

Short Term Rentals: From Airbnb to Zoning

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March
2019

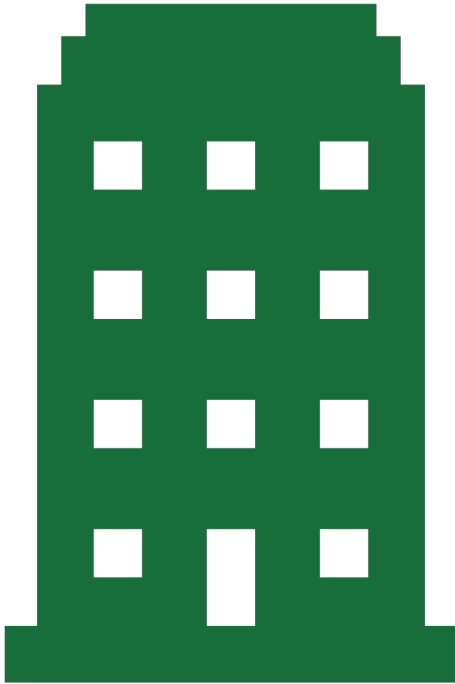
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AN ACT REGULATING AND INSURING STR



Chapter 337 of the Acts of 2018

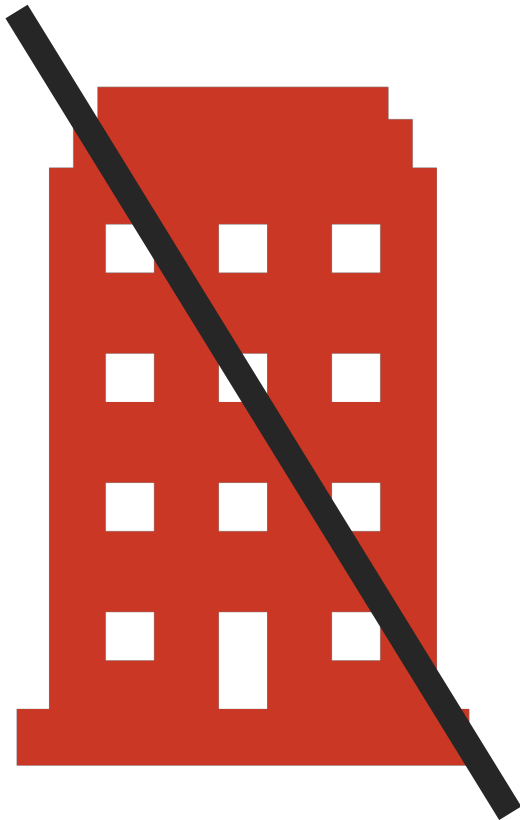
What is a Short Term Rental?



- 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



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**

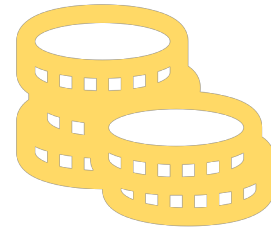


Rented for 14 or fewer days (provided registered and declaration is filed)



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



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!



Local Option Tax

Accepted	Not Adopted
Adams (6%)	Alford
Clarksburg (6%)	Becket
Dalton (6%)	Cheshire
Great Barrington (6%)	Egremont
Hancock (4%)	Florida
Lanesborough (6%)	Hinsdale
Lee (6%)	Monterey
Lenox (6%)	Mount Washington
New Ashford (4%)	New Marlborough
North Adams (6%)	Otis
Pittsfield (6%)	Peru
Richmond (4%)	Sandisfield
Stockbridge (4%)	Savoy
W. Stockbridge (4%)	Sheffield
Williamstown (6%)	Tyringham
	Washington
	Windsor



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



Local Option Tax

- Effective date: 1st date of calendar quarter following 30 days after acceptance vote or 1st day of a later calendar quarter if so voted

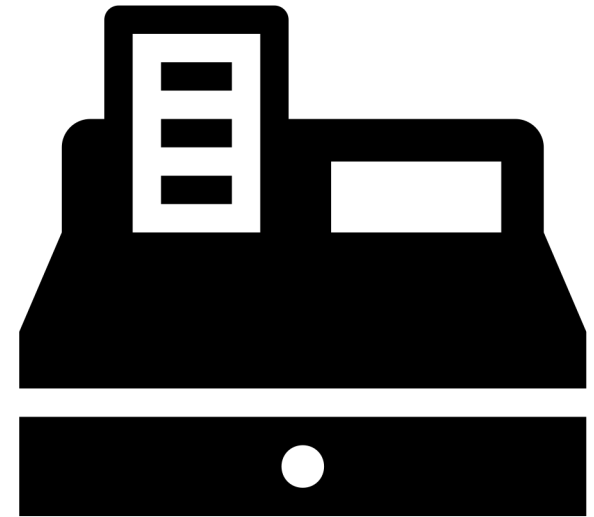
Acceptance Vote	Excise Effective
May 31, 2019	July 1, 2019
June 1, 2019	October 1, 2019

- Must **NOTIFY** DOR!



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)

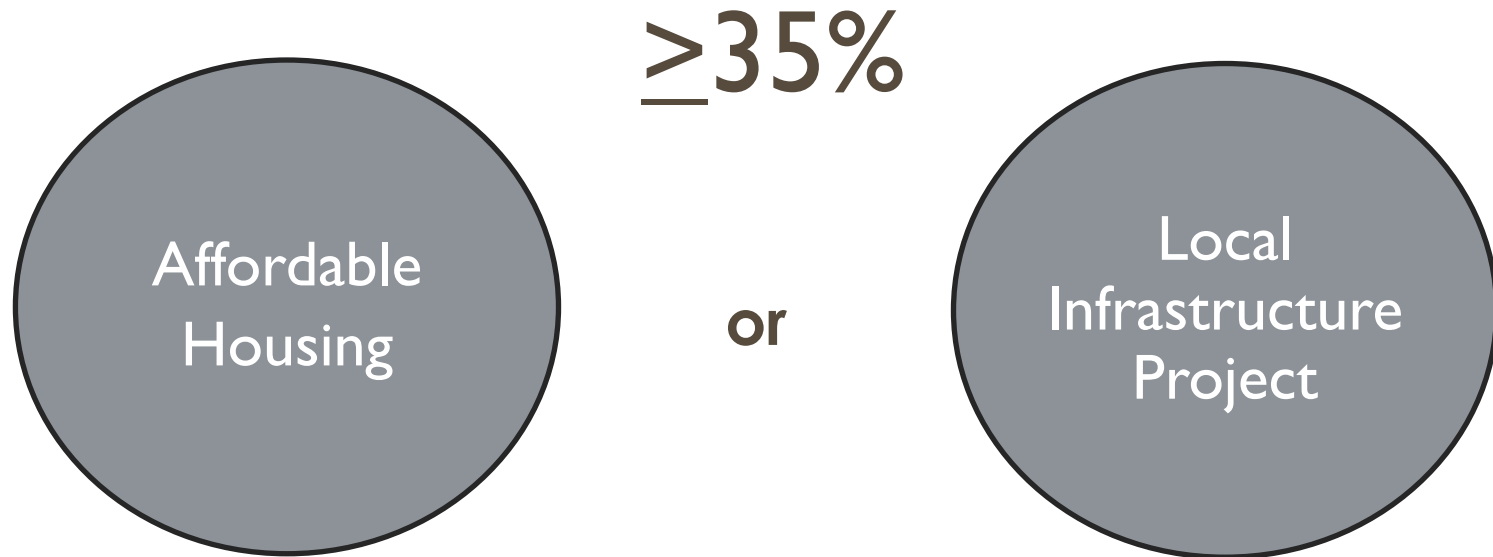




M.G.L. c.64G, §3D

- 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





Affordable Housing Trust Fund
Other special revenue fund
Receipts reserved for appropriation account



Community Impact Fee

1

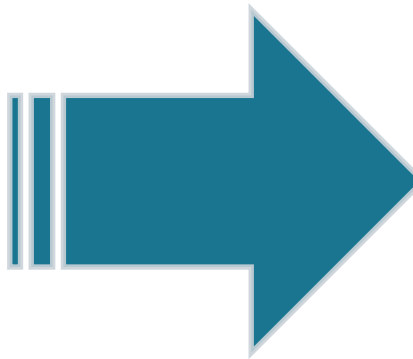
PROFESSIONALLY MANAGED

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:

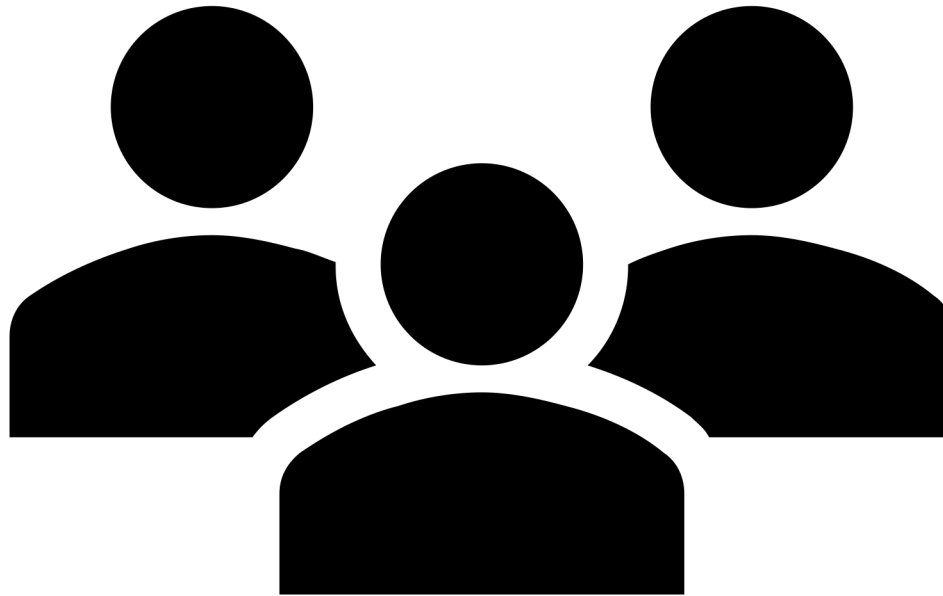
- After a party at a STR, Town issued a cease and desist order.
- Town amended its Bylaw prohibiting rentals less than 30 calendar days.

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.



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



Local Regulation



Existence and Location



Type and Number



Registration and Licensure



Inspection



Code Violation



Fines and Fees



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



General
Bylaw/Ordinance
Registration
or
License

Zoning
Bylaw/Ordinance
By Right
or
Special Permit



Issues with Regulating STR Platforms

- 4th Amendment
- Communications Decency Act
- Stored Communications Act

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