

1 **CHAPTER 19**

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3 **ZONING ORDINANCE**

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

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8 **Dwelling Unit:** A room or group of rooms designed and equipped exclusively for use as
9 permanent, seasonal, or temporary living quarters for only one (1) family at a time, and
10 containing cooking, sleeping, and toilet facilities. The term shall include mobile homes and
11 rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period
12 rented. Recreational vehicles are not residential dwelling units. **(Effective October 15, 2009)**

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14 **Short Term Rental:** A dwelling that is available for rent for transient occupancy by guests for a
15 period of less than 30 days, excluding motels.

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

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19 **A. Purpose**

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21 The Residence C District includes lands that are within the built-up areas of Cape Elizabeth, are
22 seweraged or can be easily served by public sewer, are identified in the Comprehensive Plan as part
23 of the Town's growth areas, are not presently in agricultural or woodland uses, and are not
24 considered to be valuable, large-scale open space with valued scenery or wildlife habitat. The
25 purpose of the district is to provide for areas of compact development that can foster cohesive
26 neighborhoods that are close to community services.

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28 **B. Permitted Uses**

29
30 The following uses are permitted in the Residence C District:

31
32 **1. The following resource-related uses:**

- 33
34 a. Any use listed in Resource Protection 1-Critical Wetlands District, or in Resource
35 Protection 2-Wetland Protection District, or in Resource Protection 3-Floodplain
36 District, as shown on Table 19-6-9
37 b. Agriculture, provided that no animal or fowl shall be raised for commercial
38 purposes on any lot containing less than one hundred thousand (100,000) square
39 feet
40 c. Keeping of livestock, such as a horse, cow, pig, goat, sheep, or similar animal,
41 provided that such activity occurs only on a lot containing at least one hundred
42 thousand (100,000) square feet
43 d. Removal of topsoil, subject to the provisions of Sec. 19-8-5, Earth Materials
44 Removal Standards
45 e. Timber harvesting
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1 **2. The following residential uses:**

- 2 a. Single family dwelling
- 3 b. Manufactured housing on an individual lot
- 4 c. Manufactured housing park, subject to the provisions of Sec. 19-7-7,
5 Manufactured Housing Parks
- 6 d. Multiplex housing
- 7 e. Eldercare facility, subject to the provisions of Sec. 19-7-6, Eldercare Facility
8 Standards
- 9 f. Rooming or boarding home
- 10 g. Short Term Rental

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12 **3. The following nonresidential uses:**

- 13 a. Home day care
- 14 b. Farm and fish market, with a maximum floor area of two thousand (2,000) square
15 feet for retail sales of products
- 16 c. Boat repair facility, subject to the provisions of Sec. 19-8-9, Boat Repair Facility
17 Standards
- 18 d. Wind energy system (**Effective October 8, 2008**)
- 19 e. Bed and Breakfast, where the operator of the Bed and Breakfast owns the
20 structure and maintains it as his/her primary residence (**Effective March 9, 2009**)

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23 **4. The following accessory uses:**

- 24 a. Accessory building, structure or use
- 25 b. Outside athletic facility accessory to permitted use
- 26 c. Home occupation
- 27 d. Homestay (**Effective March 9, 2009**)
- 28 e. Amateur or governmental wireless telecommunication facility antenna (**Effective**
29 **April 15, 2000**)
- 30 f. Amateur or governmental wireless telecommunication facility tower (**Effective**
31 **April 15, 2000**)
- 32 g. Commercial wireless telecommunication service antenna which is attached to an
33 alternative tower structure in a manner which conceals the presence of an antenna.
34 (**Effective April 15, 2000**)
- 35 h. Agriculture related use (**Effective June 10, 2010**)

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37
38 **C. Conditional Uses**

39
40 The following uses may be permitted only upon approval by the Zoning Board as a conditional
41 use, in accordance with Sec. 19-5-5, Conditional Use Permits:

42
43 **1. The following resource-related uses:**

- 44 a. Extraction of sand, gravel, rock and similar earth materials, except topsoil (see
45 permitted uses), subject to the provisions of Sec. 19-8-5, Earth Materials Removal
46

Standards

2. *The following nonresidential uses:*

- a. Cemetery
- b. Day care facility
- c. Fraternal or social institution
- d. Institution of an educational, religious, or philanthropic nature, including school, hospital, church, municipal use, or similar facility
- e. Playground or park

3. *The following accessory uses:*

- a. Home business
- b. Accessory dwelling unit

D. Prohibited Uses

All uses not specifically allowed as permitted uses or conditional uses are prohibited within this district.

E. Standards

1. *Performance Standards*

- a. The standards of performance of Articles VII and VIII shall be observed.
- b. Standards relating to permitted and conditional uses in the Residence C District include:

- Sec. 19-7-5 Creation of an Accessory Dwelling Unit
- Sec. 19-7-6 Eldercare Facility Standards
- Sec. 19-7-7 Manufactured Housing Parks
- Sec. 19-8-5 Earth Materials Removal Standards
- Sec. 19-8-8 Home Day Care and Day Care Facility Standards
- Sec. 19-8-9 Boat Repair Facility Standards
- Sec. 19-8-14 Short Term Rental Standards

2. *The following Space and Bulk Standards shall apply:*

MINIMUM LOT AREA	
<i>(1) Boat repair facility for commercial purposes</i>	200,000 sq. ft. (4.6 acres)
<i>(2) Multiplex housing</i>	5 acres
<i>(3) Eldercare facilities</i>	5 acres

(4) <i>Wind energy systems</i>	20,000 sq. ft. (Effective October 8, 2008)
(5) <i>Others</i>	20,000 sq. ft.
MAXIMUM NUMBER OF DWELLING UNITS PER AREA	
(1) <i>Multiplex housing</i>	1 unit per 15,000 sq. ft. of net residential area
(2) <i>In subdivisions</i>	1 unit per 20,000 sq. ft. of net residential area
(3) <i>In subdivisions that conform to Sec. 19-7-2, Open Space Zoning</i>	1 unit per 15,000 sq. ft. of net residential area
(4) <i>A single-family home on a lot that is not part of a subdivision</i>	1 unit per 20,000 sq. ft. of gross lot area
(5) <i>In eldercare facilities</i>	1 unit per 2,500 sq. ft. or 1 bed per 2,100 sq. ft. of net residential area (Effective May 9, 2007)
(6) <i>Rooming or boarding home</i>	1 bed per 5,000 sq. ft. of gross lot area
(7) <i>Other housing</i>	1 unit per 20,000 sq. ft. of gross lot area
MAXIMUM NUMBER OF BED AND BREAKFAST ROOMS	
<i>Bed and Breakfast Guest Room</i>	1 room per 5,000 sq. ft. of gross lot area
MINIMUM STREET FRONTAGE	
(1) <i>Bed and Breakfast</i>	100 ft. on Shore Road or Route 77
(2) <i>All uses</i>	100 ft.
MINIMUM SETBACKS	
(1) <i>All uses unless otherwise specified</i>	
(a) Side yard setback	20 ft. The side yard setback may be reduced in accordance with Sec. 19-4-3.A.2, Developed Nonconforming Lots. (Effective August 11, 1999)
(b) Rear yard setback	20 ft. The rear yard setback may be reduced in accordance with Sec. 19-4-3.A.2, Developed Nonconforming Lots.

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	(Effective August 11, 1999)
(c) Front yard setback	The front yard setbacks set forth below may be reduced, only on roads which are not classified arterial, to the average setback of the two principal structures fronting on the same road in closest proximity to the site of the proposed structure, but any structure must be at least 20 feet from the right-of-way.
- Arterial street	40 ft.
- Collector and rural connector streets	40 ft.
- Feeder street	30 ft.
- Local and private streets	20 ft.
<i>(2) Multiplex housing and eldercare facilities</i>	
(a) From property line	75 ft.
<i>(3) Accessory structures with floor area not greater than 100 square feet and a height not greater than 8-1/2 feet from average grade</i>	
(a) Side yard setback	10 ft.
(b) Rear yard setback	5 ft.
<i>(4) Reserved (Effective June 10, 2010)</i>	
<i>(5) Antennas extending from 15' to 25' measured from the highest point of the alternative tower structure</i>	
(a) Property line setback	125% of the distance from the ground to the top of the antenna (Effective April 15, 2000)
<i>(6) Towers which are freestanding, and towers which are attached or braced against a structure and exceed 15' in height measured from the highest point of the roof of the structure</i>	
(a) Property line setback	125% of the distance from the ground

	to the top of the antenna (Effective April 15, 2000)
(b) Front yard setback	125% of the distance from the ground to the top of the antenna or the distance from the street right of way to the front of the existing structure plus 5', whichever is more (Effective April 15, 2000)
(7) Open Space Zoning Subdivisions <i>(See Sec. 19-7-2)</i>	
(a) Side yard setback	15 ft.
(b) Rear yard setback	15 ft.
(c) Front yard setback	20 ft.
(8) Deck with a height of less than ten (10) feet above average grade	
(a) Side yard setback	10 ft.
(b) Rear yard setback	10 ft.
(9) Accessory building having less than one hundred fifty (150) square feet of floor area	
(a) Side yard setback	10 ft.
(b) Rear yard setback	10 ft.
(10) Outdoor recreational facilities such as swimming pools, tennis courts, and basketball courts that are accessory to a single family residential use	
(a) Side yard setback	10 ft.
(b) Rear yard setback	10 ft. (Effective December 10, 2003)
(11) Wind energy system	110% of the distance from the ground to the center of the turbine (Effective October 8, 2008)

MAXIMUM TELECOMMUNICATION HEIGHT	
<i>(1) Antenna attached to a structure</i>	25' measured from the highest point of the roof of the structure (Effective April 15, 2000)
<i>(2) Amateur or governmental tower attached or braced against a structure</i>	25' measured from the highest point of the roof of the structure (Effective April 15, 2000)
MAXIMUM WIND ENERGY SYSTEM HEIGHT (Effective October 8, 2008)	
<i>(1) All uses to center of turbine</i>	100'
MINIMUM LOT WIDTH (Effective August 11, 1999)	
<i>(1) All uses</i>	40 ft.
MAXIMUM BUILDING FOOTPRINT	
<i>(1) All uses</i>	None, except nonconforming lots shall comply with the building coverage standards contained in Sec. 19-4-3
MAXIMUM BUILDING HEIGHT	
<i>(1) All uses</i>	35 ft.

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F. Site Plan Review

The following uses and activities shall be subject to site plan review by the Planning Board, according to the terms of Article IX, Site Plan Review, prior to issuance of any building permit, plumbing permit, or other permit:

1. Multiplex housing, eldercare facilities, and boarding care facilities
2. Nonresidential uses listed in Sec. 19-6-3.B.3, except home day cares, which shall not require site plan review
3. Nonresidential uses listed in Sec. 19-6-3.C.2
4. Any other use or activity listed in Sec. 19-9-2, Applicability, as requiring site plan review

ARTICLE VIII. PERFORMANCE STANDARDS

. 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.

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

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3 Off-street parking shall be considered an accessory use when required or provided to serve any
4 legal use located in any zone except as set forth in the following sections. An off-street parking
5 space shall be a minimum of nine (9) feet wide by eighteen (18) feet long, may be open or
6 covered. The Planning Board may allow up to twenty percent (20%) of the parking requirement
7 to be met with “compact car” spaces that are a minimum of eight (8) feet wide by sixteen (16)
8 feet long provided that such spaces shall be clearly marked as “compact car parking.” Each
9 parking space must be sited to allow access and exit without obstruction. Handicapped parking
10 shall be provided in compliance with the Americans with Disabilities Act and applicable State
11 requirements. In order to determine compliance with this section, the owner or applicant shall
12 submit a plan showing the physical layout of all required off-street parking areas. Any change in
13 the evidence or conditions upon which the plan is approved shall nullify such approval.

14
15 **I.** Parking shall be provided on the lot occupied by the use for which the parking is
16 required, or on an adjacent lot owned or controlled by such use. In addition, uses located
17 within the Town Center, BA or BB District may provide all or part of the required off-
18 street parking through any of the following:

- 19
20 a. Private off-street parking located on another lot that is located within one mile of
21 the subject lot and that is controlled by long-term written lease or ownership by
22 the applicant.
23
24 b. Off-street parking shared with other uses (consistent with paragraph 2 below)
25 located within one mile of the subject lot, provided that the Planning Board finds
26 that there is adequate parking capacity to meet the parking requirements of all
27 uses sharing the parking due to variation in the time of parking demand and that
28 the shared parking is available to the applicant through a written lease or other
29 enforceable agreement.
30

31 Where parking is proposed elsewhere on an existing parking lot which has received Site Plan
32 approval, the Planning Board shall approve or deny the off site parking after considering the
33 adequacy of the parking and traffic impacts. Where parking is proposed elsewhere on an
34 existing parking lot which has not received Site Plan approval, the Planning Board shall approve
35 or deny the off site parking after reviewing the lot for compliance with the following Site Plan
36 Standards in Sec. 19-9-5: (B) Traffic Access and Parking, (M) Exterior Lighting, and (N)
37 Landscaping and Buffering.
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42 **2.** Where multiple use of a lot occurs or where the use involves more than one activity (i.e.,
43 an ice cream shop that includes a gift shop), off-street parking shall be provided for each
44 use in accordance with this section. Where the applicant can demonstrate and document
45 nonconflicting periods of use, shared use of parking spaces may be permitted by the
46 Planning Board.

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2 3. Travel and queuing aisles associated with off-street parking, drive-in facilities and motor
3 vehicle fuel pumps shall be provided and shall not interfere with the use of or be part of
4 the required off-street parking.
5

6 Parking stalls and aisle layout shall conform to the following standards.

7	8 Parking Angle	9 Stall Width	10 Skew Width	11 Stall Depth	12 Aisle Width
13					
14	90°	9'-0"		18'-0"	24'-0" two way
15	60°	8'-6"	10'-6"	18'-0"	16'-0" one way only
16	45°	8'-6"	12'-9"	17'-6"	12'-0" one way only
17	30°	8'-6"	17'-0"	17'-0"	12'-0" one way only

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19
20 4. The following minimum number of spaces, rounded up to the nearest whole number,
21 shall be provided and maintained for each use on a lot, including each use within all
22 buildings. The Planning Board may reduce by up to thirty percent (30%) the required
23 parking for the reuse of a building existing as of June 4, 1997. In granting such a
24 reduction, the Planning Board must find that:

- 25
26 a. the reduction will not create or aggravate parking problems in the neighborhood,
27 and
28
29 b. the required number of spaces cannot be reasonably accommodated on the lot.
30

31 *The maximum number of employees scheduled during peak demand/shift shall be used in*
32 *calculating the number of required parking spaces when employee is referenced in the list below.*
33 *The floor area of the structure as defined in Sec. 19-1-3 shall be used in calculating the number*
34 *of required parking spaces, unless otherwise noted.*

- 35
36 a. Residential
37
38 (1) Single Family Dwellings, 2 spaces per dwelling unit
39 including manufactured
40 housing
41
42 (1a) Short Term Rental 1 space per 4 guests, plus 2 spaces
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44 (2) Two-Family Dwellings 2 spaces per dwelling unit
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- (3) Multiplex housing or with multifamily dwellings spaces for bedrooms, and 2 bedrooms, and 2
1.5 spaces per dwelling unit one bedroom, 1.75 unit with two spaces per unit with three or more bedrooms

- (4) Home Businesses
2 spaces in addition to required parking for residence (This requirement may be reduced by the Zoning Board of Appeals.)

- (5) Eldercare facilities per 4 beds plus 1 space
1.25 spaces per unit or 1 space per employee

- b. Institutional
 - (1) Municipal Uses
space per 150 sq. ft. of public assembly and meeting area
1.25 spaces per employee plus 1

 - (2) Places of Public Assembly, space such as; Theaters/Cinemas/ Auditoriums/Stadiums/ Sports Arenas/Churches and Synagogues/Gymnasiums
1 space per 4 seats plus 1 per 2 employees

 - (3) Schools:
 - Grades K-8
1 space per classroom plus 1 space for each employee plus parking in accordance with the places of public assembly for the largest assembly space

 - Secondary
8 spaces per classroom plus parking in accordance with the places of public assembly for the largest assembly space

 - Post Secondary
1 space for each 2 students plus 1 space for each employee plus parking in accordance with the places of public assembly for the

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largest assembly space

Nursery Schools and safe off- Day Care Facilities 1 space per employee plus a street area for vehicle pickup and drop-off of students/children

Schools not listed above: 1 space per each 2 students at capacity plus 1 space for each employee plus parking in accordance with the places of public assembly for the largest assembly space

c. Commercial

- (1) Retail sales 1,000 sq. ft. (or 1 space) 3 spaces per use or 3 spaces per 333 sq. ft. or portions thereof plus 1 space per employee, whichever is greater
(2) Gas and/or Service Station; Auto Repair Garage service bay .25 space per fuel pump plus 1 space per employee plus 4 spaces per

(For gas stations involving other uses [e.g., gas pumps with convenience stores], the minimum number of required parking spaces shall be the total of the requirements for each use, plus the standards listed above).

- (3) Banks 4 spaces per use or 3 spaces per 1,000 sq.ft. (or 1 space per 333 sq.ft. or portions thereof), whichever is greater
(4) Personal Services and Business Services 3 spaces per use or 4 spaces per 1,000 sq.ft. (or 1 space per 250 sq.ft. or portions thereof), whichever is greater
(5) Business and Professional Offices (non-medical) 3 spaces per use or 4 spaces per 1,000 sq.ft. (or 1 space per 250 sq.ft. or portions thereof), whichever is greater
(6) Professional Office (medical) 5 spaces per 1,000 sq. ft. (or 1 space per 200 sq. ft. or portions thereof)

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(7) Restaurants/Eating Places 1 space per 4 patrons at capacity plus
1 space per employee

(Measurement of standing and seating capacity shall be based upon the latest adopted edition of the BOCA National Building Code and NFPA 101, whichever is more stringent.)

(8) Motels, Hotels, Inns 1 space per guest room plus 1 space per employee plus 4 spaces per 1,000 sq.ft. (or 1 space per 250 sq.ft. or portions thereof) of public assembly area

(9) Bed and Breakfasts and Homestays
(Effective March 9, 2009) 2 spaces plus 1 space per guest room

(10) Veterinary Clinics 4 spaces/doctor plus 1 space/other employee

(11) Farm and Fish Markets 3 spaces per use or 3 spaces per
1,000 sq. ft. (or 1 space per 333 sq. ft. or portions thereof. **(Effective June 10, 2010)**)

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d. Industrial 1 space per employee

e. Golf Courses 4 spaces per hole plus parking for any assembly, restaurant, or retail space in accordance with the appropriate requirements

f. Other Uses As determined by the Planning Board based upon the ITE Parking Generation Manual or data of actual parking demand of similar uses

C. Off-Street Parking Design Standards

The following design standards shall apply to all new and expanded off-street parking areas:

- 1. Parking areas for uses other than single and two-family dwellings shall be designed so that vehicles will not back out into a street.
- 2. Parking areas shall not inhibit emergency vehicle access to any building or structure.

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- 3. Parking areas shall be separated from the front of all buildings by a landscaped area at least five (5) feet wide where parking is allowed in the yard area.
- 4. Wheel stops/curbs shall be placed where needed to prevent encroachment into walkways, landscaped areas, circulation aisles, streets and structures.
- 5. Parking spaces and travel aisles shall be clearly delineated in parking lots.
- 6. All parking areas shall be designed to adequately control drainage. In furtherance of this standard, drainage calculations used shall reflect a paved condition and all parking areas shall be constructed with base material which can withstand normally expected vehicle loading and winter maintenance.
- 7. If parking spaces are provided for self-parking by employees or visitors or both, accessible spaces meeting ADA requirements shall be provided in each parking area in conformance with the following:

Total Parking in Lot	Required Minimum Number of Accessible Spaces
1	1
26	2
51	3
76	4
101	5
151	6
201	7
301	8
401	9
501	2 percent of total
1001 and over	20 plus 1 for each 100 over 1000

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- 8. Parking facilities within the Town Center District shall comply with the Standards of Sec. 19-6-4.D.3.g., Landscaping and Site Development.

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

Prior to operating a dwelling as a Short Term Rental, a completed Short Term Rental registration form shall be submitted to the Code Enforcement Officer. The Short Term registration form shall include the following:

- 1. Location. The street address and map/lot number of the short-term rental shall

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1 be provided. If the short term rental is not located on a public road, the form
2 shall include directions to the short-term rental from a public road.

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4 2. Contact Person. The name of the owner of the Short Term rental and contact
5 information, including address and telephone number shall be included on the
6 registration form. In addition, if someone other than the owner is acting as the
7 local contact person, contact information for that person should also be provided.
8 If the contact person changes seasonally, the registration form shall include the
9 time period and the contact person during the year.

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11 3. Availability. The registration form shall include when, during the calendar year,
12 the dwelling will be operated as a Short Term Rental.

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14 4. Life safety code compliance. The registration shall be accompanied by written
15 confirmation by a qualified third party that the Short Term Rental is in
16 compliance with all state and local life safety codes. The Code Enforcement
17 Officer shall be provided with an opportunity at a reasonable time to inspect the
18 Short Term rental to confirm compliance with life safety codes.

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19 5. Events. Approaches in other communities include:

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- 20 • maximum capacity based on # of bedrooms x 2
- 21 • limit on how often can rent in a one month period
- 22 • maximum capacity based on square footage/building code

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25 For Short Term Rentals operating on a lot that is less than 30,000 sq. ft., or where the
26 Short Term Rental property owner does not have their legal residence on the same lot or
27 on a lot abutting the Short Term Rental, the following additional information shall be
28 provided on the registration form:

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30 4. Sanitary waste disposal. The form shall include the total number of bedrooms
31 included in the short-term rental, any additional sleeping space, and the total
32 number of overnight guests that the short-term rental accommodates. If the
33 short-term rental is publicly advertised, the total number of overnight guests
34 used to determine adequacy of sanitary waste disposal shall not be less than the
35 number of guests advertised. For the purpose of determining of evaluating the
36 adequacy of the subsurface disposal system, every 2 sleeping guests shall be
37 equivalent to 1 bedroom.

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39 The short-term rental owner shall submit information demonstrating that
40 adequate sanitary waste disposal is available in compliance with the Town of
41 Cape Elizabeth Subsurface Wastewater Disposal Ordinance, as determined by
42 the Code Enforcement Officer.

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1 The short-term rental owner shall also identify the maximum number of guests
2 that will be accommodated at the short-term rental in addition to the guests who
3 are sleeping at the rental. For each additional 4 guests, the subsurface waste
4 disposal system shall be adequate to serve 1 additional bedroom.

5
6 5. Parking. The form shall include a depiction of how parking will be provided on
7 the same lot, or include a written agreement for off-site parking at a specified
8 location, as the Short Term Rental to comply with the Off-Street Parking
9 Standards, Sec. 19-7-8. No bus parking at the Short-Term rental shall be allowed.

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11 6. Rental Agreement Addendum. The Short Term Rental Registration Form shall be
12 submitted with an addendum to be attached to a Rental Agreement that shall be
13 provided to all guest groups, and shall not include any requirement of Town
14 enforcement of the rental agreement. At a minimum, the rental agreement
15 addendum shall include the following:

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16
17 a. Contact person

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18 b. Emergency responder contact information and building evacuation plan.

19 c. Maximum number of guests who will sleep at the property and maximum
20 number of people allowed on the property at one time.

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21 d. Parking arrangements, including a prohibition against guests and visitors
22 parking in a manner that impedes access by emergency vehicles to the
23 Short Term rental or any other dwelling in the neighborhood.

24 e. Event rules, as determined by the Short-Term Rental Owner.

25
26 7. Issuance. The Short-Term Rental registration form shall be reviewed by the Code
27 Enforcement Officer for compliance with the above requirements. If the Code
28 Enforcement Officer determine that the Short-Term Rental is in compliance with
29 this section, the Short-Term rental registration may be approved for one year.

30
31 8. Renewal. Prior to renewing a Short Term Rental registration for another year, the
32 Code Enforcement Officer shall review his/her records and request a report from
33 the Police Chief and other town officials regarding any complaints filed
34 regarding the Short Term Rental property. If complaints have been made, the
35 Code Enforcement Officer shall determine if any changes to comply with the
36 above standards may be made to address the complaints. The Code Enforcement
37 Officer shall notify the Town Manager of any complaints that cannot be
38 addressed under the above standards.

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