

## Draft Dated 05/10/23

To see if the Town will vote to amend Chapter 123 entitled "Short-Term Rentals" to read as follows (language to be inserted shown in highlight; language to be deleted shown in strikethrough); provided that the provisions of this Chapter shall take effect on the day these amendments become effective pursuant to General Laws Chapter 40, §21, but in no event shall these amendments takes effect unless and until Chapter 139 of the Town Code (Zoning) regulating short-term rental use is amended in substantially the form set forth in Article \_\_\_ of the warrant for the November 7, 2023, Special Town Meeting pursuant to G.L. c. 40A, §5, and is approved by the Attorney General:

### Chapter123

#### Short-term Rental Registration

##### § 123-1. Purpose and Intent.

This bylaw is enacted pursuant to the Town's Home Rule Authority and the authority set forth in General Laws c. 64G, §14 and is intended to provide for an orderly process for identifying, registering, and regulating Short-Term Rentals within the Town so as to insure that such Short-Term Rentals do not create or cause any nuisance conditions within the Town. This bylaw is also intended to:

- (1) Protect the time-honored tradition of home rentals on Nantucket and preserve economic opportunities for persons to keep their homes, now and into the future, through short-term rentals, to allow such persons to afford to live either full-time or part-time on Nantucket;
- (2) avoid adverse impacts on the local economy stemming from short term rental revenue, STR taxes, and visitor spending;
- (3) prohibit additional corporate ownership of residential properties for the exclusive purpose of operating them as short-term rentals rather than housing for either full-time or part-time residences.
- (4) limit the conversion of residential units to short-term rentals which has had the deleterious effect of removing residential units from the available year-round rental housing stock; and
- (5) provide a regulatory structure that reduces the threat of litigation challenging short-term rental use by full-time and part-time residents.

##### §123-2. Definitions.

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

#### OPERATOR

A person operating a short-term rental including, but not limited to, the owner or proprietor of such premises, the lessee, sublessee, mortgagee in possession, licensee or any other person otherwise operating such short-term rental. It is the intent of this bylaw that the operator shall have the same meaning as set forth in General Laws c. 64G, §1.

#### SHORT-TERM RENTAL

A dwelling unit or portion(s) thereof that is not a transient residential facility, where: (i) at least 1 room or dwelling unit is rented to an occupant or sub-occupant; and (ii) all accommodations are reserved in advance. Rental periods with a change in occupancy in excess of 31 calendar days shall not be considered a short-term rental. The rental of property for a total of 14 days or less in any calendar year shall not be considered a short-term rental.

#### **TRANSIENT RESIDENTIAL FACILITY**

Shall have the same meaning as in Chapter 139 of the Town Code.

#### **§ 123-3. Registration, Permitting, Inspection and Fees.**

- A. No person shall operate a short-term rental without having first obtained a certificate of registration from the Board of Health. An application for a certificate of registration shall be on a form provided by the Town and shall contain the Department of Revenue identification number or proof of exemption under G.L. c. 64G. The operator shall provide with the application a certificate of registration issued by the Department of Revenue in accordance with section 67 of Chapter 62C of the General Laws.
- B. The annual fee for such certificate of registration shall be set forth in the regulations issued pursuant to § 123-4.
- C. The application for the certificate of registration shall include an attestation that the owner and/or operator is in compliance with all applicable federal, state and local laws, including but not limited to G.L. c. 64G and the Fair Housing Act, G.L. c. 151B and local equivalents and regulations related thereto, and all other regulations applicable to residential dwellings, and that the owner and/or operator of the property is current with all town taxes, water, and sewage charges and other fees, subject to the requirements of Chapter 19, §§ 13 -18 of the Town Code. Any property offered for a short-term rental shall not have any outstanding building, sanitary, zoning, or fire code violations, orders of abatement, or stop work orders. Nothing contained herein shall relieve the owner or operator from complying with all local permits, rules and regulations issued by the Board of Health and other Town boards generally applicable to resident dwelling units.
- D. The Board of Health shall not issue any Certificate of Registration unless the Operator has:
  - (1) submitted a complete application and paid all associated fees;
  - (2) Provided contact information for the operator and persons designated to address any issues at the short-term rental within two (2) hours' notice; and
  - (3) Provided the Town with a certificate of insurance evidencing liability insurance coverage for the short-term rental in an amount to be determined by the regulations issued pursuant to §123-4.
- E. Operators are subject to inspection of the short-term rental by the Board of Health upon reasonable notice via consent or administrative warrant, or without such notice in the event of an imminent threat to public health or safety.
- F. Certificates of registration are valid for one year and may be renewed at the discretion of the Town, provided that the operator has complied with the provisions of this chapter and any associated regulations during the preceding year. An application for renewal of a certificate of registration shall be submitted along with the annual fee no later than November 1<sup>st</sup> of the next year. A renewal application shall include an attestation that the short-term rental was operated in accordance with all bylaws and regulations of the Town during the previous year.

G. The certificate of registration is issued to the operator and does not run with the land. If the short-term rental is sold or transferred out of ownership, a new application for a certificate of registration shall be filed by the new operator before short-term rentals can continue or resume.

H. An Owner may register to operate only two dwelling units as short-term rentals on the same or separate properties. An owner may hire a property management company to list and manage short-term rentals, but the registration must be in the owner's name.

I. Dwelling units owned by a corporation shall not be eligible to receive a certificate of registration. Short-term rentals are eligible to receive a certificate of registration for dwelling units owned by an LLC or Trust only when every shareholder, partner, or member of the legal entity is a natural person, as established by documentation provided by the applicant at the time of registration. The Board of Health may adopt regulations pursuant to §123.4 establishing the documentation required to establish eligibility under this section.

J. Short-term rentals may not be operated in any dwelling unit or in any building containing at least one rental unit that is subject to a deed restriction held by the Town for affordable or attainable housing or are subject to a deed restriction under the Nantucket covenant program.

K. No person holding a certificate of registration for a dwelling unit may engage in the short-term rental of said property that has a change of occupancy of more than 9 times during the months of July or August. The owner shall provide with the renewal application a report on the rental activities the prior year, as set forth more fully in the regulations adopted pursuant to section 123-4 of this Bylaw.

L. Any person or other legal entity who receives a certificate of registration prior to the effective date of the bylaw may continue to engage in short-term rentals in accordance with this bylaw and the regulations enacted pursuant to Section 123-4, and a certificate of registration, until the unit is conveyed, or the short-term rental certificate is not renewed.

M. Caps

#### § 123-4. Regulations.

The Board of Health, subject to the approval of the Select Board, shall promulgate regulations to carry out and enforce the provisions of this chapter. Such regulations may also include but are not limited to requirements to insure that the operation of the short-term rental does not create or cause a nuisance to the surrounding neighborhood due to unreasonable noise, overburdening of parking areas, and other nuisance conditions.

#### § 123-5. Enforcement.

A. Whoever violates any provision of this bylaw or a regulation promulgated hereunder may be penalized by indictment or on complaint brought in the district court. The Town may seek to enjoin violations thereof through any lawful process, and the election of one remedy by the Town shall not preclude enforcement through any other lawful means.

B. Whoever violates any provision of this bylaw or a regulation promulgated hereunder may be penalized by a noncriminal disposition process as provided in Massachusetts General Laws, Chapter 40, section 21D and the Town's non-criminal disposition by-law (Chapter 1 of the Town Code). If non-

**Commented [JG1]:** Although the Attorney General approved the Great Barrington bylaw which prohibits STR certificates to be issued to corporations, this restriction, if challenge, would pose some legal risk to the Town. In order to avoid a constitutional challenge on equal protect or substantive due process grounds, the Town would have to show a rational basis for the restriction and a reasonable relation to a permissive legislative interest. As a result, we have added several statements to the purpose section of this bylaw to articulate the legitimate interest the Town has in enacting the amendments. There are also other potential constitutional claims such as a regulatory taking and the interstate commerce clause. It is noted that the protection of the new Subsection L will apply to corporations which hold a certificate of registration on the effective date of the bylaw. While this will serve, in my opinion, to lower some of the risk, the Work Group may want to consider other restrictions, such as caps, rather than singling out a particular form of ownership.

Also, the sentence regarding LLC's would allow an LLC to receive a certificate of registration where every member is a natural person, there is no requirement that any of the members use the STR for their own residential purposes.

**Commented [JG2]:** This seems to be a rather draconian provision. While it is legitimate to prohibit STR's in dwelling units where the Town holds an affordable housing restriction, what is the rational basis for placing a prohibition on the entire building where one or more units are affordable. The Town may be better served in addressing this issue through the regulatory process on a case-by-case basis.

**Commented [JG3]:** Another option to consider is to impose a cap on the number of registration certificates issued by the Town, with or without differentiating among classes of ownership. Perhaps the cap could be calculated by the number of STR's currently operating plus 5 or 10% to leave room for modest growth. Residential units that are rented for four weeks or less would not be included in the cap.

criminal disposition is elected, then any person who violates any provision of this bylaw or regulation shall be subject to a penalty in the amount of one hundred dollars (\$100) for the first offense; two hundred dollars (\$200) for the second offense; and three hundred dollars (\$300) for a third and subsequent offense. Each day or portion thereof shall constitute a separate offense. The Board of Health or its agent, or any police officer of the Town, shall be the enforcing authority.

C. If a notice of violation of this bylaw or any regulation promulgated hereunder or other order is issued to the operator or the owner of the property by the Board of Health or its designee, after a certificate of registration is issued, the Board of Health, after a hearing, may suspend for a period of time determined by the Board of Health or revoke said certificate of registration until the violation has been cured or otherwise resolved. Multiple violations by any operator may, at the discretion of the Board of Health and after a hearing, disqualify that operator from obtaining a Certificate of Registration for a period of up to three years.

D. In accordance with G.L. c. 64G, §14(v), the Town may assess a civil penalty not to exceed \$5,000 for any violation of this bylaw or a regulation issued hereunder. Each day a violation continues shall be considered a separate offense.

**§ 123-6. Severability.**

If any provision in this chapter shall be held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions, which shall remain in full force and effect.

**~~§ 123-7. Effective date.~~**

~~The provisions of this Chapter shall become effective pursuant to General Laws Chapter 40, §21, or January 1, 2023, whichever is later;~~

Or take any other action relative thereto.