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## TOWN OF GREAT BARRINGTON MASSACHUSETTS

### OFFICE OF THE TOWN MANAGER

Selectboard and Planning Board Joint Special Meeting via Zoom  
Order of Agenda for Monday, November 29, 2021, at 6:00 PM

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/86106168417?pwd=WGtqdHlrd3RrMct2OEYvWlhVZkRoZz09>

Webinar ID: 861 0616 8417

Passcode: 223311

Dial-in, audio-only: (929) 205 6099

Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, and the Governor's June 16, 2021 Revised Order extending remote participation by all members in any meeting of a public body, this meeting of the Great Barrington Selectboard will be conducted via remote participation to the greatest extent possible. Specific information and the general guidelines for remote participation by members of the public and/or parties with a right and/or requirement to attend this meeting can be found on town's website, at [www.townofgb.org](http://www.townofgb.org). For this meeting, members of the public who wish to listen to the meeting may do so in the following manner: See instructions at the top of the agenda. No in-person attendance of members of the public will be permitted, but every effort will be made to ensure that the public can adequately access the proceedings in real time, via technological means.

\*\*\*\*\*ALL VOTES ARE ROLL CALL\*\*\*\*\*

1. CALL JOINT MEETING TO ORDER
2. REGULATING SHORT TERM RENTALS
  - a. Discuss impacts of short term rentals on the community
  - b. Discuss objectives of regulating short term rentals
  - c. Discuss various strategies to regulate, enforce, compensate for community impacts of short term rentals
  - d. Arrive at consensus of preferred path(s) to achieve objectives
3. CITIZEN SPEAK TIME  
*Citizen Speak Time is an opportunity for the Selectboard to listen to residents. Topics of particular concern or importance may be placed on a future agenda for discussion. This time is reserved for town residents only unless otherwise permitted by the chair, and speakers are limited to 3 minutes each.*
4. MEDIA TIME
5. ADJOURNMENT

#### NEXT SELECTBOARD MEETING

December 13, 2021

December 20, 2021

January 10, 2021

Mark Pruhenski, Town Manager

*Pursuant to MGL. 7c. 30A sec. 20 (f), after notifying the chair of the public body, any person may make a video or audio recording of an open session of a meeting of a public body, or may transmit the meeting through any medium. At the beginning of the meeting, the chair shall inform other attendees of any such recordings. Any member of the public wishing to speak at the meeting must receive permission of the chair. The listings of agenda items are those reasonably anticipated by the chair, which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may be brought up for discussion to the extent permitted by law.*

**Short Term Rentals (“STRs”)  
Additional Information**

**Joint Meeting of the Selectboard and Planning Board  
November 29, 2021**

3,600 housing units in Great Barrington

0% rental vacancy rate

Median gross rent of renter occupied units = \$900 per month (a short term rental at \$150 per night would achieve that in just six nights)

415 second homes (Assessor’s office), or 12% of the total housing units

200 short term rental registrations on Mass DOR’s registration list, approximately 56 of which (28%) are second homes

Approximately 90% of the 200 short term rental listings are for entire homes

**Existing Regulations**

Hotels, motels, bed and breakfasts are locally licensed and inspected and must comply with applicable state and local zoning, building, fire, health and safety codes.

Under the building code there is no distinction between a single family home short term rental and a large hotel. Dwellings that are not owner-occupied and are operated as short term rentals are not R-3 (one or two family dwellings) but instead are classified as R-1 (transient less than 30 day rental) and are required to provide sprinkler systems, egress lighting, have quarterly Fire Department inspections, etc.

**Our Zoning Bylaw** currently allows renting of rooms to up to three people as an accessory use as follows (underlines added):

3.2.3 Boarders. The renting of rooms or the furnishing of table board by a resident family to not more than three roomers or boarders is permitted, provided that no separate cooking facilities are maintained. (since at least 1974)

Under our Zoning Bylaw:

- Lodging Houses (more than 3 but less than 11 rooms) may be permitted by Special Permit in most areas of town including residential zones. (since at least 1960)
- Hotels and motels (11 or more rooms) may be permitted by Special Permit in commercial and industrial zones but are prohibited in residential zones. (since at least 1960)

Generally, our existing zoning would interpret non-owner occupied short term rental properties to be business uses, as opposed to residential uses, and therefore not permitted by right in residential zones

## Pros and Cons of STRs

Some possible benefits of short term rentals

- Income stream for property owners, can particularly benefit the underemployed and retired persons on fixed incomes
- Less impact on a unit and better revenue for the Owner than a long term rental
- More flexible (can it turn on and off) and less liability / legal constraints for the Owner than being a landlord to longer term tenants
- Owners tend to renovate the homes which improves the housing stock and residential tax base, employs contractors, etc.
- Supplements the lodging supply, more tourists mean more local spending
- More tourists mean more rooms (and meals) tax revenue

Some possible drawbacks of short term rentals

- Competition with limited supply of residential housing; any unit that is a short term rental is not a long term rental, and also is not an affordable housing unit
- Property speculation and increased potential income can lead to increased housing prices overall
- Disproportionately benefits wealthier homeowners including those who may not have any connection to the Town beyond wanting to make money / capitalize on the Town's desirability
- Unfair to hotels and other permitted, licensed and inspected lodging establishments
- Health, safety, noise, neighborhood and environmental impacts such fire/building/health codes, overcrowding, parking issues, overwhelmed septic systems, uncontrolled trash and recycling, parties and noise
- The impacts can be worse if no Owner or manager is onsite or has less commitment to property maintenance

## Possible Purposes of New Regulation

Enact (a) new local law(s) to regulate short term rentals in Great Barrington in order (choose any / all):

- Regulate whether residents or nonresidents may operate short term rentals
- Regulate the types of structures in which they may occur
- Regulate where or when they may operate
- Set certain standards with which short term rentals must comply
- Require licensing, registration, etc. in order to level the lodging playing field
- Collect impact fees to offset impacts on public services and the affordable housing supply
- etc
- etc

## Lodging Revenue

**State Law** (since 2019) requires all short term rentals (that are not hotels, motels, and some B&Bs...) to register with the Department of Revenue. Those that rent for 14 or more days in a calendar year must also pay the applicable rooms tax (which in Great Barrington includes the 6% local rooms tax).

**Great Barrington** has a local rooms tax rate of 6% (since 2010). Since July 2019 this rate also applies to all short term rentals rented more than 14 days per calendar year. These funds come into the Town's general fund from the state and are unrestricted.

Figure 1 Great Barrington's Lodging Tax Revenue through FY21

Room Occupancy	1st Qtr (Jun-Aug)	2nd Qtr (Sep-Nov)	3rd Qtr (Dec-Feb)	4th Qtr (Mar-May)	Total		
FY2016	160,330.96	175,416.51	74,270.17	80,431.34	490,448.98		
FY2017	163,392.98	173,066.92	90,190.62	90,373.40	517,023.92		
FY2018	157,166.56	171,181.52	65,340.08	63,929.68	457,617.84		
FY2019	143,988.73	166,711.02	78,897.22	84,970.13	474,567.10		
FY2020*	175,855.51	226,118.41	135,455.26	78,690.83	616,120.01		
FY2021	185,136.91	116,974.95	102,925.88	157,606.72	562,644.46	(53,475.55)	-9%
	\$ 985,871.65	\$ 1,029,469.33	\$ 547,079.23	\$ 556,002.10	\$ 3,118,422.31		
FY20 vs FY19	22%	36%	72%	-7.4%	30%		
FY21 vs FY20	5%	-48%	-24%	100%	-9%		
		\$ (109,143.46)	\$ (32,529.38)	\$ 78,915.89			
*Sales tax on airbnb effective 7/1/2019							1

State law also allows municipalities (Town Meeting) to adopt certain state statutes in order to collect an additional 3% on certain types of short term rentals. This could generate an additional \$10,000 to \$50,000 per year, at least 35% of which must go towards affordable housing.

# 10. Implementation Recommendations

Like much of the rest of rural New England, Great Barrington's population is declining and aging, and the economy is increasingly tilting towards lower wage employment sectors. At the same time, the area remains popular relocation destination for people with high disposable incomes. As a result, the Town has seen a depletion of its middle income brackets - there are more households at the higher income levels and at the lower income levels, and fewer in the middle. And, nearly half of all households earn less than 80% of the area median income.

Despite the declining population and a small increase in housing production, housing inventory remains extraordinarily limited. Housing units are generally old and housing costs are high. To some extent, these are not new circumstances, but housing costs have become increasingly unattainable due to people relocating because of COVID-19 which has driven up costs and a recent lack of housing supply. A supply analysis shows that there is a significant deficit of homes affordable to households in the middle income category, and an enormous deficit for households at the lowest income levels. This is particularly true of for-rent housing, where there is a 0% vacancy rate, and 43% of renter households are cost burdened. Even homeowners are relatively more cost burdened in Great Barrington than in the rest of the Southern Berkshires. Home values have risen a dramatic 24% since 2010, compared with only a 7% rise in household income. The home ownership "affordability gap" (a measurement of the difference between the affordable sale price and the median sale price) is more than \$125,000.

There are some hopeful data points, however. Median rents have climbed, but not as high as in the County or the State. This may be an indication that rents were already high, but estimates do indicate there are 40% fewer renter households paying more than 30% of their income on their rent in 2018 than in 2010. Also, among households who own their homes, 18% fewer are paying more than 30% of their incomes on housing costs.

Given the data, particularly the supply and cost-burden data, Great Barrington should continue pursuing the housing strategies of the *Community Master Plan* (2013), including providing assistance to support existing and new affordable housing units. The Town should continue zoning efforts to promote the production of a variety of new housing units.

**Recommendations:**

- Continue rental assistance programs, particularly emergency rental assistance, for households earning less than the median income;
- Continue the down payment assistance programs for household earning less than the median income;
- Redevelop blighted properties, particularly underutilized commercial properties, to create new affordable housing units in either mixed-use or residential developments;
- Provide financial incentives and tax abatements to homeowners to create new affordable units either within existing structures or by building new accessory units;
- Create new housing units for the growing senior population in assisted living or co-living arrangements.

The impacts of short-term rentals on the housing market are unclear. Almost 90% of the 178 short-term rentals (160 units) are entire homes, as opposed to a single room. In theory, these could be rented as long-term rentals in the conventional housing market, and would add 16% more units to existing 950 rental units. On the other hand, these have important economic benefits to the seasonal/tourism based economy. Offering short-term rentals may represent important sources of income for households already cost burdened. More information about short-term rentals should be collected to determine their impact on the housing market, and to ensure the Town is realizing local room tax revenue from all of these short-term rentals. In the meantime, the tax revenue generated by short-term rentals could be directed towards the Town's housing goals.

**Recommendations:**

- Collect/track and analyze short-term rental data;
- Review and possibly revise current Zoning Bylaw to regulate short-term rentals;
- Direct short-term rental tax revenue towards housing goals.

The Town should also continue initiatives that are not housing specific, but that can ease some of the expenses and burdens of living and working in a rural area like the Southern Berkshires. Examples include:

- Expanding and refining public transit options to serve the main employers in town at convenient timetables. This is especially important since, for some service employees working in town, the only affordable housing option is outside of Great Barrington.
- Fiber optic broadband internet throughout town, which could enable more work-from-home options.

For the purpose of keeping town planning documents consistent, the following goals have been taken from Great Barrington's *Community Master Plan* which was approved by the Planning Board and Select Board on October 10<sup>th</sup>, 2013. All of the following goals and implementation strategies are from *Chapter 6: Housing*.

**Housing Goal 1: Allow for a diversity of housing opportunities available at a variety of price levels and in infill locations.**

- *Strategy HO 1.1: Ensure zoning and development regulations encourage, and do not preclude, a variety of housing options in appropriate locations, including smaller homes and apartments and continuing care options for seniors.*  
**[2020 Status: Completed.]**
- *Strategy HO 1.2: Revise zoning to allow two-family housing by right in all zoning districts. Allow multi-family housing by right where it is by special permit now, and by special permit in all other districts.*  
**[2020 Status: Completed.]**
- *Strategy HO 1.3: Allow mixed use and multi-family buildings by right in downtown and Housatonic village.*  
**[2020 Status: Completed.]**
- *Strategy HO 1.4: Facilitate the development of infill and rear lots, including creating criteria to permit rear lots where zoning district boundaries split lots and revising minimum lot width where practical, and investigating new provisions to cluster homes, such as cottage zoning.*  
**[2020 Status: Partially completed. Changes to buildable area requirements and ADU allowances. Consider cluster development as the by-right subdivision option, and consider rear lot divisions by-right if they are deed restricted for affordable housing, as per the Nantucket example: <https://ecode360.com/14051269>]**

## 7.20 SHORT-TERM RENTAL OF RESIDENTIAL PROPERTIES

### 7.20.1. Purpose.

This Section, “Short-Term Rental of Residential Properties,” is intended to set forth regulations through which certain dwelling units within the Town of Great Barrington may be utilized as short-term rental units. This regulation is designed to allow for the operation of such rentals for Great Barrington residents, ensure the primary use of such rentals remains residential, reduce commercial operations in residential neighborhoods, prevent long-term rental units from being replaced with short-term rentals and protect affordable housing units from conversion, and reduce the adverse effects of short-term rentals on traffic, noise, and community cohesion in neighborhoods.

### 7.20.2. Definitions.

*Booking Agent.* Any person or entity that facilitates reservations of or collects payment for a Short-Term Rental on behalf of or for an Operator.

*Inspector.* The Inspector of Buildings or his or her designee.

*Natural Person.* A human being as distinguished from a person (as a corporation or LLC) created by operation of law.

*Operator.* A Natural Person who is the owner of a Residential Unit that seeks to offer said Residential Unit as a Short-Term Rental.

*Primary Residence.* A Residential Unit in which an Operator resides for at least six months out of a twelve-month period. Primary residence shall be demonstrated by showing that as of the date of usage as a Short-Term Rental, the Operator has resided in said Residential Unit for six of the past twelve months or that the Operator intends to reside in the Residential Unit for six of the next twelve months, in accordance with the Proof of Primary Residence requirements set forth below.

*Proof of Primary Residence.* A copy of the deed, driver’s license, or state-issued identification, as well as one other document showing residency at the Residential Unit for the Short-Term rental, such as utility bill, cable bill, or motor vehicle registration.

*Residential Unit.* A dwelling unit within a dwelling, or located on the same tax parcel as a dwelling, classified under the Building Code (“Code”) as residential use, as those terms are defined in the Code, but excluding: a congregate living complex, elderly housing, group residence, homeless shelter, orphanage, temporary dwelling structure, and transitional housing. This term shall not include a hotel, motel or any other non-residential use.

*Secondary Unit.* An additional, self-contained dwelling unit located on the same tax parcel as the Operator’s Primary Residence. (Also known as an in-law unit, accessory dwelling unit, or ADU).

*Short-Term Rental.* The rental of a Residential Unit for its intended purpose, in exchange for payment as residential accommodations for a duration of fewer than twenty-eight consecutive days. Such a rental may or may not be facilitated through the use of a Booking Agent.



### 7.20.3. Applicability.

No Residential Unit shall be offered as a Short-Term Rental except in compliance with each of the provisions of this Section.

### 7.20.4. Requirements for the Operation of Short-Term Rentals.

(a) *Operator's Primary Residence.* A Residential Unit offered as a Short-Term Rental shall be the Operator's Primary Residence.

(b) *One Party of Renters.* A Residential Unit offered as a Short-Term Rental shall be rented to only one party of short-term renters at a time, not rented as separate bedrooms, beds, or spaces to separate parties.

(c) *Number of Short-Term Renters.* A Residential Unit offered as a Short-Term Rental shall be limited to ten guests, or two guests per guest bedroom, whichever is fewer.

(d) *One Listing per Booking Agent.* A Residential Unit offered as a Short-Term Rental shall not have more than one listing per Booking Agent associated with it.

(e) *Secondary Unit.* A Secondary Unit located on the same tax parcel as the Operator's Primary Residence may be offered as a Short-Term Rental. However, only one Residential Unit per parcel at a time shall be offered as a Short-Term Rental.

(f) *Parking.* A Residential Unit offered as a Short-Term Rental shall provide all parking on-site, or in assigned parking space(s).

(g) *Events.* A Residential Unit offered as a Short-Term Rental shall not utilize the premises for holding special events or gatherings, and tents or amplified music shall be prohibited.

(h) A Residential Unit offered as a Short-Term Rental shall comply with all standards and regulations promulgated by the Inspector.

(i) *Short-Term Rental of a Shared Residential Unit.* An Operator may offer bedrooms within their Residential Unit as a Short-Term Rental 365 days per year. One bedroom shall be reserved for, and occupied by, the Operator during the entire term of the rental.

(j) *Short-Term Rental of an Unoccupied Residential Unit.* Short-Term Rentals shall not exceed in the aggregate, 120 consecutive or nonconsecutive calendar days per year when the Operator is not occupying the Residential Unit during the entire term of the Short-Term Rental.

(k) *Short-Term Rental of a Multifamily Property.* An Operator who resides in one unit of a multifamily property shall not offer an adjacent unit as a Short Term Rental. Only the Operator's Primary Residence shall be used as a Short-Term Rental.

(l) *Rental Period and Use.* Renting for an hourly rate, or for rental durations of fewer than ten consecutive hours shall not be permitted. Commercial meetings and uses are prohibited in Short-Term Rentals.

(m) *Registration.* Registration shall not be required to operate a Short-Term Rental.

(n) *No Outstanding Violations.* The Residential Unit offered as a Short-Term Rental shall not have any outstanding building, sanitary, zoning, or fire code violations, orders of abatement, or stop-work orders, or other requirements, laws, or regulations that prohibit the Operator from offering the Residential Unit as a Short-Term Rental. If a violation or other order is issued, upon notice of said violation or order Short-Term Rental use shall be terminated until the violation has been cured or otherwise resolved.

(o) *Three or More Violations in a Six Month Period.* Should a property receive three or more violations within a six month period under this section, or of any municipal ordinance, state law, or building code, any Residential Unit within the property shall be ineligible to be used as a Short Term Rental for a period of one year from the third or subsequent violation.

(p) *Compliance and Interaction with Other Laws.* Operators shall comply with all applicable federal, state, and local laws and codes, including but not limited to the Fair Housing Act, G.L. c. 151B and local equivalents and regulations related thereto, and all other regulations applicable to residential dwellings.

(q) *Retention of Records.* The Operator shall retain and make available to the Inspector, upon written request records to demonstrate compliance with this section, including but not limited to: records demonstrating the number of months that the Operator has resided or will reside in Residential Unit, if applicable, and records demonstrating a number of days per year that the Residential Unit is offered as a Short-Term Rental. The Operator shall retain such records for as long as he or she desires to use the Residential Unit as a Short-Term Rental.

(r) *Notifications.* The Operator shall post and maintain a sign on the inside of the Short-Term Rental on the entry-level, visible to and reasonably likely to be readily accessed by individuals utilizing the Short Term Rental, with the following information:

(1) instructions for recycling and the disposal of waste;

(2) information regarding the Town's parking regulations, including but not limited to on-street parking limitations and overnight ban of on-street parking during winter months;

(3) the local noise ordinances of the Town;

(4) contact information for the Operator, or when the Operator is not present, the contact information for a locally available contact designated to respond to all emergencies and problems that may arise during the rental period.

#### **7.20.5. Penalties; Enforcement.**

(a) No person or entity may offer a Residential Unit as a Short Term Rental in violation of this ordinance. No Booking Agent may accept a fee for booking a Residential Unit that is in violation of this ordinance, provided that the Town has first notified the Booking Agent of such violation of the Residential Unit. All violations of this section may be penalized by a noncriminal disposition as provided for in G.L. c. 40, s. 21D. All violations of this section are subject to a penalty in accordance with section x-x.x of the Great Barrington Town Code. Each day on which a violation exists shall be deemed a separate and distinct offense. The provisions of this section may also be enforced, if applicable, by the Inspector seeking an injunction from a court of competent jurisdiction prohibiting the offering of the Short-Term Rental. The provisions of this section may also be enforced according to Massachusetts Session Laws Acts of 2008

Chapter 106. Nothing herein shall be construed to preclude the Town from seeking any additional penalties or taking any additional enforcement action as allowed for by law.

(b) The Inspector may enter into agreements with Booking Agents or any other third parties for assistance in enforcing the provisions of this ordinance.

**7.20.6. Regulations.**

The Inspector shall have the authority to promulgate regulations to carry out the provisions of this Ordinance.

**7.20.7. Severability.**

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

**7.20.8. Effective Date.**

The provisions of this Section 7.20 “Short-Term Rental of Residential Properties” shall take effect on January 1, 2023.