

PART XII

ARTICLE 5 - Habitations for Rent Regulation

Public Hearing: June 18, 2015

Board of Health Approved: June 18, 2015

Revised: December 3, 2015

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Revised: November 18, 2022

Board of Health Approved: December 15, 2022

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 short-term rentals (as defined in the regulations of the Massachusetts Department of Revenue for the purpose of state and local occupancy excise taxes, 830 CMR 64G).

The provisions of 830 CMR 64G, as may be amended from time-to-time, are incorporated herein and the terms used in this Regulation shall be as defined in said 830 CMR 64G unless otherwise specified. Property owners intending to rent or lease their properties to third-partied for any duration are required to review and be familiar with said 830 CMR 64G and shall be responsible for compliance therewith.

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. For the purposes of this regulation, the term “rent” shall be as defined in 830 CMR 64G.

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 rooms in each unit, and the size (in square feet) of each unit, and select the type of rental certificate requested.

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.

Applicants for a rental certificate will attest and certify under the pains and penalties of perjury the type of certificate they are requesting:

Short-Term Rental Certificate: The property will be operated in such a way as to require payment of state and/or local occupancy excise taxes under 830 CMR 64G.1.1 for the short-term rentals, as defined in said regulations, which includes most rental for periods of thirty-one (31) consecutive days or less.¹

Short-Term Rental Certificates will be effective for one year from the date of issue, unless sooner revoked in accordance with these regulations. It is permissible to rent for longer durations (*i.e.*, seasonal) with this certificate.

Long-Term Rental Certificate: The property will not be operated in such a way as to require payment of state and/or local occupancy excise taxes under 830 CMR 64G.1.1 for the short-term rentals, as defined in said regulations.

¹ A full list of circumstances requiring payment of occupancy excise tax for short-term rentals and thus, registration under this regulation, is set forth in 830 CMR 64G.

Long-Term Rental Certificates for year-round and/or seasonal use will be effective for three years from the date of issue, unless sooner revoked in accordance with these regulations. It is not permissible to rent for shorter durations (*i.e.*, less than 31 consecutive days, weekly or nightly rental) with this certificate.

Hotel, Motel, Bed and Breakfast: Properties operated solely as hotels, motels and bed and breakfasts, as defined in 830 CNR 64G, do not require rental certificates.

Completion of a new or renewal rental certificate application shall include notice of the Owner's Duty of Compliance that the above listed items are true for the intended type of use of the rental unit and will remain so for the life of the rental certificate.

The fees for a Rental Certificate shall be listed in the Board of Health fee schedule, with the Short-Term Rental Certificate fee for one-year permits going into effective upon approval of Part VIII, Article 1 – Fee Schedule by the Provincetown Select Board (anticipated January 9, 2023).

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 type of Rental Certificate, after a hearing and in accordance with the procedures set forth in 105 CMR 410, for any violation of any provision of this regulation, the State Sanitary Code, or any other applicable General Law, regulation or by-law.

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 Long-Term 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

- The original regulation effective March 1, 2016.
- Approved by Provincetown Board of Health with Short-Term and Long-Term Rental Definitions, December 15, 2022 public hearing; Part VIII – Article 1, Fee Schedule approved January 9, 2023 by the Select Board; effective upon January 19, 2023 publication of notice.