



Short Term Rentals and Your Town

FRCOG Municipal Official
Workshop Series
October 5, 2017

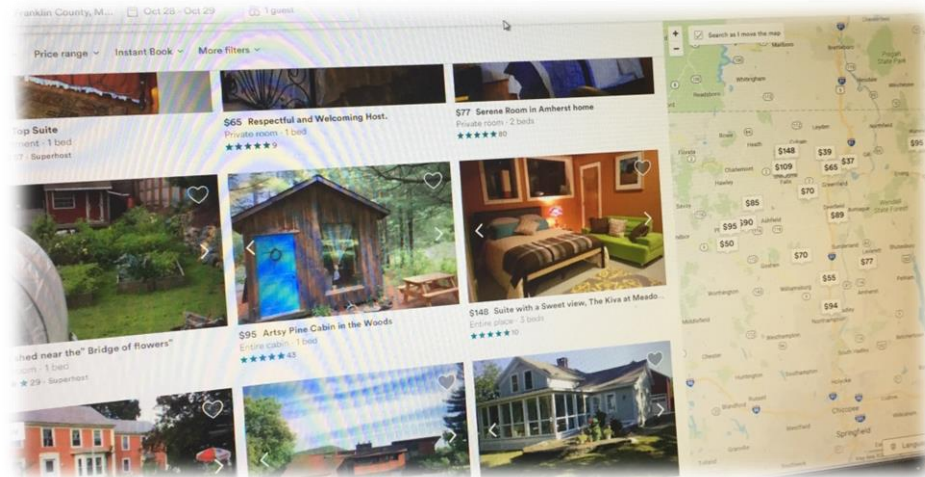
Agenda:

How do short term residential rentals fit into the state and local regulatory landscape?

- What does the building code say?
- What does the sanitary code say?
- What types of zoning changes can towns consider?
- What types of other bylaws have towns passed in response to this growing sector?
- What do hosts need to do to come into compliance with current law?
- Possible changes in State legislation.

Current Status

- Short Term Rentals are a major new business in our region, providing economic support to numerous households and recreational businesses. They are active in the entire county: Air BnB, VRBO, FlipKey, HomeAway, Vacationrentals.com



Terms of Service require compliance

- Typically, hosts must certify that they are following all local laws and regulations for permits, licenses, zoning, etc..
- Companies insure their hosts, and hosts are required by the terms of service to certify that they are following local laws and regulations:
 - <https://www.airbnb.com/help/article/376/what-legal-and-regulatory-issues-should-i-consider-before-hosting-on-airbnb>
 - <https://www.airbnb.com/help/article/961/what-regulations-apply-to-my-city>

Short Term Rentals and the public health codes

Glen Ayers
CPHS Regional Health Agent



Public Health Licensure is needed

- Short Term Rentals are subject to licensure or permitting and are considered a Bed and Breakfast or Lodging House.
 - Difference between B&B and Lodging House will disappear with new Food Code in 2018, therefore recommend BOHs treat B&B's as a Lodging House if there are five or fewer rooms (with breakfast served or no food).
 - If 6 or more rooms and serving any food, must get a Food Permit (and have a certified food handler).
- DPH Memo clarifying STR as lodgings subject to licensure:
<http://www.mass.gov/eohhs/docs/dph/environmental/sanitation/hsg-licensing-online-home-rental-services.pdf>

Lodging House Board of Health License Requirements

- Must be inspected for Minimum Standards for Human Habitability and general safe and sanitary conditions:
 - Screens on windows
 - Lockable doors
 - Heat system capable of maintaining 68/64 (am/pm) during the heating season, Sept 15 – June 15
 - And temp may not exceed 78 F (in season)
 - Bathrooms with hot and cold running water

Lodging House Requirements under public health codes, cont'd.

- Under 310 CMR 15, Lodging houses must comply with Title 5.
 - Septic system must be properly sized for the number of bedrooms (NOT bathrooms).
 - Septic system must be properly maintained (show pumping reports).



If a hot tub is onsite..

- State Pool Regulations 105 CMR 435 require someone on site be a Certified Pool/Spa Operator.
- Updated regulations due out this winter will get rid of the requirement for hot tub owners who rent out rooms to have an Operator License



In Towns with private well regulations...

- Lodging House Licensure for homes on a private well requires periodic water testing for bacteria and water quality.
 - Also applies to any food establishments on a well.



Franklin County towns with Private Well regulations

Ashfield

Buckland

Charlemont

Conway

Erving

Heath

Gill

Hawley

Leyden

Sunderland

Rowe

Wendell

Note: list from DEP as of 9/2017, may not be complete

Warning for hosts:

If guests staying **over 30 days** under the Public Health Laws

- Long term renter is a tenant under the law
 - Lead Law applies if children under 6 are present in either the owner's or renter's family.
 - Numerous other tenant rights become available to the renter.

Short Term Rentals and the Building Code

Jim Cerone
Local Inspector

Building Code Questions

- Which Code?
 - IRC: 1-2 family 3 stories or less and their accessory structures
 - IBC: Any other structure
 - IEBC: Existing Building Code
- Which Code Edition?
- When is a single family no longer considered a single family?
- When are permits are required?
- What triggers annual inspections by the building inspector?



More Questions

- When does a building require updated smoke detectors, fire alarm, or sprinkler system?
- Are existing buildings treated differently than new construction?

Categories of Residential Buildings in the Building Code

- Single Family Dwelling
- R-1 Use Group Classification
- R-2 Use Group Classification
- R-3 Use Group Classification



What is a “single family dwelling”?

- In the 6th Edition (2001) of the Code: *A building containing one dwelling unit but not a lodging house (See MGL. c 140, 22)*
 - Section 22. "Lodging house", as used in sections 22-31 shall mean a house **where lodgings are let to four or more persons not within second degree of kindred to the person conducting it,**
- In the 7th Edition(2008) and the current one, that definition disappears, as did the clarity of when a B&B is a single family, regulated by the IRC or a Lodging House, regulated by the IBC
- Clarity is coming back with the 9th edition, due out in 2018

What is an R-1 Use Group?

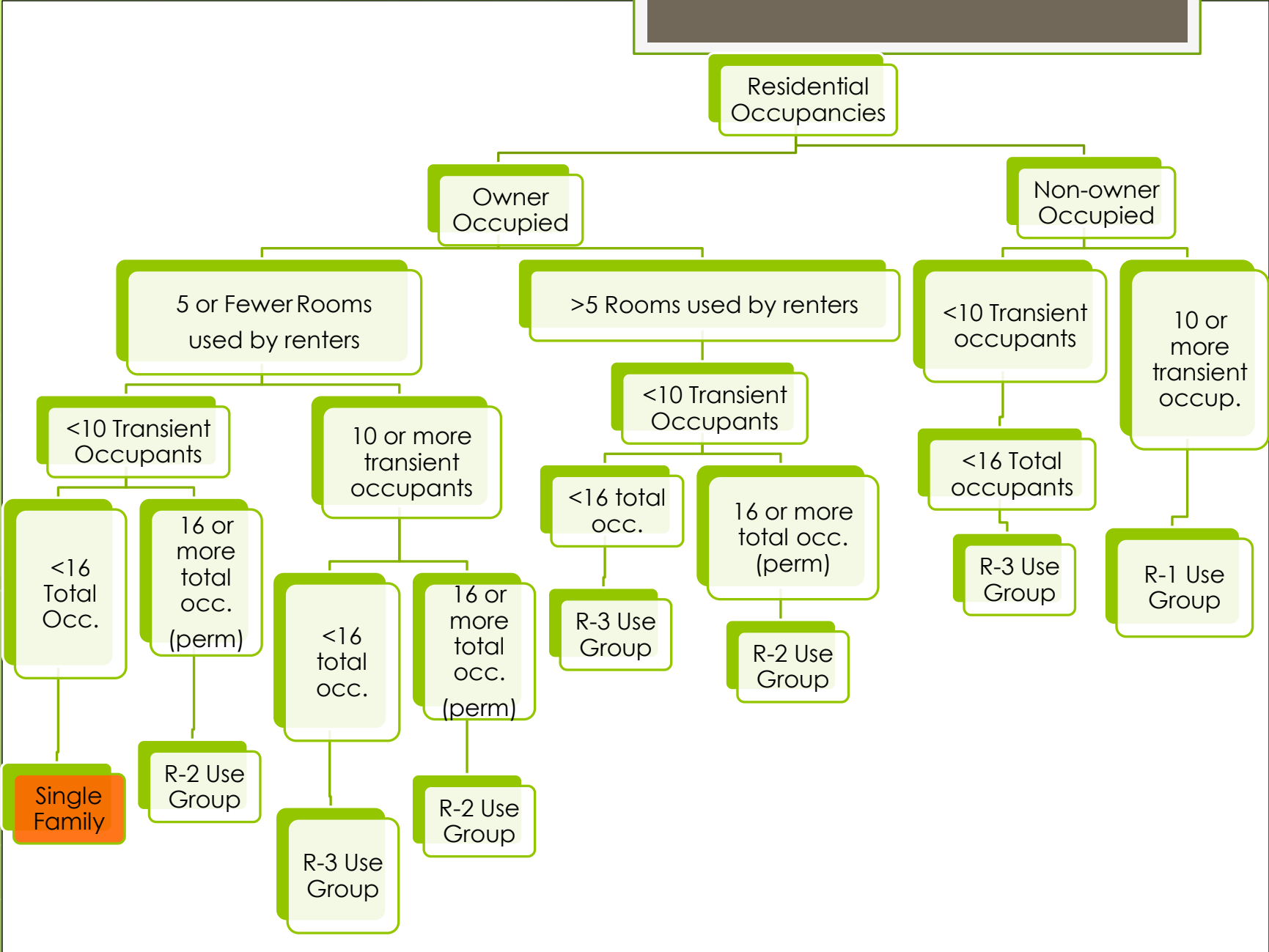
- Residential R-1 occupancies containing *sleeping units* where the occupants are primarily *transient* in nature.
- Transient: Not more than 30 days
- Examples:
 - Hotel
 - Boarding house(transient) with more than 10 occupants

What is an R-2 Use Group?

- Primarily permanent in nature
- Having more than 16 occupants
- Dormitories, multifamily dwellings

What is an R-3 Use Group?

- Residential Group R-3 occupancies where the occupants are primarily permanent in nature and not classified as Group R-1, R-2, R-4, or I.
- Includes *Lodging houses* with five or fewer *guest rooms*.



If Short Term Rental is in New Construction: Fire Protection Requirements

Use Group Classification	Sprinkler Required	Manual Fire Alarm	Fire Extinguishers	Annual Inspections
R-3 (constructed per IRC)	NO	NO	NO	NO
R-3 (Constructed per IBC or commercial code)	NFPA-13D	NO	NO	NO
R-1	NFPA-13R	YES WITH SOME EXCEPTIONS	YES	YES
R-2	NFPA-13R or 13D	NO WITH SOME EXCEPTIONS	YES	YES

If the Short Term Rental is in an existing building:

- If considered a single family (see slide 21) no building permit required
- If there is a change of occupancy classification a building permit is required:
 - Owner needs to provide an Existing Building Report
 - Means of egress
 - Emergency lighting, exit signs
 - Fire protection (different fire protection threshold in Ch. 9 IBC)

“Performance Method”: A way to meet code for Short Term Rentals in existing buildings that fall into R-1,2,3 Use Groups

- Generally requires the help of an architect
- Can help owner avoid sprinkler requirement
- Works as Pass/Fail for entire building – looks at:
 - Fire Safety
 - Means of Egress
 - General Safety

Permit Process For Existing Buildings

- Call Inspector
- If there is no Change of Use Permit required:
 - Nothing will have to be done with building department
- If a Change of Use Permit is required:
 - Must apply for a building permit
 - Receive permit
 - Be inspected by Building Inspector
 - Have a Certificate of Occupancy issued by Building Inspector.

Short Term Rentals and Local Planning

Peggy Sloan

FRCOG Director of Planning and Development



Planning Considerations for Short Term Residential Rentals

- ❑ What impact could short term rentals have on your town's affordable housing supply (e.g. vacancy rates)?
- ❑ What impacts can they have on neighborhoods (e.g. traffic, noise, parking, lighting)?
- ❑ Are there places in town that are incompatible with short term residential rentals?
- ❑ Should short term residential rentals be owner occupied?
- ❑ What size is appropriate for the neighborhood? (e.g. 4 rooms approximately 8 guests & 4 cars)
- ❑ What are the Public Health & Safety Impacts (e.g. Board of Health Regulations and Building Code requirements)?

Zoning Bylaws and Short Term Rentals

- ❑ Short Term Residential Rentals are considered to be a B&B or a Lodging House.
- ❑ Your current Zoning Bylaw may:
 - Allow them by right in certain zoning districts.
 - Allow them by Special Permit (SP) in certain zoning districts if a SP is granted by the Special Permit Granting Authority (Planning Board or ZBA)
 - Prohibit them in all or certain zoning districts.

Addressing Short Term Rentals by Amending your Zoning Bylaw

- Amend the Use Table in your Zoning Bylaw to include Air BnBs & other Short Term Rentals to make it clear

SAMPLE (CUSTOMIZE FOR YOUR TOWN) BUSINESS USES	VC	VR	RR	C	I
Motels, Hotels	SP	N	N	SP	N
Inns	SP	SP	SP	SP	N
Bed and Breakfast including Air BnB's, 1-2 rooms (owner occupied)	Y	SP	SP	Y	N
Bed and Breakfast, including Air BnB's, 3-4 rooms (owner occupied)	SP	SP	N	SP	N
Short Term Lodging (entire dwelling unit - non owner occupied)	SP	N	N	SP	N

- Footnote Use Table to state that Board of Health Regulations & Building Code requirements must also be met

Zoning Bylaw Amendments – Example of Definitions

- ❑ BED-AND-BREAKFAST -- An accessory use to a dwelling unit consisting of overnight lodging with breakfast. No meals other than a breakfast shall be served, and no breakfast shall be served nor any retail or consumer services shall be provided to any member of the public not lodged as an overnight guest. Must be owner occupied and have adequate off-street parking.
- ❑ HOTEL: a building containing rooms used or designed to be used for sleeping purposes by transient guests where the only kitchen and dining facilities provided are for public use within the building or in an accessory building. Hotel staff on-site.
- ❑ INN: an historic structure used or designed for overnight lodging for transient guests, and which may also provide a restaurant to lodgers and the public. An historic structure for the purposes of this definition shall be a building fifty (50) years or more in age. A guest(s) may not stay at an Inn for more than 90 days in any six-month period. Inn staff on-site.

How Can Short Term Rentals be addressed in a local (non-zoning) bylaw?

- ❑ Adopt a General Bylaw to require a town license for property owners that rent out their residential property to short term paying guests. Factors to consider:
 - Define short term paying guests – (e.g. less than 30 consecutive days)
 - Determine whether short term residential properties need to be owner occupied
 - Determine off-street parking requirements
 - Decide on noise & lighting restrictions
 - Decide whether to cap the amount of licenses granted to address potential reductions in long term rental units and/or increases in rents that displaces residents
 - Decide on a length of time for the license (e.g. annual) and renewal
 - Decide if a Public Hearing will be held by the Select Board to consider granting or revoking licenses
 - Decide if notification to abutters will be required

Example of a General Bylaw

- ❑ Manchester by the Sea

- ❑ Annual Town Meeting adopted a general bylaw, which has been approved by the Attorney General's Office, that requires an annual permit from the Select Board for any property owner hosts short term residential rentals
 - Must meet Building Code & Board of Health requirements
 - Must name a local contact if owner is not on-site
 - Must keep a guest register
 - Select Board issues annual permits and appoints Enforcement Agent

Examples of current handling of short term rentals in Zoning Bylaws in Franklin County Towns

Jim Hawkins
Building Commissioner

See related handout

What can hosts do to come into compliance?

Step One: Zoning Check with your Town Building Inspector about local zoning requirements for short term residential rentals.

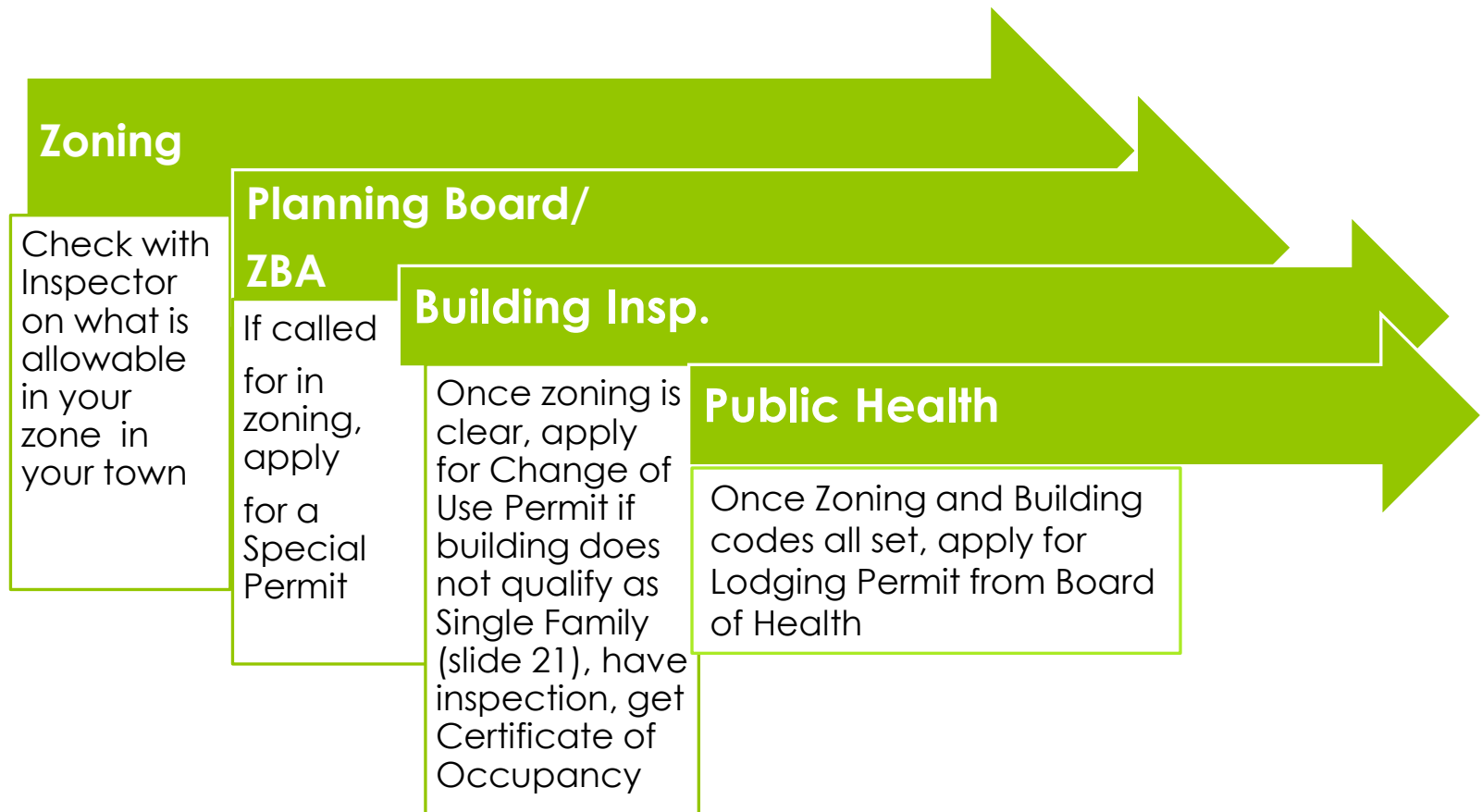
- If your zoning allows this use by right, move on to #2.
- If your zoning allows with a Special Permit from the Planning Board or Zoning Board of Appeals, contact them to start that process.
- If your zoning does not allow short term residential rentals, you could ask the Planning Board if they would be willing to consider an amendment to the Town's Zoning Bylaw.

Step Two: Building If allowed by Zoning, check with Building Inspector to see if a change of use permit is required under the building code (see slide 21) and apply for that permit. Implement any Building Code requirements identified by the Inspector.

Step Three: Health If allowed by Zoning and once building code compliant, apply for a lodging permit from your Town's Board of Health.

Note: In many towns, this costs at the most \$225 in total, once, less than \$100 annually

Local Approval Flowchart



State Legislation: H.3917

- 5% state and up to 6% local option excise tax being considered.
- <https://malegislature.gov/Bills/190/H3917>
- Contact: House Ways and Means Chair Jeffrey Sanchez, cc: Vice Chair Steve Kulik

THANK YOU!

Please fill out your evaluation forms



Speakers

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