

**COMMENTS OF SUSAN ROBERTS SUBMITTED TO MODERATOR'S  
COMMITTEE, PLANNING DEPT., TOWN COUNSEL 2-21-21**

Submitted by: Moderator's Committee for Short-Term Rentals

**To see if the Town will amend the General By-laws by adding the following article:**

**ARTICLE 5.11  
Short-Term Rentals**

**Section 5.11.1           PURPOSE**

The Town of Brookline adopts this Bylaw for the regulation and restriction of Short-Term Rentals within the Town in order to protect the health safety of renters and residents, and to provide a process through which certain properties that meet specific requirements and eligibility criteria may be registered with the Town of Brookline for use as Short-Term Rentals.

**Section 5.11.2           DEFINITIONS**

As used in this by-law, the following terms shall have the following meanings:

“Enforcement Authority”: As designated by Article 10.2 of the General By-Laws.

“Short-Term Rental”, or “STR”: The rental of a whole or portion of a Dwelling Unit for not more than 27 consecutive calendar days, as otherwise defined by M.G.L. Chapter 64G, Sec. 1, which shall be the Primary Residence of the operator.

In accordance with M.G.L. Chapter 64G, the term excludes properties that are, or that are required by law to be, licensed as a lodging house because the lodgings are rented to four or more persons not within the second degree of kindred to the owner or operator. The term also excludes properties that are, or that are required by law to be, licensed as a hotel, motel, or bed and breakfast establishment.

“Short-Term Rental Unit”: A whole or portion of a whole Dwelling Unit that is being offered as a Short-Term Rental.

“Short-Term Rental Operator”: Any person operating a Short-Term Rental. An Operator must be the owner of the Short-Term Rental Unit.

“Primary Residence”: Any property at which a resident resides for at least 183 days of the calendar year.

**Section 5.11.3           ELIGIBILITY/APPLICABILITY**

1. Any Short-Term Rental Operator seeking to establish a Short-Term Rental Unit must apply for and receive a Certificate of Registration, following the procedure set forth in Section 5.11.4. The following eligibility requirements shall apply to applicants seeking a Certificate:
  - a. The Short-Term Rental Unit cannot be subject to any local, state, or federal income-eligible or income-restricted program that is designated as below

market rate housing.

- b. The Short-Term Rental Unit shall not be subject to any outstanding building, sanitary, zoning, or fire code violations, orders of abatement, stop work orders, or other requirements, laws or regulations that prohibit the Operator from offering the residential unit as a Short-Term Rental.
  - c. The Short-Term Rental Unit shall not be in arrears regarding any municipal or state taxes, fines or fees. Short-Term Rentals, Short-Term Rental Operators, and Short-Term Rental Certificates of Registration are subject to Article 4.7 of the Town's General By-laws.
  - d. The accommodations offered must be compliant with all applicable state and local codes, including building codes, fire codes and health codes.
  - e. **[SR Comment: The occupancy limitations contained here are not justifiable and lack a rational or reasonable basis. For a STR Operator with a large 4 bedroom apartment or home (not that unusual in Brookline), such limitations simply are arbitrary deprivations of property. For example, a family of 4 with a grandmother couldn't stay in a large 2500 sq. ft. floor-through apartment (such as mine), even though such a unit could well be separated from other units in the building and larger than many Brookline homes that, under this provision, would be permitted to have such a family. The original Fall 2020 Select Board WA ("Original WA") required only that "[t]he number of rooms offered as sleeping accommodations must be code compliant." As a compromise, I could suggest retaining the first sentence of this subparagraph, if the remainder of the provision were replaced with the above quoted language from the Original WA].** Occupancy is limited to a maximum of two (2) guests per bedroom. In a multi-unit building, occupancy is limited to a maximum four (4) guests. In a single-unit building, occupancy is limited to a maximum of six (6) guests.
2. Nothing in this By-law shall be construed to make the Town responsible for compliance with or enforcement of a lease, condominium by-laws or other governing documents, or any contract or agreement to which the Town is not a party.

#### **Section 5.11.4 REGISTRATION PROCEDURE AND SUBMISSION REQUIREMENTS**

1. In connection with an application for a Certificate of Registration, the operator shall provide to the Select Board's Office all documentation that the Office shall require, which may include, but not be limited to:
  - a. Any application fee, as may be determined by the Select Board.
  - b. Proof of Primary Residence, either by: 1) providing proof of enrollment in

the Brookline residential tax exemption program; or 2) an income tax return for the current year and a recent utility bill both showing the current address of the operator as the address of the Short-Term Rental Unit.

- c. **[SR Comment: Inclusion of this provision is an egregious example of the Town's overreaching in regulating STRs. There is no public purpose or other justification in the Town's elevating condominium unit owners for greater protection than that provided to unit owners by their governing condominium documents which they fully accepted at the time of their unit purchase. Nor is there any public purpose in adversely affecting an STR Operator's property interest in his or her condominium unit which is recognized by state statute (M.G.L. 183A), and granted by the condominium's master deed, unit deed, and other governing documents. The committee knows full well that retaining this provision undoubtedly would result in most unit owners' being prohibited from operating STRs and could result in costly litigation for the Town. I'm not sure why the committee or the Town would want to fight this battle when there is no reliable data whatsoever to support the need for such regulation. This subparagraph (c) did not appear in the Original WA and should be stricken entirely. Condo unit owners are protected by the requirements of the next succeeding subparagraph (d) that requires a statement from the STR applicant that operation of an STR would comply with the condominium's governing documents.]** Where a Short-Term Rental Unit is part of a condominium association, certification signed by the condominium association that the condominium association consents to the use of the Operator's unit as a Short-Term Rental.
- d. **[SR Comment: I suggest adding the following bolded, highlighted language in order for this provision to avoid being problematic and subject to interpretation]** Where a Short-Term Rental Unit is part of a condominium association, certification signed by the applicant **[Suggest: Adding "that, to the applicant's knowledge and belief,"]** the operation of the Short-Term Rental complies with all condominium documents, bylaws, or other governing documents.
- e. Floor plan of the Short-Term Rental Unit indicating the specific rooms to be offered. The floor plan shall identify each room by a numerical or alphabetical identifier. The floor plan may be sketched by hand but should be legibly labelled with the numerical or alphabetical identifier and the use of that room (e.g., bedroom, living room, etc.). The floor plan should identify the rooms to be used as sleeping accommodations and the proposed maximum occupancy for each. An operator may be asked to resubmit a floor plan with amendments in the event it is unacceptable to the Town's inspectional departments for health and/or safety or code compliance reasons.

- f. Local Contact Information. When registering, a Short-Term Rental Operator must provide their name, address, home telephone number, cell phone number, and email address, as well as such contact information for a secondary contact. Such contact information should identify at least one individual with corresponding contact information (including an active telephone number at which the person will be reachable 24 hours a day) who can respond in person within two hours of contact by a Town official to any issue or emergency that arises during a Short-Term Rental.
  - g. Such other information and documentation as the Select Board's Office may determine.
  - h. **[SR: Not only does this requirement place an undue and unnecessary burden on an already overworked Select Board staff, it also is without rational or reasonable basis and simply serves to invite, and indeed encourage, conflict among neighbors where none need be. The Certificate of Registration is not a special or other permit, and an abutter has no statutory or regulatory right to prevent the certificate from issuing should all application conditions be made. Abutters already have legal remedies available to them should a problem develop. I note that this provision was not included in the Original WA and it should be deleted here.]** Within 14 days of the issuance of a Certificate of Registration, the Select Board Office shall mail notice of the Certificate of Registration to abutters (property owners, residents and tenants) within 300 feet of the Short-Term Rental Unit.
2. The initial issuance and renewal of a Certificate of Registration shall be subject to the applicant's compliance with applicable federal, state and local law, including this By-Law.
  3. The Certificate of Registration shall be valid for a period of one (1) to five (5) years, as the Select Board's Office may determine. The Certificate of Registration shall include a registration number, and shall identify the type of Short-Term Rental, the specific rooms that may be used as sleeping accommodations, and **[Suggest: Because of the objection in Section 5.11.3(e), adding, "and if applicable,"]** the maximum occupancy for each such room and for the unit as a whole.
  4. An operator may seek modification of a Certificate of Registration, including with regard to rooms to be used as sleeping accommodation and maximum occupancies, by submitting such documentation as may be required by the Select Board's Office in connection with such request. Modification of a Certificate of Registration is subject to approval by the Town's Health, Building and Fire Departments, who may conduct a pre-approval health and safety inspection as necessary. No modification of a Certificate may effect a change to the type of Short-Term Rental for which the Certificate was issued.
  5. Certificates of Registration are non-transferable. A Certificate of Registration shall be null and void upon a change in property owner or upon any change in the Primary Residence of the Short-Term Rental Operator that makes the unit

ineligible for operation as a Short-Term Rental under this By-law.

6. An Enforcement Authority may revoke, suspend or modify a Certificate of Registration for good cause. The Short-Term Rental Operator shall have the right to a hearing, or opportunity therefor, in connection with such action.
7. **[SR Comment: Given the climate of hostility (based on feared or actual circumstances) toward STRs as exhibited by some of the public comments at Town Meeting and the Moderator's Committee Jan. 13<sup>th</sup> meeting, I worry about automatic revocations of the Certificate of Revocation following three (3) so-called violations. Such automatic revocations deprive the STR Operator of basic due process (e.g., notice of and an opportunity to cure the violations) and, in any case, could have the unintended result of requiring revocation when the violation is simply de minimis. Once again, this provision encourages conflict amongst neighbors and is ill-advised. Also, the preceding provision, subparagraph (6) allowing revocation, suspension or modification for good cause, takes care of this issue. The first two (2) sentences of this subparagraph were not included in the Original WA for the good reason that automatic revocations of rights are generally not right or fair. Such sentences should be deleted here.]** Should the Short-Term Rental Operator be issued three (3) or more violation notices within any twelve (12) month period under this article, or of any municipal ordinance, state law, or building code, the Certificate of Registration will be revoked. In such case, a new Certificate of Registration may only be re-issued after a public hearing before the Select Board, which may, impose additional conditions. In the event an Enforcement Authority suspends or revokes an operator's right to operate an STR, the Town shall notify the Massachusetts Commissioner of Revenue of the suspension or termination.

## Section 5.11.5           INSPECTIONS

**[SR Comment: While I don't object to the Town's right to inspect, I believe that the requirement of inspection before issuance of the Certificate (involving as many as 300 to 400 STRs) may put an undue burden on each of these Departments resulting in unnecessary and undue delay of the issuance of the Certificate. Landlords renting units to tenants are not required to obtain Certificates or be subject to inspection, so an inspection of residential units to be rented is not a crucial component when there is already the requirement to comply with law. I note that inspections for any modifications to the Certificate are not required but may be conducted (see, 5.11.4(4)). I'd suggest that the better approach is to allow each Dept. to inspect as they deem appropriate. Therefore, in the first sentence of this paragraph, the suggestion is to change the word "shall" to "may."]** Prior to approving an initial Certificate of Registration, the Health, Building and Fire Departments **[Suggest: Change "shall" to "may"]** shall conduct a health and safety inspection. Such inspections may be conducted upon renewal or in connection with an annual or other inspectional schedule to be determined by the Town. Such inspections may be used to verify that each Short-Term Rental Unit:

1. Meets all building, health and fire code and regulatory requirements.

2. Meets all requirements of this By-Law and of any regulations promulgated pursuant to this By-law.

Inspections shall be made on week-days during normal Town business hours. In addition, inspections may be made at other times (including but not limited to evenings and weekends) to investigate complaints and/or concerns regarding non-compliance or health and safety issues. Inspections shall be conducted in conformity with applicable federal, state and local law. Facilities requiring re-inspection are subject to applicable re-inspection fees.

#### **Section 5.11.6 OPERATIONAL REQUIREMENTS FOR SHORT-TERM RENTAL UNITS**

1. No person shall operate a Short-Term Rental without a current Certificate of Registration pertaining to the Short-Term Rental Unit.
2. Short-Term Rentals shall comply with all applicable federal, state, and local laws, regulations and codes.
3. **[SR Comment: Given that the STR Operator already must spend at least 183 at his or her Dwelling Unit in order for the same to qualify as a Primary Residence, leaving at a minimum 182 days as potentially open and available for rental of a whole Dwelling, the 90 day cap is arbitrary. This provision, as others, restricts an STR Operator's property rights without any rationale or reasonable basis, either for any cap at all, or for a 90 day cap in particular. Also, as written, the Select Board could reduce the 90 day cap if it chose. As a compromise, the suggestion would be to extend the cap to 150 days, and provide that the Select Board could expand but not reduce the cap]** Except as may be otherwise **[Suggest: substituting "increased" for "specified"]** specified by Select Board regulation promulgated pursuant to this By-Law, a Short-Term Rental Operator may offer his or her Short-Term Rental Unit for up to **[Suggest: Substituting "150 days" for "90 days"]** 90 days per year.
4. A Short-Term Rental must be operated consistent with the terms set forth on the Certificate of Registration and with applicable law, including, but not limited to, with regard to rooms to be used as sleeping accommodations, **[Suggest: Because of the objection in Section 5.11.3(e), adding, "and if applicable,"]** the maximum occupancy of each room, the maximum occupancy of the unit as a whole, and any other stated conditions.
5. The following must be included within each Short-Term Rental Unit:
  - a. Diagram indicating the location of all fire extinguishers, gas shut-off valves, fire exits and fire alarms inside the Short-Term Rental Unit as well as in the building, as well as an evacuation route(s) highlighted in red. The diagram shall be posted i) in each bedroom used as a Short-Term Rental, ii) on all egresses from the Short-Term Rental Unit, and iii) in common areas accessible to the Short-Term Rental Unit;
  - b. A conspicuously placed binder with, at a minimum, the following

information:

- i. Local contact information including the name, address, home and cell phone numbers and email address for the Short-Term Rental Operator as well as one additional contact person who shall be reachable 24 hours a day in the absence of the Operator,
    - ii. Instructions for disposal of trash and recycling pursuant to any applicable requirements established by the Town of Brookline and/or by the property owner or condominium association,
    - iii. Information about Brookline parking regulations, including overnight parking restrictions and designated parking areas for guests, and
    - iv. Copy of Certificate of Registration from the Select Board's Office;
  - c. Fire extinguisher(s) which shall be of type ABC 10lb., dry chemical commercial with a tag to be tested and serviced annually by certified service company. Within a single-family unit, or multiple-unit building where units do not share a common access corridor, there shall be at least one acceptable type fire extinguisher available to the occupant within the unit. Where multiple units share a common access corridor on the same floor, one extinguisher may service up to four units, and be located within the access corridor on the same floor in a location to be determined by the Fire Department;
  - d. A hard-wired smoke/fire alarm system installed in accordance with M.G.L. Chapter 148 and NFPA 72; and
  - e. Any other documentation required by the Select Board's Office to be distributed inside Units.
6. Public advertisements (online or in print) for a Short-Term Rental shall include in the advertisement the Town-issued registration number associated with the Short-Term Rental's Certificate of Registration. A Short-Term Rental Operator shall only use the name stated on the application for an initial or renewed Certificate of Registration in on-line or other listings of the Short-Term Rental Unit.
  7. A Short-Term Rental Operator must keep accurate records of their business including date(s) of rental, rental rates, names of customers and customers' contact information for a period of three (3) years, and make them available to the Town upon request consistent with applicable federal, state and local law.
  8. A Short-Term Rental Operator shall notify the Select Board's Office of any change in the Operator's Primary Residence within two (2) weeks of any change.
  9. Renting for durations of less than twenty-four (24) consecutive hours shall not be permitted.
  10. Commercial uses are prohibited in Short-Term Rental Units.
  11. Short-Term Rental Operators shall cooperate and comply with lawful requests for information made by the Select Board's Office and its agents, including from the

Planning, Building, Health, Police, Fire and Public Works Departments. Such requests may include requests for bylaws and other condominium documents in order to verify certification(s) submitted to the Town in connection with a Short-Term Rental Certificate of Registration.

#### **Section 5.11.7 REGULATIONS**

The Select Board may issue regulations for the implementation of this By-law, including for the establishment of any appeal process, and for the establishment of a cap on the number of Certificates of Registration issued.

#### **Section 5.11.8 APPEALS**

Unless a statutory form of review is provided, any person aggrieved by the action or failure to act of a certifying agent shall have the right of appeal to the Select Board. Such appeal must be made in writing and filed with the office of the Select Board within fourteen days from the date action was taken. If the party aggrieved appeals from a failure of a certifying agent to act within forty-five days from the filing of an application, such appeal shall be made in writing and filed with the office of the Select Board within sixty days from the date of application.

#### **Section 5.11.9 FINES**

**[SR Comment: The continuing violation fine is very costly, especially if the violation is de minimis, or the STR is attempting to cure the violation. I'd suggest that the continuing violation be imposed only with respect to violations of a non-de minimis nature that remain uncured beyond a reasonable time for a cure, usually 30 days (e.g., to complete a repair)]** Any person violating this By-law shall be fined in the amount of \$300 for each violation. Each day of a continuing violation **[Suggest: Adding "that is of a non- de minimis nature and that continues more than thirty (30) days following the STR Operator's receipt of written notice of and an opportunity to cure said violation"]** shall count as a separate violation.

#### **Section 5.11.10 REPORTING**

**[SR Comment: While the Certificate of Registrations are public records, of course, to avoid inviting and inflaming conflict among neighbors, I'd suggest specifying that STR certificates and violations be maintained on the Town's website in the manner of building, zoning, and other similar type permits.]**

1. **[Suggest: Adding, "On the Town's Citizen Access Portal for Permitting and Licensing, a" and deleting "A":]** A list of Short-Term Rental Units with active Certificate of Registrations will be published on the Town website and updated at least monthly. Information must include address, Short-Term Rental type, Certificate of Registration effective and expiration dates, **[Suggest: Because of the objection in Section 5.11.3(e), adding, "and if applicable,"]** approved number of rooms and guests and any other restrictions.
2. **[Suggest: Adding, "On the Town's Citizen Access Portal for Permitting and Licensing, a" and deleting "A":]** A list of Short-Term Rental Unit violations will be published on the Town website and updated at least monthly. Information must include Certificate of Registration number,

address, date of violation, type of violation, and dollar amount of fine.

**Section 5.11.11        EFFECTIVE DATE**

These amendments to the General By-law shall take effect on January 1, 2022.

**Section 5.11.12        SEVERABILITY**

If any provision(s) of this section is held to be invalid, such provision(s) shall be severable and the remaining sections shall be valid.

**[SR Comment: The following seems like a typo to delete, correct?]** Or act on anything relative thereto.

VOTED DRAFT