

Working Draft for Discussion Purposes Only: SHORT TERM RENTAL PROPERTIES

Chapter 190. Short Term Rental Properties

§ 190-1 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 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.

§ 190-2 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.

COTTAGE COLONY

A group of three or more detached dwellings, legally in existence at the time of adoption of this ordinance, located on a single lot, which are customarily occupied on a seasonal basis.

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, except those 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. An “operator’s agent” shall include, but not be limited to, a property manager, property management company or real estate agent.

OWNER

Any person, as 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, a corporation which is not publicly traded, 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, excluding: Cottage Colonies, as defined herein; hotels licensed under M.G.L. Chapter, 140, Section 6; motels licensed under M.G.L. Chapter 140, Section 32B; lodging establishments licensed under M.G.L. Chapter 140, Section 23 or under Chapter 506 of the Code of the Town of Barnstable; and bed & breakfast establishments or bed & breakfast homes licensed under said Chapter 506.

§ 190-3 Short Term Rental Registration

A. Registration Required

No Owner shall rent, or offer to rent, any Short Term Rental prior to registering with 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 Registrations per Owner

A maximum of two (2) Short Term Rental registrations shall be issued per Owner; provided that Owners who have short term rentals registered with the Massachusetts Department of Revenue as of April 30, 2020, will be eligible to register those short term rentals with the Inspectional Services Department, notwithstanding the limit of two set forth herein.

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. Demonstration of compliance shall be in the form of a sworn affidavit submitted as part of the registration application described in Section D below to 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, 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 registration application, the form and content of which shall be provided by the Inspectional Services Department.

E. Registration Renewal

Short term rental registrations 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 registration or a renewal of a registration shall be initially set at \$35 and thereafter may be modified by the Town Manager at a fee hearing.

G. Non-Transferability

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

§ 190-4 Publication of Registration Number

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

§ 190-5 Contact Information of Owner, Operator and/or Operator's Agent

- A. An Owner of a Short Term Rental shall provide the Inspectional Services Department with his/her current residential address and telephone number upon application for a Registration 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 Registration in the Town of Barnstable has been issued or for which a Short Term Rental Registration 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 Registration and shall be posted conspicuously within the rental unit.

§ 190-6 Good Neighbor Information

Short term rental registrations will be published to the Inspectional Services page of the Town's website and shall include the contact information required in section 190-5(C) above. The website shall also include information about these short term rental regulations, and instructions and contact information to file a complaint.

§ 190-7 Posting of Notices

The Town shall provide information to each registered Operator summarizing the regulations for short term rentals. For each Short Term Rental Registration 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, and noise restrictions.

The Operator shall:

- A. Provide occupants a copy of the provided information; and
- B. Post the information, along with the Short Term Rental Registration, in a conspicuous location within the Short Term Rental.

§ 190-8 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.

§ 190-9 Occupancy Requirements.

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

§ 190-10 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 Registration. 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.

§ 190-11 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.

§ 190-12 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.

§ 190-13 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 Registration 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 Registration for any and all property in which the person holds a direct or indirect ownership interest, as above defined.

§ 190-14 Inspections

Short term Rentals shall be subject to reasonable inspections by Town and District inspectional staff ("Inspectors").

§ 190-15 Complaint Process, Violations

- A. Complaint. A complaint alleging that a Short Term Rental is in violation of this Chapter 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 registration 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 Registration 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. The Commissioner or his designee shall investigate complaint(s) within a reasonable timeframe 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 registered, 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 Registration. Any person who offers an eligible Dwelling Unit as a Short Term Rental without a valid Short Term Rental Registration, or any person who offers an eligible Dwelling Unit as a Short Term Rental while the unit's registration 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 be conducted by a Hearing Officer designated as such by the Town Manager and 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 Hearing Officer has issued a decision.

- I. **Right to Subpoena Persons and Materials and Right to Inspect.** To the extent permitted by law, 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 Registration.
- 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.
- L. **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.**

§ 190-16 Registration Suspension, Modification and Revocation

In addition to, and not in lieu of, the penalties that may be assessed pursuant to this Chapter, the Inspectional Services Department, after notice and public hearing, may suspend, revoke or modify any or all registrations approvals issued hereunder to an Owner for violation of these regulations or of any conditions imposed by the Inspectional Services Department, notwithstanding that a violation may have been found with respect to one or more, but not all of the registered properties held by an owner. These remedies shall be non-exclusive.

§ 190-17 Judicial Appeals

Any person aggrieved by a final decision of the Hearing 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.

§ 190-18 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.

§ 190-19 Enforcement

The Town may enforce the provisions of this Chapter by any or all of the following: the noncriminal disposition process of M.G.L. c. 40, s. 21D; by seeking to restrain a violation by injunction; and by filing a complaint in any court of competent jurisdiction.

§ 190-20 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.

§ 190-21 Effective Date

The provisions of this Chapter shall take effect on _____.

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End DRAFT General Ordinance

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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. Notwithstanding any provisions to the contrary in this Chapter 240, short term rentals shall be permitted within lawful dwelling units in all zoning districts. 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, excluding Cottage Colonies, as defined herein; hotels licensed under M.G.L. Chapter 140, Section 6; motels licensed under M.G.L. Chapter 140, Section 32B; lodging establishments licensed under M.G.L. Chapter 140, Section 23 or under Chapter 506 of the Code of the Town of Barnstable; bed & breakfast establishments or bed & breakfast homes licensed under said Chapter 506. Cottage Colony shall be defined as a group of three or more detached dwellings, legally in existence at the time of adoption of this ordinance, located on a single lot, which are customarily occupied on a seasonal basis. 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.