

ANDERSON KREIGER

To: Jim Malloy, Town Manager
TOWN OF LEXINGTON

From: Mina S. Makarios and Samuel Dinning
ANDERSON & KREIGER LLP

Re: 2020 Special Town Meeting 2, Article 2: Short Term Rental Impact Fee

Date: September 28, 2020

Article 2 on the 2020 Special Town Meeting 2 Warrant states: “To see if the Town will vote to accept Massachusetts General Laws Chapter 64G, Sections 3A & 3D, Local Option Community Impact Fee of up to 3% on short term rental properties; or act in any other manner in relation thereto.”

In order to accept the entirety of sections 3A and 3D, the Town must approve three parts of Chapter 64G:

- 1. The Town must vote to accept G.L. c. 64G, § 3A first. Town Meeting took this step in 1985.** The Town imposes an excise tax of 6% on short-term rentals and other lodging, regardless of whether the lodging is owned by a professional management company or an individual homeowner. Excise taxes are collected by the Department of Revenue (“DOR”) and distributed quarterly to the Town. The excise tax revenues would be placed in the Town’s General Fund, subject to further appropriation by Town Meeting.
- 2. Because Town Meeting previously accepted G.L. c. 64G, § 3A, it may go on to accept G.L. c. 64G, § 3D(a).** Section 3D(a) would impose a community impact fee of up to 3% for each short-term rental transaction of a *professionally managed* unit. DOR collects and distributes this fee as well. At least 35% of the fees collected under this section must be dedicated to affordable housing or local infrastructure projects. The remaining 65% may be used for any other lawful purpose for which the Town uses General Fund revenues.
- 3. If Town Meeting accepts G.L. c. 64G, § 3D(a), it may go on to accept G.L. c. 64G, § 3D(b).** Section 3D(b) permits the Town to impose the same impact fee it imposes under 3D(a) on short-term rental transactions involving a unit in a *two-family or three-family* owner-occupied dwelling.

These votes are separate from the proposed zoning bylaw amendment regarding short-term rentals under Article 10. In fact, the proposed zoning amendment would permit short-term rentals in owner-occupied dwellings only. Thus, a community impact fee under § 3D would apply only to rentals in two- or three-family owner-occupied dwellings. We recommend taking up Article 2 and Article 10 on the same night of Special Town Meeting to help Town Meeting members understand the connection between the fees and the regulation of Short Term Rentals.