



## Cape Elizabeth Town Council

DRAFT Minutes Monday, March 8, 2021

7:00 p.m.

Zoom Online

James M. "Jamie" Garvin, Chairman  
Nicole Boucher  
Valerie J. Deveraux  
Jeremy A. Gabrielson  
Caitlin R. Jordan  
Penelope A. Jordan  
Gretchen R. Noonan

**The meeting via Zoom, an online video and audio conferencing platform, was convened at 7:00 p.m. by Chairman Garvin.**

In response to the recent outbreak of Coronavirus Disease 2019 (COVID-19) Governor Mills signed [LD 2167, An Act To Implement Provisions Necessary to the Health, Welfare and Safety of the Citizens of Maine in Response to the COVID-19 Public Health Emergency](#), which is now PL 2019, c. 617.

Part G enacts Title 1, section 403-A, Public proceedings through remote access during declaration of state of emergency due to COVID-19. It authorizes conducting public proceedings through telephonic, video, electronic or other similar means of remote participation with specific conditions. The section is repealed 30 days after the termination of the state of emergency.

The Cape Elizabeth Town Council will meet as necessary to continue the town's work via an online platform as allowed by State authorization during the state of emergency due to COVID-19. The platform will allow for public comment as outlined in the Town Council Rules. The public is reminded they should continue to provide questions and comments to the town council relating to business of the town via email or mailing correspondence to their attention to town hall.

### **Roll Call by the Town Clerk**

All members of the town council were present.

Chief Paul Fenton, Police Department  
Debra M. Lane, Town Clerk  
Maureen O'Meara, Town Planner  
Matthew E. Sturgis, Town Manager

### **The Pledge of Allegiance to the Flag**

### **Town Council Reports and Correspondence**

Councilor Gabrielson encouraged anyone interested in reviewing the Fort Williams Master Plan draft recommendations to log onto the Fort Williams Park Committee meeting on March 17.

Councilors Boucher and Noonan reported they met with Tom Myers and Cliff House Beach area residents to discuss the parking concerns.

Chairman Garvin noted the passing of Stephen Peters, former long-time resident and Rescue Captain and John Woods, active member of the school and sports community. On behalf of the community, condolences are sent to the families.

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**Finance Committee Report**

Finance Chairman Jeremy Gabrielson reviewed the dashboard ending 2/28/2020. Review of the town budget will be held on March 15 and March 18 via Zoom starting at 6:00 p.m. School Board Finance Chairman Phil Saucier invites interested citizens to view and participate in the school budget review; upcoming meetings will be held at 6:30 p.m. on 3/9, 3/23 and 4/6.

**Citizen Opportunity for Discussion of Items Not on the Agenda**

Mario Magnoli, 15 Dearborn Drive expressed concerned about how aggressively the town council has seemed to push new apartment developments. There is a disconnect from what the comprehensive plan says and what the town council is doing. Trying to solve a problem in a way that is not wanted.

**Town Manager's Monthly Report**

The Community Services brochure is available online. Brochures have been mailed and should be received by residents by the end of the week.

Congratulations to Officer Aaron Webster and Officer Rory Benjamin who went above and beyond the call of duty when recently responding in South Portland to an accidental shooting incident. The officers were first responders and saved a man's life. The officers bring professionalism to their service and we are proud of them.

Town departments will begin to review opening plans based on the Governor's recent re-opening plan.

Taxes are due April 1<sup>st</sup>. Taxes can be paid via mail, drop box or online.

Matthew E. Sturgis

**Review of Draft Minutes of the Meeting Held on February 8, 2021**

Moved by Penelope A. Jordan and Seconded by Valerie J. Deveraux

ORDERED, the Cape Elizabeth Town Council approves the minutes of the virtual meeting held on February 8, 2021 as written.

(7 yes) (0 no)

**Item #42-2021 Tabled from February 8, 2021 Short Term Rental Amendments**

Moved by Jeremy A. Gabrielson and Seconded by Penelope A. Jordan

ORDERED, the Cape Elizabeth Town Council takes Item #42-2021 off the table from February 8, 2021.

(7 yes) (0 no)

**Public Comment**

Jill Seaman, 34 Shipwreck Cove Road asked if contracts will be honored in 2021 for renters who weren't able to travel last year due to the pandemic and have rebooked.

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Scott Dobos, 8 Farm House Road Scarborough, Property Manager said the amendments will not eliminate the bad actors. What is the maximum violation fine? Will owners pay the fine rather than adhere to the ordinance? The town council is not accomplishing what they think they are.

Jim Kerney, 1015 Shore Road rents 14-night maximum per year through Airbnb. Concerned the council missed the mark for the casual rental of homes less than 14 nights per year. Requests creating a casual category. The one rental for a 7-day period should not apply to hosted.

Victoria Volent, 58 Cottage Farms Road encouraged the council to move forward. Supports removing the primary unhosted. Safety measures should be in place no matter how long the stay.

Cynthia Doucette, 43 Richmond Terrace has unhosted primary residence for several years without any problems and wants to be able to continue. The proposed \$500 fee is too high.

Leslie Fissmer, 20 Cunner Lane asked if the town checks for homesteads.

Tim Hebda, 55 Richmond Terrace supports removing primary residence unhosted.

Jeff Doucette, on behalf of mother at 43 Richmond Terrace said a primary residence is invested in the community. Remember those who rent their primary residence to help with their finances.

Moved by Penelope A. Jordan and Seconded by Caitlin R. Jordan

ORDERED, the Cape Elizabeth Town Council approves the proposed amendments to Chapter 19 Zoning Ordinance Short Term Rentals as outlined in the 1/7/2021 draft and the following Whereas statements.

WHEREAS, the Town Council has received complaints that short-term rental operations in residential neighborhoods have disrupted the peaceful quiet enjoyment that Cape Elizabeth residents expect;

WHEREAS, the bulk of short-term rental complaints have originated on properties which are not the primary residence of the property owner;

WHEREAS, the Town Council has determined that the existing regulations on short-term rentals has not adequately addressed the threat to the public welfare relating to compatibility with residential uses and preservation of the character of the neighborhoods in which they are located, and to the availability of housing stock in the Town;

WHEREAS, the Town Council has determined that a short-term rental operated by someone, in their primary residence, will be more diligent in managing the short-term rental and preserving the peaceful quiet enjoyment of their neighbors;

WHEREAS, the Town has adopted zoning in the Town Center and Business A Districts that require commercial uses on the first floor which promote commercial vitality, a pedestrian-friendly environment, and short-term rental operations on the first floor is incompatible with these commercial districts' purposes;

WHEREAS, the Town Council intends to improve enforcement by requiring that all short-term rentals obtain a permit, by reinforcing Town regulations and by adding third-party enforcement services;

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WHEREAS, the Town Council wants to preserve some opportunity for property owners to earn short-term rental income to defray taxes and housing costs;

WHEREAS, the Town Council seeks to balance the competing interests of property owners wishing to rent their residential properties to short-term rental guests for compensation against the interests of residents wishing to preserve the traditional peace and quiet of their residential neighborhoods; and to ensure the safety of occupants of short-term rentals;

WHEREAS, the Town Council has adopted a moratorium on the issuance of new short-term rental permits which will expire on June 30, 2021;

WHEREAS, the Town has engaged in a thorough and transparent public process with expansive opportunity for written comment and oral testimony that included a Town Council workshop on September 4, 2019, eight Ordinance Committee meetings, four Planning Board workshops, a Planning Board hearing open to the public on November 17, 2020, four Town Council workshops and four Town Council meetings, including a public hearing on February 8, 2021;

NOW THEREFORE, the Town Council adopts the Short Term Rental amendments.

Moved by Penelope A. Jordan and Seconded by Caitlin R. Jordan

ORDERED, the Cape Elizabeth Town Council amends the motion to allow the minimum stay length within a 7-day period for a primary residence hosted to 2 rentals (rather than 1) in Sec. 19-8-14.

C. 3.

(6 yes) (1 no Councilor Gabrielson)

Moved by Jeremy A. Gabrielson and Seconded by Nicole Boucher

ORDERED, the Cape Elizabeth Town Council amends the motion to change the heading in Sec. 19-8-14. C. 3. Minimum stay length to Rental Intensity and change the last sentence in Sec. 19-8-14.

C. 2. to reference the Rental Intensity requirements.

(7 yes) (0 no)

Moved by Jeremy A. Gabrielson and Seconded by Penelope A. Jordan

ORDERED, the Cape Elizabeth Town Council amends the motion to change the last sentence in Sec. 19-8-14. B. 1. to reference the Rental Intensity requirement.

(7 yes) (0 no)

Moved by Penelope A. Jordan and Seconded by Valerie J. Deveraux

ORDERED, the Cape Elizabeth Town Council tables the vote on the amended motion to the April 12, 2021 town council meeting in order for the changes to be written into the draft for a final vote.

(7 yes) (0 no)

See attachment.

**Item #43-2021 Tabled from February 8, 2021 Comprehensive Plan Amendment –  
Recommendation #86**

Moved by Jeremy A. Gabrielson and Seconded by Penelope A. Jordan

ORDERED, the Cape Elizabeth Town Council takes Item #43-2021 from February 8, 2021 off the table.

(7 yes) (0 no)

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Moved by Nicole Boucher and Seconded by Jeremy A. Gabrielson

ORDERED, the Cape Elizabeth Town Council approves an amendment to the 2019 Comprehensive Plan – Recommendation #86 to read as follows:

#86 Restrict Short Term Rentals (STR) to protect the peaceful quiet enjoyment of neighborhoods and preserve housing stock. Limited STR activity associated with primary residency, or in lower density portions of town, may be allowed within a permit structure that allows tracking of activity and funding for enforcement.

(7 yes) (0 no)

**Item #52-2021 Tabled from February 8, 2021 2021 Town Council Goals**

Moved by Nicole Boucher and Seconded by Gretchen R. Noonan

ORDERED, the Cape Elizabeth Town Council takes Item #52-2021 from February 8, 2021 off the table.

(7 yes) (0 no)

Moved by Nicole Boucher and Seconded by Penelope A. Jordan

ORDERED, the Cape Elizabeth Town Council adopts the 2021 Town Council Goals as presented.

(7 yes) (0 no)

See attachment.

**Public Hearing      Traffic Ordinance Parking Amendments – Kettle Cove at Crescent Beach  
and Sea View Avenue/Glen Avenue**

Chairman Garvin opened the public hearing at 9:17 p.m.

Tom Mikulka, 4 Mountain View Road summarized the results of the neighborhood survey in which a majority of respondents favor resident parking only to address increased traffic and inability for residents to access the town beach due to high intensity use.

Don Kennel, 142 Two Lights Road, non-commercial lobsterman asked if a truck can be parked on the beach to launch a dinghy to access a mooring.

John Pearson, 24 Elmwood Road supports the recommendations. The character of the beach has changed - people know about the beach from the internet.

Tom Meyers, 4 Sea View Avenue thanked the conservation committee, town planner and town council for their work to resolve this issue.

Doug McFadd, 25 Broad Cove Road asked if access will be available to park on Crescent Beach to launch paddle boards from a vehicle (not trailered).

After hearing no further comments, the hearing was closed at 9:30 p.m.

**Item #53-2021           Traffic Ordinance Parking Amendments – Kettle Cove at Crescent Beach  
and Sea View Avenue/Glen Avenue**

Moved by Penelope A. Jordan and Seconded by Jeremy A. Gabrielson

ORDERED, the Cape Elizabeth Town Council approves the proposed amendments to Chapter 13 Traffic Ordinance relating to parking amendments to Kettle Cove at Crescent Beach and Sea View Avenue/Glen Avenue as presented with the addition of an allowance for a motor vehicle to be parked on Crescent Beach with someone with a mooring permit, see Sec. 13-2-4 a. 2.

(6 yes) (1 no Chairman Garvin)

See attachment.

**Item #54-2021           Recommendation of the Ad-Hoc Civil Rights Committee**

Due to the late hour, it was a consensus of the town council to reschedule the recommendation of the Ad-Hoc Civil Rights Committee to the April 12, 2021 council meeting.

Moved by Jeremy A. Gabrielson and Seconded by Penelope A. Jordan

ORDERED, the Cape Elizabeth Town Council suspends the Town Council Rules to take up new items after 10:00 p.m.

(7 yes) (0 no)

**Item #55-2021           Conservation Committee Recommendation Relating to Water Body  
Naming**

Moved by Jeremy A. Gabrielson and Seconded by Valerie J. Deveraux

ORDERED, the Cape Elizabeth Town Council refers the recommendation of the conservation committee relating to water body naming to a future workshop.

(7 yes) (0 no)

**Item #56-2021           Consideration of Endorsement of the Extended Producer Responsibility  
Resolution**

Moved by Valerie J. Deveraux and Seconded by Gretchen R. Noonan

ORDERED, the Cape Elizabeth Town Council endorses the Extended Producer Responsibility Resolution as prepared by the Natural Resources Council of Maine as presented.

(7 yes) (0 no)

**Whereas**, Maine’s communities are struggling to maintain, expand, and in some cases are eliminating, recycling programs due to rising costs and difficult-to-manage materials; and

**Whereas**, product packaging, which includes plastic, metal, glass, and cardboard, constitutes approximately 30-40% of the materials managed by weight in Maine’s municipal waste management programs; and

**Whereas**, Maine taxpayers currently unfairly bear 100% of the cost and pay an estimated \$16 million to \$17 million each year to finance the management of this material through fragmented and increasingly expensive disposal or recycling options; and

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**Whereas,** producers of product packaging have little incentive to minimize wasteful packaging or increase access to recycling; and there is no organized coordination between the producers of packaging and municipalities that are responsible for disposing of or recycling the packaging materials; and

**Whereas,** producers of product packaging have taken some or all responsibility for the management of post-consumer packaging in other parts of the world, including all European Union member states and five provinces in Canada, and, as a result, have greatly increased recycling rates, expanded infrastructure investment, created jobs, and reduced taxpayer costs;

**Now, Therefore Be It Resolved,**

**We, Maine’s municipalities, support an Extended Producer Responsibility (EPR) for Packaging law as endorsed by the Legislature in 2019 through the passage of the Resolve, To Support Municipal Recycling Programs (LD 1431). We believe that this policy will work to make recycling in Maine:**

**More effective:** Producers of packaging materials would have a direct economic incentive to produce less-wasteful packaging that can easily and profitably be managed by municipal recycling programs. Having shared responsibility between those who create the waste and those who manage the waste would foster recycling system improvements and enable greater participation in recycling across Maine;

**More sustainable:** An EPR law for packaging is an insurance policy for Maine municipalities when global recycling markets are unfavorable. The current approach to recycling is not resilient to fluctuations in the global recycling market. When commodity prices fall unexpectedly, towns and cities may be forced stop or restrict their programs; and

**More equitable:** Maine’s cities, towns, and taxpayers are currently footing the bill for a problem they didn’t create. With recycling reform, taxpayers will no longer pay for the cost of recycling since the net costs of recycling would be reimbursed—and the packaging manufacturers that produce less-wasteful, more recyclable packaging would pay less than those who do not. This is a much more equitable way to distribute costs.

**Item #57-2021            Receipt of Audit Results FY 2020**

Moved by Valerie J. Deveraux and Seconded by Nicole Boucher

ORDERED, the Cape Elizabeth Town Council acknowledges receipt of the results of the FY 2020 Annual Financial Statements ending June 30, 2020 and accompanying reports prepared by Runyon Kersteen Ouellette.

(7 yes) (0 no)

**Item #58-2021            Refer the FY 2022 Municipal Budget to the Finance Committee**

Introduction – Mr. Sturgis

Moved by Valerie J. Deveraux and Seconded by Jeremy A. Gabrielson

ORDERED, the Cape Elizabeth Town Council refers the proposed manager’s municipal budget for FY 2022 (July 1, 2021 – June 30, 2022) to the finance committee for review.

(7 yes) (0 no)

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**Item #59-2021            Consent Agreement – Two Penguin Properties LLC**

Public Comment

Zev Myerowitz, 12 Hill Way Unit A asked the town council, to avoid further delay, to vote on the consent agreement to allow the project to move forward.

Moved by Nicole Boucher and Seconded by Penelope A. Jordan

ORDERED, the Cape Elizabeth Town Council authorizing the signing of the draft consent agreement between the Town of Cape Elizabeth and Two Penguin Properties, LLC as presented.

(5 yes) (2 no Councilor Deveraux and Councilor Noonan)

See attachment.

**Item #60-2021            Spirit of America Award**

Moved by Caitlin R. Jordan and Seconded by Gretchen R. Noonan

ORDERED, the Cape Elizabeth Town Council nominates the Community Ice Rink Organizers; Sam and Maureen Sezak, Chris and Melissa Hooper, and Jay and Kate Brandeis for the 2021 Spirit of America Award.

(7 yes) (0 no)

**Citizens may at this point in the meeting raise any topic that is not on the agenda that pertains to Cape Elizabeth local government.**

None

**Item #61-2021            Executive Session – Update on Collective Bargaining and Annual Evaluation of the Town Manager**

Moved by Jeremy A. Gabrielson and Seconded by Valerie J. Deveraux

ORDERED, the Cape Elizabeth Town Council enters executive session at 10:34 p.m. pursuant to 1 MRS §405 6 D to receive an update from the town manager relating to collective bargaining negotiations with the Cape Elizabeth Police Benevolent Association and Teamster Local Union No. 340 for the Public Works Department and 1 MRS §405 6 A to begin the annual evaluation of the town manager.

(7 yes) (0 no)

Moved by Caitlin R. Jordan and Seconded by Penelope A. Jordan

ORDERED, the Cape Elizabeth Town Council exits executive session and reenters public session at 10:46 p.m.

(7 yes) (0 no)

Moved by Penelope A. Jordan and Seconded by Caitlin R. Jordan

ORDERED, the Cape Elizabeth Town Council adjourns at 10:47 p.m.

(7 yes) (0 no)

Respectfully Submitted,

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Debra M. Lane, Town Clerk

**Attachment Item #42-2021 Tabled from February 8, 2021 Virtual Meeting  
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**DRAFT (including 3/8/2021 amendments)  
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 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 only, and (4) provides all parking on-site. A maximum of one boarding room homestay is allowed per multifamily building. ~~(Effective March 9, 2009)~~ A Boarding Room may not be a Short Term Rental.

**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 has a homestead exemption for the property under the Maine Homestead Property Tax Exemption statute, 36 M.R.S. §§ 681-689, as may be amended from time to time. The 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, use, or otherwise making available for transient occupancy a dwelling, or portion of a dwelling for a tenancy of less than thirty (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 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)

**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 considered a tenant. (Effective December 14, 2012)

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

### **B. Permitted Uses**

3. The following nonresidential uses:
  - g. ~~Short Term Rental. (Effective December 14, 2012)~~
4. The following accessory uses:
  - d. HomestayBoarding Room

i. Short Term Rental

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

**B. Permitted Use**

3. The following nonresidential uses:

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

4. The following accessory uses:

d. 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.~~

i. Short Term Rental

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

**B. Permitted Uses**

3. The following nonresidential uses:

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

4. The following accessory uses:

d. ~~Homestay~~Boarding Room

i. Short Term Rental

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

**B. Permitted Uses**

3. The following nonresidential uses:

m. ~~Short Term Rentals (Effective December 14, 2012)~~

4. The following accessory uses:

k. Short Term Rental

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

**B. Permitted Use**

3. The following nonresidential uses:

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

4. The following accessory uses:

l. 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.~~

h. Short Term Rental

**SEC. 19-7-8. OFF-STREET PARKING (Effective May 12, 2002)**

**A. Applicability**

Off-street parking shall be provided for all new construction, expansions, and changes of use in accordance with the requirements and standards found in this section.

**B. Minimum Requirements for Off-Street Parking**

Off-street parking shall be considered an accessory use when required or provided to serve any legal use located in any zone except as set forth in the following sections. An off-street parking space shall be a minimum of nine (9) feet wide by eighteen (18) feet long may be open or covered. The Planning Board may allow up to twenty percent (20%) of the parking requirement to be met with "compact

car” spaces that are a minimum of eight (8) feet wide by sixteen (16) feet long provided that such spaces shall be clearly marked as “compact car parking”. Each parking space must be sited to allow access and exit without obstruction. Handicapped parking shall be provided in compliance with the Americans with Disabilities Act and applicable State requirements. In order to determine compliance with this section, the owner or applicant shall submit a plan showing the physical layout of all required off-street parking areas. Any change in the evidence or conditions upon which the plan is approved shall nullify such approval.

1. Parking shall be provided on the lot occupied by the use for which the parking is required, or on an adjacent lot owned or controlled by such use. In addition, uses located within the Town Center, BA or BB District or a Short Term Rental (limited to paragraph a below) may provide all or part of the required off-street parking through any of the following:

a. Private off-street parking located on another lot that is located within one mile of the subject lot and that is controlled by long-term written lease or ownership by the applicant.

b. Off-street parking shared with other uses (consistent with paragraph 2 below) located within one mile of the subject lot, provided that the Planning Board finds that there is adequate parking capacity to meet the parking requirements of all uses sharing the parking due to variation in the time of parking demand and that the shared parking is available to the applicant through a written lease or other enforceable agreement.

4. The following minimum number of spaces, rounded up to the nearest whole number, shall be provided and maintained for each use on a lot, including each use within all buildings. The Planning Board may reduce by up to thirty percent (30%) the required parking for the reuse of a building existing as of June 4, 1997. In granting such a reduction, the Planning Board must find that:

c. Commercial

12.	Short Term Rental	1 space per 2 tenants, with a minimum of 2 spaces (Effective December 14, 2012)
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**SEC. 19-8-11. USE OF RECREATIONAL CAMPING VEHICLE OR OTHER  
TEMPORARY RESIDENTIAL UNIT**

The use of a travel trailer, motor home, or other recreational camping vehicle as a temporary or permanent dwelling, or a Short Term Rental is prohibited in all districts. A travel trailer, motor home, or other recreational camping vehicle may be used on an occasional basis for temporary occupancy by the lot its owner. For the purpose of this section, occasional basis shall mean occupancy on not more than three (3) nights in any thirty (30) day period. Unoccupied travel trailers, motor homes, or recreational camping vehicles may be parked or stored on a lot in any district provided the lot is owned by the owner of the unit. A motor home or recreational camping vehicle which is the primary vehicle of temporary guests may also be parked on the lot for the duration of their stay.

**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 fabric of residential neighborhoods, to minimize the negative impacts of transient occupation 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 efficiently and effectively regulated to balance the respective interests of town residents. 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. For the avoidance of doubt, for example, if the owner of a Short Term Rental receives all required permits to be a "primary residence hosted" type of Short Term Rental in one calendar year, then the owner may not switch the type of Short Term Rental

to "primary residence unhosted," (or any other type) until the following 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, or abutting lot as the case may be, 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 total number of days operated as a Short Term Rental. A property used as a Short Term Rental shall be in compliance with the rental intensity requirement.

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 forty-two (42) days per calendar year.

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. Abutting land used to meet the seven (7) acres requirement may not be counted towards more than one Short Term Rental.) The property may be used as a Short Term Rental for no more than one-hundred eighty-two (182) days per calendar year.

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 Short Term Rental 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 one-hundred five (105) calendar days per calendar year. If a property owner operates a Short Term Rental Adjacent, the owner shall not operate any other Short Term Rental on the lot, or abutting lot, during the same calendar year. For example, an owner operating a Short Term Rental Adjacent on a lot (or abutting lot) shall not be able to also obtain a permit for a Primary resident hosted Short Term Rental (or any other Short Term Rental) during the same calendar year.

### C. Short Term Rental Requirements

1. Permit required. No A Short Term Rental shall be advertised, rented or operated without first obtaining a Short Term Rental Permit. 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. A Short Term Rental permit shall be valid for the calendar year in which the permit is issued. A permit application received more than thirty (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 rental is located and a lessee of the lot may not operate a Short Term Rental.

Failure to obtain a Short Term Rental permit prior to advertising, offering for rent, or use of 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 seven (7) calendar days or shall be considered an additional violation. The permit applicant must make a diligent effort to meet permit requirements.

The second failure to obtain a Short Term Rental permit for a property within a five (5) year period shall result in a prohibition from obtaining a permit for the property for one (1) 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 reference the Rental Intensity requirements.

3. Rental Intensity. No more than one (1) rental/use of the Short Term Rental shall occur in a seven (7) day period, except that a Primary Residence hosted shall

be allowed two (2) rental uses in a seven (7) day period. When a ~~æh~~ rental or non-compensated use of the property by any one (1) 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. Any tenancy of the property for less than thirty (30) days shall be considered operation of a Short Term Rental and require a Short Term Rental permit pursuant to the terms of the Zoning Ordinance. 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 five (5) business days of a Town request for the same shall be considered a violation of this section.

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.

#### DC. Review Procedure

1. The Code Enforcement Officer shall have the authority to issue 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 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 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 (5) 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 the 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.(G).~~F~~.

#### **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 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 ~~FE~~ below.

**FE. Standards**

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

1. Code compliance. An applicant's property, without limitation, comply with the following building safety requirements code sections of the (International Residential Code, ("IRC,")) and the International Building Code, ("IBC"):
  - a. ~~IRC Section R-314,~~ 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. ~~IRC Section R-315,~~ 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. ~~IBC Section 906,~~ Portable Fire Extinguishers: At least one (1) portable fire extinguisher shall be mounted in a prominent location. One (1) size/type 2/A is required or two (2) size/type 1/A extinguishers. 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;
  - d. ~~IBC Section 1006.2, 1006.3 and 1006.4 Means of Egress Illumination.~~ Emergency Lighting: At least one (1) 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.

~~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.~~

4. Parking. The applicant shall include a depiction of how parking will be provided for tenants and guests on the same lot where the Short Term Rental is located, 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. On-street parking by Short Term Rental tenants or guests is prohibited. 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 ~~of~~ addendum. The rental agreement addendum shall include the following:

- a. Primary and secondary cContact 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 on-street or 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 two (2) tenants per bedroom, plus two (2) additional tenants for no more than one (1) additional sleeping space.

If a Short Term Rental property is operated on a lot of thirty-thousand (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 (8) tenants at any time. The number of Short Term Rental guests shall be limited to eight (8) at any time. On site parking shall be limited to four (4) 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 thirty (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 enjoyment of property by residents within one thousand feet (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 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.

#### **GF. 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 (3)~~2~~ 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 (5) 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 (30) days.

3. Second Substantiated Complaint. Once the Code Enforcement Officer 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 a-period remainder of permit year but not less than six (6) months. When less than six (6) months remains in the calendar year, no Short Term Rental Permit may be submitted in the next calendar year until six (6) months after the second substantiated complaint. Late permit fees shall apply. ~~of not less than thirty days, nor more than one hundred twenty days.~~

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 (3) substantiated complaints, the Code Enforcement Officer shall notify the property owner in writing that

the Short Term Rental permit has been revoked for three (3) one calendar 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).
  
76. Effective Date. ~~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 the 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.~~

The Short Term Rental amendments shall be effective July 1, 2021. Any Short Term Rental permit in effect and issued prior to July 1, 2021 shall expire on June 30, 2021. On June 1, 2021, the Code Enforcement Officer will begin accepting for review a Short Term Rental permit application that is in compliance with the Short Term Rental amendments that become effective on July 1, 2021. All Short Term Rental permits issued after June 30, 2021 shall expire on January 2, 2022.

The 2021 permit fee for any property with an existing short term rental permit shall be \$250. The 2021 permit fee for any property that does not have a short term rental permit shall be \$500. Commencing in 2022, the Short Term Rental Permit fee shall be determined in the Town Fee Schedule.

## **Attachment Item #52-2021 Tabled from February 8, 2021 Virtual Meeting March 8, 2021**

### **Vision Statement**

With breathtaking coastlines, lighthouses, farms, forests, and leafy neighborhoods — all in proximity to Portland — Cape Elizabeth will continue to be a desirable place to live. We honor our heritage and history. We strive to encourage citizen engagement; support excellence in our schools; diversify housing choices; create a vibrant town center; preserve our open space, farming and natural resources; and connect neighborhoods through a safe pedestrian network. By embracing these ideals, our vision is for Cape Elizabeth to remain a highly desirable and welcoming community.

### **One-Town Concept**

The “One Town Concept” was first developed in the late 1970s. The elected officials at that time sought to find creative ways for the school department and the town government to work closer together to enhance services and to save tax dollars.

### **Comprehensive Plan**

The Comprehensive Plan was the product of more than two years of work by the Comprehensive Plan 2019 Committee appointed by the Town Council. It includes extensive information about demographics, statistical information, inventories, and specific recommendations to manage expected growth.

### **Town Strategic Map - Strategic Pillars**

#### **Infrastructure**

Maintain current infrastructure while building toward the future.  
Expand communication coverage and reduce impact of power outages.  
Create climate action goals.  
Provide reliable public and emergency services.

#### **Education and Continuous Learning**

Support programming and services for citizens.  
Demonstrate value for education of our youth.  
Ensure citizens have access and opportunity for feedback and engagement.

#### **Fiscal Responsibility & Economic Opportunity**

Create visibility and transparency for all financial decisions.  
Ensure financial data and information is easy to access and understand.  
Ensure elected officials have the data they need to make informed decisions.

#### **Healthy & Diverse Community**

Ensure diverse housing opportunities.  
Provide public and community services for all ages.  
Promote spaces and connections for diverse physical activities.  
Leverage knowledge of town staff to discover hidden needs of citizens.

#### **Natural & Cultural Resources**

Support farming and locally grown food.  
Value and protect community character and open spaces.  
Preserve and protect natural resources.  
Recognize the history of our town.  
Expand waterfront access.

### **Resources**

**Involved Citizens - Effective Leadership - Equipped Workforce  
Regional Collaboration - Informed Fiscal Management**

## **2021 Goals and Objectives**

### **Infrastructure**

#### **Maintain current infrastructure while building toward the future.**

- Incorporate new technologies where possible as current infrastructure needs are addressed
- Stay current with capital improvement projects
- Define problem areas and potential solutions and quick wins for cellular coverage in town
- Address traffic and parking challenges

#### **Create climate action goals.**

- Research and create climate goals for the town and develop a climate action plan with aggressive greenhouse gas reduction goals
- Reduce energy dependence and consumption and greenhouse gas emissions
- Complete solar project at the Recycling Facility, LED street lamp installation, and EV charging stations
- Promote opportunities for alternative transportation and fuels

#### **Provide reliable public and emergency services.**

- Determine the long term needs and costs for fire/rescue services and establish a 5-10-year strategy

### **Education and Continuous Learning**

#### **Support programming and services for citizens.**

- Encourage library programming for a variety of interests and ages
- Seek learning and experience opportunities for all citizens through community services

#### **Ensure citizens have access and opportunity for feedback and engagement.**

- Assess the need and ability to implement virtual meetings and online forums as part of meeting options
- Assess how other towns engage citizens
- Survey residents

## **2021 Goals and Objectives**

### **Fiscal Responsibility & Economic Opportunity**

#### **Maintain fiscal responsibility, balancing town priorities with economic realities.**

- Ensure financial decisions consider current and future impacts to the town's tax base
- Identify new revenue sources
- Pursue cooperative purchasing and resource sharing with neighboring communities
- Maintain municipal bond ratings to ensure capital needs can be met on favorable terms for when borrowing is required

#### **Promote the businesses in town.**

- List businesses on town website
- Create awareness of the diversity of businesses in town

### **Healthy & Diverse Community**

#### **Meet the diverse needs of our community.**

- Develop and preserve affordable housing opportunities locally and regionally
- Evaluate assistance needs among senior residents
- Leverage knowledge of town staff to discover opportunities to support the undiscovered needs of residents, including social and emotional well being

#### **Promote safe and healthy homes and neighborhoods.**

- Address food insecurity and access to healthy food and meal options for all citizens
- Revise short-term rental ordinances and monitor results

## **2021 Goals and Objectives**

### **Natural & Cultural Resources**

#### **Protect access to town resources and assets.**

- Complete the Fort Williams Master Plan
- Come to resolution with paper streets
- Establish a new boat access area at Crescent Beach

#### **Preserve the natural resources of Cape Elizabeth.**

- Replace Willowbrook culvert
- MSW management (ex. Kettle Cove drainage project)

#### **Natural resource protection.**

- Consider a pesticide/herbicide ordinance
- Promote clean and litter-free streets and other public places
- Develop a “Don’t Trash Cape” campaign to rid the streets, paths and open spaces of litter

#### **Recognize the history of our town.**

- Explore the potential for historic preservation designations for landmarks

### **Ongoing Initiatives**

#### **Equip employees with the training and resources they need to deliver high-quality services to the town.**

- Continuously evaluate organizational structure, succession planning, staff utilization, and process improvements
- Encourage professional and personal growth opportunities for all employees
- Offer Diversity, Equity, and Inclusion training

#### **Collaborate with regional partners.**

- Identify opportunities to share services and resources with other communities
- Participate in solving regional social/economic issues

#### **Leverage the work and recommendations of town committees.**

- Review and incorporate committee recommendations in council direction and decision making (e.g., Fort Williams, Civil Rights, Energy)
- Revisit goals and strategic map every 6 months

**Traffic Ordinance**  
**Kettle Cove Parking Amendments**  
**Sea View Ave Parking Amendments**

**Sec. 13-1-1. Definitions.**

- a. ~~The words "motor vehicle" means every vehicle that is self-propelled but does not include electric personal assistive mobility devices motorized wheelchairs or vehicles operated on rails.~~

**All-terrain vehicle** means a motor driven, off-road, recreational vehicle capable of cross-country travel on land, snow, ice, marsh, swampland or other natural terrain. It includes, but is not limited to, a multi-track, multi-wheel or low pressure tire vehicle; a motorcycle or related two-wheel, three-wheel or belt driven vehicle; an amphibious machine; or other means of transportation deriving motion power from a source other than muscle or wind. For purposes of this ordinance, "all-terrain vehicle" does not include a snowmobile; an airmobile; a construction or logging vehicle used in performance of its common functions; a farm vehicle used for farming purposes; a vehicle used exclusively for emergency, military, law enforcement or fire control purposes.

**Immobilize** means to render a motor vehicle inoperable by affixing a device, commonly referred to as a boot.

**Impound** means to tow a motor vehicle for storage on the premises of the towing company.

**Motor vehicle** means every vehicle that is self-propelled but does not include electric personal assistive mobility devices, motorized wheelchairs or vehicles operated on rails.

- b. ~~The word "p~~**Park**" means the standing of a vehicle, whether occupied or not, other than temporarily for the purpose of and while actually engaged in loading or unloading.

**Person** means every natural person, firm, co-partnership, association or corporation.

**Roadway** means that portion of a street, way or road, designated or ordinarily used for vehicular traffic.

**School complex** means the portion of Cape Elizabeth that includes (i) Cape Elizabeth High School, (ii) Cape Elizabeth Middle School, (iii) Pond Cove Elementary School, (iv) the Donald Richards Community Pool, (v) the roadways, except Jordan Way, extending from Scott Dyer Road and Ocean House Road leading to and around the schools, and (vi) the sidewalks, athletic fields, tennis courts, basketball courts, playgrounds, parking lots and other improved areas

accessed from the roadways described in (v). The "school complex" does not include the Cape Elizabeth Community Center.

c. ~~The word "s**Standing**" means any stopping of a vehicle, whether occupied or not.~~

d. ~~The words "**street, way or road**" means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of traffic.~~

e. ~~The word "**roadway**" means that portion of a street, way or road, designated or ordinarily used for vehicular traffic.~~

f. ~~The word "**person**" means every natural person, firm, co-partnership, association or corporation.~~

g. ~~The words "**all-terrain vehicle**" means a motor driven, off-road, recreational vehicle capable of cross-country travel on land, snow, ice, marsh, swampland or other natural terrain. It includes, but is not limited to, a multi-track, multi-wheel or low pressure tire vehicle; a motorcycle or related two-wheel, three-wheel or belt driven vehicle; an amphibious machine; or other means of transportation deriving motion power from a source other than muscle or wind. For purposes of this ordinance, "all-terrain vehicle" does not include a snowmobile; an airmobile; a construction or logging vehicle used in performance of its common functions; a farm vehicle used for farming purposes; a vehicle used exclusively for emergency, military, law enforcement or fire control purposes.~~

h. ~~The term "**school complex**" means the portion of Cape Elizabeth that includes (i) Cape Elizabeth High School, (ii) Cape Elizabeth Middle School, (iii) Pond Cove Elementary School, (iv) the Donald Richards Community Pool, (v) the roadways, except Jordan Way, extending from Scott Dyer Road and Ocean House Road leading to and around the schools, and (vi) the sidewalks, athletic fields, tennis courts, basketball courts, playgrounds, parking lots and other improved areas accessed from the roadways described in (v). The "school complex" does not include the Cape Elizabeth Community Center.~~

i. ~~The term "**impound**" means to tow a motor vehicle for storage on the premises of the towing company.~~

j. ~~The term "**immobilize**" means to render a motor vehicle inoperable by affixing a device, commonly referred to as a boot.~~

**Watercraft** means a boat that requires a motor vehicle and trailer to convey to a launch area and excludes floatation devices such as but not limited to a paddleboard, surf board, nonmotorized inflatables, and pool toys.

**Sec. 13-2-4. Limited Parking.** Limited parking shall be as follows:

a. Crescent Beach. During the months of May through November, no motor vehicle shall be parked on Crescent Beach, except as follows:

1. A motor vehicle may be parked by a commercially licensed fisherman ~~that commercial fishermen may, in the pursuit of their calling, park there~~ for the reasonably necessary purposes of loading and unloading a commercial watercraft; and

2. A motor vehicle may be parked by someone with a Boat Launch Pass for the reasonably necessary purposes of launching and unlaunching a trailered watercraft.

b. Sea View Avenue and Glen Avenue. No motor vehicle shall be parked on the northwest side of Sea View Avenue from its intersection with Shore Road northeasterly to its terminus. Up to two (2) motor vehicle spaces may be used for bicycle parking on the east side of Seaview Ave in the area of the utility pole. After sunset, each day until sunrise, no motor vehicle shall be parked on the east ~~either~~ side of Sea View Avenue from its intersection with Glen Avenue northeasterly to its terminus. No motor vehicle shall park on east side of Glen Avenue from the intersection with Sea View Ave to Shore Road. From May 1 to October 1, only vehicles displaying a Town of Cape Elizabeth Municipal Recycling Center Sticker may be parked on Sea View Ave and Glen Ave.

c. Emergency No Parking. There is no parking on any public road where emergency no parking signs have been placed after authorization of such sign placement by the Chief of Police with the approval of the Town Manager.

d. Kettle Cove Rd. From 9:00 a.m. to 6:00 p.m., from May 1 through October 1, no motor vehicle shall be parked on either side of Kettle Cove Road.

e. Town Center Public Property Parking. The parking spaces and areas available for parking at the Town Center Fire Station and the Cape Elizabeth Police Station may be used only in connection with business or activities in those buildings. The parking spaces and areas available for parking at the Thomas Memorial Library, during Library business hours or activities in the Library building, may be used only in connection with business or activities in the Library building. The town manager may also authorize the placement of signs at spaces at the Town Center Fire Station indicating that spaces are to be used only for emergency public safety purposes, and signs at the Cape Elizabeth Police Station indicating that spaces are to be used only for authorized vehicles

f. Plaisted Park. The parking area at Plaisted Park may be used only in connection with activities at Plaisted Park. The town council may authorize the collection of parking fees at Plaisted Park in conjunction with an approved special event at Fort Williams Park.

g. Maiden Cove, Garden Circle, Garden Lane. There shall be resident parking only on Maiden Cove Lane, Garden Circle, and Garden Lane. For purposes of this section only, “resident” is defined as persons occupying homes on Maiden Cove Lane, Garden Circle and Garden Lane.

h. Truck Parking Limit. A box truck, cargo van or tractor trailer may be parked overnight on any public road for not more than one night each year. Any such parking shall not be in violation of any other section of these parking regulations.

i. Trailer Parking Limit. An equipment trailer, boat trailer or other hauling trailer may not be parked overnight on any public road for more than four consecutive days or for eight days in any calendar year. Any trailer parked on any public road at any time shall have a wooden block or similar device in place under the trailer tongue to avoid pavement damage.

**Sec. 13-3-9. Beach Access Restrictions.** No person shall operate a motor vehicle on Crescent Beach except for the express purpose of launching a watercraft, ~~for commercial fishing activities~~, for the commercial harvesting of rockweed or seaweed; or for public safety or authorized beach maintenance purposes.

**Attachment Item #59-2021 Virtual Meeting  
March 8, 2021**

IN THE MATTER OF

TWO PENGUIN PROPERTIES, LLC  
14 HILL WAY (Tax Map 022, Lot 74-3)  
CAPE ELIZABETH, ME 04107

CONSENT AGREEMENT

This CONSENT AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2021 by and between Two Penguin Properties, LLC (the “Landowner”), a Maine limited liability corporation having its principal place of business in Cape Elizabeth, Maine, and the Town of Cape Elizabeth, a municipal corporation existing under the laws of the State of Maine with offices at 320 Ocean House Road in Cape Elizabeth, Maine (the “Town”) (collectively, the “Parties”).

RECITALS

WHEREAS, the Landowner owns a vacant lot at 14 Hill Way in Cape Elizabeth, Maine, which is designated on the Town’s assessing maps as Tax Map 022, Lot 74-3, and is shown as Lot #3 on the Tarbox Triangle Subdivision Plan recorded in the Cumberland County Registry of Deeds in Plan Book 216 (the “Subject Lot”);

WHEREAS, the Subject Lot is located in the Town Center District (“TC District”);

WHEREAS, under Section 19-6-4(B)(3)(m) of the Town’s Zoning Ordinance, “short term rental” is identified as a nonresidential use permitted in the TC District;

WHEREAS, on or about July 21, 2020, the Landowner filed with the Town a site plan review application, seeking approval from the Town’s Planning Board to construct a mixed-use building on the Subject Lot containing a short term rental use on the first floor and a residential unit on the second and third floors;

WHEREAS, on October 20, 2020, after holding a public hearing on the application, the Planning Board voted to approve the site plan review application;

WHEREAS, in its written decision, the Planning Board found that, on or about April 13, 2020, the Town Council had adopted a moratorium on new short term rental permits and further found that the Landowner “may not be able to obtain a certificate of occupancy if Short Term Rental regulations in effect when the moratorium ends do not allow issuance of a Short Term Rental Permit for 14 Hill Way” and that the Planning Board’s “approval will not create vested rights to create a Short Term Rental on the first floor”;

WHEREAS, based on these findings, the Planning Board conditioned its approval by stating that “any use occupying the first floor of the building located at 14 Hill Way must be a use included in Sec. 19-6-4(B)(3) nonresidential uses” (hereafter, this condition of approval is referred to as “COA #5”);

WHEREAS, although the Town Council has not adopted any amendments to the Town’s Zoning Ordinance regulating short term rental uses within the Town to date, the Planning Board prepared draft Zoning Ordinance amendments, dated October 10, 2020, that propose to treat short term rentals as an accessory residential use by removing “short term rental” from the list of permitted nonresidential uses in the TC District and adding “short term rental” to the list of permitted accessory residential uses in the TC District;

WHEREAS, the Landowner is concerned that if the Town Council amends the Town's Zoning Ordinance so as to re-characterize short term rentals in the TC District from permitted nonresidential uses to accessory residential uses, then the Planning Board's October 20, 2020 decision, including specifically COA #5, could be interpreted by the Town to deny the Landowner a certificate of occupancy and/or a short term rental license or permit for the use of the first floor of the building to be constructed on the Subject Lot, notwithstanding the Planning Board's site plan approval;

WHEREAS, a dispute exists between the Town and the Landowner as to (1) whether the Town Council properly enacted a moratorium ordinance on April 13, 2020 banning the issuance of short term rental permits within the Town; (2) whether the Planning Board's moratorium-related written findings of fact, conclusions of law, and conditions of approval, including COA #5, are legally valid and enforceable; and (3) whether the Town may lawfully deny the Landowner the use of the first floor of the building on the Subject Lot for short term rental use by virtue of said findings, conclusions, or conditions, including COA #5;

WHEREAS, on November 19, 2020, the Landowner brought an action against the Town pursuant to M.R. Civ. P. 80B, seeking an order to strike all moratorium-related findings, conclusions, and conditions, including COA #5, from the Planning Board's October 20, 2020 decision and to specify with clarity that the Landowner is authorized to use the first floor of the building on the Subject Lot for short term rental use, regardless of whether or not the Town's ordinances, rules, or regulations are amended with respect to short term rental uses (the "Litigation"); and

WHEREAS, this Agreement is intended to reflect the settlement of the Litigation and the establishment of the Landowner's rights to the short term rental use of the first floor of the building approved to be constructed on the Subject Lot, and the Town and the Landowner are willing to forebear from pursuing the Litigation so long as the terms and conditions of this Agreement are met.

## AGREEMENT

NOW, THEREFORE, the Town and the Landowner agree as follows:

1. The Town agrees to not interpret or enforce against the Landowner the Planning Board's October 20, 2020 decision (the "**Decision**") granting the Landowner site plan approval (including the Planning Board's moratorium-related findings, conclusions, and conditions of approval, and specifically COA #5) so as to deny the Landowner the right to use the first floor of the building on the Subject Lot for short term rental use, including without limitation by denying the Landowner a certificate of occupancy or a short term rental license or permit, on the basis of the Decision. However, Landowner shall have to meet any and all other conditions necessary for a certificate of occupancy or short term rental license or permit.
2. In the event that the Town's ordinances, rules, or regulations are amended so as to prohibit short term rental uses, re-characterize short term rental use as a land use other than a permitted nonresidential use in the TC District or any successor zoning district designation, establish new or amended land use ordinances affecting short term rental uses, or otherwise prohibit the use of the first floor of the building on the Subject Lot for short term rental, the Town agrees to treat the short term rental use on the Subject Lot as a legally existing, nonconforming use as of the date of the Decision, in accordance with Section 19-4-3.C.1 ("Nonconforming Uses; Continuation") of the Zoning Ordinance of the Town of Cape Elizabeth, Maine.
3. The Landowner agrees, for purposes of implementing a settlement of the Litigation, to stipulate to the dismissal of all claims by the Landowner against the Town related to the Litigation with prejudice and without costs.

4. The Landowner shall record this Agreement in the Cumberland County Registry of Deeds once entered by the Court.

5. In the event any dispute arises under this Agreement, the Parties shall enter into non-binding mediation, with the Parties bearing their own costs and attorneys' fees but sharing equally in the cost of the mediation. If a matter in dispute is not resolved at mediation, the sole venue for judicial enforcement of any claim by either Party of a breach of this Agreement, including any determination that a claim is related to or arising out of matters released in this Agreement, shall be brought in a court of competent jurisdiction in Cumberland County, Maine. In any such dispute, the Parties agree that the prevailing Party shall be entitled to recover from the other Party its attorneys' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith.

6. This Agreement shall be binding upon and inure to the benefit of the Town and the Landowner, and their heirs, successors, and assigns.

6. This Agreement is being delivered and is intended to be performed in the State of Maine and shall be construed and enforced in accordance with the laws of the State of Maine.

IN WITNESS WHEREOF, the Town and the Landowner have executed this Agreement on the date first above written.

TWO PENGUIN PROPERTIES, LLC

\_\_\_\_\_  
By: Zev Myerowitz, Jr.  
Its: President

\_\_\_\_\_  
Witness

STATE OF MAINE  
Cumberland County, ss.

\_\_\_\_\_, 2021

Then personally appeared before me the above named Zev Myerowitz, Jr., duly authorized, and acknowledged the foregoing instrument to be the free act and deed of Two Penguin Properties, LLC.

Before me,

\_\_\_\_\_  
Notary Public/Attorney at law  
Printed Name: \_\_\_\_\_

TOWN OF CAPE ELIZABETH

\_\_\_\_\_  
James M. Garvin, Chair, Town Council

\_\_\_\_\_  
Nicole Boucher, Town Councilor

\_\_\_\_\_  
Valerie J. Deveraux, Town Councilor

\_\_\_\_\_  
Jeremy A. Gabrielson, Town Councilor

\_\_\_\_\_  
Caitlin Jordan, Town Councilor

\_\_\_\_\_  
Penelope A. Jordan, Town Councilor

\_\_\_\_\_  
Gretchen Noonan, Town Councilor

Being a majority of the Town Council of the Town of Cape Elizabeth, Maine.

STATE OF MAINE  
Cumberland County, ss.

\_\_\_\_\_, 2021

Then personally appeared before me the above named \_\_\_\_\_, \_\_\_\_\_,  
\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_,

\_\_\_\_\_, duly authorized, and acknowledged the foregoing instrument to be the free act and deed of  
the Town of Cape Elizabeth, Maine.

Before me,

\_\_\_\_\_  
Notary Public/Attorney at law

Printed Name: \_\_\_\_\_

