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CITY OF CAMBRIDGE

Office of the City Solicitor
795 Massachusetts Avenue
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April 1, 2019

Louis A. DePasquale
City Manager
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

Re: ***Response to Awaiting Report No. 19-1, Policy Order #4 of 1/7/19 Re: Report on the recently adopted regulations of the short-term rental revenue and the necessary steps to impose and access the revenue from the excise and community impact fees***

Dear Mr. DePasquale:

We have prepared this legal opinion in response to Awaiting Report No. 19-1, Policy Order #4 of 1/7/19, which requests a report on the recently adopted regulations of the short-term rental revenue and the necessary steps to impose and access the revenue from the excise and community impact fees. Specifically, Awaiting Report No. 19-1 relates to the recently enacted legislation known as An Act Regulating and Insuring Short-Term Rentals, which is Chapter 337 of the Acts of 2018 (the "Act"). Awaiting Report No. 19-1 requests guidance concerning the process by which the City can apply the local option room occupancy excise tax (the "Local Room Tax") to dwelling units rented on a short-term basis (a "Short-Term Rental" or "STR"), as well as the process for imposing the local option community impact fee (the "Community Impact Fee") to Short-Term Rentals.

As set forth below in more detail, the City has previously adopted the Local Room Tax in the amount of six percent (6%), and the Act automatically amends the Local Room Tax to also apply to Short-Term Rentals, so no further action is required by the City for the Local Room Tax to apply to Short-Term Rentals. The Act additionally establishes a Community Impact Fee in an amount up to three percent (3%), and it is applicable to two different categories of Short-Term Rentals. If the City wishes to adopt the Community Impact Fee, it has to vote to accept it as to each of the categories. A chart summarizing all applicable short-term rental taxes and fees is attached.

A. Background

The Act was signed into law on December 28, 2018, with portions of the Act not going into effect until July 1, 2019. The most significant provisions of the Act are as follows: 1) the creation of a statewide registry of all STR operators that will be available to the public; 2) the imposition of state room occupancy excise tax (the “State Room Tax”) to Short-Term Rentals; 3) the expansion of the Local Room Tax to Short-Term Rentals; 4) the creation of an exemption from the State and Local Room Taxes if the STR unit is only rented for fourteen (14) days or less per calendar year; 5) the creation of the Community Impact Fee that is payable by a STR operator directly to the municipality; 6) that municipalities are authorized to regulate Short-Term Rentals by ordinance; and 7) the imposition of insurance requirements on Short-Term Rentals.

The State and Local Room Taxes and Community Impact Fee provisions will be addressed in more detail below.

As to the registry of Short-Term Rentals, the Act requires that all STR operators apply for and be issued a certificate of registration by the Department of Revenue (“DOR”). The Act also requires a publicly available registry of all STR operators. At a minimum, the registry will include a list of accommodations offered for Short-Term Rental, but it shall only include the name of the street and the city where the STR is located, and not the street number. The Act also authorizes the Executive Office of Housing and Economic Development to promulgate regulations concerning the registry by September 30, 2019, and those regulations will further establish what information will be included in the registry.

Additionally, the Act requires that STR operators maintain insurance with coverage of at least one million dollars to cover Short-Term Rentals. The Act allows insurers that write homeowners and renters policies to exclude coverage for claims arising from the STR use, so it may be necessary for operators to obtain separate policies to provide the necessary coverage. The Act also permits operators to not maintain separate coverage if the hosting platform maintains equal or greater coverage.

The Act also authorizes municipalities to regulate Short-Term Rentals by ordinance or bylaw. The Act explicitly authorizes municipalities to regulate the existence of Short-Term Rentals and the locations of Short-Term Rentals, among other things. Additionally, the Act allows a municipality to require Short-Term Rentals to register with the municipality, in addition to the state registry, and to require health and safety inspections, among other things. A municipality may “establish a reasonable fee to cover the costs associated with the local administration and enforcement of regulating operators and accommodations.” In our opinion, the Act explicitly authorizes the City’s STR zoning ordinance, which is Article 4, Section 4.60, *et seq.*, of the Cambridge Zoning Ordinance (the “STR Ordinance”), and the STR Ordinance is not in conflict with the Act.

B. State Room Occupancy Excise Tax for Short-Term Rentals

The Act amends G.L. c.64G, which is the room occupancy excise tax statute, to make Short-Term Rentals on and after July 1, 2019, subject to State Room Tax. As an initial matter,

the Act amends the definition of “occupancy” to include the use or possession of a Short-Term Rental for a period of not more than thirty-one (31) consecutive days. The Act then imposes the State Room Tax on the transfer of occupancy of a Short-Term Rental. However, the Act does create an exemption for Short-Term Rentals that are not rented for more than fourteen (14) days in a calendar year. Those exempt Short-Term Rentals still are required to register and be included in the publicly available registry, but are not subject to either the State Room Tax or Local Room Tax.

For all Short-Term Rentals that are rented for more than fourteen (14) days a calendar year, the Act imposes a five percent (5%) room occupancy excise tax on the total amount of rent. However, DOR imposes an additional uncodified surtax of point seven percent (0.7%) to the rate, making the State Room Tax rate five point seven percent (5.7%). Additionally, pursuant to the Act, in certain cities in the state, including Cambridge, a convention center financing fee (the “Convention Center Fee”) is imposed upon the transfer of occupancy of Short-Term Rentals, just as it has been imposed on other accommodations that are subject to the State Room Tax, such as hotels and motels. The Convention Center Fee is two point seventy-five percent (2.75%) of the rent.

The Act amends and expands the definition of “rent” from the prior definition which was “consideration received for occupancy valued in money” to the new definition which is “the total consideration paid by or on behalf of an occupant, including any service, cleaning or other charge to an operator ... valued in money.” This change means that for purposes of calculating the State and Local Room Taxes and the Convention Center Fee, as well as for the Community Impact Fee addressed below, rent includes optional charges such as cleaning fees, service charges, and also security deposits.

C. Local Option Room Occupancy Excise Tax for Short-Term Rentals

In addition to applying the 5.75% State Room Tax to Short-Term Rentals, the Act applies the Local Room Tax to Short-Term Rentals on and after July 1, 2019. The Local Room Tax is available by local acceptance. General Laws c.64G, §3A has previously provided that a municipality may accept the provisions of that statute and if it does, may impose a Local Room Tax at a rate of up to six percent (6%) of the rent. The City has previously accepted the provisions of G.L. c.64G, §3A, and the Local Room Tax of six percent (6%) was effective on October 1, 2009.

The Act amends G.L. c.64G, §3A by adding that the 6% Local Room Tax also applies to Short-Term Rentals. Further, the Act provides that if a municipality accepted the provisions of G.L. c.64G, §3A before July 1, 2019, it “shall be deemed to have accepted said section 3A of said Chapter 64G for the purposes of this act.” Accordingly, the 6% Local Room Tax automatically applies to Short-Term Rentals. The DOR has confirmed that according to the above-referenced language and the general principle that if a municipality accepts a statute the municipality is also accepting any amendments made by the legislature, the City’s prior acceptance of the 6% Local Room Tax automatically applies to Short-Term Rentals. No further action is necessary by the City to apply the 6% Local Room Tax to Short-Term Rentals, unless the City wishes to amend or revoke its acceptance.

As with the 5.75% State Room Tax, the 6% Local Room Tax will apply to the full amount of rent paid for occupancy of the Short-Term Rental. Additionally, the State Room Tax, Local Room Tax and the Convention Center Fee are all paid by the occupant, collected by the operator, and then paid to DOR. DOR then distributes the City's share back to the City.

D. Community Impact Fee

The Act also creates a new section of G.L. c.64G, which is codified as Section 3D, and provides for the Community Impact Fee. The Community Impact Fee is not a tax, but rather a fee charged to and paid by operators of Short-Term Rentals for rentals on and after July 1, 2019. The Community Impact Fee is payable directly to municipalities. The fee may be up to three percent (3%) of the rent, and if adopted by the City, at least thirty-five percent (35%) of the funds collected have to be used for affordable housing or local infrastructure projects. The remaining portion goes into the general fund.

In order to adopt the Community Impact Fee, a municipality has to have first adopted the Local Room Tax, which has been done by the City. Then the Community Impact Fee is broken down into two categories, each of which requires a further and separate vote to accept by the City.

The first category is a Community Impact Fee imposed on the transfer of occupancy of a "professionally managed unit." The Act defines "professionally managed unit" 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." Although the STR Ordinance, which regulates Short-Term Rentals in the City, only allows Short-Term Rentals that are operator-occupied or owner-adjacent, it is possible to have Short-Term Rentals that are lawful under the STR Ordinance and fall under the Act's definition of professionally managed unit. Specifically, under the STR Ordinance, it is possible to have a four-unit residential building where one unit is being used as an owner-adjacent STR, and another unit is being used as an operator-occupied STR.¹ Both of the units in that situation would constitute professionally managed units under the Act's definition, even though they are not operated by a professional management company. In our opinion, because a unit in that situation falls under the definition of professionally managed unit under the Act, such a unit will be subject to the first category of Community Impact Fee, if the City adopts such Community Impact Fee.

The second category of Community Impact Fee can only be adopted if the professionally managed unit Community Impact Fee is adopted first. The second category is a Community Impact Fee imposed on "the transfer of occupancy of a Short-Term Rental that is located within

¹ The STR Ordinance, Section 4.62, includes the following definitions:

"d. Operator-occupied short-term rental. The short-term rental of a dwelling unit, or of no more three (3) individual bedrooms within such dwelling unit, that is the primary residence of its operator.

e. Owner-adjacent short-term rental. The short-term rental of a dwelling unit that is not the primary residence of the operator, but is located within a residential building with a total of four or fewer dwelling units where all dwelling units in the building are owned by the operator, and one of the dwelling units in the building is the primary residence of the operator."


a two-family or three-family dwelling that includes the operator's primary residence." If the City adopts this category of Community Impact Fee, under the STR Ordinance, any operator-occupied STR or owner-adjacent STR in a two- or three-family dwelling will be subject to the Community Impact Fee. The Short-Term Rentals that are permissible under the STR Ordinance but will not be subject to either category of Community Impact Fee are: 1) single-family dwellings used as operator-occupied STRs; 2) operator-occupied STRs located in four-family dwellings where there is not also an owner-adjacent STR; 3) owner-adjacent STRs located in four-family dwelling where there is not also an operator-occupied STR; and 4) operator-occupied STRs located in buildings with more than four dwelling units.

Based on the foregoing, in our opinion, the City Council may vote to accept the two categories of Community Impact Fee. Both of the Community Impact Fee categories shall be accepted by separate votes and in the following manner. The City Council may first accept G.L. c.64G, §3D(a), the professionally managed unit Community Impact Fee, by a majority vote. Then if the City Council accepts G.L. c.64G, §3D(a), the City Council may accept G.L. c.64G, §3D(b), the two- and three-family Community Impact Fee, by a majority vote.

E. Conclusion

In conclusion, on July 1, 2019, Short-Term Rentals in the City will be subject to the 5.75% State Room Tax, the 2.75% Convention Center Fee and the 6% Local Room Tax. Additionally, the City Council may vote to accept the professionally managed unit Community Impact Fee in an amount up to three percent (3%), and if it accepts that, the City Council may also vote to accept the two- and three-family dwelling Community Impact Fee in the same amount, which will also apply to Short-Term Rentals on July 1, 2019.

Very truly yours,



Nancy E. Glowa
City Solicitor