FREQUENTLY ASKED QUESTIONS (FAQs)
AN ACT REGULATING AND INSURING SHORT-TERM RENTALS

Frequently asked questions (FAQs) published by the Division of Local Services (DLS) within the Department of Revenue provide general information about Massachusetts municipal tax and finance laws and DLS policies and procedures in effect when published. They do not answer all questions or address complex issues about their topics. FAQs are not public written statements of the Department. They are informational only as described in 830 CMR 62C.3.1(9)(c), and do not supersede, alter or otherwise change any Massachusetts General Law, Department public written statement or other source of law.

These FAQs provide information of interest to municipal officials regarding "An Act Regulating and Insuring Short-term Rentals", c. 337 of the Acts of 2018, (the Act) signed by Governor Baker on December 28, 2018. The Act added short-term rentals to the room occupancy excise under G.L. c. 64G and included other new provisions. These FAQs also include information regarding amendments to the Act that were contained in c. 5 of the Acts of 2019.

We currently have a local option room occupancy excise in my city/town. What actions do we need to take to have it apply to short-term rentals?

As a general rule, unless the legislation provides otherwise, a municipality that accepts a statute accepts any amendments the legislature subsequently makes to the statute. Therefore, if your city or town has already adopted a local option room occupancy excise under G.L. c. 64G, § 3A, your local excise will automatically apply to a short-term rental starting July 1, 2019 for which a rental contract was entered into on or after January 1, 2019. No further action is required for the local excise to apply to short-term rentals. The local excise applies to the same occupancies as the state excise.

You can find a listing of municipalities that currently have a local option room occupancy excise by visiting the Division of Local Services' **Municipal Databank**.

My city/town does not have a local option excise – how do we adopt it?

If a city/town has not yet adopted a local room occupancy excise, it may do so at any time by voting to accept G.L. c. 64G, § 3A and establishing the rate for its local room occupancy excise. The maximum local rate is 6% (6.5% in Boston). The local acceptance procedure is as follows:

- In cities, by majority vote of city council and if city has elected mayor, with mayor's approval
- In towns that have town meeting form of government, by majority vote of the annual or special town meeting
- Where there is a town council form of government, by majority vote of the council.

When will a city/town's acceptance of the local excise become effective?

First, the city/town must report its acceptance to the DLS Municipal Databank within 48

hours of the vote. The form is found on this DLS webpage. The effective date of local excise is the first day of the calendar quarter following 30 days after acceptance or the first day of a later calendar quarter if the later date is specified in the acceptance vote. See the below timetable:

Acceptance Vote	Excise Effective
May 31, 2019	July 1, 2019
June 1, 2019	October 1, 2019

Please refer to the DLS website for a more detailed acceptance timetable.

Is the city/town required to collect the local room occupancy excise?

No. The local excise is paid by the operator (proprietor) directly to DOR and DOR distributes the local share to the city or town. Payments to cities and towns are made on a quarterly basis by DOR.

Can our city/town vote that our local option excise not apply to short-term rentals?

No – The local excise applies to the same occupancies and rentals as the state room occupancy excise.

My city/town currently has a local option excise. May we vote to revoke it or amend the rate?

Yes. If a city/town has already accepted the local room occupancy excise, it may amend the excise rate or revoke its acceptance; however, it may not do so more than once in a 12-month period. The amendment and revocation procedure and effective dates are the same as with an original acceptance. G.L. c. 64G, § 3A.

Did the new law provide for other options for cities and towns in addition to the local option room occupancy excise?

Yes, if a city/town has adopted the local room occupancy excise under G.L. c. 64G, § 3A, it may adopt a local option community impact fee of up to 3% of rent regarding transfers of occupancies of two categories of short-term rentals described below. G.L. c. 64G, § 3D. (St. 2018, c. 337, § 6.) If a community has not adopted a local room occupancy excise, it cannot adopt any local option community impact fee. If a community revokes its local option excise, its local option community impact fee will automatically be revoked.

The acceptance procedure for the local option community impact fees is the same as required for accepting the local option room occupancy excise. A separate acceptance vote is required to adopt each local option community impact fee as shown below.

First Local Option Community Impact Fee (G.L. c. 64G, § 3D(a)) - The first local option community impact fee is adopted under G.L. c. 64G, § 3D(a) and applies to each transfer of occupancy of a "professionally managed unit," which is defined as one of two or more short-term rental units in same city/town not located within a single- or two- or three-family dwelling that includes the operator's (owner's) primary residence. The fee applies to transfers of occupancies on or after July 1, 2019 for which a rental contract was entered into on or after January 1, 2019. It does not apply to occupancies for which the rental contract was entered into before January 1, 2019. For example, if a summer vacation rental was booked last summer (or at any time before January 1, 2019), the local option community impact fee will not apply.

Second Local Option Community Impact Fee (G.L. c. 64G, § 3D(b)) - If the city/town has voted to adopt the local option community impact fee described above for "professionally managed units" under G.L. c. 64G, § 3D(a), it may by a separate additional vote, adopt the local option community impact fee on short-term rental units located within a two- or three-family dwelling that includes the operator's primary residence under G.L. c. 64G, § 3D(b). The impact fee will, again, apply only to transfers of occupancies on or after July 1, 2019 for which a contract was entered into on or after January 1, 2019. If the city/town has not adopted the local option community impact fee under G.L. c. 64G, § 3D(a) (above), it cannot adopt the local option community impact fee under G.L. c. 64G, § 3D(b).

DLS's Municipal Databank must be notified (within 48 hours) when the community adopts a local option community impact fee by completing the notification of acceptance form found here and providing a certification of the vote(s) of the legislative body.

The effective date of the local option community impact fee will be the first day of the calendar quarter following 30 days after the vote or the first day of a later calendar quarter if the later date is specified in the adoption vote. See the below timetable:

Acceptance Vote	**Effective Date**
May 31, 2019	July 1, 2019
June 1, 2019	October 1, 2019

The timetable is the same as the local excise acceptance timetable. Please refer to the DLS website for the local excise acceptance timetable.

Who collects the local option community impact fee?

The local option community impact fee is paid by the operator (proprietor) directly to DOR and DOR distributes the local share to the city or town at the same time as the room occupancy excise distribution. St. 2019, c. 5, § 33(c).

Are there any restrictions on how a municipality spends these funds?

The revenue from the local room occupancy excise is general fund revenue and may be appropriated by the city/town's legislative body for any municipal purpose. The revenue from the local option community impact fee, however, is partially restricted. Thirty-five percent (35%) of the impact fee must be dedicated to affordable housing or local infrastructure projects. G.L. c. 64G, § 3D(c). As a result, thirty-five percent (35%) of the local option community impact fee revenue must be accounted for as a "receipts reserved for appropriation" account for affordable housing or local infrastructure projects. A legislative body vote will be required to appropriate these funds for either affordable housing or local infrastructure projects. The balance of the local option community impact fee, the remaining 65%, will be general fund revenue of the city/town and may be appropriated for any municipal purpose. However, under G.L. c. 64G, § 3D(c), the city or town may, by legislative body vote, dedicate more than the required 35%, up to 100% of the local option community impact fees to affordable housing or local infrastructure projects. In that case, the increased percentage of the revenue from the impact fee will be credited to the receipts reserved for appropriation account. Any amount not so dedicated will be general fund revenue. A city or town's legislative body vote regarding a dedication in excess of the required 35% will be effective on the July 1 following the vote and apply until a subsequent legislative body vote changes the percentage which would then become effective the next following July 1 after that vote. "A local infrastructure project" is a capital project for which a community could borrow. For example, the legislative body could appropriate from this receipts reserved for appropriation account to fund the acquisition of a fire truck or to fund road improvements, but not to fund the payment of debt service.

May a city/town adopt a local by-law or ordinance regarding short-term rentals?

Yes, under the new G.L. c. 64G, § 14, a city/town may adopt an ordinance or by-law to regulate operators registered with DOR. Operators are defined under G.L. c. 64G, § 1 as "a person operating a bed and breakfast establishment, hotel, lodging house, short-term rental or motel in the commonwealth …." We suggest that cities and towns work with their local counsel if they wish to adopt a local by-law or ordinance.

How can a city or town obtain a list of establishments who are registered with DOR?

A list of establishments who are registered with DOR is available through the DLS Databank on request. A city or town should update this information annually so it is current. Contact: databank@dor.state.ma.us .

What is the Cape Cod and Islands Water Protection Fund?

The short-term rental legislation also includes a new Cape Cod and Islands Water Protection Fund (Fund). It is funded, in part, by a new 2.75% excise on all occupancies subject to the room occupancy excise located within a municipality that is a member of the Fund. It does not apply to occupancies where the total amount of daily rent (or its equivalent) is less than $15 per day. G.L. c. 64G, § 3C. This excise is paid by the

operator to DOR with its room occupancy excise. Revenues from this new excise are to be credited to the Fund. The effective date of this excise is July 1, 2019.

How do I find out if my city/town is a member of the Cape Cod and Islands Water Protection Fund?

Under G.L. c. 29C, § 19, "Each municipality within Barnstable or Nantucket counties or within the county of Dukes County shall be a member of the fund if it is subject to: (i) an area wide wastewater management plan under section 208 of the federal Clean Water Act, 33 U.S.C. 1288; or (ii) a suitable equivalent plan determined by the department of environmental protection."

According to the Mass. Dept. of Environmental Protection (DEP) and the Cape Cod Commission, all Barnstable County towns are currently subject to an area wide wastewater management plan under section 208 of the federal Clean Water Act (the "208 Plan Update") and so all are members of the Fund. (The plan can be found at: http://www.capecodcommission.org/index.php?id=506.) Island towns (Nantucket and Dukes County) are not currently members of the Fund. They will need to work with the DEP to obtain its determination of a "suitable equivalent plan" to join the Fund. Those towns should contact DEP for more information on how to obtain a determination by DEP that the town's plan is a "suitable equivalent plan."

If my city/town is a member of the Fund, may it withdraw from the Fund?

A city/town may withdraw from the Fund by a two-thirds vote of its legislative body; however, it may not withdraw during the term of a financial assistance award from the Fund. Furthermore, a city/town may not withdraw from the Fund until March 28, 2020, one year after the effective date of St. 2018, c. 337. We interpret this to mean that although the city/town may vote to withdraw before March 28, 2020, the effective date of the vote of withdrawal cannot be before March 28, 2020.

If a city/town withdraws from the Fund and wishes to return to the Fund, it may, by majority legislative body vote, return to the Fund after withdrawal. However, it cannot receive funding from the Fund for two years after its vote to return to the Fund.

In the event of a withdrawal from the Fund or a return to the Fund after a withdrawal, the city or town must notify the DLS Municipal Databank within 48 hours of the vote of the legislative body. Send notification by email to databank@dor.state.ma.us and include a certification of the vote by the city/town clerk.

If my city/town is not currently a member of the Fund and later becomes a member of the Fund, when does the 2.75% excise become effective?

As explained above, a city or town that is within Nantucket and Dukes County that wishes to join the fund would have to contact DEP to obtain its determination that the city/town has a "suitable equivalent plan." Once DEP makes that determination, the city/town will be a member of the Fund. For those becoming members of the Fund after June 1, 2019, according to St. 2018, c. 337, § 11, as amended by St. 2019, c. 5, § 36,

the 2.75% excise will become effective on the first day of the calendar quarter following 30 days after the municipality has joined the fund. (The timetable for implementation is the same as the above timetables for implementation of local option room occupancy excise and local option community impact fee.) If, however, the city or town wishes the excise to become effective later, it may through a majority vote of its chief executive officers, designate the effective date to be the first day of a later calendar quarter.

A city or town that becomes a member of the Fund must report its joining the Fund to the DLS Municipal Databank within 48 hours of being notified of DEP's determination, unless the city or town's chief executive officers vote to designate a later effective date for the excise, in which case, the city or town must report its joining the Fund within 48 hours of the chief executive officers' vote. Send notification by email to databank@dor.state.ma.us and include a copy of DEP's determination and, if applicable, a certification of the vote of the chief executive officers by the city/town clerk.

Note that under G.L. c. 4, § 7, cl. 5B, the "chief executive officer'' includes the mayor in a city and the board of selectmen in a town unless some other municipal office is designated to be the chief executive officer under the provisions of a local charter.

For more information, please see the FAQs on the Dept. of Revenue's website and its Technical Information Release, TIR 19-3.