

Meeting Minutes

Moderator's Committee on Short Term Rentals

2/15/2021

Public Meeting Convened at 7:02PM

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 the Warrant Article amendment process, the desire for all committee members to see regulations for Short-Term Rentals passed and Cambridge's requirement that a condominium owner have consent from their condominium association to operate a Short-Term Rental.

Paul reviewed the February 10, 2021 committee meeting minutes. The committee voted 6-0-0 to table consideration of the meeting minutes until the February 15 committee meeting.

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.

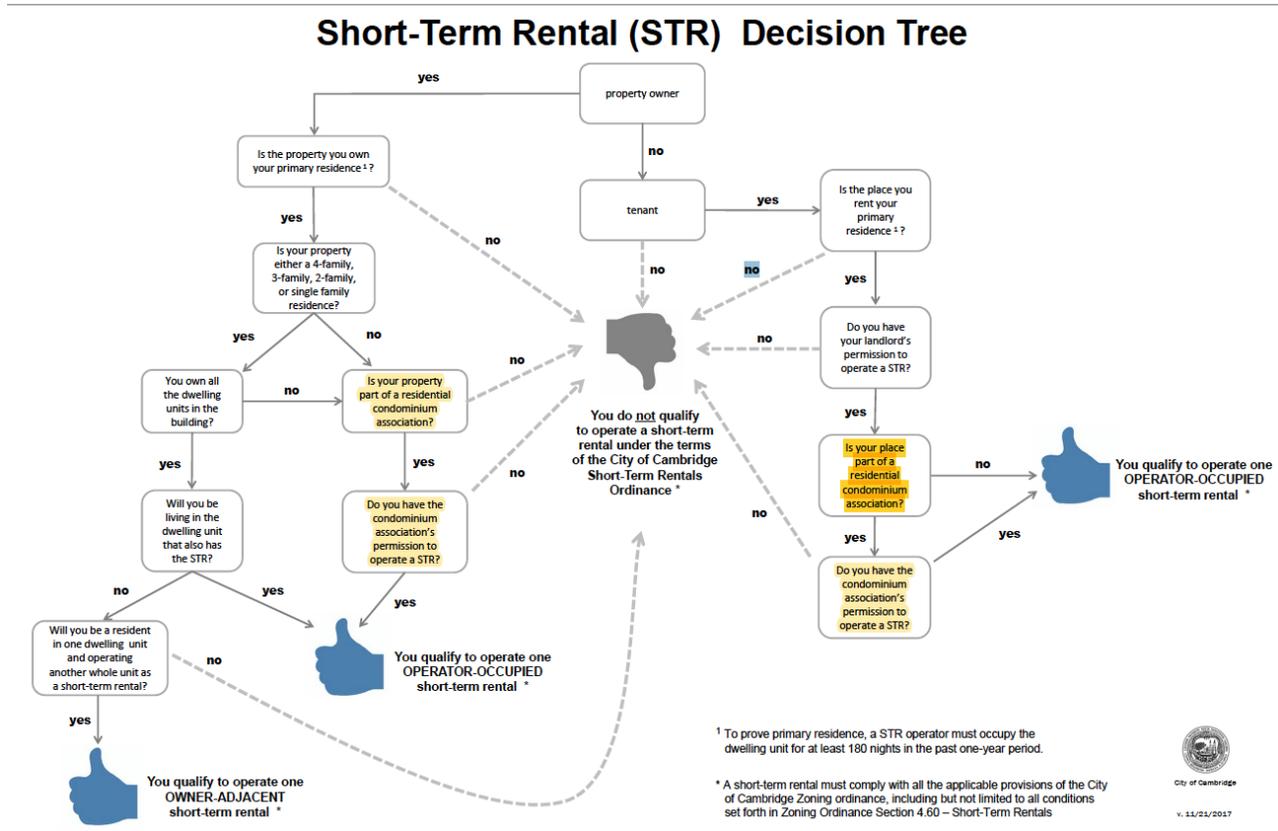
Based on feedback from Town Counsel, Ana moved and seconded by Paula the following amended language; "The Short-Term Rental Unit cannot be subject to any local, state or federal income-eligible or income-restricted program that is designated as below market rate housing." The motion passed 6-0-0.

The committee then continued its reconsideration of the condominium provision.

Maureen shared that her interpretation of Cambridge's requirement that a condominium association provide written consent of the use of a condo unit only applied to applicants that were renting a condo unit and did not apply to condo owners. Maureen also shared that she believes that requiring approval of the association is a very high bar and does not agree with it.

Sean shared that he had reviewed Cambridge's decision tree and concluded that Cambridge does require an affidavit from the condo association approving the use of a condo as an STR for both owners and renters.

Paul shared the Short-Term Rental Decision Tree (included below) from the Cambridge STR website and highlighted the requirement that indicates that Cambridge asks "Do you have the condominium associations permission to operate an STR?" when the applicant is a condo owner.



Paul then shared the Short-Term Rental Affidavit of Approval From The Condominium Association” that Cambridges uses to document consent from the condo owner. This form can be viewed on the Cambridge website at <https://www.cambridgema.gov/-/media/Files/inspectionalservicesdepartment/shorttermrental/shorttermrentalcondoassociationaffidavit.pdf>

Paula shared having one provision for all condominiums, both large and small, would simplify the regulations and treat all condominium associations equally.

Paul shared that the Moderator stated that he would allow amendments in both directions for the condominium provision. Meaning, if the committee submitted attest language, the moderator would allow an amendment to require consent. If the committee submitted consent language, the Moderator would allow an amendment to require attest.

Maureen stated that her preferred language was the “attest” language and that she was pleased to see that the Moderator would allow an amendment in both directions. She asked that it be noted in the comments that the alternate language would be the “attest” 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.”. Maureen also asked the condo documents be provided upon request instead of at the time of application.

Ana moved and seconded by Paula, the following language: "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." The motion passed 4-2-0.

Chris suggested that, as with the "attest" vs. "consent" provision, the committee should provide opportunities to Town Meeting to amend the language by making some provisions more permissive.

A motion was made by Sean, seconded by Maureen to delete the following 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.". The motion passed 6-0-0.

The committee discussed the merits and challenges of requiring the booking platforms to provide the town with the operators that are listing STRs within Brookline.

Paul moved and seconded by Ana, the deletion of the following language: "Any entity advertising Short-Term Rentals in the Town of Brookline shall provide the town with ownership and address information for those units.". The motion passed 6-0-0.

The committee then discussed the language related to prohibiting commercial meetings and uses in STRs.

Chris shared that many companies use STRs as an alternative to hotels and business colleagues use business accounts to make the reservations. He is concerned that this type of booking and activity would be prevented by the existing commercial meeting and use language.

Polly stated that she believes the provision should remain. The scenario where people come to an STR that are not staying there to have a commercial meeting is inappropriate for a residential neighborhood.

Paul shared that the intent of the provision seems to be to prohibit commercial use of and STR.

Maureen commented that it is not clear what a commercial use is and shared that the Building Commissioner has said it is a grey area.

Polly stated that commercial use is clearly defined in the zoning bylaw table of use.

Ana moved and seconded by Chris, the following amended language to remove the reference to commercial meetings: "Commercial uses are prohibited in Short-Term Rental Units.". The motion passed 5-1-0.

The committee then discussed changing the Fine language from “Shall” to “May”.

Town Counsel provided feedback that changing the language to “may find” could present legal problems for the town. She suggested that if the committee wanted to provide the option of issuing a warning without a monetary fine, that it create a schedule of fines.

Sean shared that the tobacco regulations provides for an option for the person being issued the fine to attend smoking cessation classes instead of receiving a fine.

Maureen offered that the committee could consider language that provided for the elimination of a fine if the infraction was corrected within 7 days. She shared that a \$300 fine is pretty steep.

Paula shared that some issues such as nuisance need to be immediately resolved and providing 7 days to resolve do not really work.

Paul stated that the enforcement agencies already have discretion as to when they issue a fine.

Committee members shared various opinions on offering a warning, providing for time to rectify the circumstances that caused the citation, the amount of the fine and using “shall fine” vs. “may fine” language.

A motion was made by Paula and seconded by Ana to keep the existing language as follows: "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." The motion passed 5-1-0.

Committee members then discussed the enforcement article.

Maureen shared that she believes that there is not one point of ownership for enforcing the regulations.

Polly stated that each department (building, health, fire, etc) needs to be able to issue their own violations.

Paul asked who would do the tracking of fines and oversight of the STR regulations. Polly stated that the Office of the Select Board is charged with overseeing and administering the regulations.

Maureen stated that Boston and Newton have an inspectional services department leading the STR enforcement. Polly shared that Brookline’s building department is the equivalent to Boston and Newton’s inspectional services department.

Sean asked if a Certificate is the same as a License. He pointed out that section 5.7 of the bylaws includes an appeal process.

The committee agreed to ask Town Counsel about the difference between a certificate and a license and whether section 5.7 would apply to STR certificates.

Paula shared her desire to have an appeal process defined similar to lodging houses and other licensed operations.

Sean asked who is issuing the Certificate of Operation. Polly answered that the Office of the Select Board is issuing the certificate.

Sean asked if there was any public hearing related to the issuance or renewal of a certificate of operation. Paul stated that there is no provision in the bylaw for a public hearing related to an STR certificate.

Sean suggested that the STR bylaws should reference section 5.7 of the general bylaws to provide for an appeal process to allow for an aggrieved party.

There was a brief discussion between committee members discussing the merits of holding a public hearing, in a perhaps omnibus fashion, on the renewal of short-term rental certificates.

Chris pointed out that the Select Board, in the proposed bylaws, has the ability to issue regulations related to appeals.

The committee agreed to wait to hear from Town Counsel on the issue of the applicability of section 5.7 to STR certificates.

The committee then discussed the topic of the Select Board setting a cap on the number of certificates issued by Precinct.

Paul shared feedback from staff where they stated that it would be very difficult and possibly impossible to track caps by Precinct.

Chris stated that he did not believe that Zoning District is the right approach either since Zoning Districts are spread throughout the town and it would be difficult to connect them to STR capacity. Sean also shared that Zoning Districts can change.

Paula motioned and seconded by Ana the following amendment: "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." The motion passed 4-2-0.

The meeting adjourned at 9:41PM.

2-15 Open Items To Discuss

Step 2 - Discuss, propose and vote on specific amendments.

Specific Amendments							
PF	AA	MC	CD	SLJ	PW	pass/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)							
(f)Unit cannot be designated as below market rate housing (10-5.11.3.1.a)							
<u>Current Language:</u> "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"							
<u>Proposed Language:</u> "Consistent with existing restrictions, the Short-Term Rental Unit cannot be subject to							
Y	Y	Y	Y	Y	Y	PASS	

	<p>any local, state or federal income-eligible or income-restricted program that is designated as below market rate housing."</p>							
<p>TC suggests alternative language to address existing restrictions by removing "Consistent with existing restrictions"</p>	<p><u>Town Counsel Suggested Amendment:</u> "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."</p>	y	y	y	y	y	y	PaSS
	<p>Unit free of any outstanding building, sanitary, zoning, fire code violations, etc. (10-5.11.3.1.b)</p>							
	<p>Unit free of arrears municipal or state taxes, fines or fees (10-5.11.3.1.c)</p>							
	<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 accomodations offered must be compliant with all applicable state and local building and fire codes"</p>	<p>Y Y Y Y Y Y PASS</p>
	<p>Motion to reconsider Proposed Language: "The accomodations offered must be compliant with all applicable state and local building, fire codes and health codes."</p>	<p>Y Y Y Y Y Y PASS</p>
	<p>(f)Condo Association (CA) must certify STR complies with association governing documents (10-5.11.4.1.c) <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>	

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."

y y y y Y Y Pass

(f)All owners in CA of <=4 units must consent if CA documents do not explicitly prohibit STRs (10-5.11.4.1.d)*

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.
"

Motion: Move to table
to 2/3

Y Y Y Y Y Y PASS

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."

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

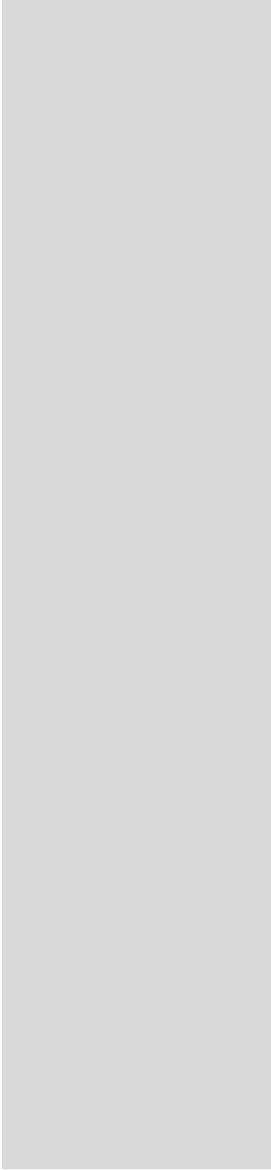
Condo Consent or Attest	use of the property.						
	Motion to reconsider	y	y	y	y	y	Pass
	Motion to table to 2/15	y	y	y	y	y	Pass
	<u>Proposed Language:</u> Where a Short-Term Rental Unit is part of a condominium association, certification signed by the condominium association that the condominium association consents to the use of the Operator's unit as a Short-Term Rental.	y	y	n	n	y	Pass

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

Y Y N Y Y Y Pass

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.

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)***

Current Language:

"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."

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."

Y Y Y Y Y Y PASS

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."
"

Amend or Delete

Motion to table until 2/3

Y Y Y Y Y Y PASS

Motion to Delete 4 unit or less condominium language...

y Y Y Y Y Y PASS

(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

<p>300 feet of unit (10-5.11.4.1.h)*</p>	
<p>Certificate of Registration valid for 1 to 5 years, as determined by Select Board's Office (10-5.11.4.3)</p>	
<p>Operator can seek modification of a Certificate of Operation (10-5.11.4.4)</p>	
<p>Certificates are non-transferable (10-5.11.4.5)</p>	
<p>Enforcement Authority may revoke, suspend or modify a Certificate of Registration (10-5.11.4.6)</p>	
<p>(f)Certificate revoked if <=3 violations in a 12 month period. Select Board hearing required (10-5.11.4.7)*</p>	
<p>(f)Health and Safety inspection required prior to issuance and renewal of Certificate of Operation (10-5.11.5)*</p>	
<p>Operational Requirements</p>	
<p>Active Certificate of Operation for Unit (10-</p>	

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)*

Current Language:

"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.

Proposed Language:

"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

Y Y Y Y Y Y PASS

<p>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>	
<p>Current Language: "occupancy is limited to a maximum of two rooms and four quests."</p>	
<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>Y Y Y N Y Y PASS</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>	

(f)Town issued Certificate of Registration number must be used in all advertisements (10-5.11.6.6)

(f)Entity advertising in Brookline shall provide town with unit ownership and address info (10-5.11.6.7)*

Current Language:

"Any entity advertising Short-Term Rentals in the Town of Brookline shall provide the town with ownership and address information for thos units."

Proposed Amendment by Town counsel:

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

<p>Do we need this now that DOR is providing list of registered STRs?</p>	<p>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 2/3</p>								
	<p>Motion to delete provision related to Entity advertising in Brookline shall provide town with unit ownership and address information (10-5.11.6.7)</p>	y	Y	Y	Y	Y	Y	Y	PASS
	<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>								

(f)Minimum rental period is 24 hours. Maximum rental period is 31 days. (10-5.11.6.10 and (9-1.1)

Current Language
5.11.6.10: "Renting for durations less than twenty-four (24) consecutive hours shall not be permitted."

Proposed Language:
 "Renting for durations less than twenty-four (48) consecutive hours shall not be permitted."

Y Y N N N A FAIL

(f)Commercial meetings and uses are prohibited (10-5.11.6.11)

Current Language:
 "Commercial meetings and uses are prohibited in Short-Term Rental Units."

Possible amendment to allow SB to issue temporary regulations in support of large events; US Open, Marathon?

Move to table to 2/3

y y y y y y Pass

Proposed: "Commercial uses are prohibited in Short-Term Rental Units."

Y Y N Y Y Y PASS

Additional Regulations and Enforcement

(f) Select Board may issue regulations for the implementation including caps on the number of certificates by Zoning District (10-5.11.7)

Current Language:

"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)."

Proposed Language:

"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

Staff Feedback on Precinct

Y Y N N Y Y Pass

	caps by Precinct)."	
	<p>Proposed Language: "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."</p>	<p>Y Y N N Y Y PASS</p>
	<p>(f)Fine of \$300 for each violation and each day of violation (10-5.11.8) <u>Current Language:</u> "Any person violating this By-law shall be fined in the amount of \$300 for each vilatio. Each day of a continuing violation shall count as a separate vilation."</p>	

<p>Town Counsel stated that "may" is a problem. "Shall" with specific guidance is recommended</p>	<p>Current Language: "Any person violating this By-law shall be fined in the amount of \$300 for each violation, except in the instance where the violation is rectified within 24 hours of the violation being issued. Each day of a continuing violation shall count as a separate violation."</p> <p>Motion to retain existing "shall be fined" language.</p>	<p>Y Y N Y Y Y PASS</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>Do we need revisit?</p>	<p>(f)Regulations will be enforced by Building Commissioner, Director of Health and Human Services, Fire Chief, Town Administrator and Police (11)</p>	<p>For Town Counsel, is a Certificate of Operation different than License.</p>