Agenda No. O-8

CITY OF BAYONNE
COUNTY OF HUDSON
STATE OF NEW JERSEY

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BAYONNE AMENDING AND SUPPLEMENTING THE REVISED GENERAL ORDINANCES, CHAPTER 33, PLANNING AND DEVELOPMENT REGULATIONS, SO AS TO REPEAL AND REPLACE ARTICLE XX, SHORT TERM RENTALS

WHEREAS, short-term rentals involve transient occupancy within properties and neighborhoods principally devoted to residential uses and therefore present regulatory and enforcement considerations different from those ordinarily associated with long-term residential occupancy; and

WHEREAS, the City of Bayonne presently regulates short-term rentals pursuant to Chapter 33, Article XX of the Revised General Ordinances of the City of Bayonne; and

WHEREAS, Article XX was established by Ordinance O-24-12 and subsequently amended by Ordinance O-24-37; and

WHEREAS, Article XX presently permits certain short-term rentals subject to eligibility requirements, permitting, inspections, operational restrictions, and enforcement requirements administered by various departments and officials of the City; and

WHEREAS, the existing ordinance requires the owner or operator of a short-term rental property to obtain a short-term rental permit before renting or advertising a property for short-term rental occupancy; and

WHEREAS, short-term rental permits issued under the existing ordinance are valid for a period of one year and thereafter require annual renewal; and

WHEREAS, any existing permits issued under the existing Ordinance are nontransferable and automatically expire upon a change in ownership of the subject property; and

WHEREAS, the Council has had an opportunity since adoption of the existing regulations to evaluate the operation and administration of the City's short-term rental program and its effects upon residential neighborhoods and municipal services; and

WHEREAS, the Council recognizes, as has been confirmed during the evaluation of the operation and administration of the City’s short-term rental

program, that short-term rental activity may result in complaints and concerns relating to excessive noise, parking, refuse and recycling, overcrowding, property maintenance, neighborhood disturbances, public safety and other quality-of-life issues; and

WHEREAS, the Council has further observed and recognizes that the operation and regulation of short-term rentals may require responses, inspections, investigations and enforcement activity by multiple municipal departments and personnel, including, as applicable, the Police Department, Fire Department, Division of Zoning, Construction Code officials, property-maintenance personnel and other municipal employees; and

WHEREAS, the Council, based upon its evaluation, finds that the effective regulation of short-term rentals by the City requires a coordinated municipal system capable of receiving and tracking complaints, identifying licensed properties, monitoring compliance, conducting inspections, communicating among municipal departments, maintaining appropriate records and taking timely enforcement action where necessary; and

WHEREAS, the Council has determined that an effective regulatory program should clearly designate the municipal department, division or official having primary responsibility for administration of the program and should provide appropriate procedures, staffing, resources and interdepartmental coordination for enforcement; and

WHEREAS, the City's existing regulatory framework providing for the regulating of short-term rentals does not presently provide the comprehensive administrative and enforcement structure that the Council believes should be in place before the City continues or expands the existing short-term rental permitting program; and

WHEREAS, the Council has therefore determined that continuation of the existing short-term rental permitting program, including the issuance of any additional new permits and the renewal of existing permits previously issued, is not appropriate under the present administrative structure; and

WHEREAS, the Council finds that it is in the public interest to discontinue the present short-term rental permitting program while the City evaluates and develops an appropriate administrative and enforcement structure for addressing short-term rental activity; and

WHEREAS, following the establishment and evaluation of such administrative and enforcement mechanisms, the Council may consider whether adoption of a new comprehensive ordinance regulating short-term rentals would be appropriate and in the public interest; and

WHEREAS, nothing contained in this Ordinance shall obligate the Municipal Council to enact a future short-term rental ordinance or create any right or expectation that short-term rentals will again be authorized within the City; and

WHEREAS, rather than terminate existing valid permits before their stated expiration dates, the Council has determined to proceed conservatively and prospectively by allowing existing valid permits to remain in effect through their existing one year terms, subject to all existing regulations, while prohibiting the issuance of any new permits and/or renewals for any existing valid permits following the expiration of their existing one year term; and

WHEREAS, the Council finds that this approach appropriately balances the City's responsibility to protect the public health, safety and welfare with the interests of persons presently holding such permits previously issued by the City;

WHEREAS, the Council further finds that the effectiveness of any short-term rental regulatory program depends upon the City having clear authority and practical mechanisms to identify and promptly address properties that operate or advertise as short-term rentals without holding a valid permit issued by the City; and

WHEREAS, the Council therefore intends that, during the phase-out of the existing program and until such time, if ever, that a new short-term rental ordinance is adopted, the City retain and strengthen its authority to investigate, cite and prosecute unpermitted short-term rental activity and to require the immediate cessation of such unlawful use; and

NOW, THEREFORE, BE IT ORDAINED by the Municipal Council of the City of Bayonne, County of Hudson, State of New Jersey, as follows:

SECTION 1. Chapter 33, Article XX, entitled “Short Term Rentals” is hereby repealed and replaced in its entirety as follows:

§33-20. Short-Term Rentals.

§33-20.1 Authority and Purpose; Definitions.

A. Authority. In accordance with New Jersey law, a municipality may make and enforce within its limits, all ordinances and regulations not in conflict with general laws, as it may deem necessary and proper for the good government, order and protection of persons and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants. The City of Bayonne hereby adopts the within Ordinance in accordance with said authority.

B. The aforementioned recitals are incorporated herein as though fully set forth herein.

C. The following terms shall have the meanings indicated below:

a. "Owner" shall mean any person alone or jointly or severally with others:

i. Who has legal or equitable title to any premises, with or without accompanying actual possession thereof:

ii. Who has equitable title and is either in actual possession or collects rents therefrom:

iii. Who, as executor, executrix, trustee, guardian or receiver of an estate or as mortgagee or as vendee in possession, either by virtue of a court order or by agreement or voluntary surrender of the premises by the person holding the legal title, or as collector of rents, shall have charge, care or control of any dwelling, boardinghouse or lodging' house; or any such person thus representing the person holding the equitable or legal title, all of whom under this chapter shall be bound to comply with the provisions hereof and any rules and regulations adopted pursuant thereto to the same extent as if they were the persons holding the legal or equitable title.

b. "Property" shall mean a parcel of real property located within the boundaries of the City of Bayonne, Hudson County, New Jersey.

c. "Responsible party" shall mean the short-term rental property owner or a person (property manager) designated by the owner to be called upon and be responsible at all times during the period of a short-term rental and to answer for the maintenance of the property, or the conduct and acts of occupants of the short-term rental property, and, in the case of the property manager, to accept service of legal process on behalf of the owner of the short-term rental property.

d. "Short-term rental" or "STR" shall mean the accessory use of a dwelling unit as defined in this section for occupancy by someone other than the unit's owner or permanent resident for a period of sixty day (60) or fewer consecutive days, which dwelling unit is regularly used and kept open as such for the lodging of quests, and which is advertised or held out to the public as a place regularly rented to transient occupants as defined in this section.

e. "Short-term rental property" or "STRP" shall mean a residential dwelling unit as defined in this section, that is used and/or advertised for rent as a short-term rental for transient occupants as guests, as those terms are defined in this section.

f. "Transient occupant" shall mean any person or a guest or invitee of such person, who, in exchange for compensation, occupies or is in

actual or apparent control or possession of residential property, which is either: (1) registered as a short-term rental property, or (2) satisfies the definition of a short-term rental property, as such term is defined in this section. It shall be a rebuttable presumption that any person who holds themselves out as being an occupant or guest of an occupant of the short-term rental is a transient occupant.

§33-20.2. Discontinuation of new short-term rental permits.

Notwithstanding any provision of any other Ordinance to the contrary, including but not limited to the previously existing and now repeated terms of Chapter 33, Article XX, upon the effective date of this Ordinance:

A. The City shall cease accepting applications for the issuance of a new short-term rental permit.

B. No new short-term rental permit shall be issued by the City.

C. No property that does not possess a valid and unexpired short-term rental permit on the effective date of this Ordinance shall thereafter commence operation as a short-term rental.

D. No owner, operator, or other person shall advertise, list, offer, or otherwise hold out a property for short-term rental occupancy unless the property is operating pursuant to a valid and unexpired permit preserved pursuant to §33-20.3.

§33.20.3. Existing valid permits.

Following the effective date of this Ordinance:

A. A short-term rental permit that was previously validly issued by the City and remains valid and unexpired on the effective date of this Ordinance may continue in effect until the expiration date stated on that permit.

B. Nothing contained herein shall extend, enlarge or modify the existing term of such permit under §33-20.3(A).

C. Each existing permit shall remain subject to all requirements, limitations, restrictions, inspections, enforcement provisions and penalties contained in Chapter 33, Article XX prior to the effective date of this Ordinance and all other applicable laws and regulations.

D. An existing permit shall terminate prior to its stated expiration date upon the occurrence of any event that would cause expiration, suspension, revocation or termination under Chapter 33, Article XX prior to the effective date of this Ordinance or other applicable law.

§33.20.4. No renewal, extension or reissuance.

Following the effective date of this Ordinance:

A. No existing short-term rental permit shall be renewed following the effective date of this Ordinance.

B. No existing permit shall be extended beyond its presently stated expiration date.

C. No permit shall be reissued or replaced following expiration, revocation or other termination.

D. The acceptance of reservations, execution of rental agreements, expenditure of funds, payment of fees or other commitments by the permit holder shall not create any right to renewal, extension or continued operation beyond the existing permit term.

§33-20.5. Nontransferability and change of ownership.

A. All existing provisions of Chapter 33, Article XX concerning the nontransferability of short-term rental permits and expiration upon a change in ownership shall remain in full force and effect.

B. No existing permit that was previously validly issued may be transferred or assigned or used by any person or entity, other than the owner to whom it is issued, or at any property location or dwelling unit other than the property for which it is issued.

C. Upon a change in ownership, the permit shall expire as provided by existing law.

D. No subsequent owner shall be entitled to receive a new or replacement short-term rental permit.

§33-20.6. Pending applications.

A. Only a short-term rental permit issued prior to the effective date of this Ordinance shall qualify for continued operation pursuant to the terms of §33-20.3 of this Ordinance.

B. The filing or pendency of an application prior to the effective date of this Ordinance shall not create an entitlement to issuance of a permit after the effective date of this Ordinance.

C. Any application for which a permit has not been issued as of the effective date shall be administratively closed upon the effective date of this Ordinance.

D. The City may refund an application or registration fee for an application administratively closed solely as a consequence of this Ordinance.

§33-20.7. Continued regulation and enforcement of existing permits.

A. During the remaining term of each valid existing permit, all provisions of Chapter 33, Article XX shall remain applicable and enforceable by the City as to each valid existing permit, including provisions concerning:

a. Inspections;
b. Fire and life safety;
c. Construction and property maintenance;
d. Insurance;
e. Responsible parties and agents;
f. Maximum occupancy;
g. Parking;
h. Noise and nuisance conduct;
i. Garbage and recycling;
j. Advertising and listings;
k. Recordkeeping;
l. Suspension and revocation;
m. Enforcement; and
n. Fines and penalties.

B. Nothing in this Ordinance shall restrict the authority of the City to investigate complaints or enforce any applicable municipal or State law against an existing short-term rental.

§33-20.8. Cessation of use following permit expiration.

A. Upon expiration, revocation, or other termination of a previously validly issued existing short-term rental permit, no owner, operator, responsible party, agent, tenant, or other person or entity shall:

a. Operate the property or any portion thereof as a short-term rental;
b. Rent or offer the property for short-term rental occupancy;
c. Advertise, list or market the property for short-term rental occupancy;
d. Cause or permit a third-party booking platform or other intermediary to offer the property for short-term rental occupancy; or
e. Enter into or honor an agreement for short-term rental occupancy occurring after expiration or termination of the permit.

B. Except for a property operating pursuant to a valid and unexpired permit preserved under this Ordinance, a short-term rental as defined in §33-20.1 shall not be permitted within the City.

§33-20.9. Unpermitted short-term rentals; interim enforcement.

A. Following the effective date of this Ordinance, and following the expiration, revocation, termination or other cessation of any short-term rental permit, it shall be unlawful for any owner, operator, tenant, agent, responsible party, property manager, or other person or entity to operate, maintain, advertise, list, offer, facilitate, or permit the property, or any portion thereof, to be used as a short-term rental without a valid and unexpired permit.

B. The operation, maintenance, advertisement, listing, offering, or facilitation of a short-term rental without a valid and unexpired permit shall constitute a violation of Chapter 33, Article XX, and this Ordinance. Each day such violation exists or continues constitutes a separate offense.

C. The City may enforce this Article against the property owner, operator, short-term rental agent, responsible party, tenant, property manager, or any other person or entity who participates in, facilitates, authorizes or permits the unlawful short-term rental use.

D. Evidence of unpermitted short-term rental activity may include, without limitation:

1. Advertisements or listings appearing on Airbnb, Vrbo, Booking.com or any other internet-based booking or rental platform;

2. Online advertisements, social-media advertisements, multiple-listing-service advertisements or other marketing materials;

3. Booking confirmations, rental agreements, payment records, guest communications or occupancy records;

4. Statements of occupants, neighbors, owners, agents, responsible parties or other persons with knowledge;

5. Observations, reports or records of City officials or employees;

6. Police, Fire, Construction, Zoning, Property Maintenance or other municipal records;

7. Evidence of repeated or transient occupancy of the premises; and

8. Any other competent evidence demonstrating that the property is being offered, maintained or operated for short-term rental occupancy.

E. The existence of an advertisement or listing offering a property for short-term rental occupancy during a period when no valid and unexpired permit exists may constitute evidence that the property is being offered or operated as an unlawful short-term rental, subject to all applicable rules of evidence and due process.

F. Upon determining that a property is being operated or advertised as a short-term rental without a valid permit, the designated enforcement official may issue a notice of violation and/or summons and may direct the owner, operator, agent, responsible party or other person to immediately cease the unlawful short-term rental use and remove all advertisements and listings relating thereto.

G. Violations shall be subject to the penalties set forth in § 33-20.11 and any other remedies available to the City by law, including appropriate injunctive relief where authorized.

H. Nothing contained herein shall limit the City's authority to enforce any applicable zoning, construction, building, fire, property-maintenance, health, noise, parking, nuisance or other law or ordinance independently of this Article.

I. Until such time as the Municipal Council adopts a subsequent ordinance establishing a different administrative or enforcement structure, the Division of Zoning shall remain the primary administrative enforcement agency for Chapter 33, Article XX and this Ordinance. The Division of Zoning may coordinate enforcement with the Police Department, Fire Department, Construction Code officials, Property Maintenance, the Law Department and any other appropriate department or official.

J. Nothing contained herein shall prevent any municipal department, division or official from exercising enforcement authority otherwise within its jurisdiction.

§33-20.10. Reservations beyond permit expiration.

A. Following the effective date of this Ordinance, the holder of an existing permit shall not accept a new reservation providing for occupancy after the stated expiration date of the permit.
B. No reservation, agreement, or contractual commitment shall extend the term of a permit or authorize short-term rental occupancy after expiration.

§33-20.11 Violations and penalties.

A. A violation of any provision of this article may subject the STRP owner, transient occupant(s), the short-term property rental agent, and the responsible party or their agents to fines assessed by the Court up to $1,250 per violation, but not less than $500 per violation per day that the violation exists.

§33-20.12. Other lawfully established transient uses.

Nothing herein shall be construed to prohibit a hotel, motel or other transient lodging use that is separately and lawfully established under the City's Planning and Development Regulations and applicable State law and that does not constitute a short-term rental as defined by §33-20.1.

§33-20.13. Development of administrative and enforcement framework.

The Business Administrator, in consultation with the Law Department and such other departments, divisions and officials as the Business Administrator deems appropriate, is authorized to evaluate and develop recommendations concerning an appropriate municipal administrative and enforcement framework for short-term rentals. During the period in which the City evaluates and develops any future comprehensive administrative and enforcement structure, the existing enforcement authority of the Division of Zoning and all other municipal departments and officials shall remain fully effective with respect to unlawful or unpermitted short-term rental activity. The evaluation may include, without limitation:

A. Identification of the department, division or official that should have primary responsibility for administration and enforcement;

B. Appropriate staffing and personnel requirements;

C. Procedures for permit application review;

D. Inspection requirements and coordination among Zoning, Construction, Fire, Police and other appropriate departments;

E. Creation of a centralized registry or database of regulated properties;

F. Procedures for receiving, recording, investigating and tracking resident complaints;

G. Procedures for identifying and addressing unlicensed short-term rental activity;

H. Procedures for monitoring internet and booking-platform advertisements;

I. Standards governing responsible parties and twenty-four-hour emergency contacts;

J. Procedures for responding to noise, parking, overcrowding, garbage, property-maintenance and other quality-of-life complaints;

K. Interdepartmental communication and referral procedures;

L. Enforcement procedures, including notices of violation, summonses, suspension and revocation;

M. Appropriate application, registration, inspection and renewal fees necessary to reasonably support administration and enforcement;

N. Recordkeeping and reporting requirements;

O. Appropriate technology or third-party services that may assist the City in identifying and regulating short-term rentals; and

P. Such additional matters as may be necessary to create an effective and enforceable regulatory program.

§33-20.14. Future short-term rental legislation.

After evaluating the matters identified in §33-20.13, the Administration may submit recommendations to the Municipal Council on whether to consider a new comprehensive short-term rental ordinance.

Any future authorization of short-term rentals shall require the Municipal Council to adopt a new ordinance in accordance with all applicable statutory procedures.

Nothing contained herein:

A. Requires the Administration to recommend authorization of short-term rentals;

B. Requires the Municipal Council to adopt future short-term rental legislation;

C. Creates a right in any person to obtain a future short-term rental permit;

D. Creates a right to continuation of a prior permit; or

E. Constitutes a representation that short-term rentals will be permitted in the future.

Until such time, if ever, that a subsequent ordinance affirmatively authorizes short-term rentals, short-term rentals shall remain prohibited except for operation pursuant to an existing valid and unexpired permit preserved by this Ordinance.

§33-20.15. Existing violations; savings clause.

A. Nothing contained in this Ordinance shall:

a. Legalize any use that was unlawful before its effective date;
b. Excuse, cure or abate any existing violation;
c. Affect any summons, notice of violation, enforcement action, suspension, revocation or judicial proceeding previously commenced;
d. Eliminate any penalty or liability previously incurred; or

e. Restrict the City's authority to enforce its zoning, construction, fire, property-maintenance, health, safety or other applicable laws.

B. Any existing enforcement matter may continue to conclusion notwithstanding the adoption of this Ordinance.

§33-20.16. Planning Board referral.

Prior to final adoption, this Ordinance shall be referred to the Planning Board of the City of Bayonne pursuant to N.J.S.A. 40:55D-26 and all other applicable provisions of the Municipal Land Use Law.

The Planning Board shall review the proposed amendment and transmit its report to the Municipal Council within the period prescribed by law, including identifying any provisions inconsistent with the City's Master Plan and providing such recommendations as the Planning Board deems appropriate.

The Municipal Council shall review and consider the Planning Board's report before final adoption and shall proceed in accordance with the Municipal Land Use Law regarding any recommendation or identified inconsistency.

§33-20.17. Legislative findings following planning board review.

Following receipt of the Planning Board's report, the Municipal Council may supplement the legislative findings contained herein concerning consistency with the City's Master Plan and the City's land-use, housing, neighborhood-stability, public-safety and general-welfare objectives.

SECTION 2. SEVERABILITY. If any section, subsection, paragraph, sentence, clause, phrase or provision of this Ordinance is declared unconstitutional, invalid or unenforceable by a court of competent jurisdiction, such determination shall not affect the validity of the remaining portions of this Ordinance.

SECTION 3. REPEALER. All ordinances or portions of ordinances inconsistent with this Ordinance are repealed to the extent of such inconsistency, except where as expressly set forth herein, those previously existing provisions of Chapter 33, Article XX necessary to regulate and enforce existing permits during their remaining terms and to define and enforce the prohibition against unauthorized short-term rentals shall remain in full force and effect and enforceable by the City.

SECTION 4. CODIFICATION.

The City Clerk, in consultation with the City’s legal counsel and the City's codification service, is authorized to make non-substantive changes in numbering, lettering, cross-references and formatting necessary to properly

incorporate this Ordinance into the Revised General Ordinances of the City of Bayonne.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect following final passage, publication and compliance with all requirements of applicable law.