

**To: Moderator’s Committee on STRs
Planning and Regulation Subcommittee of the Advisory Committee**
Cc: Susan Roberts, Maureen Coffey, Petitioners
From: Patty Correa, First Assistant Town Counsel
Date: March 18, 2021
Re: Warrant Article 17

I am writing to provide legal feedback regarding edits proposed by Warrant Article 17 to Section 5.11.9 (“Fines”) of Warrant Article 15 (the Moderator’s Committee on Short-Term Rentals’s proposal for a new General Bylaw 5.11 entitled “Short-Term Rentals”).

Section 5.11.9 as drafted by the Committee and inserted into Warrant Article 15 reads:

“Section 5.11.9 FINES
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.”

Section 5.11.9 as edited by Warrant Article 17 is block-copied and indented below, along with several other subsections to which it refers (the below reflects Warrant Article 17’s proposed edits to those sections as well, inserted below in clean text). I note legally problematic language in highlighting.

First (see **yellow** highlighting): Section 5.11.9 should not cross reference Sections 5.11.4(6) and (7). Sections 5.11.4(6) and (7) concern action against the Certificate of Registration itself, analogously to the liquor licensing context. Action against the Certificate of Registration (as with action against a liquor license) is a separate enforcement tool than a fine. Fines would be enforced pursuant to this bylaw in addition to General Bylaw Art. 10.3 and Mass. Gen. Laws. ch. 40, § 21D.

Second (see **pink** highlighting): The wording regarding the measure of a violation that triggers a fine is vague and would be difficult for the Enforcement Authorities to implement. I am not aware of such language appearing elsewhere in the Town’s Bylaws. See, *e.g.*, Art. 10.3.

Third (see **blue** highlighting): The wording proposes a “de minimus” standard that it does not define and it expects the “Enforcement Authority” (which could be any of a number of departments, see Warrant Article 16) to understand how to implement it. In connection with bylaw review, the Attorney General’s Office has repeatedly warned that vague language such as this which requires unbridled discretion could be illegal.

Conclusion: Based on the above considerations, I urge that the original language for Section 5.11.9 proposed by Warrant Article 15 be retained.

FROM WARRANT ARTICLE 17:

Section 5.11.4 REGISTRATION PROCEDURE AND SUBMISSION
REQUIREMENTS

.....

6. An Enforcement Authority may revoke, suspend or modify a Certificate of Registration for violation of this By-law. Prior to such revocation, suspension or modification, the Short-Term Rental Operator shall be provided with written notice and shall have the right to a hearing, or opportunity therefor, in connection with such action.

7. Should the Short-Term Rental Operator be found by the Enforcement Authority to be in violation of this Bylaw three (3) or more times within any twelve (12) month period, the Certificate of Registration may be suspended or revoked. following written notice to the STR Operator and the opportunity for a hearing as provided in Section 5.11.4(6) above. In such case, a new Certificate of Registration may only be re- issued after a public hearing before the Select Board, which may, impose additional conditions. In the event an Enforcement Authority suspends or revokes an operator's right to operate an STR, the Town shall notify the Massachusetts Commissioner of Revenue of the suspension or termination.

.....

Section 5.11.9 FINES

Without in any way limiting an STR Operator's rights as stated in Sections 5.11.4(6) and/or (7), for each violation of this By-law determined pursuant to said sections, a STR Operator shall be fined in the amount of \$300. Subject to Sections 5.11.4(6) and/or (7), each day that a STR Unit is rented without such violation having been addressed as may be required, provided that said violation is not of a de minimis nature as determined by the Enforcement Authority, such rental day shall count as a separate violation.