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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 Homestay: 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 guests for a minimum of 30 consecutive calendar days 1 or more nights; (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 guests only, and (4) provides all parking on-site. A maximum of one boarding room homestay 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 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)~~

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.

1
2 **Short Term Rental Guest:** A visitor of a Short Term Rental tenant who will not
3 be sleeping overnight on the property, provided persons on the property after
4 11:00 PM local time shall be deemed tenants and not Short term Rental Guests for
5 the purposes of this Ordinance. (Effective December 14, 2012)

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

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

14
15 **Special event facility:** A building or portion of a building, outdoor areas, and
16 related parking which is made available for consideration individuals or groups
17 to accommodate private functions including but not limited to banquets,
18 weddings, anniversaries and other similar events. Such use may include (1)
19 kitchen facilities for the preparation or catering of food, (2) the sale and / or serving
20 of alcoholic beverages for on-premises consumption, only during scheduled
21 events and not open to the general public and (3) entertainment. A special event
22 facility may be operated in conjunction with other uses. Overnight
23 accommodations may be operated on a site that is also a special event facility, and
24 are subject to all applicable provisions of the Zoning Ordinance. (Effective December
25 4, 2015)

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

32
33
34 **SEC. 19-6-1. RESIDENCE A DISTRICT (RA)**

35
36 **B. Permitted Uses**

37
38 3. The following nonresidential uses:

39
40 g. Short Term Rental. (Effective December 14, 2012)

41
42 4. The following accessory uses:

43
44 d. HomestayBoarding Room

45 i. Short Term Rental

46
47 **SEC. 19-6-2. RESIDENCE B DISTRICT (RB)**

1 **B. Permitted Use**

2
3 3. The following nonresidential uses:

4
5 e. Short Term Rental (Effective December 14, 2012)

6
7 4. The following accessory uses:

8 i. Short Term Rental

9
10 **SEC. 19-6-3. RESIDENCE C DISTRICT (RC)**

11 **B. Permitted Uses**

12
13
14 3. The following nonresidential uses:

15
16 f. Short Term Rental (Effective December 14, 2012)

17
18 4. The following accessory uses:

19
20 d. Homestay Boarding Room

21 i. Short Term Rental

22
23 **SEC. 19-6-4. TOWN CENTER DISTRICT (TC)**

24 **B. Permitted Uses**

25
26
27 3. The following nonresidential uses:

28
29 m. Short term rental (Effective December 14, 2012)

30
31 4. The following accessory uses:

32
33 k. Short Term Rental

34
35 **SEC. 19-6-5. BUSINESS DISTRICT A (BA)**

36 **B. Permitted Use**

37
38
39 3. The following nonresidential uses:

40
41 o. Short Term Rental (Effective December 14, 2012)

42
43 4. The following accessory uses:

i. Short Term Rental

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

B. Permitted Uses

4. The following accessory uses:

c. Boarding Room. The renting of not more than two (2) rooms within a single family dwelling provided that there is no physical alteration of the building and no change in the external appearance of the structure.

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. 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 Applicability

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.

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 number of days.

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

1 residence during the tenancy of the short term rental tenants. The property may
2 be used as a short term rental for no more than 105 days per calendar year.

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

12
13 **[Preceding change added 6-24-2020]**

14
15 4. **Short Term Rental Adjacent.** One short term rental may be operated by a
16 property owner in a non-primary residence when the short term rental owner's
17 primary residence is located on the same lot as the primary residence or on an
18 abutting lot. (Abutting shall mean any lot that shares a lot line or is located directly
19 across a road right-of-way from the primary residence.) The property owner must
20 be in residence during the tenancy of the short term rental tenants. The property
21 may be used as a short term rental for no more than 105 calendar days per calendar
22 year.

23
24 5. **Short Term Rentals not allowed.** No short term rental shall be operated
25 that does not comply with sections 1, 2, 3, and 4 above.

26
27 **C. Short Term Rental Requirements**

28
29 1. **Permit required.** NoA Short Term Rental shall be advertised, rented or
30 operated without first obtaining a Short Term Rental Permit. is permitted only
31 after the issuance of a Short Term Rental permit. Notwithstanding the preceding
32 sentence, a permit is not required for a Short Term Rental which, with any prior
33 Short Term Rental of the property, does not exceed in the aggregate fourteen (14)
34 days in any calendar year. A short term rental permit shall be valid for the calendar
35 year in which the permit is issued. A permit application received more than 30
36 days after the permit deadline, which shall be January 2nd of the year the short
37 term rental will be operating, shall be considered late. The property must remain
38 in compliance with the short term rental permit for the entire calendar year in
39 which the permit is issued. A short term rental permit may only be issued to the
40 property owner of the lot where the short term is located and a lessee of the lot
41 may not operate a short term rental.

42
43 Failure to obtain a short term rental permit prior to offering, advertising or renting
44 the short term rental shall require payment of double the short term rental permit
45 fee. Once notified by the town that a short term rental has been operated without
46 a permit, a permit application shall be submitted within 7 calendar days or shall
47 be considered an additional violation. The permit applicant must make a diligent
48 effort to meet permit requirements.

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

6
7
8 2. Advertising. It shall be unlawful to advertise occupancy or use of a short
9 term rental that would violate Sec. 19-8-14 of the Zoning Ordinance. For the
10 purposes of this section, the term "advertise" shall mean any form of
11 communication for marketing that is used to encourage, persuade or manipulate
12 viewers, readers or listeners into contracting for goods and/or services as may be
13 viewed through various media included, but not limited to newspapers,
14 magazines, flyers, handbills, television commercials, radio, signage, direct mail,
15 websites or text messages. No short term rental shall be advertised that does not
16 have a current short term rental permit. The short term rental advertising must be
17 consistent with the terms of the short term rental permit and must include the
18 current short term rental permit number. Advertising of the short term rental must
19 state that the short term must be rented for a minimum period of seven
20 consecutive (7) days.

21
22 3. Minimum stay length. No more than one (1) rental/use of the short term
23 rental shall occur in a seven (7) day period. When a ach-rental or non-compensated
24 use of the property by any one individual or group, including but not limited to
25 personal or family use by the property owner, of less than seven (7) days occurs,
26 the property shall remain vacant for the remaining portion of the seven (7) day
27 period. shall be deemed for a period of not less than seven (7) days regardless if
28 the actual number of days the property is occupied is less than seven (7) days.
29 Further, not more than one Short Term Rental agreement shall be entered for any
30 given property for any consecutive seven-day period.

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

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

42 **DC. Review Procedure**

- 43
44 1. The Code Enforcement Officer shall have the authority to issue a
45 Short Term Rental permit.

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- 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 in the Town Fee Schedule. The form shall include a non-exclusive checklist of code requirements that the property owner shall demonstrate compliance with.
- 3. The Ccode 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 Eenforcement 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. ~~A permit shall be valid for one (1) year from date of issuance.~~ 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.(GF).

ED. Submission Requirements

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

1 the owner is acting as the local contact person, contact information
2 for that person shall also be provided. If there will be different
3 contact persons for different time periods during the year, the form
4 shall include the applicable contact person for each time period.
5 Regardless of who enters the Short Term Rental agreement, or who
6 may be designated as the owner's contact person, the property
7 owner shall be responsible for compliance with the Short Term
8 Rental Ordinance provisions.
9

- 10 3. Availability. The registration form shall include when, during the
11 calendar year, the Short Term Rental will be available for rental. If
12 this changes, the owner shall notify the Code Enforcement Officer.
13
14 4. All information needed to demonstrate compliance with the
15 standards listed in Subsection FE below.
16

17 **FE. Standards**

18
19 The Code Enforcement Officer shall issue a Short Term Rental permit upon the
20 applicant satisfying the above requirements if the following standards are met:
21

- 22 1. Code compliance. An applicant's property, without limitation,
23 comply with the following building safety requirements code
24 sections of the (International Residential Code, ("IRC")) and the
25 International Building Code ("IBC"):
26
27 a. IRC Section R 314, Smoke Alarms: A smoke alarm is required
28 in each bedroom. A smoke alarm is also required outside of
29 each bedroom and in the immediate vicinity. A smoke alarm
30 is also required to be on each story of the dwelling, including
31 basements and habitable attics. The alarms shall be
32 interconnected as much as reasonably possible. (Reference
33 IRC Section R314);;
34
35 b. IRC Section R 315, Carbon Monoxide Alarms: If a house has
36 an attached garage or a fuel fired appliance, a carbon
37 monoxide alarm shall be installed outside each bedroom and
38 in the immediate vicinity. (Reference IRC Section R315);
39
40 c. IBC Section 906, Portable Fire Extinguishers: At least one
41 portable fire extinguisher shall be mounted in a prominent
42 location. One size/type 2 / A is required or two size/type 1 / A
43 extinguishers. The building shall be considered to be an R-1
44 Occupancy (Boarding House) for the purpose of determining
45 the type and location of portable fire extinguishers;
46
47 d. IBC Section 1006.2, 1006.3 and 1006.4. Means of Egress
48 Illumination. Emergency Lighting: At least one hardwired
49 emergency light with battery backup is required per 1200

1 square feet of living space. The lights must be positioned to
2 illuminate the path of egress to the maximum extent. There
3 also must be exterior lighting that is permitted to be solar
4 powered. Exception: The house lighting has a backup power
5 source that automatically activates.

6
7 The applicant shall provide floor plans of the dwelling unit that
8 shows the location of the alarms, fire extinguisher(s) and emergency
9 lighting.

10
11 2. Building evacuation plan. A building evacuation plan shall be
12 prominently posted in the Short Term Rental property during the
13 rental period.

14
15 3. Sanitary waste disposal. The applicant shall submit information
16 demonstrating that adequate sanitary waste disposal is available in
17 compliance with the Town of Cape Elizabeth Subsurface Wastewater
18 Disposal Ordinance, as determined by the Code Enforcement
19 Officer, or that the property is served by public sewer.

20
21 ~~The information shall include the total number of bedrooms~~
22 ~~included in the property, any additional sleeping space, and the~~
23 ~~total number of tenants that the property accommodates. The total~~
24 ~~number of tenants used to determine adequacy of sanitary waste~~
25 ~~disposal shall not be less than the total number of tenants that the~~
26 ~~property is advertised to accommodate. For the purpose of~~
27 ~~evaluating the adequacy of a subsurface disposal system, every two~~
28 ~~tenants shall be equivalent to one bedroom.~~

29
30 4. Parking. The applicant shall include a depiction of how parking will
31 be provided for tenants and guests on the same lot where the Short
32 Term Rental is located, and/or include a written agreement for off-
33 site parking at a specified location, to comply with the Off-Street
34 Parking Standards, Sec. 19-7-8. Garage parking spaces not allowed
35 for tenant use shall not be used to meet the Short Term Rental
36 parking requirement. No bus shall be parked at the Short Term
37 Rental property during any rental period.

38
39 5. Rental Agreement Addendum. The Short Term Rental permit
40 application shall be submitted with an addendum, to be attached to
41 Short Term Rental agreement between owner and tenant, that shall
42 be provided to all tenants. The Town shall not be responsible for
43 enforcement of the rental agreement of addendum. The rental
44 agreement addendum shall include the following:

- 45
46 a. Primary and secondary cContact person and contact
47 information; A contact person must be available to tenants at
48 all time of rental period (24/7).
49 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 ~~more than two tenants per bedroom, shall not allow use of non-bedroom areas for sleeping, and 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.

[The following standard has been drafted at the request of the Town Council for discussion and may be problematic]

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. 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.

GF. Suspension and Revocation of Permit

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

- 8
9 1. Complaint. Any individual or town official may file and/or initiate
10 a complaint against a Short Term Rental permit holder. If the Police
11 Department or the Code Enforcement Officer receives a complaint,
12 they shall visit the property. The Police Department shall generate a
13 report of the facts its officers have observed upon a visit, and
14 statements made to them regarding the Short Term Rental. The
15 Police Department shall then forward the report to the Code
16 Enforcement Officer.

17
18 When the Code Enforcement Officer receives a report from the Police
19 Department, or the Code Enforcement Officer has responded to a
20 complaint or independently investigated, the Code Enforcement
21 Officer shall inspect the property and shall collect information
22 related to the complaint, including notifying the property owner and
23 requesting information regarding the complaint. Within five days of
24 receiving a Police Report or complaint, the Code Enforcement
25 Officer shall determine if the complaint is substantiated. A
26 complaint is substantiated when the Code Enforcement Officer
27 concludes that one or more violations of the Short Term Rental
28 provisions occurred.

- 29
30 2. First Substantiated Complaint. Once the Code Enforcement Officer
31 has made a finding of a substantiated complaint, the Code
32 Enforcement Officer shall notify the property owner in writing.
33 The notification shall require the property owner to meet with the
34 Code Enforcement Officer within five (5) business days from the
35 date of the written notification, or such other time as is agreed upon
36 by the Code Enforcement Officer, to identify ways in which the
37 violation(s) will be corrected. The owner will agree to take all
38 necessary measures to correct the violation(s), which measures shall
39 be memorialized in a written agreement at the conclusion of the
40 meeting and shall be fully implemented within one (1) week of said
41 meeting unless another date is agreed to by the Code Enforcement
42 Officer. Failure of the property owner to enter into such an
43 agreement at the conclusion of the meeting will be deemed a second
44 violation of the Short Term Rental provisions. In addition, the Code
45 Enforcement Officer may suspend the Short Term Rental permit for
46 a term not to exceed thirty days.

- 47
48 3. Second Substantiated Complaint. Once the Code Enforcement Office
49 has made a finding of two (2) substantiated complaints, the Code

1 Enforcement Officer shall notify the property owner in writing that
2 the Short Term Rental permit shall be suspended for ~~the a period~~
3 ~~remainder of permit year but not less than six (6) months. of not less~~
4 ~~than thirty days, nor more than one hundred twenty days.~~

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

18
19 4. Third Substantiated Complaint. Once the Code Enforcement Officer
20 has made a finding of three substantiated complaints, the Code
21 Enforcement Officer shall notify the property owner in writing that
22 the Short Term Rental permit has been revoked for ~~three one~~
23 ~~calendar years.~~

24
25 5. Appeal. An appeal to the Zoning Board of Appeals as an
26 Administrative Appeal may be taken by any person aggrieved by a
27 determination of the Code Enforcement Officer pursuant to Section
28 19-5-2(A).

29
30 76. Effective Date. ~~[to be determined. Should include termination of all~~
31 ~~existing permits on December 31, 2020.]The Short Term Rental~~
32 ~~provisions of the ordinance shall be fully effective as to all contracts~~
33 ~~for short Term Rentals executed on or after 30 days from date of~~
34 ~~enactment, and shall further apply to all contracts in effect on such~~
35 ~~date to the extent the application of these provisions would not result~~
36 ~~in a substantial impairment of such existing contracts.~~