



TOWN COUNCIL
Committee to Review Zoning and Permitting Regulations
Selectmen's Conference Room

Thursday February 06, 2020 – 5:30pm

Councilors:

Councilor Paula K. Schnepf (Chair)
Councilor Jennifer Cullum
Councilor Gordon Starr
Councilor Kristine Clark
Councilor Britt Beedenbender

MEETING MINUTES

PRESENT: Councilor Paula K. Schnepf; Councilor Jennifer Cullum; Councilor Gordon Starr; Councilor Kristine Clark; **ALSO IN ATTENDANCE:** Elizabeth Jenkins, Director, Planning and Development; Paul Wackrow, Assistant Planner; Gloria McPherson, Planning and Development; Brian Florence, Building Commissioner; Assistant Town Manager, Andrew Clyburn; **ABSENT:** Councilor Britt Beedenbender

Chair of Committee opened the meeting at 6pm making the following announcement: In Accordance with MGL, Chapter 30A, Section 20, I must inquire whether anyone is recording this meeting and if so, to please make your presence known. Chair of Committee also made the comment that Public Comment was moved to the end of the meeting to allow for questions after the presentation is done, also keeping in mind that the meeting must end no later than 6:45 to be able to start the Town Council Meeting timely and to allow for adequate public comment if needed.

There has been a lot of effort to get a sense of what the public feels regarding short term rentals in our area and the Chair would like to take notice of the previous Chair Councilor Jennifer Cullum and how important it was to get all the information gathered from the surveys and also the Civic Associations and their concerns as well, and the information gathered in that 4 months, that there is sense that we want to maintain seasonal rentals in our area but at the same time get a process in place to regulate the short term rentals, and to make that process transparent to the public, and that all the neighborhoods feel that their concerns were heard, and a process in which the complaints of these types of rentals can be heard. We also looked at the concerns of the Civic Associations; Councilor Schnepf put that information together and found three topic of concern; Staff has worked diligently to come up with short term regulations and meets all the requirements;



1. Health and Safety
2. Neighborhood Character
3. Nuisances

Assistant Town Manager was introduced and stated that he and the Town Staff that have worked on this are here to support this Committee in whatever the recommendations may be from this Committee to the full Council for consideration. Assistant Town Manager mentioned there were a lot of suggestions that came through on this from various outlets and we will support this Committee with whatever you direct us to do. Short Term Rentals have a large platform in which they operate under and it is all new to us and several other communities in Massachusetts. Short Term Rentals currently are not prohibited in the town, but are in every village in Barnstable. Short Term Rentals were never envisioned when we did our Zoning, but are operating everywhere in Barnstable. We believe we should license short term rental owners and do inspections on these rentals, and develop a Town Ordinance to regulate parking and notification of abutters; Inspectional Services also needs this as a tool in order to enforce the regulations. It is important to understand that Zoning deals with land use not ownership, not owner occupied or owner of land, we can't allow and at this point it is clear that we cannot simply allow short term rentals across the board. Vacation rentals have been a regular use here, so when we develop regulations we need to keep this in mind.

The following was introduced by Elizabeth Jenkins, Director of Planning and Development it is a working document in DRAFT form for discussion purposes only. The Committee members looked at each section and raised areas of concern wanting to know how many rentals we currently have in Barnstable, who owns them, are they privately owned, company owned. Assistant Town Manager Andrew Clyburn stated that there are currently 600 short term rentals listed in Barnstable that have registered or are advertising. These rentals are in every village in the town. Ms. Jenkins also mentioned that Barnstable currently has a housing shortage as do many communities around the Commonwealth. There are some things we can do as a community to address this issue of Short Term Rentals:

1. Consider the limiting of licenses given out Town wide
2. Limit the number of licenses one person can hold
3. Limit the number of days stay in the Growth Incentive Zone
4. Occupancy looked at per rental (overcrowding)
5. Consider 1 week minimum stay outside the Growth Incentive Zone

The definition presented to the Committee regarding Short Term Rentals is: anything rented less than 31 days is considered a short term rental. Ms. Jenkins mentioned that this was just a DRAFT document in the works; it is not the final document and is still in working progress. The town may also want to look at our Accessory Apartment program as well to make sure that anything we put in place does not cut that program short, we may need to look at our zoning for more density housing, and possibly crafting regulations for those individuals running a business in a business zone vs regulations in a residential neighborhood, so there are options we can do with this document.

Working Draft for Discussion Purposes Only

SHORT TERM RENTAL PROPERTIES

[Introductory findings]

§ 170. Short Term Rental Properties

§ 170-1 Purpose

The purpose of this chapter is to protect the health, safety, and welfare of both the occupants of short term rental units and the general public and to maintain the character and quality of life in residential neighborhoods and the availability of the Town's housing stock. It will assist the Town in the enforcement of state and local health and safety regulations and provide a method of correcting violations when requiring immediate attention.

§ 170-2 Definitions

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

DWELLING

Any building or area in a building used or intended for use for human habitation, including, but not limited to, apartments, condominiums, cottages, guesthouses, one-, two- or multiple-unit residential buildings/dwellings, but not including any facility licensed under any state or local laws or regulations other than those licensed under this chapter.

FRONT YARD

The area between the roadway and the part of the structure nearest to the roadway.

INSPECTIONAL SERVICES DEPARTMENT

Consisting of Building, Health and Code Compliance Divisions

OCCUPANCY

The use or possession or the right to the use or possession of a short term rental.

OCCUPANT (GUEST)

Any individual residing overnight in a short term rental.

OPERATOR (HOST)

Any individual operating a short term rental.

OPERATOR'S AGENT

An individual who, on behalf of an operator of a short term rental: (i) manages the operation or upkeep of a property offered for rent; or (ii) books reservations at a property offered for rent; provided, however, that an "operator's agent" shall include, but not be limited to, a property manager, property management company or real estate agent.

OWNER

Any [person] who alone or severally with others has legal title to any dwelling, dwelling unit; mortgagee in possession; or agent, trustee or other person appointed by the courts.

PERSON

An individual, partnership, trust or association, with or without transferable shares, joint-stock company, corporation, society, club, organization, institution, estate, receiver, trustee, assignee or referee and any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, or any combination of individuals acting as a unit including a governmental unit other than the Town of Barnstable or any of its agencies.

SHORT TERM RENTAL

A residential dwelling or any portion of a dwelling rented out through the use of advance reservations, for a fee, on a transient basis (a period of not more than 31 consecutive calendar days).

The term short term rental shall not include hotel or motels licensed pursuant to ____; lodging establishments licensed pursuant to ____; bed & breakfast establishments or bed & breakfast home licensed pursuant to _____;

§ 170-X Short Term Rental License.

A. License Required

No owner shall rent, or offer to rent, any short term rental prior to receiving a valid license from the Inspectional Services Department.

B. Compliance

A dwelling used as a short term rental shall be in compliance with the provisions of all state and local health and safety ordinances or regulations, as determined by the Inspectional Services Department, prior to occupancy. Operators shall comply with all applicable federal, state and local laws and regulations, including but not limited to the Fair Housing Act, G.L. c. 151B and local equivalents and regulations related thereto, and all other regulations applicable to residential dwellings.

C. Application Required

The owner of the dwelling shall be required to complete a short term rental license application, the form and content of which shall be provided by the Inspectional Services Department.

D. License Renewal

Short term rental licenses shall be renewed biennially (every two years) after a satisfactory inspection by Inspectional Services and upon payment of the renewal fee.

E. Fees

The fee for a short term rental license or a renewal of a license shall be initially set at \$90 and thereafter may be modified by the Town Manager at a fee hearing.

F. Non-Transferability

Short term rental licenses shall be granted solely to an Owner and shall not be transferable or assigned to any other person, legal entity, or address. The license does not run with the property; it shall be terminated upon sale or transfer of the property for which the license has been issued.

§ 170-X Contact Information of Owner, Operator and/or Operator’s Agent

An owner of a short term rental shall provide the Inspectional Services Dept. with his/her current residential address and telephone number upon application for a license.

If the owner is a corporation, the name, address, and telephone number of the president and legal representative of the corporation shall be provided. If the owner is a realty trust or partnership, the name, address, and telephone numbers of the managing trustee or partner shall be provided.

The name and contact information of the Operator must be provided, along with the name and contact information of an Operator’s Agent, if different from the Operator, who is able to respond in person to any issues or emergencies that arise during occupancy within one (1) hour of contact by Inspectional Services Department, Barnstable Police, or any Fire District to complaints regarding the condition or operation of the short term rental. Contact information must include a telephone number that is available 24 hours per day, 7 days a week to short term rental occupants and the above-stated public safety agencies. This contact information shall be included in the application for a short term rental license and shall be posted conspicuously within the rental unit.

§ 170-X Good Neighbor Notices

Upon issuance of a short term rental license, notice shall be provided by _____ to all property owners adjoining or immediately opposite and across a road from the property on which the short term rental is located. The notice shall include: information about these short term rental regulations and instructions and contact information to file a complaint, including where to access such information that may be available on the Town’s website.

§ 170-X Posting of Notices

The Town shall provide information to each licensed Operator summarizing the regulations for short term rentals. For each short term rental license issued, this will include, but shall not be limited to: the name and 24-hour contact information of the Operator or Operator’s Agent designated in the Application, parking restrictions; occupancy limits; restrictions on noise; trash removal; _____.

The Operator shall:

- a. Provide Occupants a copy of the provided information; and
- b. Post the information, along with the short term rental license, in a conspicuous location within the short term rental.

§ 170-X Keeping of Register

The Operator or Operator’s Agent shall be responsible for keeping a register containing the name of the Occupant who is the leaseholder, total number of occupants, and dates of occupancy. The register shall be retained for a period of two (2) years and shall be made available upon request to Inspectional Services Department staff, police, or other duly appointed or authorized code compliance staff of the Town of Barnstable.

§ 170-X Parking Restrictions.

A. On-site parking shall not be in any cultivated or landscaped area within a Front Yard as defined herein.

B. Nothing in this section shall be deemed to supersede the parking requirements set forth by site plan review or the Town of Barnstable Zoning Ordinance.

§ 170-X Smoke detectors and carbon monoxide alarms

Each short term rental shall contain functional smoke detectors and carbon monoxide alarms. Upon license renewal, all smoke detectors and carbon monoxide alarms in short term rentals shall be upgraded to comply with current building code requirements. In addition, the Operator shall provide and maintain one 2.5 lb. multi-purpose fire extinguisher on each floor. Extinguishers shall be maintained or replaced in accordance with the manufacturer's specifications. Operators shall test and perform maintenance on every smoke detector, carbon monoxide alarm upon renewal of the short term rental license. Any detector or alarm found to be defective shall be repaired or replaced forthwith. The Occupant(s) shall be notified to report faulty or inoperative smoke detector unit(s) to, first, the owner of the dwelling and, second, the Inspectional Services Department.

§ 170-X Ineligible Units

The following are not eligible to be rented or offered to rent as Short Term Rentals:

1. Dwellings designated as below market rate or income-restricted, that are subject to affordability covenants, or that are otherwise subject to housing or rental assistance under local, state, or federal law;
2. Family Apartments or Accessory Affordable Apartments;
3. Dwellings subject to any requirement of local, state, or federal law that prohibits the leasing or subleasing of the unit or use of the unit as a Short Term Rental.
4. Dwellings that are the subject of any outstanding building, sanitary, zoning, or fire code violations, orders of abatement, or stop work orders.
5. Dwellings for which municipal and district taxes, fees, assessments and charges are outstanding and unpaid.

§ 170-X Inspections

Short term rentals shall be subject to reasonable inspections by Town and District inspectional staff ("Inspectors"). All interior inspections shall be done in the company of the Owner or authorized agent.

Dwellings shall be inspected and approved for occupancy prior to issuance of a short term rental license.

§ 170-X

Complaint.

Review of Complaint.

Right to Hearing. [include in hearing process the ability for the hearing officer to approve the issuance of subpoenas of persons and documents and to administer oaths]

Decision.

Judicial Appeals.

§ 170-X

A. Written notice of any violations of this chapter may be given by Inspectors and shall specify the nature of the violation to the Occupant and Owner and the time within which compliance must be

achieved. The requirements of this subsection shall be satisfied by mailing such notice, through the United States Postal Service by certified mail, or by delivering in hand such notice as memorialized by an affidavit of any Town employee or officer authorized to serve any form of process notice to the Owner or legal representative named on the license application.

B. Violations of an unoccupied dwelling shall be corrected prior to occupancy. Violations found in an occupied dwelling shall be corrected within the time specified as determined by the Inspectors.

C. License Suspension, Modification and Revocation

In addition to, and not in lieu of, the penalties that may be assessed pursuant to _____, the Issuing Authority, after notice and public hearing, may suspend, revoke or modify any license issued hereunder for violation of these regulations or of any conditions imposed by the Issuing Authority.

D. Any person who violates any provision of this chapter may be subject to a fine in accordance with the following:

- Warning 1st Offense -
- \$100 2nd Offense -
- \$200 3rd Offense
- \$300 4th Offense – (and each subsequent offense. Each day that a violation exists constitutes a separate offense.)

E. Utilizing the fine schedule above, this chapter may be enforced under the provisions of MGL c. 40, § 21D. In the alternative, utilizing a Written Notice of Violation, Inspectional Services may file a complaint with the Southeast Housing Court seeking an appropriate remedy.

§ 170-X Review

The Inspectional Services Department shall provide a report upon request to the Town Council at which time the Town Council may review such report and based upon their findings modify or revise this ordinance from time to time.

§ 170-X Severability

Each provision of this chapter shall be construed as separate. If any part of this chapter shall be held invalid for any reason, the remainder shall continue in full force and effect.

§ 170-X Effective Date

The provisions of this section shall take effect on _____.

PUBLIC COMMENT

Chair of the Committee asked if anyone from the Public would like to make any comments:

Kathleen Holcombe from Centerville commented that she would like to see all rentals in go away and have the existing zoning remain. Neighborhoods that want to remain tourist free and we do not need to open our town to neighborhoods for tourists, Keep our residential neighborhoods the same, we do not need any more individuals in our neighborhoods, and keep the current zoning as is would like to meet with the Assistant Town Manager. If individuals want to come and stay here then they can stay in hotels, bed and breakfasts in commercially zoned areas and not in residential neighborhoods.

Robert Simmons asked if the work load has doubled for the Police due to complaints issued, and if so what happens after it is a repeated offense at the same residence, is the homeowner notified.

Martin MacNeely manages (3) properties that an individual who was born and raised here and moved away, came back and invested in Barnstable and bought properties here on the Cape and rents all three; one was rented for 2 weeks the other 9 weeks the other 4 weeks, the owner herself uses the properties when not rented out, we did not have any loud parties or complaints from any of the three properties, we are a management company that have their hands in the rental and monitor it very closely. There seems to be issues with other properties that are rented in the same way, however it is not the majority of properties here in Barnstable that are problems, this Committee is proposing a lot of regulations here, some he agrees with some he does not, he understands how we need to keep safety in mind, but be mindful of those that are responsible when drafting these regulations.

Laura Cronin wanted to thank the Committee for these draft regulations, she was a little disappointed that the current document does not go far enough to protect the neighborhoods, and some of the existing business that actually do this for a living, where is their protection and protecting their income from renting properly, she would like to see all rentals of this type banned in all residential neighborhoods, and there would be support for that, Enforcement is the real issue, we do have some regulations on the books currently that has never been enforced, so if we start enforcing those regulations we currently have we can manage these. She does not believe that the tourists will be turned away if we do away with these rentals.

Bob Schulte had some concerns regarding best practices of other coastal communities that have adopted laws regarding short term rentals that does not seem to be anywhere in these draft regulations, expansion of short term rentals to all residential neighborhoods is a concern of his, there isn't any consideration of how many people can stay in a home at one time because of septic concerns, the fines in the draft should be taken a step further and have liens put on the house if compliance is not met, there needs to be some teeth in the enforcement part, lot of these homeowners that rent their homes do not reside here year round, so you're going to chase them with fines and letters if nothing is attached to the property. What is the point in fines if they are not enforced?

Councilor Jennifer Cullum responded to Mr. Simmons that the police have responded, and now the police can quantify the results of the properties, and take some of the burden off the police, the mechanism of complaints and to revoke a license is very important and the neighbors in the neighborhoods feel like they have been run over without any say.

Chair of the Committee closed public comment.

Chair of the Committee asked if any of the members had any questions regarding the DRAFT document, Councilor Cullum asked if there was going to be anything in there regarding disability access to these rentals and if they are made to comply to the regulations of the Disability Act, and also if there was consideration in the septic and whether homeowners would have to upgrade for capacity reasons, so if we are continuing to clean our waters, this is very important; quality of character of our neighborhoods is also very important, the other is investor properties and length of stay, those are the one important to most of the people I talked to. Councilor Cullum would also like to know the numbers of homes are investor owned properties, owned by companies, and others in trust if possible. Assistant Town Manager had those numbers and reported as follows; out of the 600 current registered homes in Barnstable, 63 of these rentals are owned either by Trust or a LLC or Corporations, all other rentals are privately owned, there is one vacation company that owns 16 units that are rented out. We have some thoughts about number of occupants, and we can certainly look at the septic issue you brought up as well.

Councilor Cullum wanted to know how this is going to be enforced, your department right now doesn't have enough individuals to enforce what we do have currently for enforcement, and we are going

to add another tool to the tool box, but how is it going to be enforced so that are police department is not the frontline responding to these issues, a hotline phone number to someone is great, but if no one is there answering and responding at 2am when there is a neighbor that has a complaint, it should not turn into a 911 call at 2am to the police, so enforcement we need to support as well. Building Commissioner, Mr. Florence said that part of the registration process, we have included additional staff to handle the program as well as the GIS program to identify these properties, and track the complaints.

Chair of the Committee took away from tonight's discussion to focus on three key points

1. Minimum night stay
2. Limit license
3. Occupancy requirements

Councilor Cullum stated that we have the Growth Incentive Zone, we have a train that comes from Boston into Hyannis, we have the Transportation Center around the corner, we have Mr. Brennan building affordable housing development around the corner, so let's explore single night stays in our growth incentive zone or where there are hotels located for day stays or 3 days or whatever the length, it's something to look at.

Councilor Clark asked if there could be different licenses and different regulations according to owner occupied vs not owner occupied, Ms. Jenkins said she could look into that as far as the use of the property, and would be happy to look at that option.

Ms. Jenkins will take all the recommended ideas mentioned tonight and bring a document with some of the concerns addressed and look at the document again to see if it is complete for the next meeting.

Chair of the Committee asked the Committee to look at the DRAFT document and at our next meeting bring concerns or questions that they would like clarification on and we will try and address those concerns.

Chair of the Committee thanked everyone for all the comments tonight and the DRAFT document presented and the work that went into it.

Chair of the Committee asked for a motion to accept the meeting minutes of January 9, 2020, Councilor Cullum made the motion to accept the meeting minutes of January 9, 2020 as written, this was seconded by Councilor Kristine Clark, the meeting minutes of January 9, 2020 were approved by all except Councilor Clark who had not had a chance to look at them.

Going forward with new initiatives, Councilor Cullum would like to look at rezoning or providing and incentive to developers that would like to build with higher density housing

Councilor Paula Schnepf would like to look at the Accessory Apartments program as well to see if that needs to be looked at.

Chair of the Committee asked for a motion to adjourn, all members present voted in favor of Adjournment.

ADJOURN: 6:55pm

Transcribed by Cynthia A Lovell, Administrator, Town Council