



**City of New Buffalo  
224 W. Buffalo Street  
New Buffalo MI 49117**

**Special Joint Meeting of the Planning Commission and City Council Workshop Agenda  
March 17, 2021 at 7:00 p.m.**

1. Call Meeting to Order
2. Roll Call
3. Approval of Agenda
4. Approval of Previous Minutes- October 12, 2020
5. Workshop Items
  - a. Discussion of Short-term Rental Ordinances
    - a. Zoning ordinance
    - b. Regulatory ordinance
6. Public Comment
7. City Council/ Planning Commission Comments
8. Adjournment

**Call to Order at 6:04 p.m.**

**City Council Roll Call. Present: Mayor O'Donnell, Kroll, Robertson, Spirito Absent: Ennis:** Motion by O'Donnell, seconded by Spirito to excuse Ennis due to medical reasons: Roll call vote, motion carried, 4-0.

**Planning Commission Roll Call. Present: Chair Billingslea, Joseph, Lauer, McCollum, Stoneburner**

**Approval of Agenda.** Motion by O'Donnell seconded by Kroll to approve the agenda with addition of presentation by Nick Curcio: City Council Roll call vote, motion carried, 4-0. Planning Commission Roll Call Vote, motion carried, 5-0.

**Public Comment:** The following residents were at City Hall, 224 W. Buffalo Street. John Humphrey, 229 S. Mayhew St., Rusty Geisler, 116 W. Clay St, Kathy Sexton, 103 S. Berrien St., Louise Balliton, 126 S. Berrien St. The following residents spoke via Zoom. Ron Watson, 1171 Shore Dr., Jason Milovich, owner of Bluefish Vacations, Heather Gradowski, Owner of Vacation Rental, and Jeff Miller.

**Presentation:**

Kyle Salonga gave a presentation regarding an overview of his company, Granicus.

City Attorney, Nick Curcio gave a presentation on the New Buffalo Short-term rental Ordinance and gave potential ideas for ordinance amendments and went over the moratorium that was adopted in May 2020.

This meeting was to be a starting point for discussion. City Staff is looking for City Council and Planning Commission feedback.

Mayor O'Donnell stated we will have another meeting with Planning Commission to talk more about these issues brought up tonight. Community should stay tuned for next meeting.

Motion by O'Donnell, seconded by Robertson to adjourn the meeting at 7:45: roll call vote, motion carried 4-0.

Motion by Billingslea, seconded by Stoneburner to adjourn meeting at 7:45: roll call vote, motion carried 2-0. Members Joseph, McCollum and Lauer were not present during roll call to adjourn the meeting.

**af**



## WORKSHOP STAFF REPORT

Special Meeting – March 17, 2021

### **AGENDA ITEM:** Discussion of Short-Term Rental Proposals

**SUMMARY:** Following the City Council's discussion regarding short-term rentals during a special meeting in January, City staff and the City Attorney have worked to develop a new draft ordinance package that incorporates comments made by both Council members and members of the general public. Council members indicated that it would be useful for the Council and the Planning Commission together for a workshop to discuss the proposals.

The proposed ordinance package consists of two separate ordinances, the first of which is an amendment to the regulatory ordinance that the City adopted in the spring of 2019. Since that ordinance was adopted, some have argued that the City's enforcement efforts have not been satisfactory. The "three strikes" provision has received particular criticism on the grounds that the requirement to prosecute each "strike" in the state court system makes the process overly burdensome, time-consuming, and expensive. Perhaps because of these sentiments, the City has not pursued permit revocation for any short-term rental properties during the two years since the program began.

The principal purpose of the draft regulatory ordinance is to address these concerns about enforcement cost and efficiency. The proposal seeks to achieve this purpose by, among other things:

1. Establishing an administrative hearing system that can be used to revoke licenses "in house" without court involvement. This is intended to make the process more feasible and cost-efficient.
2. Eliminating subjective standards relating to revocation so that the hearing officer's revocation decisions will be more likely to be upheld on appeal.
3. Clarifying the responsibilities of owners/agents as compared to the responsibilities of occupants.
4. Requiring owners/agents to compile and provide information to the City about each rental reservation, so that officers called to a scene can easily identify the renters and the vehicles that belong to them, as opposed to non-renter guests at the property.
5. Strengthening provisions relating to off-street parking, which has been one of the most frequent causes for complaints under the existing ordinance.

Notably, the new draft ordinance omits several provisions that were included in the draft discussed at the special meeting in January, such as the provisions that would have (i) decreased maximum occupancy from 14 to 10; (ii) required a professional management company to be used as a local agent; and (iii) allowed the City to place a placard in front of properties that are found to be renting without a rental permit.

The second component of the proposed ordinance package is an amendment to the zoning ordinance that:

1. Caps the total number of short-term rental units in the R-1 zoning district at existing levels. (New short-term rentals would continue to be allowed in all other zoning districts that contain dwelling units.)
2. Provides that if a property owner in R-1 fails to renew a rental permit within a year of expiration (or within a year after the end of a revocation period), the short-term rental use is deemed abandoned.

In short, this proposal is intended to restore the residential nature of the R-1 district, as opposed to allowing the number of short-term rentals to continue to increase. The rationale for this change is similar to the rationale for the moratorium that the City Council adopted in the spring of 2020.

During the workshop, Council members and Planning Commissioners can ask any questions they may have regarding the proposals and make suggestions for further revisions. If the proposals have sufficient support, staff anticipates that the zoning ordinance component of the package will then be brought to the Planning Commission for a public hearing sometime in early April. The City Council would then consider the package as a whole in late April or early May.

Rick Killips, Interim City Manager

Attachments:

Draft Regulatory Ordinance Amendment

Draft Zoning Ordinance Amendment

**CITY OF NEW BUFFALO  
BERRIEN COUNTY, MICHIGAN**

**ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE TO AMEND SECTION 2-3 AND ADD A NEW SECTION 6-5 TO THE  
NEW BUFFALO ZONING ORDINANCE TO CAP THE TOTAL NUMBER OF SHORT-  
TERM RENTAL UNITS IN THE CITY'S R-1 ZONING DISTRICT**

WHEREAS, in April 2019, the City Council adopted an ordinance requiring the registration and inspection short-term rental units within the City; and

WHEREAS, since enacting the ordinance, City staff has studied the registration statistics and the density of short-term rentals; and

WHEREAS, after extensive study of the proliferation and effects of short-term rental uses, the City Council has determined that if current trends were allowed to continue, short-term rental uses could undermine the character and stability of neighborhoods in certain districts by, among other things:

1. Decreasing the number of long-term residents;
2. Decreasing enrollment in local schools;
3. Decreasing the availability of long-term housing stock, thereby driving up prices and making long-term residency less affordable;
4. Creating significant numbers of vacant homes in the winter months; and
5. Increasing levels of noise, traffic, and on-street parking during the summer tourist season.

WHEREAS, in a series of recent cases, Michigan courts have recognized that transitory and commercial uses are in tension with the traditional use of single-family dwellings; and

WHEREAS, the City Council has determined that it is in the best interest of the City to amend the zoning ordinance to clarify the permissibility of short-term rental uses throughout the City and to cap the total number of short-term rental units in the R-1 zoning district at the existing level of 65 units.

The City of New Buffalo ordains:

Section 1. Addition of Definition. Section 2-3 of the New Buffalo Zoning Ordinance is amended to add the following definitions, which shall appear between the definitions of "Shopping Center" and "Sign":

*Short-Term Rental Activity*. The rental of a dwelling unit for compensation for a term of less than one month. However, short-term rental activity does not include the following: transitional housing operated by a nonprofit entity, group homes such as nursing homes and adult foster care homes, hospitals, or housing provided by a substance abuse rehabilitation clinic, mental health facility, other health care related clinic, or dwelling units owned by a business entity and made available on a temporary basis to employees of that business entity or employees of a contractor working for that business entity.

*Short-Term Rental Unit*. A dwelling unit in which short-term rental activity is permitted to occur subject to the terms and conditions of this ordinance and Chapter 11 of the City Code.

Section 2. Amendment of Definition. Section 2-3 of the New Buffalo Zoning Ordinance is amended to modify the definition of "Dwelling Unit" to read as follows:

*Dwelling Unit*. A building, or portion thereof, designed exclusively for human occupancy providing complete independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation. A dwelling unit may be used as a short-term rental unit

when licensed pursuant to Chapter 11 of the City Code and not prohibited by Section 6-5 or any other provision of this ordinance.

Section 3. Addition. Section 6-5 of the New Buffalo Zoning Ordinance is added to read as follows:

**Sec. 6-5. Short-Term Rental Units Capped at Existing Levels.**

- A. *Cap Established.* The total number of such short-term rental units in the R-1 district shall not exceed **65**. New permits for properties in the R-1 district shall only be issued to the extent allowed in Chapter 11.
- B. *Abandonment of use.* Use as a short-term rental unit shall be deemed abandoned if: (a) the short-term rental permit for the property expires, terminates, or is revoked by the City, and (b) a renewed short-term rental permit is not obtained within 12 months of the date on which renewal first becomes possible pursuant to Chapter 11 of the City Code. After abandonment, the owner of the property is not entitled to a renewed short-term rental permit, and shall only be entitled to a new permit to the extent such permits are available.

Section 4. Publication and Effective Date. The City Clerk shall cause this ordinance or a summary thereof to be published in a newspaper of general circulation in the City, and the ordinance shall be effective 20 days after enactment or upon publication, whichever is later.

YEAS: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ABSENT: \_\_\_\_\_

**CERTIFICATION**

This is a true and complete copy of Ordinance No. \_\_\_\_\_ adopted at a regular meeting of the New Buffalo City Council held on \_\_\_\_\_, 2021.

\_\_\_\_\_  
John Humphrey, Mayor

\_\_\_\_\_  
Ann M. Fidler, City Clerk

**CITY OF NEW BUFFALO  
BERRIEN COUNTY, MICHIGAN**

**ORDINANCE NO. \_\_\_\_**

**ORDINANCE TO AMMEND CHAPTER 11 OF THE NEW BUFFALO CITY  
CODE OF ORDINANCES TO PROVIDE AN EFFICIENT PROCEDURE FOR  
REVOKING RENTAL PERMITS AND MAKE OTHER MODIFICATIONS  
ALLOWING MORE EFFECTIVE REGULATION OF SHORT-TERM RENTAL  
UNITS**

The City of New Buffalo ordains:

Section 1. Amendment. Chapter 11 of the New Buffalo City Code, entitled “Short-Term Rental Units,” is amended to read in its entirety as follows:

**Chapter 11  
Short-Term Rental Units**

**Sec. 11-1. Purpose.**

- A. The City recognizes that one of its largest industries is tourism. The tourism market supports many different types of businesses including the hospitality market, the restaurant/dining market, the shopping and retail market as well as a host of others. The City believes that the tourism industry will continue to grow.
- B. The City recognizes that a major part of the tourism industry is the short-term rental or vacation rental marketplace. This marketplace has grown exponentially with the increasing use of online booking websites, and it will most likely continue to grow as surrounding municipalities limit, restrict or eliminate the practice.
- C. While short-term rentals can provide community benefits, their proliferation in single-family neighborhoods can also cause difficulties where the character of the use takes on a more transitory and commercial character. Michigan courts have recognized that transitory and commercial uses are in tension with the traditional use of single-family dwellings.
- D. The City needs to take action to ensure that the operation of short-term rentals is done in a safe and controllable manner for the well-being of all in the community. The character of residential zoning districts must also be restored and preserved. To that end, the City has established zoning regulations to cap the total number of short-term rentals in the R-1 zoning district at 65 units, which is the number of lawfully existing short-term rentals in the R-1 zoning district as of the date of this ordinance.
- E. The City further recognizes that the establishment of a permit hearing system is needed in order to effectively enforce the short-rental regulations provided in this chapter in a cost-efficient manner. Final determinations made in any permit hearing shall be subject to judicial review.

**Sec. 11-2. Definitions.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

- A. *Bedroom*. A room intended for sleeping or placement of a bed, separated from other spaces in a dwelling unit by one or more functional doors. The following spaces, which must be included in every dwelling unit, do not qualify as bedroom: (i) kitchens; (ii) dining areas; (iii) gathering spaces such as family rooms, dens, or living rooms; and (iv) attics or basements without egress meeting standards in applicable building, residential, and fire codes. To count as a bedroom, a room must

comply with applicable requirements for bedrooms and habitable spaces set forth in Chapter 3 of the Michigan residential code.

- B. *City*. The department, officer or individual designated by the City Manager or City Council to administer all or any part of the permitting and inspection programs under this chapter.
- C. *Good visitor guideline materials*. Materials prepared by the City's zoning administrator that include: (1) a summary of the City's noise ordinance, fireworks ordinance, trash disposal ordinances, and applicable offenses against the public peace, (2) a reminder that the rental property is located in a residential neighborhood and that neighbors may not be vacationing, and (3) a statement informing the renters that neighboring property owners may contact the local agent and local police to report any issues relating to the property.
- D. *Hearing Officer*. An individual designated by the City Council who presides over and adjudicates permit revocation hearings as described in Section 11-13. The hearing officer may be either an employee or independent contractor of the City, but in either case shall act as an impartial adjudicator. To ensure impartiality, an individual who serves as a hearing officer may not be involved in enforcing this chapter in any way other than as described in Section 11-13.
- E. *Local Agent*. An individual designated to: (i) oversee the short-term rental of a rental unit in accordance with this chapter; (ii) respond to calls from renters, concerned citizens, and representatives of the City; (iii) act as an agent of the owner with respect to a short-term rental unit, which shall include the authority to accept service of legal paper's relating to the unit on the owner's behalf.
- F. *Occupant*. An individual who is living in, sleeping in, or otherwise having possession of a short-term rental dwelling unit. An individual present in a dwelling unit during the term of a short-term rental shall be presumed to be an occupant unless circumstances clearly indicate that the individual is visiting between the hours of 8:00 a.m. and 10:00 p.m. and will not stay overnight.
- G. *Off-Street Parking Space*. Shall mean a parking space that is provided on the same lot as the short-term rental unit that satisfies the requirements to count toward the minimum-parking calculation in Article 15 of the Zoning Ordinance.
- H. *Owner*. A natural person who is the legal or equitable titleholder of the premises in question. In situations where the record title holder is a trust, corporation, limited liability company, or other similar legal entity, the term "owner" shall refer to natural persons with control or partial control over such entity, *e.g.*, a trustee, designated corporate representative, any and all members and managers of a limited liability company, etc.
- I. *Short-Term Rental Activity*. The rental of a dwelling unit for compensation for a term of less than one month. However, short-term rental activity does not include the following: transitional housing operated by a nonprofit entity, group homes such as nursing homes and adult foster care homes, hospitals, or housing provided by a substance abuse rehabilitation clinic, mental health facility, other health care related clinic, or dwelling units owned by a business entity and made available on a temporary basis to employees of that business entity or employees of a contractor working for that business entity.
- J. *Short-Term Rental Reservation Summary*. A standard form issued by the City Clerk on which the owner or local agent of a short-term rental dwelling unit shall document, for each anticipated short-term rental term, the name and date of birth of each occupant that will be staying at the property; the number of vehicles that will be parked on site; the make, model, and license number of each such vehicle; and the dates on which the short-term rental term will commence and end. At the discretion of the City Clerk, the form may also include information regarding any requirement of this ordinance.



- K. *Short-Term Rental Term.* The duration of a short-term rental occupancy by a given renter or group of renters. A rental term shall be deemed to end when there is a complete turnover in the occupancy of the dwelling unit.
- L. *Short-Term Rental Unit.* A dwelling unit in which short-term rental activity is permitted to occur subject to the terms and conditions of this ordinance and the City's zoning ordinance.
- M. *Short-Term Rental Unit Permit.* A written document issued by the City indicating that the dwelling unit identified thereon is authorized to operate as a short-term rental unit in accordance with this chapter. When used in this chapter, the word "permit" refers to short-term rental permits.

**Sec. 11-3. Short-Term Rental Permits; Requirement, Applications, and Review Procedure.**

- A. *Permits required.* All dwelling units used for short-term rental activity must be registered with and have a short-term rental unit permit issued by the City. Further, the operation of short-term rental units is restricted by Section 6-5 of the zoning ordinance, which caps the total number of such units allowed in the City's R-1 zoning district.
- B. *Application.* To apply for a short-term rental unit permit, the owner(s) shall:
  1. Provide and certify as true the following on a form provided by the City:
    - a. Name, date of birth, address, email address, and telephone numbers (local and cell phone) of each and every owner of the property, as well as the local agent designated by the owners.
    - b. The street address of the short-term rental unit, along with other identification if more than one short-term rental unit has the same street address.
    - c. The number of short-term rental units in the building, if more than one.
    - d. The number of bedrooms in each short-term rental unit.
    - e. The number of off-street parking spaces provided on the lot that are reserved exclusively for occupants of the short-term rental unit. Valid off-street parking spaces include space in a garage, on an improved driveway, or in a carport.
    - f. A statement certifying that each bedroom has a working smoke alarm, that there is a working carbon monoxide detector on each floor, and that the owner(s) or local agent will check those devices at least every 90 days.
    - g. A statement certifying that each kitchen has a working fire extinguisher and that a working fire extinguisher is located near each outdoor cooking device.
    - h. A statement certifying that the owner(s) consent to inspections by the City and that the owner(s) or local agent will make the dwelling unit available to inspections upon request.
    - i. A statement acknowledging the requirement in Section 11-4(f) below to submit a short-term rental reservation summary to the City each time the property is rented on a short-term basis.
    - j. Such other information as the City requests.
  2. Sign the application form and provide the signature of the local agent.
  3. Pay an annual administrative fee, as set by resolution of the City Council.
  4. Submit the property to an annual inspection for compliance with applicable codes and ordinances. Failure to satisfactorily complete an inspection shall be grounds for withholding a permit or deeming an existing permit to be immediately void. Voiding a permit under this section is not subject to the procedures provided in Sections 11-11 and 11-13.

- C. *Local agent required.* All short-term rental units must have a designated local agent that satisfies the following:
1. The local agent shall be a natural person who resides within 20 miles of the geographic boundaries of the City of New Buffalo.
  2. An owner may serve as the local agent so long as he or she has the ability to continue residing at a location within 20 miles of the City of New Buffalo during the duration of any short-term rental term.
- D. *Permit issuance.* To the extent permits are available in the pertinent zoning district at the time of the application, a short-term rental unit permit shall be granted after a successful inspection if the requirements in this ordinance for short-term rental units and applications for a short-term rental unit permit are met.
- E. *Validity and renewal.* Short-term rental unit permits become invalid in each of the following circumstances:
1. A permit expires on year from the date of issuance of the permit;
  2. A permit is terminated when the property to which the permit applies is conveyed to another party;
  3. A permit is terminated when revoked in accordance with Section 11-11 below.
- A permit that expires or is terminated upon the conveyance of the property can be renewed so long as the application is submitted within 12 months of expiration or termination. A permit that is revoked in accordance with Section 11-11 can renewed at the end of the 1-year ineligibility period so long as the application is submitted within 12 months of the date when the permit first becomes eligible for renewal. The renewal process shall be subject to the same requirements as the initial application.
- F. *Delinquent payments.* No permit shall be issued or renewed unless the owner is current on the payment of all real property taxes, utility rates, fees, charges, special assessments and other amounts due to the City. Delinquencies on any such payments to the City, regardless of whether they relate to the rental unit for which a rental unit permit is sought shall result in denial of the permit.
- G. *Changes in information.* An owner or local agent shall notify the City in writing within 15 days of any change in the information provided on the application form. An owner of a short-term rental unit shall notify the City in writing within 15 days of any change in the designated local agent.

#### **Sec. 11-4. Responsibilities of Short-Term Rental Operators.**

The owner(s) and local agent for each short-term rental unit shall each be responsible for ensuring compliance with the following regulations, except where expressly provided otherwise:

- A. *Local agent availability.* During each short-term rental term, the local agent shall be available 24 hours per day, seven days per week for the purpose of responding within 30 minutes to complaints regarding the condition, operation, or conduct of occupants of the short-term rental unit or their guests.
- B. *Timely and effective response.* The local agent shall, upon notification that any occupant or guest of the short-term rental unit has created unreasonable noise or disturbances, engaged in disorderly conduct, parked vehicles in violation of this ordinance, or committed any other violations of applicable laws, rule or regulation pertaining to the use and occupancy of the short-term rental unit, respond in a timely and appropriate manner to halt and prevent a recurrence of such violations.

- C. *Reasonably prudent business practices.* The owner and/or the owner's authorized agent shall use reasonably prudent business practices to ensure that the occupants and/or guests of the short-term vacation rental unit do not create unreasonable noise or disturbances, engage in disorderly conduct, or violate any applicable law, rule or regulation pertaining to the use and occupancy of the subject short-term vacation rental unit.
- D. *Duty to provide permit and post in window.* Upon request by any occupant or prospective occupant, the owner(s) or agent shall provide the occupant or prospective occupant with a copy of the short-term rental unit permit. Further, a full-sized copy of the short-term rental unit permit must be posted in a prominent first-floor window of any short-term rental during each short-term rental term.
- E. *Maximum occupancy; advertising regulations.* Each short-term rental unit permit shall indicate the maximum occupancy for the unit, calculated pursuant to Section 11-9 below. A short-term rental unit shall not be advertised for an occupancy that is greater than the allowed maximum occupancy calculated pursuant to this section. Any advertisement posted on an online short-term rental platform must state the maximum occupancy as calculated pursuant to Section 11-9.
- F. *Reservation requirements.* At least 24 hours prior to the commencement of a short-term rental term, the owner or the local agent shall:
1. Obtain the contact information for at least one of the occupants who will be staying in the unit;
  2. Complete a copy of the short-term rental reservation summary form and file it with the City Clerk or the Clerk's designee in a manner specified on the form;
  3. Ensure that a copy of the short-term rental reservation summary form is available within the dwelling unit during each short-term rental term so that rental occupants can produce it upon request in conformance with Section 11-5(B) below.
  3. Provide a copy of the good visitor guideline materials to the prospective occupants;
  4. Inform the prospective occupants of the maximum occupancy of the short-term rental dwelling unit; and
  5. Inform the prospective occupants of the number and location of off-street parking spaces provided on the lot and of the parking regulations provided in Section 11-5(A) below.
- G. *Basement regulations.* No basement can be used for a bedroom unless it has an egress window approved by the City inspector and found in compliance with local and state code requirements.
- H. *Curbside refuse pickup.* The owner or local agent must make provisions to have refuse picked up (curbside) at least once per week when the short-term rental unit is being rented. Where curbside pickup is not reasonably available, this requirement may be satisfied by provision of a communal dumpster available for use by occupants of the short-term rental unit. Further, it shall be responsibility of the owner and local agent to ensure compliance with Section 15-7 of the City Code, which regulates the times at which refuse and recycling receptacles may be set out for collection and left at the curb of the street.
- I. *Renter turnover procedure.* For short-term rental units, the local rental agent shall, at least once per month, inspect the premises (or ensure inspection by a designee of the agent) using a City-designated checklist and shall ensure that all smoke detectors, carbon monoxide detectors, lights in common areas and stairways, egress doors, and railings are in a safe and working condition; any defects discovered shall be corrected promptly. Upon inspection, the agent shall sign and date that checklist and shall maintain it for City inspection and copying for a period of at least two years.
- J. *Compliance with safety equipment requirements and applicable codes.* All short-term rental units shall comply with the safety equipment requirements in Section 11-8 below, as well as all

applicable zoning, construction, fire, and property maintenance codes, ordinances, or other regulations. A violation of any of the foregoing shall also be a violation of this section.

- K. *Rental of partial dwelling units prohibited.* This chapter pertains only to the short-term rental of an entire dwelling unit. The short-term rental of partial dwelling units (e.g., a room or rooms within a dwelling unit) is prohibited.

**Sec. 11-5. Responsibilities of Short-Term Rental Occupants and Guests.**

- A. *Street parking prohibited.* No short-term rental occupant, nor any other guest visiting a short-term rental unit during a short-term rental term, shall park vehicles on public streets adjacent to the unit. Rather, the off-street parking spaces provided on the lot must be utilized, and any excess vehicles must be parked in public parking lots or other permitted off-site locations.
- B. *Short-term rental reservation summary.* Occupants shall produce a copy of the short-term rental reservation summary to a City police officer or other ordinance enforcement officer upon request.
- C. *Duty to comply with applicable laws.* Short-term rental occupants and guests shall comply with the City's noise ordinance, fireworks ordinance, trash disposal ordinances, open burning regulations, applicable offenses against the public peace, and any other applicable ordinances or laws. A violation of any of the foregoing shall also be a violation of this section.

**Sec. 11-6. Unauthorized Rentals Without a Permit.**

- A. *Unauthorized rentals.* It shall be unlawful to engage in short-term rental activity with respect to any dwelling unit that has not been issued a permit pursuant to this chapter. In any prosecution or action to determine a violation of this section, the following shall apply:
1. Advertising that offers a property as a short-term rental home shall constitute prima facie evidence of short-term rental activity involving the property and the burden of proof shall be on the property owner or other defendant to establish that the subject property has not been used for short-term rentals.
  2. Any communication in which a person offers a dwelling unit for rent for a term of less than one month shall constitute prima facie evidence of short-term rental activity and the burden of proof shall be on the property owner or other defendant to establish that the subject property had not been used for short-term rentals.
- B. *Unauthorized advertising.* It shall be unlawful to advertise any dwelling unit that does not have a short-term rental permit issued pursuant to this section for rent for a period of less than one month. Such advertisement shall constitute a violation of this ordinance separate and apart from a violation described in subsection A above.

**Sec. 11-7. Inspections.**

- A. *Scheduling.* Upon written notice from the City, it shall be the owner's and local agent's responsibility to schedule and allow the City's inspection of the short-term rental unit. Inspections shall generally occur during the City's regular business hours, except in emergency situations or when otherwise agreed to by the City and the owner or local agent. All fees shall be paid prior to the inspection.
- B. *Opportunity to correct deficiencies.* If an inspection reveals that the short-term rental unit is not in compliance with this chapter or applicable codes, the owner(s) shall be provided a written list of deficiencies or violations that must be corrected. Failure to correct such deficiencies in a reasonable time shall be grounds for withholding a permit or voiding an existing permit.
- C. *Additional inspections.* The City may conduct additional inspections as it deems necessary, upon reasonable notice to the owner(s) or agent, such as when:

1. A complaint is filed with the City; or
  2. The City otherwise has reasonable cause to believe a short-term rental unit is in violation of any City ordinance.
- D. *Changes in conditions following inspection.* The owner(s) or local agent shall notify the City in writing within 30 days if any of the items inspected pursuant to this chapter are altered after inspection by the City.

#### **Sec. 11-8. Safety Equipment.**

- A. *Smoke detectors.* The owner(s) and local agent of each short-term rental unit shall each be responsible for the installation of smoke detectors/alarms in each rental unit. All smoke detectors/alarms shall be UL (Underwriters Laboratories, Inc.) approved, and shall be installed in accordance with the provisions of the Michigan Residential Code and the household fire warning equipment provisions of the National Fire Protection Association (NFPA) Standards § 72.
- B. *Smoke detector locations.* Smoke detectors/alarms shall be installed in the following locations:
1. In each sleeping room;
  2. Outside of each separate sleeping area in the immediate vicinity of the bedrooms; and
  3. On each additional story of the rental unit, including basements and cellars, but not including crawl spaces and uninhabitable attics. In rental units with split levels and without an intervening door between the adjacent levels, a smoke detector/alarm installed on the upper level shall suffice for the adjacent lower level, provided that the lower level is less than one full story below the upper level.
- C. *Carbon monoxide detectors.* The owner(s) and local agent of each short-term rental unit shall each be responsible for the installation of a carbon monoxide detector in each rental unit. All carbon monoxide detectors shall be of the type described in MCLA § 125.1504d.
- D. *Fire extinguisher.* The owner(s) of each short-term rental unit shall each be responsible for the installation of a fire extinguisher in the kitchen of each unit and near each outdoor cooking device.
- E. *Tampering prohibited.* No person shall tamper or interfere with the effectiveness of a smoke detector, carbon monoxide detector or fire extinguisher required by this section.

#### **Sec. 11-9. Maximum Occupancy Calculation.**

The number of occupants in a dwelling unit during a short-term rental shall not exceed the lesser of:

- A. Fourteen total occupants;
- B. Two occupants per bedroom plus two additional occupants per finished story meeting the applicable egress requirements for occupancy in the Michigan Construction Code; or
- C. Except for units within a planned unit development, four occupants for every off-street parking space that is provided on the lot and reserved exclusively for occupants of the short-term rental unit. For units within a planned unit development, the occupancy is determined only by the limits described in Subsection A and B.

#### **Sec. 11-10. Violations.**

- A. *Violations as municipal civil infractions.* Any person who violates any of the provisions of this ordinance is responsible and may be prosecuted for a municipal civil infraction in court of competent jurisdiction, subject to payment of a civil fine of not less than \$500, plus costs and other sanctions, for each infraction. Repeat offenses shall be subject to an increased civil fine as follows:

1. The fine for any offense which is a first repeat offense shall not be less than \$750 plus costs and other sanctions.
  2. The fine for any offense which is a second repeat offense or any subsequent repeat offense shall not be less than \$1,000, plus costs and other sanctions.
  3. A repeat offense means a second (or any subsequent) violation of this ordinance:
    - a. Committed by a person within any twelve-month period; and
    - b. For which the person admits responsibility or is determined to be responsible.
- B. *Administrative notices in lieu of citations.* As an alternative or initial remedy, the City may seek to obtain compliance with this ordinance by issuing an administrative violation notice to the owner(s) and/or local agent for the unit to which the violation pertains. Each time a violation notice is issued, the owner(s) and local agent shall immediately cease the offending conduct or taking corrective action to terminate the violation described. Each violation notice shall be served in accordance with Section 11-12 and shall contain the following information:
1. The name of the responsible person(s);
  2. The code section violated;
  3. The address where the code violation occurred;
  4. A description of the code violation;
  5. The names of the issuing department and enforcement officer;

#### **Sec. 11-11. Short-Term Rental Permit Revocation.**

- A. *Grounds for revocation.* The City may revoke the short-term rental permit for any short-term rental unit which is the site of at least three separate incidents within a 12-month period (occurring on three separate days) constituting a violation of any provision of this ordinance, whether committed by an owner, local agent, occupant or guest. In order to qualify as an incident for purposes of this paragraph: (1) the City must have issued a civil infraction citation or administrative violation notice regarding the offending conduct prior to commencing revocation proceedings pursuant to subsection B below; and (2) the violation must be either admitted by the owner or proven by a preponderance of the evidence in a civil-infraction prosecution in state court or in a revocation hearing as provided in Section 11-13 below.
- B. *Revocation Procedure.* Upon a determination by the City that the short-term rental permit is subject to revocation pursuant to subsection A, the City shall serve a notice, pursuant to Section 11-12, to the property owner(s) and the local agent stating that the City intends to revoke the short-term rental permit. The notice shall inform the owner(s) and local agent of the date and time at which a revocation hearing will be conducted before a hearing officer, in accordance with Section 11-13. Determinations by the hearing officer regarding revocation shall constitute final orders of the City.
- C. *Period of ineligibility following revocation.* Upon revocation of a permit, a renewed short-term rental permit will not be issued for a period of 12 months and the unit cannot be used for short-term rentals until such permit is obtained.

#### **Sec. 11-12. Service of Notices.**

Any notice issued pursuant to this chapter shall be considered served as of the date of the earliest of any of the following events:

- A. The posting of the notice on or adjacent to the premises, in conjunction with the mailing of the notice to the responsible party's last known address by first-class mail;
- B. The sending of the notice by email to an email address designated on a short-term rental permit for the property;
- C. Personal delivery of the notice to the responsible party; or
- D. The responsible party's receipt of the notice by certified U.S. mail, as indicated in a notification of receipt.

**Sec. 11-13. Permit Revocation and Permit-Ineligibility Hearings.**

The following standards and procedures shall apply in any permit revocation or permit-ineligibility hearing conducted under this chapter:

- A. *Opportunity to be heard.* Property owners and local agents shall be provided with the opportunity for a hearing during which they may be represented by counsel, present witnesses, and cross-examine witnesses. Hearings shall be scheduled with reasonable promptness, provided that the property owner(s) and local agent shall be given at least 14 days after service of process to prepare for the hearing.
- B. *Evidence.* The hearing officer may admit and give probative effect to evidence of any type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Irrelevant, immaterial, or unduly repetitious evidence may be excluded. Effect shall be given to the rules of privilege recognized by law. Objections to offers of evidence may be made and shall be noted in the record. Subject to these requirements, the hearing officer, for the purpose of expediting hearings and when the interests of the parties will not be substantially prejudiced thereby, may provide in an administrative hearing or by rule for submission of all or part of the evidence in written form.
- C. *Burden of Proof.* The City shall have the burden of establishing that the grounds for permit revocation, as described in Section 11-10, by a preponderance of the evidence. A decision and an order shall not be made except upon consideration of the record as a whole or a portion of the record as may be cited by any party to the proceeding and as supported by and in accordance with the competent, material, and substantial evidence.
- D. *Appeals.* Final determinations of the hearing officer shall be subject to judicial review in accordance with Article VI, Section 28 of the Michigan Constitution in an appeal taken pursuant to Michigan Court Rule 7.123.

**Sec. 11-14. Implementation of R-1 Zoning Cap.**

- A. *Ceasing the issuance of new permits.* Upon the effective date of Section 6-5 of the Zoning Code, which caps the total number of short-term rentals in the City's R-1 zoning district at existing levels, the City shall not issue any new short-term rental permits for parcels in the R-1 district (even if the total number of permits in existence drops below the cap established in Section 6-5). The City shall, however, continue to issue renewed short-term rental permits for properties in the R-1 district as provided in Section 11-3 above.
- B. *Future amendments to allow new permits.* The City reserves the right to amend this section in the future in order to provide a procedural mechanism for issuing new short-term rental permits for parcels in the R-1 district once the total number of permits in existence drops below the cap established in Section 6-5 of the Zoning Ordinance. However, the City shall have no obligation to do so.

Section 2. Publication and Effective Date. The City Clerk shall cause this ordinance or a summary thereof to be published in a newspaper of general circulation in the City, and the ordinance shall be effective 20 days after enactment or upon publication, whichever is later.

YEAS: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ABSENT: \_\_\_\_\_

**CERTIFICATION**

This is a true and complete copy of Ordinance No. \_\_\_\_ adopted at a regular meeting of the New Buffalo City Council held on \_\_\_\_\_, 2021.

\_\_\_\_\_  
John Humphrey, Mayor

\_\_\_\_\_  
Ann M. Fidler, Clerk

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