

TOWN OF FALMOUTH
SELECT BOARD
AGENDA
SATURDAY, APRIL 1, 2023 – 9:00 A.M.
SELECT BOARD MEETING ROOM
TOWN HALL
59 TOWN HALL SQUARE, FALMOUTH, MA 02540

THIS IS A WORKSHOP MEETING – THERE WILL BE NO PUBLIC COMMENT.

9:00 a.m. OPEN SESSION

1. Call to Order

9:05 p.m. BUSINESS

1. Policies Discussions:
 - a. Embarkation fund usage
 - b. Fiscal policy update
 - c. Short-term rental regulation

10:00 a.m. ADJOURN

Nancy R. Taylor, Chair
Select Board

The Select Board may discuss and vote appropriate action on any item listed on this Agenda unless a different disposition is noted. At the discretion of the Chair, agenda items may be taken out of order.

OPEN SESSION

TOWN MANAGER'S REPORT

April 1, 2023



TOWN OF FALMOUTH
Office of the Town Manager & Select Board
59 Town Hall Square, Falmouth, Massachusetts 02540

TO: Select Board
FROM: Peter Johnson-Staub, Interim Town Manager *PJS*
SUBJECT: Report for Workshop Meeting April 1, 2023
DATE: March 31, 2023

Policy Discussions:

1. Embarkation Fund Usage:

Per Chapter 55 of the Acts of 2003, Section 11, embarkation funds must be treated as a "special" revenue fund and used only for certain specified purposes. The allowed purposes are described as follows:

Chapter 55 of the Acts of 2003, Section 11 (d):

"Monies deposited may be appropriated for services including, but not limited to, providing harbor services, public safety protection, emergency services or infrastructure improvements within and around the harbor of any city or town which receives monies from this section."

From inception, the Town has complied with this requirement by depositing said funds into a special fund and appropriating \$350,500 out of that fund each year by vote of Town Meeting for Police and Fire expenses.

The Transportation Management Committee recommends adopting a policy for the Embarkation Fund. This proposed policy is included in your packet. I do not support the Committee's recommendation. The parameters for use are already established in the statute and the procedures for assuring compliance are in place. Further reporting would require additional staff time with no material benefit in my view. The Town has 9 other special funds for which we do not have a policy or annual reporting outside of the Town's standard budget and accounting reports.

If the Town were to redirect this \$350,500 in annual funding from Police and Fire to another purpose, it would leave a hole in the operating that would need be filled from another source, unless these budgets are going to be cut. The present balance in this fund is over \$1 million due to collections exceeding the annual appropriation to Police and Fire. This excess could be used as a funding source to absorb the cost of additional Firefighters that are in excess of the override. These funds might also be used to offset part of the cost to restore the 2 Patrol Officer positions which were replaced with social workers. Alternatively, or additionally, some of these funds could be used for capital projects to mitigate Woods Hole or downtown traffic or parking. This future allocation of Embarkation Funds can be incorporated in future discussion of capital planning and operating budget priorities. The Board's priorities on these options may evolve in the years ahead which is why I am recommending that the Board not earmark these funds in a way that limits budget flexibility for future years.

2. Fiscal Policy Update:

The purpose of this agenda item is to address one specific Fiscal Policy provision which the Board has discussed several times: allocation of rooms excise taxes including short-term rentals. Most recently, the Board did not reach a consensus on the proposed policy when it was addressed last summer. The Board did agree on the following language for FY2024 only which was adopted as part of the FY2024 Operating Budget Policy:

Town Meeting voted to increase the room occupancy excise tax rate (i.e. hotel/motel tax including short-term rentals) from 5% to 6% effective July 1, 2022. The additional revenue that results from this rate increase, which is approximately \$350,000, will be allocated to the Falmouth Affordable Housing Fund (FAHF). In addition, the portion of the room occupancy tax attributed to short-term rentals, approximately \$1,000,000, will be allocated to the FAHF and the School Department operating budget with each receiving \$500,000. In future years, the Town may adjust these allocations after there is a full year of actual collections at the 6% room occupancy tax rate.

My recommendation is that the Board adopt a policy that honors the Town Meeting vote which increased the rate from 5% to 6%, but allows some flexibility as to the allocation of funds in excess of the amount generated by this rate increase. Attached is a revised policy with my proposed amendment to the revenue policy shown on page 2 subsection i.

3. Short-Term Rental Regulation

This agenda item is intended as an overview of the legal landscape and some approaches that are being tested in other communities. Maura O'Keefe, Brian Tobin and Jed Cornock have prepared a presentation. We look forward to a robust discussion and anticipate additional research, discussion and community engagement will be needed before the Board has sufficient information to make any policy decisions on this complex and important topic.

//SB Report 04-01-2023

OPEN SESSION

BUSINESS

1. Policies Discussions:
 - a. Embarkation fund usage

**TOWN OF FALMOUTH
EMBARKATION REVENUE**

	FY18	FY19	FY20	FY21	FY22	FY23 to date
Ferry Fee Fund (230-3300-3215)	381,108.65	521,968.03	427,878.06	315,681.17	423,277.95	415,203.98
	381,108.65	521,968.03	427,878.06	315,681.17	423,277.95	415,203.98

Recommended
Ferry Embarkation Fee Procedures
By unanimous vote October 14, 2021

Recommendation: The Transportation Committee recommends the Town adopt a formal policy that details the purpose, goals and process for appropriating and monitoring the Ferry Embarkation Fee Fund (hereinafter “Fund”).

Background: Section 11 of Chapter 55 of the Acts of 2003 created the so-called Ferry Embarkation Fee. The fee is collected by ferry boat operators who embark passengers in the Town provided the ferry boat is licensed to carry more than 100 passengers. With some exceptions such as commuter tickets and school-related rates, 50 cents is added to each ticket and collected on behalf of the of the Town. Massachusetts Department of Revenue Technical Information Release (TIR) 04-18 describes the procedures that must be followed by the Town to collect the fees. According to the Act, Ferry Embarkation Fees must be a deposited in a “special fund” and “solely appropriated for the purpose of mitigating the impacts of ferry service” upon the Town. Numerous impacts of ferry operations have been identified – dangerous truck traffic and speeding on Woods Hole Road, noise from trucks on Woods Hole Rd, dangerous/lack of safe crossings between the Shining Sea Bikeway, ferry parking lots and the downtown, etc. The Embarkation fee is designed specifically to help mitigate these issues. The fund is an underutilized source of funding to effectively and efficiently mitigate ferry operation impacts.

Past and current practices: Funds (\$350,500 in recent years) are now simply transferred into the police and fire general operating accounts or line items. Because the fund receives in excess of \$400,000 per year, a significant balance is accruing (reported in May to be in excess of \$1.2 million). The Town neither tracks the use of the funds nor does it have any means to establish that the funds are solely appropriated for the purpose of mitigating the impacts of ferry service upon the Town, which appears to be contrary to the Act. There is no process in place for accessing those funds for appropriate projects. For the Town to be in full compliance with the law, and for optimal use of these funds to mitigate ferry operation impacts and make Falmouth a better place to live, the Transportation Committee recommends a series of practices and procedures be developed and implemented under the umbrella of a cohesive ferry mitigation policy.

Recommended policy to be developed and implemented:

1. The policy must address that The Town receives and distributes all funds in accordance with the Act.
2. The policy must address the accounting of funds to ensure that funds are solely used to mitigate the impact of ferry operations upon the Town. Note that transfers to general operating line items from the Fund are prohibited under the “solely” language in the Act.
3. The policy must include procedures for requesting and reviewing purchases and projects for any appropriation from the Fund, including who can apply and how projects will be reviewed/judged.
4. The policy should address the specific actions and responses of the Police Department, Fire/Rescue Department and Marine and Environmental Services Department that can

receive reimbursement from the Fund and establish accounting and reporting requirements for those departments.

5. The policy must assign responsibility to review annually ferry operations embarking passengers from the various harbors to ensure the fee is collected from all operators subject to the Act.
6. For transparency, the policy should require an annual written report be made to the Select Board of funds received and disbursed, with detailed accounting of all available for public inspection.

On behalf of the Transportation Committee

OPEN SESSION

BUSINESS

1. Policies Discussions:
 - b. Fiscal policy update

Town of Falmouth

Fiscal Policy

Select Board Voted to Approve

September 11, 2017

I. Introduction

The Town of Falmouth recognizes the challenges involved with managing and operating a first-class, full service municipality within the confines of the legally restricted revenue raising authority provided to cities and towns in the Commonwealth of Massachusetts. With growing expenditure pressure for labor costs, fringe benefits, insurance and infrastructure maintenance a systematic and concerted effort is required for all financial decisions in order to be successful in providing sustainable service levels under the restrictions created by proposition 2 ½. The Town of Falmouth has recognized these challenges and over the long term understands that consistent short and long term financial planning, conservative budgeting techniques, and professional management can result in high quality service levels that contribute strongly to the quality of life in our community while maintaining affordable property taxes.

These financial policies serve to memorialize the critical financial considerations that govern financial decision making at the local level; and contribute to stabilizing our tax levy, controlling expenditures and protecting sufficient levels of fund balances to guarantee internal financial stability regardless of economic uncertainty.

II. Goals

- a. Support Business and Community Development to sustain a vibrant local economy
- b. Promote Long Term Financial Stability of Town Operations through sound financial planning and practices
- c. Sustain and improve the Town's high AA+ bond rating
- d. Minimize financial risk
- e. Submit and maintain a Comprehensive Annual Financial Report

III. Revenue Policy

- a. On or before the first day of October each year, the Town Manager shall request and receive from all financial officers the estimated revenues for the next fiscal year (Charter sec. 8-3a).
- b. Finance officials will consult with state officials to get a timely report on state receipts in order to estimate local aid for the next fiscal year.
- c. Revenue forecasts for local receipts and state aid shall be conservative and revenue deficits will be avoided at all costs.
- d. Annually, fees will be re-examined and possible new revenue sources will be recommended for adoption by the Select Board in order to maximize revenue potential.
- e. Town officials will explore new grant opportunities and scrutinize such opportunities in order to maximize their potential. Future costs will be examined and a

recommendation made if the grant will be financially feasible and in the best interest of Town services.

- f. Town officials will review a comparison of estimated revenues against actuals in order to determine if adjustments need to be made.
- g. Actual revenues will be monitored monthly to determine if they are on pace with forecasts or if Management needs to act on any shortfall.
- h. User charges and fees will be set to recover not more than 100% of the total direct and indirect costs associated with their respective programs.
- i. Town Manager's proposed budget shall allocate to affordable housing the greater of:
 - i. 1/6th of estimated rooms excise tax revenue consistent with the explanation provided to Town Meeting for article 15 of the November Town Meeting of 2021; or
 - h-ii. \$850,000

IV. Operating budget policy

- a. On or before the first day of November of each year, the Select Board, after consulting with the Town Manager, shall issue a policy statement relating to the budget for the next fiscal year. The statement shall establish the outer limits of possible budget growth for the Town (Charter sec. 8-3c).
 - i. The operating budget shall be submitted using conservative revenue projections to sufficiently cover projected appropriations.
 - ii. The Town will avoid relying on one-time revenues to fund on-going operations.
- b. All department heads and multimember bodies shall submit budget requests to the Finance Director on or prior to the first day of December each year taking into consideration the Select Board's budget policy and Town Manager's directives. The budget request submitted by the School Committee shall be submitted in sufficient time, and in sufficient detail, to enable the Town Manager to assess the probable impact of the School Department's budget upon the local town budget (Charter sec. 8-3D).
- c. On or prior to the first day of January of each year, the Town Manager shall submit to the Select Board a comprehensive budget for all town functions for the ensuing fiscal year and an accompanying budget message (Charter sec. 8-3e).
- d. The budget message shall explain the budget both in fiscal terms and in terms of what specific projects are contemplated in the year ahead.
 - i. Outline the proposed financial policies of the Town for the ensuing fiscal year.
 - ii. Describe the important features of the budget.
 - iii. Indicate any major changes from the current year in financial policies, revenues and expenditures, together with reasons for such changes.
 - iv. Summarize the Town's debt position
 - v. Include such other material as the Town Manager may deem appropriate. (Charter sec. 8-3f)
- e. The budget shall indicate proposed expenditures for current operations during the ensuing fiscal year, detailed by departments, offices, multimember bodies and specific purposes.
- f. The Select Board shall within 15 days of January 1st adopt the budget with or without recommendations, and submit it to the Finance committee on or before the 16th day of January of each year. The Select Board shall also transmit the budget request of the School Committee to the Finance committee (Charter sec. 8-4a).

V. Appropriation/Expenditure policy

- a. Appropriations are approved through Town Meeting in April and November.
- b. Budgeted appropriations will be monitored against expenses weekly by the accounting office and monthly by department heads to ensure such expenditures do not exceed the authorized budget.

- c. Expenses will be monitored to ensure proper procurement procedures have been met and an approved contract is on file.
- d. Invoices will be submitted in a timely fashion and authorized by the appropriate signatory authority
- e. Capital Project appropriations will be closed at the end of the fiscal year if there has been no activity in the past three years and if the project has been completed.

VI. Reserve Fund Balance Policy

Maintaining adequate reserves presents a strong picture of financial performance which increases the confidence of investors, credit rating agencies and the banking industry which potentially contributes to a higher bond rating and access to capital.

- a. The Town shall provide a reserve fund appropriation within each annual budget to be managed by the Finance Committee and the amount will not be less than \$325,000
- b. At a minimum, the Town shall maintain a range of 5-15% of operating budget expenditures in the undesignated fund balance and general stabilization fund.
- c. The Town will maintain a range of 15-25% of operating budget expenditures categorized as unassigned fund balance to include but not limited to:
 - i. Undesignated fund balance
 - ii. General Stabilization Account
 - iii. Capital stabilization account
 - iv. Water Stabilization Account
 - v. Special Education Stabilization Account
- d. The Town will not rely on reserves to sustain operating deficits or operations. The use of such reserves will be limited to assisting the Town with short term or unanticipated, emerging financial stress.

VII. Capital Improvement and Stabilization Fund Policy

Capital planning and budgeting is central to economic development, transportation, communication, delivery of essential services, environmental management and maintaining the quality of life of our citizens. Much of what is accomplished by local government depends on a sound long-term investment in infrastructure and equipment. In that regard, the Town recognizes conditions that necessitate capital intervention and include:

- o *Imminent threat to the health and safety of citizens/property*
- o *Preservation of operations*
- o *Legal requirement of Federal or State agencies*
- o *Improvement of infrastructure*
- o *Improvement in the efficiency and effectiveness of service delivery*

The Town endeavors to conduct the following to satisfy these objectives:

- a. The Town Manager shall prepare a five-year capital improvement plan which shall include a clear summary of its contents; a list of capital improvements proposed to be undertaken during the next five (5) fiscal years, together with supporting data; cost estimates, methods of financing and recommended time schedules; and the estimated annual cost of operating and maintaining the facilities or equipment to be constructed or acquired. (Charter sec. 8-6a) Recognizing the strong need to plan and prioritize capital spending in order to maintain the fiscal stability of the Town, it shall be the policy

of the Town that all proposed capital improvements recommended for funding shall have been included in the Capital Improvement Program. Except for emergency situations, any such requests or Town Meeting articles submitted for capital expenditures that have not been submitted through the Capital Improvement Programming process should be referred at the appropriate time of year to the Town Manager for consideration; all projects must be submitted in a timely manner in the capital request form, including justifying backup information, as may be required by the Town Manager as instructions for submitting projects.

- b. Funding for the capital plan will be in accordance with the recommendations from the Town Manager, as follows:
 - i. \$25,000-\$1,000,000 - available funds
 - ii. Greater than \$1,000,000 - borrowing, capital exclusion or available funds
- c. The Finance Committee (the Committee) shall publish, in one (1) or more newspapers of general circulation in the Town, the general summary of the capital improvements plan and a notice stating:
 - i. The time and places where copies of the capital improvements plan are available for inspection
The date, time and place, not less than (7) days following such publication, when the Committee shall conduct a public hearing on said plan. The public hearing should be conducted at least thirty (30) days prior to Town Meeting at which the capital budget is acted upon (Charter sec. 8-7a,b).
- d. Capital Stabilization Fund-The Capital Stabilization Fund was created to address the Town's aging infrastructure needs and to dedicate a revenue source to address those needs.
- e. At a minimum, the Town will continue to dedicate 75% of the meals tax revenue to the Capital Stabilization Fund. The Town will maintain a balance of 2-5% of the operating budget in the fund.
- f. The Capital Stabilization Fund will also be used as a funding source for the Town's capital improvement plan.
- g. The capital stabilization fund may be used in lieu of borrowing to minimize the Town's borrowing and interest costs.

VIII. Debt Policy

Debt is an effective way to finance capital improvements. Properly managed debt helps to preserve the Town's credit rating and is an effective approach to managing the Town's long term capital assets that maintain or improve its quality of life.

- a. Long term debt and debt exclusions will be issued for purposes authorized by M.G.L. Chapter 44 sections 7 and 8.
- b. Excluded debt and debt exclusions will be issued in a manner that stabilizes the tax levy over a number of years. The Finance Director will maintain a financing plan that calculates the current and future debt capacity.
- c. The Town will attempt to vote all significant debt ballot questions (over \$1,000,000) exempt from the limits of proposition of 2 ½.
- d. General fund debt service, exclusive of debt funded from dedicated revenue sources, shall not exceed 5% of expenditures.
- e. The Town will continually pursue opportunities to acquire capital by means other than conventional borrowing; such as grants, and low-or-zero interest loans from State or Federal agencies.

- f. The Town will maintain good communications with bond rating agencies, the Town's financial advisor and bond counsel and work closely with them to ensure that all legal requirements are met and that the lowest possible interest rate can be obtained. This includes preparation of the Official Statement.

OPEN SESSION

BUSINESS

1. Policies Discussions:

- c. Short-term rental regulation



SHORT-TERM RENTALS

SUMMARY & DISCUSSION

SELECT BOARD WORKSHOP – APRIL 1, 2023

AGENDA

Introduction

Potential Goals

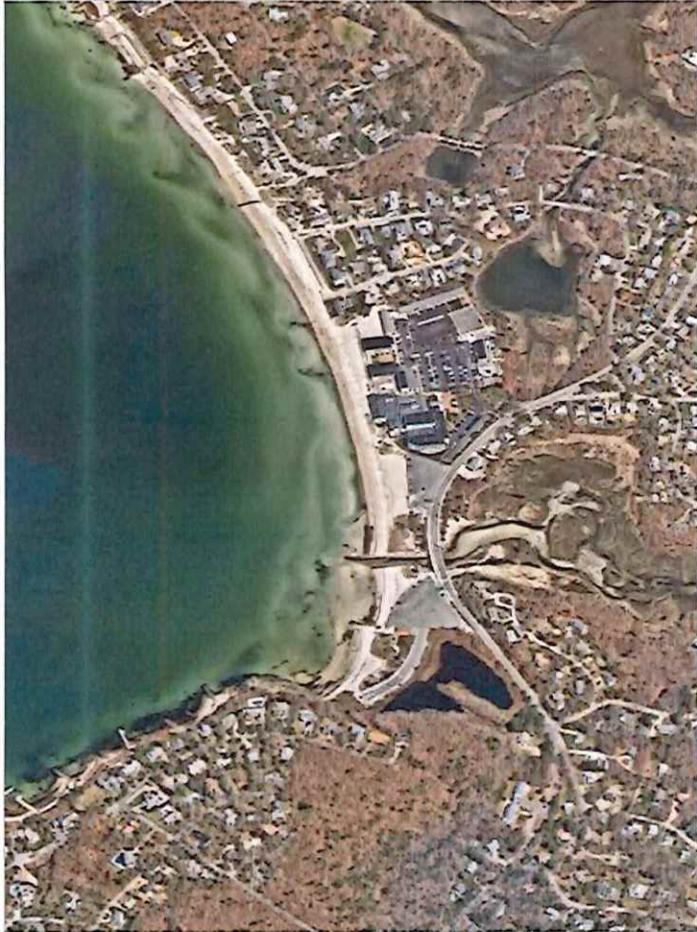
Zoning Bylaw Review

Drafting Strategies

Real World Examples

Question & Answer





INTRODUCTION

With 68 miles of coastline, a vibrant downtown area, and an abundance of open spaces and recreational opportunities, Falmouth is a summer vacation dream.

Some short-term rental management platforms estimate that Falmouth has between 3,000 to 4,000 short-term rentals every year.

Balancing private property rights with impacts to the neighborhood and the housing stock is important to Falmouth.

POTENTIAL GOALS

- Preserve the supply of year-round housing stock
- Protect the quality of life by limiting large groups from renting single-family homes
- Ensure that all property owners are following the same rules
- Preserve private property rights
- Prevent Seasonal Rental Corporations from Pricing Out Long-Term Residents
- Others?

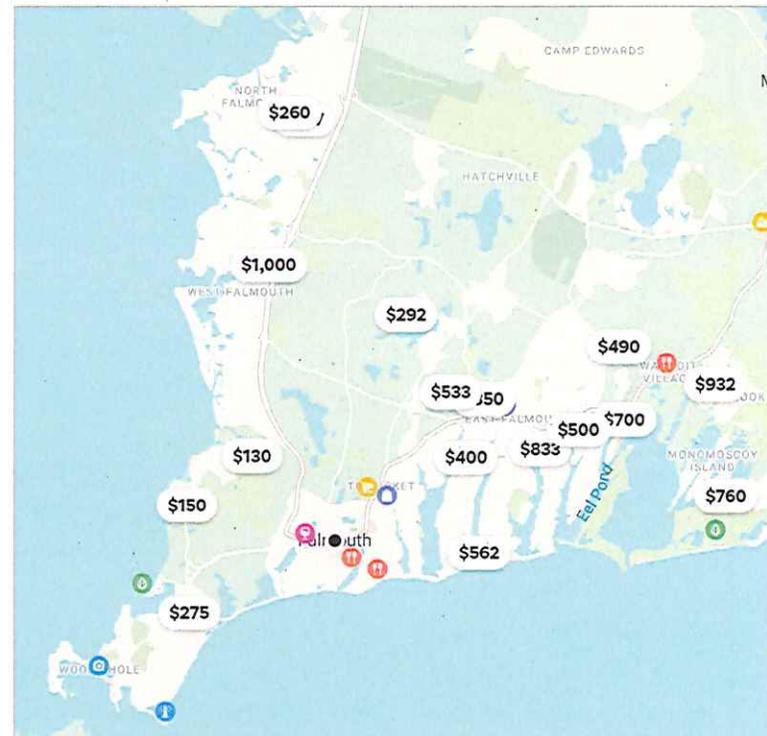
WHERE ARE THEY NOW?

Source: airbnb.com; Date searched: 3.17.23

July 4th Week (7.2.23 to 7.8.23) – 113 properties



Road Race Weekend (8.18.23 to 8.21.23) – 98 properties



Some estimates include between 3,000 to 4,000 properties per year

ZONING BYLAW REVIEW

USE, DEFINITION, PERMITTING

- No express reference to "Short-Term Rentals"
- Closest allowable use would be "Commercial Accommodations" (§ 240-9.4)
- Definition is broad and bylaw section is general
 - Dimensional requirements and parking seem to be the limiting factors
- Allowed by Special Permit from Zoning Board of Appeals in the majority of zoning districts
 - Approximately 35 establishments in Falmouth

ZONING BYLAW REVIEW

COMMERCIAL ACCOMMODATIONS - DEFINITION

"Premises for rental to transient guests, including a boarding, lodging, or tourist home; motel; hotel; or inn."

Boardinghouse: A lodging house in which meals are served, for compensation, to the guests, or others.

Lodging House: A house where lodgings are let by the day, week, or month, for compensation, to 4 or more persons not within second degree of kindred to the person operating the lodging house in accordance with G.L. c. 140, §§ 22-23. A Lodging House does not include group residences licensed or regulated by agencies of the Commonwealth.

Rooming House: In accordance with G.L. c. 111, § 199B, every dwelling unit or part thereof that contains 1 or more rooming units in which space is let or sublet for compensation by the owner or operator to 4 or more persons not within second degree of kindred to the person compensated. Rooming units shall mean the room or group of rooms let to an individual or household for use as living and sleeping quarters.

ZONING BYLAW REVIEW

COMMERCIAL ACCOMMODATIONS - PERMITTING

- Listed in most zoning district use tables – not in Marine and Senior Care Retirement Districts
- Typically a Special Permit from the Zoning Board of Appeals (“SP-Z”)

Uses	Standards	AGAA	AGA	AGB		
Commercial Accommodations	See § 240-9.4	SP-Z	SP-Z	SP-Z		
		B-1	B-2	B-3	BR	
		SP-Z	SP-Z	SP-Z	SP-Z	
		LI-A	LI-B	LI-C		
		SP-Z	N	N		
		PU				
		SP-Z				
		SR-AA	SR-A	SR-B	SR-C	GR
		SP-Z	SP-Z	SP-Z	SP-Z	SP-Z

THREE PRELIMINARY PATHS TO EXPLORE

- Allow a Non-Regulatory Environment
- Explore Application of Current By-Laws to STR. *See Styller v. Zoning Board of Appeals of Lynnfield*, 487 Mass. 588 (2021).
 - Commercial Accommodations
 - Current General Bylaw & BOH Rental Registration
- Explore Options for STR Specific Regulations - Spectrum
 - General By-Law
 - Zoning By-Law (Rare)
 - Board of Health Rules & Regulations

STEPS TO DRAFTING STR SPECIFIC REGS

- First Determine Goals
 - E.g. Manage STR Impact on Housing Market or Workforce Housing
 - E.g. Collect Additional Tax Revenue Via Registration Enforcement
- Then Determine
 - Structure
 - Substance
 - Enforcement Policy (Official or Unofficial)
- Goals and Unique Characteristics of Town Primary Driving Force

WHAT HAVE OTHER COMMUNITIES DONE?

Six Town Survey

- Chatham
 - BOH Rules Only
 - BOH Registration
 - Proposed Full-Time Employee in BOH
- Lexington
 - General & Zoning Bylaws (rare)
 - BC Registration
 - FD/BC Inspection
- Orleans
 - General Bylaw
 - BOH Registration
- Great Barrington
 - General Bylaw
 - Select Board Registration
 - Multi-Inspection Rights
- Nantucket
 - General Bylaw (BOH Approved)
 - BOH Registration
- Provincetown
 - BOH Rules
 - Non-Compliance Registration Fee Increase

WHAT HAVE OTHER COMMUNITIES DONE?

Common Themes

- Registration
 - 4/6 with BOH
 - Outliers are Town Specific
- Inspection
 - 5 out of 6 BOH or BOH with other Dept. Insp. Rights
 - 3 out of 6 General Town Inspection Rights
 - 2 out of 6 require inspection pre-cert or renewal or both
 - 1 out of 6 combines self inspection & affidavit pre-cert with inspection as enforcement alternative
- Enforcement
 - 5 out of 6 civil penalties MGL c. 40 s. 21D; see also 64G s. 14
 - 1 is silent on penalties or fines
 - 1 also increases registration and renewal fees based on non-compliance

OPTIONS FOR CONSIDERATION

STAY THE COURSE

Continue to allow property owners to manage their rentals on their own

REQUIRE A SPECIAL PERMIT

Require all short-term rental property owners to obtain a Special Permit as a Commercial Accommodation

AMEND THE ZONING BYLAW

Insert language that defines a short-term rental and create permitting restrictions and/or rules

GENERAL BYLAW & REGISTRATION

Amend the General Bylaw to include short-term rentals and require that they register just like year-round rentals

BOARD OF HEALTH RULES & REGS

Have Board of Health manage the short-term rentals through their rules and regulations



QUESTIONS?

