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**COASTAL ASSOCIATION OF REALTORS® POSITION STATEMENT**  
***Proposed Residential Rental Licensing Program***  
***Worcester County Commissioners***  
***August 2019***

Under consideration by the Worcester County Commissioners are four bills that establish the framework for a residential rental licensing program for Worcester County. The following is a summary of the key substantive provisions of each of the proposed Rental Licensing Program Bills.

**(1) Bill 19-3, “Zoning – Board and Lodging Rentals” (the “Zoning Bill”)**

- **New Definitions:** The Zoning Bill would repeal and replace the existing definitions of *transient*, *lodger*, and *roomer or boarder*, and would add a new definition of *short-term rental* to the Zoning and Subdivision Article of the County Code (the “Zoning Code”) as follows:
  - Transient - When referring to a person, a person occupying or intending to occupy all or any portion of a structure for lodging on a temporary basis not to exceed twenty-eight consecutive days.
  - Lodger - A person who receives sleeping accommodations, which may also include meals, for compensation in all or any portion of any dwelling unit for twenty-eight consecutive days or less.
  - Roomer or Boarder - A person who receives sleeping accommodations, which may also include meals, for compensation in all or any portion of any dwelling unit for more than twenty-eight consecutive days and who is not part of the resident family.
  - Short-Term Rental (STR) - All or a portion of any dwelling unit or all of an accessory apartment that is rented to a lodger for sleeping accommodations on a basis not to exceed twenty-eight consecutive days. Short-term rentals do not include bed-and breakfast establishments.
- **Addition of Short-Term Rental as a Permitted Use:** The Zoning Bill would amend Subsection ZS 1-105(c)(7) of the Zoning Code to make short-term rentals a permitted use in all primary zoning districts, subject to the provisions of proposed Section ZS 1-351.



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- **Short-Term Rental Regulations:** The Zoning Bill would add a new Section ZS 1-351 to the Zoning Code, titled “Short-Term Rentals.” The key substantive provisions of proposed Section ZS 1-351 are as follows.
  - Occupancy Restriction: Proposed Section ZS 1-351(b)(3) would limit the maximum occupancy of short-term rentals as follows:
    - Where the entire dwelling unit or accessory apartment is being offered for rent, occupancy shall be limited to a *maximum of one family or housekeeping unit* as defined in § ZS 1-103(b) hereof.
    - Where a portion of the principal dwelling is being offered for rent, occupancy shall consist of a *maximum of two sleeping rooms that may accommodate up to two lodgers per room not including children under the age of twelve* but in no case a greater number of lodgers than may be permitted by the zoning district regulations.
    - Accessory apartments shall only be rented in their entirety and shall be limited to a *maximum of one family or housekeeping unit* as defined in § ZS 1-103(b).
  - Off-Street Parking Requirement: Short-term rentals would have to provide one additional off-street parking space beyond the number required by Section ZS 1-320(a) for the existing structure.
  - Inspections: Proposed Section ZS 1-351(b)(7) would require the owner of a short-term rental or their authorized agent to make the unit “available for inspection during reasonable hours upon request by the County in order to verify compliance” with the Zoning Code. In addition, proposed Section ZS 1-351(b)(6) would require the owner to “maintain a record of the names of all lodgers, including their address, phone number and email address ... as well as the dates of lodging” and to provide such records to the County upon request.
  - Functions and Events Prohibited: Proposed Section ZS 1-351(b)(9) would prohibit short-term rentals from hosting “events and functions” such as weddings, family reunions, birthday or anniversary celebrations, corporate or employee parties or similar gatherings “other than the authorized lodgers.”



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**(2) Bill 19-4, “Taxation and Revenue – Rental Licenses” (the “Licensing Bill”)**

The proposed Licensing Bill would amend the Taxation and Revenue Article of the County Code by deleting existing Section TR 2-201 (Tourist permits) and creating a new Section TR 2-106, titled “Rental Licenses.” The key substantive provisions of the Licensing Bill are as follows.

- **License Requirement:** Proposed Section TR 2-106(b) would require the owner of any “house, townhouse, apartment, condominium unit, cottage, cabin, manufactured home, rooming house, recreational vehicle, recreational park model, hotel or motel room, or any other building or structure or portion thereof as sleeping accommodations or any lot or parcel of land for the purposes of placing a manufactured or mobile home, recreational vehicle or tent, regardless of the length of the rental term, without first obtaining a rental license from the [County License] Department.” Rental licenses would be issued only to the property owner, would be valid for a period of one year, and would not be transferrable.
- **Rental License Applications:** Rental license applicants would have to submit to the County a “floor plan drawn to scale” that shows the size and location of all rooms and indicates the “maximum number of persons permitted in each sleeping area” in cases where only a portion of a building would be rented out, or the “maximum number of persons permitted to occupy the structure” in cases where the entire building would be rented out. The applicant would also have to submit a copy of the “standard lease or rental agreement” and a copy of any “house or property rules for renters.” In addition, the rental license application would have to provide the names and contact information for all of the property owners (and a property manager or resident agent, if applicable) any of whom could be contacted 24-hours a day during any property rental period. All property owners would have to sign the rental license application.
- **Display of Rental License:** The rental license would have to be “prominently displayed on the premises to which it applies” and the rental license number would have to be included in all advertising for the rental, including print, electronic, and other media.
- **Inspections:** Section TR 2-106(g)(1) of the Licensing Bill would give the staff of the Department or any public safety or law enforcement agency “the right to enter upon any property for which a rental license has been issued ... in order to inspect such license and such property or parts of such property which are covered by the license provided, however, that nothing herein shall be so construed so as to give said individuals the right or privilege of entering upon any such premises or any part thereof *while the same are under the control or supervision of a tenant of the license holder* without permission of that tenant or having obtained a valid search warrant,



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- if applicable, unless such premises is usually and customarily open to members of the public.”
- **Enforcement and Penalties:** If the Department finds that any of the provision of the Licensing Bill is being violated, it would give written notice of the violation to the property owner and order that the violation be corrected within a reasonable period of time. Violations would be deemed a civil infraction, and potential penalties would include the suspension or revocation of the license, fines, filing of an injunction to bring about correction of any violations, and abatement of imminent dangers to the health and safety of the occupants as determined by the Department. Each day of a violation would constitute a separate offense. If a rental license is revoked, the Department would not issue a rental license for that particular property for a period of three years to the former license holder or a member of the former license holder’s housekeeping unit as defined in Section ZS 1-103(b).

**(3) Bill 19-5, “Taxation and Revenue – Hotel Rental Tax” (the “Hotel Tax Bill”)**

The Hotel Tax Bill would repeal and replace Subtitle VI of Title 1 of the County Code, titled “Hotel Rental Tax,” to expand the imposition of the hotel rental tax to include any house, townhouse, apartment, condominium unit, cottage, cabin, rooming house, manufactured home, recreational vehicle, or recreational park model that is used, in whole or in part, to provide sleeping accommodations to a “transient” in return for compensation. The bill would revise the definition of “transient” to mean:

- Transient – Any person who, for any period of less than four consecutive months, obtains sleeping accommodations or space, either at his own expense or at the expense of another, in any house, townhouse, apartment, condominium unit, cottage, cabin, manufactured home, rooming house, recreational vehicle, recreational park model, hotel or motel room, or any other building or structure or portion thereof as sleeping accommodations.

**(4) Bill 19-6, “Taxation and Revenue – Mobile and Manufactured Home Park Licenses” (the “Mobile Home Bill”)**

The Mobile Home Bill would repeal Subtitle V of Title 1 of the County Code, titled “Mobile and Manufactured Home Park Licenses,” thereby eliminating the excise tax for mobile and manufactured home parks. Mobile and manufactured home parks would instead be regulated and taxed under the Licensing Bill and Hotel Tax Bill respectively.



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#### **POSITION I**

***A short-term rental should not be defined as being less than twenty-eight days.***

Short-term rentals are generally leased for a period of less than seven days, and should be defined as such. There are no twenty-eight-day short term rentals.

#### **POSITION II**

***The maximum occupancy limits as presented infringe upon a property owner's core right to rent. Occupancy should be determined by a home's square footage, not by the relationship between the occupants, which will be difficult for enforcement to verify.***

Among the core rights that a property owner has is the right to lease or rent the property on a temporary basis to another party. The proposed Zoning Bill would infringe upon that core right by limiting the maximum number of occupants allowed in a short-term rental for the owner of a short-term rental home with enough bedrooms to accommodate more than "one family or housekeeping unit," as defined in Section ZS1-103(B) of the Zoning Code.

Additionally, the proposed occupancy restrictions for short-term rentals may be vulnerable to challenge under the federal Fair Housing Act and associated guidance. Zoning ordinances often restrict the number of unrelated occupants who may reside together in a single-family zoning district. The FHA expressly exempts from its scope "reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling." The federal circuit courts initially were divided as to whether this exemption extended to zoning restrictions based on the number of unrelated occupants. In the 1995 U.S. Supreme Court case *City of Edmonds v. Oxford House, Inc.*, it was determined that the maximum occupancy exemption from FHA does not apply to limitations that apply only to unrelated occupants. The Supreme Court in this case defined "true maximum occupancy restrictions" as those which "cap the number of occupants per dwelling, typically in relation to available floor space or the number and type of rooms." While this case ultimately did not hold that a limitation on the number of unrelated occupants *per se* violates the FHA, it did establish that such restrictions do not qualify for the statutory exemption for "reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling." As a result, an ordinance that limits the number of unrelated persons who can occupy a dwelling – as the proposed occupancy limits in the Zoning Bill would do – is subject to review under a discrimination and reasonable accommodation analysis.



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Should the county continue to restrict occupancy as proposed, “housekeeping unit” must be clearly defined. Clarification is needed as to the nature of the members of a housekeeping unit’s relationship to one another.

### **POSITION III**

***The inspection requirements of the Zoning Bill and the Licensing Bill may be vulnerable to challenge under the Fourth Amendment to the U.S. Constitution and Article 26 of the Maryland Declaration of Rights.***

None of the provisions of the Zoning Bill state what notice, if any, must be given to the owner and tenants of a residential rental or short-term rental unit before an inspection is conducted. Most notably, Section ZS 1-351(b)(7) does not expressly require that the County inspector have a *warrant* to inspect a short-term rental if the owner does not *consent* to the inspection. Section ZS 1-351(b)(6) of the Zoning Bill does not specify that a warrant is required to inspect the records of all lodgers of the property, if the owner does not *consent* to the inspection. While Section TR 2-106(g)(1) of the Licensing Bill contains language requiring the County to have permission to inspect or a valid search warrant, that provision is specifically addressed to inspections “while the [unit is] under the control or supervision of a tenant of the license holder.” As a result, the proposed inspection requirements of the Zoning Bill and the Licensing Bill may be vulnerable to challenge under the Fourth Amendment.

From the perspective of affected property owners and tenants, the fact that the Zoning Bill does not require that County inspectors have a warrant to inspect a short-term rental property without the consent of the owner or occupant—and the fact that the Licensing Bill does not require that inspectors have a warrant to inspect a rental property when it is not under the control of a tenant—raises serious concerns under the Fourth Amendment of the U.S. Constitution, which safeguards the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.”

### **POSITION IV**

***Several provisions of the Zoning Bill and the Licensing Bill could have a negative impact on vacation rentals and the second home market in Worcester County.***

- **Section ZS 1-351(b)(3) – One Family or Housekeeping Unit Limitation:** Read literally, this provision makes it unlawful for a group of six unrelated friends to rent a vacation home in Worcester County. It would also make it unlawful for two unrelated families to rent a house in order to vacation together in the County. By imposing a “one family or housekeeping unit” restriction on short-term rentals, the Zoning Bill would unreasonably limit the field of potential short-term renters for larger homes that can



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accommodate more than one family or more than five unrelated persons. For groups of friends or families that wish to rent a house in order to vacation together, Section ZS 1-351(b)(3) of the Zoning Bill effectively removes Worcester County as a potential vacation destination by making such rental unlawful.

- **Section ZS 1-351(b)(9) – Ban on Functions and Events at Short Term Rentals:** This provision of the Zoning Bill would prohibit the hosting of “events and functions, including but not limited to wedding ceremonies, wedding receptions, family reunions, birthday and anniversary celebrations, corporate and employee appreciation parties or other similar gatherings of persons other than the authorized lodgers.” By preventing such events from being held at a short-term rental property, the Zoning Bill will force families and other groups planning such events to seek accommodations in other communities that have not adopted such a ban. Moreover, tourists who become aware of the ban on functions and events may perceive it as motivated by, and evidence of, an anti-tourist sentiment in the County and may choose to vacation elsewhere. Even a slight impact on tourism in the County conceivably could have a significant negative effect on the viability and success of restaurants, retail establishments and other local businesses that provide services to tourists.
- **Section TR 2-106 – Rental Licenses Not Transferable:** Under proposed Section TR 2-106 of the Licensing Bill, rental licenses would have to be renewed annually and would not transfer to the new owner upon sale or transfer of the property. By prohibiting rental licenses from transferring with title to the purchaser of a home, the Licensing Bill could have a negative impact on the market for second home and rental properties in the County. Prospective purchasers who want to buy a vacation home and rent it out from time to time may be unwilling to purchase a home in Worcester County without a guarantee that it can be used as a vacation rental. Making rental licenses nontransferable could also have a detrimental effect on home prices in the County. Market demand might decrease because buyers, particularly purchasers of second homes, will be uncertain about whether they will be allowed to rent a home to vacationers in order to offset the purchase price and operation and maintenance costs. The result could be that houses in areas of the County that are popular for second-home owners may decrease in value because they will appeal only to the limited market of buyers who have no interest in ever making the property available to vacation renters. The lack of certainty as to whether a home could be used as a vacation rental might also make it more difficult for buyers to secure financing for a second home in the County, because the potential purchaser will not be able to give the lender assurances that there



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will be a contingent stream of income to offset the carrying costs of the property, if necessary.

#### **POSITION V**

***The county's means of enforcement of all provisions of these bills is unclear.***

The County's Director of Development Review & Permitting has effectively admitted that the "one family or housekeeping unit" limitation of Section ZS 1-351(b)(3) is unenforceable. Even if, for the sake of argument, the proposed "one family or housekeeping unit" limitation and the proposed ban on functions and events at short-term rentals would not have a negative impact on vacation rentals, the second home market, and possibly the local economy, if the Director of Development Review & Permitting believes that the County cannot enforce the requirements of Sections ZS 1-351(b)(3) and ZS 1-351(b)(9), then the County Commissioners should not adopt them.

#### **POSITION VI**

***The Zoning Bill would unfairly impose more demanding occupancy and off-street parking standards on short-term rentals than on homes that are not used as short-term rentals.***

Section ZS 1-351(b)(3) of the Zoning Bill would limit the maximum occupancy of short-term rentals to a "maximum of one family or housekeeping unit" when the entire dwelling unit is rented out and a "maximum of two sleeping rooms that may accommodate up to two lodgers per room" when only a portion of the dwelling is rented out. These occupancy limits apparently would not apply to homes that are owner-occupied or are rented on a long-term basis (i.e., for more than 28 consecutive days).

The Zoning Bill would also impose a greater off-street parking requirement on short-term rentals than on homes not used for short-term rentals. Specifically, Section ZS 1-351(b)(5) would require that short-term rentals provide "one additional off-street parking space beyond that required by the provisions of Section ZS 1-320(a) for the existing permitted structure."

There is no rational basis for imposing more demanding occupancy and off-street parking standards on a home that is occupied by short-term renters than on homes that are owner-occupied or are rented on a long-term basis. The Court of Appeals of Maryland has ruled that the temporary or short-term use of a residence for living purposes is still a residential use—it is fundamentally the same as a long-term occupancy (*Lowden v. Bosley, 909 A.2d 261, 269 – Md. Ct. App. 2006*). Moreover, as a practical matter, the impact of a gathering of people at a home or the parking of cars on a public road does not differ based on whether a home is occupied by a property owner or a long-term tenant, or by vacation renters.