



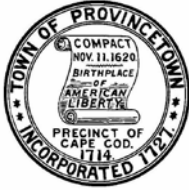
Board of Selectmen

Meeting Agenda

The Provincetown Board of Selectmen will hold a public meeting on Monday, November 28, 2016, at 5:00 p.m. in Judge Welsh Room, Town Hall, 260 Commercial Street, Provincetown, MA 02657.

1. Joint Meeting with Board of Health – Discussion regarding the Rental Certificate Program, solid waste removal regulations and other Board of Health matters - Director of Health Morgan Clark.
2. Others – Other matters that may legally come before the Board not reasonably anticipated by the Chair 48 hours before the meeting. Votes may be taken.

Posted by the Assistant Town Clerk: www.provincetown-ma.gov, 11/22/16 1:20 pm dv



Provincetown Board of Selectmen
AGENDA ACTION REQUEST

Monday, November 28, 2016

1

JOINT MEETING – BOARD OF HEALTH

Rental Certificate Program; Solid Waste Removal Regulations

Requested by: Town Manager David B. Panagore

Action Sought: Discussion

Proposed Motion(s)

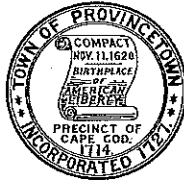
Discussion dependent – votes may be taken.

Additional Information

See attached materials.

Board Action

<i>Motion</i>	<i>Second</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Disposition</i>



**Town of Provincetown
260 Commercial Street
Provincetown, MA 02657**

**Office of Community Development
Telephone (508) 487-7020
Fax (508) 487-7040**

MEMORANDUM

**TO: David B. Panagore, Town Manager
David Gardner, Assistant Town Manager**
FROM: Morgan Clark, Health Director
DATE: October 18, 2016
RE: Board of Health Rental Registration Program

The Provincetown Health Department regulates the rental property industry in Provincetown by registering all rental units and ensuring rental properties meet minimum standards for habitation. Regulating rental units in Provincetown is the most expensive and time consuming program run by the Health Department. This is a factor of both the sheer number of units in Provincetown and the labor intensive process of review, inspection, and enforcement for noncompliant units. Whereas there are approximately 200 food service establishments, there could be 3,000 or more rental units in Provincetown. (The Assessor cites 3,789 residential dwellings in Provincetown. There are 2,642 year round residents according to the 2010 Census.)

Program Model

Prior to the fall of 2015, the Rental Certificate program was administered via a lackluster yet labor intensive model. This model involved mandatory inspections of every unit but limited public outreach about the program and lax enforcement of properties out of compliance because inspections took up the bulk of staff time. Inspections originating from voluntary application to the program almost never yielded concerns over the safety of the rental units, and never warranted follow up inspections or enforcement. At the same time, the Health Department investigated rental properties received through the complaint process which often yielded violations of the minimum standards of human habitation (105 CMR 410) and the local registration requirement.

In 2015, the Board of Health and the Town Administration requested the Health Department design a more robust, effective regulatory program for rental units. Taking into consideration past experiences, the new model includes more aggressive outreach about the program, a posting requirement to make the program visible to consumers, and incentivizes voluntary registration by charging a double fee for discovery. This model allows the Department to focus the bulk of staff time and resources on compliance with state and local regulations through review, inspection, and other enforcement actions.

The new model has resulted in an increase in rental applications. For example, there were 297 rental applications in the six months prior to the Code Compliance Officer starting the aggressive

outreach strategy. In the almost five months since the outreach began, another 575 rental applications were submitted, a figure almost double the previous six months.

Operational Costs of Program

The fee for registering a rental unit pays for the regulatory program, which regulates the entire rental industry in Provincetown and ensures minimum safety standards are met. In other words, the fee finances a program in which all rentals are registered, all complaints are investigated, and all violations of sanitation standards are enforced accordingly. It does not pay for an individual inspection, nor were inspections of the past provided as a service to property owners.

Currently staff members enter applications into the online permitting database for applicants, as there are still kinks to work out in the online permitting program. Once an application is received, the staff time to process an application varies widely. Staff members estimate that approximately ten percent of rental units submit details that match existing Community Development, Assessor, and Sewer records and can be processed quickly. The majority of applications require additional review by one or more staff members and requests for more information from the owner.

Staff estimate that at least a quarter of all rental applications received require significant staff time. These applications usually require one or more staff member review to determine accuracy of details submitted, inspect to determine compliance with habitation standards, or execute subsequent enforcement actions. Cases in which violations are egregious or numerous may involve travel, constable services, and legal fees as well.

Historically the fee to register a rental unit has been assessed on a three year basis, presumably to make compliance less onerous for the property owner and to better facilitate the scheduling of the then-mandatory inspections of each unit. In 2015 it was decided to adopt a flat fee per rental unit because the fees collected are used to run the entire program, not to pay for inspections as a service to the property owner.

On June 18, 2015, the Board of Health voted to increase the fee to \$50/year/unit, or \$150 per unit for the three year period of certificate. In the winter of 2016 (BOH 2/4/16, BOS 2/22/16), the rental certificate fee was increased to \$300 per unit or \$100/year/unit to better reflect the true cost of running the regulatory program and the cost of increasing staff effort on enforcement.

Fee Policies

Fees were historically waived for affordable units. In April 2016, as part of fine tuning the program to facilitate the move to online permitting, the Board of Health voted to waive fees for deed restricted affordable and community housing units as defined by the Provincetown Zoning By-laws and for those units eligible for the Town of Provincetown's tax exemption program administered by the Assessor's Department, in keeping with the Board of Selectmen's own policies.

On February 4, 2016, the Board of Health included in its Policies the ability to assess a non-compliance fee if a property is found to be noncompliant in cases of intentional misrepresentation on an application or not applying at all. The policy had been in the Rental

Regulation specifically, and then was moved to apply to all Board of Health licensees to incentivize compliance generally.

Conclusion

The new model for the rental regulation program is in its infancy. If there is consensus that there should be a more proactive inspection system, the Health Department would strongly suggest implementing a randomized selection process to choose the rental units to inspect. Past experience inspecting all units has shown that the Provincetown rental market does not warrant inspection of every unit.

PART XII

ARTICLE 5 - Habitations for Rent Regulation

Public Hearing: June 18, 2015

Board of Health Approved: June 18, 2015

Revised: December 3, 2015

Board of Health Approved: February 4, 2016

The Provincetown Board of Health promulgates the following regulation under 105 CMR 410.000 Minimum Standards of Fitness for Human Habitation, adopted under authority of M.G.L. c. 111, Sections 3 and 127A.

Section 1: Purpose

The purpose of the regulation is to protect the public health, safety and welfare of both the general public and the occupants of all rental housing units, including but not limited to, year round, seasonal and weekly rentals.

Section 2: Rental Certificate Required

No property owner shall rent or lease, or offer to rent or lease, or cause to rent or lease any building or any portion of a building to be used for human habitation without first obtaining a Rental Certificate from the Board of Health.

Section 3: Application for Rental Certificate

Application for such certificate shall be made to the Board of Health through the Town's on-line permitting portal. The application shall contain the name and address of the property owner, the address of the property being registered, the number of units in the registered property, the number of rooms in each unit, and the size (in square feet) of each unit.

The application shall include the name and phone number of one or more responsible individuals who can be reached and who shall be available at all times (twenty four hours per day, seven days per week) to respond to emergencies and requests for assistance from tenants and/or board of health staff within one hour of being called.

The application shall include a certification by the owner or its authorized agent, under pains and penalties of perjury, that they have inspected each unit and that it complies with all applicable laws, including but not limited to the State Sanitary Code, 105 CMR 410.000, et seq., the State Building Code, 780 CMR and the Town of Provincetown Zoning Bylaws.

The application shall be accompanied by the applicable fee. Fees shall be waived for deed restricted affordable and community housing units as defined by the Provincetown Zoning Bylaws and for those units eligible for the Town of Provincetown's tax exemption program administered by the Assessor's Department.

Section 4: Rental Certificate -- Conditions, Term and Fees

Rental Certificates shall be issued subject to such conditions as the Board of Health deems necessary for the protection of public health, safety and welfare.

The Rental Certificates shall specify the maximum number of occupants that may be permitted in each unit. Maximum occupancy will be determined by Board of Health staff based on information provided in the application and available Town records. An inspection may be required to aid in the determination of maximum occupancy.

The Rental Certificates shall specify the name and contact information for persons responsible for responding to emergencies and requests for assistance from tenants and/or Board of Health staff.

The Rental Certificate shall be conspicuously posted on the premises in a location accessible to all occupants and visitors.

All advertisements of property for rent shall clearly post the Rental Certificate number assigned by the Town of Provincetown.

Rental Certificates will be effective for three years from the date of issue, unless sooner revoked in accordance with these regulations.

The fee for a Rental Certificate shall be listed in the Board of Health fee schedule.

Section 5: Owner's Duty of Compliance

It shall be the responsibility of the property owner to ensure that compliance with the conditions set forth in the Rental Certificate and all applicable laws relative to the habitation of the premises is maintained at all times.

It shall be the responsibility of the property owner to ensure that the maximum occupancy of the premises is not exceeded at any time.

It shall be the responsibility of the property owner to ensure that the individual(s) identified as being available for responding to emergencies and requests for assistance are in fact available at all times and that a prompt and appropriate response is provided.

Section 6: Suspension, Modification or Revocation of Rental Certificate

The Board of Health may suspend or revoke any Rental Certificate, after a hearing and in accordance with the procedures set forth in 105 CMR 410.830-410.860, for any violation of any provision of this regulation, the State Sanitary Code, or any other applicable General Law, regulation or by-law intended to protect public health, safety and/or the environment.

The Board of Health may, in lieu of suspension or revocation, modify any Rental Certificate to impose additional conditions, including but not limited to a requirement for periodic inspections and/or a limitation on the maximum number of occupants allowed.

If any Rental Certificate is suspended or revoked, the owner of the premises shall be responsible for finding alternative and comparable housing for any and all tenants until such time as the tenancy ends or the rental certificate is reinstated.

This regulation is intended to further the objectives of and to act in concert with any existing federal, state or local laws concerning the maintenance of property and the habitation of dwellings. Nothing in this regulation is intended to limit or restrict the authority of the Board of Health, or any other board, commission or officer of the Town to act in accordance with federal, state and local laws within their jurisdiction, including but not limited to the emergency condemnation procedures set forth in the State Sanitary Code.

The Board of Health may enforce the regulation or enjoin violations thereof through any lawful process; and the election of one remedy by the Board of Health shall not preclude enforcement through any other lawful means.

Section 7: Fines and Penalties

Any agent of the Board of Health may enforce this regulation.

Whoever violates any provision of this regulation may be penalized by a non-criminal disposition process as provided in G.L. c.40, §21D and the Town's non-criminal disposition by-law. If non-criminal disposition is elected, then any person who violates any provision of this regulation shall be subject to the penalty of \$300.

Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

As an alternative to enforcement through non-criminal disposition, whoever violates any provision of this regulation may be penalized by indictment or on complaint brought in the district court. Except as may be otherwise provided by law and as the district court may see fit to impose, the maximum penalty for each violation shall be \$1,000 dollars.

Section 8: Severability

If any provision of this regulation is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

Section 9: Operation and Effect

This regulation shall become effective March 1, 2016.

PART VI

ARTICLE 3 - Sanitation Collection & Disposal

Revised April 17, 2003

Revised September 10, 2009

Revised March 20, 2014

Section 1: Residential Collection

- A. Schedule of days for collection is established by the Department of Public Works and approved by the Board of Health and shall be widely posted.
- B. All residential households are allowed two 32-gallon containers of refuse and up to four 15-gallon or two 32-gallon recycling bins. 32-gallon recycling bins must be affixed with two Department of Public Works labels identifying them as recycling bins. Labels are available for sale at the Transfer Station.
- C. Refuse must be put out on the evening prior to a resident's pick-up day, but not before 6:00 PM.
- D. No loose refuse is permitted. All refuse must be contained in a tightly covered barrel no larger than a standard 32-gallon capacity.
- E. No empty cartons, cardboard, newspaper, etc., will be picked up unless all items are separated, flattened and tied or cardboard flattened into one box or newspaper put in brown paper bags.
- F. There is no curbside pick-up for brush. Brush must be taken to the Transfer Station and will be charged as full loads.
- G. To be defined as a person or persons who are not a business or in any sense of the meaning a commercial establishment.
- H. If a resident or residents live on a private way the Town will only pick-up trash if:
 - a. All residents have signed an agreement to hold the Town harmless of any damage that may occur due to the Town vehicles on their private way.
 - b. The private way road conditions meet the state standards of a public way. In other words, the Town will not enter a private way that is too narrow or in a condition that could damage the Town vehicles.
- I. Refuse at condominiums will not be picked up unless:
 - a. The condominium has 8 units or less.
 - b. It is privately owned and not a time-share unit.
- J. Guest Houses and Lodging Houses are considered commercial establishments with the exception of owner/manager occupied, where the owner/manager is considered a resident and will be allowed two 32-gallon containers and 1 recycling container per week.

- K. All residents who live in a predominately commercial area need to mark the trash receptacles as residential with their name and address.
- L. All residential trash is to be put out at the curb of the nearest public or private way that receives trash pickup service. Sanitation employees cannot and will not enter private property to pick up trash.
- M. Housing developments in which 100% of the units are affordable, recycling and solid waste pick up shall be provided by the Town.
- N. The Department shall pick-up once a week pick-up pursuant to the following schedule:

Please Note Cardboard and Newspaper will be picked up on the same day as Trash and Recycling is picked up.

Monday's Route:

From 192 Bradford St - to and including 351 Bradford St
 From 942 Commercial St - to and including 463 Commercial St

Mayflower Heights	Allerton St
Snow St	Conway St
Kendall Lane	Duncan Lane
Atkins Mayo Rd	Hancock St
Atkins Lane	Anthony St
Daggett Lane	Howland St
Cook St	Bangs St
Maple Ct	Willow Dr
Oak Dr	Harry Kemp Way

Tuesday's Route:

From 190 Bradford St - to and including 139 Bradford St
 From 461 Commercial St - to and including 315 Commercial St

Kiley Ct	Lovett's Ct
Miller Hill Rd	Pricilla Alden Rd
Young's Ct	Brewster St
Aunt Sukey's Way	Old Colony Way
Dyer St	Washington Ave
Law St	Pearl St
Conwell St	Arch St
Railroad Ave	Johnson St
Center St	Freeman's Way
Cemetery Rd	Standish Ave
Standish St	Alden St
Nelson Ave	Stearns Ave

Race Point Rd
Wareham Rd

Tiny's Way
Heather's Way

Wednesday's Route:

From 138 Bradford St - to and including 51 Bradford St
From 314 Commercial St - to and including 157 Commercial St

Smalls Ct
Gosnold St
Winslow St
Webster St
Carver St
Mozart Ave
Holway Ave
Watson's Ct
Winthrop St
Central St
Capt Birdie's Way

Ryder St
Willow St
Jerome Smith Rd
Masonic
Carver Ct
Prince St
Cudworth St
Court St
Shank Painter Rd
Atlantic Ave
George's Path

Thursday's Route:

From 49 Bradford St to and including 2 Bradford St
From 155 Commercial St to and including 1 Commercial St.

Conant St
Pleasant St
Carnes Ave
Brown St
Franklin St
School St
Cottage St
Tremont St
Creek Rd
Kimberly Lane
Creek Hill Rd
Blueberry Ave

Montello St
Fritz's Way
Carnes Lane
Race Rd
Atwood Ave
Mechanic St
Nickerson St
Soper St
West Vine St
Point St
Bayberry Ave
Pilgrim Heights Rd

Section 2: Commercial:

1. Any establishment licensed by the Town is considered a commercial establishment; the Town does not pick up commercial trash or recycling.
2. All licenses will require all commercial establishments to identify their private haulers for the removal of trash and recycling from the business property.
3. All Guest Houses, Motels, Hotels, Camps, Cabins, Inns and Time Share units are Commercial and will be charged as such.
4. All vehicles entering the Transfer Station driven or owned by known Business owners will be subject to spot checks to determine if they are dumping commercial trash or residential trash and will be charged as determined.

Section 3: FINES.

It is hereby illegal for any resident, citizen, visitor or business to place household or business trash into a town-owned receptacle or barrel. All Town receptacles will be subject to spot checks by Sanitation and/or Seasonal Barrels & Grounds personnel for the purpose of identifying violations. Evidence of illegal dumping will be reported to the police and a fine will be given to the person and/or business whose trash was found. Schedule of fines will be as follows:

- 1st Offense - \$ 50.00
- 2nd Offense - \$100.00
- 3rd Offense - \$500.00

TOWN BY TOWN COMPARISON
REGULATION OF RENTAL UNITS

TOWN	REGULATE RENTAL UNITS?	TYPE OF RENTAL UNITS REGULATED	FEE	INSPECTIONS?	NOTES
PROVINCETOWN	YES	ALL RENTALS	\$300/3 YEARS	UPON COMPLAINT	
TRURO	YES	SHORT TERM RENTALS	\$200/YEAR	UPON COMPLAINT	
WELLFLEET	NO				
EASTHAM	YES	ALL RENTALS	\$75/YEAR	YES: NEW APPLICANTS, AND THEN EVERY 3-5 YEARS AFTER IN ANNUAL TARGET AREAS	
ORLEANS	NO				
CHATHAM	NO				
BREWSTER	NO				
HARWICH	YES	SHORT TERM RENTALS	\$55/YEAR	UPON COMPLAINT	MANAGED BY THE BUILDING DEPARTMENT
DENNIS	YES	ALL RENTALS	\$50/YEAR	YES: NEW APPLICANTS OR CHANGE OF OWNERSHIP, COMPLAINTS	
YARMOUTH	YES	ALL RENTALS	\$80/YEAR	YES: NEW APPLICANTS, PERIODICALLY THEREAFTER	
BARNSTABLE	YES	ALL RENTALS	\$90/YEAR - \$25 FOR ADDITIONAL UNITS	YES: ANNUAL INSPECTION	2 HOUSING INSPECTORS ON STAFF
SANDWICH	NO		SAME OWNER, SAME ADDRESS		
MASHPEE	NO				
FALMOUTH	YES	ALL RENTALS	\$25/YEAR	UPON COMPLAINT	
BOURNE	NO				

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Habitation for Rent Regulations

Based on my review of Board of Health minutes...

General Bylaw **9-5. Habitations for rent.** Chapter eliminated in its entirety by April 2009 ATM 22.

The Board of Health held a public hearing on the Health Regulations on February 26, 2009. At that time, the regulation sought to include all rentals and the proposed fee, based on a fee analysis was:

Section 8. Rental Certificate Registration fees

All Rental Certificates must be renewed annually, whether an inspection is required that year or not, in accordance with the following fee schedule (No fee for deed restricted affordable housing):

1. Initial Rental Certificate with Inspection: \$150.00

Annual Renewal of Rental Certificate: \$60.00

Annual Renewal of Rental Certificate with Inspection (after every third year): \$100.00

On April 2, 2009, the Board of Health adopted the proposed Regulations as amended:

Motion: Move that the BoH promulgate Regulation Part XIV Habitations for Rent, Article 1, Sections 1-13 as finally amended – contingent that the Health Agent send to each member to review for content (typos etc) the final draft for publication. Inspections will be valid for three years for a fee of \$120 for the first unit and \$50 for each additional unit.

In 2015, the Board of Health held public meetings to discuss potential amendments to the Rental Certificate Program on April 2, 2015, April 16, 2015 and June 4, 2015.

A public hearing on June 18, 2015 in which they discussed several regulation changes, include a change to the Rental Certificate program, which removed the automatic inspection requirement. At that time they raised the fee from \$120 to \$150 for 3 year period.

The Board of Selectmen approved those fees on July 15, 2015.

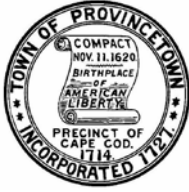
A public hearing was held on August 4, 2015 to amend the Rental Certificate Program relations to require that..."*All advertisements of property for rent shall clearly post the rental Certificate number assigned by the Town of Provincetown.*"

On January 7, 2016, the Board discussed amending their regulations to include Double Fees – when a property is found to be non-compliant in cases of intentional misrepresentation in an application or not applying at all.

On Feb 4, 2016, the Board of Health held a public hearing to approve various regulation changes include double fees for non-compliant properties. They did a review of their fees in which they increased the rental certificate fee from \$150/3 years to \$300/3 years.

The Board of Selectmen approved those fees on February 22, 2016 and they took effect March 1, 2016.

The April Town Meeting approved an increase in the Community Development budget to hire a part-time seasonal enforcement person for the Rental Certificate Program. In addition a STM article approved a budget transfer to allow the enforcement person to start prior to July 1.



Provincetown Board of Selectmen
AGENDA ACTION REQUEST
Monday, November 28, 2016

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OTHER

Requested by: Town Manager David B. Panagore

Action Sought: Discussion

Proposed Motion(s)

Discussion Dependent – votes may be taken.

Additional Information

Board Action

<i>Motion</i>	<i>Second</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Disposition</i>