

ORDINANCE 2021-11

**AN ORDINANCE OF THE BOROUGH OF ISLAND HEIGHTS,
COUNTY OF OCEAN, STATE OF NEW JERSEY, AMENDING
CHAPTER 32 - SECTION 32-4 OF THE CODE OF THE
BOROUGH OF ISLAND HEIGHTS, ENTITLED
“RESIDENTIAL DISTRICTS” AND CHAPTER 4 OF THE
CODE OF THE BOROUGH OF ISLAND HEIGHTS,
ENTITLED “POLICE REGULATIONS” CREATING NEW
SECTION 4-19 TO BE ENTITLED “SHORT TERM RENTALS”**

WHEREAS, the New Jersey Legislature has, pursuant to N.J.S.A. 40:52-1(d) and (n), specifically authorized municipal corporations, including the Borough of Island Heights, to regulate “furnished and unfurnished rented housing or living units and all other places and buildings used for sleeping and lodging purposes and the occupancy thereof” and the “rental of real property for a term of less than one hundred seventy-five (175) consecutive days for residential purposes by a person having a permanent place of residence elsewhere”; and

WHEREAS, in recent years, there has arisen a proliferation of interest and other media advertising often on websites dedicated to the rental of Dwelling Units for short terms and for a period of less than thirty (30) days (“Short Term Rental”); and

WHEREAS, the Borough’s experience, as well as common experiences, dictates the conclusion that Short Term Rentals frequently result in public nuisance, noise complaints, sanitation issues, overcrowding and illegal parking within the residential neighborhoods of the Borough, and essentially convert residential dwelling units into illegal de-facto hotels, motels, boarding houses and other commercial enterprises in violation of the Borough’s Zoning and other Codes as well as state statutes; and

WHEREAS, the Borough wishes to deter the cyber-social phenomenon of any Owner renting his/her residential Dwelling Unit(s) on various websites as well as the listing of Short Term Rental(s) by website businesses, of any Dwelling Unit(s), that constitutes an illegal business operating in violation of the Borough’s Zoning Code and other public nuisance ordinances; and

WHEREAS, the Borough additionally wishes to prevent overcrowding which can result when the Borough’s occupancy limits are exceeded; and

WHEREAS, problems also frequently associated with such Short Term Rental(s) can result when the Borough’s overcrowding, excessive noise, unruly behavior, obscene language, fighting, littering, parking of vehicles on lawns, public urination, sanitation issues, poor maintenance of the property and grounds, and violation of trash collection ordinances; and

WHEREAS, pursuant to N.J.S.A. 40:48-1 et seq., the governing body of every municipality may make, amend, repeal and enforce such ordinances, regulations, rules and by-laws not contrary to the laws of this state or the United States, as it may deem necessary and proper for the good government, order and protections of persons and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants, and as may be necessary to carry into effect the powers and duties conferred and imposed by law; and

WHEREAS, the Borough of Island Heights is a body politic and corporate in law pursuant to N.J.S.A. 40A:60-1 et seq.,

NOW THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Island Heights, County of Ocean, State of New Jersey:

SECTION I.

A. The Borough Code of Island Heights, Chapter 32 is hereby amended and supplemented under § 32-4 titled "Permitted Uses," to read as follows:

- a. In the Medium Density and Low Density Residential Districts, no building or structure shall be erected, enlarged, altered or used for any purpose or purposes other than one (1) or more of the following:
 1. A dwelling house for one (1) family only, or one (1) housekeeping unit only, on one (1) lot; provided, however, that nothing herein contained shall prevent the use of a minor part of the dwelling house for an office or studio by a person or persons residing in the dwelling house or the display on the premises of one (1) small announcement sign showing the name or names of the person or persons using such office or studio, and the profession or business conducted in connection therewith.
- b. Public buildings, parks, playgrounds, schools and other municipal uses.
- c. Tourist/Guest House having transient tourist/guest rooming accommodations providing that the structure has no separate kitchen facilities and shall provide a minimum of three (3) and a maximum of five (5) guest rooms. The owner shall have his/her place of residence in the same house and off-street parking shall be provided per Subsection 30-1.7.
- d. Non-Binding Referendum by Mail Vote Prior to Amendment of Permitted Uses in the Medium Density Residential District.
 1. In the Medium Density Residential District, no ordinance shall be enacted to permit any building or structure to be erected, enlarged, altered or used for any purpose or purposes other than one (1) or more of the purpose or purposes listed in Subsections a, b or c of the existing ordinance, without first being subject to

a non-binding referendum, which shall take place following the first reading of the ordinance and prior to final adoption.

2. Such vote shall be conducted by mail ballot to all registered voters of the Borough of Island Heights, which shall be mailed fifteen (15) days subsequent to the first reading of the ordinance. Said ballots shall then be returned to the Borough Clerk within thirty (30) days of the mailing. The ballots shall be opened on the thirtieth day, checked for valid signatures by the Borough Clerk and the votes shall be recorded. The results of the vote shall be announced at the next subsequent Council Meeting and shall be published according to customary means in a newspaper of local circulation.

- B. The Borough Code of Island Heights, Chapter 4 is hereby amended and supplemented so as to create new § 4-19 to be titled "Short Term Rentals" to be read as follows:

Section 4-19.1 Purpose.

It is the purpose of this section to regulate short-term rental uses in order to help preserve housing for long-term tenants and to minimize any potential deleterious effects of short-term rental properties on other properties in the surrounding neighborhoods in which they are located.

Section 4-19.2. Definitions.

As used in this section, the following terms shall have the meanings indicated:

ADVERTISE or ADVERTISING — Any form of solicitation, promotion, and communication for marketing, used to solicit, encourage, persuade, or manipulate viewers, readers, or listeners into contracting for goods and/or services in violation of this Ordinance, as same may be viewed through various media including but not limited to, newspapers, magazines, flyers, handbills, pamphlets, commercials, radio, direct mail, internet websites, or text or other electronic messages for the purpose of establishing occupancies or uses of rental property, for Consideration, which are prohibited by this Ordinance.

CONSIDERATION — Soliciting, charging, demanding, receiving or accepting any legally recognized form of consideration including a promise or benefit, a quid-pro-quo, rent, fees, other form of payment, or thing of value.

DWELLING UNIT — Any structure, or portion thereof, whether furnished or unfurnished, which is occupied in whole or in part, or intended, arranged, or designed to be occupied, for sleeping, dwelling, cooking, gathering and/or entertaining, as a residential occupancy, by one or more persons. This definition includes an apartment, condominium, building, cooperative, converted space, or portions thereof, that is offered to use, made available for use, or is used for accommodations, lodging, cooking, sleeping, gathering and/or entertaining of Occupants and/or guest(s) for Consideration, for a period of thirty (30) days or less.

HOUSEKEEPING UNIT — Constitutes a family-type situation, involving one or more persons, living together that exhibit the kind of stability, permanency and functional lifestyle equivalent to that of a traditional family unit, as further described in the applicable reported and unreported decisions of the New Jersey Superior Court.

OCCUPANT — Any individual using, inhabiting, living, gathering, entertaining, being entertained as a guest, or sleeping in a Dwelling Unit, or portion thereof, or having other permission or possessory right(s) within a Dwelling Unit.

OWNER — Any person(s) or entity(ies), association, limited liability company, corporation, or partnership, or any combination, who legally use, possess, own, lease, sub-lease or license (including an operator, principal, shareholder, director, agent or employee, individually or collectively) that has charge, care, control, or participates in the expenses and/or profit of a Dwelling Unit pursuant to a written or unwritten agreement, rental, lease, license, use, occupancy agreement or any other agreement.

PERSON — An individual, firm, corporation, association, partnership, limited liability company, association, entity, and any person(s) and/or entity(ies) acting in concert or any combination therewith.

RESIDENTIAL OCCUPANCY — The use of a Dwelling Unit by an Occupant(s).

Section 4-19.3. Short Term Rental Property Prohibited Uses.

- a. Notwithstanding anything to the contrary contained in the Borough Code, it shall be unlawful for an Owner, lessor, sub-lessor, or any other person(s) or entity(ies) with possessory or use right(s) in a Dwelling Unit, their principals, partner or shareholders, or their agents, employees, representatives and other person(s) or entity(ies), acting in concert or a combination thereof, to receive or obtain actual or anticipated consideration for soliciting, advertising, offering and/or permitting, allowing or failing to discontinue the use or occupancy of any Dwelling unit, as defined herein, for a period of less than thirty (30) days.

1. A Dwelling Unit may be occupied by residential tenants providing the rental term is not less than 30 days.
 2. A Dwelling Unit occupied by a residential tenant must be registered with the Borough of Island Heights and receive a registration number. Any and all advertising or offers to rent a dwelling house must include the Borough-issued registration number.
 3. Nothing in this Ordinance will prevent formation of an otherwise lawful occupancy of a Dwelling Unit for a rental period thirty (30) days or more.
- b. A Tourist/Guest House may be occupied by transient tourist/guest rooming accommodations for less than a thirty-day period, provided the following:
1. All short-term rentals consisting of less than a thirty-day period require the owner to maintain residential occupancy of the tourist/guest house, and off-street parking shall be provided per Subsection 30-1.7.
 2. Residences used for tourist/guest house purposes must be registered with the Borough of Island Heights and receive a registration number. Any and all advertising or offers to rent a tourist/guest house must include the Borough issued registration number.
 3. Use of any residence for tourist/guest house purposes is limited to May 1 through September 30 annually.
- c. The residential occupancy of an otherwise lawful and lawfully occupied Dwelling Unit for a period of thirty (30) days or less by any person who is a member of the Housekeeping Unit of the Owner, without Consideration, such as house guests, is permitted.

Section 4-19.4. Advertising Prohibited.

- a. It shall be unlawful to advertise, solicit or promote by any means actions in violation of this Ordinance.

Section 4-19.5. Enforcement; Violations and Penalties.

- a. The provisions of this Ordinance shall be enforced by the Police Chief or other Borough Police Officer, the Code Enforcement Officer, the Building Code/Construction Official, Fire Official, Health Department, other Sub-Code or Code Official, as their jurisdiction may arise, including legal counsel for the Borough or other persons designated by the Borough Council, to issue municipal infractions directing alleged violators of this Ordinance to appear in court or to file civil complaints.

- b. A violation of this Ordinance is hereby declared to be a public nuisance, a nuisance per se, and is hereby further found and declared to be offensive to the public health, safety and welfare.
- c. Any person found to have violated any provision of this Ordinance, without regard to intent or knowledge, shall be liable to the penalty stated in Chapter I, Section 1-5. Each day of such violation shall be a new and separate violation of this Ordinance.
- d. The penalty imposed herein shall be in addition to any and all other remedies that may accrue under any other law, including, but not limited to, eviction proceedings and/or injunction, reasonable attorney's fees or other fees and costs, in the Borough's Municipal Court or the Superior Court of New Jersey in the vicinage of Ocean County, or in such other Court or tribunal of competent jurisdiction, by either summary disposition or by zoning or construction code municipal proceeding.

SECTION II.

All ordinances or parts thereof, which are inconsistent with the provisions of this Ordinance, are hereby repealed to the extent of their inconsistencies.


SECTION III.

In the event any section, part or provision of this Ordinance shall be held unconstitutional or invalid by any Court, such holding shall not affect the validity of this Ordinance or any remaining part of this Ordinance other than the part held unconstitutional or invalid.

SECTION IV.

This Ordinance shall take effect immediately upon its final passage and publication as required by law.

The foregoing Ordinance was duly adopted by the Mayor and Council of the Borough of Island Heights on the 9th day of November, 2021.



SEAN ASAY
Borough Clerk