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DRAFT
Short Term Rental Ordinance 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)

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- Deleted: 1 or more nights
- Deleted: guests
- Deleted: homestay

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 primary place of residence, as defined by whether the Owner carries on basic living activities at the dwelling unit and whether such dwelling unit is the Owner's usual place of return. Reasonable documentation, such as a homestead exemption Maine Homestead Property Tax Exemption statute, 36 M.R.S. §§ 681-689, as may be amended from time to time, voter registration, government ID with address, motor vehicle registration, or motor vehicle excise tax payment receipt and that it is such for 183 or more days of the calendar year, shall be indicia of primary residence.

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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.

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Deleted: The use of a dwelling offered for rent for transient occupancy by tenants for a tenancy of less than 30 days, excluding motels, hotels and bed and breakfasts. (Effective December 14, 2012)¶

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

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

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

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

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

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SEC. 19-5-5. CONDITIONAL USE PERMITS

The purpose of this section is to establish the procedures and standards to enable the Town to review applications for conditional use permits.

A. Conditional Use Approval Required

1 A building, structure, or parcel of land may be used for a conditional use if:
2

- 3 1. The use is specifically listed as a conditional use in the district, and
- 4
- 5 2. Conditional use approval is granted by the Zoning Board of Appeals.
- 6

7 **B. Administrative Procedures**
8

- 9 1. Prior to submitting a formal application for conditional use approval,
10 the applicant should meet with the Code Enforcement Officer to
11 informally discuss the proposed application and the review process.
12 The purpose of this informational meeting is to allow the applicant to
13 understand the process and clarify any questions before submitting a
14 formal application.
15
- 16 2. An application for conditional use approval shall be made to the Code
17 Enforcement Officer on forms provided for that purpose.
18
- 19 3. The application form shall be accompanied by the supporting
20 materials set forth in Sec. 19-5-5.C, Application Requirements, and an
21 application fee.
22
- 23 4. The application shall be processed in accordance with the procedures
24 set forth in Sec. 19-5-3, Procedures.
25

26 **C. Application Requirements**
27

28 The applicant's submissions shall include the following:
29

- 30 1. A completed and signed application form
- 31
- 32 2. The appropriate fee
- 33
- 34 3. The location of the proposed use, including Assessor's tax map and lot
35 number, and a location map
36
- 37 4. A description of the exact nature of the proposed use, including but
38 not limited to the type of use, square footage involved, hours of
39 operation, types and amount of any pollutants to be generated, and
40 types and amount of traffic expected to be generated
41

- 1 5. A scale drawing, including existing and proposed buildings, important
2 natural features, driveways, parking areas, pedestrian ways, streets
3 and other rights-of-way, and location of signs and outdoor lighting
4
- 5 6. Information demonstrating that the application complies with the
6 standards of approval of Sec. 19-5-5.C, Standards for Conditional Use
7 Approval
8

9 This information must be provided or a waiver sought before the application will
10 be considered by the Board. The Board may waive any of these submission
11 requirements at its initial consideration of the application upon written request of
12 the applicant. In waiving any submission requirement, the Board shall find that
13 such waived information is not needed to determine conformance with the
14 standards of approval due to the scale or nature of the proposed activity.
15

16 The Board may also request, at the initial consideration of the application, that
17 additional information be provided to determine compliance with the standards
18 of approval. The applicant shall have the burden of providing the information
19 upon which the Board will base its findings and decision.
20

21 **D. Standards for Conditional Use Approval**
22

23 The Board shall, after review of required materials, authorize issuance of a
24 conditional use permit, upon a showing that:
25

- 26 1. Any conditions prescribed for such conditional use will be satisfied;
27
- 28 2. The proposed use will not create hazardous traffic conditions when
29 added to existing and foreseeable traffic in its vicinity;
30
- 31 3. The proposed use will not create unsanitary conditions by reason of
32 sewage disposal, emissions to the air, or other aspects of its design or
33 operation;
34
- 35 4. The proposed use will not adversely affect the value of adjacent
36 properties;
37
- 38 5. The proposed site plan and layout are compatible with adjacent
39 property uses and with the Comprehensive Plan; and
40
- 41 6. The design and external appearance of any proposed building will
42 constitute an attractive and compatible addition to its neighborhood,
43 although it need not have a similar design, appearance or architecture.

1
2 Upon a finding by the Board that all of these standards have been met, the Board
3 shall authorize the issuance of a permit for such conditional use, but may impose
4 such conditions upon the use as it deems necessary in order to assure that the
5 foregoing objectives will be attained.

6
7 **E. Conditions of Approval**

8
9 The Board may attach conditions to its approval of a conditional use. These
10 conditions may include, but are not limited to, such requirements as:

- 11
12 1. off-site street improvements
13 2. access restrictions
14 3. hours of use
15 4. buffering and screening
16 5. utility improvements
17 6. performance guarantees

18
19 **F. Duration of a Conditional Use Approval**

- 20
21 1. Provided all conditions and standards of approval are met, a
22 conditional use shall be a continuing grant of permission for as long as
23 the property is used for such purposes. The conditional use shall
24 expire if the owner:
25 a. physically alters the property and/or structure so it can no longer
26 be used for the conditional use, or
27
28 b. ceases to use the property for the approved conditional use for one
29 (1) year or more, or
30
31 c. fails to initiate the operation or conduct of the conditional use
32 within one (1) year of the date of the Board's vote to grant said
33 approval.
34
35 2. A conditional use may be expanded in area or function only with the
36 granting of a new conditional use approval by the Board.

37
38 **G. Scope of Approval**

39
40 All permits or approvals shall include, as an express condition, a written
41 statement to the effect that the permit or approval is granted subject to all
42 elements of the final plans and specifications submitted by the applicant and to

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all representations, oral or written, made by or on behalf of the applicant in support of the application.

SEC. 19-6-1. RESIDENCE A DISTRICT (RA) [same for RB, RC, TC, BA districts]

B. Permitted Uses

3. The following nonresidential uses:

g. Short Term Rental, in accordance with Sec. 19-8-14

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4. The following accessory uses:

d. Boarding Room

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C. Conditional Uses

3. The following accessory uses:

c. Short Term Rental, in accordance with Sec. 19-8-14

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.

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B. Permitted Short Term Rentals

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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 type of short term rental may be operated on a property in a calendar year.**

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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 for no more than ninety (90) days per calendar year.

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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 thirty (30) 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 non-primary residence property owner on their property either 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. The property may be used as a short term rental for no more than 30 consecutive days per calendar year, and the 30 days must be a consecutive block. Prior to applying for a Short Term Rental Permit, the property owner shall be required to obtain a conditional use permit from the Zoning Board of Appeals.

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4. **Short Term Rental Adjacent.** A 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 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 may be used as a short term rental for no more than 90 calendar days per calendar year. Prior to applying for a Short Term Rental Permit, the property owner shall be required to obtain a conditional use permit from the Zoning Board of Appeals.

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

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

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. Failure to obtain or renew a permit prior to offering, advertising or renting the short term rental shall require payment of double the short term rental permit fee. The second failure to obtain or renew a permit (within a 5 year period) shall be prohibited from obtaining a permit for one (1) year. A permit application received more than 30 days after the permit deadline shall be considered late. A short term rental permit shall be valid for the calendar year in which the permit is issued. The property must remain in compliance with the short term rental permit for the duration of the permit.

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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.

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

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

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

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D. Review Procedure

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1. The Code Enforcement Officer shall have the authority to issue a Short Term Rental permit. Short term rentals that require a conditional use permit shall obtain that permit before applying for a Short Term Rental Permit.
2. The Code Enforcement Officer shall provide a Short Term Rental application to be completed by the applicant and submitted to the Code Enforcement Officer accompanied by the Short Term Rental permit fee as established by the Town Council. The form shall include a non-exclusive checklist of code requirements that the property owner shall demonstrate compliance with.
3. The Code Enforcement Officer shall determine if the form has been properly completed before any permit is issued.
4. The first time that a Short Term Rental permit is submitted for a property, no permit shall be issued until the Code Enforcement Officer has inspected the proposed Short Term Rental property for compliance with the Short Term Rental Standards and compliance with building code requirements. Thereafter, renewal of a Short Term Rental permit shall require inspection by the Code Enforcement Officer of the Short Term Rental property no less than once every five years. When the Code Enforcement Officer does not conduct an annual inspection, the Short Term Rental owner shall 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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1 The Short Term Rental permit application shall include the following
2 information:

3
4 1. Location. The street address and map/lot number of the Short
5 Term Rental property. If the property is not located on a public
6 road, the form shall include directions to the property from a public
7 road.

8
9 2. Contact Person/Owner Responsibility. The name of the owner of
10 the Short Term Rental property and contact information, including
11 address and telephone number. In addition, if someone other than
12 the owner is acting as the local contact person, contact information
13 for that person shall also be provided. If there will be different
14 contact persons for different time periods during the year, the form
15 shall include the applicable contact person for each time period.
16 Regardless of who enters the Short Term Rental agreement, or who
17 may be designated as the owner’s contact person, the property
18 owner shall be responsible for compliance with the Short Term
19 Rental Ordinance provisions.

20
21 3. Availability. The registration form shall include when, during the
22 calendar year, the Short Term Rental will be available for rental. If
23 this changes, the owner shall notify the Code Enforcement Officer.

24 [revisit when agree on any time limits]

25
26 4. All information needed to demonstrate compliance with the
27 standards listed in Subsection F below.

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29 F. Standards

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

33
34 1. Code compliance. An applicant’s property, without limitation,
35 comply with the following building safety requirements
36 (International Residential Code, IRC, and the International Building
37 Code, IBC;

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38
39 a. Smoke Alarms: A smoke alarm is required in each bedroom.
40 A smoke alarm is also required outside of each bedroom and
41 in the immediate vicinity. A smoke alarm is also required to
42 be on each story of the dwelling, including basements and

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habitable attics. The alarms shall be interconnected as much as reasonably possible. (Reference IRC Section R314);

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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);

Deleted: IRC Section R 315,

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;

Deleted: IBC Section 906,

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.

Deleted: . The building shall be considered to be an R-1 Occupancy (Boarding House) for the purpose of determining the type and location of portable fire extinguishers

Deleted: IBC Section 1006.2. 1006.3 and 1006.4. Means of Egress Illumination.

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 same lot, and/or include a written agreement for off-site 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

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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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:

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- a. Contact person and contact information;
- 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.

Deleted: more than two tenants per bedroom, shall not allow use of non-bedroom areas for sleeping, and shall not allow

G. Suspension and Revocation of Permit

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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. A violation of other town ordinances related to the operation of a STR shall also be considered a substantiated complaint.

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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.~~

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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.~~

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- 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).

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- 7. Effective Date. ~~[to be determined]~~

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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.