

WARRANT ARTICLE HEARING REFERENCE MATERIALS

ARTICLE 35 BYLAW AMENDMENT/SHORT-TERM RENTAL REGULATIONS

“AN ACT REGULATING AND INSURING SHORT-TERM RENTALS”

****Relevant Sections***

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the

SECTION 6. Chapter 64G of the General Laws is hereby amended by striking out sections 1 to 6, inclusive, as appearing in the 2016 Official Edition, and inserting in place thereof the following 11 sections:-

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

“Bed and breakfast establishment”, a private owner-occupied house where not less than 4 rooms are let, a breakfast is included in the rent and all accommodations are reserved in advance.

“Bed and breakfast home”, a private owner-occupied house where not more than 3 rooms are let, a breakfast is included in the rent and all accommodations are reserved in advance.

“Commissioner”, the commissioner of revenue.

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

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

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

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

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

“Occupancy”, the use or possession or the right to the use or possession of a room in a bed and breakfast establishment, hotel, lodging house or motel designed and normally used for sleeping and living purposes for a period of not more than 90 consecutive calendar days, regardless of whether such use and possession is as a lessee, tenant, guest or licensee, or the use or possession or the right to the use or possession of a room in a short term rental normally used for sleeping and living purposes for a period of not more than 31 consecutive calendar days, regardless of whether such use and possession is as a lessee, tenant, guest or licensee; provided, however, that “occupancy” shall include the right to the use or possession of the furnishings or the services and accommodations, including breakfast in a bed and breakfast establishment, accompanying the use and possession of such a room.

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

“Operator”, a person operating a bed and breakfast establishment, hotel, lodging house, short-term rental or motel in the commonwealth 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 bed and breakfast establishment, hotel, lodging house, short-term rental or motel.

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

“Person”, an individual, partnership, trust or association, with or without transferable shares, joint-stock company, corporation, society, club, organization, institution, estate, receiver, trustee, assignee or referee and any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, or any combination of individuals acting as a unit.

“Professionally-managed unit”, 1 of 2 or more short-term rental units that are located in the same city or town, operated by the same operator and are not located within a single-family, two-family or three-family dwelling that includes the operator’s primary residence.

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

“Short-term rental”, an owner-occupied, tenant-occupied or non-owner occupied property including, but not limited to, an apartment, house, cottage, condominium or a furnished accommodation that is not a hotel, motel, lodging house or bed and breakfast establishment, where: (i) at least 1 room or unit is rented to an occupant or sub-occupant; and (ii) all accommodations are reserved in advance;

provided, however, that a private owner-occupied property shall be considered a single unit if leased or rented as such.

Section 2. This chapter shall not include: (i) lodging accommodations at a federal, state or municipal institution; (ii) lodging accommodations, including dormitories, at religious, charitable, educational and philanthropic institutions; provided, however, that the exemption allowed shall not apply to accommodations provided by any such institution at a hotel or motel generally open to the public and operated by the institution; (iii) privately-owned and operated convalescent homes or homes for the aged, infirm, indigent or chronically ill; (iv) religious or charitable homes for the aged, infirm, indigent or chronically ill; (v) summer camps for children up to 18 years of age or developmentally disabled individuals; provided, however, that a summer camp that offers its facilities off season to individuals 60 years of age or older for a period of not more than 30 days in a calendar year shall not lose its exemption under this section; (vi) bed and breakfast homes; (vii) lodging accommodations provided to seasonal employees by employers; (viii) alcohol and drug free housing that is certified pursuant to section 18A of chapter 17; (ix) tenancies at will or month-to-month leases; and (x) time-shares, as defined in section 2 of chapter 183B.

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

Section 3. An excise shall be imposed upon the transfer of occupancy of a room or unit in a bed and breakfast establishment, hotel, lodging house, short-term rental or motel by an operator at the rate of 5 per cent of the total amount of rent for each such occupancy. An excise shall not be imposed if the total amount of rent is less than \$15 per day or its equivalent.

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

No excises or fees established under this chapter shall be imposed upon the transfer of occupancy of a short-term rental if the operator transfers such short-term rental for not more than 14 days in a calendar year, provided, that the operator has first: (i) registered with the commissioner in accordance with section 67 of chapter 62C; and (ii) filed a declaration with the commissioner, signed by the operator and subject to section 5 of chapter 62C, setting forth the intention to transfer the short-term rental for not more than 14 days in a calendar year. Such a declaration, if applicable, shall be required annually in a manner determined by the commissioner. If the operator transfers the short-term rental for 15 days or more in the same calendar year, or fails to register and file a declaration as required by this section, then the operator shall be liable for the payment of required excises and fees under this chapter, including payment of required taxes and fees on the first 14 days the short-term rental was transferred in the calendar year.

Section 3A. A city or town that accepts this section may impose a local excise upon the transfer of occupancy of a room in a bed and breakfast establishment, hotel, lodging house, short-term rental or motel located within that city or town by an operator at a rate of not more than 6 per cent of the total amount of rent for each such occupancy; provided, however, that the city of Boston may impose such local excise upon the transfer of occupancy of a room in a bed and breakfast establishment, hotel, lodging house, short-term rental or motel located within the city by an operator at the rate of not more than 6.5 per cent of the total amount of rent of each such occupancy. No excise shall be imposed if the total amount of rent is less than \$15 per day or its equivalent or if the accommodation is exempt under section 2. An operator shall pay the local excise imposed under this section to the commissioner at the same time and in the same manner as the excise due to the commonwealth. All sums received by the commissioner under this section as excise, penalties or forfeitures, interest, costs of suit and fines shall at least quarterly be distributed, credited and paid by the state treasurer upon certification of the commissioner to each city or town that has adopted this section in proportion to the amount of such sums received from the transfer of occupancy in each such city or town. Acceptance of this section shall be: (i) by a majority vote of the city council with the approval of the mayor in the case of a city with a mayor elected to serve as the chief executive officer of the city; (ii) by a majority vote of the city council in every other city; (iii) by a majority vote of the annual town meeting or a special meeting called for that purpose in the case of a municipality with a town meeting form of government; or (iv) by a majority vote of the town council in the case of a municipality with a town council form of government. This section shall take effect on the first day of the calendar quarter following 30 days after its acceptance or on the first day of a later calendar quarter as the city or town may designate. The city or town, in accepting this section, shall not revoke or otherwise amend the applicable local tax rate more often than once in a 12-month period.

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

Section 3B. Notwithstanding sections 9 and 10 of chapter 152 of the acts of 1997, the convention center financing fee imposed upon the transfer of occupancy of a short-term rental in the cities of Boston, Cambridge, Springfield, Worcester, West Springfield and Chicopee shall revert half to the General Fund and half to the city in which the short-term rental was transferred.

Section 3C. In addition to the excise imposed under section 3 and any excise imposed under section 3A, an excise shall be imposed on the transfer of occupancy of a room in a bed and breakfast establishment, hotel, lodging house, short-term rental or motel located within a municipality that is a member of the Cape Cod and Islands Water Protection Fund established under section 19 of chapter 29C at a rate of 2.75 per cent of the total amount of rent for each such occupancy; provided, however, that all revenues received from the excise under this section shall be credited to the Cape Cod and Islands Water Protection Fund. An excise shall not be imposed if the total amount of rent is less than \$15 per day or its equivalent. An operator shall pay the excise due to the Cape Cod and Islands Water Protection Fund to the commissioner at the same time and in the same manner as the excise due to the commonwealth.

Section 3D. (a) A city or town that accepts section 3A may, by a separate vote and in the same manner of acceptance as set forth in section 3A, impose upon an operator a community impact fee of not more than 3 per cent of the total amount of rent for each transfer of occupancy of a professionally managed unit that is located within that city or town.

(b) A city or town that votes to impose a community impact fee under subsection (a) may, by a separate additional vote and in the same manner of acceptance as set forth in section 3A, also impose the community impact fee upon each transfer of occupancy of a short-term rental unit that is located within a two-family or three-family dwelling that includes the operator's primary residence.

(c) All community impact fees under this section shall be paid monthly by the operator to the municipality. A city or town shall dedicate not less than 35 per cent of the community impact fees collected under this section to affordable housing or local infrastructure projects.

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

Section 5. The amount of the excise collected by the operator from the occupant pursuant to this chapter shall be stated and charged separately from the rent and shown separately on any record of the excise at the time the transfer of occupancy is made or on any evidence of such transfer issued or used by the operator.

Section 6. A person shall not operate a bed and breakfast establishment, hotel, lodging house, short-term rental or motel unless a certificate of registration has been issued to the person in accordance with section 67 of chapter 62C.

Section 6A. No person subject to this chapter shall engage in an unlawful practice under section 4 of chapter 151B.

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

Section 7A. An operator who has paid to the commissioner an excise pursuant to section 3 upon an account later determined to be worthless shall be entitled to an abatement of the excise paid on the worthless account. A claim for abatement shall be filed not later than April 15 annually and shall cover the amount of the excise on accounts determined to be worthless in the prior calendar year.

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

Section 7B. An operator who fails to pay to the commissioner money required to be paid by this chapter shall be personally and individually liable therefor to the commonwealth. As used in this section, the term "operator" shall include an officer or employee of a corporation or a member or employee of a partnership or a limited liability company who, as such officer, employee or member, is under a duty to pay the excises imposed by this chapter.

An operator who misrepresents to an intermediary that the transfer of occupancy of the operator's property is exempt from the excise imposed by sections 3, 3A and 3C and the community impact fee imposed by section 3D shall be liable for any unpaid excise under said sections 3, 3A and 3C and the

community impact fee imposed by said section 3D and shall be deemed to have committed an unfair trade practice under chapter 93A in making such a misrepresentation to the intermediary.

SECTION 8. Said chapter 64G is hereby further amended by striking out section 12, as so appearing, and inserting in place thereof the following 7 sections:-

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

Section 13. (a) An operator may elect to allow an intermediary to collect rent or facilitate the collection or payment of rent on its behalf through a written agreement on an accommodation subject to the excise under this chapter. An intermediary that enters into a written agreement with the operator to collect rent or facilitate the collection or payment of rent on behalf of the operator of an accommodation subject to the excise under this chapter shall: (i) apply for and obtain a certificate of registration from the commissioner in accordance with section 67 of chapter 62C on behalf of the operator; (ii) assess, collect, report and remit the excise to the commissioner as described for operators in sections 3, 3A, 3B, 3C, 5, 7A, 7B and 12; (iii) assess, collect and remit the community impact fee to the municipality as described for operators in section 3D; (iv) maintain records of any excises collected that have been remitted to the commissioner and shall make these records available to the department upon request; (v) ensure that the operator is registered pursuant to said section 67 of said chapter 62C prior to permitting such operator to list or offer an accommodation for rent through the use of the intermediary; and (vi) notify the operator that the operator must comply with all applicable municipal, state and federal laws including, but not limited to, the collection and remittance of required excises. The certificate of registration obtained from the commissioner pursuant to this subsection shall identify and be in the name of the individual operator, not the intermediary.

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

(c) The intermediary shall not be liable for faults in collecting or remitting the excise proximately caused by the intermediary's reasonable reliance on representations made to it by the operator about the nature of the property being rented, the duration of the occupancy or other similar misrepresentations made by the operator to the intermediary. The operator shall be liable for any unpaid excise resulting from any such misrepresentation. An intermediary shall not be liable for any over collection of the excise if the excise collected was remitted to the commissioner and the over collection resulted from the intermediary's reasonable reliance on the operator's representations about the nature of the property being rented or the nature of the occupancy or whether such property was exempt from the excise. The operator shall be liable for monetary damages to the occupant resulting from any such misrepresentations.

Section 14. A city or town, by ordinance or 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 city or town, by ordinance or 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.

Notwithstanding any ordinance or by-law adopted by a city or town pursuant to this section, an operator of a short-term rental shall post inside the short-term rental unit information regarding the location of any fire extinguishers, gas shut off valves, fire exits and fire alarms in the unit and building.

Nothing in this section shall preclude a city or town from publishing a public registry of all short-term rental accommodations located within that city or town offered for rent by operators who are registered in accordance with section 67 of chapter 62C. A city or town may determine what relevant information shall be listed, including where the accommodation is located.

Section 15. Nothing in this chapter shall confer a right to lease, sublease or otherwise offer a residential unit as a short-term rental where such use is prohibited by a homeowner's association agreement or requirements, a rental agreement or any other restriction, covenant, requirement or enforceable agreement.

Section 16. For residential units subject to rent control provisions, operators of short-term rentals shall charge not more than the prorated maximum amount allowed.

Section 17. The commissioner shall annually publish a report on the economic activity of short-term rentals in the commonwealth rented for occupancy through a hosting platform or intermediary. The commissioner may require a hosting platform, intermediary or operator of a short-term rental to submit to the department of revenue, in a form approved by the commissioner, information necessary to compile the report including, but not limited to: (i) the aggregate rent paid by all occupants during the reporting period; (ii) the total amount of revenue collected from the excise on the transfer of occupancy of the short-term rentals; and (iii) the total amount of revenue collected from the local excise on the transfer of occupancy of the short-term rentals.

The department shall make available any data set used pursuant to this section to a regional planning agency, municipality or other public agency requesting such information; provided, however, that the department shall utilize the practices that are necessary to prevent the public disclosure of personal information regarding operators and occupants. The department shall annually publish local summary statistics on its website. The department shall take all measures necessary to protect the confidentiality and security of an operator's personal tax information from any disclosure pursuant to this section.

Section 18. The commissioner shall promulgate rules and regulations for assessing, reporting, collecting, remitting and enforcing the room occupancy excise pursuant to this chapter.

SECTION 9. Chapter 175 of the General Laws is hereby amended by inserting after section 4E the following section:-

Section 4F. (a) As used in this section, the terms "hosting platform", "operator" and "short-term rental" shall have the same meanings as under section 1 of chapter 64G unless the context clearly requires otherwise.

(b) An operator shall maintain liability insurance of not less than \$1,000,000 to cover each short-term rental, unless such short-term rental is offered through a hosting platform that maintains equal or greater coverage. Such coverage shall defend and indemnify the operator and any tenants or owners in the building for bodily injury and property damage arising from the short-term rental.

(c) Prior to an operator offering a short-term rental through the use of a hosting platform, the hosting platform shall provide notice to the operator that standard homeowners or renters insurance may not cover property damage or bodily injury to a third-party arising from the short-term rental.

(d) Insurers that write homeowners and renters insurance may exclude any and all coverage afforded under the policy issued to a homeowner or lessee for any claim resulting from the rental of any accommodation under chapter 64G. Insurers that exclude the coverage described in this section shall not have a duty to defend or indemnify any claim expressly excluded by a policy. Nothing under this section shall preclude an insurer from providing coverage for short-term rentals.

(e) Any policy or policy form intended to cover operators of short-term rentals from liabilities, whether the policy or policy form is provided by a hosting platform or an operator itself, shall be filed according to instructions provided by the division of insurance.