



Maureen O'Meara <maureen.omeara@capeelizabeth.org>

Fwd: Short Term Rental Enforcement

2 messages

Benjamin McDougal <benjamin.mcdougal@capeelizabeth.org>
To: Maureen O'Meara <maureen.omeara@capeelizabeth.org>

Mon, Jul 13, 2020 at 8:58 AM

Benjamin McDougal
Code Enforcement Officer
Town of Cape Elizabeth
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P.O. Box 6260
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----- Forwarded message -----

From: **Benjamin McDougal** <benjamin.mcdougal@capeelizabeth.org>
Date: Tue, Jul 7, 2020 at 1:52 PM
Subject: Short Term Rental Enforcement
To: Matthew Sturgis <matthew.sturgis@capeelizabeth.org>

Matt,

Regarding the proposed draft of the Short Term Rental Ordinance, I have concerns about how it will be enforced. Specifically, Standard #8 requires me to consider complaints from neighbors regarding the 'good neighbor conduct' of a short term rental. It seems like this standard will result in litigation regardless of what I decide. I will undoubtedly get complaints from neighbors regarding the conduct of short term renters. I will then need to decide whether or not to issue the permit based on the complaint(s) I receive. If I choose to issue the permit, it is likely that the neighbor will appeal my decision. If I choose to deny the permit based on circumstantial evidence from a neighbor, the short term rental owner will undoubtedly appeal my decision. We will then have people arguing good neighbor conduct every month at the Zoning Board of Appeals, and continuing the argument in Superior Court. In my opinion, Standard #8 sets us up for litigation regardless of how I handle a situation.

Another issue is fines. I spoke to our Town Attorney, Mike Hill, about this subject. In order for me to levy fines, I need to cite someone with a violation and they have the right to a "hearing" to appeal my decision. In South Portland, the City Clerk runs the hearing to determine if the ordinance was violated. After the hearing, if the person refuses to pay the fine, we would need to seek a judgement from the Superior Court. If we operate based on our existing protocols, people have 30 days to appeal my decision, then they could be heard at the Zoning Board 3-6 weeks later then they can appeal that decision to Superior Court. A violation on the 4th of July might not be settled until after Thanksgiving.

It is concerning that the ordinance is being written with sophisticated and swift enforcement, but we don't have the infrastructure and staff to follow through. Municipalities that are able to follow through with sophisticated enforcement typically have at least 4 code officers and a staff attorney. Building permit revenue is much higher than expected and I'm legally required to act on building permits and provide inspections in a timely manner. I can't drop those things when a short term rental complaint comes in.

Also, be aware of Title 30-A MRSA Section 4452. Subsection 3 sets maximum penalties of \$5,000 for violations of land use ordinances. We also may want to ask the Town Attorney if it's legal to assess different fines for the same offense based on the assessed value of the property.

Regards,
Ben

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Maureen O'Meara <maureen.omeara@capeelizabeth.org>
To: Deb Lane <Debra.lane@capeelizabeth.org>

Mon, Jul 13, 2020 at 9:07 AM

Deb,

For your records. Not sure it has been forwarded to the Town Council.

Maureen

[Quoted text hidden]

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