

3/01/2013

DRAFT

This language does not include removals.

New language since the last meeting is in **bold red**.

## RESIDENTIAL RENTAL PROPERTY REGULATIONS

**[NOTE: For the purposes of discussion, this draft includes frequent references to a requirement for a residential rental permit—one of the options under discussion by the Safe & Healthy Neighborhoods Working Group from the beginning of this process. However, no decision has been made as to whether or not to recommend a permit requirement. That requirement and several other potential features of these regulations are included so that they may be reviewed and discussed.]**

The effective date of these regulations shall be \_\_\_\_, 2013.

1. **Purpose.** **These regulations are adopted** in accordance with the Town of Amherst's Home Rule Authority and the Amherst Master Plan, in furtherance of the following public purposes:
  - a. To protect the health, safety, and welfare of tenants and other citizens of the Town of Amherst by extending and expanding compliance with basic life safety and sanitary codes through the registration and permitting of residential rental properties.
  - b. To ensure safe and sanitary conditions in Amherst's rental housing stock, preventing degradation and helping to promote preservation of important historic residential buildings and neighborhoods.
  - c. To provide clear and accessible guidelines for the operation of rental properties for tenants, owners, landlords, and neighbors, and to extend awareness of related Town bylaws and health regulations related to operation of a rental property and those regulations related to noise, alcohol and nuisance behaviors.
  - d. To establish and assign responsibility for different aspects of rental housing management.
  - e. To establish and expand awareness of the requirements for use and maintenance of rental housing exteriors and grounds, including parking requirements.
  - f. To ensure awareness of and responsibility for occupancy limits in rental units on the part of property owners, managers, tenants, neighbors, and code officials.
  - g. To help to stabilize, protect, and enhance the essential characteristics of and quality of life within existing diverse, multi-generational residential neighborhoods for all residents, including families and students, consistent with Amherst's long history as a college community..
2. **Registration & Permit Required.** No person, firm, trust, partnership, corporation or other legal entity may rent to individuals or households any dwelling unit nor any rooming unit in a lodging or boarding house being operated as a principal zoning use in the Town of Amherst until the unit has been registered and a rental permit therefore has been issued by the code official.

3. **Enabling Legislation & Regulations.** All rental units and rooming units regulated hereunder shall comply with all applicable local zoning and regulations, as well as all state laws and health, building and fire codes. All inspections, enforcement, and other actions taken under these regulations are authorized under those applicable local and state laws and regulations, as amended.
4. **Applicability & Exemptions.** Registration and rental permits shall be required of all residential properties containing rented dwelling units or rooming units, except for the following:
- 1) Accessory lodging or boarding uses (rooms) and supplemental apartments operated in owner-occupied single family dwellings in conformance with Amherst’s Zoning Bylaw.
  - 2) Hotels, motels, inns, hostels, or bed and breakfasts.
  - 3) Residential facilities authorized and operated under state and federal law, congregate or similar group housing for the elderly or disabled, half-way houses for persons with substance abuse problems, congregate living arrangements for persons with disabilities, or other similar housing facilities operated under license by the Commonwealth of Massachusetts.
5. **Definitions.** Definitions of terms used in the regulations.

Under these regulations, the following terms have the meanings indicated:

***[Definitions removed include Building, Blighted, Dilapidated, Interested Parties, Nuisance Property, Lodging or Boarding House, Rooming Unit, Structure]***

*Code Official* – means the Building Commissioner/Zoning Enforcement Officer of the Town of Amherst, the Health Director, the Police Chief, Fire Chief, or their designees and/or any of the inspectors or officers authorized to enforce the law, regulations and codes listed under Section 3 of these regulations.

*Dwelling Unit* – means the room or group of rooms within a dwelling used or intended for use by one family or household for living, sleeping, cooking and eating. Dwelling unit shall also mean a condominium unit.

*Emergency* – in addition to those events involving natural disasters, fire, or other threats to the health and safety of the residents of a rental property, an emergency shall also be understood to represent any violation of any health or safety code, regulation, or law enforceable by a code official.

*Hazard* - means a condition likely to expose persons to injury, or property to damage, loss, or destruction.

*Occupant* – means a person who occupies real property with the consent of the owner as a lessee, tenant at will, licensee or otherwise. The singular use of the term includes the plural when the context so indicates.

*Owner* – means every person who alone or jointly or severally with others:

- a. has legal title to any building, structure, or property to this bylaw, or;
- b. has care, charge, or control of any such building, structure, or property in any capacity including but not limited to agent, executor, administrator, trustee or guardian of the estate of the holder of legal title; or
- c. is a lessee under written agreement; or

- d. is the mortgagee in possession; or
- e. is the recognized agent, trustee or other person appointed by the courts.

*Owner-Occupant(s)* – One or more natural persons who, in their individual capacity as distinct from any representative capacity, own(s) a whole or undivided interest in fee simple of certain real property and at least one of whom occupies a dwelling unit thereon as his or her principal residence (see definition).

*Person* – means an individual, corporation, trust, corporation, trust, partnership (including general partnership, limited partnership, and limited liability partnership), and a limited liability company. In addition, any similar entity permitted by law to hold title to real estate shall for the purpose of this by-law be deemed a “person.”

*Premises* – means any real estate used for residential premises, including but not limited to apartments, dwellings, dwelling units, lodging houses, lodging units, rooming houses, and rooming units.

*Principal Residence* - means the primary residence of an individual, family (as defined in this Bylaw), or property owner, i.e., the home where an owner, and the owner’s family if applicable, resides as their primary dwelling; provided however, that no person shall hold concurrent rights in more than one (1) principal residence, as set forth under MGL Ch. 188, Section 1, as amended. Regular or periodic interruptions in residency shall not be considered to change the status of principal residency where such interruptions are the result of illness, catastrophe, professional or academic scheduling, or other temporary reasons for absence which do not affect basic indices of residency. For the purposes of this Bylaw, principal residency shall be determined by the code official based upon a preponderance of evidence, including but not limited to the following indices of residency and address, as applicable: declaration of homestead, filing of state and federal income taxes, voter registration, annual street list, driver's license, motor vehicle registration, mortgage, mailing address, and telephone listing (if any).

*Rooming Unit* – means the room or group of rooms let to an individual or household for use as living and sleeping quarters but not for cooking, whether or not common facilities for cooking are made available; provided, that cooking facilities shall not be deemed common if they can be reached only by passing through any part of the dwelling unit or rooming unit of another.

## **6. Registration & Permitting.**

- a. Application Process and Requirements.** Registration and rental permit applications shall be made on forms approved by the Town, and shall provide such information as the designated code official shall deem reasonable and appropriate. Completed applications shall be submitted to the [appropriate Town office, address, etc.]. Rental permit applications shall be reviewed and acted on with fourteen (14) working days from the date of submission.

Information required as part of a rental permit application shall include:

- 1) **Contact Information & Responsible Parties.** Name(s) and current contact information, including but not limited to mailing address, telephone number and email address, for all owners and any responsible rental property management entity or person(s). In all cases where the rental property owner(s) **does not have their principal residence** in the town of Amherst, and in order to ensure

contact in circumstances when the owner cannot be reached, the owner shall appoint one or more person(s) who are residents of Amherst to serve as Local Agent(s) for the owner, authorized to act on the owner's behalf with regard to the property, but in particular in all matters in response to an emergency which endangers the property or threatens the welfare of any person living on the premises. Notices given to a Local Agent shall be sufficient to satisfy any requirement of notice to the owner or the operator. The owner shall notify the designated code official in writing of any change of Local Agent within five days of any such change.

2) **Compliance Through Self-Certification.** Evidence of current compliance with **all applicable local zoning and regulations, as well as** state health, fire and building codes, **shall be provided through submission of** an Owner's Self-Inspection and Certification Checklist provided by the Town.

3) **Complete & Accurate Information Required.** No incomplete application will be accepted. It shall be a violation of these regulations for anyone to knowingly provide false or misleading information on an application, and may constitute grounds for fines and other penalties hereunder.

b. **Renewal.** Rental permits shall be valid for a period to begin on July 1 and **shall** end on June 30, regardless of when a permit is applied for or approved and issued. Completed applications for permit renewals shall be submitted and received by June 15<sup>th</sup> of each calendar year.

c. **Permit Posted.** A rental permit issued for a rental unit under these regulations shall be conspicuously posted and maintained within the premises in a common area visible to tenants and inspectors.

d. **Transferability.** Rental permits shall be transferable upon a change of ownership, providing that operation of the continued rental use abides by the provisions of the permit and management plan. The new owner or designated operator of the rental property is required to promptly notify the code official of their acquisition of the property and to submit for review and approval any proposed changes in the provisions of the permit.

e. **Limits of Town liability.** The issuance of a rental permit shall in no way imply liability or responsibility on the part of the Town of Amherst for any claim, injury, damages, costs or expenses that may arise in connection with the use or occupancy of the subject premises.

## **7. Inspections & Complaints.**

a. **Self-Certification Program.** Owners of rental property governed by these regulations shall self-inspect and certify their properties as required under this section. Nothing in the Self-Certification program shall limit the Town's authority or the discretion of the code official to investigate and inspect a property in response to a complaint or for other good cause, or to compel abatement of any violation under these regulations in a manner consistent with the laws of the Commonwealth.

1) Annual Owner Self-Inspections & Checklist.

a. **Owner Self-Inspection & Certification.** An owner or their local agent shall conduct an annual inspection of the property, using a Self-Certification Checklist provided by the Town. The owner or their agent shall sign the Checklist indicating, under penalty of perjury, that the information contained therein is complete and accurate as of the date of said annual inspection, and shall submit the Checklist and any required materials along with their application for annual

renewal of the rental permit for the property and unit(s) in question. Any false statements or information provided on the Checklist shall constitute a violation of these regulations.

- b. **Subsidized Housing.** Where residential rental **units** are regularly inspected under requirements of the state or federal government, no Self-Inspection and Certification shall be required. Annual certification by the owner that a **rental unit** has been inspected in accordance with state or federal law shall be accepted by the Town as evidence of Self-Inspection as part of any permit application or renewal.
- c. **Self- Inspections & Access.** An owner shall not be found in violation of the Self-Certification program if they have been refused access for an inspection by a tenant/occupant. However, in such instances the owner shall either provide the Town with a signed statement from the tenant/occupant indicating that the inspection was refused, or the owner shall provide proof, under penalty of perjury, that a request for access was served to the tenant/occupant and the request was thereafter refused.
- d. **Leases Available.** Copies of current, active leases for the subject property or units shall be kept on file with the owner or manager, and shall be made available to the code official within 48 hours of any request.

**b. Self-Inspection for Different Circumstances**

- 1) **Short-Term or Emergency Rentals.** Dwelling units on **owner-occupied** properties **servicing as the owner's principal residence, and** which contain no more than two (2) units may be rented under simple registration with the Town without the requirement for a rental permit for a period not to exceed one (1) calendar year under the following circumstances:
  - a. During a pending sale of the property **by the owner-occupant**, or
  - b. In response to regular or periodic interruptions in residency **by the owner-occupant**, where such interruptions are the result of illness, catastrophe, professional or academic scheduling, or other temporary reasons for absence which do not affect basic indices of residency.

At the end of the one (1) year rental period, as calculated from the initial date of the lease or occupancy of the unit(s) by persons other than the owner(s), any such units shall be registered and a rental permit obtained in compliance with these regulations.

- 2) **Long-Term Tenancies & Periodic Self-Inspections.** Rental units which have been leased and occupied continuously by the same tenant(s) for a period of not less than three (3) years shall require a Self-Inspection & Certification upon initial registration and thereafter at three (3) year intervals. Exceptions shall be that Self-Inspection & Certification will be required upon any change in tenants, or may be required at more frequent intervals at the discretion of the code official in response to complaints or other circumstances requiring a Town inspection.
- c. **Complaints & Response Process.** All rental units are subject to inspection upon complaint or request by tenants or property owners. Issuance of a rental permit to an owner does not preclude tenants' right to file a complaint with the Town, to which the Town must respond with an inspection in compliance with the provisions of state law and regulations.

Upon receipt of a complaint or notice alleging that the condition of a rental unit or property is in violation of any law or regulation, the code official shall conduct an inspection of a premise within a reasonable amount of time. Inspections shall be as scheduled by the code official.

- d. **Inspections.** **Inspections of rental properties, buildings, grounds, and rented dwelling or rooming units shall be conducted in accordance with all applicable local and state laws, regulations and codes, in a manner consistent with the laws of the Commonwealth.**
  - e. **Access to Properties.** The permit holder shall make a good faith effort to arrange access by authorized Town personnel to any permitted rental property for the purpose of conducting inspections within twenty-four (24) hours of receiving a request. A provision allowing tenants to agree to provide such access shall be a feature of any lease for a rental unit or property permitted under these regulations. Where no lease is used, the owner(s) or their lawful representatives shall provide documentation demonstrating that they have made all tenants aware of the Town of Amherst rental regulations and inspection system.
8. **Tenant Information.** The owner shall be required to distribute to tenants annually, and to each new tenant, an information sheet **provided by the Town describing key local regulations, bylaws, and state laws and codes applying to rental properties.** A copy of this information sheet with proof of its delivery shall be maintained on the premises and shall be made available to any tenant **or** code official upon request.
  9. **Occupancy Limits.** The maximum number of adult persons who may occupy a dwelling unit or rooming unit shall be as determined by the requirements of the Amherst Zoning Bylaw.
  10. **Parking.** **All parking on** residential rental properties within the town of Amherst shall **be on paved or surfaced** parking spaces **designated** on a parking site plan developed in compliance with the standards set forth herein, submitted with any application for registration and permit, **approved by the Town as hereafter provided, and attached to every lease.**
    - a. **Existing Parking.** No parking shall be permitted on lawn areas or other unpaved landscaped areas as part of regular use of any rental property. Paving for parking surfaces may include concrete, bituminous asphalt, rolled gravel, trap rock, porous pavement, or similar material designed and installed as hereinafter described.

Existing on-site parking and circulation shall be reviewed and approved by the code official, who may approve existing conditions as being sufficient after taking into account **such factors as** existing site limitations, **existing paved parking layout and circulation, current standards for parking space dimensions, circulation and vehicular access, and such other factors as the code official may deem pertinent.**
    - b. **New or Expanded Parking.** Any new or expanded parking shall comply with the Design Standards and Landscape Standards of the Amherst Zoning Bylaw.
    - c. **Parking Site Plan.** A basic parking site plan meeting the requirements of this section shall be developed and submitted as part of any rental permit application, and shall be reviewed and approved by the code official. Submission of an existing site plan approved under a land use (zoning) permit and which accurately represents current on-site parking shall meet the requirements of this section



1) Basic Parking Site Plan Requirements. The parking site plan shall be drawn to scale (1"=20' preferred), as appropriate to the site. Except as may otherwise be required by the code official or under the provisions of Amherst's Zoning Bylaw, Town of Amherst GIS mapping may be used as the base for a site plan developed under this section.

- a) The Basic Parking Site Plan shall accurately depict the area within which parking is proposed, including:
  - i) Property boundaries
  - ii) Existing driveways and pedestrian walks
  - iii) Dwellings and structures
  - iv) All existing and proposed on-site parking spaces
  - v) Existing and proposed landscaped areas
  - vi) Fencing or other barriers or screening
  - vii) Site features such as trees over 12 inches in diameter (as measured five feet above grade), bedrock outcroppings, steep slopes, and such other site features as may affect parking locations.

**d. Waiver or Modification.** Any provision of Section **10. a., or c., 1) a)** may be waived or modified by the code official for compelling reasons of safety or design.

**11. Fees.** The Select Board or its designee may set and periodically revise a schedule of fees for registration, permit application, and inspections of rental properties.

## **12. Enforcement.**

- a. Enforcement Personnel.** The Town Manager is hereby authorized to designate the principal code official and other Town officials empowered to enforce or otherwise take actions under this article, and may delegate responsibility for the latter to the principal code official.
- b. Enforcement Options.** This by-law shall be enforced by criminal complaint through the **court of competent jurisdiction**. In the alternative, any person committing a violation under this section may be issued a citation under the noncriminal disposition process of M.G.L. c. 40 section 21D.
- c. Violations. Non-compliance with any requirement of these regulations shall constitute a violation subject to penalty.** Every day in which a violation continues shall be considered to be a separate offence. If more than one violation has occurred, each condition of these regulations which has been violated shall be considered a separate offense.

[See Conceptual Approach to Violations & Penalties]

## APPENDIX

- I. Application Form
- II. Self-Inspection Checklist
- III. Tenant Information Sheet
- IV. Etc.