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Maureen,

I have reviewed some law on this issue, including a recent decision from the Ninth Circuit Court of Appeals. See Rosenblatt v. City of Santa Monica, 940 F.3d 439 (9th Cir. 2019). Although the Ninth Circuit case is not directly on point, its discussion of the Dormant Commerce Clause in the short term rental context is instructive. Based on my research, it is my view that an ordinance that regulates short term rentals so nonprimary residence short term rentals owned by Cape residents are treated less strictly than nonprimary residence short term rentals owned by non-Cape residents would likely run afoul of the Dormant Commerce Clause. A typical test applied by courts to determine whether a local regulation is consistent with the commerce clause is: "legislation that visits its effects equally upon both interstate and local business may survive constitutional scrutiny if it is narrowly drawn." Lewis v. Bt Inv. Managers, 447 U.S. 27, 36, 100 S. Ct. 2009, 2015 (1980). In my view, it would be difficult to show that the type of differential treatment described above meets this test.

Let me know if you have any additional questions.

Regards, John

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