

**DRAFT**  
**Short Term Rental Amendments**  
**Town of Cape Elizabeth Zoning Ordinance**

**SEC. 19-1-3. DEFINITIONS**

**Accessory Dwelling Unit:** A single subordinate dwelling unit accessory to and wholly contained within a principal building or structure and/or attached garage in which a single-family dwelling unit is the principal use.

**Bed and Breakfast:** A use that must be operated in conjunction with the use of a dwelling as a primary residence and that (1) provides up to nine (9) furnished bedrooms for rent to guests for 1 or more nights and having a total length of stay not to exceed 14 consecutive days, (2) is operated by the family or person residing permanently in the home; and (3) may serve 1 or more meals to guests only. (Effective March 9, 2009)

**Boarding Room:** A use that is accessory and incidental to the primary use of a dwelling as a residence and that (1) provides one or two furnished bedrooms for rent to lodgers for a minimum of 30 consecutive calendar days; (2) is operated by the family or person residing permanently in the home who are in residence, including overnight, during the guest rental period; (3) may serve 1 or more meals to lodgers only, and (4) provides all parking on-site. A maximum of one boarding room is allowed per multifamily building. (Effective March 9, 2009)

**Hotel:** A building used primarily for occupancy of individuals who are lodged with or without meals, having ten (10) or more guest rooms, and intended to be rented principally to transients on a short-term basis.

**Motel:** A building or group of attached or detached buildings containing guest rooms or dwelling units, most of which have separate outside entrances and adjacent parking spaces and are intended to be rented principally to transients on a short-term basis.

**Primary residence:** An owner's permanent residence, which shall be documented by demonstration that the owner qualifies for a homestead exemption under Maine Homestead Property Tax Exemption statute, 36 M.R.S. §§ 681-689, as may be amended from time to time, for the property. Owner shall be the person who owns the real property, or who is the beneficiary of a revocable living trust that owns the property.

**Short Term Rental:** The advertising, offering for rent or otherwise making available for transient occupancy a dwelling, or portion of a dwelling for a tenancy of less than 30 consecutive calendar days, excluding motels, hotels, and bed and breakfasts.

**Short Term Rental Guest:** A visitor of a Short Term Rental tenant who will not be sleeping overnight on the property, provided persons on the property after

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1 11:00 PM local time shall be deemed tenants and not Short term Rental Guests for  
2 the purposes of this Ordinance. (Effective December 14, 2012)

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4 Short Term Rental Hosted: A short term rental of a private room or rooms but  
5 not the entire dwelling where the owner of the property is in residence,  
6 including overnight, during the tenancy of the short term rental tenant(s).

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8 Short Term Rental Unhosted: A short term rental of a dwelling where the owner  
9 of the property is not in residence during the tenancy of the short term rental  
10 tenant(s).

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12 **Special event facility:** A building or portion of a building, outdoor areas, and  
13 related parking which is made available for consideration individuals or groups  
14 to accommodate private functions including but not limited to banquets,  
15 weddings, anniversaries and other similar events. Such use may include (1)  
16 kitchen facilities for the preparation or catering of food, (2) the sale and / or serving  
17 of alcoholic beverages for on-premises consumption, only during scheduled  
18 events and not open to the general public and (3) entertainment. A special event  
19 facility may be operated in conjunction with other uses. Overnight  
20 accommodations may be operated on a site that is also a special event facility, and  
21 are subject to all applicable provisions of the Zoning Ordinance. (Effective December  
22 4, 2015)

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24 **Tenant:** An occupant of land or premises who occupies, uses, and enjoys real  
25 property for a fixed time, usually through a lease arrangement with the property  
26 owner or with the owner's consent. When applied to a Short Term Rental,  
27 anyone sleeping overnight shall be presumed to be a tenant. (Effective December  
28 14, 2012)

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30 **SEC. 19-6-1. RESIDENCE A DISTRICT (RA)**

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32 **B. Permitted Uses**

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34 3. The following nonresidential uses:

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36 g.

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38 4. The following accessory uses:

- 39  
40 d. Boarding Room  
41 i. Short Term Rental  
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43 **SEC. 19-6-2. RESIDENCE B DISTRICT (RB)**

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45 **B. Permitted Use**

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47 3. The following nonresidential uses:  
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- e. ▼
- 4. The following accessory uses:
  - i. Short Term Rental

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**SEC. 19-6-3. RESIDENCE C DISTRICT (RC)**

**B. Permitted Uses**

- 3. The following nonresidential uses:
  - 4. The following accessory uses:
    - d. Boarding Room
    - i. Short Term Rental

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**SEC. 19-6-4. TOWN CENTER DISTRICT (TC)**

**B. Permitted Uses**

- 3. The following nonresidential uses:
  - 4. ▼ The following accessory uses:
    - k. Short Term Rental

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**SEC. 19-6-5. BUSINESS DISTRICT A (BA)**

**B. Permitted Use**

- 3. The following nonresidential uses:
  - 4. ▼ The following accessory uses:
    - i. Short Term Rental

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**SEC. 19-6-6 BUSINESS DISTRICT B (BB)**

**B. Permitted Uses**

- 4. The following accessory uses:

c. Boarding Room.

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**SEC. 19-8-14. SHORT TERM RENTAL STANDARDS**

(Effective December 14, 2012)

**A. Purpose**

Cape Elizabeth residents prize the peace and quiet of their residential neighborhoods. Some property owners have capitalized on the desirability of their neighborhood by renting out their property, especially during the summer months and holidays. Neighborhood residents are concerned that short term rentals take on the character of a business operating in a residential neighborhood. In order to preserve the character of residential neighborhoods, to minimize the negative impacts of unsupervised tourism activities on adjacent residents, to maintain housing availability for long-term residents and to protect the public safety of visitors and residents, the operation of short term rentals must be constrained.

**Deleted:** The purpose of this section is to balance the desire of property owners to rent their properties to short term tenants and the desire of residents to preserve the peaceful quiet and enjoyment of their residential neighborhoods.

**B. Permitted Short Term Rentals**

The following types of short term rentals may be allowed after obtaining all required permits. Short term rental types not listed below are prohibited. Only one short term rental may be operated on a lot in a calendar year, and limited to only one of short term rental types listed below for the calendar year. Where operation of a short term rental must include that the Short Term Rental owner is "in residence," the intent is that the owner shall be living on the lot and managing the tenants.

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1. **Primary residence hosted.** A short term rental may be operated by a property owner in their primary residence when the property owner is in residence, including overnight, during the tenancy of the short term rental tenants with no limit on the total number of days operated as a short term rental.

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2. **Primary residence unhosted.** A short term rental may be operated by a property owner in their primary residence when the property owner is not in residence during the tenancy of the short term rental tenants. The property may be used as a short term rental for no more than 42 days per calendar year.

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3. **Seven (7) acres plus short term rental.** A short term rental may be operated by a property owner in their primary residence or non-primary residence when the property owner is in residence or not in residence during the tenancy of the short term rental tenants, where the lot is seven (7) acres or more in size. (Land abutting the short term rental lot in the same ownership may be counted toward the minimum lot size. Abutting shall mean any lot that shares a lot line or is located directly across a road right-of-way from the primary residence.) The property may be used as a short term rental for no more than 182 days per calendar year.

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4. **Short Term Rental Adjacent.** One short term rental may be operated by a property owner in a non-primary residence when the short term rental owner's primary residence is located on the same lot as the primary residence or on an abutting lot. (Abutting shall mean any lot that shares a lot line or is located directly across a road right-of-way from the primary residence.) The property owner must be in residence during the tenancy of the short term rental tenants. The property may be used as a short term rental for no more than 105 calendar days per calendar year.

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5. **Short Term Rentals not allowed.** No short term rental shall be operated that does not comply with sections 1, 2, 3, and 4 above.

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**C. Short Term Rental Requirements**

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1. Permit required. No Short Term Rental shall be advertised, rented or operated without first obtaining a Short Term Rental Permit. A short term rental permit shall be valid for the calendar year in which the permit is issued. A permit application received more than 30 days after the permit deadline, which shall be January 2nd of the year the short term rental will be operating, shall be considered late. The property must remain in compliance with the short term rental permit for the entire calendar year in which the permit is issued. A short term rental permit may only be issued to the property owner of the lot where the short term is located and a lessee of the lot may not operate a short term rental.

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Deleted: is permitted only after the issuance of a Short Term Rental permit. Notwithstanding the preceding sentence, a permit is not required for a Short Term Rental which, with any prior Short Term Rental of the property, does not exceed in the aggregate fourteen (14) days in any calendar year.

Failure to obtain a short term rental permit prior to offering, advertising or renting the short term rental shall require payment of double the short term rental permit fee. Once notified by the town that a short term rental has been operated without a permit, a permit application shall be submitted within 7 calendar days or shall be considered an additional violation. The permit applicant must make a diligent effort to meet permit requirements.

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The second failure to obtain a short term rental permit for a property within a 5 year period shall result in a prohibition from obtaining a permit for one (1) year and shall also be assessed a fine by the Town Manager equal to one percent (1%) of the assessed value of the property as determined by town assessor where the short term rental is located. [failure to run with the property]

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2. Advertising. It shall be unlawful to advertise occupancy or use of a short term rental that would violate Sec. 19-8-14 of the Zoning Ordinance. For the purposes of this section, the term "advertise" shall mean any form of communication for marketing that is used to encourage, persuade or manipulate viewers, readers or listeners into contracting for goods and/or services as may be viewed through various media included, but not limited to newspapers, magazines, flyers, handbills, television commercials, radio, signage, direct mail, websites or text messages. No short term rental shall be advertised that does not have a current short term rental permit. The short term rental advertising must be consistent with the terms of the short term rental permit and must include the current short term rental permit number. Advertising of the short term rental must

1 state that the short term must be rented for a minimum period of seven  
2 consecutive (7) days.

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4 3. Minimum stay length. No more than one (1) rental/use of the short term  
5 rental shall occur in a seven (7) day period. When a rental or non-compensated  
6 use of the property by any one individual or group, including but not limited to  
7 personal or family use by the property owner, of less than seven (7) days occurs,  
8 the property shall remain vacant for the remaining portion of the seven (7) day  
9 period.

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Deleted: shall be deemed for a period of not less than seven (7) days regardless if the actual number of days the property is occupied is less than seven (7) days. Further, not more than one Short Term Rental agreement shall be entered for any given property for any consecutive seven-day period.

10 4. Registration record. The short term rental owner must (a) maintain  
11 accurate, up-to-date records of all rental transactions involving the short term  
12 rental, including the number of tenants and the length of their stays, and  
13 upcoming reservations; and (b) present said information to Town inspection  
14 officials upon request. Failure of the short term rental owner to provide this  
15 information within 5 business days of a Town request for the same shall be  
16 considered a violation of this section.

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17 5. Multi-family and multiplex units. No short term rental may be operated  
18 on a lot containing a multifamily dwelling unit unless all of the dwelling units  
19 are held in common ownership. No short term rental shall be operated on a  
20 property containing five (5) or more dwelling units.

21 **D. Review Procedure**

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23 1. The Code Enforcement Officer shall have the authority to issue a  
24 Short Term Rental permit.

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26 2. The Code Enforcement Officer shall provide a Short Term Rental  
27 application to be completed by the applicant and submitted to the  
28 Code Enforcement Officer accompanied by the Short Term Rental  
29 permit fee as established by the Town Council in the Town Fee  
30 Schedule. The form shall include a non-exclusive checklist of code  
31 requirements that the property owner shall demonstrate compliance  
32 with.

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34 3. The Code Enforcement Officer shall determine if the form has been  
35 properly completed before any permit is issued.

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37 4. The first time that a Short Term Rental permit is submitted for a  
38 property, no permit shall be issued until the Code Enforcement  
39 Officer has inspected the proposed Short Term Rental property for  
40 compliance with the Short Term Rental Standards and compliance  
41 with building code requirements. Thereafter, renewal of a Short  
42 Term Rental permit shall require inspection by the Code  
43 Enforcement Officer of the Short Term Rental property no less than  
44 once every five years. When the Code Enforcement Officer does not  
45 conduct an annual inspection, the Short Term Rental owner shall

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certify that there have been no material changes since the last inspection by the Code Enforcement Officer. Any third party inspection information submitted with the completed form shall have been conducted within the twelve months prior to the permit being issued.

- 5. The Code Enforcement Officer shall review the permit application for compliance with the Short Term Rental Standards.
- 6. If the Code Enforcement Officer determines that the proposed Short Term Rental application complies with the Short Term Rental Standards, a Short Term Rental permit shall be issued. The permit may be subject to suspension by the Code Enforcement Officer if the Short Term Rental property becomes non-compliant with the Short Term Rental Standards, and may be revoked as provided in 19-8-14.(G).

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**E. Submission Requirements**

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The Short Term Rental permit application shall include the following information:

- 1. Location. The street address and map/lot number of the Short Term Rental property. If the property is not located on a public road, the form shall include directions to the property from a public road.
- 2. Contact Person/Owner Responsibility. The name of the owner of the Short Term Rental property and contact information, including address and telephone number. In addition, if someone other than the owner is acting as the local contact person, contact information for that person shall also be provided. If there will be different contact persons for different time periods during the year, the form shall include the applicable contact person for each time period. Regardless of who enters the Short Term Rental agreement, or who may be designated as the owner’s contact person, the property owner shall be responsible for compliance with the Short Term Rental Ordinance provisions.
- 3. Availability. The registration form shall include when, during the calendar year, the Short Term Rental will be available for rental. If this changes, the owner shall notify the Code Enforcement Officer.
- 4. All information needed to demonstrate compliance with the standards listed in Subsection F below.

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**E. Standards**

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The Code Enforcement Officer shall issue a Short Term Rental permit upon the applicant satisfying the above requirements if the following standards are met:

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1. Code compliance. An applicant's property, without limitation, comply with the following building safety requirements (International Residential Code, IRC, and the International Building Code, IBC;

a. Smoke Alarms: A smoke alarm is required in each bedroom. A smoke alarm is also required outside of each bedroom and in the immediate vicinity. A smoke alarm is also required to be on each story of the dwelling, including basements and habitable attics. The alarms shall be interconnected as much as reasonably possible. (Reference IRC Section R314);

b. Carbon Monoxide Alarms: If a house has an attached garage or a fuel fired appliance, a carbon monoxide alarm shall be installed outside each bedroom and in the immediate vicinity. (Reference IRC Section R315);

c. Portable Fire Extinguishers: At least one portable fire extinguisher shall be mounted in a prominent location. One size/type 2/A is required or two size/type 1/A extinguishers;

d. Emergency Lighting: At least one hardwired emergency light with battery backup is required per 1200 square feet of living space. The lights must be positioned to illuminate the path of egress to the maximum extent. There also must be exterior lighting that is permitted to be solar powered. Exception: The house lighting has a backup power source that automatically activates.

The applicant shall provide floor plans of the dwelling unit that shows the location of the alarms, fire extinguisher(s) and emergency lighting.

2. Building evacuation plan. A building evacuation plan shall be prominently posted in the Short Term Rental property during the rental period.

3. Sanitary waste disposal. The applicant shall submit information demonstrating that adequate sanitary waste disposal is available in compliance with the Town of Cape Elizabeth Subsurface Wastewater Disposal Ordinance, as determined by the Code Enforcement Officer, or that the property is served by public sewer.

4. Parking. The applicant shall include a depiction of how parking will be provided for tenants and guests on the lot where the Short Term Rental is located, and/or include a written agreement for off-site

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Deleted: The information shall include the total number of bedrooms included in the property, any additional sleeping space, and the total number of tenants that the property accommodates. The total number of tenants used to determine adequacy of sanitary waste disposal shall not be less than the total number of tenants that the property is advertised to accommodate. For the purpose of evaluating the adequacy of a subsurface disposal system, every two tenants shall be equivalent to one bedroom...

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parking at a specified location, to comply with the Off-Street Parking Standards, Sec. 19-7-8. Garage parking spaces not allowed for tenant use shall not be used to meet the Short Term Rental parking requirement. No bus shall be parked at the Short Term Rental property during any rental period.

5. Rental Agreement Addendum. The Short Term Rental permit application shall be submitted with an addendum, to be attached to Short Term Rental agreement between owner and tenant, that shall be provided to all tenants. The Town shall not be responsible for enforcement of the rental agreement addendum. The rental agreement addendum shall include the following:

- a. Primary and secondary contact person and contact information; A contact person must be available to tenants at all time of rental period (24/7).
- b. Emergency responder contact information;
- c. Building evacuation plan;
- d. Maximum number of tenants and guests;
- e. Parking arrangements, including a prohibition of tenants and guests parking in a manner that impedes access by emergency vehicles to the property or any other dwelling in the neighborhood;
- f. Maximum number of tenants and guests allowed at the property;
- g. Good neighbor guidelines;
- h. Copy of the Miscellaneous Offenses Ordinance.

6. Limit on rental intensity. The maximum tenant capacity of a short term rental shall be limited to no more than 2 tenants per bedroom, plus 2 additional tenants for no more than 1 additional sleeping space.

If a Short Term Rental property is operated on a lot of 30,000 sq. ft. or less in size and property owner is not either living on an abutting lot or in a separate dwelling in the same lot, the Short Term Rental permit shall not allow occupancy by more than eight tenants at any time. The number of short term rental guests shall be limited to eight at any time. On site parking shall be limited to four parking spaces.

7. Response requirement. Failure of the owner/contact person to respond to a short term rental tenant or guest inquiry during the short term rental tenancy, including check-in, within 30 minutes shall be considered a violation of Sec. 19-8-14, Short Term Rental Standards.

8. Good neighbor conduct. The Code Enforcement Officer shall consider any complaints received about behavior at the short term rental that diminishes the peaceful quiet and enjoyment of property by residents within 1,000' of the short term rental property line.

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Disruptive outdoor behavior may include but not be limited to smoking, swearing, lewd gestures or conduct, late hour noise, pet control, substance use, parking and speeding. The Code Enforcement Officer may deny issuance of the permit based on complaints that the short term rental owner, tenants or guests have diminished the peaceful quiet and enjoyment of neighborhood residents. An appeal of the Code Enforcement Officer's decision to issue or deny a Short Term Rental permit based on this standard shall be heard by the Town Council.

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**G. Suspension and Revocation of Permit**

In addition to the provisions of Sec. 19-3-6, Violations, a permit for a Short Term Rental may be suspended or revoked if the Code Enforcement Officer determines that one or more substantiated complaints regarding Short Term Rentals of a property have been made in a three-year period. The Police Department may provide a report of conditions observed in plain sight to the Code Enforcement Officer, but enforcement of the Zoning Ordinance shall remain with the Code Enforcement Officer.

1. Complaint. Any individual or town official may file and/or initiate a complaint against a Short Term Rental permit holder. If the Police Department or the Code Enforcement Officer receives a complaint, they shall visit the property. The Police Department shall generate a report of the facts its officers have observed upon a visit, and statements made to them regarding the Short Term Rental. The Police Department shall then forward the report to the Code Enforcement Officer.

When the Code Enforcement Officer receives a report from the Police Department, or the Code Enforcement Officer has responded to a complaint or independently investigated, the Code Enforcement Officer shall inspect the property and shall collect information related to the complaint, including notifying the property owner and requesting information regarding the complaint. Within five days of receiving a Police Report or complaint, the Code Enforcement Officer shall determine if the complaint is substantiated. A complaint is substantiated when the Code Enforcement Officer concludes that one or more violations of the Short Term Rental provisions occurred.

2. First Substantiated Complaint. Once the Code Enforcement Officer has made a finding of a substantiated complaint, the Code Enforcement Officer shall notify the property owner in writing. The notification shall require the property owner to meet with the Code Enforcement Officer within five (5) business days from the date of the written notification, or such other time as is agreed upon by the Code Enforcement Officer, to identify ways in which the violation(s) will be corrected. The owner will agree to take all

necessary measures to correct the violation(s), which measures shall be memorialized in a written agreement at the conclusion of the meeting and shall be fully implemented within one (1) week of said meeting unless another date is agreed to by the Code Enforcement Officer. Failure of the property owner to enter into such an agreement at the conclusion of the meeting will be deemed a second violation of the Short Term Rental provisions. In addition, the Code Enforcement Officer may suspend the Short Term Rental permit for a term not to exceed thirty days.

- 3. Second Substantiated Complaint. Once the Code Enforcement Office has made a finding of two (2) substantiated complaints, the Code Enforcement Officer shall notify the property owner in writing that the Short Term Rental permit shall be suspended for ~~the remainder of permit year but not less than six (6) months.~~

The notification shall require the property owner to meet with the Code Enforcement Officer within five (5) business days from the date of the written notification, or such other time as is agreed upon by the Code Enforcement Officer, to identify ways in which the violation(s) will be corrected. The owner will agree to take all necessary measures to correct the violation(s), which measures shall be memorialized in a written agreement at the conclusion of the meeting and shall be fully implemented within one (1) week of said meeting unless another date is agreed to by the Code Enforcement Officer. Failure of the property owner to enter into such an agreement at the conclusion of the meeting will be deemed a violation of the Short Term Rental provisions.

- 4. Third Substantiated Complaint. Once the Code Enforcement Officer has made a finding of three substantiated complaints, the Code Enforcement Officer shall notify the property owner in writing that the Short Term Rental permit has been revoked for ~~three years.~~

- 5. Appeal. An appeal to the Zoning Board of Appeals as an Administrative Appeal may be taken by any person aggrieved by a determination of the Code Enforcement Officer pursuant to Section 19-5-2(A).

- 7. Effective Date. ~~[to be determined. Should include termination of all existing permits on December 31, 2020.]~~

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Deleted: The Short Term Rental provisions of the ordinance shall be fully effective as to all contracts for short Term Rentals executed on or after 30 days from date of enactment, and shall further apply to all contracts in effect on such date to the extent the application of these provisions would not result in a substantial impairment of such existing contracts.