

SHORT-TERM RENTAL ORDINANCE

Durham, NH

Adopted February 3, 2020

***EXCERPTS FROM ZONING ORDINANCE**

Section 175-7. Definitions

Short-term rental. An accessory use to an owner-occupied single-family residence containing, in addition to living accommodations for the owner and the owner’s family, not more than three sleeping rooms, for the purpose of providing to the general public, for compensation, lodging, with or without breakfast, for less than thirty consecutive days. A short-term rental is not considered a home occupation.

Section 175-53. Table of Uses

Residential Zones:

Rural (R)	<i>Special exception</i>
Residence A (RA)	<i>Special exception</i>
Residence B (RB)	<i>Special exception</i>
Residence C (RC)	<i>Special exception</i>

Retail/Commercial Zones:

Central Business (CB)	<i>Permitted</i>
Professional Office (PO)	<i>Permitted</i>
Church Hill (CH)	<i>Permitted</i>
Courthouse (C)	<i>Permitted</i>
Coe’s Corner (CC)	<i>Permitted</i>

Research/Industrial Zones:

Office Research - Route 108 (OR)	<i>Special exception</i>
Mixed Use and Office Research (MUDOR)	<i>Special exception</i>
Office Research Light Industry (ORLI)	<i>Special exception</i>
Durham Business Park (DBP)	<i>Not permitted</i>

175-109. Standards for Specific Uses

R. **Short-term rental.** The following terms and conditions apply to a short-term rental.

1. A short-term rental may not be established until a permit to operate a short-term rental has been issued by the Zoning Administrator. The property owner shall submit an application to operate a short-term rental to the Zoning Administrator. The proposal shall be reviewed for compliance with all Building, Fire, and Life Safety Codes. Site plan review is not required for a short-term rental.
2. Special Exceptions. In those districts where a short-term rental is allowed by special exception, the property owner shall obtain a special exception prior to issuance of a permit to

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operate a short-term rental. The following specific requirements apply to special exceptions for short-term rentals:

- a. ZBA Hearing. For notification purposes, abutting properties shall include those lots within 300 feet of the subject property.
 - b. Other Conditions. The Zoning Board of Adjustment may set additional conditions on the special exception based upon potential impact of the proposal to the neighborhood.
3. The site where the short-term rental is located must be the property owner's primary residence.
 4. The property owner or a member of the property owner's family must be on the premises overnight each night while the property is rented.
 5. Those areas of the premises open to use by lodgers remain subject to periodic safety inspections per state law.
 6. No recreational vehicle, travel trailer, tent, or other temporary shelter may be used by the renter(s) on the premises in conjunction with the short-term rental.
 7. Signage is restricted to the following:
 - a. One non-illuminated sign not exceeding two square feet. If ground mounted the sign must be set back at least 10 feet from all lot lines and be no taller than three feet. If mounted on the house no part of the sign may be higher than the top of the first floor windows.
 - b. Non-advertising auxiliary signs (such as "No Parking Here" and "Entrance to the Right") that are non-illuminated and do not exceed one square foot for each sign.

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- D. Roads and access to public roads shall be constructed in such a manner as to respect the landscape and shall promote public safety. Sufficient off street parking is required for all uses. Two spaces are required for each dwelling unit and/or for each 400 feet of non-residential floor space, unless amended by the Board of Adjustment.
- E. The Town of Canterbury has maintained a rural, residential and agricultural character that is incompatible with "adult businesses" which involve public indecency or sexually explicit activities or materials. The Town's limited police and public protection resources are insufficient to address the secondary effects and well-documented problems that are often associated with adult businesses. The Town has limited areas available for commercial development and the location of adult business within those commercial areas would deter their development for uses that would enhance the community tax base. The table of uses set forth in section 5.3 shall therefore be interpreted so as to preclude the establishment of an adult business within any permitted use or special exception.

2.9 AIRCRAFT TAKE-OFFS AND LANDINGS ON PRIVATE LAND

Aircraft take-offs and landings on private land shall not be deemed to be a valid and permitted accessory use of any property in the Town of Canterbury.

2.10 WAIVER OF DIMENSIONAL STANDARDS TO PROVIDE REASONABLE ACCOMMODATION FOR DISABLED INDIVIDUALS

Upon application duly made to the Zoning Board of Adjustment that Board, by approving a special exception pursuant to Section 8.2, may allow waiver of dimensional standards otherwise applicable to a property occupied by an individual with a disability as defined by the Federal Americans with Disabilities Act. The Board may grant the special exception if it finds that the criteria set forth in Section 8.2 are met and if it finds that the waiver of the dimensional requirements is necessary to provide reasonable accommodation under said law to allow the individual to make reasonable use of the property. The Board of Adjustment may attach such conditions to approval of the special exception as it deems necessary, including provisions to require compliance with the waived dimensional requirement if the property is no longer occupied by the individual with the disability.

2.11 LODGING, SHORT TERM

The use is regulated to preserve the traditional character of residential neighborhoods that can be negatively impacted by this type of use and to help preserve the quality and quantity of the housing stock for year-round residential use. Allowable as either primary or accessory use.

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Permitted in all zones except Industrial, providing the following conditions are met:

1. A Short-Term Lodging application will require a Special Exception approval from the Canterbury Zoning Board of Adjustment to determine suitability for this use, using the following criteria:
 - a. The owner of a proposed Short-Term Lodging dwelling unit shall apply for the Special Exception and pay the review and abutter notification fees.
 - b. As part of the application approval process the dwelling unit must pass a joint inspection by the Fire Department and the Building Code Enforcement Department which shall be limited to the following:
 - i. Combination Smoke & CO detectors must be installed in areas defined by the Town's adopted codes and must be functioning.
 - ii. Windows and doors functioning as the primary and secondary means of egress shall conform to the current adopted Life Safety Code requirements for One- and Two-Family Dwellings.
 - iii. No basement space shall be used as sleeping areas unless there are properly sized egress windows and/or doors conforming to the Town's adopted codes.
 - iv. A functional fire extinguisher shall be visibly installed in any kitchen area.
 - v. To determine maximum occupancy of the dwelling unit, floor space square footage shall be confirmed to conform to the Town's adopted codes.
 - vi. To determine maximum number of vehicles allowed per rental, driveway capacity shall be confirmed. On-street parking shall not be allowed.
 - vii. Safety concerns reported by lodgers or abutters may require another inspection.
2. The Zoning Board of Adjustment may set other requirements or conditions as part of the approval process.
3. The owner of a Short-Term Lodging unit will be responsible for:
 - a. Ensuring that all parking of vehicles is on site;

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- b. Ensuring that occupancy limits are not exceeded;
 - c. Any other site-specific conditions imposed as part of the approval.
4. Short-Term Lodging applications shall be reviewed and approved or denied within 30 days of receipt of a complete application. Notice of the approval or denial will be mailed to the applicant and abutters as defined in RSA 672:3.
5. Approval for Short-Term Lodging use will be in effect for five years from date of approval and must be renewed by the Code Enforcement Officer after an inspection to ensure that all conditions for approval are still in effect.
6. Violation of this ordinance will subject the property owner to fines and penalties outlined in Article 10.0 of the Canterbury Zoning Ordinances consistent with NH RSA 676:17.

ARTICLE 3

DEFINITIONS

- 3.0 For the purpose of this ordinance, words used in the present tense include the future, the singular number includes the plural, and the plural includes the singular. The word "lot" shall include "plot" or "parcel." The word "structure" shall include the word "building" where the context requires. The word "used" shall include "rented, leased, intended to be used, and occupied." The word "shall" is mandatory and the word "may" is permissive.

CERTAIN OTHER TERMS OR WORDS SHALL BE INTERPRETED AS FOLLOWS:

ABUTTER

Any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the Planning Board. For purposes of receiving testimony only, and not for purposes of notification, the term "abutter" shall include any person who is able to demonstrate that his land will be directly affected by the proposal under consideration. (RSA 672.3)

ACCESSORY DWELLING UNITS

An Accessory Dwelling unit (ADU) is a second completely private dwelling unit that provides independent facilities for one or more persons, including provisions for sleeping, eating, cooking and sanitation on the same parcel of land as the principal dwelling unit it

**Homeshares and Short-Term Rentals
Proposed Amendments to the Zoning Ordinance
Draft – 10/17/2019**

ORDINANCE #

THE CITY OF PORTSMOUTH ORDAINS

That the Ordinances of the City of Portsmouth, Chapter 10 – Zoning Ordinance be amended as follows (deletions from existing language ~~stricken~~; additions to existing language **bolded**; remaining language unchanged from existing):

A. Amend Article 15 – Definitions, Section 10.1530 – Terms of General Applicability, as follows:

- (1) Delete the definitions of “Bed and Breakfast”, “Bed and Breakfast 1” and “Bed and Breakfast 2”.
- (2) Insert the following terms and definitions in alphabetical order:

Homeshare

The rental of up to 5 rooms in an owner-occupied dwelling unit for less than 30 consecutive days.

- **The rental of a room to the same individual(s) for 30 or more consecutive days is not considered a homeshare rental and is allowed provided that the total occupancy of the dwelling unit complies with the definition of “family” in this ordinance.**

Short-term rental

The rental of an entire dwelling unit for less than 30 consecutive days at a time and for no more than 120 total days in any 12-month period.*

- **Short-term rental does not include boarding houses or homeshares.**
- **The rental of a dwelling unit to the same household for 30 or more consecutive days is not considered a short-term rental and is allowed to the same extent that the dwelling unit is allowed.**
- **The rental of a dwelling unit for more than 120 total days in any 12-month period where more than one individual occupancy is for less than 30 consecutive days shall be considered a primary business use of the property rather than an accessory short-term rental use. †**

* The 120-day limit would allow rental of the unit for 2 days/nights every weekend during the year, or 20 week-long (Sunday to Saturday, 6 nights) rentals.

† This provision is intended to address the gray area between an accessory use of a residence and a business lodging use such as an inn, hotel or motel.

- (3) Amend the definitions of “boarding house”, “caretaker residence”, “dwelling unit”, “inn”, and “principal use”, as follows:

Boarding house

~~A residential structure, other than a bed and breakfast,~~ **A building, other than an inn**, in which rooms are rented, leased or otherwise made available for compensation to more than two but not more than 10 individuals, and where such rooms do not contain separate cooking or bathroom facilities.

Caretaker residence

A dwelling unit that is accessory to and on the same lot as a ~~nonprofit~~ **principal** use, and that is provided for and limited to occupancy by a person employed to provide maintenance and security 24 hours per day for the principal use.

Dwelling unit

A building or portion thereof providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. This use shall not be deemed to include such transient occupancies as hotels, motels, **inns**, ~~rooming~~ or boarding houses.

Inn

A building offering lodging for transient ~~boarders~~ **occupancy** with up to 15 sleeping rooms.

- An inn may have a ~~caretaker residence~~ **one dwelling unit for occupancy by the property owner or a manager**, but the inn does not have to be occupied by the owner **or a manager**).
- **An inn may provide meals to guests in a common dining area, but shall not provide cooking facilities for guests** and shall not serve food to the public. **A building that does not comply with these limitations may be regulated as a boarding house, hotel or motel, as appropriate.**

(See also: ~~bed and breakfast~~, hotel, motel, **homeshare, short-term rental**.)

Principal use

The primary use on a lot, which may have accessory uses. **A lot or building may contain more than one principal use: for example, one or more ground-floor businesses and upper-floor dwelling units.**

B. Amend Section 10.811.40 by inserting the following new subsection 10.811.41:

10.811.41 Accessory Dwelling Units, Garden Cottages, Homeshares, and Short-Term Rentals are regulated by the provisions in Sections 10.814, 10.815, 10.817 and 10.818, respectively.

C. Insert a new Section 10.817 – Homeshare, as follows:

10.817 Homeshare

10.817.10 A homeshare shall comply with all of the following requirements:

10.817.11 The owner of the dwelling unit shall occupy the unit as his or her principal place of residence and shall reside in the unit at all times that rooms are rented.

10.817.111 The owner shall provide documentation demonstrating to the satisfaction of the City that the dwelling unit is his or her principal place of residence.

10.817.112 When the dwelling unit is owned by one or more living trusts, the dwelling unit shall be the principal place of residence of the beneficiary(ies) of the trust(s).

10.817.12 If the dwelling unit is part of a condominium, the homeshare use shall require the assent of the condominium association.

10.817.13 The lot and structure shall conform to all dimensional standards of the zoning district in which they are located.

10.817.14 One off-street parking space shall be provided for each room rented, in addition to the number of off-street parking spaces otherwise required for all dwelling units in the dwelling or on the lot.

10.817.15 The dwelling unit shall at all times be covered by an insurance policy that permits rental of rooms in the unit.

10.817.16 The owner of a homeshare shall register for the State rooms and meals tax and shall pay all required taxes.

10.817.20 Where so indicated in Section 10.440, a homeshare shall require the granting of a special exception by the Zoning Board of Adjustment. In order to grant a special exception for a homeshare use, the Zoning Board of Adjustment must make the following findings:

10.817.21 The homeshare use will comply will all requirements of this Section 10.817.

10.817.22 The homeshare use, as well as the structure, will meet the standards for special exceptions in Section 10.232.20.

10.817.30 A certificate of use issued by the Planning Department is required to verify compliance with the standards of this Section, including the owner-occupancy and principal residency requirements. Said certificate shall be renewed annually upon submission of such documentation as the Planning Department may require to verify compliance.

10.817.40 Violations *

10.817.41 Noncompliance with any requirement listed in this Section 10.817, or with any condition of the granting of a required special exception for the homeshare use, shall constitute a violation of this ordinance and of said special exception and shall result in the termination of said special exception.

10.817.42 The failure to submit any required documentation within 8 months after the expiration of the certificate of use shall constitute a violation of this ordinance and of said special exception resulting in the termination of said special exception.

10.817.43 Where a special exception has been terminated under either of the above provisions, the homeshare use shall be terminated until a new special exception has been applied for and granted.

* Because homeshares are proposed to be permitted uses ("P") in several zoning districts, the provisions on violations have to reference violations of the ordinance as well as the special exception, and a new section 10.818.44 is needed to require termination of the use when a special exception is not required.

10.818.44 Where a homeshare is designated in Section 10.440 as a permitted accessory use (“P”), a violation of this ordinance under sections 10.817.41 or 10.817.42 shall result in the discontinuance of the homeshare use until the noncompliance has been remedied to the satisfaction of the Code Official.

D. Insert a new Section 10.818 – Short-Term Rentals, as follows:

10.818 Short-Term Rentals

10.818.10 Where allowed by Section 10.440, the accessory short-term rental use of a single-family dwelling, or a dwelling unit in a two-family or multifamily dwelling, shall require the granting of a special exception by the Zoning Board of Adjustment, and shall comply with all of the standards and requirements in this Section 10.818.

10.818.11 On a lot containing an accessory dwelling unit, neither the principal dwelling unit nor the accessory dwelling unit may be used for a short-term rental.

10.818.12 A dwelling unit in a two-family or multifamily dwelling shall be a condominium unit, and not a rental unit in an apartment building.

10.818.13 The short-term rental use of a condominium unit shall require the assent of the condominium association.

10.818.20 A short-term rental shall comply with all of the following requirements:

10.818.21 The dwelling or dwelling unit shall at all times comply with all applicable requirements of the Building Code and other codes adopted by or applicable within the City.

10.818.22 The lot and structure shall conform to all dimensional standards of the zoning district in which they are located.

10.818.23 Occupancy of a short-term rental shall be limited to no more than the number of bedrooms, as determined by the Code Official, multiplied by two persons.

10.818.24 Off-street parking spaces shall be provided as follows:

10.818.241 A dwelling or dwelling unit that is used as a short-term rental shall be provided with at least one off-street parking space in addition to the minimum required number of off-street parking spaces otherwise required for the dwelling or dwelling unit.

10.818.242 Notwithstanding the above, the Board may require the provision of additional off-street parking spaces based on existing congestion or anticipated occupancy.

10.818.243 All required off-street parking spaces shall comply with the standards for location and design of off-street parking facilities in Sections 10.1113 and 10.1114.

10.818.25 A dwelling or dwelling unit that is used as a short-term rental shall at all times be covered by an insurance policy that permits such rental.

10.818.26 The owner of a dwelling or dwelling unit used as a short-term rental shall register for the State rooms and meals tax and shall pay all required taxes.

10.818.27 No recreational vehicle, travel trailer, tent or other temporary shelter shall be used on the premises for living or sleeping purposes.

10.818.30 In order to grant a special exception for a short-term rental use, the Zoning Board of Adjustment must make the following findings:

10.818.31 The short-term rental use will comply will all requirements of this Section 10.818.

10.818.32 The short-term rental use, as well as the structure, will meet the standards for special exceptions in Section 10.232.20.

10.818.40 A certificate of use issued by the Planning Department is required to verify compliance with the standards of this Section, including the owner-occupancy and principal residency

requirements. Said certificate shall be renewed annually upon submission of such documentation as the Planning Department may require to verify compliance.

10.818.50 Violations

10.818.51 Noncompliance with any condition listed in this Section 10.818, or any condition of the granting of a special exception for the short-term rental use, shall constitute a violation of the special exception and shall result in the termination of said special exception.

10.818.52 The failure to submit any required documentation within 8 months after the expiration of the certificate of use shall constitute a violation of the special exception resulting in the termination of said special exception.

10.818.53 Where a special exception has been terminated under either of the above provisions, the short-term rental use shall be terminated until a new special exception has been applied for and granted.

E. Amend Section 10.821 – Historic Preservation Buildings and Museums, by inserting the following new subsection 10.821.14:

10.821.14 By special exception, dwelling units or inns that are accessory to and supportive of the principal use. *

F. Amend Section 10.430 – Use Regulations by inserting a new subsection 10.434.50 as follows:

10.434.50 Except in a residential district, a lot or building may contain more than one principal use provided that all such uses are authorized in Article 4.

G. Amend Section 10.1112.32 – Parking Requirements for Nonresidential Uses, under use group 10 – Lodging Establishments, as follows:

* NOTE: The proposed short-term rental provisions require condominium ownership of a unit used for short-term rental in a two-family or multifamily dwelling (sec. 10.818.12). This would prohibit the short-term rental of dwelling units in Historic Preservation Buildings and Museums. Is this okay, or should an exemption be added?

10.10-10.20	Boarding house or Bed and breakfast	2 + 1 per room for rent
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H. Amend Section 10.440, Table of Uses, as set forth in Attachment A: “Proposed Amendments to Zoning Ordinance, Section 10.440 – Homeshares and Short-Term Rentals.”

The City Clerk shall properly alphabetize and/or re-number the ordinances as necessary in accordance with this amendment.

All ordinances or parts of ordinances inconsistent herewith are hereby deleted.

This ordinance shall take effect upon its passage.

APPROVED:

Jack Blalock, Mayor

ADOPTED BY COUNCIL:

Kelli L. Barnaby, City Clerk

Attachment A:
Proposed Amendments to Zoning Ordinance, Section 10.440 – Homeshares and Short-Term Rentals
Draft – 10/17/2019

Use	R	SRA SRB	GRA GRB	GRC (A)	GA/M H	MRO CD4- L1	CD4- L2	MRB	CD5 CD4	GB	G1	G2	B CD4- W	WB	OR	I	WI	Supplemental Regulations
10. Lodging Establishments																		
10.10 Boarding house	N	N	N	N	N	N	N	N	N	S	S	N	S	N	N	N	N	
10.20 Bed and breakfast																		
10.21 Bed and Breakfast 1	N	N	S	N	N	S	S	P	P	N	S	S	P	N	N	N	N	
10.22 Bed and Breakfast 2	N	N	N	N	N	S	S	P	P	N	S	S	P	N	N	N	N	
10.30 Inn	N CUP	N	N	N	N	N	S CUP	S CUP	P	P	S CUP	S CUP	P	N	N	N	N	

Use	R	SRA SRB	GRA GRB	GRC (A)	GA/M H	MRO CD4- L1	CD4- L2	MRB	CD5 CD4	GB	G1	G2	B CD4- W	WB	OR	I	WI	Supplemental Regulations
19. Accessory Uses																		
19.30 Homeshare																		
19.31 1 or 2 guest bedrooms	S	S	S	N	N	S	S	P	P	N	S	S	P	N	N	N	N	10.817 (homeshare)
19.32 3 to 5 guest bedrooms	S	N	N	N	N	S	S	P	P	N	S	S	P	N	N	N	N	
19.40 Short-term rental																		
19.41 Single-family dwelling	S	S	S	S	N	S	S	S	N	N	N	N	N	N	N	N	N	10.818 (short-term rentals)
19.42 Unit in two-family or multifamily dwelling	N	N	S	S	S	S	S	S	S	S	S	S	S	N	N	N	N	

ARTICLE VIII - DEFINITIONS

For the purpose of this Ordinance, certain terms or words used herein shall be interpreted as follows:

The word **PERSON** includes a firm, association, partnership, trust company or corporation as well as an individual and shall apply to the owner, agent contractor or others acting on behalf of any of the above.

The present tense includes the future tense, the singular number includes the plural, and the plural number includes the singular.

The word **SHALL** is mandatory, the word **MAY** is permissive.

The word **USED** or **OCCUPIED** includes the words **INTENDED, DESIGNED OR ARRANGED TO BE USED OR OCCUPIED.**

The word **LOT** includes the words **PLOT** or **PARCEL.**

ACCESSWAYS - Any right-of-way, easement or fee-owned portion of land used for the purposes of passing to and from a parcel of land, residence or commercial use, from any recognized public way. (1980)

ACCESSORY APARTMENT - An apartment meeting the Special Exception criteria for accessory apartments set forth in Article VII. (11 Mar 08)

ACCESSORY SHORT TERM RENTAL- An accessory use to a single family detached dwelling unit that is offered for a fee for less than 30 consecutive days at a time. The short term rental must be secondary to the principal residential use of the dwelling. (9 Mar 22)

ACCESSORY USES - An accessory use is a subordinate use that is clearly incidental to and related to the principal structure, building or use of the land. Aircraft takeoffs and landings shall not be considered an accessory use to a residential use (see NH RSA 674:16 V for reference). (11 Mar 97)

AFFORDABLE HOUSING - Affordable housing shall be priced not to exceed 2 ½ times the median family income for Belknap County, based on December 31st of the prior year, as determined by N.H. Department of Labor, Bureau of Statistics, or what is approved by Farmers' Home Administration for loans in Belknap County for single-family housing. (8 Mar 88)

AGRICULTURAL STOCK FENCE - A fence erected for the sole purpose of containing stock: (1978)

AGRICULTURE AND FARMING – means all operations of a farm, including:

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7. Any additional information that will adequately describe the proposed work.

2. Accessory Short Term Rentals – Short Term Rentals of a room or rooms within a single family dwelling or of an entire single family dwelling shall be considered accessory to a detached, single family dwelling provided the occupancy of the single family dwelling is the primary use. The short term rental shall meet the following criteria: (9 Mar 22)

- a. Short Term Rentals shall be permitted as an accessory use in the zone where single family dwellings are allowed.
- b. Short Term Rentals may occur for periods of less than 30 days each, but shall not exceed 120 days cumulative rental days annually.
- c. Adequate off-street parking shall be provided to accommodate the occupancy of the dwelling.
- d. Adequate state approved septic system shall be in place and consistent with the number of bedrooms.
- e. A point of contact shall be provided that is accessible 24 hours a day.
- f. Provisions for trash disposal shall be made.
- g. Short term rentals shall not be permitted in accessory apartments.