



TOWN OF OTIS, MASSACHUSETTS

1 N. Main Rd. Box 237
Otis MA 01253
Office of the Town Clerk
413-269-0100 ext. 5


PUBLIC NOTICE

Date of Posting: September 4, 2024

The Zoning By-law amendments approved at the May 21, 2024 Annual Town Meeting have been approved for Article 24 by the Attorney General's office and are now in effect in the Town of Otis.

Claims of invalidity by reason of any defect in the procedure of adoption or amendment may only be made within (90) ninety days of the above posting. Copies of the referenced bylaws may be obtained from the Town Clerk's office, 1 North Main Rd., Otis, MA Monday-Thursday 8AM-3PM. The bylaw can also be found on the town website on the Town Clerk's Page at <https://townofotisma.com/departments/town-clerk/>

Sincerely,

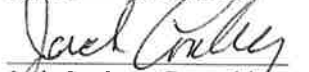

Lyn O'Brien
Town Clerk

Article 24: SHORT TERM RENTAL BYLAW

Constable Certificate of Posting:

Date: September 4, 2024

On the date above, I have posted at least 5 copies of this notice stating where the Zoning Bylaws Amendments passed at the May 21, 2024 Annual Town Meeting and approved by the Attorney General's Office can be obtained.


Jack Conboy, Constable

A list of places where this document was posted can be obtained in the Town Clerk's Office

Attachment:

Attorney General's Letter



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION
10 MECHANIC STREET, SUITE 301
WORCESTER, MA 01608

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

(508) 792-7600
(508) 795-1991 fax
www.mass.gov/ago

August 30, 2024

Lyn O'Brien, Town Clerk
Town of Otis
P.O. Box 237
Otis, MA 01253

**Re: Otis Annual Town Meeting of May 21, 2024 -- Case # 11457
Warrant Article # 24 (Zoning)**

Dear Ms. O'Brien:

Article 24 - Under Article 24 the Town voted to amend the zoning by-laws to adopt a new "Short Term Rental Bylaw" that requires an annual registration for a Short Term Rental (STR) and imposes operation requirements on STRs. We approve Article 24 from the May 21, 2024 Otis Annual Town Meeting because it does not conflict with the Constitution or laws of the Commonwealth, including G.L. c. 64G, § 14, which authorizes towns to regulate STRs. See Thayre v. Town of Brookline, 2021 WL 664042 * 6-7 (D. Mass. 2021) (recognizing the municipal regulatory authority over STRs granted by G.L. c. 64G, § 14 and rejecting owner's asserted property right to engage in short-term rentals).¹

In this decision we describe the by-law amendments adopted under Article 24; discuss the Attorney General's limited standard of review of town by-laws under G.L. c. 40, § 32; and then explain why, based on that standard, we approve Article 24. We emphasize that our approval in no way implies any agreement or disagreement with any policy views that may have led to the passage of the by-law amendments. The Attorney General's limited standard of review requires her to approve or disapprove by-laws based solely on their consistency with state law, not on any policy views she may have on the subject matter or wisdom of the by-law. Amherst v. Attorney General, 398 Mass. 793, 795-96, 798-99 (1986) (requiring inconsistency with state law or the constitution for the Attorney General to disapprove a by-law).

¹ In decisions issued to the Towns of Richmond on August 16, 2024 (Case # 11391); New Marlborough on July 29, 2024 (Case # 11348); Eastham on July 26, 2024 (Case # 11358); West Tisbury on July 8, 2024 (Case # 11327); Provincetown on April 20, 2024 (Case # 11190); Lee on March 19, 2024 (Case # 11294); Sandisfield on February 16, 2023 (Case # 11139); Great Barrington on December 19, 2022 (Case # 10670) and Stockbridge on October 4, 2021 (Case # 10265) we approved similar STR by-laws.

RECEIVED BY
TOWN CLERK
OTIS, MASSACHUSETTS
2024 SEP -3 PM 1:03

I. Summary of the By-law

The stated purpose of the STR by-law is to “preserve and promote the character, history, health and safety of the community at large and individual neighborhoods in the Town of Otis by permitting and licensing short-term rentals...” Section 1, “Purpose.” Section 2 of the by-law defines terms used therein, including “Short-Term Rental, STR or STRs” as follows:

Any rental of a residential dwelling unit, or bedroom or bedrooms within a dwelling unit, in exchange for monetary payments or in-kind non-monetary barter, as residential accommodations for a duration of less than thirty-one (31) consecutive days and rented or exchanged for rental for a period greater than 14 days within a calendar year.

Section 3, “Registration,” requires a yearly STR license from the “Authority Having Jurisdiction” (AHJ), defined in Section 2 as the Zoning Enforcement Officer. Section 3 details the information that must be included in the registration application and authorizes the AHJ to conduct an inspection to verify the provided information. Section 4 imposes various regulations related to safety, health and licensing on the STR, including compliance with the Fire Code and Building Code. Section 5 imposes additional regulations related to the STR including maximum occupancy restrictions. The by-law also imposes record keeping obligations and fees. Section 6, “Record Keeping” and Section 7, “Fees.” Lastly, the by-law imposes penalties for a violation, provisions for appeal of a decision issued by the AHJ, and severability provisions. Sections 8-10.

II. Attorney General’s Standard of Review of Zoning By-laws

Our review of Article 24 is governed by G.L. c. 40, § 32. Under G.L. c. 40, § 32, the Attorney General has a “limited power of disapproval,” and “[i]t is fundamental that every presumption is to be made in favor of the validity of municipal by-laws.” Amherst, 398 Mass. at 793, 795-96 (1986). The Attorney General does not review the policy arguments for or against the enactment. Id. at 798-99 (“Neither we nor the Attorney General may comment on the wisdom of the town’s by-law.”) Rather, to disapprove a by-law (or any portion thereof), the Attorney General must cite an inconsistency between the by-law and the state Constitution or laws. Id. at 796. “As a general proposition the cases dealing with the repugnancy or inconsistency of local regulations with State statutes have given considerable latitude to municipalities, requiring a sharp conflict between the local and State provisions before the local regulation has been held invalid.” Bloom v. Worcester, 363 Mass. 136, 154 (1973).

Article 24, as an amendment to the Town’s zoning by-laws, must be accorded deference. W.R. Grace & Co. v. Cambridge City Council, 56 Mass. App. Ct. 559, 566 (2002). When reviewing zoning by-laws for consistency with the Constitution or laws of the Commonwealth, the Attorney General’s standard of review is equivalent to that of a court. “[T]he proper focus of review of a zoning enactment is whether it violates State law or constitutional provisions, is arbitrary or unreasonable, or is substantially unrelated to the public health, safety or general welfare.” Durand v. IDC Bellingham, LLC, 440 Mass. 45, 57 (2003). A municipality has no power to adopt a zoning by-law that is “inconsistent with the constitution or laws enacted by the [Legislature].” Home Rule Amendment, Mass. Const. amend. art. 2, § 6.

III. Municipal Authority to Adopt Short-Term Rental By-laws

In 2018 the Legislature amended G.L. c. 64G, "Room Occupancy Excise," to authorize municipalities to impose local registration, licensing, and other operational requirements on STRs. Under G.L. c. 64G, § 14 towns may: (1) regulate the class of operators of STRs; (2) limit the number of days that STRs may be rented; (3) impose fees for STRs; and (4) impose penalties for a violation of the by-law's provisions, as follows:

A . . . town, by . . . by-law, may regulate operators registered pursuant to section 67 of chapter 62C and impose penalties for the violation of such an ordinance or by-law. A . . . town, by . . . by-law, may:

(i) regulate the existence or location of operators under this section within the city or town, including regulating the class of operators and number of local licenses or permits issued to operators under this section and the number of days a person may operate and rent out an accommodation in a calendar year;

(ii) require the licensing or registration of operators within the city or town; provided, however, that a city or town may: (A) accept a certificate of registration issued to an operator in accordance with section 67 of chapter 62C in lieu of requiring an operator to obtain a local license or registration under this section; or (B) issue a provisional license or registration to permit an operator to offer accommodations on temporary or seasonal basis;

(iii) require operators to demonstrate that any properties or premises controlled, occupied, operated, managed or used as accommodations subject to the excise under this chapter are not subject to any outstanding building, electrical, plumbing, mechanical, fire, health, housing or zoning code enforcement, including any notices of violation, notices to cure, orders of abatement, cease and desist orders or correction notices;

(iv) require properties or premises controlled, occupied, operated, managed or used by operators as an accommodation subject to the excise under this chapter to undergo health and safety inspections; provided, however, that the cost of any inspection conducted under this section shall be charged to and solely paid by the operator under this section; provided further, that after any initial health and safety inspection, the city or town may determine the frequency of any subsequent inspections;

(v) establish a civil penalty for violation of an ordinance or by-law enacted pursuant to this section; provided, however, that a city or town that suspends or terminates an operator's right to operate an accommodation for a violation of any ordinance or bylaw shall notify the commissioner of revenue of the suspension or termination; and

(vi) establish a reasonable fee to cover the costs associated with the local administration and enforcement of regulating operators and accommodations.

In addition to this statutory grant of authority, the state's Home Rule Amendment, Mass. Const. amend. art. 2, § 6 (as amended by amend. art. 89), allows a town to exercise, subject to certain limits not present here, "any power or function which the general court has power to confer upon it." This includes the authority to adopt by-laws regulating STRs. See *Styller v. Zoning Bd. of Appeals of Lynnfield*, 487 Mass. 588, 599 (2021) (local regulation of STRs is within a town's zoning power because the "absence of stability and permanence of the individuals residing in those [STRs]" subverts the municipal goal of "foster[ing] stability and permanence") (internal quotations and citation omitted).

IV. Comments on Certain Provisions of the By-law

We approve Article 24 because we find no conflict between Article 24 and G.L. c. 64G, § 14. General Laws Chapter 64, Section 14 authorizes towns to adopt by-laws that regulate the class of operators of STRs, including the number of local licenses or permits issued to operators. See *Thayre*, 2021 WL 664042 * 6-7 (recognizing G.L. c. 64G, § 14's grant of authority to cities and towns to enact their own local regulations and registration and licensing requirements for STRs). Therefore, we cannot conclude that the by-law's regulations on STRs conflict with G.L. c. 64G, § 14. However, we offer comments for the Town's consideration regarding Section 7, imposing registration fees for STRs.

Section 7, "Fees," establishes the required fees for submitting an application, licenses and renewal fees, including an authorization that these fees "are subject to change at the request of the AHJ to the Selectboard," as follows:

1. Fee to submit an application for registration is: \$150.00. This includes the pre-license inspection.
2. Fee for License issue is: \$500.00.
3. Annual renewal fee for nonexempt property STR. \$500.00

While a municipality may impose fees, it "has no independent power of taxation." *Silva v. City of Attleboro*, 454 Mass. 165, 169 (2009). In distinguishing valid fees from impermissible taxes, the Supreme Judicial Court has noted that fees tend to share the following common traits: (1) fees, unlike taxes, are charged in exchange for a particular governmental service which benefits the party paying the fee in a manner not shared by other members of society; (2) user fees (although not necessarily regulatory fees) are paid by choice, in that the party paying the fee has the option of not utilizing the governmental service and thereby avoiding the charge; and (3) fees are collected not to raise revenues but to compensate the governmental entity providing the services for its expenses. *Id.* (citing *Emerson College v. City of Boston*, 391 Mass. 415, 424-25 (1984)). The Town should consult with Town Counsel to ensure that any fees for STR applications and licenses charged under Section 7 constitute a valid fee rather than an impermissible tax.

V. Conclusion

Because Article 24 does not conflict with G.L. c. 64G, § 14, or other provisions of state or federal law, we approve it. The Town should consult with Town Counsel with any questions on the comments provided in this decision.

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.

Very truly yours,

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

Nicole B. Caprioli

By: Nicole B. Caprioli
Assistant Attorney General
Municipal Law Unit
10 Mechanic Street, Suite 301
Worcester, MA 01608
(508) 792-7600 ext. 4418

cc: Town Counsel Jeremia Pollard



Town of Otis, Massachusetts
Annual Town Meeting Minutes
May 21, 2024

ARTICLE 24: Short Term Rental Bylaw

To see if the Town will vote to adopt the following bylaw; or take any other action relative thereto.

1. Purpose:

The Town of Otis Short-Term Rental (STR) regulation is intended to preserve and promote the character, history, health and safety of the community at large and individual neighborhoods in the Town of Otis by permitting and licensing short-term rentals that are habitable and safe for occupants and neighbors alike. STR licensing will locate and identify STR's in the community protecting our visitors, residents and neighborhoods. This regulation provides guidance for permitted STR operation.

2. Definitions:

AHJ, Authority Having Jurisdiction: Zoning Enforcement Officer, Building Inspections Department,

Booking Agent: Any person or entity that applies for a permit to license an STR; facilitates reservations, collects payments or is listed as the Emergency Contact for an STR on behalf of or for an Operator. (see Operator's Agent.)

Emergency Contact: An Operator/Owner, Trustee or designee or Booking Agent that is available twenty-four hours/seven days per week and has contact with the Occupant for Fire, Police, Building Inspector, Otis Board of Health.

License for STR: A processed permit to license a dwelling located in Otis MA as an STR for monetary or in-kind gain. The STR license is accompanied by a fee (see Schedule) from the AHJ. The license term runs for one year from January 1 to December 31. A license is terminated upon the sale of a property and must be reapplied for.

Non-conforming waste-water disposal system: MGL 310.CMR 15.000. A Cesspool or cesspit.

Non-Owner Occupied STR: A dwelling that is not occupied by an operator/owner, operator/owner adjacent

Occupant: Any person or persons occupying a dwelling unit, a bedroom or bedrooms within a dwelling unit, functioning as a STR for a duration of less than thirty-one (31) consecutive days - that is counted in the calculation for adult occupancy per assessed bedroom.

Operator's Agent: Any person or entity that applies for a permit to license an STR; facilitates reservations, collects payments or is listed as the Emergency Contact for an STR on behalf of or for an Operator. (see Booking Agent.)

Operator/Owner: The natural person who is the owner of the residence that he/she seeks to offer as a STR. Only one owner may be registered as an Operator on the Application for Permit or Provisional Permit to license the STR. No other person may be listed as Operator even if that person is an owner or Trustee and meets the qualifications of primary resident.

Operator/Owner-Adjacent STR: A dwelling unit that is not the primary residence of the Operator/Owner but is located within an owner-occupied residential building (e.g. condominiums or multi-family dwelling) or the Operator/Owner is on the same Town Assessed plat or an abutting plat with at least one contiguous property line and the Operator/Owner actively lives in the condominium complex, the multi-family dwelling or the adjacent dwelling sharing a contiguous property line.

Operator/Owner Occupied STR: A single family dwelling unit of two or more individual bedrooms as verified by the Town of Otis Assessor that is the primary residence of its Operator/Owner and a minimum of one bedroom is occupied by the Operator/Owner. The Operator/Owner actively lives in the dwelling unit during the rental period. A two-family or multi-family dwelling unit where one unit is occupied as the primary residence of the Operator/Owner and the additional unit(s) offered for STR.

Parking: Off-street parking required. The minimum number of off-street parking spaces provided shall be, one (1) parking space per registered bedroom plus one additional space.

Partially Exempt Properties: A STR property which meets the requirements of Operator/Owner Occupied STR, Operator/Owner Adjacent STR or Resident Operator/Owner Non-adjacent STR.

Provisional Permit: A permit for a dwelling with a non-conforming waste water disposal system to be used as STR. A provisional permit will be issued only once and will expire at the end of two years. A STR with a Provisional Permit that wishes to continue renting in any capacity, whether short-term or long-term will have the two-year period prior to expiration to become compliant with MGL 310.CMR 15.000 Title 5. The process for obtaining a STR license after the expiration of a Provisional Permit will be through an expedited hearing with the BOH.

Resident Operator/Owner Non-adjacent STR: A permanent resident of the Town of Otis who may qualify for partially exempt status for a single (1) Non-adjacent property, short-term rental. This may be in addition to an Operator/Owner Occupied STR and an Operator/Owner Adjacent STR.

Short-Term Rental, STR or STRs: Any rental of a residential dwelling unit, or bedroom or bedrooms within a dwelling unit, in exchange for monetary payment or in-kind non-monetary barter, as residential accommodations for a duration of less than thirty-one (31) consecutive days and rented or exchanged for rental for a period greater than 14 days total within a calendar year.

3. Registration

A Short-term Rental license term is twelve months, from January 1 to December 31 and renewable between December 1 and February 1. New applications or sales of STR registered properties must provide new registrations prior to start of, or re-start of STR. Information to be submitted to the AHJ on the forms provided and must include but is not limited to the information below. Prior to issuance or during the term, an inspection by the AHJ may be conducted to verify the information provided.

- a. **Owner's Name:** As recorded by the Collector with mailing address.
- b. **Operator's Name:** The name and contact information of the local responsible party listed as the emergency contact for the STR. This may be the Owner or the Booking Agent / Hosting Platform.
- c. **Operator's Agent / Booking Agent:** Hosting platform, realtor or other entity.
- d. **MA DOR certificate of registration.** A copy of the Certification of Registration with the Massachusetts Department of Revenue.
- e. **Health & Safety Compliance:** Applicants shall attest under penalties of perjury that a dwelling unit or bedroom offered for STR shall comply with all state and local requirements for health and safety and the Standards of Fitness for Human Habitation as stated in the Massachusetts State Sanitary Code-Chapter ii-105 CMR 410.000 by including at a minimum the following:
 - a. Compliance with residential smoke and CO detector law pursuant to
 - i. MGL c 148 s.26F
 - ii. A fire extinguisher shall be mounted in (or near) kitchens used for the
 - iii. STR in a clearly visible location, or if the unit offers no kitchen, a fire extinguisher will be mounted in a location easily accessible to occupants.
- f. **Septic or Municipal Sewer Compliance:** A signed attestation as to the number of bedrooms permitted in the Board of Health records. For sewer users a copy of a quarterly sewer user's tax bill to verify current status.
- g. **Number of Bedrooms:** As listed in BOH records.
- h. **Water Supply:** Well water used for drinking or cooking (potable) purposes must be tested prior to initial registration and every subsequent 5years for attachment to the registration form to ensure that it is safe to use for personal consumption.
- i. **Parking:** Number of off-street parking spaces provided.
- j. **Recycling:** Recycling of household waste is required. Any outside waste containers must be secured. They must be weather proof and animal/rodent proof. Waste and recycling is the responsibility of the owner. Purchase of commercial compactor permit required.

4. Regulations; Safety / Health / Licensing:

- a. **Registration and licensing:** All STR operations shall register and be licensed prior to beginning operation. Owners, Operators or Operators Agents may file the application for registration to the AHJ. All documents and fees required must be paid before a license will be issued. Proof of registration with the Commonwealth of Mass Department of

- Revenue and compliance with Commonwealth insurance requirements must be provided. A registration or license number of the STR will be issued. This number must be used in any advertising, listing or marketing for the STR to identify the unit and occupancy.
- b. **STR Code Compliance:** Owners shall provide, install, and maintain in operable condition smoke detectors and carbon monoxide alarms in every dwelling that is required to be equipped with smoke detectors and carbon monoxide alarms in accordance with any provision of the Massachusetts General Laws and any applicable regulations of the State Board of Fire Prevention (527 CMR), State Board of Building Regulations (780 CMR), or the Board of Examiners of Plumbers and Gas Fitters (248 CMR). A fire extinguisher shall be mounted in an accessible location in the normal path of travel in or near the kitchen. If there is more than one habitable level, a fire extinguisher shall be mounted on each level in an easily accessible location. In a STR without a kitchen, a fire extinguisher shall be mounted in an easily accessible location to occupants.
 - b. **Inspection, Non Owner Occupied STR:** Non Owner occupied STR's require an inspection by the Zoning Enforcement Officer prior to issuance of a STR license and an inspection during the renewal period of each year after to maintain the STR license.
 - c. **Inspection, Partially Exempt Properties:** Owner occupied, Owner adjacent and Resident Operator/Owner Non-adjacent STR's require an inspection by the Zoning Enforcement Officer prior to issuance of a STR license. These properties are exempt from continuing renewal inspections.
 - d. **Inspection, Complaints:** STR's may be subject to inspection by the Zoning Enforcement Officer and may include, The Board of Health (BOH), Fire Department and or the Building Inspections Department. Inspections scheduled due to complaints from renters, abutting property owners or other aggrieved parties will be scheduled by the Zoning Enforcement Officer and the Operator/Owner as listed on the registration form. Inspections will be scheduled to the best of the Zoning Enforcement Officer's ability to accommodate a timely process. Information on the registration provided by the Operator /Owner that is not current or accurate may result in additional violations of the license. Failure to respond or failure to submit current information may result in additional violations and or revocation of the STR license.

5. Additional STR Requirements

- a. **Maximum Occupancy:** The maximum occupancy is 2 adult persons per bedroom plus one (1). Ex: a 2 bedroom STR equals 5 persons occupancy. The Title 5 system design room count may be used to set the maximum occupancy.
- b. **Bedrooms Available:** The maximum number of bedrooms in a STR cannot exceed the number specified in the septic system design specification or the property.
- c. **Rental Duration:** renting for an hourly rate or periods less than eighteen (18) hours is prohibited.
- d. **Extra Commercial Use:** Commercial meetings or group events that exceed the occupancy capacity of the STR license are prohibited.
- e. **Household Waste:** Recycling of household waste is required. Any outside waste containers must be secured. They must be weather proof and animal/rodent proof. Waste and recycling is the responsibility of the owner. Purchase of commercial compactor permit required.

6. Record Keeping:

The operator or Operator's Agent shall keep either paper or electronic records of rental activity of the STR. Information shall include but is not limited to, the dates of rental and the number of occupants. Records shall be kept for the duration of the STR operation and for two (2) years after. These records must be produced on demand by the AHJ.

7. Fees:

The fees for application submission, issuance of license, annual renewal fee for non-exempt properties and additional required inspection are subject to change at the request of the AHJ to the Select Board.

1. Fee to submit an application for registration is: \$150.00. This includes the pre-license inspection.
2. Fee for License issue is: \$500.00.
3. Annual renewal fee for nonexempt property STR. \$500.00.

8. Penalties:

If any Owner, Operator / Operator's Agent or Occupant violates any provision of this by-law the Owner and or the Operator may be subject to civil penalties in accordance with the following.

1. First offense: \$100.00
2. Second Offense: \$200.00
3. Third Offense: \$300.00 and each subsequent offense. Each day a violation occurs constitutes a separate offense.

Violations may result in suspension or revocation of the license.

9. Appeals:

Any person aggrieved by a decision of the Zoning Enforcement Officer may appeal the decision to the Board of Appeals within ten (10) business days of the receipt of the grievance. A Public Hearing will be advertised and notice given as prescribed by the laws of the Commonwealth.

10. Severability:

If any provision of this by-law is found to be illegal or unenforceable the remaining sections and all other regulations shall continue in full force.

2/3 VOTE REQUIRED

A motion was made to accept Article 24.

The motion was seconded.

Discussion: Currently there are no regulations or policies. There was concern regarding the age of renters and corporations buying properties that isn't mentioned in the bylaws. Exemptions were also discussed and how the \$500.00 fee is determined. Debate continued about passing or

failing the bylaw. What is the process to contest penalties? Fines go to the Zoning Board and you would also contest them through the Zoning Board.

A motion was made to call the vote.

The motion was seconded.

The Moderator declared the motion passed to call the vote.

A hand count was completed. Yes 127; No 47

Article 24 passed.