

SHORT-TERM RENTAL REGULATIONS: PRESERVING TRADITION, DIVERSITY AND CHARACTER OF OUR VILLAGES

On January 9, 2020, the Town indicated it would draft new short-term rental regulations that move away from our rental traditions. The new “*Commercial Rentals Everywhere*” regulations would gut residential zoning. All residential neighborhoods would have the same short-term rental zoning as seasonal vacation cottage areas. Offsite investors would be free to flip homes in every residential neighborhood into 365-day-a-year makeshift hotels. Neighbors would get some nuisance regulations and a phone number to call with complaints.

At the January 23, 2020 Barnstable Town Council meeting, President Paul Hebert said, wisely, that our new short-term rental and zoning regulations should reflect “**what other communities are doing successfully, that’s what we want to imitate...to protect all of our citizens and all of our neighborhoods.**”

Barnstable Watch proposes the following regulations in that spirit.

SUMMARY

The regulations we propose are based on the study of other successful communities. We’re not the first, or tenth, or even twentieth popular, coastal tourist destination to deal with juggernauts Airbnb, Vrbo, HomeAway, and services like theirs offered by Realtors and other commercial interests.

The most influential community regulations have been the Hamptons. Here’s why:

- Like Barnstable, The Hamptons are a group of unique seaside villages.
- They have significant population increases during the summer.
- They have a year-round community, and a year-round weekend community. Shops and restaurants that used to close are now open “off season.”
- The Hamptons, less than two hours from New York City, are diverse. Some have large homes, some have more commerce than others, some have cottages near beaches.

The Hamptons’ short-term rental regulations are quite strict, reflecting its interest in preserving its character, quality of life and housing. We agree with those values but have loosened our version considerably to respect local rental traditions.

What follows are key highlights of the “Diversity & Tradition” regulations we propose.

Preserves our diverse zoning and traditions. Barnstable zoning has long reflected village and neighborhood character. We believe there should be no short-term rentals in residential zones with no commerce, no transient lodging, and where not even a single room rental has been allowed by law. At the same time, areas that have longtime seasonal rental traditions, like Craigville Beach, will also not be forced to change. Preserving our zoning traditions will also help preserve our hotels, motels, inns, and bed & breakfasts that have long been an important part of our community.

Bans investor-operated short-term rentals. This is common in destination communities in the U.S. and around the world. The property must be a place where someone actually lives — in this case, and in light of second-home ownership, the owner must reside there only three months a year. The three-month requirement is lighter than most, but still works to do what coastal and tourist communities have found to be so important: preventing offsite investors from flipping homes into hotels. Housing stock here in Barnstable is precious and vacation rental rules need to reflect that undisputed fact.

Sets minimum rental stays for lodgers. Consistent with Cape rental traditions, we propose a one-week minimum rental duration in permitted zones. Our proposal bans the pay-per-night, one-, two-, and three-night stays that Airbnb-like platforms sell, or the “mini-stays” that some Realtors offer.

Respects legal occupancy limits. Rental ads must identify the legal number of adults allowed in the home per the Town Code. Failure results in the loss of license to rent. (The business model of many short-term rentals counts on chronic overcrowding: air mattresses, illegal bedrooms, calling common areas sleeping quarters. This is especially damaging in Barnstable, which must protect our delicate septic systems for decades until the \$1.5 billion wastewater modernization project is complete.) Like the Hamptons, we presume if property advertising is not aligned with legal occupancy limits, there is overcrowding. This will ease enforcement work, eliminating the need for Town staff to do tourist count heads at 2:00am or ask neighbors to police the property next door.

Preserves real homesharing for guests: In neighborhoods where zoning has permitted room rentals to non-related guests, residents can share their primary homes when they are also present. Barnstable requires that all motels, hotels, inns, and bed & breakfasts have management present when overnight lodgers are present; the same need exists when overnight lodgers stay in rooms next door.

Enforcement is clear. Our proposal eases enforcement where possible by identifying presumptions, provides a timeline for enforcement, and a hearing process so citizens have assurance of timely action and due process.

Legislative Intent.

The Town of Barnstable recognizes and preserves Barnstable residents' opportunity to rent the homes in which they live for some portion of the year in a way that also preserves quality of life and character of the community, and housing stock for use as homes.

The Town of Barnstable recognizes rising incidences of single-family residential dwelling units being used as make-shift motels for transient accommodations, including but not limited to use by groups and multi-families on a short-term rental basis where the property owner does not live and is not present during transient lodgers' stay. The Town of Barnstable recognizes the need to preserve housing stock for use as residents, as well as the quality of life and character of community for its residents while allowing them to rent their homes to other families for short periods of time in residential zoning districts where home sharing has been permitted in the Town Code. The Town of Barnstable further recognizes the adverse implications on property values in residential neighborhoods where homes are used for transient lodging and the consequent adverse impact on the tax base.

The Town of Barnstable recognizes that occupancy at such short-term rental properties often exceeds the occupancy limits established in the Town Code consistent with rental advertisements that welcome occupants in excess of legal limits, which limits exist to "guide growth in accordance with the local comprehensive plan, so as to promote beneficial and convenient relationships between the natural resources of the Town and its inhabitants, to address nutrient management and other environmental, health and safety issues resulting from overcrowding in residential dwellings." (Sec. 59-1). The Town of Barnstable also recognizes that the ground resources of the Town of Barnstable are its sole source of water supply and occupancy limits that recognize septic system capacities protect public health and safety from deterioration of ambient groundwater by nitrate contamination.

In order to provide the Town's personnel with information to enable prompt enforcement and thus compliance with the legal use of properties throughout the Town, to protect the health, safety, and welfare of rental property occupants and the community at large, and not to shift the burden to neighbors to gather evidence to assist enforcement actions, the Town requires more and better information and regulation of rental properties. The adoption of a rental registry and permit requirements will provide information on the location of rental properties throughout the Town and provide information and presumptions to assist Town personnel in enforcing the provisions of the Town Code.

1 **Definitions.**

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3 All terms used in this Chapter shall have the meanings set forth below regardless of any
4 inconsistent provisions elsewhere in the Town Code. Any terms not specifically defined herein
5 shall have the same meaning as set forth in the Zoning Code or if not so defined therein, shall
6 be defined by common usage.

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8 **ANNUAL OWNER RESIDENCE AFFIDAVIT**

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

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14 **BUILDING INSPECTOR**

15 The person holding the position of Building Inspector for the Town of Barnstable or her
16 designee.

17

18 **DWELLING UNIT**

19 A building or part of a building where the unit consists of one (1) or more rooms with provisions
20 for cooking, living, sanitary and sleeping facilities designed for residential use and arranged or
21 intended to be occupied by one individual household or family living independently of other
22 individual households or families.

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24 **FAMILY**

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26 A. The following shall constitute a family hereunder:

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28 (1) Any number of persons occupying a dwelling unit, provided that all are related by blood,
29 marriage or legal adoption and provided that they live and cook together as a single
30 housekeeping unit; or

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32 (2) Any number of persons not exceeding four occupying a dwelling unit and living and
33 cooking together as a single housekeeping unit, where not all are related by blood,
34 marriage or legal adoption.

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36 B. A group of persons whose association or relationship is transient or seasonal in nature,
37 rather than of a permanent and domestic character, shall not be considered a family.

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39 C. A group of unrelated persons numbering more than four (4) and occupying a dwelling unit
40 shall be presumed not to constitute a family. This presumption can be overcome only by a
41 showing that, under the standards enumerated in the Town Code, the group constitutes the
42 functional equivalent of a family. A determination as to the status of such group may be made

43 in the first instance by the Building Inspector or, on appeal from an order, requirement,
44 decision or determination made by him, by the Zoning Board of Appeals.

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46 D. Persons occupying group quarters, such as a dormitory, fraternity or sorority house or a
47 seminary, shall not be considered a family.

48

49 **HOME SHARE UNIT**

50 A Dwelling Unit that is the Owner's residence, a portion of which is offered as a Short-Term
51 Rental while the Owner is present in those zoning districts that permit single-room rentals to
52 non-related persons.

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54 **IMMEDIATE FAMILY**

55 The Owner's spouse, children, parents, siblings, grandparents or grandchildren.

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57 **OWNER**

58 Any person, individual, association, entity or corporation whose name is listed as grantee on
59 the last deed of record for the property, as recorded in the Barnstable Registry of Deeds.

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61 **OWNER ADJACENT DWELLING UNIT**

62 A Dwelling Unit that is not the Owner's residence as established by the Annual Owner
63 Residence Affidavit and that is not a Family Apartment per the Town Code but that is located in
64 the same dwelling building as the Owner's residence or in a separate dwelling on the Owner's
65 property.

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67 **OWNER RESIDENCE**

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

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75 **PERSON**

76 Includes any individual, business, partnership, firm, corporation, enterprise, trustee, company,
77 industry, association, public entity or other legal entity.

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79 **PUBLISH**

80 Promulgation of an available rental property to the general public or to selected segments of
81 the general public, in a newspaper, magazine, flyer, handbill, mailed circular, bulletin board,
82 sign, website, or electronic media.

83

84 **RENT**

85 A return, in money, property or other valuable consideration (including payout in kind or

86 services or other thing of value), for the use and occupancy or the right to the use and
87 occupancy of a rental property, whether or not a legal relationship of landlord and tenant exists
88 between the owner and the occupant or occupants thereof.

89

90 **RENTAL PROPERTY**

91 A Dwelling Unit which is occupied for habitation as a residence by persons other than the
92 Owner or the Owner's immediate family, and for which rent is received by the Owner, directly
93 or indirectly, in exchange for such residential occupation. The term rental property shall include
94 single-family houses, two-family houses, and apartments (other than those regulated under the
95 Town Code's Family Apartments) but shall not include:

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97 1.) legally existing hotels, motels, inns, bed and breakfasts providing short term
98 transient accommodations;

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100 2.) any housing owned or managed by the Town of Barnstable or any affordable or
101 senior multi-family dwelling unit developments owned and/or managed by a not for
102 profit organization;

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104 **SHORT-TERM RENTAL**

105 The use of a Dwelling Unit for occupancy by a person or persons for a period of fewer
106 consecutive days than are in a calendar month, and for a fee.

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108 **Regulations.**

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110 A. No Dwelling Unit shall be offered as a Short-Term Rental except in compliance with the
111 provisions of this section.

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113 B. No Dwelling Unit shall be offered as a Short-Term Rental in zoning district(s) RC, RD, RF-
114 1 and RG.

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116 C. An Owner of a Dwelling Unit in all residential zoning districts other than RC, RD, RF-1
117 and RG may offer his or her whole Dwelling Unit, as established by an Annual Resident
118 Owner Affidavit, as a Short-Term Rental to a single family for a period of no less than
119 one (1) week at an adult occupancy level that conforms to the Town Code.

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121 D. Nothing in this subsection is intended to restrict rentals of dwellings in a Cottage Colony
122 as specified in Section 240-131.3.

123

124 E. An Owner may offer his or her Home Share Unit as a Short-Term Rental for up 365 days
125 per year in those zoning districts that permit room rentals in residential dwellings to
126 non-related persons provided the Owner is present during the rental period.

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- 128 F. An Owner may offer Owner-Adjacent Units for use as a Short-Term Rentals for up to 365
129 days per year in two-family or three-family dwellings and in cottages located on the
130 Owner’s building lot where all units are owned by the same unique owner who resides
131 at such unit and is present during such Short-Term Rental; however, for the purposes of
132 owner-occupied three-family residential dwellings, an Owner of an Owner-Adjacent Unit
133 may only register and use one Owner-Adjacent Unit as a Short-Term Rental.
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- 135 G. No Dwelling Unit may be offered as a Short-Term Rental that is the subject of two (2) or
136 more findings of violations of this section within a twelve-month period, or two (2) or
137 more violations of any municipal ordinance or state law or code relating to excessive
138 noise, improper disposal of trash, disorderly conduct, or other similar conduct within a
139 twelve-month period.
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141 **REGISTRATION AND PERMIT REQUIRED.**

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143 **A. Registration Required.** It shall be unlawful and a violation of this chapter for any person or
144 entity owning, renting or leasing a rental property within the Town to rent, lease or permit the
145 occupancy of such rental property by other than the Owner or Owner’s immediate family,
146 without having first registered the property as a rental property with the Building Inspector by
147 the filing of a Rental Property Registration Form or Rental Property Registration Renewal Form
148 deemed complete by the Building Inspector.
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150 **B. Rental Registration Number and Permit Required**

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152 1. It shall be unlawful and a violation of this chapter for any person or entity owning,
153 renting or leasing a rental property within the Town to rent, lease or permit the
154 occupancy of such rental property by other than the Owner or Owner’s immediate
155 family, without first obtaining a Rental Registry Number and permit from the Building
156 Department for the specific premises used as a rental property.
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158 2. It shall be unlawful and a violation of this chapter for any person to use a rental
159 property that does not have a valid Rental Registry Number and permit from the
160 Building Department for the specific premises used as a rental property.
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162 **C. Rental registration update required.** It shall be unlawful and a violation of this chapter for
163 any person or entity owning, renting or leasing a rental property within the Town to rent, lease
164 or permit the occupancy of such rental property by other than the Owner or Owner’s
165 immediate family, without having filed a Rental Registration update if there shall be a change in
166 conditions as set forth in of this Chapter.
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168 **D. Use prohibited.** It shall be unlawful and a violation of this chapter for any person or entity to
169 use or occupy a rental property without that property being validly registered and permitted as
170 a rental property with the Building Department.

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E. Failure to publish Rental Registry Number and Maximum Number of Adult Occupants. It shall be unlawful and a violation of this chapter for any person or entity to cause to be published any advertisement for the rental of any residential property in the Town of Barnstable without including the Rental Property Registration Number for said property and the maximum number of adult occupants permitted by the Town Code.

REGISTRATION AND PERMITTING PROCESS.

A. Rental Property Registration Form. Rental Property Registration Forms shall be made in a sworn or affirmed writing by the property owner to the Building Department on a form provided therefore. To the extent the Town makes on-line registration available, applicants may utilize such system. Such application shall, at a minimum, set forth:

1. The names, physical addresses, mailing addresses and telephone numbers of the property owner(s);
2. The name, physical address, mailing address and telephone numbers of an agent designated by the owner to act in his or her stead, if any;
3. 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, Town first responders and or Town personnel staffing the citizen resource phone line.
4. The street address of the rental property;
5. The maximum number of adult occupants permitted per the Town Code;
6. The number of rooms, the number of bedrooms, and the square footage of each respective bedroom in the rental property;
7. A copy of the latest Certificate of Occupancy for the property issued by the Town of Barnstable;
8. A completed and notarized Rental Property Inspection Checklist, in a form approved by the Building Inspector, sworn to by the Dwelling Unit owner, a licensed home inspector or town inspection staff.

B. Rental Registration Number and Permit. Upon filing of a Rental Property Registration Form or Rental Property Renewal Form and it being deemed complete by the Building Inspector, and the filing of the Registration Fee, each rental property will be assigned a unique Rental Registration Number and a Permit for the rental property.

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C. Change in conditions. In the event that any information required on the Rental Property Registration Form or permit should change during the effective period of the Rental Registration, including, but not limited to the change in tenants, rental period or term, the commencement of a new rental period or term, the number of tenants, the number of bedrooms, the property owner shall notify the Town within five business days by delivering a sworn or affirmed written notice of such change, along with any requisite fees for such Rental Property Registry update, to the Building Department who shall include such notice in the records for the rental registry.

D. Change in ownership. A change in ownership of the rental property shall void the Rental Registration Number or permit. Any new Owner will be required to file a new Rental Property Registration Form and provide a new registration fee. Upon the Building Inspector finding the form complete and receiving the registration fee, the Building Inspector shall assign a new Rental Registration Number and permit.

E. Registration and Update Fees. All fees are non-refundable, and the registration fee, renewal registration fee, and registry update fee shall be in an amounts established by the Town and amended from time to time as deemed appropriate. All fees shall be paid upon the filing of a Rental Property Registration Form, Rental Property Renewal Form or Rental Property Registry update.

F. Presumption of rental occupancy. Any single-family residence, or any other premises subject to the provisions of this Chapter shall be presumed to be a rental property if such premises are not occupied by the legal Owner thereof at least three of the prior twelve months as evidenced by an Annual Owner Residency Affidavit. This presumption shall be rebuttable.

G. Maintenance of Registry. It shall be the duty of the Building Inspector to maintain the Rental Property Registry pursuant to this section. Such register shall be kept by tax map number, Rental Property Registration Number, street address showing the name and address of the owner, 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 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.

H. Rental Registration Term. The registration of a rental property will expire two (2) years after the date that Building Inspector issues a rental permit.

I. Rental Property Registration Renewal Form. Rental Property Registration Renewal Forms shall be made in writing by the property owner to the Building Department on a form provided therefore. To the extent the Town may make on-line registration available, applicants may utilize such system. Such application shall, at a minimum, set forth:

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1. The names, physical addresses, mailing addresses and telephone numbers of the property owner(s);
2. The name, physical address, mailing address and telephone numbers of an agent designated by the owner to act in her stead, if any;
3. The street address of the rental property;
4. The maximum number of adult occupants permitted per the Town Code.
5. The number of rooms, the number of bedrooms, and the square footage of each respective bedroom in the rental property;
6. A copy of the latest Certificate of Occupancy for the property issued by the Town of Barnstable;
7. A completed and notarized Rental Property Inspection Checklist, in a form approved by the Town Building Department, sworn to by the property Owner, a licensed home inspector or town inspectional staff.
8. Any previous rental registration number of the rental property.

PRESUMPTIVE EVIDENCE DWELLING UNIT IS BEING USED AS RENTAL PROPERTY.

A. The presence or existence of any of the following shall create a presumption that a Dwelling Unit is being used as a rental property:

1. The property is occupied by someone other than the Owner or his/her immediate family;
2. Utilities, cable, phone or other services are in place or requested to be installed or used at the premises in the name of someone other than the record Owner;
3. Persons residing in the Dwelling Unit represent that they pay rent to occupy the premises;
4. A Dwelling Unit which has been published as being available for rent or lease;

B. The foregoing may be rebutted by evidence presented to the enforcement authority or any court of competent jurisdiction.

PRESUMPTIVE EVIDENCE OF OWNER'S RESIDENCE.

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301 A. It shall be presumed that an owner of a Dwelling Unit does not reside within said rental
302 property if the Owner has not submitted an Annual Owner Residency Affidavit to the Building
303 Department.

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305 B. The foregoing may be rebutted by evidence presented to the enforcement authority or any
306 court of competent jurisdiction.

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308 **PRESUMPTIVE EVIDENCE OF OVER-OCCUPANCY.**

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

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

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317 C. The foregoing may be rebutted by evidence presented to the enforcement authority or any
318 court of competent jurisdiction.

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320 **COMPLAINT PROCESS**

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322 A. **Complaint.** A complaint alleging that a Dwelling Unit is in violation of this section or any
323 applicable law, code or regulation may be filed with Building Inspector. The complaint must
324 contain the Dwelling Unit's address, unit number, date and nature of alleged violation(s), and
325 name and contact information of complainant. The Building Inspector must acknowledge
326 receipt of each complaint within 48 hours of receipt.

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328 B. **Review of Complaint.** Within thirty (30) days after receipt of a complaint, the Building
329 Inspector or a designee shall complete the investigation of the complaint and shall determine
330 whether there may be a violation. If the alleged violation is under the jurisdiction of a state or
331 federal agency, the Building Inspector shall refer the complaint to such agency for further
332 action. Within five (5) business days of finding a potential violation, the Building Inspector or
333 designee shall serve notice of the violation upon the Owner of the Dwelling Unit, if such unit is
334 listed on the Short Term Rental Registry, and upon the owner of the property if such unit is not
335 listed on the Short-Term Rental Registry. The Building Inspector shall keep records of all
336 complaints received and determinations made.

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338 C. **Right to Hearing.** A person upon whom a notice of violation has been served may request a
339 hearing from the Building Inspector by filing a written petition requesting a hearing on the
340 matter within fourteen (14) days after the notice of violation was served. Upon receipt of the
341 petition for hearing, the Building Inspector or designee shall notify the complainant of the
342 place, date and time of such hearing. The hearing shall occur no later than two (2) weeks after

343 the date Building Inspector receives the petition for hearing. The time period in which violations
344 must be remedied shall be stayed upon receipt of the petition for a hearing until such time as
345 the hearing is held and the Building Inspector or designee has issued a decision.

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347 **D. Decision.** Within seven (7) days after the conclusion of the hearing, the Commissioner or
348 designee shall sustain, modify, or withdraw the notice of violation and shall inform the person
349 upon whom a notice of violation has been served, in writing, of its decision and the reasons
350 therefor. If the Building Commissioner modifies the notice of violation, said violation shall be
351 remedied within the time period allotted as issued or in the modification. If a written petition
352 for a hearing is not filed with Building Inspector within fourteen (14) days after the notice of
353 violation has been served, or if, after a hearing, the notice of violation has been sustained in
354 any part, each day's failure to comply with the notice of violation within the time allotted as
355 issued or modified shall constitute a separate violation.

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357 **E. Judicial appeals.** Any person aggrieved by a final decision of the Building Inspector with
358 respect to a notice of violation or any other order issued under this section may seek relief
359 therefrom in any court of competent jurisdiction as provided by the laws of the
360 Commonwealth.

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362 **GENERAL APPLICABILITY OF PRESUMPTIONS.**

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364 The presumptions set forth, subject to the limitations contained therein, shall also be applicable
365 to the enforcement and the prosecution of building and zoning Town Code violations.

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367 **PENALTIES FOR OFFENSES.**

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369 A. A violation of this chapter by the Owner(s) and/or tenant(s) shall be punishable as follows:

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371 1. Failure to publish Rental Registry Number or the legal number of adult occupants
372 permitted per the Town Code in rental advertisements shall result in the termination
373 of the Short- term Rental Permit.

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375 2. A violation of any other section of this chapter is declared to be an offense
376 punishable by a fine not less than \$300 for a conviction of a first offense. Each day
377 the violation continues shall constitute a separate offense. The cost shall constitute
378 a lien upon such properties until said cost has been paid.

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380 3. A second or subsequent violation of any section of this chapter within an eighteen-
381 month period is hereby declared to be an offense punishable by a fine not less than
382 \$300. Each day the violation continues shall constitute a separate offense. The cost
383 shall constitute a lien upon such properties until said cost has been paid.

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385 4. For the purpose of conferring jurisdiction upon courts and judicial officers in
386 general, violations of this chapter shall be deemed misdemeanors and, for such
387 purpose only, all provisions of law relating to misdemeanors shall apply. Each day's
388 continued violation shall constitute a separate additional violation.
389

390 **AUTHORITY.**

391 The Town may enact this local law in order to protect the health, safety and welfare of its
392 residents.
393

394 **SEVERABILITY.**

395 If any section or subsection, paragraph, clause, phrase or provision of this law shall be adjudged
396 invalid or held unconstitutional by any court of competent jurisdiction, any judgment made
397 thereby shall not affect the validity of this law as a whole or any part thereof other than the
398 part or provisions so adjudged to be invalid or unconstitutional.

Effective Date. The provisions of this Section shall take effect on xx/xx/xx.