Short Term Rentals: From Airbnb to Zoning

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AN ACT REGULATING AND INSURING STR

Chapter 337 of the Acts of 2018
What is a Short Term Rental?

- Occupied property (not a hotel, motel, lodging house, or bed and breakfast) where at least one room or unit is rented out through use of advanced reservations
- Includes apartment, house, cottage, condominium, and furnished accommodation
What is NOT a Short Term Rental?

- Tenancies at will
- Month to month rentals
- More than 31 consecutive calendar days
- Time-shares
- Certain institutional, educational, and religious institutions
- Seasonal employee housing provided by employer
Components

- State Registration
- Taxes/Fees
- Local Regulation
STR, B&B, hotel, lodging house, and motel operators must:

1. Obtain a Certificate of Registration under *M.G.L. c.62C, §67* from the Commissioner of Revenue
   - Hosting platforms that collect rent must apply for Certificate and ensure that the Certificate is issued prior to posting

2. Executive Office of Housing and Economic Development Registry (*M.G.L. c.23A, §68*)
   - Regulations shall specify what information/how collected
   - Name of street and city or town, not property address
Amended M.G.L. c.64G by adding Short Term Rentals

Occupancies on or after **JULY 1, 2019** for which a contract was executed by **JANUARY 1, 2019**

Rented for 14 or fewer days *(provided registered and declaration is filed)*
M.G.L. c. 64G, §3

- 5.7% of Rent
  “Rent” amended to include cleaning fees and other service charges

- Excise paid directly to DOR
**Local Option Tax**

**M.G.L. c.64G, §3A**

- Maximum rate of 6%
- Applies to all room occupancies subject to the state tax
- DOR collects and distributes to Town
- Don’t need to reaccept!
<table>
<thead>
<tr>
<th>Accepted</th>
<th>Not Adopted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adams (6%)</td>
<td>Alford</td>
</tr>
<tr>
<td>Clarksburg (6%)</td>
<td>Becket</td>
</tr>
<tr>
<td>Dalton (6%)</td>
<td>Cheshire</td>
</tr>
<tr>
<td>Great Barrington (6%)</td>
<td>Egremont</td>
</tr>
<tr>
<td>Hancock (4%)</td>
<td>Florida</td>
</tr>
<tr>
<td>Lanesborough (6%)</td>
<td>Hinsdale</td>
</tr>
<tr>
<td>Lee (6%)</td>
<td>Monterey</td>
</tr>
<tr>
<td>Lenox (6%)</td>
<td>Mount Washington</td>
</tr>
<tr>
<td>New Ashford (4%)</td>
<td>New Marlborough</td>
</tr>
<tr>
<td>North Adams (6%)</td>
<td>Otis</td>
</tr>
<tr>
<td>Pittsfield (6%)</td>
<td>Peru</td>
</tr>
<tr>
<td>Richmond (4%)</td>
<td>Sandisfield</td>
</tr>
<tr>
<td>Stockbridge (4%)</td>
<td>Savoy</td>
</tr>
<tr>
<td>W. Stockbridge (4%)</td>
<td>Sheffield</td>
</tr>
<tr>
<td>Williamstown (6%)</td>
<td>Tyringham</td>
</tr>
<tr>
<td></td>
<td>Washington</td>
</tr>
<tr>
<td></td>
<td>Windsor</td>
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Accepting or Amending the Rate

**CITY**
- Majority Vote of City Council
- Mayor Approval (if required)

**TOWN**
- Majority Vote of Town Meeting
- ATM or STM

Rate can be amended only once in a 12 month period
Effective date: 1\textsuperscript{st} date of calendar quarter following 30 days after acceptance vote or 1\textsuperscript{st} day of a later calendar quarter if so voted

<table>
<thead>
<tr>
<th>Acceptance Vote</th>
<th>Excise Effective</th>
</tr>
</thead>
<tbody>
<tr>
<td>May 31, 2019</td>
<td>July 1, 2019</td>
</tr>
<tr>
<td>June 1, 2019</td>
<td>October 1, 2019</td>
</tr>
</tbody>
</table>

Must **NOTIFY** DOR!
Local Option Tax

**M.G.L. c.40, §5B, paragraph 4**

- Local option statute
- Not less than 25% of local room excise to any stabilization fund (general or special purpose)
Community Impact Fee

M.G.L. c.64G, §3D

- Impact fee of up to 3% of rent on certain STR over and above Local Option Tax
- Must have accepted the Local Option Excise Tax
- Separate acceptance vote
- Municipality collects the fee monthly
  - Pending legislation that would require DOR to collect
Community Impact Fee

35%  

Affordable Housing  

≥35%  

Local Infrastructure Project  

or

Affordable Housing Trust Fund
Other special revenue fund
Receipts reserved for appropriation account
1. Professionally Managed

One of two or more short-term rental units and not located within a single-family, two-family, or three family dwelling that includes the operator’s primary residence.

2. Owner Occupied

STR units within a two or three family dwelling that includes the operator’s primary residence.

Separate Votes!

35% unless otherwise voted
Lytle Trustee v. ZBA of Hull (Land Ct. 2017)

Facts:
• STR deemed to be a business use by the Building Commissioner.

• Cease and desist order issued to property owner in residential district.

Held:
• Property owner was operating a commercial enterprise in a single family residential zone.

• STRs are not accessory uses to a single family home.
Styller v. Aylward (Lynnfield ZBA) (Land Ct. 2018)

Facts:
• After a party at a STR, Town issued a cease and desist order.

• Town amended its Bylaw prohibiting rentals less than 30 calendar days.

Held:
• STRs are not the type of use that can be grandfathered under zoning

• Even if grandfathered, STRs are not allowed as accessory use to a principal residential use.
Local Regulation

What are the issues?
Local Regulation

**Safety**
- Fire, Health, and Building Code issues
- Neighborhood changes

**Economic**
- Tourism
- Existing Rental marketing
- Traditional lodging accommodations

**Noise**
- Large groups of people using the STR
- Parties

**Parking**
- Less parking for residents
- Parking on street when need exceeds driveway

**Environmental**
- No commitment to maintaining property
- Reduced recycling
- Septic system capacity
Some State imposed protections:

- **Insurance**: Not less than $1 million to cover each STR, unless a hosting platform provides greater coverage

- **Safety**: Must post information about the location of fire extinguishers, gas shut off valves, fire exits and fire alarms
Local Regulation

Safety
- Inspections for rental units
- Owner or Manager nearby
- Additional insurance

Economic
- Community impact fee
- Limit number of STRs
- Local property assessment

Noise
- Lot size
- Location
- Occupancy cap

Parking
- Parking requirements in licensure

Environmental
- Occupancy cap/bed cap
- Obligation to provide trash/recycle bins
Local Regulation

- General Bylaw/Ordinance Registration or License
- Zoning Bylaw/Ordinance By Right or Special Permit
Local Regulation

Issues with Regulating STR Platforms

• 4th Amendment
• Communications Decency Act
• Stored Communications Act