

3/11/2013

DRAFT –

This language does not include removals.

New language since the last meeting is in red.

## RESIDENTIAL RENTAL PROPERTY BYLAW

**[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 this bylaw are included so that they may be reviewed and discussed.]**

The effective date of this bylaw shall be \_\_\_\_, 2013.

1. **Purpose.** This bylaw is 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 monitoring and enhancing 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, and neighbors.
  - 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.** Except as provided in Section 4 below, no person, firm, trust, partnership, corporation or other legal entity may rent, or offer to 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, or offered for that purpose, except for the following as follows:

**a. Registration Only.**

1) Accessory lodging or boarding uses (rooms) and supplemental apartments operated in owner-occupied single family dwellings in conformance with Amherst's Zoning Bylaw **shall be required to be registered under this bylaw, but shall not require rental permits.**

**b. No Registration or Permit Required. The following shall not be required to be registered or permitted under this bylaw:**

1) Hotels, motels, inns, hostels, or bed and breakfasts.

2) 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. Notwithstanding, such facilities shall comply with Section 7(a)(1)(b) below.

5. **Definitions. Definitions of terms used in the regulations.**

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

*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 this bylaw.

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

*Emergency* – Events or conditions involving natural disasters, fire, or other threats to the health and safety of the residents of a rental property.

*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 lessor under written agreement; or
- d. is the mortgagee in possession; or
- e. is the recognized agent, trustee or other person with care, charge, or control 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, 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 the Zoning 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 within fourteen (14) working days from the date of submission. **Except as may otherwise be permitted by the Code Official, a rental permit application shall identify the total number of rental units on the property.**

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). Where the rental property owner(s) **does not have their principal residence or principal place of business in the town of Amherst or within 10 miles of an Amherst town line**, 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 as set forth in Section 7 below. **An owner or property manager may provide the Town with a single Self-Inspection and Certification Checklist for multiple units provided that said units are on a single property. Where said units represent a portion of the total rental units on the property, the applicant shall propose a schedule of Self-Inspection and Certification for the remaining units for the review and approval of the Code Official.**
- 3) **Complete & Accurate Information Required.** No incomplete application will be accepted. It shall be a violation of this Bylaw for anyone to knowingly provide false or misleading information on an application, and may constitute grounds for fines and other penalties hereunder. See Sections 12 and 13 below.
  - 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 shall be conspicuously posted and maintained within the premises in a common area or area as is necessary to be 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 shall be subject to 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.

## 7. Inspections & Complaints.

- a. **Self-Certification Program.** Owners of rental property governed by this bylaw 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 authority and/or 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 this bylaw in a manner consistent with or required by 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 pains and penalties 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 this bylaw.
- b. **Subsidized Housing.** Where residential rental units are regularly inspected and licensed 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 provided to the Town and 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 pains and penalties of perjury, that a request for access was served to the tenant/occupant and the request was thereafter refused.
- d. **Leases Terms.** Subject to an as limited by the Constitution of the Commonwealth, a provision requiring tenants to agree to provide reasonable access to the owner(s) or management company shall be a feature of any lease for a rental unit or property permitted under this bylaw. 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 bylaw and inspection system. All leases shall provide an acknowledgment that all tenants have been made aware of these requirements.
- e. **Leases Available.** Copies of all current, active leases for the subject property or units shall be kept on file with the owner or manger, 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 serving 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 this bylaw.

- 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.**

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.

Subject to the above limitation, all rental units are subject to inspection upon complaint or request by a tenant. 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 State or local requirement, 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.

- e. **Access to Properties.** In accordance with Section 7(1)(d), 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.

- 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 within twenty-four (24) hours.

- 9. **Occupancy Limits and Zoning.** 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 and State standards for fitness for habitation. The fact that a structure or use may be permitted or authorized under the Amherst Zoning Bylaw shall not exempt said structure or use from application of this bylaw or relieve or excuse compliance herewith in any way.

- 10. **Parking.** Parking on residential rental properties within the town of Amherst shall be permitted only on paved or surfaced parking spaces designated on a parking site plan developed in compliance with the

standards set forth herein, to be submitted with any application for registration and permit, and attached to every lease.

No parking shall be permitted on lawn areas or other unpaved landscaped areas as part of regular use of any rental property. Acceptable parking surfaces may include concrete, bituminous asphalt, rolled gravel, trap rock, porous pavement, or similar material.

**a. Compliance with Zoning.** All existing parking and any new or expanded parking shall comply with the General Standards and Design Standards and Landscape Standards of the Amherst Zoning Bylaw.

**b. Parking Site Plan.** A Basic Parking Site Plan, as described below, 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.

**c. Review and Approval.** 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 zoning standards for parking space dimensions, circulation and vehicular access, and such other factors as the Code Official may deem pertinent. Any provision of Section 10. b., 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 Bylaw shall be enforced by criminal complaint through a court of competent jurisdiction. In addition, 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. Furthermore, in appropriate circumstances, a civil action may be initiated to compel compliance herewith.
- 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.
- d. Enforcement Procedures.** Except for cases where conditions exist which may endanger or impair the health, or safety and well-being of a person or persons occupying the premises or as may otherwise be provided for by the Massachusetts Sanitary Code, Building Code and Fire Regulations, the response of Code Officials to potential violations of this Bylaw shall include one or more of the actions as deemed necessary by the Code Official. Nothing herein shall supersede, alter, or vary the requirements of those codes or the responsibilities of the official that administer them.
- 1) **Complaint Filed.** Any person through the Fire/Health/Inspections Department may file a formal complaint regarding one or more violations of this Bylaw.
  - 2) **Property Research.** The Code Official shall perform a limited initial research of the property to confirm permit history, assessor's information, and other pertinent information. The Code Official may contact the alleged violator, occupant or responsible party to gather additional information.
  - 3) **Site Inspection.** The Code Official shall conduct a site inspection to determine the validity of the complaint and collect any relevant facts of the case.
  - 4) **Notice of Violation/Enforcement Order.** After inspecting the site and upon confirming that a violation exists, the Code Official shall inform the responsible party in writing of the violation and specify a time period within which to correct the violation. Violations may be cited pursuant to the applicable state or local code or regulation.
  - 5) **Follow up Inspection.** Shall be conducted upon the expiration of the time specified to correct the violation.
  - 6) **Fines.** The Code Official may elect to impose fines in instances where: 1) compliance has not been achieved within a timely manner after the responsible party has been made aware of the violation and given an opportunity to come into compliance, or 2) for repeat offenses.
  - 7) **Suspension of Rental Permit.** In instances of egregious violations and when all reasonable and practical efforts have been made by the Code Official to gain compliance at a property without result, the Code Official may suspend a rental permit based upon the specific criteria provided in Section 13 of this Bylaw. The permit holder shall have the opportunity to be heard and appeal any decision of the Code Official to impose a suspension in accordance with Section 14 of this Bylaw.
  - 8) **Court Relief.** If a violator fails to comply with an Enforcement Order, the Code Official may seek a court order to remedy the violation.

### **13. Penalties**

- a. Fines.** Fines shall be set and assessed in accordance with the procedures of Non-Criminal Disposition and other applicable local and state laws, regulations and codes, in a manner consistent with the laws of the Commonwealth.



**b. Suspension.** Based on the standard of proof and criteria specified herein, a suspension shall take effect immediately on the day following the end of the current lease. The suspension of a rental permit shall be imposed to affect only those unit(s) which are the subject of the violation(s) and enforcement actions.

- 1) An owner or their agent has knowingly allowed or assisted in allowing violations of the Amherst Zoning Bylaw. The Code Official must collect compelling documentation through his or her investigation to substantiate this violation and support the decision to suspend a permit.
- 2) The responsible party repeatedly refuses or neglects to comply with an order of the Code Official. The Code Official must find that the responsible party has not taken action to achieve compliance of the property and that at least 90 days has expired without compliance since the date of receipt of the Enforcement Order. During this time the Code Official shall inform the responsible party in writing that the permit is subject to suspension.

Suspensions shall be as follows:

First Offense – 90 days

Second Offense in a twelve month period – 180 days

Third Offense in a twelve month period – 3 years

**c. Immediate Suspension.** In those instances where a rental unit has been condemned or deemed an unsafe structure pursuant to health, building and fire regulations, the rental permit shall be immediately suspended and shall remain suspended until as such time the property is found to be habitable and in compliance by the appropriate Code Official.

#### **14. Appeals of the Code Official.**

Any decision by the Code Official to suspend a permit may be challenged by the permit holder by filing an appeal to the Rental Appeals Board (RAB) appointed by the Select Board. All appeals must be filed within 14 days of the decision and shall be heard within 30 days of filing. All appeals shall be heard at a duly noticed public hearing and any party filing such an appeal shall have the right to be represented by counsel.

A decision of the Rental Appeals Board shall be final. Further relief of a decision by the RAB made under this Bylaw shall be reviewable in a court of competent jurisdiction of an action filed within sixty (60 days) thereof, in accordance with G.L. c. 249, § 4.

#### **APPENDIX**

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