

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

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

ARTICLE 35A: SHORT-TERM RENTALS GENERAL BYLAW AMENDMENT

To see if the Town will 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.

~~**INSPECTIONAL Departments.** Consisting of Town of Fairhaven Building, Health and Fire Departments.~~

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 primary 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 ~~Department~~ [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 Departments.](#)
- 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 Good Neighbor Information

Short term rental registrations will be published to the Town's website and shall include the contact information required in section 190-5(C) above. The website shall also include information about these Short term rental regulations, and instructions and contact information to file a complaint.

§ 190-7 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; ~~and~~
- C. ~~Post the Short-term Rental registration number on a placard visible from the street in the dwelling's front yard or front door.~~

§ 190-8 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-four (24) 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.

§ 190-9 Occupancy Requirements

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

§ 190-10 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. ~~and shall be made available upon request to Fairhaven Inspectional Services Department.~~

§ 190-11 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. ~~Family Apartments or~~ Accessory dwelling units per 198-32.1 Affordable Apartments;
- 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.
- E. ~~Properties designated as Problem Properties.~~

§ 190-12 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.

§ 190-13 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.

§ 190-14 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.

§ 190-15 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.

§ 190-16 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.

§ 190-17 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.

§ 190-18 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.

§ 190-19 Regulations

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

§ 190-20 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.

§190-21 Annual Reporting

The Town ~~Manager-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.

Petitioned by: Planning Board

ARTICLE 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)

To see if 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*

Petitioned by: Planning Board

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

To see if 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*

Petitioned by: Planning Board