

**Town of Cape Elizabeth  
Ordinance Committee Minutes**

September 20, 2012

8:00 a.m. Town Hall

Present: Jim Walsh, Chair  
Kathy Ray  
Dave Sherman

Staff: Tom Leahy, Town Attorney  
Neil Williams, Police Chief  
Robert Malley, Public Works Director  
Bruce Smith, Code Enforcement Officer  
Maureen O'Meara, Town Planner

Mr. Walsh opened the meeting and asked for public comment.

Public Comment

Peter Clifford, 36 Lawson Rd - Mr. Clifford thanked the committee for the work on the short term rental amendments and supports adoption. He supports the comments made at the Town Council workshop that a short term rental should have a minimum 7 day stay. This will reduce the weekend party rentals. Short term rentals have changed the neighborhood. The parking changes also are more than originally envisioned.

Mary Volin, Lawson Rd- She referenced her written comments supporting adjusting the definition of overnight guests.

Jim Huebener, 13 Kettle Cove Rd - Mr. Huebener is interested in including an exemption for landlords who live next door to their rental. He is against the ordinance and considers this an interesting study of government and a colossal waste of time. He feels punished for someone else doing something wrong.

June Eiesland, 117 Old Ocean House Rd - She has a list of concerns. Safety is addressed by the IRC code. She would like to know if her house is up to code. Her house is on one floor so the codes may be easy to meet but some houses are convoluted. She added an addition to her house 20 years ago and the septic system was approved. How does she get her septic design?

She is not in favor of the three-strikes enforcement. Her lot is over 30,000 sq. ft. Maine sells fireworks. Her lease prohibits fireworks, but if a tenant sets off fireworks and a complaint is made, her house is in violation. It could take up to a

week before she is notified and the tenant is gone. She is guilty by association and may have to shut down when has entered into contracts. She wants to be notified the day after the infraction.

### Minutes

Mr. Sherman made a motion to approve the minutes, seconded by Mrs. Ray, and adopted by a vote of 3-0.

### Short Term Rental Amendments

The committee considered the guest definition. Mr. Sherman asked if people are there at 3:00 a.m., would they be considered guests? Mr. Smith noted it would be difficult to make the determination, if for example, the police report states they were playing poker, etc.

Mr. Sherman suggested that a time be established, after which time anyone on the premises would be considered a tenant. The committee agreed to set a time of 11:00 p.m when everyone would be considered a tenant. Mr. Leahy agreed to make that change.

The committee reviewed the applicability section where wording was changed to clarify that a rental period is a minimum of 7 days. Committee members agreed with the change and Mr. Sherman said that the draft is in the spirit of the Town Council workshop discussion.

Mr. Sherman asked Mr. Smith if Ms. Eiesland can get code information from him and Mr. Smith said he can get that information to her.

Mr. Sherman asked about the fireworks example and how to review that complaint. Mr. Smith said that property owner would need to show they are controlling their tenant.

Mr. Walsh asked about the timeline to notify the property owner. Chief Williams said that people are notified when the police arrive.

Mr. Smith stated that regardless of timeline, the first thing I do when I get a police report is to call the owner. I also call before I visit to investigate.

Mr. Sherman felt the 5 day window is adequate and he does not want to micromanage. Mr. Smith noted that if the complaint is on a Friday and there is a long weekend, that is four days.

The committee agreed to leave the Suspension and Revocation notification as is.

Mr. Walsh discussed the application form and asked if it should be referenced in the ordinance. Will the safety codes be elaborated upon and how to determine septic compliance? Mr. Smith said he would handle it the same way he does now. Mr. Walsh wanted to confirm this is in writing and Mr. Smith said it is on the application form now. Mr. Walsh said it should be made clear how permit applicants can meet standards like septic design, such as hiring a professional. Mr. Smith said he can address that.

Mrs. Ray suggested that applicants receive a packet that tells them what is required. She wants the information to be clear.

Mr. Sherman noted the good neighbor guidelines. The committee agreed to leave that to a possible committee of short term rental owners to prepare.

Mr. Sherman made a motion to move the Short Term Rental amendments to the Town Council. Mrs. Ray confirmed that the amendments would include 2 changes discussed to be prepared by the Town Attorney and Town Planner in consultation with Ordinance Committee Chair Walsh. The motion was approved 3-0.

Mr. Walsh reviewed the timeline of Town Council receipt of the Ordinance Committee recommendation at the October 10th Town Council meeting and an anticipated public hearing at the November 14th Town Council meeting, with a possible vote after the hearing.

### Miscellaneous Offenses

Chief Williams explained that chapter 17 of the State code has more weight because offenders are subject to arrest, so police officers use that instead of the local Miscellaneous Offenses Ordinance. The chief noted that if a case is taken to court, a complainant and signed statement is needed if there is any chance of prosecution. For example, if a short term rental is loud, the police officer will need to go to the complainant's house and ask for a written statement. We would then issue a summons and pursue prosecution with the District Attorney's office. Prosecution of violations of town ordinance is handled by the police and the Town Attorney.

Mr. Walsh said the Town Council asked us to review this as part of the short term rental amendments.

Chief Williams said the town ordinance does not address short term rentals. If we could pinpoint who is creating the disturbance, the onus would be on the tenant.

Mr. Sherman suggested making the property owner responsible for the disturbance. Mr. Walsh suggested more clarity on landlord/tenant responsibilities.

Mr. Sherman stated that if you rent, you have responsibility for who you rent to. People want to enjoy their property in peace.

The committee agreed the ordinance changes should make clear that the property owner is responsible.

Chief Williams commented on the distance standards in other ordinances. He felt it would be hard for the police to enforce if they need a tape measure.

Mrs. Ray noted that many neighbors live closer than 150' from each other. Mr. Sherman liked the flexibility if a neighbor embraces a wedding next door. Mrs. Ray liked adding a time standard.

Mr. Sherman asked if the police were called often and Chief Williams said not often and typically for something like a band in a garage. Mr. Walsh asked if adding a time, like 10:00 p.m. would make it easier for the police to enforce. Chief Williams agreed and noted the current ordinance does not specify music. The committee agreed to add music.

Mr. Sherman and Mrs. Ray would like to see the draft include quiet time parameters.

Mr. Malley asked for some flexibility on starting earlier if there is a utility coordination issue and the committee agreed. Staff will bring a draft back to the committee.

Public comment was offered as follows:

Mary Volin, Lawson Rd - She suggested including profanity as a type of unacceptable noise. Staff noted that it is covered.

Jessica Sullivan, Mitchell Rd - She agreed with emphasizing land owner responsibility, but is concerned with how far you can take that. Chief William said you won't know until you go to court.

Mr. Sherman noted that the police must use their discretion all the time.

Mrs. Sullivan wondered how this will look to the general public if the tenant is gone when the police arrive. Does the landlord go to jail?

Chief Williams said he would work with the landlord to correct the problem. He used the example of the Woodlands where the landlord has been great in cooperating with the police.

### Solid Waste

Mr. Malley noted that the ordinance amendments constitute cleanup of provisions. The Recycling committee has reviewed the amendments and supports them. Mr. Malley summarized the changes.

Mrs. Sullian said that she likes this proposal as some people seem to live there. Mr. Malley noted that he has been told by some people that they will not leave items in the Swap Shop just so someone can then resell it. The amendments give him some authority to tell frequent visitors (such up to 5 times a day) to use restraint.

Mr. Sherman noted that we don't want to discourage folks from using the Swap Shop and these changes will protect that.

Mrs. Ray asked for an example of the suspension of privileges procedures. Mr. Malley said he wouldn't suspend disposal of household waste, but there have been abuses at the Swap Shop, removal of items from the bin, and demo material hauled in from out-of-town.

Mrs. Ray made a motion, seconded by Mr. Sherman, to recommend the Solid Waste Amendments to the Town Council. The motion passed 3-0.

### Next meeting

At the next meeting, the committee agreed to review the Miscellaneous Offenses draft amendments, and Sign Ordinance.