

**Municipal Alert
February 2019**

**Important New Legislation Helps Municipalities Address Growing
Short-Term Rental Industry**

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In recent years local officials have grappled with the proliferation of short-term rentals arranged through internet platforms such as Airbnb, HomeAway and VRBO. The newly adopted state law, Chapter 337 of the Acts of 2018 (the “Act,” approved by the Governor on December 28, 2018), effects important changes relative to this issue. Below we summarize some of the Act’s salient provisions.

I. Local Room Occupancy Excise Tax

The Act amends local option statute G.L. c. 64G, § 3A to include short-term rentals among those that are subject to a local room occupancy excise tax of up to 6% of total rent. A municipality that previously accepted Section 3A may begin taxing any short-term rentals that both: (a) occur on/after July 1, 2019; and (b) are booked under “contracts with occupants [that] were entered into on or after January 1, 2019.” Municipalities that wish prospectively to accept Section 3A, or to modify their tax rate thereunder, may do so via the applicable acceptance procedure. MHTL clients considering acceptance should contact the attorney assigned to their account for guidance regarding voting procedures, timing and other relevant particulars. Upon imposition of the tax, and as with local room occupancy excise taxes generally under Section 3A, operators of short-term rentals must pay local excise taxes directly to the Department of Revenue, for distribution to the municipality.

II. Community Impact Fee

The Act also authorizes municipalities that have accepted Section 3A to, in addition and via separate local option votes, impose a “community impact fee” of up to 3% on two categories of short-term rentals, namely:

1. “[A] professionally managed unit,” defined as “1 of 2 or more short-term rental units that are located in the same city or town, operated by the same operator and are not located within a single-family, two-family or three-family dwelling that includes the operator’s primary residence;” and

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2. Municipalities that have accepted a community impact fee for professionally managed units may, in addition and via a further local option vote, impose a community impact fee upon “a short-term rental unit that is located within a two-family or three-family dwelling that includes the operator’s primary residence.”

Unlike for local room occupancy excise taxes, operators must pay community impact fees directly to the municipality. Further, while local room occupancy excise receipts constitute general fund revenue that may be appropriated for any municipal purpose, the Act requires that municipalities dedicate a minimum of 35% of their community impact fee revenues to “affordable housing or local infrastructure projects.” In initial guidance the DOR has advised that the restricted portion of community impact fee revenues “must be accounted for as a ‘receipts reserved for appropriation’ account,” while the remaining maximum of 65% shall constitute general fund revenue. See “Short-term rentals frequently asked questions,” available at: <https://www.mass.gov/info-details/short-term-rentals-frequently-asked-questions>.

III. Bylaws/Ordinances

The Act expressly recognizes a municipality’s authority to adopt bylaws/ordinances to regulate short-term rentals in various enumerated ways, including by, among other things:

1. Regulating “the existence or location of operators,” . . . including, e.g., the “class of operators,” the “number of local licenses or permits issued to operators,” and “the number of days a person may operate and rent out an accommodation in a calendar year;”
2. Imposing licensing or registration requirements;
3. Requiring proof of compliance with building, zoning, health and other legal requirements; and
4. Establishing “a reasonable fee to cover” the municipality’s associated “administration and enforcement” costs.

In formulating bylaws or ordinances it is prudent to consider not only the Act, but also the potential implications of recent state and federal court litigation challenging local regulation of short-term rentals, such as *Airbnb, Inc. v. City of Boston* (involving Airbnb’s November, 2018 lawsuit in Federal District Court seeking to enjoin the

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application of various provisions of Boston's ordinance, on constitutional and other grounds) and *Styller v. Lynnfield ZBA* (appeal of Land Court ruling that short-term rental was prohibited and not entitled to protection as a pre-existing non-conforming use). We are monitoring these cases closely and will apprise clients promptly of any relevant developments.

This Alert was prepared by Peter Mello who recently joined MHTL – Peter has spent a great part of his professional career representing and dealing with government agencies and subdivisions. Peter is a 15 year experienced litigator in a variety of areas including construction, land use, environmental, employment and others.

We look forward to Peter providing our present and future clients with first class representation.

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