

## STR Ordinance Inspection Enforcement & Fee Queries

**RE:** Concern for the legal vulnerability the town may face as it proceeds with the process of enforcing the STR ordinance.

In March 2024 Bethlehem voted to permit STRs with outlined health and safety requirements. Mike Bruno cited they could be regulated by **RSA 41:11** which reads as follows:

**RSA 41:11-c Regulations; Businesses Obtaining Municipal Permits. – The selectmen may establish regulations relative to businesses obtaining municipal permits.** Any person who violates a regulation established under this section shall be guilty of a violation.

The STR committee was established and over the past year met to develop the process of application and enforcement. Also during the past year legal challenges have been brought up in other municipalities and in **New Hampshire Superior court** as to the legality of the inspection requirements put forth in their town ordinances. Notably in Freedom and Conway, NH. Concurrently, other towns have voted for registration only permits and to not move forward with the inspection requirements citing **NH RSA 48-A:2**.

**See:**

[https://www.hab.nh.gov/documents/Decisions/2023/HAB-Order\\_ZBA-2023-19.pdf](https://www.hab.nh.gov/documents/Decisions/2023/HAB-Order_ZBA-2023-19.pdf)

<https://www.nhbr.com/mwv-str-association-sues-conway/>

[https://www.conwaydailysun.com/news/local/town-pauses-rental-inspections-owners-suspend-lawsuit/article\\_dddfe48a-80c5-11ef-af56-63f4c92d1f02.html](https://www.conwaydailysun.com/news/local/town-pauses-rental-inspections-owners-suspend-lawsuit/article_dddfe48a-80c5-11ef-af56-63f4c92d1f02.html)

### **RSA 48-A:2**

2024 New Hampshire Revised Statutes

Title III - Towns, Cities, Village Districts, and Unincorporated Places

Chapter 48-A - Housing Standards

Section 48-A:2 - Grant of Power.

### **NH Rev Stat § 48-A:2 (2024)**

**48-A:2 Grant of Power.** – Whenever the governing body of any municipality finds that there exists in such municipality dwellings which are unfit for human habitation due to dilapidation, dangerous defects which are likely to result in fire, accidents, or other calamities, unhealthful lack of ventilation or sanitary facilities, or due to other unhealthy or hazardous or dilapidated conditions, including those set forth in RSA 48-A:7, power is hereby conferred upon such municipality to adopt ordinances, codes, or bylaws to cause the repair, closing, or demolition or removal of such dwellings in the manner provided in this chapter. Any municipality which adopts such a code or ordinance which has provisions for appeal, pursuant to this chapter, shall be exempt from any provisions of RSA 48-A which are in conflict with the adopted ordinance. **The power conferred by this section shall not be used to impose any additional ordinances, codes, bylaws, licenses, certificates, or other restrictions on dwellings used as a vacation rental or short-term rental.**

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**So I raise the question? Does the town have statutory authority to implement the rental licensing inspection requirement?**

Since the town is beholden to statute and only has the powers granted to it by the legislature, has the State legislature granted municipalities the power to restrict an owner's ability to rent his or her property unless the owner consents to a search/inspection of the premises?

**The permit application, as currently written, forces property owners to choose between their right to be free from unreasonable searches/inspections and the right to use their property, and seemingly violates the United States and New Hampshire Constitutions (where the right to refuse a warrantless search/inspection without penalty is guaranteed by the 4th amendment).**

Under this proposed rental licensing application is the town unconstitutionally requiring the search of the STR properties without an administrative warrant supported by probable cause?

**Therefore, I encourage the town to review the legality of forcing property owners — specifically those who choose the STR business model — to submit to a search of their property without an administrative warrant supported by probable cause.**

STR owners are aware of their property rights and have been pursuing legal actions where they feel their rights have been violated. Bethlehem has an opportunity to make sure they are not in violation at this juncture and can prevent potential legal challenges which may arise once this ordinance is enforced.

**In addition to the legality of warrantless inspections, I query the current proposed \$250 fee for the STR permit. I would like to understand how this fee was calculated based on the regulations of N.H. Rev. Stat. § 41:9-a?**

**Section 41:9-a Establishment of Fees** At any annual or special meeting, **authorize the board of selectmen to establish or amend fees**, as provided in this section. Such a vote shall continue in effect until rescinded.

II. Following such vote, the board of selectmen, without further vote of the town, may establish or amend fees or charges for the following purposes:

(a) The issuance of any license or permit which is part of a regulatory program which has been established by vote of the town.

(b) The use or occupancy of any public revenue-producing facility, as defined in RSA 33-B:1, VI, the establishment of which has been authorized by vote of the town.

**III. Such fees or charges shall not exceed, in the case of licenses or permits, an amount reasonably calculated to cover the town's regulatory, administrative and enforcement costs.**

IV. Prior to the establishment or amendment of any such fees, the selectmen shall hold a public hearing, notice for which shall be given at least 7 days prior to the hearing by posting in 2 public places in the town and by publication in a newspaper of general circulation in the town. The notice shall include the proposed schedule of fees.

V. This section shall not be deemed to prohibit a town from delegating authority over specific fees to another official or official body of the town. This section shall not supersede other provisions of law concerning the establishment or amount of specific types of fees. RSA 41:9-a

**The proposed fee of \$250 is as high as the town's building permit fee for Commercial Buildings.**

**STRs are not defined in the ordinance as commercial buildings** (*Short-Term Rental: A single-family dwelling, owner-occupied two-family dwelling, or owneroccupied single family dwelling with accessory dwelling unit, where one unit only is offered for transient use for compensation. Refers only to dwelling units that would normally be considered residential living units not associated with Public Accommodations.*)

**The town's current fee for building permits for residential dwellings is \$200.**

**I ask that the board provide the cost rational that justifies the proposed \$250 fee.**

**I look forward to your supported findings in response to these questions and concerns.**

**Julia Brabec**