

## PRESERVING SHORT-TERM RENTAL TRADITIONS *and* RESIDENTIAL NEIGHBORHOODS

### ZONING and GENERAL ORDINANCE AMENDMENT IDEAS TO THE ZONING SUBCOMMITTEE'S PROPOSAL

We appreciate having been asked by several Councilors to provide possible amendment ideas. In this document, we identify amendment concepts to both the proposed Zoning Code change and to the proposed General Ordinance change. Each concept is followed by rationale. To add clarity around the concepts, we also provide illustrative language given the requests and the interrelated components of the changes. We hope you find it helpful, understanding that your staff will be better equipped to align any amendment language to the proposal language. We provide the illustrative amendment language embedded in the General Ordinance as well for further clarity given its length and complexity; we do not provide it in the Zoning Code paragraph given its brevity. To be clear, the effect of the zoning amendments is to maintain current zoning; the objective of the zoning amendments would be achieved by not adopting any Zoning Code changes.

The amendment ideas to the proposed zoning code changes and to the proposed general ordinance changes are designed, when taken together, to:

- ⇒ Preserve Barnstable's traditional short-term rentals *and* its residential-only neighborhoods;
- ⇒ Control the *use* of homes by requiring as a condition of a short-term rental permit in districts where short-term rentals are permitted, that an owner live in the home a small (non-sequential) portion of a year, or alternatively, by limiting the number of times per year a home may be short-term rented. This prioritizes our housing and local residents' needs over the desires of off-site investors to use homes as profit centers and not as housing. (These are two of many approaches used by municipalities across the country without legal impediment and that have withstood legal challenge to prevent homes from being used exclusively as mini-hotel businesses);
- ⇒ Eliminate, over a two-year period, short-term businesses in zoning districts that the zoning code permits a single use: single-family residential dwellings;
- ⇒ Strike a vague proposed change to zoning that would allow short-term rental of home "portions", which language would change the nature of residential homes and is ripe for litigation, and adhere instead to the specific and clear bedroom rental authority when the homeowner is present, as provided in the current zoning code;
- ⇒ Strike the zoning proposal to allow cars to park in back yards and side yards (i.e., anywhere but the front yard) at short-term rentals;
- ⇒ Respect current occupancy levels in our Town Code that protect health and safety, including that of our delicate wastewater system;

- ⇒ Establish a minimum night stay that prevents neighborhoods from being mini-stay revolving door hotels and venues for weekend parties, preserving short-stay business for our hotels, motels, inns and Bed & Breakfasts; and,
- ⇒ Provide for timely enforcement responsiveness.

<p>Rationale</p> <p><u>Illustrative Additions</u></p> <p><del>Suggested Deletions</del></p>
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### ZONING AMENDMENT IDEAS

The following are three (3) suggested amendments to the Zoning Subcommittee’s proposed zoning code changes that would effectuate elements of the above relevant to zoning.

- I. **Strike zoning proposal to change zoning in districts where the only permitted use is single-family residential dwelling to maintain the clear, deliberate and diverse zoning districts.**

**Additional Consideration:** Grant currently registered short-term rental businesses in Single Family Residential-Only Districts (240-13: RC, RD, RF-1, RG; see, zoning chart below for reference) a permit to continue operating their businesses as a non-conforming use, which permit expires in two years or upon the transfer of the property.

*Rationale:* This maintains the zoning that residents relied upon when they purchased homes in residential-only zones (zones that do not permit any business or commercial use) and gives the approximately 123 entities (based on analysis of current data) that operate commercial businesses in those residential zoning districts where the zoning code permits one use - single-family residential dwellings - a period in which to transition the use to a single-family residence or to sell. This amendment preserves single-family residential zoning residents relied upon without court or ballot action.

**Illustrative Amendment:** Notwithstanding any provisions to the contrary in this Chapter 240, short term rentals shall be permitted within lawful dwelling units in ~~all~~ zoning districts other than in those zoning districts where the only permitted use is single-family residential dwelling.

**Additional Amendment Idea:** Consider coupling with a grant of two-year, non-conforming use permit for short-term rental operators of currently registered units in zoning districts where the sole permitted use is single-family residential dwelling.

- II. Strike vague zoning proposal that would allow home “portions”<sup>1</sup> to be short-term rented; maintain the clear rules in those zoning districts that currently permit homeowners to rent a specific number of bedrooms, and clarify that those bedroom rentals may also be short-term rented when the owner is present; maintain the clear rules in those zoning districts that do not permit any bedroom rentals.**

*Rationale:* Today, the zoning code permits homeowners in certain residential districts to rent a specific number of bedrooms in their own home. In other residential zoning districts, the zoning code does not permit even one bedroom rental. It is perfectly clear.

The Town of Barnstable confirmed this on October 6, 2018 when it issued a Cease and Desist Order to the owner of a home in Zoning District RC who was renting bedrooms. In part, the Town ordered the owner to stop renting bedrooms. The Town stated “Further, the renting of rooms is not a permitted principal or accessory use in the RC Zoning District. See Chapter 240 Section 13 A-E”.

In Appeal No. 2019-001, that homeowner asked the Zoning Board of Appeals (ZBA) to grant a variance to permit bedroom rentals. The January 9, 2019 ZBA meeting minutes note that the ZBA Chairman stated he had a hard time granting a variance in areas that the Town did not zone for such use. Another ZBA member noted the neighbors were not aware that this property could be rented out. The request for a variance was then withdrawn.

This amendment maintains the zoning code’s current clarity around bedroom rentals. It further specifies that in zoning districts where bedrooms rentals are permitted, such bedroom rentals may be short-term rented as well.

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<sup>1</sup> **Process issue on two of the three zoning change proposals:** The proposals to change zoning 1) to allow short-term rental of unlimited, undefined home “portions” (even in zoning districts that do not allow long-term rentals of even one bedroom) and, 2) to allow parking at short-term rentals in back and side yards (anywhere but the front yard) were inserted into a draft dated 4/30/2020. This was in a period of no public meetings due to COVID-19. Both proposals were released for the first time on the eve of the scheduled vote (then postponed due to a notice problem). Thus, the public does not know where these proposals came from, how/why they appeared on the vote eve, what a home portion means, and why cars filling yards at short-term rentals is appropriate. There was no public discussion of these proposals, or public comment on them when the Subcommittee approved them. The Planning Board also did not discuss these zoning code changes.

The new undefined, and vague home “portion” language is a significant change to zoning law. It will invariably wind up before a court for a determination as to meaning. For example, it would:

- ⇒ Allow rentals of all bedrooms in a home for single nights, weekends, or weeks to unrelated people, including in zoning districts where the zoning code does not currently allow rental of even one bedroom (for any length of time, for example, to provide housing for a teacher for a school year).
- ⇒ Allow rentals of living rooms, kitchen and dining areas, basements, sunrooms, or any other home “portion” to unrelated persons for nightly or weekend events, including in those zoning districts where the zoning code does not currently allow rental of even one bedroom (for any length of time, for example, to provide housing for a teacher for a school year).
- ⇒ Allow rentals on a per night or weekend basis to groups of unrelated people outdoor kitchens, and pool houses, for example.
- ⇒ Allow multiple bedroom rentals or other home portion rentals for consecutive 30-day periods - the functional equivalent of a boarding house for groups of unrelated people, including in zoning districts that do not permit even on long-term bedroom rental.

Moreover, the proposal does not require that the short-term rental of home “portions” occur when the owner is present. Even if the word “bedroom” was substituted for home “portion”, the proposal is structured to permit a property owner to rent rooms, indeed unlimited rooms, to unrelated people when that owner is not present. That is not “home sharing”. That is the functional equivalent of an unsupervised boarding house. (Note the Town Code requires all other facilities that permit the rental of single rooms to unrelated people to have onsite management at all times when guests are present.)

**Illustrative Amendment:** A short term rental shall be defined as a residential dwelling ~~or any portion of a dwelling~~ **or a bedroom, as permitted in Residential Districts in Chapter 240 Article III when the Owner is on site**, rented out through the use of advance reservations, for a fee, for a period of not more than 31 consecutive calendar days...

**III. Strike zoning proposal to permit cars to fill back and side yards at homes provided the homes are used as short-term rentals.**

*Rationale:* There is no policy basis to authorize the use of back and side lawns as parking lots provided the property is used as a short-term rental rather than as a home by owners or by long-term tenants.

Giving homes used as short-term rentals express permission to fill side and back yards with as many cars as can fit has no connection to any provision of the Town's short- or long-term comprehensive plans or to the various village plans to preserve the village character or quality of life for residents.

The perceived need to create distinct and expanded parking permission for homes used as short-term rentals rather than as homes, would be mitigated by maintaining the same occupancy level for homes whether used by owners, long-term renters, or short-term renters.

As an aside, there are questions about the implications of allowing cars to park in yards on top of a property's septic system.

This amendment eliminates a proposal that gives express permission to make Barnstable homes, when used as short-term rentals, look, respectfully, like junkyards with no recourse for aggrieved neighbors with property value degradation and quality of life decline.

**Illustrative Amendment:** ~~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.~~

## GENERAL ORDINANCE AMENDMENT IDEAS

The following are amendment ideas to the Zoning Subcommittee's proposed general ordinance changes that would effectuate elements of the objectives described above.

### I. **Prevent homes from being used as 365 days-a-year businesses - make-shift hotels - in residential neighborhoods.**

Municipalities across the country have used a variety of ways to preserve the housing stock for use as homes, to prioritize local residents' needs over investors' economic interests, and to protect residential neighborhoods from homes used exclusively as businesses - the functional equivalent of unstaffed hotels.

For permissible short-term rentals in all zoning districts, require minimal owner occupancy of the home as a condition of short-term rental registration: short-term rental registration requires owner to attest to three (3) months (total annual, not consecutive) of owner occupancy per year.

Eliminate provision to allow all persons to register and operate two short-term rentals, which effectively allows one hundred percent (100%) of homes in Barnstable to be used as full-time short-term rental businesses.

*Alternatively*, control the *use* of homes in residential neighborhoods by limiting the number of short-term rental registrations to one per owner *and* limiting the number of times per year an owner may short-term rent a property.

***Rationale:*** This amendment would implement an extremely common owner occupancy requirement: allow homeowners to short-term rent their own home. This requirement is consistent with Cape traditions of Cape families renting their own homes for periods of time to other families to help them afford taxes and other expenses. It prioritizes housing and local resident needs over off-site investors' economic interests.

This requirement preserves housing for use as homes, requires some minimal owner connection to the home and neighborhood, and prevents absentee businesses and speculators from converting homes Barnstable needs for housing to full-time short-term rental profit centers, which drives down housing availability and drives up the cost of housing.

It is very common for municipalities that prioritize housing and local residents needs to permit persons to short-term rent only their permanent residence or homes they occupy year round or at least six months per year. This amendment is dramatically shortened to account for residents who live on and off Cape.

*Alternatively*, limiting short-term rental registrations to one per person *and* limiting the number of times per year an owner may short-term rent a home can achieve the same objectives: preserving housing stock for use as homes, and prioritizing local residents' housing needs over investors' interest in monetizing housing stock as a business proposition. This option also preserves local residents' traditional short-term rental practices of moving out of their home in the summer to rent to other families for summer weeks.

**Illustrative Amendments:**

**ANNUAL OWNER RESIDENCE AFFIDAVIT**

**A form provided by the Inspectional Services Department to Dwelling Unit Owners in which Owners attest annually to residency in the Dwelling Unit for three (3) of the prior twelve (12) months and an intent to reside in the Dwelling Unit for three (3) of the subsequent twelve (12) months signed and submitted to the Building Division.**

### OWNER RESIDENCE

The Dwelling Unit in which the Owner resides for at least three (3) months out of a twelve (12)-month period. Owner residence is demonstrated by an Annual Owner Residence Affidavit showing that as of the date of registration of the Dwelling Unit on the Short-Term Rental Registry, the Owner has resided in the Dwelling Unit for three of the past twelve months and intends to reside in the Dwelling Unit for three (3) of the subsequent twelve (12) months. Such Owner Residence affidavit shall be signed and submitted to the Inspectional Services Department annually.

### **Registration Required**

No Owner shall rent, or offer to rent, any Short Term Rental prior to registering with the Inspectional Services Department, **which registration requires an Annual Resident Owner Affidavit**. No tenant or lessee of an Owner shall let or sub-let a Short Term Rental under any circumstances.

### ~~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.~~

### **Alternative: Maximum Number of Short-term Rentals per Calendar Year**

**No Owner shall rent, or offer to rent, any Short Term Rental, more than eight (8) seven (7) day periods in each calendar year.**

## **II. Minimum Night Stays: Seven (7) nights. Eliminate the proposal's inherent mini-stay permission.**

*Rationale:* A minimum seven (7) night stay adheres to our traditional short-term rental duration. It eliminates homes used as mini-stay hotels and unsupervised weekend party venues (that even Airbnb considers risky).

In residents' experience, such super-short stay rentals are often when groups use homes as event venues, i.e., weekend bachelorette parties, and college student getaways.

This minimum seven night short-term rental period preserves mini-stay business for Barnstable's hotels, motels, Inns and Bed & Breakfast. The Town Code requires hotels, motels, inns and Bed and Breakfast to have

staff present at all times when transient lodgers come to town for a few nights for good reason.

**Illustrative Amendment:**

**B. Minimum Short-term Rental Person**

**No Owner shall rent, or offer to rent, any Short-Term Rental for a period of less than seven (7) days.**

- III. Maintain Town Code Occupancy Limits:** Strike special increased occupancy limits when properties are used as short-term rentals rather than as homes; reduce burden on neighbors from having to count heads and ease enforcement of occupancy code by creating assumptions around occupancy levels.

*Rationale:* An exceptionally common complaint about short-term rentals is over-occupancy. High occupancy at homes used as short-term rentals contributes to other common short-term rental complaints, such as noise and excessive cars.

Short-term rental operators often advertise for occupancy levels in excess of Town Code limits; the more “guests” in the group making a reservation, the lower the per person cost per night, the more competitive the operator is vis a vis other lodging options, and the higher the profit.

This amendment respects the occupancy limits for homes in the Town Code that protects health and safety, including of our delicate wastewater system. It eliminates the proposed disparity in occupancy levels between homes used as homes and homes used as short-term rentals, and express permission for short-term renters to use common spaces as if they were legal bedrooms.

Short-term renters are very often gone from the premise before enforcement officials arrive following a complaint about over-occupancy. Neighbors who complain about over-occupancy have been asked for proof; head counting is not and should not become a neighbor’s role. Further, encouraging neighbors to essentially photograph short-term renters is problematic, and particularly so when lodgers in homes have an expectation of privacy inside the home or in a back yard.

Some municipalities have eased the burden of establishing over occupancy on neighbors and enforcement officials by codifying evidence of presumption of over-occupancy upon which enforcement officials may act. This mitigates the need to count heads, arrive while lodgers are still



present, or debate whether some occupants are overnight guests or visitors.

**Illustrative Amendment:  
Occupancy Requirements.**

~~Notwithstanding the provisions of Chapter 59-3, the maximum number of Occupants in a Short Term Rental shall be two per bedroom, plus an additional two.~~ Occupancy limits in a Short Term Rental shall conform to occupancy limits in Chapter 59-3.

**Presumptive Evidence Of Over-Occupancy**

**A. It shall be presumed that a bedroom is over-occupied if the number of mattresses in a bedroom exceeds the maximum number of occupants permitted for the bedroom pursuant to the Town Code.**

**B. It shall be presumed that the Dwelling Unit is over-occupied if a common area is advertised as a bedroom or as a room with sleeping accommodations.**

**C. The foregoing may be rebutted by evidence presented to the Inspectional Services Department or a court of competent jurisdiction.**

**IV. Make Zoning and General Ordinance enforcement personnel available 24/7 and Establish specific timelines for enforcement action following a complaint.**

*Rationale:* Residents are entitled to the benefit of the rules designed to protect them by ensuring available enforcement resources when problems arise, not afterwards.

Resident comments appended to the Town's short-term rental survey provide a sense of the consistency of resident frustration at lack of enforcement.

This amendment relieves the burden on residents from having to consider calling the police and relieves our police force from being in the short-term rental management business when they have other things to do.

Funding for adequate staffing level can come from short-term rental taxes or from short-term rental registration fees. The proposed registration fee is currently less than the cost of a beach parking sticker.

The imperative to have enforcement staff available at all times was explained well by Councilor Cullum at the Zoning Subcommittee meeting on May, 14 2020:

“I have some concerns about, its good that it’s written in here that you go through the inspectional services department, but if your complaint is at 11:00 pm or on a Sunday, how does the person complaining get an answer immediately? And this is going to be what makes or breaks this ordinance. In my opinion. This has to be airtight. So, what are we offering people? Are they calling the police department that then triages it through inspectional services after it’s all tamped down. What are we offering the public as an assurance that it’s not a number that goes nowhere and it’s not an e-mail that isn’t answered. I mean, who is picking up the phone basically?

...

As life exists now, people in my neighborhood are afraid to call the police at 11:00 pm for something where there is no blood and there is no gunshots. So how do we get the message out to people, and I’m not trying to be nit picky, I ask it every single time, how do we get the message out that the town is serious about preserving everyone’s quality of life? I think it’s absolutely essential that it be really spelled out that we know that we’ll call the the police department, they will be the first point of contact and from there they will triage it out to whoever needs it. If it’s Saturday at 4:00 pm or whatever maybe we just make all calls go through the police department or maybe the one spend that we have is to have an inspectional person on call at all times. But I really feel that unless we have that shored up we are failing the public on this. There is no point. Because right now people don’t complain. They don’t have a reliable place to complain. That’s the whole point.

...

What I want is just a point person that everybody can call. Because you know what I mean we have the community line, I forget the acronym or something, that ended up like it was the bane of our existence now because it went nowhere and then it went to Lynn, you know, I really think we need a framework in place and not just leave it in the document that you can just complain. Because everyone is just going to say “who do I complain to?” I would like people to be more comfortable with the idea of call the police, but the fact is that they are not, they are just not. Older people especially aren’t for non-emergencies. So I really think that is something we need to consider. I know it’s the back end of all this, but it’s the most important thing, in my opinion.”

Finally, residents – those who rent their homes and are the subject of complaints and those who file complaints - are entitled to timing certainty with respect to complaint reviews and resolution. The rules exist for residents, and timeliness matters. Resources to allow for timing certainty could be funded from the short-term rental tax and/or short-term rental registration fees.

**Illustrative Amendments:**

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. It shall be the duty of the Inspectional Services Department to maintain staffing levels adequate to be available to receive resident complaints about violations of any provision of this section twenty-four hours per day, seven days per week.

#### Fees

The fee for a short term rental registration or a renewal of a registration shall be initially set at ~~\$35~~ [level sufficient to fund 24/7 enforcement when coupled with revenue from short-term rental tax revenue] and thereafter may be modified by the Town Manager at a fee hearing.

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 within thirty (30) days after receipt of a complaint.

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 within five (5) business days of such finding a potential violation.

#### 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, which shall be no later than seven business days following the close of the hearing.

#### V. **Penalty scheme structured to have consequences, including risk of loss of right to short-term rent.**

*Rationale:* Relatively minimal economic penalties are a cost of doing business and not an incentive. The proposed penalties are just that, and never present real risk to the owner, economic or otherwise, to modify practices to avoid them.

Absent an ability to impose material fines for early offenses as many municipalities have done (some for example set a penalty at twice the daily rental rate), the risk

of continuing non-compliance should be a loss of the right to short-term rent after a few offenses.

An effective penalty scheme with the potential for serious economic consequences and the risk of the loss of the right to rent incents owner responsibility and would reduce continuing complaints and enforcement actions.

### **Illustrative Amendment**

#### **Penalties**

Any person who violates any provision of this chapter ~~will~~ **may** be subject to a fine in accordance with the following:

Any person who violates any provision of this chapter ~~will~~ **may** be subject to a fine in accordance with the following:

- Warning 1st

Offense

- ~~\$100~~**\$300**

2nd Offense

- ~~\$200~~ 3rd Offense – **Termination of Short-term Rental Registration**

- ~~\$300 4th Offense and each subsequent~~

~~offense~~ Each day that a violation exists constitutes a separate offense.

## **VI. Maintenance of a Comprehensive, Transparent Short-term Rental Registry**

The current database of rental registrations does not provide real information about property ownership. It appears to be organized by just one of a property owner's first names. The name of a second or subsequent or any joint owner does not appear, nor do the names of the principals of any business entity or trust that owns the property. It is also not searchable.

***Rationale:*** If housing stock and residents are to be prioritized over investors taking houses out of the housing stock for use as businesses, a threshold need is for a rental registration list that provides complete and fully transparent information about ownership interests.

### **Illustrative Amendment**

#### **Short-term Rental Registry**

It shall be the duty of the Inspectional Services Department to maintain the Short-Term Rental Property Registry pursuant to this section. Such register shall be searchable and sortable and shall:

- 1) be kept by tax map number, Rental Property Registration Number, street address;

- 2) and show the name and address of the owner, which shall include the name of every individual with any ownership interest in the property, the name of every individual that is a member of any business entity or trust with an ownership interest in the property, and for each individual a representation about whether that individual has an ownership interest in any other property on the Rental Property Registry;
- 3) display the number of conventional bedrooms in the single family residence at such street address, the number of adults allowed to occupy that residence pursuant to the Town Code; and,
- 4) include the name and telephone number active 24 hours per day of the individual who is able to respond in person to any issues or emergencies that arise during the Short-Term Rental within two (2) hours of being notified by Short-Term Rental occupants and Town personnel.