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CHAPTER 19

ZONING ORDINANCE

SEC. 19-1-3. DEFINITIONS

Dwelling: A building containing one (1) or more dwelling units and used for human habitation.

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

Short Term Rental Guest: A visitor of a Short Term Rental tenant who will not be sleeping overnight on the property.

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 and with the owner's consent. When applied to a Short Term Rental, anyone sleeping overnight shall be considered a tenant.

SEC. 19-3-1. CODE ENFORCEMENT OFFICER

The Code Enforcement Officer of the Town shall interpret and enforce the provisions of this Ordinance and shall require compliance with its requirements and restrictions. The Code Enforcement Officer shall adopt procedures to facilitate the handling of all matters and questions arising hereunder within the scope of the Code Enforcement Officer's authority and duties. Any decision of the Code Enforcement Officer denying a permit shall be in writing, a copy of which shall be given to the applicant. Appeals from decisions of the Code Enforcement Officer shall be to the Zoning Board of Appeals in accordance with the provisions of Sec. 19-5-2.A, Administrative Appeals.

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

A. Purpose

The Residence A District includes lands that are outside of the built-up areas of Cape Elizabeth, lands to which public sewer lines are not expected to be extended in the near future, and large tracts suitable for farming, woodland production, and wildlife habitat. The purpose of this district is to allow residential development that is compatible with the character, scenic value, and traditional uses of rural lands and that does not impose an undue burden on the provision of municipal services.

B. Permitted Uses

The following uses are permitted in the Residence A District:

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

- 2
- 3 a. Any use permitted in Resource Protection 1-Critical Wetlands District, or in
- 4 Resource Protection 2-Wetland Protection District, or in Resource Protection 3-
- 5 Floodplain District, as shown on Table 19-6-9
- 6
- 7 b. Agriculture, provided that no animal or fowl shall be raised for commercial
- 8 purposes on any lot containing less than one hundred thousand (100,000) square
- 9 feet
- 10 c. Keeping of livestock, such as a horse, cow, pig, goat, sheep, or similar animal,
- 11 provided that such activity occurs only on a lot containing at least one hundred
- 12 thousand (100,000) square feet
- 13 d. Removal of topsoil, subject to the provisions of Sec. 19-8-5, Earth Materials
- 14 Removal Standards
- 15 e. Timber harvesting
- 16

17 **2. The following residential uses:**

- 18
- 19 a. Single family dwelling
- 20 b. Manufactured housing on an individual lot
- 21 c. Multiplex housing
- 22 d. Eldercare facility, subject to the provisions of Sec. 19-7-6, Eldercare Facility
- 23 Standards
- 24 e. Short Term Rental
- 25

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

- 27
- 28 a. Home day care
- 29 b. Farm and fish market, with a maximum floor area of two thousand (2,000) square feet
- 30 for retail sales of products
- 31 c. Boat repair facility, subject to the provisions of Sec. 19-8-9, Boat Repair Facility
- 32 Standards
- 33 d. Golf Course and Golf Course Related Activities (**Effective February 12, 2003**)
- 34 e. Wind energy system (**Effective October 8, 2008**)
- 35 f. Bed and Breakfast, where the operator of the Bed and Breakfast owns the structure and
- 36 maintains it as his/her primary residence (**Effective March 9, 2009**)
- 37

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

- 39 a. Accessory building, structure or use
- 40 a.b. Outside athletic facility accessory to permitted use
- 41 a.c. Home occupation
- 42 d. Homestay (**Effective March 9, 2009**)
- 43 d.e. Amateur or governmental wireless telecommunication facility antenna (**Effective**
- 44 **April 15, 2000**)
- 45 d.f. Amateur or governmental wireless telecommunication facility tower (**Effective**
- 46 **April 15, 2000**)

1 d.g. Commercial wireless telecommunication service antenna which is attached to an
2 alternative tower structure in a manner which conceals the presence of an antenna.

3 **(Effective April 15, 2000)**

4 d.h. Agriculture related use **(Effective June 10, 2010)**

5
6 **C. Conditional Uses**

7
8 The following uses may be permitted only upon approval by the Zoning Board as a conditional
9 use, in accordance with Sec. 19-5-5, Conditional Use Permits:

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12 **1. The following resource-related uses:**

- 13
14 a. Extraction of sand, gravel, rock and similar earth materials, except topsoil (see
15 permitted uses), subject to the provisions of Sec. 19-8-5, Earth Materials Removal
16 Standards

17
18 **2. The following nonresidential uses:**

- 19
20 a. Cemetery
21 b. Day care facility
22 c. Fraternal or social institution
23 d. Institution of an educational, religious, or philanthropic nature, including school,
24 hospital, church, municipal use, or similar facility
25 e. Playground or park

26
27 **3. The following accessory uses:**

- 28
29 a. Home business
30 b. Accessory dwelling unit

31
32 **D. Prohibited Uses**

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

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37 **E. Standards**

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39 **1. Performance standards**

- 40
41 a. The standards of performance of Articles VII and VIII shall be observed.
42 b. Standards relating to permitted and conditional uses in the Residence A District
43 include:

44
45 Sec. 19-7-5 Creation of an Accessory Dwelling Unit

46 Sec. 19-7-6 Eldercare Facility Standards

- 1 Sec. 19-8-5 Earth Materials Removal Standards
- 2 Sec. 19-8-7 Great Pond Watershed Performance Standards
- 3 Sec. 19-8-8 Home Day Care and Day Care Facility Standards
- 4 Sec. 19-8-9 Boat Repair Facility Standards
- 5 Sec. 19-8-14 Short Term Rental Standards

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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>	10 acres
<i>(3) Eldercare facilities</i>	10 acres
<i>(4) Golf Course (Effective February 12, 2003)</i>	150 acres (Effective February 12, 2003)
<i>(5) Wind energy systems (Effective. October 8, 2008)</i>	20,000sq. ft.
<i>(6) Other uses</i>	80,000 sq. ft.
MAXIMUM NUMBER OF DWELLING UNITS PER AREA	
<i>(1) Multiplex housing</i>	1 unit per 66,000 sq. ft. of net residential area
<i>(2) In subdivisions</i>	1 unit per 80,000 sq. ft. of net residential area
<i>(3) In subdivisions that conform to Sec. 19-7-2, Open Space Zoning</i>	1 unit per 66,000 sq. ft. of net residential area
<i>(4) In eldercare facilities</i>	1 unit per 6,000 sq. ft. or 1 bed per 3,500 sq. ft. of net residential area, whichever is less
<i>(5) Other housing</i>	1 unit per 80,000 sq. ft. of gross lot area
MAXIMUM NUMBER OF BED AND BREAKFAST ROOMS (Effective March 9, 2009)	
<i>Bed and Breakfast Guest Room (Effective March 9, 2009)</i>	1 room per 20,000 sq. ft. of gross lot area

MINIMUM STREET FRONTAGE	
<i>(1) Bed and Breakfast</i>	125 ft. on Shore Road or Route 77
<i>(2) All uses</i>	125 ft.
MINIMUM SETBACKS	
<i>(1) All uses unless otherwise specified</i>	
(a) Side yard setback	30 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	30 ft. The rear yard setback may be reduced in accordance with Sec. 19-4-3.A.2, Developed Nonconforming Lots. (Effective August 11, 1999)
© 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	50 ft.
- Collector, rural connector, and feeder streets	40 ft.
- Local and private streets	30 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.

(4) Reserved (Effective June 10, 2010)	
(5) Antennas extending from 15' to 25' measured from the highest point of the alternative tower structure	
(a) Property line setback	125% of the distance from the ground to the top of the antenna (Effective April 15, 2000)
(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	
(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 (See Sec. 19-7-2)	
(a) Side yard setback	20 ft.
(b) Rear yard setback	20 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	15 ft.
(b) Rear yard setback	15 ft.
(9) Accessory building having less than one hundred fifty (150) square feet of floor area	
(a) Side yard setback	15 ft.

(b) Rear yard setback	15 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	15 ft.
(b) Rear yard setback	15 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)
(12) Antenna attached to a structure	25' measured from the highest point of the roof of the structure (Effective April 15, 2000)
(13) Freestanding amateur or governmental wireless telecommunication tower	50' measured from average original grade (Effective April 15, 2000)
MAXIMUM WIND ENERGY SYSTEM HEIGHT (Effective October 8, 2008)	
(1) All uses to center of turbine	100'
MINIMUM LOT WIDTH (Effective August 11, 1999)	
(1) All uses	40 ft.
MAXIMUM BUILDING FOOTPRINT	
(1) All uses	None, except nonconforming lots shall comply with the building footprint standards contained in Sec. 19-4-3, Nonconformity Outside of Shoreland and Resource Protection Areas.
MAXIMUM BUILDING HEIGHT	
(1) All uses	35 ft.

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2 **F. Site Plan Review**
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4 The following uses and activities shall be subject to site plan review by the Planning Board,
5 according to the terms of Article IX, Site Plan Review, prior to issuance of any building permit,
6 plumbing permit, or other permit:
7

- 8 1. Multiplex housing and eldercare facilities
- 9 2. Nonresidential uses listed in Sec. 19-6-1.B.3, except home day cares, which shall not
10 require site plan review (**Effective August 11, 1999**)
- 11 3. Nonresidential uses listed Sec. 19-6-1.C.2
- 12 4. Any other use or activity listed in Sec. 19-9-2, Applicability, as requiring site plan review

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14 **SEC. 19-6-2. RESIDENCE B DISTRICT (RB)**
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16 **A. Purpose**
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18 The Residence B District is differentiated from the Residence A District in that subdivisions in
19 Residence B are required to be laid out according to the principles of open space zoning, as
20 described in Sec. 19-7-2, Open Space Zoning. The Residence B District includes lands outside
21 of the built-up parts of Town where the Comprehensive Plan indicates growth can and should be
22 accommodated as a result of soils suitable for individual or common septic systems or the
23 extension of public sewer lines. The purpose of this district is to allow a significant portion of
24 the Town's anticipated residential growth to occur in these areas, in a manner that preserves the
25 character of rural lands, promotes healthy neighborhoods, offers flexibility in design, and
26 minimizes the costs of municipal services.
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28 **B. Permitted Uses**
29

30 The following uses are permitted in the Residence B District:

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

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46 **2. *The following residential uses:***

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- a. Single family dwelling
- b. Manufactured housing on an individual lot
- c. Multiplex housing
- d. Eldercare facility, subject to the provisions of Sec. 19-7-6, Eldercare Facility Standards
- e. Short Term Rental

3. The following nonresidential uses:

- a. Home day care
- b. Farm and fish market, with a maximum floor area of two thousand (2,000) square feet for retail sales of products
- c. Golf Course Related Activities, excluding restaurants, clubhouses and meeting halls. **(Effective February 12, 2003)**
- d. Wind energy system **(Effective October 8, 2008)**

4. The following accessory uses:

- a. Accessory building, structure or use
- b. Outside athletic facility accessory to permitted use
- c. Home occupation
- d. 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.
- e. Amateur or governmental wireless telecommunication facility antenna **(Effective April 15, 2000)**
- f. Amateur or governmental wireless telecommunication facility tower **(Effective April 15, 2000)**
- g. Commercial wireless telecommunication service antenna which is attached to an alternative tower structure in a manner which conceals the presence of an antenna. **(Effective April 15, 2000)**
- h. Agriculture related use **(Effective June 10, 2010)**

C. Conditional Uses

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

1. The following resource-related uses:

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

2. The following nonresidential uses:

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

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8 **3. *The following accessory uses:***

9

- 10 a. Home business
- 11 b. Accessory dwelling unit

12

13 **D. Prohibited Uses**

14

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

16 district.

17

18 **E. Standards**

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20 **1. *Performance standards***

21

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

- 25
- 26 Sec. 19-7-5 Creation of an Accessory Dwelling Unit
- 27 Sec. 19-7-6 Eldercare Facility Standards
- 28 Sec. 19-8-5 Earth Materials Removal Standards
- 29 Sec. 19-8-8 Home Day Care and Day Care Facility Standards
- 30 Sec. 19-8-14 Short Term Rental Standards

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

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- 34 a. Lots that are part of residential subdivisions approved by the Planning Board after
- 35 June 4, 1997, shall comply with the terms of Sec. 19-7-2, Open Space Zoning,
- 36 except that subdivisions for which completed applications have been submitted to
- 37 the Planning Board prior to June 4, 1997, shall be subject to the regulations in
- 38 effect at the time of their submission.

- 39
 - 40 b. For all other lots, the following Space and Bulk Standards shall apply:
- 41

MINIMUM LOT AREA	
(1) <i>Eldercare facilities</i>	5 acres
(2) <i>Wind energy systems</i>	20,000 sq. ft.

	(Effective October 8, 2008)
(3) Other uses	80,000 sq. ft.
MAXIMUM NUMBER OF DWELLING UNITS PER AREA	
(1) In eldercare facilities	1 unit per 3,500 sq. ft. or 1 bed per 2,500 sq. ft. of net residential area, whichever is less
(2) Other uses	1 unit per 80,000 sq. ft. of gross lot area
MINIMUM STREET FRONTAGE	
(1) All uses	125 ft.
MINIMUM SETBACKS	
(1) All uses unless otherwise specified	
(a) Side yard setback	30 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	30 ft. The rear yard setback may be reduced in accordance with Sec. 19-4-3.A.2, Developed Nonconforming Lots. (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	50 ft.
- Collector, rural connector, and feeder streets	40 ft.
- Local and private streets	30 ft.
(d) Limit on parking within the front yard	A nonresidential use shall not locate its required off-street parking within the

	front yard setback
(2) Multiplex housing and eldercare facilities	
(a) From property line	75 ft.
(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	
(b) Rear yard setback	5 ft.
(4) Reserved (Effective June 10, 2010)	
(5) Antennas extending from 15' to 25' measured from the highest point of the alternative tower structure	
(a) Property line setback	125% of the distance from the ground to the top of the antenna (Effective April 15, 2000)
(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	
(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) Deck with a height of less than ten (10) feet above average grade	
(a) Side yard setback	15 ft.
(b) Rear yard setback	15 ft.
(8) Accessory building having less than one hundred fifty (150) square feet of floor area	

(a) Side yard setback	15 ft.
(b) Rear yard setback	15 ft.
(9) 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	15 ft.
(b) Rear yard setback	15 ft.
(10) Wind energy system	(Effective. 12/10/03)
	110% of the distance from the ground to the center of the turbine (Effective October 8, 2008)
MAXIMUM TELECOMMUNICATION HEIGHT	
(1) Antenna attached to a structure	25' measured from the highest point of the roof of the structure (Effective April 15, 2000)
(2) Amateur or governmental tower attached or braced against a structure	25' measured from the highest point of the roof of the structure (Effective April 15, 2000)
(3) Freestanding amateur or governmental wireless telecommunication tower	50' measured from average original grade (Effective April 15, 2000)
MAXIMUM WIND ENERGY SYSTEM HEIGHT (Effective October 8, 2008)	
(1) All uses to center of turbine	100'
MINIMUM LOT WIDTH (Effective August 11, 1999)	
(1) All uses	40 ft.
MAXIMUM BUILDING FOOTPRINT	
(1) All uses	None, except nonconforming lots shall comply with the building footprint standards contained in Sec. 19-4-3
MAXIMUM BUILDING HEIGHT	

<i>(I) 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 and eldercare facilities
2. Nonresidential uses listed in Sec. 19-6-2.B.3, except home day cares, which shall not require site plan review
3. Nonresidential uses listed in Sec. 19-6-2.C.2
4. Any other use or activity listed in Sec. 19-9-2, Applicability, as requiring site plan review

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

A. Purpose

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

B. Permitted Uses

The following uses are permitted in the Residence C District:

1. The following resource-related uses:

- a. Any use listed in Resource Protection 1-Critical Wetlands District, or in Resource Protection 2-Wetland Protection District, or in Resource Protection 3-Floodplain District, as shown on Table 19-6-9
- b. Agriculture, provided that no animal or fowl shall be raised for commercial purposes on any lot containing less than one hundred thousand (100,000) square feet
- c. Keeping of livestock, such as a horse, cow, pig, goat, sheep, or similar animal, provided that such activity occurs only on a lot containing at least one hundred thousand (100,000) square feet
- d. Removal of topsoil, subject to the provisions of Sec. 19-8-5, Earth Materials

- 1 Removal Standards
- 2 e. Timber harvesting

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4 **2. The following residential uses:**

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

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

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

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

27

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

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41 **C. Conditional Uses**

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43 The following uses may be permitted only upon approval by the Zoning Board as a conditional

44 use, in accordance with Sec. 19-5-5, Conditional Use Permits:

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46 **1. The following resource-related uses:**

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- a. Extraction of sand, gravel, rock and similar earth materials, except topsoil (see permitted uses), subject to the provisions of Sec. 19-8-5, Earth Materials Removal 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	
(1) Boat repair facility for commercial purposes	200,000 sq. ft. (4.6 acres)
(2) Multiplex housing	5 acres

<i>(3) Eldercare facilities</i>	5 acres
<i>(4) Wind energy systems</i>	20,000 sq. ft. (Effective October 8, 2008)
<i>(5) Others</i>	20,000 sq. ft.
MAXIMUM NUMBER OF DWELLING UNITS PER AREA	
<i>(1) Multiplex housing</i>	1 unit per 15,000 sq. ft. of net residential area
<i>(2) In subdivisions</i>	1 unit per 20,000 sq. ft. of net residential area
<i>(3) In subdivisions that conform to Sec. 19-7-2, Open Space Zoning</i>	1 unit per 15,000 sq. ft. of net residential area
<i>(4) 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
<i>(5) 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)
<i>(6) Rooming or boarding home</i>	1 bed per 5,000 sq. ft. of gross lot area
<i>(7) 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	
<i>(1) Bed and Breakfast</i>	100 ft. on Shore Road or Route 77
<i>(2) All uses</i>	100 ft.
MINIMUM SETBACKS	
<i>(1) 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. (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)
<i>(7) Open Space Zoning Subdivisions (See Sec. 19-7-2)</i>	
(a) Side yard setback	15 ft.
(b) Rear yard setback	15 ft.
(c) Front yard setback	20 ft.
<i>(8) Deck with a height of less than ten (10) feet above average grade</i>	
(a) Side yard setback	10 ft.
(b) Rear yard setback	10 ft.
<i>(9) Accessory building having less than one hundred fifty (150) square feet of floor area</i>	
(a) Side yard setback	10 ft.
(b) Rear yard setback	10 ft.
<i>(10) Outdoor recreational facilities such as swimming pools, tennis courts, and basketball courts that are accessory to a single family residential use</i>	
(a) Side yard setback	10 ft.
(b) Rear yard setback	10 ft.
	(Effective December 10, 2003)
<i>(11) Wind energy system</i>	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.

1
2 **B. Minimum Requirements for Off-Street Parking**
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4 Off-street parking shall be considered an accessory use when required or provided to serve any
5 legal use located in any zone except as set forth in the following sections. An off-street parking
6 space shall be a minimum of nine (9) feet wide by eighteen (18) feet long, may be open or
7 covered. The Planning Board may allow up to twenty percent (20%) of the parking requirement
8 to be met with “compact car” spaces that are a minimum of eight (8) feet wide by sixteen (16)
9 feet long provided that such spaces shall be clearly marked as “compact car parking.” Each
10 parking space must be sited to allow access and exit without obstruction. Handicapped parking
11 shall be provided in compliance with the Americans with Disabilities Act and applicable State
12 requirements. In order to determine compliance with this section, the owner or applicant shall
13 submit a plan showing the physical layout of all required off-street parking areas. Any change in
14 the evidence or conditions upon which the plan is approved shall nullify such approval.
15

16 **1.** Parking shall be provided on the lot occupied by the use for which the parking is
17 required, or on an adjacent lot owned or controlled by such use. In addition, uses located
18 within the Town Center, BA or BB District may provide all or part of the required off-
19 street parking through any of the following:
20

- 21 a. Private off-street parking located on another lot that is located within one mile of
22 the subject lot and that is controlled by long-term written lease or ownership by
23 the applicant.
24
- 25 b. Off-street parking shared with other uses (consistent with paragraph 2 below)
26 located within one mile of the subject lot, provided that the Planning Board finds
27 that there is adequate parking capacity to meet the parking requirements of all
28 uses sharing the parking due to variation in the time of parking demand and that
29 the shared parking is available to the applicant through a written lease or other
30 enforceable agreement.
31

32 Where parking is proposed elsewhere on an existing parking lot which has received Site Plan
33 approval, the Planning Board shall approve or deny the off site parking after considering the
34 adequacy of the parking and traffic impacts. Where parking is proposed elsewhere on an
35 existing parking lot which has not received Site Plan approval, the Planning Board shall approve
36 or deny the off site parking after reviewing the lot for compliance with the following Site Plan
37 Standards in Sec. 19-9-5: (B) Traffic Access and Parking, (M) Exterior Lighting, and (N)
38 Landscaping and Buffering.
39

40 **2.** Where multiple use of a lot occurs or where the use involves more than one activity (i.e.,
41 an ice cream shop that includes a gift shop), off-street parking shall be provided for each
42 use in accordance with this section. Where the applicant can demonstrate and document
43 nonconflicting periods of use, shared use of parking spaces may be permitted by the
44 Planning Board.
45

46 **3.** Travel and queuing aisles associated with off-street parking, drive-in facilities and motor

vehicle fuel pumps shall be provided and shall not interfere with the use of or be part of the required off-street parking.

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

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

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:

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

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

- a. Residential
 - (1) Single Family Dwellings, 2 spaces per dwelling unit including manufactured housing
 - (1a) Short Term Rental 1 space per 4 tenants, with a minimum of 2 spaces
 - (2) Two-Family Dwellings 2 spaces per dwelling unit
 - (3) Multiplex housing or 1.5 spaces per dwelling unit

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- with multifamily dwellings
spaces for
bedrooms, and 2
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
area
1.25 spaces per employee plus 1
public assembly and meeting
area
 - (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
largest assembly space

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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
1 space
Station; Auto Repair Garage
service bay
- .25 space per fuel pump plus
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)
- (7) Restaurants/Eating Places
- 1 space per 4 patrons at capacity plus

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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 1,000 sq. ft. (or 1 space) 3 spaces per use or 3 spaces per 333 sq. ft. or portions thereof. (Effective June 10, 2010)

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.

- 1 3. Parking areas shall be separated from the front of all buildings by a landscaped area at
- 2 least five (5) feet wide where parking is allowed in the yard area.
- 3
- 4 4. Wheel stops/curbs shall be placed where needed to prevent encroachment into walkways,
- 5 landscaped areas, circulation aisles, streets and structures.
- 6
- 7 5. Parking spaces and travel aisles shall be clearly delineated in parking lots.
- 8
- 9 6. All parking areas shall be designed to adequately control drainage. In furtherance of this
- 10 standard, drainage calculations used shall reflect a paved condition and all parking areas
- 11 shall be constructed with base material which can withstand normally expected vehicle
- 12 loading and winter maintenance.
- 13
- 14 7. If parking spaces are provided for self-parking by employees or visitors or both,
- 15 accessible spaces meeting ADA requirements shall be provided in each parking area in
- 16 conformance with the following:
- 17
- 18
- 19

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

- 20
- 21 8. Parking facilities within the Town Center District shall comply with the
- 22 Standards of Sec. 19-6-4.D.3.g., Landscaping and Site Development.
- 23

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

25

26 **A. Purpose**

27

28 Cape Elizabeth residents prize the peace and quiet of their single family neighborhoods.

29 Some property owners have capitalized on the desirability of their neighborhood by

30 renting out their property to transient tenants, especially during the summer months

1 and holidays. Neighborhood residents are concerned that these short-term rentals take
2 on the character of a business operating in a residential neighborhood. The purpose of
3 this section is to balance the desire of property owners to rent their properties to short-
4 term tenants and the desire of residents to preserve the peaceful quiet and enjoyment of
5 their single family neighborhoods.

6
7 **B. Review Procedure**
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9 1. Any property owner who wants to operate a Short Term Rental must first obtain
10 a Short Term Rental Permit from the Code Enforcement Officer.

11
12 2. The Code Enforcement Officer shall provide a Short-Term Rental Form to be
13 completed by the applicant and submitted to the Code Enforcement Officer
14 accompanied by the Short Term Rental permit fee as established by the Town Council.
15 **The form shall include a checklist of code requirements that the owner shall**
16 **demonstrate compliance with.**

17
18 3. The Code Enforcement Officer shall determine if the form has been completely
19 filled out and require that any missing information be provided before any permit is
20 issued.

21
22 4. The first time that a Short Term Rental Permit is submitted for a property, no
23 permit shall be issued until the Code Enforcement Officer has inspected the proposed
24 Short Term Rental for compliance with the Short Term Rental Standards. Thereafter,
25 renewal of a Short Term Rental Permit shall include inspection by the Code
26 Enforcement Officer of the Short Term Rental no less than once every five years. When
27 the Code Enforcement Officer does not conduct an inspection, the Short Term Rental
28 Owner shall provide certification that the Short Term Rental is in compliance with code
29 requirements. Any third party inspection information submitted with the completed
30 form shall be conducted in the calendar year for which the permit is issued.

31
32 5. Code Enforcement Officer shall review the permit application for compliance
33 with the Short Term Rental Standards.

34
35 6. If the Code Enforcement Officer determines that the proposed Short Term Rental
36 complies with the Short Term Rental Standards, a Short Term Rental permit shall be
37 issued. A permit shall be valid for one (1) year from date of issue. The permit may be
38 subject to suspension by the Code Enforcement Officer if the Short Term Rental
39 becomes noncompliant with the Short Term Rental Standards.

40
41 **C. Submission Requirements.** The Short Term Rental permit application shall
42 include the following:
43

1 1. Location. The street address and map/lot number of the short-term rental shall
2 be provided. If the Short Term Rental is not located on a public road, the form
3 shall include directions to the Short Term Rental from a public road.
4

5 2. Contact Person. The name of the owner of the Short Term Rental and contact
6 information, including address and telephone number shall be included on the
7 registration form. In addition, if someone other than the owner is acting as the
8 local contact person, contact information for that person should also be provided.
9 If the contact person changes seasonally, the registration form shall include the
10 time period and the contact person during the year.
11

12 3. Availability. The registration form shall include when, during the calendar year,
13 the Short Term Rental will be available for rental. If change, notify CEO.
14

15 **D. Standards.** The Code Enforcement Officer shall issue a Short Term Rental permit
16 if the following standards are met:
17

18 1. Code compliance. The Short Term Rental permit application shall include written
19 confirmation by the Code Enforcement Officer or a qualified third party
20 approved by the Code Enforcement Officer that the Short Term Rental is in
21 compliance with all applicable codes including without limitation smoke
22 detectors, carbon monoxide detectors, and emergency egress.
23

24 For Short Term Rentals operating on a lot that is less than 30,000 sq. ft., or where the
25 Short Term Rental property owner is not living on the same lot or on a lot abutting the
26 Short Term Rental during the period of rental, the following additional standards shall
27 be met:
28

29 2. Limit on rental intensity. The Short Term Rental shall not accommodate more
30 than 12 tenants at any one time.
31

32 [The following is not recommended but included as a note for further
33 discussion:
34

35 From May 1 to October 31 of each year, a Short Term Rental shall not be rented
36 more than 2 weeks in any one month.]
37

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

43 The information shall include the total number of bedrooms included in the

1 short-term rental, any additional sleeping space, and the total number of tenants
2 that the short-term rental accommodates. If the short-term rental is publicly
3 advertised, the total number of tenants used to determine adequacy of sanitary
4 waste disposal shall not be less than the total number of tenants that the property
5 is advertised to accommodate. For the purpose of evaluating the adequacy of a
6 subsurface disposal system, every 2 tenants shall be equivalent to 1 bedroom.

7
8 The short-term rental owner shall also identify the maximum number of tenants
9 and guests that will be accommodated at the Short Term Rental. For each
10 additional 4 guests, the subsurface waste disposal system shall be adequate to
11 serve 1 additional bedroom.

12
13 4. Parking. The application shall include a depiction of how parking will be
14 provided on the same lot, or include a written agreement for off-site parking at a
15 specified location, at the Short Term Rental to comply with the Off-Street Parking
16 Standards, Sec. 19-7-8. Garage parking spaces shall not be used to meet the Short
17 Term Rental parking requirement. No bus parking or recreational vehicles shall
18 be parked at the Short-Term rental.

19
20 5. Rental Agreement Addendum. The Short Term Rental permit application shall
21 be submitted with an addendum to be attached to the Tenant Rental Agreement
22 that shall be provided to all tenant groups. The Town shall not be responsible for
23 enforcement of the rental agreement or addendum. The rental agreement
24 addendum shall include the following:

- 25
26 a. Contact person.
27 b. Emergency responder contact information and building evacuation plan.
28 c. Maximum number of tenants and guests.
29 d. Parking arrangements, including a prohibition against tenants and guests
30 parking in a manner that impedes access by emergency vehicles to the
31 Short Term rental or any other dwelling in the neighborhood.
32 e. Event rules, as determined by the Short-Term Rental Owner.

33
34 **E. Enforcement.** Violation of the Short Term Rental permit provisions shall be
35 subject to the provisions of 30-A M.R.S.A. Sec. 4452.