



TOWN COUNCIL
Committee to Review Zoning and Permitting Regulations
Selectmen's Conference Room
Thursday March 5, 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 Britt Beedenbender; 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; Town Attorney, Karen Nober; Attorney Charles McLaughlin

Chair of the Committee opened the meeting at 5:30pm, making the statement that the meeting is going to be taped tonight, not aired live, but available for viewing tomorrow. The Chair also declared the following statement: **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;** seeing no one,

PUBLIC COMMENT: The following is a list of Individuals who spoke at Public comment;

Jeff Solars
John Williams
Laurie Cronin
John Cronin
Bob Ward
Cathy Sullivan
Scott Beedenbender
Bob Schutte

Please follow the link below for The Zoning and Regulatory Public Comment and meeting on March 5, 2020

<http://streaming85.townofbarnstable.us/CablecastPublicSite/show/8861?channel=1>

Elizabeth Jenkins, Director, Planning and Development introduced the following document in DRAFT form after consideration of the Public comment from the last Zoning and Regulatory Committee as well as the comments submitted by the various Civic Associations. Ms. Jenkins explained that the most substantial change was the number of permits an owner can hold, and it was changed to only two permits per owner going forward, and the other change was for the owners currently who have more than one unit are essentially grandfathered from the date of the passage.

Councilor Cullum asked about those that were grandfathered now, if they were to sell the property, the new owners are not grandfathered they need to come and apply through the various boards? Ms. Jenkins replied, yes that is correct, they grandfather clause does not transfer to the new owners; they would need to apply again. A Non Transferable clause is attached.

Zoning & Regulatory Committee
03/05/2020

Working Draft for Discussion Purposes Only

SHORT TERM RENTAL PROPERTIES

[Introductory findings]

§ XXX. Short Term Rental Properties

§ XXX-X 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.

§ XXX-X Definitions

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

BUILDING COMMISSIONER

The Building Commissioner of the Town of Barnstable or his designee.

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.

INSPECTIONAL SERVICES DEPARTMENT

Consisting of Town Building and Health Divisions

OCCUPANCY

The use or possession of or the right to use or possess 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 persons defined immediately below who alone or severally with others has legal or equitable title, or a beneficial interest in any dwelling unit; a 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, firm, organization, institution, estate, receiver, trustee, assignee or referee any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, or any other combination of individuals, directly or indirectly, or through any agent, employee, stockholder, officer or other person or any subsidiary whatsoever 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, for a period of not more than 31 consecutive calendar days.

The term short term rental shall not include hotel licensed under M.G.L. Section 6 of Chapter 140; motels licensed under M.G.L. Section 32B of Chapter 140; lodging establishments licensed under M.G.L. Section 23 of Chapter 140 or under Chapter 506 of this Ordinance; bed & breakfast establishments or bed & breakfast homes licensed under Chapter 506 of this Ordinance.

§ XXX-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. No tenant or lessee of an Owner shall let or sub-let a Short Term Rental under any circumstances.

B. Limits on Number of Licenses per Owner

a. A maximum of 2 Short Term Rental licenses shall be issued per Owner.

b. Owners will be eligible for an equivalent number of Short Term Rental licenses to the number of Short Term Rentals registered with the Massachusetts Department of Revenue prior to the date of passage of this ordinance.

C. 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 Chapter 133 Noise, Chapter 353, Art. 1 Storage of Garbage and Refuse, and the Fair Housing Act, G.L. c. 151B and local equivalents and regulations related thereto, and all other regulations applicable to residential dwellings.

D. 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.

E. 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.

F. 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.

G. 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.

§ XXX-X Publication of License Number

The Town issued license number shall be included on any listing offering the Short Term Rental for rent.

§ XXX-X Contact Information of Owner, Operator and/or Operator's Agent

- A. 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 as well as a full and complete list of persons (as defined above) or who have a direct or indirect interest in any property for which a Short Term Rental License in the Town of Barnstable has been issued or for which a Short Term Rental License application is pending.
- B. 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.
- C. 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.

§ XXX-X Good Neighbor Notices

Upon initial issuance of a short term rental license, notice shall be provided by the licensed Owner 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: The contact information required in section XXX-X(C) above, 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.

§ XXX-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, requirements for trash removal, occupancy requirements, parking restrictions, and large event regulations contained herein, and noise restrictions (Chapter 133).

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.

§ XXX-X Trash Removal.

The Short Term Rental Operator shall be responsible for ensuring that household trash is removed from the premises immediately after an Occupancy is concluded or once per week, whichever is more frequent, in addition to compliance with the requirements of Chapter 353, Art. 1 Storage of Garbage and Refuse.

§ XXX-X Occupancy Requirements.

The maximum number of occupants in a Short Term Rental shall be two per bedroom, plus an additional two.

§ XXX-X Parking Restrictions.

Parking for short term rentals shall comply with the requirements in the Zoning Ordinance, §240-7.

§ XXX-X Large Event Regulations.

- A. Large events, such as weddings, are prohibited in Short Term Rentals.
- B. The above prohibition notwithstanding, a large event may be held in a short term rental upon compliance with the following:
 - 1. At least 5 days in advance of the event, written notice shall be provided to the Inspectional Services department of the event. Notice shall include the name and a telephone number for the party responsible for the event.
 - 2. The notice shall include written authorization of the Owner for the event, either in the rental agreement, or by separate letter.
 - 3. The notice must include a start and end time for the event, expected number of participants, and a parking plan.
 - 4. Events shall comply with Chapter 133 Noise and all other applicable Town regulations and licensing requirements.

§ XXX-X Smoke detectors and carbon monoxide alarms

Each short term rental shall contain functional smoke detectors and carbon monoxide alarms. 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.

§ XXX-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.

§ XXX-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. Properties designated as Problem Properties under Chapter 160.

§ XXX-X Failure to Pay or to Make Suitable Arrangements for the Payment of Municipal or District Taxes, Fees, Assessments, and Charges

The privilege of receiving or holding a Short Term Rental License is contingent upon the timely payment of municipal and district taxes, fees, assessments, and charges. Failure of a Person to comply with this requirement shall be cause, after notice and hearing pursuant to the requirements of G.L. c. 40, § 57, for denial, suspension, amendment, or revocation of a Short Term Rental License for any and all property in which the person holds a direct or indirect ownership interest, as above defined.

§ XXX-X Inspections

- A. Short term rentals shall be subject to reasonable inspections by Town and District inspectional staff ("Inspectors").
- B. Dwellings shall be inspected and approved for occupancy prior to issuance of a short term rental license.

§ XXX-X Complaint Process, Violations.

- A. Complaint. A complaint alleging that a Short Term Rental is in violation of this section or any applicable law, code or regulation may be filed with the Inspectional Services Department. The complaint must contain the Short Term Rental address, unit number, date and nature of alleged violation(s), and name and contact information of complainant.
- B. Written notice of any violations of this chapter shall be treated as a complaint and may also be given by Inspectors. The notice 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.

- C. Any notice required or contemplated by this Chapter shall be deemed sufficient if delivered to or mailed to the mailing address listed by the owner on the Short Term Rental License application then on file with the Inspectional Services Department. A written change-of-address notice signed by the owner/s and delivered to the Inspectional Services Department may be filed at any time.
- D. Review of Complaint. Within thirty (30) days after receipt of a complaint, the Commissioner or a designee shall investigate the complaint and shall determine whether there may be a violation. If the alleged violation is under the jurisdiction of another city or state or federal agency, the Commissioner shall refer the complaint to such agency for further action. Upon a finding of a potential violation, the Commissioner or designee shall serve notice of the violation upon the Owner of the Short Term Rental. The Commissioner shall keep records of all complaints received and determinations made.
- E. Offering an Ineligible Unit as a Short Term Rental. Any person who offers a unit as a Short Term Rental, where such unit is not an eligible Dwelling Unit or is not licensed, may be fined in accordance with the fine schedule herein on a per violation per day basis. Each day's failure to comply with a notice of violation or any other order shall constitute a separate violation. The Commissioner or a designee may also seek an injunction from a court of competent jurisdiction prohibiting the offering of the unit as a Short Term Rental.
- F. Failure to Obtain a License. Any person who offers an eligible Dwelling Unit as a Short Term Rental without a valid Short Term Rental License, or any person who offers an eligible Dwelling Unit as a Short Term Rental while the unit's License is suspended, may be fined in accordance with the fine schedule herein on a per violation per day basis. Each day's failure to comply with a notice of violation or any other order shall constitute a separate violation.
- G. Failure to Comply with Notice of Violation. Any person who fails to comply with any notice of violation or other order issued pursuant to this section by the Commissioner or a designee for a violation of any provision of this section may be fined in accordance with the fine schedule herein on a per violation per day basis. Each day's failure to comply with a notice of violation or any other order shall constitute a separate violation.
- H. Right to Hearing. A person upon whom a notice of violation has been served may request a hearing by filing a written petition requesting a hearing on the matter with the Inspectional Services Department within fourteen days after the day the notice of violation was served. Upon receipt of a petition for hearing, the Inspectional Services Department shall notify the complainant of the place, date and time of the hearing. The hearing shall occur no later than three (3) weeks after the date the Inspectional Services Department receives the petition for hearing. The time period in which violations must be remedied shall be stayed upon receipt of the petition for a hearing until such time as the hearing is held and the Hearings Officer has issued a decision.
- I. Right to Subpoena Persons and Material and Right to Inspect. Any party to a Hearing may subpoena a person or papers or other tangible things upon prior application to and approval of the hearing officer. Any party to a Hearing, or a Hearing Officer on his own motion, may order an inspection of the property which is the subject of the hearing. A failure of a Party to comply with such orders shall be taken as an admission against interest and may result in dismissal of or other sanctions against the non-compliant party, including revocation of the Short Term Rental License.

- J. Decision. Within seven days after the conclusion of the hearing, the Commissioner or designee shall sustain, modify, or withdraw the notice of violation and shall inform the person upon whom a notice of violation has been served, in writing, of its decision and the reasons therefor. If the Inspectional Services Department sustains or modifies the notice of violation, said violation shall be remedied within the time period allotted as issued or in the modification.
- K. 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.

§ XXX-X License Suspension, Modification and Revocation

- A. In addition to, and not in lieu of, the penalties that may be assessed pursuant to this ordinance, the Issuing Authority, after notice and public hearing, may suspend, revoke or modify any or all licenses issued hereunder for violation of these regulations or of any conditions imposed by the Issuing Authority, notwithstanding that a violation may have been found with respect to one or more, but not all of the licenses held by an owner. These remedies shall be non-exclusive.
- B. If a written petition for a hearing is not filed within fourteen (14) days after the notice of violation has been served, or if, after a hearing, the notice of violation has been sustained in any part, each day's failure to comply with the notice of violation within the time allotted as issued or modified shall constitute a separate violation.

§ XXX-X Judicial Appeals.

Any person aggrieved by a final decision of the [Hearings Officer and Inspectional Services Department] with respect to a notice of violation or any other order issued under this section may seek relief therefrom in any court of competent jurisdiction as provided by the laws of the Commonwealth.

§ XXX-X Penalties

- A. 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.

§ XXX-X Enforcement.

The provisions of this section may be enforced in accordance with the noncriminal disposition process of M.G.L. c. 40, s. 21 D, and, if applicable, by seeking to restrain a violation by injunction. In the alternative, utilizing a Written Notice of Violation, Inspectional Services may file a complaint in any court of competent jurisdiction as provided by the laws of the Commonwealth

§ XXX-X Review

The Inspectional Services Department shall, upon request, provide a report 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.

§ XXX-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.

§ XXX-X Effective Date

The provisions of this Chapter shall take effect on _____.

Councilor Kristine Clark asked about any software that the Town is looking at, if the program is something that the Public will be able to access to see where in the Town these rentals exist.

Building Commissioner Brian Florence answered:

The Town Is currently looking at software that will help identify where the Short Term Rentals are currently located in the Town, and the second type of software that is being looked at will be able to track the short term problems and complaints.

Councilor Cullum asked Ms. Jenkins if there was a way to track the Investor owned properties, vs. the Owner Occupied homes. Ms. Jenkins stated only if they register with the Department of Revenue that way are they identified that way.

Councilor Cullum asked if the Town eliminated the Short Term Rentals in the areas of Osterville and Hyannisport what that amount would be to the Town as a loss of revenue. Ms. Jenkins answered she did not have the total amount of the 159 homes currently located in those villages, but if she had to guess it would be significant.

Councilor Cullum asked that the following document be introduced. It shows the amount of revenue the Hyannis Youth and Community brings in when they hold certain events that go longer than 1 day, families look to stay in short term rentals rather than a hotel or a motel, it is cheaper for the family.

HYCC - Event Listing

		2020	2019	2018	2017	2016	2015	2014
BYHA - Lobster Pot	March	\$ 14,800.00	\$ 14,800.00	\$ 12,500.00	\$ 12,100.00	\$ 12,500.00	\$ 12,800.00	\$ 12,500.00
BYHA - A Tournament	February	\$ 6,500.00	\$ 6,800.00	\$ 5,600.00	\$ 7,700.00	\$ 8,000.00	\$ 8,000.00	\$ 8,200.00
TACC - February Tournament	February	\$ 14,850.00	\$ 10,180.00	\$ 11,675.00				
Top Shelf - February Tournament	February				\$ 17,826.00	\$ 16,325.00	\$ 12,452.00	\$ 14,050.00
Cape Cod Waves - Cranberry Tournament	November	\$ 16,300.00	\$ 16,300.00	\$ 16,300.00	\$ 16,300.00	\$ 16,000.00	\$ 16,000.00	\$ 15,500.00
Commandant's Cup	April	\$ 4,300.00	\$ 4,300.00	\$ 4,300.00	\$ 4,000.00	\$ 4,000.00	\$ 4,000.00	\$ 3,800.00
Cape Cod Chowdah Classic	June	\$ 9,300.00	\$ 9,300.00	\$ 9,300.00	\$ 6,500.00	\$ 5,200.00	\$ 5,200.00	\$ 3,050.00
Women's Hockey East Championship	March						\$ 9,200.00	\$ 9,200.00
Bourne Skating Club								
	Synchro December		\$ 13,700.00	\$ 15,000.00	\$ 16,400.00			
Yarmouth Ice Club								
	Cranberry Open August		\$ 17,350.00	\$ 16,400.00	\$ 17,300.00			
	Theatre on Ice June					\$ 33,800.00		
	Adult Nationals April							\$ 37,000.00
	Easterns November	\$ 36,000.00				\$ 33,600.00		
	Solo Dance September			\$ 17,700.00				

TOTAL REVENUE \$ 102,050.00 \$ 92,730.00 \$ 108,775.00 \$ 98,126.00 \$ 62,025.00 \$ 135,052.00 \$ 103,300.00 **TOTAL** \$ 702,058.00

Councilor Starr asked how are we going to identify the owner or if it's a LLC. Ms. Jenkins stated the application now specifies that you need to identify any financial interest when filling out the application

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End DRAFT General Ordinance

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Next Page DRAFT Zoning Ordinance

Working Draft

ZONING – Short Term Rentals

Chapter 240. Zoning

Article II. General Provisions

Section 240-7. Application of District Regulations

Regulations within each district established herein shall be applied uniformly to each class or kind of structure or use.

J. Short term rentals. In all zoning districts, short term rentals shall be permitted within lawful dwelling units only upon licensure with the Inspectional Services Department pursuant to the standards set forth in Chapter XXX, Short Term Rental Properties, of the Code of the Town of Barnstable, notwithstanding any provisions to the contrary in this Chapter. A short term rental shall be defined as a residential dwelling or any portion of a dwelling rented out through the use of advance reservations, for a fee, for a period of not more than 31 consecutive calendar days.

The term short term rental shall not include hotel licensed under M.G.L. Section 6 of Chapter 140; motels licensed under M.G.L. Section 32B of Chapter 140; lodging establishments licensed under M.G.L. Section 23 of Chapter 140 or under Chapter 506 of this Ordinance; bed & breakfast establishments or bed & breakfast homes licensed under Chapter 506 of this Ordinance.

- (1) When a property is in use as a short term rental, on-site parking shall not be in any cultivated or landscaped area between a roadway and the part of the principal structure nearest to the roadway.

Chair of Committee asked if there were any other questions,

Councilor Cullum would like to take another look at the license and owner occupied issues, we have made a lot of progress, but we don't have it ready yet, so we need to look at that before moving any DRAFT to the full Council. The Committee is looking to meet on April 2, 2020 at 5:30 to meet again on the issue still open of licenses.

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

ADJOURN: 6:55pm