



CITY OF SOMERVILLE, MASSACHUSETTS LAW DEPARTMENT

June 9, 2015

Honorable Board of Aldermen
City Hall
93 Highland Avenue
Somerville, MA 02143

Re: That the City Solicitor provide an opinion on applying the local option room occupancy excise to short-term rentals and whether zoning ordinance changes are required

Board Order No. 199123

Dear Honorable Board Members:

You have asked this office to provide an opinion on two questions concerning short-term residential rentals of property: (1) whether the local option room occupancy excise may apply; and (2) whether the zoning ordinance must be amended regarding short-term rentals.

In my opinion, the local option room occupancy excise generally does not apply as discussed below, and special legislation is required to impose, an excise tax on short-term residential rentals. As to the second question, in my opinion, whether to amend the zoning ordinance regarding short-term residential rentals is a legislative determination. Please note that a change in the ordinance alone does not impact the first question. Below is a summary of how the zoning ordinance is currently interpreted.

MGL c. 64G, s. 3A is a local option statute which authorizes the city to impose a local excise tax "upon the transfer of occupancy of any room or rooms in a *bed and breakfast establishment, hotel, lodging house, or motel*" in the city. (emphasis added). The Massachusetts

¹Each term is defined as follows: "*Bed and breakfast establishment*", a private owner-occupied house where four or more rooms are let and a breakfast is included in the rent, and all accommodations are reserved in advance. "*Hotel*", any building used for the feeding and lodging of guests licensed or required to be licensed under the provisions of section six of chapter one hundred and forty. "*Lodging house*", a house where lodgings are let to four or more persons not within the second degree of kindred to the person conducting it, licensed or required to be licensed under section twenty-three of chapter one hundred and forty. "*Motel*", any building or portion thereof, other than a hotel or lodging house, in which persons are lodged for hire with or without meals and which is licensed or required to be licensed under the provisions of section thirty-two B of chapter one hundred and forty, or is a private club. GL c. 64G, s.1.

Department of Revenue has advised that the excise does not generally apply to short-term rentals of residential properties, such as apartments, condominiums, or homes nor an internet intermediary (i.e. a website). In my opinion, such rentals generally do not constitute a "bed and breakfast establishment, hotel, lodging house, or motel" as defined in MGL c. 64G. "The local excise applies to all room occupancies subject to the state room occupancy excise and a municipality may not vary the occupancies subject to the excise." *Dept. of Revenue Div. of Local Services, Bulletin 2009-15B*. Accordingly, in my opinion, in order to apply the excise to all short-term residential occupancies of a private home or similar accommodation, special legislation is necessary.

On the second question, I am informed the City planning department's interpretation of the current zoning ordinance, is as follows. The short-term rental of an entire dwelling unit does not meet the occupation duration specified in the definition of a "residential use²", and therefore constitutes an unpermitted use pursuant to section 7.7 of the ordinance. However, the short-term rental of one to three rooms may be permitted as a "tourist home³" use; provided it is owner-occupied and all other requirements of the ordinance are met.

Please contact me if you have any additional questions.

Very truly yours,



Jason D. Grossfield
Assistant City Solicitor

cc: Mayor Joseph A. Curtatone
John Long, City Clerk
George Proakis, Director of Planning

Exempt from the excise tax is a "*bed and breakfast home*", defined as "a private owner-occupied house where three or fewer rooms are let and a breakfast is included in the rent, and all accommodations are reserved in advance". MGL c. 64G, s. 2.

² *Som. Zoning Ord. §2.2.137. Residential (Use)*. The occupancy, use or intended use of land or structures or any portion thereof by persons where living, sleeping, cooking and eating accommodations are designed for ongoing use by the occupant for a stable period of time, generally several months or longer. (emphasis added).

³ *Som. Zoning Ord. §2.2.165. Tourist Home*. A residential use accessory to an owner-occupied principal residential use, and providing up to three (3) rooms without kitchen facilities for separate lease to tourists or transient persons, with or without meals, on an overnight or short-term basis of usually less than seven (7) days, and which holds any required licenses. (Also see related use, "Bed and Breakfast, Historic").