

Meeting Minutes

Moderator's Committee on Short Term Rentals

2/10/2021

Public Meeting Convened at 7:03PM

All six members of the committee were in attendance.

The Chair opened the Public Meeting and notified the public that the meeting is being recorded.

The Chair made an opening statement covering topics that included her confidence in the committee working together to come to a consensus of proposed regulations as well as summarizing the committee's prior week's meeting with town staff.

Paul reviewed the February 3, 2021 committee meeting minutes. Ana motioned to adopt the meeting minutes as edited, seconded by Chris. The motion passed by a vote of 6-0-0.

Paul facilitated an activity where the committee discussed and voted on amendments to the warrant articles 9, 10 and 11. A copy of the table used to capture the amendments and votes is included at the end of these minutes.

A motion was moved by Sean and seconded by Ana to reconsider the following, previously passed language "Proposed Language: "The accommodations offered must be compliant with all applicable state and local building and fire codes". The motion passed 6-0-0.

The committee then discussed Staff's request to add "health codes" to the reconsidered language. Ana moved and seconded by Maureen the following amended language; "Proposed Language: "The accommodations offered must be compliant with all applicable state and local building, fire codes and health codes." The motion passes 6-0-0.

Paul shared with the committee two proposals from Town Counsel for possible reconsideration of the condominium language. The first proposal provided language where the applicant would certify that the STR is not prohibited by the condominium association. The language provided by Town Counsel read "Where a Short Term Rental is part of a condominium association, certification by the applicant that the operation of the Short Term Rental is not prohibited by applicable leases and/or condominium documents, bylaws, or other governing documents." The second proposal provided language where the consent of the condo association would be needed. The language provided by Town Counsel read "Where the Short-Term Rental is part of a condominium association, the operator shall provide written evidence that the owner and the condominium association, as applicable, consent(s) to the short term rental use of the property."

Ana shared that she spoke with five small condominium associations to understand how they make decisions, consensus or majority. She learned that some have very clear by-laws on how decisions are to be made and others are unclear on how decisions are made. Ana shared that she prefers that the condominium provide consent since many associations have very old bylaws that never anticipated short-term rentals.

Maureen shared that Boston, Cambridge and Newton use the attest language. She shared that she believes Cambridge only requires consent when the applicant is renting the condo.

Paul shared that he believes Cambridge does actually require consent from the association.

Paul stated that there is an opportunity to consolidate the two condominium provisions into one provision. He shared that the consent language, as provided by Town Counsel, keeps the town out of the decision making process of the condominium association because the consent language only specifies that evidence that consent has been provided and does not state how that consent is determined within the condo association.

Sean shared that he was concerned about the unanimous consent language used for the four unit or less association. He offered that the proposed consent language would be good and could possibly be modified to include that a written letter could be provided by the association or specific reference from the condominium documents. Sean stated that he likes the approach of having one provision for all condos and that the consent version is preferred.

Ana stated that it would be easier for the town to have a letter from the association stating that the association consents to the operation of an STR in their association.

Chris shared that he supports the attestation language. He does not support a letter or any other evidence that an STR is prohibited or allowed in an association. Chris trusts condo associations as being able to figure this out.

Paul shared that short-term rentals can have a significant impact on condominium associations and that he supports the consent version of the language.

Ana stated that she supports the consent language.

Maureen shared that some small associations may not have a designated representative. Maureen also stated that a small association may have difficulty achieving the quorum necessary to decide on consent.

Paula stated that since some condominium documents may be unclear, it would be better to use the consent language. Paula also shared Town Counsel's opinion that Cambridge does require consent from the association.

There was discussion and agreement that there are differing interpretations of the Cambridge regulations and that the committee needs clarification.

Sean shared that he would like to see a provision that an application provide written certification that includes providing condominium documents upon request from the town. He would like to find some middle ground between consent and attest.

Ana stated that older condo documents may not prohibit something that did not exist when they were written. For that reason she supports consent because many small associations share utilities and costs.

Paula shared that the concept of the association providing a letter for a bank loan would be a similar model that the committee could use.

Sean shared that he is leaning towards attest because it will provide for an amendment at Town Meeting. Sean stated that he thinks that the Moderator may not allow an amendment if the language reads "consent".

Paul shared that we have heard from many small unit condo owners that short-term rentals can be very disruptive and invasive and that consent is necessary.

Ana stated that she agreed with consent and that she has spoken with many small associations and they all agree that consent is necessary because the small units have shared utilities and expenses.

Maureen stated that she has also spoken to at least six condo owners who do not want the consent provision.

Paula moved reconsideration of the current condo association language, seconded by Ana.
Vote to reconsider the condominium language passed 6-0-0

Chris summarized where he thought each committee member stood with respect to the issues of consent vs. attest. Chris stated that he believed that attest would allow for an amendment to consent.

Sean stated that there are two issues with respect to drafting. Written evidence or not and is the consent positive or negative.

Chris shared that all members support written evidence.

Paula suggested that we defer the discussion on this topic until the next meeting so the committee can hear from the Moderator with respect to what amendments he would allow with the attest and consent language.

Sean moved and seconded by Maureen to table the discussion to the next meeting. The motion passed 6-0-0.

Paul shared that staff provided feedback with their concern about the inspection provision requiring “shall” possibly delaying the issuance of a license if inspections are backed up.

Paul stated that the current language requires an inspection and that this was done to protect visitors and guests.

Maureen offered that “may inspect” still allows the town to inspect prior to issuing a license. She shared that the backlog of inspections could be significant upon the initial period of applications. Maureen stated that she would not want applicants to be delayed for more than 30 days.

Polly Selko stated that one of the reasons to pass regulations is to keep owners/operators and guests safe and that she supports requiring the initial inspection.

Sean shared that inspections could start prior to the official effective date of the regulations.

Polly shared that this was the intent of the original regulations by having the effective date be one year after Town Meeting’s approval.

Maureen shared that she was concerned that STRs have already been shut down for two years and a further delay would prevent operators from earning their income.

Chris stated that he supports that an inspection must be done before the initial inspection and that he supports that the town may inspect for the renewal.

Sean moved and seconded by Ana, the following amended language: “Prior to approving an initial Certificate of Registration, the Health, Building and Fire Departments 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.”

The motion passed 5-1-0.

The next issue that the committee discussed was the number of rooms available that an operator can provide for rent.

Paul shared that the committee had discussed creating two sets of occupancy limits. One for multi-unit building and another for single family units.

Maureen shared that Boston has a limit of 3 bedrooms and six guests, Newton has a limit of 3 bedrooms and 9 guests and Cambridge has a 3 bedroom limit.

Ana shared that she prefers a limit of two bedrooms and four guests for condominiums and single family units having a higher occupancy limit.

Sean shared that there should be a limit of 2 guests per bedroom and then an overall cap on the number of guests perhaps 6 guests. Sean also shared that there are some free standing buildings that are large and also condominiums.

Maureen suggested that square footage and floorplan could be an alternative to determine the occupancy.

Chris shared that there is nothing stopping an operator from requesting a number of guests and then allow more than that. Chris stated that owners have a strong disincentive to pack people into their homes due to the wear and tear. Chris offered that we should be more permissive and provide for two guests per bedroom and let the operators determine how many guests they can list. Chris shared that he did not think home owners would be offering all of their bedrooms for guests since many single family homes are very expensive and those owners may not want to or need to rent their homes out.

Paul shared that if we put a limit on the number of guests, those limits can be increased in the future. If the limit is set high, it will be difficult to reduce the limit for those who have already been given the right to rent to the higher number.

Ana shared that if four bedrooms are rented out for 28 days in a month at \$200 / night, that is \$20,000 which she believes is a significant incentive to rent to a higher number of guests.

Chris shared that if someone has a six bedroom home in South Brookline why they would need to be limited to 6 guests when they can rent to a family for a reunion or during the US Open to a higher number of guests.

Paula shared that we could add to the regulations that the Select Board can issue temporary, special event provision that would allow for a higher number of guests during special events.

Maureen shared that we are penalizing operators by limiting guests through a start small approach. Maureen stated that operators have already been delayed for three years.

Paula moved and seconded by Ana, the following amended language: "Occupancy is limited to a maximum of 2 guests per bedroom. In a multi-unit building, occupancy is limited to a maximum of four guests. In a single-unit building, occupancy is limited to a maximum of six guests.". The motion passed 5-1-0.

Paul shared the list of open issues that the committee still need to address including condominium provision, advertiser's provision, commercial meetings, monetary fines, caps by Precinct and the enforcement language.

The meeting was adjourned at 9:44 PM.

2-10 Open Items To Discuss	REGULATIONS	COMMITTEE MEMBER VOTES
		P A M C S P pass/ F A C D LJ W fail
	Unit Eligibility	
	STRs allowed in all zoning districts (Residential S, SC, T, F, M; Business L,G,O; Industrial) (9-3)	
	(f)Unit must be owned by the Operator (9-1.2)*	
	Unit must be the primary residence of the Operator (183 days/year) (9-2.4), (10-5.11.4.1.b)	
	<p>(f)Unit cannot be designated as below market rate housing (10-5.11.3.1.a)</p> <p><i>Current Language:</i> "The Short-Term Rental Unit cannot be subject to any local, state or federal income-eligible for income-restricted program that is designated as below market rate housing"</p> <p><i>Proposed Language:</i> "Consistent with existing restrictions, the Short-Term Rental Unit cannot be subject to any local, state or federal income-eligible for income-restricted program that is designated as below market rate housing."</p>	<p>Y Y Y Y Y Y PAS S</p>

	Unit free of any outstanding building, sanitary, zoning, fire code violations, etc. (10-5.11.3.1.b)	
	Unit free of arrears municipal or state taxes, fines or fees (10-5.11.3.1.c)	
Staff suggests adding health code	<p>Number of rooms offered as sleeping accommodations must be (building code) code compliant (10-5.11.3.1.d)</p> <p><u>Current Language:</u> "The number of rooms offered as sleeping accommodations must be code compliant"</p> <p>Proposed Language: "The accommodations offered must be compliant with all applicable state and local building and fire codes"</p>	<p>PAS</p> <p>Y Y Y Y Y Y S</p>
	<p>Motion to reconsider</p> <p>Proposed Language: "The accommodations offered must be compliant with all applicable state and local building, fire codes and health codes."</p>	<p>PAS</p> <p>Y Y Y Y Y Y S</p>
		<p>PAS</p> <p>Y Y Y Y Y Y S</p>
Staff suggest no documents with application and certification like bank loan from association. See Town Counsel proposed language below for all condos.	<p>(f)Condo Association (CA) must certify STR complies with association governing documents (10-5.11.4.1.c)</p> <p><u>Current Language:</u> "Where a Short-Term Rental Unit is part of a condominium association, certification by the Short-Term Rental Operator's condominium association board that the operator of the Short-Term Rental complies with all applicable condominium documents, bylaws, or other governing documents."</p> <p>Proposed Language: "STR Operator shall attest that the STR Unit is not prohibited by applicable condominium documents, bylaws, or other governing documents, and shall provide applicable condominium documents, bylaws, or other governing documents at the time of application."</p>	<p>y y y y Y Y Pass</p>
	(f)All owners in CA of <=4 units must consent if CA documents do not explicitly prohibit STRs (10-5.11.4.1.d)*	

<p>Town Counsel Proposed Language; Applicant Attests</p> <p>Town Counsel Proposed Language; Association Consents</p>	<p>Current Language: "Where a Short-Term Rental Unit is part of a four (4) unit or less condominium association and the condominium association applicable documents, bylaws or other governing documents do not explicitly prohibit Short-Term Rentals, certification by all unit owners in the Short-Term Rental Operator's condominium association that they consent to the operation of a Short-Term Rental. "</p> <p>Motion: Move to table to 2/3</p> <p>Proposed Language: Where a Short Term Rental is part of a condominium association, certification by the applicant that the operation of the Short Term Rental is not prohibited by applicable leases and/or condominium documents, bylaws, or other governing documents."</p> <p>Proposed Language: Where the Short-Term Rental is part of a condominium association, the operator shall provide written evidence that the owner and the condominium association, as applicable, consent(s) to the short term rental use of the property.</p> <p>Motion to reconsider</p> <p>Motion to table to 2/15</p>	<p>PAS Y Y Y Y Y Y S</p> <p>y y y y y y Pass</p> <p>y y y y y y Pass</p>
<p>Staff suggest "may" inspect.</p>	<p>(f)Unit must pass inspection at time of initial and renewal application (10-5.11.5)*</p>	

Current Language: Prior to approving an initial or renewed Certificate of Registration, and in connection with an annual or other inspectional schedule to be determined by the Town, the Health, Building and Fire Departments shall conduct a health and safety inspection. 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.

Proposed Language: Prior to approving an initial Certificate of Registration, the Health, Building and Fire Departments 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.

Y Y N Y Y Y Pass

Registration Procedure / Certificate Issuance

	Application Fee may be assessed by Select Board (10-5.11.4.1.a)	
	Proof that unit is Primary Residence (10-5.11.4.1.b)	
	(f)Certification by Condo Association (10-5.11.4.1.c and d)*	
Match was is used / amended above	<p><u>Current Language:</u> "Where a Short-Term Rental Unit is part of a condominium association, certification by the Short-Term Rental Operator's condominium association board that the operator of the Short-Term Rental complies with all applicable condominium documents, bylaws, or other governing documents."</p> <p><u>Proposed Language:</u> "STR Operator shall attest that the STR Unit is not prohibited by applicable condominium documents, bylaws, or other governing documents, and shall provide applicable condominium documents, bylaws, or other governing documents at the time of application."</p>	PAS Y Y Y Y Y Y S
Match was is used / amended above	<p><u>Current Language:</u> "Where a Short-Term Rental Unit is part of a four (4) unit or less condominium association and the condominium association applicable documents, bylaws or other governing documents do not explicitly prohibit Short-Term Rentals, certification by all unit owners in the Short-Term Rental Operator's condominium association that they consent to the operation of a Short-Term Rental. "</p> <p>Motion to table until 2/3</p>	PAS Y Y Y Y Y Y S
	(f)Floor plans indicating rooms to be used and number of occupants (10-5.11.4.1.e)	
	(f)Emergency contact who can be reached 7/24 and respond in person within 2 hours (10-5.11.4.1.f)	
	(f)Within 14 days of issuance, notification sent to abutters within 300 feet of unit (10-5.11.4.1.h)*	
	Certificate of Registration valid for 1 to 5 years, as determined by Select Board's Office (10-5.11.4.3)	
	Operator can seek modification of a Certificate of Operation (10-5.11.4.4)	

	Certificates are non-transferable (10-5.11.4.5)	
	Enforcement Authority may revoke, suspend or modify a Certificate of Registration (10-5.11.4.6)	
	(f)Certificate revoked if <=3 violations in a 12 month period. Select Board hearing required (10-5.11.4.7)*	
	(f)Health and Safety inspection required prior to issuance and renewal of Certificate of Operation (10-5.11.5)*	
	Operational Requirements	
	Active Certificate of Operation for Unit (10-5.11.6.1)	
	(f)Operator must be physically present during rental period (9-1.1)*	
	(f)Maximum occupancy is 2 rooms and 4 guests (9-1.1)*	
	<p><i>Current Language:</i> "Short-Term Rental (or "STR") - The rental of a whole or portion of a Dwelling Unit for not more than 31 consecutive calendar days, as defined by M.G.L. Chapter 64G, Sec. 1, subject to the following limitations: the Dwelling Unit is the Primary Residence of the operator, the operator is physically present in the Dwelling Unit during the rental, and occupancy is limited to a maximum of two rooms and four guests.</p> <p><i>Proposed Language:</i> "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 defined by M.G.L. Chapter 64G, Sec. 1, and the Dwelling Unit is the Primary Residence of the operator." [balance of language will be added to a new paragraph/number]</p>	PAS Y Y Y Y Y Y S
Open Issue: Different occupancy for single and multi-family units?	Current Language: "occupancy is limited to a maximum of two rooms and four quests."	

	<p>Proposed Language: Occupancy is limited to a maximum of 2 guests per bedroom. In a multi-unit building, occupancy is limited to a maximum four guests. In a single-unit building, occupancy is limited to a maximum of six guests.</p>	<p>PAS Y Y Y N Y Y S</p>
	<p>(f)Unit can be rented for up to 90 days per year (10-5.11.6.3)</p>	
	<p>STR must comply with fed, state and local laws and consistent with terms of COR (10-5.11.6.2 and 4)</p>	
	<p>Unit must include various documentation for guests, fire extinguisher, smoke alarm, etc (10-5.11.6.5)</p>	
	<p>(f)Town issued Certificate of Registration number must be used in all advertisements (10-5.11.6.6)</p>	
<p>See feedback from Staff and Town Counsel in column S</p>	<p>(f)Entity advertising in Brookline shall provide town with unit ownership and address info (10-5.11.6.7)*</p> <p><i>Current Language:</i> "Any entity advertising Short-Term Rentals in the Town of Brookline shall provide the town with ownership and address information for thos units."</p> <p><i>Proposed Amendment by Town counsel:</i> Section 5.11.7 OPERATIONAL REQUIREMENTS FOR BOOKING AGENTS Booking agents shall provide to the Town, on a monthly basis, an electronic report, in a format determined by the Town that is contained in public listings maintained, authorized, facilitated or advertised by the booking agent within Town for the applicable reporting period. To the extent the following is included in public listings, the reports shall include a breakdown of where the listings are located (including address) and an identification of the owner.</p> <p>Motion to table to 1/3</p>	<p>PAS y Y Y Y Y Y S</p>
	<p>Operator must retain rental records for 3 years and make available to Town upon request (10-5.11.6.8)</p>	
	<p>Operator must notify Select Board within 2 weeks of change in Operator's Primary Residence (10-5.11.6.9)</p>	

	<p>(f)Minimum rental period is 24 hours. Maximum rental period is 31 days. (10-5.11.6.10 and (9-1.1)</p> <p><u>Current Language 5.11.6.10:</u> "Renting for durations less than twenty-four (24) consecutive hours shall not be permitted."</p> <p><u>Proposed Language:</u> "Renting for durations less than twenty-four (48) consecutive hours shall not be permitted."</p>	Y Y N N N A FAIL
Open Issue. Does this prevent use during US Open and similar?	<p>(f)Commercial meetings and uses are prohibited (10-5.11.6.11)</p> <p><u>Current Language:</u> "Commercial meetings and uses are prohibited in Short-Term Rental Units."</p> <p>Move to table to 2/3</p>	y y y y y y Pass
	Additional Regulations and Enforcement	
Staff Feedback: Cap by Precinct may not be possible.	<p>(f)Select Board may issue regulations for the implementation including caps on the number of certificates by Zoning District (10-5.11.7)</p> <p><u>Current Language:</u> "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 issues (including numerical caps by type of Certificate of Registration and by Zoning District)."</p> <p><u>Proposed Language:</u> "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 (including numerical caps by Precinct)."</p>	Y Y N N Y Y Pass
	<p>(f)Fine of \$300 for each violation and each day of violation (10-5.11.8)</p> <p><u>Current Language:</u> "Any person violating this By-law shall be fined in the amount of \$300 for each violation. Each day of a continuing violation shall count as a separate violation."</p>	

	<p>(f)Short-Term Rental Units with active Certificates will be published on the Town Website (10-5.11.9.1)*</p>	
	<p>(f)Short-Term Rental violations will be published on the Town Website (10-5.11.9.2)*</p>	
<p>Open Issue.</p>	<p>(f)Regulations will be enforced by Building Commissioner, Director of Health and Human Services, Fire Chief, Town Administrator and Police (11)</p>	