

THE COMMONWEALTH OF MASSACHUSETTS
 OFFICE OF THE ATTORNEY GENERAL
 CENTRAL MASSACHUSETTS DIVISION
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October 5, 2021

Linda Fredette, Town Clerk
 Town of Fairhaven
 40 Center Street
 Fairhaven, MA 02719

2021 OCT - 5 P 2: 27
 RECEIVED
 TOWN CLERK
 FAIRHAVEN,
 MASS.

RE: Fairhaven Annual Town Meeting of June 12, 2021 - Case # 10267
 Warrant Articles # 30, 37, 41, and 54 (Zoning)
 Warrant Articles # 35A, 35B, 35C, and 59 (General)

Dear Ms. Fredette:

Articles 30, 35A, 35B, 35C, 37, 41, 54, and 59 – We approve these Articles, and the map amendments related to Articles 30 and 54, from the Fairhaven Annual Town Meeting of June 12, 2021. We will return the approved map amendments by regular mail.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

MAURA HEALEY
 ATTORNEY GENERAL

Margaret J. Hurley

by: Margaret J. Hurley, Assistant Attorney General
 Chief, Central Massachusetts Division
 Director, Municipal Law Unit
 Ten Mechanic Street, Suite 301
 Worcester, MA 01608
 (508) 792-7600 x 4402

cc: Town Counsel Thomas P. Crotty



Town of Fairhaven

Town Clerk's Office

Town Hall · 40 Center Street · Fairhaven, MA 02719

REMOTE ANNUAL TOWN MEETING – SATURDAY, JUNE 12, 2021
WALTER SILVEIRA AUDITORIUM – ELIZABETH HASTINGS MIDDLE SCHOOL
TOWN MEETING MEMBERS PRESENT 226 – QUORUM REQUIRED 40

ARTICLE 30: AMENDMENT TO ZONING MAP: FLOOD INSURANCE RATE MAP

By 2/3rds vote, the town voted to enact the following mandatory amendments to the Zoning Bylaw Chapter 198 Section 28, Floodplain and Nasketucket River Basin Districts:

- 1) Add to 198-28.A panels: 25005C0391H, 25005C0392G, 25005C0394H, 25005C0411G, 25005C0413G dated July 6, 2021.
- 2) Delete from 198-28.A panels: 25005C0391F, 25005C0392F, 25005C0394F, 25005C0411F, 25005C0413F dated July 7, 2009.
- 3) In 198-28A revise the date of the Bristol County Flood Insurance Study (FIS) report date to July 6, 2021.
- 4) Add 198-28C as follows: The floodplain management regulations found in this Floodplain Overlay District section shall take precedence over any less restrictive conflicting local laws, ordinances or codes.
- 5) Add 198-28C as follows: If any section, provision or portion of this bylaw [ordinance] is deemed to be unconstitutional or invalid by a court, the remainder of the ordinance shall be effective.
- 6) Add 198-28C as follows: The Town of Fairhaven hereby designates the position of Building Commissioner to be the official floodplain administrator for the Town.
- 7) Add 198-28C(3) as follows: The Town will request from the State Building Code Appeals Board a written and/or audible copy of the portion of the hearing related to the variance, and will maintain this record in the community's files. The Town shall also issue a letter to the property owner regarding potential impacts to the annual premiums for the flood insurance policy covering that property, in writing over the signature of a community official that (i) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (ii) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions for the referenced development in the floodplain overlay district.
- 8) Add 198-28C(4) as follows: Variances to local Zoning Bylaws related to community compliance with the National Flood Insurance Program (NFIP): A variance from these floodplain bylaws must meet the requirements set out by State law, and may only be granted if: 1) Good and sufficient cause and exceptional non-financial hardship exist; 2) the variance will not result in additional threats to public safety, extraordinary public expense, or fraud or victimization of the public; and 3) the variance is the minimum action necessary to afford relief.
- 9) Add 198-28C(5) as follows: Permits are required for all proposed development in the Floodplain Overlay District: The Town of Fairhaven requires a permit for all proposed construction or other development in the floodplain overlay district, including new construction or changes to existing buildings, placement of manufactured homes, placement of agricultural

facilities, fences, sheds, storage facilities or drilling, mining, paving and any other development that might increase flooding or adversely impact flood risks to other properties.

- 10) Add 198-28C(6) as follows: Assure that all necessary permits are obtained: Fairhaven's permit review process includes the use of a checklist of all local, state and federal permits that will be necessary in order to carry out the proposed development in the floodplain overlay district. The proponent must acquire all necessary permits, and must submit the completed checklist demonstrating that all necessary permits have been acquired.
- 11) Add 198-28C(7) as follows: The degree of flood protection required by this bylaw is considered reasonable but does not imply total flood protection.
- 12) Add 198-28C(8) as follows: If the Town acquires data that changes the base flood elevation in the FEMA mapped Special Flood Hazard Areas, the Town will, within 6 months, notify FEMA of these changes by submitting the technical or scientific data that supports the change(s.) Notification shall be submitted to: FEMA Region I Risk Analysis Branch Chief 99 High St., 6th floor, Boston, MA 02110. And copy of notification to: Massachusetts NFIP State Coordinator MA Dept. of Conservation & Recreation, 251 Causeway Street, Boston, MA 02114
- 13) Add 198-28F: Revise date in preamble.
- 14) Add 198-28F.12 as follows: Base flood elevation data for subdivision proposals: When proposing subdivisions or other developments greater than 50 lots or 5 acres (whichever is less), the proponent must provide technical data to determine base flood elevations for each developable parcel shown on the design plans.
- 15) Add 198-28F.13 as follows: Unnumbered A Zones: In A Zones, in the absence of FEMA BFE data and floodway data, the building department will obtain, review and reasonably utilize base flood elevation and floodway data available from a Federal, State, or other source as criteria for requiring new construction, substantial improvements, or other development in Zone A as the basis for elevating residential structures to or above base flood level, for flood proofing or elevating nonresidential structures to or above base flood level, and for prohibiting encroachments in floodways.
- 16) Add 198-28F.14 as follows: Recreational vehicles: In A1-30, AH, AE Zones, V1-30, VE, and V Zones, all recreational vehicles to be placed on a site must be elevated and anchored in accordance with the zone's regulations for foundation and elevation requirements or be on the site for less than 180 consecutive days or be fully licensed and highway ready.
- 17) Add 198-28I: Definitions not found in the State Building Code. Definitions not found in the State Building Code

National Flood Insurance Program (NFIP) definitions are found in Title 44 of the Code of Federal Regulations, section 59.1. The definitions below refer to their source; if the definition is from the MA building code, it is from the 9th Edition, which meets the minimum standards of the NFIP.

In order for the bylaw or ordinance to be clearly understood, it is necessary to define technical terms or key words. An understanding of these terms is a prerequisite to effective administration of the floodplain management bylaw or ordinance.

Per FEMA Region I, these additional definitions must be included in local bylaws or ordinances.

DEVELOPMENT means any man-made change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials. [US Code of Federal Regulations, Title 44, Part 59]

FLOOD BOUNDARY AND FLOODWAY MAP means an official map of a community issued by FEMA that depicts, based on detailed analyses, the boundaries of the 100-year and 500-year floods and the 100-year floodway. (For maps done in 1987 and later, the floodway designation is included on the FIRM.)

FLOOD HAZARD BOUNDARY MAP (FHBM.) An official map of a community issued by the Federal Insurance Administrator, where the boundaries of the flood and related erosion areas having special hazards have been designated as Zone A or E. [US Code of Federal Regulations, Title 44, Part 59]

FLOODWAY. The channel of the river, creek or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. [Base Code, Chapter 2, Section 202]

FUNCTIONALLY DEPENDENT USE means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities. [US Code of Federal Regulations, Title 44, Part 59] Also [Referenced Standard ASCE 24-14]

HIGHEST ADJACENT GRADE means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure. [US Code of Federal Regulations, Title 44, Part 59]

HISTORIC STRUCTURE means any structure that is:

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (1) By an approved state program as determined by the Secretary of the Interior or
 - (2) Directly by the Secretary of the Interior in states without approved programs.

[US Code of Federal Regulations, Title 44, Part 59]

NEW CONSTRUCTION. Structures for which the start of construction commenced on or after the effective date of the first floodplain management code, regulation, ordinance, or standard adopted by the authority having jurisdiction, including any subsequent improvements to such structures. *New construction includes work determined to be substantial improvement.* [Referenced Standard ASCE 24-14]

RECREATIONAL VEHICLE means a vehicle which is:

- (a) Built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) Designed to be self-propelled or permanently towable by a light duty truck; and

(d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

[US Code of Federal Regulations, Title 44, Part 59]

REGULATORY FLOODWAY - see FLOODWAY.

SPECIAL FLOOD HAZARD AREA. The land area subject to flood hazards and shown on a Flood Insurance Rate Map or other flood hazard map as Zone A, AE, A1-30, A99, AR, AO, AH, V, VO, VE or V1-30. [Base Code, Chapter 2, Section 202]

START OF CONSTRUCTION. The date of issuance for new construction and substantial improvements to existing structures, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement is within 180 days after the date of issuance. The actual start of construction means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of a slab or footings, installation of pilings or construction of columns.

Permanent construction does not include land preparation (such as clearing, excavation, grading or filling), the installation of streets or walkways, excavation for a basement, footings, piers or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main building. For a substantial improvement, the actual "start of construction" means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building. [Base Code, Chapter 2, Section 202]

STRUCTURE means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. [US Code of Federal Regulations, Title 44, Part 59]

SUBSTANTIAL REPAIR OF A FOUNDATION. When work to repair or replace a foundation results in the repair or replacement of a portion of the foundation with a perimeter along the base of the foundation that equals or exceeds 50% of the perimeter of the base of the foundation measured in linear feet, or repair or replacement of 50% of the piles, columns or piers of a pile, column or pier supported foundation, the building official shall determine it to be substantial repair of a foundation. Applications determined by the building official to constitute substantial repair of a foundation shall require all existing portions of the entire building or structure to meet the requirements of 780 CMR. [As amended by MA in 9th Edition BC]

VARIANCE means a grant of relief by a community from the terms of a flood plain management regulation. [US Code of Federal Regulations, Title 44, Part 59]

VIOLATION means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in §60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided. [US Code of Federal Regulations, Title 44, Part 59]

A TRUE COPY, ATTEST:



LINDA FREDETTE - ACTING TOWN CLERK



Town of Fairhaven

Town Clerk's Office

Town Hall · 40 Center Street · Fairhaven, MA 02719

REMOTE ANNUAL TOWN MEETING – SATURDAY, JUNE 12, 2021
WALTER SILVEIRA AUDITORIUM – ELIZABETH HASTINGS MIDDLE SCHOOL
TOWN MEETING MEMBERS PRESENT 226 – QUORUM REQUIRED 40

ARTICLE 35: SHORT-TERM RENTALS AND COMMUNITY IMPACT **FEENERAL BYLAW AMENDMENT**

(The following subsections (35A, 35B and 35C) should be voted separately)

ARTICLE 35A: SHORT-TERM RENTALS GENERAL BYLAW AMENDMENT

By majority vote, the town voted to add the following General Bylaw Chapter 190 for the administration and enforcement of Short-Term Rental Properties.

§ 190-1 Purpose.

The purpose of this chapter is to provide for administration and enforcement of the Fairhaven Short-Term Rental Properties Bylaw, which provides for registration of short-term rental units in order to protect the health, safety, and welfare of both the occupant(s) of those rental housing units and the general public and to maintain the quality of life in residential neighborhoods of the Town. Further, this bylaw is intended to provide for the orderly operation of short-term rentals within the Town and prevent negative impacts on neighborhood character, housing availability, house prices, availability of long-term rental units and impacts on infrastructure services such as sewer, parking, access, fire codes, building code enforcement and snow removal. These regulations are also intended to assist the Board of Health, the Building Department and the Fire Department in the enforcement of state and local health and safety laws and regulations related to short-term rental units and to provide a method for correcting violations when conditions require immediate attention in situations associated with Short-Term Rentals.

§ 190-2 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

BUILDING COMMISSIONER. The Building Commissioner of the Town of Fairhaven or his designee.

COTTAGE COLONY. A group of three or more detached dwellings, legally in existence at the time of adoption of this ordinance, located on a single lot, which are customarily occupied on a seasonal basis.

DWELLING. Any building or area in a building used or intended for use for human habitation, including, but not limited to, apartments, condominiums, cottages, guesthouses, one-, two- or multiple-unit residential buildings/dwellings, except those licensed under any state or local laws or regulations other than those licensed under this chapter.

OCCUPANCY. The use or possession of or the right to use or possess a short-term rental of not more than 30 consecutive days.

OCCUPANT (GUEST). Any individual residing overnight in a short-term rental.

OPERATOR (HOST). Any Person or entity operating a short-term rental.

OPERATOR'S AGENT. A Person who, on behalf of an operator of a short-term rental: (i) manages the operation or upkeep of a property offered for rent; or (ii) books reservations at a property offered for rent. An "operator's agent" shall include, but not be limited to, a property manager, property management company or real estate agent.

OWNER. Any Person, as defined immediately below, who alone or severally with others has legal or equitable title or a beneficial interest in any dwelling unit; a mortgagee in possession; or agent, trustee or other person appointed by the courts.

PERSON. An individual, partnership, trust or association, with or without transferable shares, joint stock company, a corporation which is not publicly traded, society, club, firm, organization, institution, estate, receiver, trustee, assignee or referee any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, or any other combination of individuals, directly or indirectly or through any agent, employee, stockholder, officer or other person or any subsidiary whatsoever acting as a unit, including a governmental unit other than the Town of Fairhaven or any of its agencies.

SHORT-TERM RENTAL. A residential or mixed-use dwelling unit or any bedroom within a dwelling rented out through the use of advance reservations, for a fee, for a period of not more than 30 consecutive calendar days, excluding: Cottage Colonies, as defined herein; hotels licensed under M.G.L. Chapter, 140, Section 6; motels licensed under M.G.L. Chapter 140, Section 32B; lodging establishments licensed under M.G.L. Chapter 140, Section 23 or; bed & breakfast establishments licensed under Chapter 198 of the Code of the Town of Fairhaven

§ 190-3 Short-Term Rental Registration.

Registration is Required. Short Term Rentals shall only be allowed in one or two family or multi-family dwelling units (excluding accessory buildings).

- A. No owner shall rent, or offer to rent, any Short-Term Rental prior to registering with the Fairhaven Building Department. No tenant or lessee of an Owner shall let or sub-let a Short-Term Rental.
- B. Limits on total number of registrations within the Town shall be 64 active units or less, until December 31, 2022; thereafter not more than 120 Short Term Rentals shall be allowed in Town at any one time.
- C. Compliance. A dwelling used as a Short-term Rental shall at all times be in compliance with the provisions of all state and local health and safety laws, bylaws and regulations, including, but not limited to; Chapter 198-24 Noise, Litter and Smoke Standards, Chapter 198-23 Home Occupations, the Fair Housing Act, G.L. c. 151B and local equivalents and regulations related thereto, and all other regulations applicable to residential dwellings, except as specifically set forth otherwise herein.
- D. Application Required. The Owner of the dwelling shall be required to complete a Fairhaven Short-Term Rental registration application with the Fairhaven Building Department. The Applicant shall also provide proof each Short Term Rental is registered with the Massachusetts Department of Revenue.

- E. Abutter Notification: For an initial application to register a property as a Short Term Rental, the Applicant is required to send notification informing abutters within 300' and provide proof to the Town of the notification using one of the following methods: Hand delivery; Certified mail, return receipt requested; Certified mail. Proof of abutter notification shall be included with the application.
- F. The Fairhaven Building Commissioner shall, in accordance with the above sections, issue a certificate of registration which shall expire on the following December 31, provided that the certificate may be renewed each year. The Building Commissioner will share the list of Short Term Rentals with the Police and Fire Department.
- G. Registration Renewal. Short-term rental registrations shall be renewed annually upon payment of the renewal fee.
- H. Fees. The fee for a Short-term rental registration or a renewal of a registration shall be \$200 and thereafter a schedule of fees for permits as authorized under Chapter 190 shall be as established and revised from time to time by the Board of Selectmen.
- I. Non-Transferability. Short-term rental registrations shall be granted solely to an Owner and shall not be transferable or assigned to any other person, legal entity, or address. The registration does not run with the property; it shall be terminated upon sale or transfer of the property for which the registration has been issued.
- J. Determination: Any person aggrieved by a determination made by the Building Commissioner regarding a registration may file an appeal for review to the Select Board for a hearing and re-determination.

§ 190-4 Publication of Registration Number.

The Town-issued registration number shall be included on any listing offering the Short-term Rental for rent.

§ 190-5 Contact Information of Owner, Operator and/or Operator's Agent.

- A. An Owner of a Short-term Rental shall provide the Fairhaven Building Department with his/her current residential address and telephone number upon application for a Registration as well as a full and complete list of persons (as defined above) or who have a direct or indirect interest in any property for which a Short-term Rental Registration in the Town of Fairhaven has been issued or for which a Short-term Rental Registration application is pending.
- B. If the Owner is a corporation, the name, address, and telephone number of the president and legal representative of the corporation shall be provided. If the Owner is a realty trust or partnership, the name, address, and telephone numbers of the managing trustee or partner shall be provided.
- C. The name and contact information of the Operator must be provided, along with the name and contact information of an Operator's Agent, if different from the Operator, who is able to respond in person to any issues or emergencies that arise during occupancy within one (1) hour of contact by the Fairhaven Building Commissioner to complaints regarding the condition or operation of the Short-term Rental. Contact information must include a telephone number that is available 24 hours per day, 7 days a week to Short-term Rental Occupants and the above-stated public safety agencies. This contact information shall be included in the application for a Short-term Rental Registration and shall be posted conspicuously within the rental unit.

§ 190-6 Posting of Notices

The Town shall provide information to each registered Operator summarizing the regulations for Short-term rentals. For each Short-term Rental Registration issued, this will include, but shall not be limited to: the name and 24-hour contact information of the Operator or Operator's Agent designated in the application, requirements for trash removal, occupancy requirements, parking, and noise restrictions. The Operator shall:

- A. Provide each occupant a copy of the provided information; and
- B. Post the information, along with the Short-term Rental Registration, in a conspicuous location within the Short-term Rental.

§ 190-7 Specific Standards of Short-Term Rental Properties

- A. Trash Removal. The Short-term Rental Operator shall be responsible for ensuring that household trash is removed from the premises immediately after Occupancy is concluded or once per week, whichever is more frequent.
- B. Parking. On-site parking of one space per Short-term Rental bedroom.
- C. Renting for durations of less than twenty (20) consecutive hours shall not be permitted.
- D. Commercial meetings and uses are prohibited in Short-term Rentals.
- E. Each Short-term Rental shall contain functional smoke detectors and carbon monoxide alarms. In addition, the Operator shall provide and maintain one 2.5 lb. multi-purpose fire extinguisher on each floor.

§ 190-8 Occupancy Requirements

The maximum number of Occupants in a Short-Term Rental shall be two per each bedroom, plus an additional two total.

§ 190-9 Keeping of Register

The Operator or Operator's Agent shall be responsible for keeping a register containing the name of the Occupant who is the leaseholder, total number of occupants, and dates of occupancy. The register shall be retained for a period of two (2) years.

§ 190-101 Ineligible Units

The following are not eligible to be rented or offered to rent as Short-term Rentals:

- A. Dwellings designated as below market rate or income-restricted, that are subject to affordability covenants, or that are otherwise subject to housing or rental assistance under local, state, or federal law;
- B. Accessory dwelling units per 198-32.1.
- C. Dwellings subject to any requirement of local, state, or federal law that prohibits the leasing or subleasing of the unit or use of the unit as a Short-term Rental;
- D. Dwellings that are the subject of any outstanding building, sanitary, zoning, or fire code violations, orders of abatement, stop work orders, unsafe orders, or cease and desist orders.

§ 190-11 Failure to Pay Municipal Taxes, Fees, Assessments, and Charges.

The privilege of receiving or holding a Short-term Rental Registration is contingent upon the timely payment of municipal and district taxes, fees, assessments, and charges. Failure of a Person to comply with this requirement shall be cause, after notice and hearing pursuant to the requirements of G.L. c. 40, § 57, for denial, suspension, amendment, or revocation of a Short-Term Rental Registration for any and all property in which the person holds a direct or indirect ownership interest, as above defined.

§ 190-12 Inspections

Short-term Rentals shall be subject to a mandatory initial inspection and thereafter inspections every two (2) years by the Fairhaven Building Commissioner, Fire Department, Health Department or other duly authorized authority from the Town.

§ 190-13 Complaint Process, Violations

- A. **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 Fairhaven Building Commissioner. 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.
- B. **Written notice of any violations of this chapter shall be treated as a complaint and may also be initiated by the Building Commissioner.** The notice shall specify the nature of the violation to the Occupant and Owner and the time within which compliance must be achieved. The requirements of this subsection shall be satisfied by mailing such notice, through the United States Postal Service by certified mail, or by delivering in hand such notice as memorialized by an affidavit of any Town employee or officer authorized to serve any form of process notice to the Owner or legal representative named on the registration application.
- C. **Any notice required or contemplated by this chapter shall be deemed sufficient if delivered to or mailed to the mailing address listed by the owner on the Short-term Rental Registration application then on file with the Fairhaven Building Department.** A written change-of address notice signed by the Owner/s and delivered to the Fairhaven Building Department may be filed at any time.
- D. **Review of Complaint.** The Building Commissioner shall investigate complaint(s) within a reasonable timeframe and shall determine whether there may be a violation. If the alleged violation is under the jurisdiction of another city or state or federal agency, the Commissioner shall refer the complaint to such agency for further action. 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. The Building Commissioner shall keep records of all complaints received and determinations made.
- E. **Offering an Ineligible Unit as a Short-term Rental.** Any person who offers a unit as a Short-term Rental, where such unit is not an eligible Dwelling Unit or is not registered, may be fined in accordance with the fine schedule herein on a per violation per day basis. Each day's failure to comply with a notice of violation or any other order shall constitute a separate violation. The Commissioner or a designee may also seek an injunction from a court of competent jurisdiction prohibiting the offering of the unit as a Short-term Rental.
- F. **Failure to Obtain a Registration.** Any person who offers an eligible Dwelling Unit as a Short-term Rental without a valid Short-term Rental Registration, or any person who offers an eligible Dwelling Unit as a Short-term Rental while the unit's registration is suspended, may be fined in accordance with the fine schedule herein on a per violation per day basis. Each day's failure to comply with a notice of violation or any other order shall constitute a separate violation.
- G. **Failure to Comply with Notice of Violation.** Any person who fails to comply with any notice of violation or other order issued pursuant to this section by the Commissioner or a designee for a violation of any provision of this section may be fined in accordance with the fine schedule herein on a per violation per day basis. Each day's failure to comply with a notice of violation or any other order shall constitute a separate violation.
- H. **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 Fairhaven Building Department within fourteen days after the day the notice of violation was served.

Upon receipt of a petition for hearing, the Commissioner 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 Administrator and shall occur no later than three (3) weeks after the date the Fairhaven Building 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.

- I. Decision. Within seven days after the conclusion of the hearing, the Commissioner or designee shall sustain, modify, or withdraw the notice of violation and shall inform the person upon whom a notice of violation has been served, in writing, of its decision and the reasons therefor. If the Fairhaven Building Department sustains or modifies the notice of violation, said violation shall be remedied within the time period allotted as issued or in the modification.
- J. Violations of an unoccupied dwelling shall be corrected prior to occupancy. Violations found in an occupied dwelling shall be corrected within the time specified as determined by the Building Commissioner.
- K. If a written petition for a hearing is not filed within fourteen (14) days after the notice of violation has been served, or if, after a hearing, the notice of violation has been sustained in any part, each day's failure to comply with the notice of violation within the time allotted as issued or modified shall constitute a separate violation.

§ 190-14 Registration Suspension, Modification and Revocation

In addition to, and not in lieu of, the penalties that may be assessed pursuant to this chapter, the Fairhaven Building Commissioner, after notice and public hearing, may suspend, revoke or modify any or all registration approvals issued hereunder to an Owner for violation of these regulations or of any conditions imposed by the Fairhaven Building Commissioner, notwithstanding that a violation may have been found with respect to one or more, but not all of the registered properties held by an owner. These remedies shall be non-exclusive.

§ 190-15 Judicial Appeals

Any person aggrieved by a final decision of the Hearing Officer and Fairhaven Building Commissioner with respect to a notice of violation or any other order issued under this section may seek relief therefrom in any court of competent jurisdiction.

§ 190-16 Penalties

If any Occupant, Operator or Owner violates any provision of this chapter, the Owner may be subject to a fine in accordance with the following: \$150 1st Offense, \$300 2nd Offense and each subsequent offense. Each day that a violation exists constitutes a separate offense.

§ 190-17 Enforcement

The Town may enforce the provisions of this chapter by any or all of the following: the noncriminal disposition process of M.G.L. c. 40, s. 21D; by seeking to restrain a violation by injunction; and by filing a complaint in any court of competent jurisdiction.

§ 190-18 Regulations

The Fairhaven Building Commissioner may adopt regulations, policies and procedures for the implementation of this chapter.

§ 190-19 Severability

Each provision of this Chapter shall be construed as separate. If any part of this Chapter shall be held invalid for any reason, the remainder shall continue in full force and effect. In the event of a conflict between this Chapter and any other Chapter of the General Code of Fairhaven, this Chapter 190 shall control.

§190-20 Annual Reporting

The Town Administrator shall publish annually in the Town of Fairhaven Annual Report on the statistical data relating to Short-term Rentals.

§190-21 Room Occupancy Excise and Community Fees.

Short-term rentals subject to the provisions of this bylaw are subject to the Room Occupancy Excise under G.L. c.64G and short-term rental community impact surcharge.

A TRUE COPY, ATTEST:


LINDA FREDETTE - ACTING TOWN CLERK



Town of Fairhaven Town Clerk's Office

Town Hall · 40 Center Street · Fairhaven, MA 02719

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WALTER SILVEIRA AUDITORIUM – ELIZABETH HASTINGS MIDDLE SCHOOL
TOWN MEETING MEMBERS PRESENT 226 – QUORUM REQUIRED 40

ARTICLE 35: SHORT-TERM RENTALS AND COMMUNITY IMPACT FEE GENERAL BYLAW AMENDMENT

(The following subsections (35A, 35B and 35C) should be voted separately)

ARTICLES 35B and 35C: COMMUNITY IMPACT FEE

2021 PROPOSED GENERAL BYLAW AMENDMENT TO COLLECT A 3% COMMUNITY IMPACT FEE ON SHORT TERM RENTALS

Two proposed amendments to the Town Bylaw Chapter that would allow the Town to adopt a general bylaw that would impose a three percent (3%) Community Impact Fee, per Section 3D (b) of M.G.L. Chapter 64G, to be paid monthly on the total amount of rent for each transfer of occupancy of any professionally managed short-term rental units and on short-term rental units located within a two-family or three-family dwelling that includes the operator primary residence. By statute, thirty five percent (35%) of all community impact fees received pursuant to this Order shall be dedicated to either affordable housing or local infrastructure projects within the Town. The Town of Fairhaven already has a six percent (6%) Hotel Room Occupancy Tax that automatically applies to Short Term Rentals as of July 1, 2019 based on the State law (Section 3D (b) of M.G.L. Chapter 64G).

35B: Community Impact Fee (Professionally managed short-term rental units)

By majority vote, the Town of Fairhaven accepts the provisions of Section 3D (a) of M.G.L. Chapter 64G, and hereby imposes a 3 percent (3%) community impact fee on the total amount of rent for each transfer of occupancy of a professionally managed short-term rental unit that is located within the Town. All community impact fees received pursuant to this Order shall be paid to the Department of Revenue monthly by the operator. *Note: This bylaw would take effect beginning November 15, 2021*

35C: Community Impact Fee (two or three-family dwelling that includes the operator primary residence)

By majority vote, the Town of Fairhaven accepts the provisions of Section 3D (b) of M.G.L. Chapter 64G, and hereby imposes a 3 percent (3%) community impact fee on the total amount of rent for each transfer of occupancy within a two-family or three family dwelling that includes the operator primary residence short-term rental unit that is located within the Town. All community impact fees received pursuant to this Order shall be paid to the Department of Revenue monthly by the operator. *Note: This bylaw would take effect beginning November 15, 2021*

A TRUE COPY, ATTEST:

LINDA FREDETTE - ACTING TOWN CLERK



Town of Fairhaven Town Clerk's Office

Town Hall · 40 Center Street · Fairhaven, MA 02719

REMOTE ANNUAL TOWN MEETING – SATURDAY, JUNE 12, 2021
WALTER SILVEIRA AUDITORIUM – ELIZABETH HASTINGS MIDDLE SCHOOL
TOWN MEETING MEMBERS PRESENT 226 – QUORUM REQUIRED 40

ARTICLE 37: AMENDMENTS TO THE TOWN'S PLANNING BY-LAWS **CHAPTER 198-31.1 STORMWATER MANAGEMENT**

By 2/3rds vote, the town voted to enact the following mandatory amendments to the Zoning Bylaw Chapter 198-31.1 Stormwater Management required by *the General Permit for Stormwater Discharges From Small Municipal Separate Storm Sewer Systems in Massachusetts (MS4 Permit)* administered through the United States Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) or take any other action relative thereto:

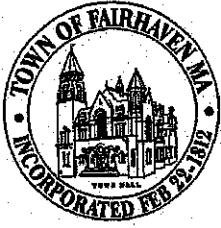
1. Add to end of preamble as follows: This section shall also apply to all new special permits subject to § 198-29 that disturb one (1) or more acres of land regardless of whether they increase the impervious area of a property.
2. Add to § 198-31.1.A(1) as follows: Stormwater management for each development shall “be designed consistent with or more stringent than the requirements of the Massachusetts Stormwater Handbook, shall comply with Chapter 194: Stormwater Management, Illicit Discharge, Soil Erosion, Sediment Control Bylaw and Adhere to the standards and requirements of Regulations issued there under and shall” accomplish the following:
3. Add § 198-31.1.(1)B(1) as follows: Stormwater management systems for New Development and Redevelopment projects shall meet minimum requirements of the *General Permit for Stormwater Discharges From Small Municipal Separate Storm Sewer Systems in Massachusetts (MS4 Permit) including:*
 - (a) New Development Projects shall provide removal of 90% of the average annual (not per storm) load of Total Suspended Solids (TSS) generated from the total post-construction impervious area on the site AND 60% of the average annual (not per storm) load of Total Phosphorus (TP) generated from the total post-construction impervious surface area on the site. Average annual pollutant removal requirements are achieved through one of the following methods:
 - i. Installing BMPs that meet the pollutant removal percentages based on calculations developed consistent with EPA Region 1's BMP Accounting and Tracking Tool (2016) or other BMP performance evaluation tool provided by EPA Region 1, where available. If EPA Region 1 tools do not address the planned or installed BMP performance any federally or State approved BMP design guidance or performance standards (e.g. State stormwater handbooks and design guidance manuals) may be used to calculate BMP performance;

- ii. Retain the volume of runoff equivalent to, or greater than, one (1.0) inch multiplied by the total post-construction impervious surface area on the site;
or
 - iii. Meeting a combination of retention and treatment that achieves the above standards.
- (b) Redevelopment projects shall provide removal of 80% of the average annual (not per storm) post-construction load of Total Suspended Solids (TSS) generated from the total post-construction impervious area on the site AND 50% of the average annual (not per storm) load of Total Phosphorus (TP) generated from the total post-construction impervious surface area on the site. Average annual pollutant removal requirements are achieved through one of the following methods:
- i. Installing BMPs that meet the pollutant removal percentages based on calculations developed consistent with EPA Region 1's BMP Accounting and Tracking Tool (2016) or other BMP performance evaluation tool provided by EPA Region 1, where available. If EPA Region 1 tools do not address the planned or installed BMP performance any federally or State approved BMP design guidance or performance standards (e.g. State stormwater handbooks and design guidance manuals) may be used to calculate BMP performance;
or
 - ii. Retaining the volume of runoff equivalent to, or greater than, 0.80 inch multiplied by the total post-construction impervious surface area on the site;
or
 - iii. Meeting a combination of retention and treatment that achieves the above standards.

Redevelopment activities that are exclusively limited to maintenance and improvement of existing roadways, (including widening less than a single lane, adding shoulders, correcting substandard intersections, improving existing drainage systems, and repaving projects) shall improve existing conditions unless infeasible and are exempt from Section 1.b. Roadway widening or improvements that increase the amount of impervious area on the redevelopment site by greater than or equal to a single lane width shall meet the requirements of Section 1.b.

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REMOTE ANNUAL TOWN MEETING – SATURDAY, JUNE 12, 2021
WALTER SILVEIRA AUDITORIUM – ELIZABETH HASTINGS MIDDLE SCHOOL
TOWN MEETING MEMBERS PRESENT 226 – QUORUM REQUIRED 40

ARTICLE 41: ZONING BY—LAW CHANGE CHAPTER 198-33 DEFINITIONS AND WORD USE

By 2/3rds vote, the town voted to enact the following amendments to the Zoning Bylaw chapter 198-33 to add, remove and/or change definitions from Massachusetts General Law to the definitions section (198-33) and other locations within the Fairhaven Codebook where the revised definitions reside. The proposal is to amend Zoning Chapter 198—33 Definitions and word use, by adding the following definitions, deleting definitions ~~xxx~~, or modifying existing definitions by adding the text shown in ***bold and italicized***.

24-HOUR BASIS: The actual time that a person is an occupant within a facility for the purpose of receiving care. It shall not include a facility that is open for 24 hours and is capable of providing care to someone visiting the facility during any segment of the 24 hours.

AMBULATORY CARE FACILITY: Buildings or portions thereof used to provide medical, surgical, psychiatric, nursing or similar care on a less than 24-hour basis to persons who are rendered incapable of self-preservation by the services provided.

ACCESSORY BUILDING: A subordinate building, the use of which is customarily incidental to that of the principal building or of the land and which is located on the same lot with the principal buildings or use. ***Not allowed without the Principal Structure on the same lot.***

ANCILLARY: Subordinate: often with to/or auxiliary

ASSISTED LIVING RESIDENCE: A residential development subject to certification under MGL c. 19D, which provides room and board; provides assistance with activities of daily living for three or more adult residents who are not related by consanguinity or affinity (i.e., by blood or marriage) to their care provider; and collects payments or third party reimbursement from or on behalf of residents to pay for the provision of assistance. Dwelling units in assisted living residences shall not be considered multifamily or garden apartment units. ***R-4 Use 5-16 People Custodial Care.***

BEDROOM: See Sleeping Unit.

BOARDING HOUSE: A building arranged or used for lodging for compensation, with or without meals.

CARE SUITE: In Group 1-2 occupancies, a group of treatment rooms, care recipient sleeping rooms and the support rooms or spaces and circulation space within the suite where staff are in attendance for supervision of all care recipients within the suite, and the suite is in compliance with the requirements of Section 407.4.

CLINIC, OUTPATIENT: Buildings or portions thereof used to provide medical care on less than a 24-hour basis to persons who are not rendered incapable of self-preservation by the services provided.

Congregate living facilities: A building or part thereof that contains sleeping units where residents share bathroom or kitchen facilities or both.

CONSTANTLY ATTENDED LOCATION: A designated location at a facility staffed by trained personnel on a continuous basis where alarm or supervisory signals are monitored and facilities are provided for notification of the fire department or other emergency vehicles.

CUSTODIAL CARE: Assistant with day to day living tasks; such as assistance with cooking, taking medication, bathing, using toilet facilities and other tasks of daily living. Custodial care includes persons receiving care who have the ability to respond to emergency situations and evacuate at a slower rate and/or who have mental and psychiatric complications.

DETOXIFICATION FACILITIES: Facilities that provide treatment for substance abuse, serving care recipients who are incapable of self-preservation or who are harmful to themselves or others.

DOCK OR PIER, PRIVATE: Any structure, floating or fixed, attached or adjacent to land, and placed in or and extending into coastal inland waters (in the case of tidal waters, seaward of the mean high tide line) which is restricted to waterfront owners for their private use and is designed, or is suitable for access to vessels, for swimming or any other similar purpose.

DORMITORY: A space in a building where group sleeping accommodations are provided in one room, or in a series of closely associates rooms, for persons not members of the same family group, under joint occupancy and single management, as in college dormitories or fraternity houses.

DWELLING UNIT OR SLEEPING UNIT, MULTISTORY. SEE "Multistory unit".

DWELLING UNIT ***A single unit providing complete, independent living facilities for one or more persons, including permanent provision for living, sleeping, eating cooking and sanitation.***

FOSTER CARE FACILITIES: Facilities that provide care to more than five children, 2 ½ years of age or less.

GROUP HOME: A facility for social rehabilitation, substance abuse or mental health problems that contains a group housing arrangement that provides custodial care but does not provide medical care.

GUEST ROOM: A room used or intended to be used by one or more guests for living or sleeping purposes.

HALFWAY HOUSE: A place for helping people adjust to society after being imprisoned, hospitalizes, etc.

HEIGHT OF SIGN: The height of the sign shall be computed as the vertical distance measured from the base of the sign at grade to the top of the highest attached component of the sign. ***Bolt sign site line.***

HOSPITALS AND PHSYCHIATRIC HOSPITALS: Facilities that provide care or treatment for the medical, psychiatric, obstetrical, or surgical treatment of care recipients who are incapable of self-preservation.

INCAPABLE OF SELF-PRESERVATION. Persons who, because of age, physical limitations, mental limitations, chemical dependency or medical treatment, cannot respond as an individual to an emergency situation.

INTENDED TO BE OCCUPIED AS A RESIDENCE: This refers to a dwelling unit or sleeping unit that can or will be used all or part of the time as the occupant's place of abode.

LODGING HOUSE: A one-family dwelling with five or fewer guest rooms where one or more occupants are primarily permanent in nature and compensation is provided for the guest rooms. A building licensed as a "lodging house" in accordance with M.G.L. c 140, ss 22 through 31 shall comply with 780 CMR requirements according to its appropriate use and occupancy classification.

MEDICAL CARE. Care involving medical or surgical procedures, nursing or for psychiatric purposes.

MOTEL or HOTEL: Residential occupancies containing sleeping units where the occupants are primarily transient in nature

MULTISTORY UNIT: A dwelling unit or sleeping unit with habitable space located on more than one story.

NONFAMILY ACCOMMODATIONS: Boardinghouses, lodging houses, guesthouses, tourist homes, dormitories or similar accommodations. Accommodations shall be considered hotels or motels if having a sign in excess of two square feet or other departure from residential character or if having a specified term of residence of less than one week, except where there is a resident family on the premises and accommodations for fewer than 10 nonresidents. Accommodations having individual kitchen facilities (two or more of the following: stove, refrigerator, sink) shall be considered dwelling units. ~~Transient or non-transient~~

NURSING, CONVALESCENT OR REST HOME: **Incapable Self Preservation.** Premises for the care of three or more persons as licensed by the Massachusetts Department of Public Health.

NURSING HOMES. Facilities that provide care, including both intermediate care facilities and skilled nursing facilities where any of the persons are incapable of self-preservation.

OCCUPANT LOAD: The number of persons for which the means of egress of a building or portion thereof is designed.

OCCUPIABLE SPACE: A room or enclosed space designed for human occupancy in which individuals congregate for amusement, educational or similar purposes or in which occupants are engaged at labor, and which is equipped with means of egress and light and ventilation facilities meeting the requirements of this code.

OUTPATIENT CLINIC: See "Clinic, outpatient"

OWNER: Any person, agent, operator, entity, firm or corporation having any legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding an interest or title to the property; or otherwise having possession or control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

PERSONAL CARE SERVICE. The care of persons who do not require medical care. Personal care involves responsibility for the safety of the persons while inside the building.

RELIGIOUS WORSHIP, PLACE OF: A building or portion thereof intended for the performance of religious services.

SLEEPING UNIT: A room or space in which people sleep, which can also include permanent provisions for living, eating and either sanitation or kitchen facilities but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.

SUMMER CAMPS FOR CHILDREN: Premises with residential facilities operated solely between April and October for recreational and other purposes. For requirements see section 429.

TEMPORARY STRUCTURES: An accessory tent or construction shanty (**180 days subject to 780 527 CMR**) to be used for less than one year.[25]

TOWNHOUSE: A single-family dwelling unit constructed in a group of three or more attached units in which each unit extends from the foundation to roof and with open space on at least two sides.

TRANSIENT: Occupancy of a dwelling unit or sleeping unit for not more than 30 days.

VARIANCE: The Board of Appeals may grant upon petition after a public hearing for which notice has been given by publication and posting as provided in section eleven and by mailing to all parties in interest to grant upon appeal or upon petition with respect to particular land or structures a variance from the terms of the applicable zoning ordinance or by-law where such permit granting authority ***specifically finds that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district*** in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law. (per Chapter 40A Section 10)

A TRUE COPY, ATTEST:


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**REMOTE ADJOURNED ANNUAL TOWN MEETING – MONDAY, JUNE 14, 2021
WALTER SILVEIRA AUDITORIUM – ELIZABETH HASTINGS MIDDLE SCHOOL
TOWN MEETING MEMBERS PRESENT 192 – QUORUM REQUIRED 40**

ARTICLE 54: CITIZENS PETITION - REZONE PORTIONS OF 267 HUTTLESON AVENUE

By 2/3rds vote, the town voted as amended, an article for the Rezone of the following described property Portions of 267 Huttleston Avenue from (Existing Zoning) Multi-family to Proposed Zoning: Business

AMENDMENT: This zoning change becomes effective only after the following requirements are met, a covenant is drawn that declares all areas cited Conservation Restricted in the sitemap attached to this proposal be protected perpetuity by being designated Conservation Restricted Area by the petitioner filed with the MA, D.E.P. and said CR in Place.

A TRUE COPY, ATTEST:


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**REMOTE ADJOURNED ANNUAL TOWN MEETING – MONDAY, JUNE 14, 2021
WALTER SILVEIRA AUDITORIUM – ELIZABETH HASTINGS MIDDLE SCHOOL
TOWN MEETING MEMBERS PRESENT 192 – QUORUM REQUIRED 40**

**ARTICLE 59: AMENDMENT TO THE TOWN'S GENERAL BYLAW, CHAPTER 194 STORMWATER
MANAGEMENT, ILLICIT DISCHARGE, SOIL EROSION, SEDIMENT CONTROL**

7. *To add to §194-9 Stormwater Management Plan the following at the end:*
- a. The Plan shall meet the standards defined in Bylaw 198-31.1.A.
 - b. The Plan shall Utilize the 24 hour rainfall data taken from the NOAA Atlas 14 https://hdsc.nws.noaa.gov/hdsc/pfds/pfds_map_cont.html (or most current data from NOAA) and type III storm.

A TRUE COPY, ATTEST:


LINDA FREDETTE - ACTING TOWN CLERK