressmaking or millinery.
- (5) Letting of rooms or taking of boarders for 30 or more consecutive days to the same person(s), to a maximum of two (2) persons, conducted by resident occupants only.
- (6) Family day care home.
- (7) Group day care home.

(g) The following uses are specifically prohibited as a home occupation:

- (1) Tourist camps, cabins, bed & breakfast inns, inns, motels, hotels, and mobile home parks and short-term rentals.
- (2) Restaurants or other public eating places.

• • •

Inn. A business conducted in a building and containing one to twenty sleeping rooms rented on a transient basis to the general public for a period not to exceed 90 days in any 120 consecutive day period. Public dining facilities may be included but no cooking facilities or kitchens are permitted in any of the rooms rented to the public. The term does not include a short-term rental as defined herein and regulated under Chapter 14 of the Code of Ordinances.

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Short-term rental means the use, control, management or operation of a dwelling unit or accessory dwelling unit, in whole or in part; for dwelling, sleeping or lodging purposes; for less than 30 consecutive days; for compensation, directly or indirectly. Short-term rentals are not available to walk-ins who arrive without a reservation. Short-term rentals do not have signage either on- or off-site identifying, advertising, and/or providing way finding related to the use of the dwelling unit for lodging purposes. The term shall not be deemed to include a bed & breakfast inn, hotel, inn, motel, rooming house, trailer or home occupation.

• • •

Fiscal Note: Less than \$1,000

Date: June 5, 2018