

Diane N. Tradd  
*Assistant City Manager/DPD Director*

R. Eric Slagle  
*Director of Development Services*

Shaun Shanahan  
*Building Commissioner*

**MEMORANDUM**

TO: Eileen Donoghue, City Manager *(Signature)*  
 Diane Tradd, DPD Director

FROM: R. Eric Slagle, Director of Development Services

RE: **MOTION BY COUNCILOR ELLIOTT - REQ. CITY MGR. PROVIDE A REPORT REGARDING AIR BNB ZONING REGULATIONS AND RENTAL OF UNITS TO STUDENTS.**

This memorandum addresses the request from Councilor Elliott regarding the regulation of Air BnB and other short-term rentals in the City of Lowell. A separate response for the rental of units to students will be forthcoming.

Currently, the City Zoning Ordinance allows for Tourist Homes and Bed and Breakfasts in the following districts:

Districts:	SSF	SMF	SMU	RR	TSF	TTF	TMF	TMU	NB	USF	UMF	UMU	DMU	HRC	INST	OP	LI	GI
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12.1. RESIDENTIAL USES																		
k. Non-family accommodations:																		
1. Tourist home, Bed & Breakfast Inn	N	SP	SP	SP	N	N	SP	SP	SP	N	SP	SP	SP	N	Y	N	N	N

It is unclear if the Zoning Ordinance intended to classify the use of a residential property for short-term rental, such as Air BnB as a Tourist Home because the Zoning Ordinance does not have a specific definition of Tourist Home. Development Services proposed an ordinance change which would have defined Tourist Home and updated the definition of Transient as follows:

**TOURIST HOME:** A residential dwelling which is the principal residence of the tourist home operator, where rooms are rented to transients, as defined in this ordinance, catering to their needs by the furnishing of sleeping accommodations, and may include the provision of meals. The maximum stay shall be for twenty-eight (28) days. Any dwelling to be utilized as a tourist home must receive an annual registration certificate with the Development Services office.

**TRANSIENT:** A person visiting the community, and staying at a place that does not constitute his or her permanent residence or usual dwelling unit. The term "transient" shall not include seasonal workers who are staying at a place while employed in the area.

Additionally, the ordinance would have required both a registration of such short-term rentals with the City and would have required a special permit from the Planning Board for such uses. However, the City Council requested that these new definitions be tabled for a future Zoning Subcommittee meeting, and they have not been enacted.

The Massachusetts Legislature has taken up the issue of short-term rentals in its most recent session. Both the House and the Senate have passed competing bills which would tax, regulate, and require registration of these short-term rentals. The bills are currently in conference committee to try and draft compromise legislation to put on the Governor's desk sometime this summer. I have attached copies of both the Senate and House bills for the Council's review.

While Development Services believes that adopting the definitions listed above would be a good first step in regulating the short-term rental market in the City, we do believe it is prudent to wait until the State has acted on the pending legislation noted above before enacting more wide-ranging regulations. This will allow us to review the ultimate legislation passed by the State to see if it might address the issues that can occur with the short-term rental market.

ES

5/10/2018

**HOUSE . . . . . No. 4327**

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**The Commonwealth of Massachusetts**

\_\_\_\_\_  
**In the One Hundred and Ninetieth General Court  
(2017-2018)**  
\_\_\_\_\_

An Act regulating and insuring short-term rentals.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Section 6 of chapter 14 of the General Laws, as appearing in the 2016  
2 Official Edition, is hereby amended by adding the following 2 clauses:-

3           11. Shall establish and maintain a short-term rental registry to record the name of each  
4 host and the corresponding address of each residential unit offered for short-term rental under  
5 chapter 64O. The commissioner may charge a reasonable fee for such registration.

6           12. Shall maintain on the department’s website an easily searchable and regularly  
7 updated list of addresses of all residential units offered for short-term rental registered in the  
8 short-term rental registry established in clause 11, excluding the names of the hosts of said  
9 properties.

10           SECTION 1A. Chapter 29C of the General Laws, as appearing in the 2016 Official  
11 Edition, is hereby amended by inserting after section 18 the following new sections:—

12           Section 19. There shall be established and set up on the books of the trust a separate fund  
13 to be known as the Cape Cod and Islands Water Protection Fund, referred to in this section as the  
14 fund. Except as otherwise specifically provided in this section, the provisions of this chapter  
15 shall be applicable to the fund. There shall be credited to the fund revenue from appropriations or  
16 other monies authorized by the general court and specifically designated to be credited to the  
17 fund, including but not limited to any investment income earned on the fund's assets and all  
18 other sources, each source being tracked separately for accounting purposes as of June 30 of each  
19 year. The trust shall hold the fund in an account or accounts separate from other funds of the  
20 trust. Proceeds of the fund shall not be used to offset or otherwise replace contract assistance  
21 funds nor shall they be used to offset or otherwise replace reserve funds used for pool financing.  
22 The trust shall apply and disburse amounts credited to the fund, without further appropriation, to  
23 provide additional subsidies and other assistance, which may include principal forgiveness, to  
24 local governmental units and other eligible borrowers in the payment of debt service costs on  
25 loans and other forms of financial assistance made by the trust for water pollution abatement  
26 projects in Barnstable, Dukes and Nantucket counties upon approval of an areawide waste  
27 management plan under section 208 of the federal Clean Water Act in said counties that is  
28 certified, on or after June 1, 2015, by the governor or the governor's designee, referred to in this  
29 section as a 208 plan, or a suitable equivalent as established by the department of environmental  
30 protection, respectively, for each county. Any such projects shall be consistent with an approved  
31 208 plan, as determined pursuant to paragraph (d) of section 6 of this chapter and may include  
32 projects utilizing innovative and alternative Title V technologies that result in nutrient reduction  
33 for marine and fresh waters. In the case of projects in the towns of Nantucket, Edgartown,  
34 Tisbury and Oak Bluffs subject to the approval of a 208 plan, or suitable equivalent as

35 established by the department of environmental protection, and the towns of Barnstable,  
36 Falmouth, Chatham and Provincetown, the fund shall also provide subsidies and assistance as  
37 aforesaid with respect to debt incurred by such towns apart from the trust prior to the  
38 establishment of the fund. Amounts credited to the fund shall be expended or applied, in a  
39 manner determined by, and only with the approval of the Cape Cod and Islands Water Protection  
40 Fund Management Board established under section 20 of this chapter, in addition to any  
41 approvals required under this chapter. From amounts deposited in the fund, the trust shall  
42 transfer to the department of environmental protection ten per cent of the annual revenue  
43 deposited into the fund, for the purposes of contracting with a single regional planning agency or  
44 non-profit corporation to evaluate and report on the efficacy of adaptive management measures  
45 to reduce nitrogen pollution of coastal waterways undertaken pursuant to a 208 plan, to monitor  
46 the water quality of areas subject to said study and to support further assessment and water  
47 quality modeling to further refine said study. Any amounts remaining in the fund at the end of a  
48 fiscal year shall be carried forward into the following fiscal year and shall remain available for  
49 application and disbursement without further appropriation. Any municipality included in the  
50 fund under this section may opt to withdraw from the fund no sooner than one year after the  
51 effective date of this act by a majority vote of its legislative body; provided, however, that a  
52 municipality may not withdraw from the fund during the term of any financial assistance award  
53 from the fund to said municipality. Any municipality that has withdrawn from the fund and  
54 votes, by majority vote of its legislative body, to return to the fund shall not receive money from  
55 the fund until at least two years from the date of its vote to do so.

56           Section 20. There is hereby established a Cape Cod and Islands Water Protection Fund  
57 Management Board, referred to in this section as the management board, consisting of 1 person

58 to be appointed by each board of selectmen or town council in each of the municipalities within  
59 an areawide waste management plan approved under section 208 of the federal Clean Water Act  
60 in Barnstable, Dukes and Nantucket counties, that is certified, on or after June 1, 2015, by the  
61 governor or the governor's designee, referred to in this section as a 208 plan; provided,  
62 however, that the appointees by the boards of selectmen or town councils shall be either  
63 members of their respective appointing authority, its town manager or administrator or other  
64 municipally employed professional staff. Each municipality within Barnstable County shall have  
65 representation on the management board, and the executive director of the Cape Cod  
66 Commission shall serve as an ex-officio member. Each municipality in Dukes County shall have  
67 a representative, the executive director of the Martha's Vineyard Commission shall serve as an  
68 ex-officio member, the town manager of Nantucket shall be a member and the Chair of the  
69 Nantucket County Commissioners shall serve as an ex-officio member on the management  
70 board, upon approval of a 208 plan. Each member of the management board shall serve for a  
71 term of 3 years and until a successor is appointed and qualified, and each member of the  
72 management board shall be eligible for reappointment. Each member of the management board  
73 appointed to fill a vacancy on the management board shall be appointed for the unexpired term  
74 of the vacant position. The members of the management board shall select a member to serve as  
75 chairperson and vice-chairperson for a term established by vote of the management board. The  
76 Cape Cod Commission, in consultation with the Martha's Vineyard Commission, shall provide  
77 administrative and technical support to said management board and may be compensated for its  
78 associated costs by vote of the management board. The management board duties are limited to  
79 determining the method for subsidy allocation and to ensuring that monies from the Cape Cod

80 and Islands Water Protection Fund are spent only for the purposes listed in section 19 of this  
81 chapter.

82 SECTION 2. Section 16 of chapter 62C of the General Laws, as so appearing, is hereby  
83 amended by inserting after subsection (g) the following subsection:-

84 (g1/2) Every host, or by agreement, hosting platform, as defined in section 1 of chapter  
85 64 O, subject to taxation under said chapter 64O, shall file a return with the commissioner for  
86 each calendar quarter. The commissioner may by regulation require returns under this section to  
87 be filed on an annual rather than a quarterly basis or on such other basis as the commissioner  
88 may determine and to have different filing periods for different groups of hosts or hosting  
89 platforms. Every such return shall be filed within 20 days after the expiration of the period  
90 covered thereby.

91 SECTION 3. Section 21 of said chapter 62C, as so appearing, is hereby amended by  
92 striking out, in line 162, the words “and chapter 64L” and inserting in place thereof the following  
93 words:-, chapter 64L and chapter 64O.

94 SECTION 4. The General Laws are hereby amended by inserting after chapter 64N the  
95 following chapter:-

96 CHAPTER 64O

97 SHORT-TERM RENTAL EXCISE

98 Section 1. As used in this chapter the following words shall, unless the context clearly  
99 requires otherwise, have the following meanings:

100 “Commissioner”, the commissioner of the department of revenue.

101 “Department”, the department of revenue.

102 “Host”, an investor host, a professionally managed host, or a residential host.

103 “Hosting platform”, a person or entity that provides a service through which hosts may  
104 offer a residential unit for short-term rental to an occupant through a website, software, online-  
105 enabled application, mobile phone application or other similar advertising process, and for which  
106 the person or entity collects or receives, directly or indirectly through an agent or intermediary, a  
107 fee.

108 “Investor host”, whoever rents between 3 and 5 residential units for short-term rental.

109 “Occupant”, a person who, for consideration, uses, possesses or has a right to use or  
110 possess a residential unit offered for short-term rental.

111 “Professionally managed host”, whoever rents 6 or more residential units for short-term  
112 rental.

113 “Property manager”, an individual who is responsible for the upkeep and maintenance of  
114 residential units and is available either on-site or on-call 24 hours per day.

115 “Residential host”, whoever rents 2 or fewer residential units for short-term rental.

116 “Rent”, the consideration paid or payable by an occupant to a host for the occupancy of a  
117 residential unit for short-term rental; provided, however, that if a separate fee is charged for  
118 services, goods or commodities, that fee shall not be included in rent.

119 “Residential unit”, a room, group of rooms or other living or sleeping space for  
120 the lodging of occupants; a single-family dwelling, multi-family dwelling or residential dwelling



121 unit in a multi-unit structure; or a condominium, cooperative, timeshare or similar joint property  
122 ownership arrangement, including vacation rentals.

123 “Short-term rental”, the rental of a residential unit for a duration of less than 28  
124 consecutive days for a fee; provided, however, that “short-term rental” shall not include the  
125 rental of those accommodations that are defined in or covered under section 1 of chapter 64G.

126 Section 2. An excise is hereby imposed upon an occupant of a residential unit offered for  
127 short-term rental for the total amount of rent for each short-term rental, at the rate of 4 per cent  
128 by a residential host; 5.7 per cent by an investor host; and 8 per cent by a professionally managed  
129 host; provided further, that an additional excise at the rate of 2.75 percent shall be imposed on an  
130 occupant of a residential unit offered for short-term rental within a municipality that is a member  
131 of the Cape and Islands Water Protection Trust Fund as established by section 19 of chapter 29C.  
132 No excise shall be imposed if the total amount of rent is less than \$25 per day.

133 Section 3. (a) Any city or town may impose a local excise tax upon an occupant for the  
134 total amount of rent for each short-term rental at a rate of up to, but not exceeding, 5 per cent by  
135 a residential host; 6 per cent by an investor host; and 10 per cent by a professionally managed  
136 host. No excise shall be imposed if the total amount of rent is less than \$25 per day.

137 This subsection shall only take effect in a city or town accepting the provisions of this  
138 section by a majority vote of the city council with approval of the mayor, in the case of a city  
139 with Plan A, Plan B or Plan F charter; by a majority vote of the city council, in the case of a city  
140 with Plan C, Plan D or Plan E charter; by a majority vote of the annual town meeting or a special  
141 meeting called for that purpose, in the case of a municipality with a town meeting form of  
142 government; or by a majority vote of the town council, in the case of a municipality with a town

143 council form of government. This section shall take effect on the first day of the calendar quarter  
144 following 30 days after such acceptance, or on the first day of such later calendar quarter as the  
145 city or town may designate. The city or town, in accepting the provisions of this section, may not  
146 revoke or otherwise amend the applicable local tax rate more often than once in any 12 month  
147 period.

148 (b) Any city or town which accepts subsection (a) shall enact ordinances or by-laws  
149 requiring all residential units offered for short-term rental within the city or town to undergo a  
150 safety inspection before said residential units shall be rented. The city or town shall have 60 days  
151 after the address of a residential unit is listed on the department's website, as required under  
152 section 6 of chapter 14, to inspect said unit. If the residential unit is not inspected within 60 days,  
153 the host may offer the residential unit for short-term rental on a temporary basis. Any city or  
154 town that has a safety inspection program in place as of the effective date of this act may deem  
155 any previously completed inspections of residential units to be in compliance with this  
156 requirement. The cost of the inspection shall be charged to and paid by the hosts. After the initial  
157 safety inspection, cities and towns shall determine the frequency of any subsequent inspections.

158 (c) Any city or town which accepts subsection (a) may require a host to demonstrate that  
159 a residential unit is not subject to any outstanding building, electrical, plumbing, mechanical,  
160 fire, health, housing or planning code enforcement, including any notices of violation, notices to  
161 cure, orders of abatement, cease and desist orders or correction notices.

162 (d) Any city or town which accepts the provisions of subsection (a) shall distribute an  
163 amount equal to 50 per cent of the excise tax collected by professionally managed hosts pursuant  
164 to this section to programs addressing either local infrastructure needs or low- and moderate-

165 income housing programs; provided however, that not less than 25 per cent of such excise tax  
166 collected by professionally managed hosts shall be distributed to low- and moderate-income  
167 housing programs.

168 Section 4. Any city or town, whether or not such city or town has accepted section 3, may  
169 enact ordinances or bylaws under this chapter.

170 Any city or town, whether or not such city or town has accepted section 3, may establish  
171 penalties for failure to comply with ordinances or by-laws enacted by said city or town under this  
172 chapter. Any city or town that suspends or terminates a host's right to operate a short-term rental  
173 for a violation of any ordinance or bylaw shall notify the commissioner of said suspension or  
174 termination.

175 Any city or town, whether or not such city or town has accepted section 3, may restrict  
176 short-term rentals, including but not limited to, a restriction on the number of days hosts may  
177 rent out residential units, a requirement that hosts obtain a business licenses and a requirement  
178 that each residential unit is the host's primary residence.

179 Section 5. Any excise tax imposed pursuant to sections 2 and 3 shall be paid by the  
180 occupant. Hosts, or, by agreement, hosting platforms, shall add to the rent and shall collect at the  
181 same time and in the same manner from the occupant the full amount of the excise tax. Any  
182 excise tax shall be stated and charged separately from the rent and shown separately on any  
183 record thereof at the time the transfer of occupancy is made, or on any evidence of such transfer  
184 issued or used by the host or hosting platform. Hosts, or by agreement, hosting platforms, shall  
185 pay the excise to the commissioner at the time provided for filing the return required by section  
186 16 of chapter 62C.

187           Hosts, or by agreement, hosting platforms shall pay any local excise tax imposed under  
188 section 3 to the commissioner at the same time and in the same manner as the state excise tax  
189 imposed under section 2. All sums received by the commissioner shall be distributed, credited  
190 and paid at least quarterly by the state treasurer upon certification of the commissioner to each  
191 city or town that has adopted the provisions of section 3 in proportion to the amount of such  
192 sums received from the short-term rentals in each such city or town.

193           Hosts, or by agreement, hosting platforms shall pay any additional excise tax imposed  
194 under section 2 for short-term rentals within a municipality that is a member of the Cape and  
195 Islands Water Protection Trust Fund to the commissioner at the same time and in the same  
196 manner as the state excise tax. All such sums received by the commissioner shall be distributed,  
197 credited and paid at least quarterly by the state treasurer upon certification of the commissioner  
198 to the Cape and Islands Water Protection Trust Fund.

199           The commissioner shall make available to any city or town requesting such information  
200 the total amount of room occupancy tax collected pursuant to section 3 in the preceding fiscal  
201 year in the city or town requesting the information.

202           Section 6. Hosts shall comply with any and all applicable municipal, state and federal  
203 laws, including but not limited to the collection and remittance of required excise taxes.

204           Professionally managed hosts shall employ a property manager for each residential unit  
205 and maintain \$1,000,000 or more in liability insurance offered for short-term rental.

206           Hosts shall retain and, upon receipt of written request, make available to the department  
207 or to the city or town, short-term rental records, including, but not limited to, those records  
208 demonstrating a host's place of primary residence and the number of days per calendar year a

209 residential unit has been rented for short-term rental, including the specific dates and the duration  
210 of each stay.

211 Hosts shall register each residential unit with the short-term rental registry maintained by  
212 the commissioner pursuant to section 6 of chapter 14.

213 Hosts shall be required to provide notice to all insurers of the host's intention to use the  
214 residential unit as a short-term rental.

215 Hosts shall post inside the residential unit information regarding the location of all fire  
216 extinguishers, gas shut off valves, fire exits and fire alarms in the unit and building.

217 Nothing in this chapter shall confer a right to lease, sublease or otherwise offer a  
218 residential unit for short-term rental where such use is prohibited by a homeowner's association  
219 agreement or requirements, a rental agreement or any other restriction, covenant, requirement or  
220 enforceable agreement.

221 Section 7. Prior to any host listing a residential unit for short-term rental through a  
222 hosting platform, the hosting platform shall ensure that the host has registered the residential unit  
223 with the short-term rental registry maintained by the commissioner under section 6 of chapter 14  
224 and shall provide notice to the host that this chapter regulates short-term rentals and establishes  
225 state and local excise tax obligations.

226 Hosting platforms that execute the financial transaction between hosts and occupants  
227 shall maintain liability insurance of not less than \$1,000,000 to cover each residential unit  
228 offered for short-term rental. Such coverage shall defend and indemnify the host and any tenants

229 and owners in the building for bodily injury and property damage arising from the short-term  
230 rental.

231 Hosting platforms that execute the financial transaction between hosts and occupants  
232 shall collect and remit any taxes required by this chapter. Hosting platforms shall maintain  
233 records of any taxes collected that have been remitted to the commissioner and shall make these  
234 records available to the department upon request.

235 Hosting platforms shall provide notice to all potential hosts that standard homeowners or  
236 renters insurance may not cover damage or injury to a third-party related to short-term rentals.

237 Hosting platforms and hosts shall not discriminate on the basis of race, sex, gender  
238 identity, ethnicity, sexual orientation, age, religion, disability or nationality.

239 Section 8. For residential units subject to rent control provisions, hosts shall charge no  
240 more than the prorated maximum amount allowed.

241 Section 9. No excise shall be imposed, pursuant to this chapter, for a short-term rental if  
242 the occupant is an employee of the United States military traveling on official United States  
243 military orders, which encompass the date of said occupancy. Each host and hosting platform  
244 shall maintain such records to substantiate exemptions claimed under this section.

245 Section 10. The provisions of chapters 186 and 239 shall not apply to short-term rentals.

246 SECTION 5. Chapter 175 of the General Laws is hereby amended by inserting after  
247 section 4E the following section:-

248           Section 4F. Insurers that write homeowners and renters insurance may exclude any and  
249 all coverage afforded under a policy issued to a homeowner or lessee for any claim resulting  
250 from a short-term rental under chapter 64O.

251           Insurers that exclude the coverage described in this section shall not have a duty to  
252 defend or indemnify any claim expressly excluded by a policy. Nothing shall preclude an insurer  
253 from providing coverage for short-term rentals if the insurer chooses to do so by contract or  
254 endorsement.

255           SECTION 6. Cities and towns shall conduct initial inspections on short-term rental units  
256 listed on the registry, as required under section 3 of chapter 64O of the General Laws, not later  
257 than 6 months after the city or town accepts the provisions of said section 3 of said chapter 64O.

258           SECTION 7. Section 1 shall take effect on January 31, 2019.

259           SECTION 8. Sections 2, 3 and 4 shall take effect 1 year after the effective date of this  
260 act; provided, however, that the department of revenue shall establish rules and regulations for  
261 the collection and remittance of taxes pursuant to section 2 and section 3 of chapter 64O of the  
262 General Laws, inserted by section 3 of this act, on or before January 31, 2019.

263           SECTION 9. The Commissioner shall create and make available on the Department’s  
264 website an electronic checklist of the residential host requirements established by this act and  
265 through regulations.

266           SECTION 10. Section 1 of chapter 40U is hereby amended by deleting the definition of  
267 “Unpaid charge,” and inserting in place thereof the following words:—

268           “Unpaid charge”, an unpaid fine incurred as a result of a violation of a rule, regulation,  
269 order, ordinance or by-law regulating the housing, sanitary or municipal snow and ice removal  
270 requirement or related to the use of property for short-term rental use.



**SENATE . . . . . No. 2381**

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**The Commonwealth of Massachusetts**

—————  
**In the One Hundred and Ninetieth General Court**  
**(2017-2018)**  
—————

SENATE, Thursday, March 29, 2018

The committee on Ways and Means, to whom was referred the House Bill regulating and insuring short-term rentals; reports, recommending that the same ought to pass with an amendment striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2381.

For the committee,  
Karen E. Spilka

# SENATE . . . . . No. 2381

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## The Commonwealth of Massachusetts

\_\_\_\_\_  
In the One Hundred and Ninetieth General Court  
(2017-2018)  
\_\_\_\_\_

1 SECTION 1. Section 16 of chapter 62C, as appearing in the 2016 Official Edition, is  
2 hereby amended by inserting after subsection (g) the following subsection:-

3 (g<sup>1/2</sup>) Notwithstanding subsection (g), the department of revenue shall promulgate  
4 regulations to minimize the administrative burden relative to filing returns under said subsection  
5 (g) on operators who offer their accommodations to the public for at least 1 day in 5 separate  
6 months or less in the taxable year. The regulations may authorize an operator to file a return only  
7 for a month that the operator's accommodation is offered to the public.

8 SECTION 2. Chapter 64G of the General Laws is hereby amended by striking out  
9 sections 1 to 6, inclusive, as so appearing, and inserting in place thereof the following 9  
10 sections:-

11 Section 1. As used in this chapter, the following words shall have the following meanings  
12 unless the context clearly requires otherwise:

13 "Bed and breakfast establishment", a private owner-occupied house where at least 1 room  
14 or unit is rented, a breakfast is included in the rent and all accommodations are reserved in  
15 advance.

16 “Commissioner”, the commissioner of revenue.

17 “Hosting platform”, a service through a digital platform, third-party website, software,  
18 online-enabled application, mobile phone application or some other, similar electronic process  
19 that allows: (i) an operator to advertise, list or offer the use of an accommodation subject to the  
20 excise under this chapter in exchange for rent; (ii) an operator to collect the payment of rent on  
21 an accommodation; and (iii) a person to arrange, book, reserve or rent an accommodation.

22 “Hotel”, a building used for the feeding and lodging of guests licensed or required to be  
23 licensed under section 6 of chapter 140.

24 “Intermediary”, a person or entity, other than an operator, that facilitates the sale, use or  
25 possession of an occupancy and charges a room charge to the general public; provided, however,  
26 that the term “facilitates” shall include a person or entity that brokers, coordinates or in any other  
27 way arranges for the purchase, sale, use or possession of occupancies by the general public; and  
28 provided further, that the term “intermediary” shall include a hosting platform and operator’s  
29 agent.

30 “Lodging house”, a house licensed or required to be licensed under section 23 of chapter  
31 140 and where lodgings are rented to not less than 4 people who shall not be within the second  
32 degree of kindred to the owner or operator of such lodging house.

33 “Motel”, a building or portion of a building in which a person is lodged for hire with or  
34 without meals and that is licensed or required to be licensed under section 32B of chapter 140;  
35 provided, however, that a “motel” shall not include a hotel or lodging house.

36           “Occupancy”, the use or possession or the right to the use or possession of a room in a  
37 bed and breakfast establishment, hotel, lodging house, transient accommodation or motel  
38 designed and normally used for sleeping and living purposes for a period of not more than 90  
39 consecutive calendar days, regardless of whether such use and possession is as a lessee, tenant,  
40 guest or licensee; provided, however, that “occupancy” shall include the right to the use or  
41 possession of the furnishings or the services and accommodations, including breakfast in a bed  
42 and breakfast establishment, accompanying the use and possession of such a room.

43           “Occupant”, a person who uses, possesses or has a right to use or possess a room in a bed  
44 and breakfast establishment, hotel, lodging house, transient accommodation or motel for rent  
45 under a lease, concession, permit, right of access, license or agreement.

46           “Operator”, a person operating a bed and breakfast establishment, hotel, lodging house,  
47 transient accommodation or motel in the commonwealth including, but not limited to, the owner  
48 or proprietor of such premises, the lessee, sublessee, mortgagee in possession, licensee or any  
49 other person otherwise operating such bed and breakfast establishment, hotel, lodging house,  
50 transient accommodation or motel.

51           “Operator’s agent”, a person who on behalf of an operator of a bed and breakfast  
52 establishment, hotel, motel, transient accommodation or lodging house: (i) manages the  
53 operation or upkeep of a property offered for rent; or (ii) books reservations at a property offered  
54 for rent; provided, however, that an “operator’s agent” shall include, but not be limited to, a  
55 property manager, property management company or real estate agent.

56           “Person”, an individual, partnership, trust or association, with or without transferable  
57 shares, joint-stock company, corporation, society, club, organization, institution, estate, receiver,

58 trustee, assignee or referee and any other person acting in a fiduciary or representative capacity,  
59 whether appointed by a court or otherwise, or any combination of individuals acting as a unit.

60 “Rent”, the total consideration paid by or on behalf of an occupant, including any service,  
61 cleaning or other charge, to an operator, an intermediary collecting and remitting the excise on  
62 behalf of an operator under section 13 or a room reseller for occupancy, valued in money,  
63 whether received in money or otherwise, including all receipts, cash, credits and property or  
64 services of any kind or nature.

65 “Room reseller”, a person having any right, permission, license or other authority from or  
66 through an operator to reserve, convey or arrange transfer of occupancy of an accommodation  
67 for rent, directly or indirectly.

68 “Transient accommodation”, an owner-occupied, tenant-occupied or non-owner occupied  
69 property including, but not limited to, an apartment, house, cottage, condominium, time-share  
70 unit or a furnished accommodation that is not a hotel, motel, lodging house or bed and breakfast  
71 establishment, where: (i) at least 1 room or unit is rented to an occupant or sub-occupant; and (ii)  
72 all accommodations are reserved in advance; provided, however, that a private owner-occupied  
73 property shall be considered a single unit if leased or rented as such.

74 Section 2. This chapter shall not include: (i) lodging accommodations at federal, state or  
75 municipal institutions; (ii) lodging accommodations, including dormitories, at religious,  
76 charitable, educational and philanthropic institutions; provided, however, that the exemption  
77 allowed shall not apply to accommodations provided by any such institution at a hotel or motel  
78 generally open to the public and operated by the institution; (iii) privately-owned and operated  
79 convalescent homes or homes for the aged, infirm, indigent or chronically ill; (iv) religious or

80 charitable homes for the aged, infirm, indigent or chronically ill; (v) summer camps for children  
81 up to 18 years of age or developmentally disabled individuals; provided, however, that a summer  
82 camp that offers its facilities off season to individuals 60 years of age or older for a period of not  
83 more than 30 days in a calendar year shall not lose its exemption under this section; (vi) lodging  
84 accommodations provided to seasonal employees by employers; (vii) alcohol and drug free  
85 housing that is certified pursuant to section 18A of chapter 17; and (viii) tenancies at will or  
86 month-to-month leases.

87           For the purposes of this section, “developmentally disabled individual” shall mean an  
88 individual who has a severe chronic disability that: (i) is attributable to a mental or physical  
89 impairment or combination of mental and physical impairments; (ii) is likely to continue  
90 indefinitely; (iii) results in substantial functional limitations in not less than 3 of the following  
91 areas of major life activity: (1) self-care; (2) receptive and expressive language; (3) learning; (4)  
92 mobility; (5) self-direction; (6) capacity for independent living; and (7) economic self-  
93 sufficiency; and (iv) reflects the individual’s need for a combination and sequence of special,  
94 interdisciplinary or generic care, treatment or other services that are of lifelong or extended  
95 duration and are individually planned and coordinated.

96           Section 3. An excise shall be imposed upon the transfer of occupancy of a room in a bed  
97 and breakfast establishment, hotel, lodging house, transient accommodation or motel by an  
98 operator or room reseller at the rate of 5 per cent of the total amount of rent for each such  
99 occupancy. An excise shall not be imposed if the total amount of rent is less than \$15 per day or  
100 its equivalent.

101           The operator or room reseller shall pay the excise to the commissioner at the time  
102 provided for filing the return required under section 16 of chapter 62C.

103           Section 3A. A city or town that accepts this section may impose a local excise upon the  
104 transfer of occupancy of a room in a bed and breakfast establishment, hotel, lodging house,  
105 transient accommodation or motel located within that city or town by an operator or room  
106 reseller at a rate of not more than 6 per cent of the total amount of rent for each such occupancy;  
107 provided, however, that the city of Boston may impose such local excise upon the transfer of  
108 occupancy of a room in a bed and breakfast establishment, hotel, lodging house, transient  
109 accommodation or motel located within the city by an operator or room reseller at the rate of not  
110 more than 6.5 per cent of the total amount of rent of each such occupancy. No excise shall be  
111 imposed if the total amount of rent is less than \$15 per day or its equivalent or if the  
112 accommodation is exempt under section 2. An operator or room reseller shall pay the local  
113 excise imposed under this section to the commissioner at the same time and in the same manner  
114 as the excise due to the commonwealth. All sums received by the commissioner under this  
115 section as excise, penalties or forfeitures, interest, costs of suit and fines shall at least quarterly  
116 be distributed, credited and paid by the state treasurer upon certification of the commissioner to  
117 each city or town that has adopted this section in proportion to the amount of such sums received  
118 from the transfer of occupancy in each such city or town. Acceptance of this section shall be: (i)  
119 by a majority vote of the city council with the approval of the mayor in the case of a city with a  
120 Plan A, Plan B or Plan F charter; (ii) by a majority vote of the city council in the case of a city  
121 with a Plan C, Plan D or Plan E charter; (iii) by a majority vote of the annual town meeting or a  
122 special meeting called for that purpose in the case of a municipality with a town meeting form of  
123 government; or (iv) by a majority vote of the town council in the case of a municipality with a

124 town council form of government. This section shall take effect on the first day of the calendar  
125 quarter following 30 days after its acceptance or on the first day of a later calendar quarter as the  
126 city or town may designate. The city or town, in accepting this section, shall not revoke or  
127 otherwise amend the applicable local tax rate more often than once in a 12-month period.

128           The commissioner shall make available to a city or town requesting such information the  
129 total amount of room occupancy tax collected in the preceding fiscal year in the city or town  
130 requesting the information.

131           Section 3B. Notwithstanding sections 9 and 10 of chapter 152 of the acts of 1997, the  
132 convention center financing fee imposed upon the transfer of a transient accommodation in the  
133 cities of Boston, Cambridge, Springfield, Worcester, West Springfield and Chicopee shall revert  
134 half to the General Fund and half to the city in which the transient accommodation was  
135 transferred.

136           Section 4. Except as provided in section 13, reimbursement for the excise imposed under  
137 this chapter shall be paid by the occupant of any such room to the operator and each operator  
138 shall add to the rent and collect from the occupant the full amount of the excise imposed by this  
139 chapter or an amount equal as nearly as possible or practical to the average equivalent thereof  
140 and such excise shall be a debt from the occupant to the operator when so added to the rent and  
141 shall be recoverable at law in the same manner as other debts.

142           Section 4A. Notwithstanding this chapter, where occupancy is transferred through the use  
143 of a room reseller, the room reseller shall collect and pay to the commissioner the excise upon  
144 the amount of rent paid by the occupant to the room reseller, less the amount of rent that the



145 reseller has paid to the operator. The operator shall collect and pay to the commissioner the  
146 excise upon the amount of rent paid to the operator by the reseller or the occupant.

147 No assessment shall be made against an operator for an incorrect remittance of the excise  
148 under this chapter by an unaffiliated room reseller and no assessment shall be made against a  
149 room reseller for an incorrect remittance of the excise under this chapter by an unaffiliated  
150 operator.

151 Section 5. The amount of the excise collected by the operator or the room reseller from  
152 the occupant pursuant to this chapter shall be stated and charged separately from the rent and  
153 shown separately on any record of the excise at the time the transfer of occupancy is made or on  
154 any evidence of such transfer issued or used by the operator. A room reseller shall not be  
155 required to disclose to the occupant the amount of tax charged by the operator. The room reseller  
156 shall represent to the occupant that the separately stated taxes charged by the room reseller  
157 include taxes charged by the operator.

158 Section 6. A person shall not operate a bed and breakfast establishment, hotel, lodging  
159 house, transient accommodation or motel or operate as a room reseller unless a certificate of  
160 registration has been issued to the person in accordance with section 67 of chapter 62C.

161 SECTION 3. Said chapter 64G is hereby further amended by striking out sections 7A and  
162 7B, as so appearing, and inserting in place thereof the following 2 sections:-

163 Section 7A. An operator or room reseller who has paid to the commissioner an excise  
164 pursuant to section 3 upon an account later determined to be worthless shall be entitled to an  
165 abatement of the excise paid on the worthless account. A claim for abatement shall be filed not

166 later than April 15 annually and shall cover the amount of the excise on accounts determined to  
167 be worthless in the prior calendar year.

168 An operator or room reseller who recovers an excise on an account determined to be  
169 worthless and for which an application for abatement has been filed shall report and include the  
170 same in a monthly return at the time of recovery.

171 Section 7B. An operator or room reseller who fails to pay to the commissioner money  
172 required to be paid by this chapter shall be personally and individually liable therefor to the  
173 commonwealth. As used in this section, the term “operator” or “room reseller” shall include an  
174 officer or employee of a corporation or a member or employee of a partnership or a limited  
175 liability company who, as such officer, employee or member, is under a duty to pay the taxes  
176 imposed by this chapter.

177 An operator who misrepresents to an intermediary that the transfer of occupancy of the  
178 operator’s property is exempt from the excise imposed by sections 3 and 3A shall be liable for  
179 any unpaid excise under said sections 3 and 3A and shall be deemed to have committed an unfair  
180 trade practice under chapter 93A in making such a misrepresentation to the intermediary.

181 SECTION 4. Said chapter 64G is hereby further amended by striking out section 12, as  
182 so appearing, and inserting in place thereof the following 4 sections:-

183 Section 12. No excise shall be imposed under this chapter upon the transfer of occupancy  
184 of a room in a hotel, lodging house, transient accommodation or motel if the occupant is an  
185 employee of the United States military traveling on official United States military orders that  
186 encompass the date of such occupancy. Each operator or room reseller shall maintain such  
187 records as the commissioner shall require to substantiate exemptions claimed under this section.

188           Section 13. (a) An operator may elect to allow an intermediary to collect rent or facilitate  
189 the collection or payment of rent on its behalf through a written agreement on an accommodation  
190 subject to the excise under this chapter. An intermediary that enters into a written agreement with  
191 the operator to collect rent or facilitate the collection or payment of rent on behalf of the operator  
192 on an accommodation subject to the excise under this chapter shall: (i) apply for and obtain a  
193 certificate of registration from the commissioner in accordance with section 67 of chapter 62C on  
194 behalf of the operator; and (ii) assess, collect, report and remit the excise to the commissioner as  
195 described for operators in sections 3, 3A, 5, 7A, 7B and 12. The certificate of registration  
196 obtained from the commissioner pursuant to this subsection shall identify and be in the name of  
197 the individual operator, not the intermediary.

198           (b) An intermediary collecting and remitting the excise on behalf of an operator shall  
199 provide notification within a reasonable time to the operator that the excise has been collected  
200 and remitted to the commissioner pursuant to section 3. The notification may be delivered in  
201 hand or by mail or conveyed by electronic message, mobile or smart phone application or  
202 another similar electronic process, digital media or communication portal. An operator shall not  
203 be responsible for collecting and remitting the excise on a transaction for which the operator has  
204 received notification from an intermediary that the excise has been collected and remitted to the  
205 commissioner on their behalf.

206           (c) The commissioner may enter into a voluntary collection agreement with an  
207 intermediary required to remit the excise pursuant to subsection (a) who is willing to assume  
208 liability for the collection and remittance of the excise imposed under this chapter on behalf of  
209 the operators that the intermediary represents. The intermediary shall not be liable for faults in  
210 collecting or remitting the excise proximately caused by the hosting platform's or operator's

211 agent's reasonable reliance on representations made to it by the operator about the nature of the  
212 property being rented, the duration of the occupancy or other similar misrepresentations made by  
213 the operator to the hosting platform or operator's agent. The operator shall be liable for any  
214 unpaid excise resulting from any such misrepresentations. An intermediary shall not be liable for  
215 any over collection of the excise if the excise collected was remitted to the commissioner and the  
216 over collection resulted from the intermediary's reasonable reliance on the operator's  
217 representations about the nature of the property being rented or the nature of the occupancy or  
218 whether such property was exempt from the excise. The operator shall be liable for monetary  
219 damages to the occupant resulting from any such misrepresentations.

220           The commissioner may promulgate rules and regulations for assessing, reporting,  
221 collecting, remitting and enforcing the room occupancy excise pursuant to this section.

222           Section 14. A city or town, by ordinance or bylaw, may regulate operators registered  
223 pursuant to section 67 of chapter 62C and impose penalties for the violation of such an ordinance  
224 or bylaw. An ordinance or bylaw may require registration, licensing or inspection and may  
225 regulate the existence or location of operators.

226           SECTION 5. Section 3 shall take effect for transfers by room resellers and for  
227 occupancies in transient accommodations that commence on or after January 1, 2019 and for  
228 which contracts with occupants were entered into on or after November 1, 2018.