

CHAPTER 18
CONSERVATION

Article I.	Sprague Conservation Area	18-2
Sec. 18-1-1.	Nighttime Closure of Town Ways	18-2
Sec. 18-1-2.	Speed Limits for Vehicles	18-2
Sec. 18-1-3.	Parking Prohibited; Traffic Direction	18-2
Sec. 18-1-4.	Authority to Further Wildlife Management	18-2
Sec. 18-1-5.	Violation, Penalty	18-3
Article II.	Storm Water and Non-Storm Water Control Ordinance	18-3
Sec. 18-2-1.	Purpose	18-3
Sec. 18-2-2.	Approval Required	18-3
Sec. 18-2-3.	Definition	18-3
Sec. 18-2-4.	Storm Water Runoff System Design	18-5
Sec. 18-2-5.	System Responsibility	18-6
Sec. 18-2-6.	Storm Water Runoff System Plan Requirements	18-6
Sec. 18-2-7.	Design Adjustment	18-8
Sec. 18-2-8.	Non-Storm Water Regulation	18-8
Sec. 18-2-9.	Enforcement	18-9
Sec. 18-2-10.	Severability	18-11
Article III.	Tree Ordinance	18-11
Sec. 18-3-1.	Purpose	18-11
Sec. 18-3-2.	Definitions	18-11
Sec. 18-3-3.	Tree Warden	18-12
Sec. 18-3-4.	Duties of Tree Warden	18-12
Sec. 18-3-5.	Tree Permits Required	18-13
Sec. 18-3-6.	Tree Permits Procedures	18-13
Sec. 18-3-7.	Abuse or Mutilation of Public Trees	18-14
Sec. 18-3-8.	Interference with Tree Warden	18-14
Sec. 18-3-9.	Penalties	18-14
Article IV	Post Construction Stormwater Management Ordinance	18-15
Sec. 18-4-1	Purpose	18-15
Sec. 18-4-2	Objectives	18-15
Sec. 18-4-3	Applicability	18-15
Sec. 18-4-4	Definitions	18-16
Sec. 18-4-5	Post-Const. Storm Water Management Plan	18-19
Sec. 18-4-6	Post-Const. Storm Water Management Plan Compliance	18-20
Sec. 18-4-7	Enforcement	18-22
Sec. 18-4-8	Notice of Violation	18-22
Sec. 18-4-9	Penalties/Fines/Injunctive Relief	18-22
Sec. 18-4-10	Consent Agreement	18-23
Sec. 18-4-11	Appeal of Notice of Violation	18-23
Sec. 18-4-12	Enforcement Measures	18-23
Sec. 18-4-13	Severability	18-23

Article I. Sprague Conservation Area.

[Adopted eff. 5/8/1974 under R. S. 1964, T. 30, Sec. 1916 & Sec. 2151.]

Sec. 18-1-1. Nighttime Closure of Town Ways. Charles E. Jordan Road and that portion of Fowler Road southwesterly from its intersection with Bowery Beach Road shall be closed each day between the hours of sunset and sunrise to use by the general public, and by all persons excepting those requiring access to residences from said roads, their agents and guests, or requiring access to provide necessary governmental services; such closure shall be indicated by appropriate signs and may be enforced by installation of an appropriate gate, chain or other device, which signs, device and the necessity therefore shall be determined by the Cape Elizabeth Conservation Commission after consultation with the Town Manager.

Sec. 18-1-2. Speed Limits for Vehicles. The Town Council shall submit for appropriate State authorization such restriction of the speed for vehicles on Charles E. Jordan Road and that portion of Fowler Road that lies southwesterly from its intersection with Bowery Beach Road as the Cape Elizabeth Conservation Commission may recommend to the Town Council as being necessary for the proper conservation of wildlife in the lands through which such roads pass.

Sec. 18-1-3. Parking Prohibited; Traffic Direction. The parking of motor vehicles along Charles E. Jordan Road and that portion of Fowler Road which lies southwesterly from its intersection with Bowery Beach Road shall be limited to points designated by the Cape Elizabeth Conservation Commission, which points may differentiate between occupied standing vehicles and unattended vehicles and shall be fixed from time to time in order to minimize possible obstruction of traffic, assure opportunities to view from such roads, and otherwise enhance the development and proper management of wildlife and other natural resources. The Conservation Commission may cause the erection from time to time of signs designating and restricting such parking where appropriate, if it determines such signs to be necessary to accomplish the foregoing purposes.

Sec. 18-1-4. Authority to Further Wildlife Management. The Cape Elizabeth Conservation Commission is authorized and empowered to cooperate and negotiate with Sprague Corporation, the State Department of Inland Fisheries and Game and other persons or bodies interested in the enhancement and proper management of the wildlife resources within lands abutting or adjacent to Charles E. Jordan Road and that portion of Fowler Road which lies southwesterly of its intersection with Bowery Beach Road, in order (a) to designate and set aside appropriate parking areas or turn-outs along said roads, (b) to obtain appropriate conservation easements for the Town, (c) to further appropriate wildlife and natural resources management practices in the areas adjacent to said roads, (d) to designate, regulate and assist in administering wildlife viewing and feeding areas for use by the general public within said lands; provided that final action for the benefit of or binding upon the Town of Cape Elizabeth which may result from such negotiations by the Commission shall be taken only after vote of the Town Council approving such specific action.

Sec. 18-1-5. Violation, Penalty. Any person who shall violate the closure of the southwesterly portion of Fowler Road or of Charles E. Jordan Road as provided in Sec. 18-1-1, or any parking restrictions established and posted under Sec. 18-1-3 of this Ordinance shall, upon conviction therefore in the District Court, be punished by a fine not exceeding One Hundred Dollars (\$100) for each such violation, to be forfeited and paid over to the use of the Town, and such fine shall not be less than Twenty-Five Dollars (\$25) in the event of a conviction for violation of Sec. 18-1-1 hereof and not less than Ten Dollars (\$10) upon conviction for violation of Sec. 18-1-3 hereof.

Article 11. Storm Water and Non-Storm Water Control Ordinance.

[Adopted eff. 10/10/1979 under R. S. 1964, T. 30, Sec. 1917 & Sec. 4956; amended eff. July 13, 2005]

Sec. 18-2-1. Purpose. The purpose of this Ordinance is to require the disposal of storm water on the land at the site of development through the wise use of the natural features of the site and to regulate storm water and non-storm water Discharges to the Town Storm Water Runoff System as required by federal and state law. Storm water and non-storm water shall be deposited of in a manner so that it does not pose dangers of flooding, soil erosion, pollution of receiving waters, or otherwise constitute a threat to public health, safety or welfare.

Sec. 18-2-2. Applicability. The provisions of this chapter shall apply to:

- a. Any proposed activity involving more than 10,000 square feet of impervious surface, paving, clearing, or vegetative alterations, except for the construction of a single family home and related landscaping. Planning Board approval shall be required as provided hereunder.
- b. Any Discharge of storm water or non-storm water from any premises into the Town Storm Water Runoff System.

Sec. 18-2-3. Definitions. For the purposes of this Ordinance, the following terms shall have the meanings given herein. All words not defined herein shall carry their customary and usual meanings.

Clean Water Act: The federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*, also known as the “Clean Water Act”), and any subsequent amendments thereto.

CFR: Code of Federal Regulations.

Discharge: Any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of Pollutants to Waters of the State.

Direct Discharge: Any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, container, concentrated animal

feeding operation or vessel or other floating craft, from which Pollutants are or may be discharged. (Also know as Point Source.)

Enforcement Authority: The Town of Cape Elizabeth Public Works Director or his/her designee.

Industrial Activity: Activity subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit: A permit issued by the United States Environmental Protection Agency (EPA) or by the Maine Department of Environmental Protection (DEP) that authorizes the Discharge of pollutants to waters of the United States.

Non-Storm Water Discharge: Any Discharge to the Town Storm Water Runoff System that is not composed entirely of Storm Water.

Person: Any individual, firm, corporation, municipality, quasi-municipal corporation, State or Federal agency or other legal entity.

Pollutant: Any dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, aggregate materials, and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

Premises: All or any part of a building, lot, parcel of land, whether improved or unimproved, including adjacent sidewalks and parking areas from which Discharges into the Town Storm Water Runoff System are created, initiated, originated or maintained.

Storm Water: Runoff resulting from snowmelt, rain, precipitation or groundwater on the ground.

Storm Water Runoff System: An element or array of elements that convey water from or across land, including but not limited to natural elements.

Tidal Waters: Waters contiguous to the Atlantic Ocean where the surface rises and falls due to gravitational pull.

Town: The Town of Cape Elizabeth.

Waters of the State: Any and all surface and subsurface waters that are contained within, flow through, or under or border upon the State of Maine or any portion of the State of Maine, including the marginal and high seas, except such waters as are confined and retained completely upon the property of one person and do not drain into or connect with any other waters of the State of Maine, but not excluding waters susceptible to use in interstate or foreign commerce, or whose use, degradation or destruction would affect interstate or foreign commerce.

Uncontaminated: Free of Pollutants.

Sec. 18-2-4. Storm Water Runoff System Design. Any development involving more than 10,000 sq. ft. of impervious surface, paving, clearing, or vegetative alterations, and which requires Site Plan (Chapter 19, Zoning Ordinance) and/or Subdivision Review (Chapter 16, Subdivision Ordinance) by the Planning Board shall also submit to the Planning Board plans and materials to demonstrate compliance with the following:

- a. The technical design, sizing of components and hydraulic analyses and computations for any storm water runoff system shall be performed or approved in writing by a professional engineer registered in Maine. The storm water runoff systems for developments requiring site plan review or subdivision approval by the Planning Board shall be designed with the objective of infiltrating, detaining or retaining water falling on or flowing to the site during a storm of intensity equal to the 2 and 25-year storm in such a manner that, to the maximum extent practicable, (1) the rate of flow of such water from the site shall not exceed that which would occur in its undeveloped state or will discharge directly to a tidally influenced area, and (2) the physical, chemical and biological properties of the techniques or structures to accomplish either objective shall be the responsibility of the developer, subject to review and approval by the Planning Board.
- b. The design of Storm Water Runoff Systems shall include consideration of permanent and temporary ponding or storage within the development to control and minimize outflow rates. The designer of the Storm Water Runoff System shall evaluate the effectiveness of various methods and shall develop the hydraulic computations based on accepted engineering principles to demonstrate the expected rate of outflow after development compared with the rate of outflow prior to development.
- c. If it is not practicable to reduce the outflow rate from the developed area for the 2 and 25-year storm to that from the undeveloped site, considering the construction and maintenance costs of the Storm Water Runoff System and the downstream benefits to be obtained, the developer shall demonstrate by hydraulic analysis that downstream channel or system capacity is sufficient to carry the flow without adverse effects. Computations and analysis made pursuant to this section shall be made available for review by the Planning Board or its designees.
- d. Designers of Storm Water Runoff Systems shall be fully cognizant of upstream runoff, which must pass over or through the development site. The Storm Water Runoff System shall be designed to pass through the proposed development all upstream flows generated by the 2 and 25-year storm from the upstream watershed as fully developed, without surcharging the Storm Water Runoff System or flooding areas not specifically planned for flooding.

- e. Storm Water Runoff Systems shall be designed with both major and minor components, which will serve specific access convenience objectives, erosion control objectives, water quality objectives and pollution control objectives.
- f. The design of piped or open channel Storm Water Runoff Systems shall be based on a 25-year storm without surcharge or flooding beyond channel limits, unless such surcharge is specifically planned to assist in meeting the objectives of subsection (g). The areas expected to be flooded by a runoff of a 25-year storm shall be designated, and no structures shall be permitted within such areas. Where state or federal law is more restrictive, such provisions shall supersede the provisions of this section.
- g. Where embankment-type storage or retention facilities are planned, they shall be designated in accordance with the appropriate sections of the Maine Department of Environmental Protection Best Management Practices (MDEP BMPs). Design methods and computations shall be submitted for review upon request of the Planning Board or its designees.
- h. Easements shall be conveyed for all components of the Storm Water Runoff System lying outside of public ways. Such rights of ways shall be offered to the Town of Cape Elizabeth for public ownership.
- i. Upon completion of Storm Water Runoff System installation, and before any section thereof is accepted by the Town or deeded to an association, the developer shall submit a reproducible set of record drawings indicating the work accomplished, and shall designate how the data for such drawings were compiled. The Enforcement Authority reserves the right to field check the drawings, and the Storm Water Runoff System shall not be accepted or deeded until the Town is satisfied that the installed work is consistent with approved design plans, and that the record drawings reasonably reflect the work installed.

Sec. 18-2-5. System Responsibility. The developer shall maintain all components of the Storm Water Runoff System until they are formally accepted by the Town or transferred to a property owners association whose charter and powers for financing and maintaining the Storm Water Runoff System shall be approved by the Town Attorney. Storm Water Runoff System components within proposed public ways shall become Town property upon formal acceptance. Storm Water Runoff System components outside of public ways may be accepted by the Town but shall otherwise be deeded to a property owners association, as required by the Planning Board or as agreed by the Town and the developer prior to project approval. In all cases the Town shall have the right to access and enter the Storm Water Runoff system to conduct emergency maintenance, as it deems necessary.

Sec. 18-2-6. Storm Water Runoff System Plan Requirements.

- a. Basic site data upon which Storm Water Runoff Systems are planned and designed shall include:

1. A topographic map of the entire development site utilizing a 2-foot contour interval, which map shall show water bodies, wetlands, the location of all permanent and intermittent streams or water courses, the location and type of vegetative cover, and the soil type determined by a medium intensity soil survey;
 2. A map of upstream areas giving sufficient information to calculate hydraulics and drainage designs through the site; and
 3. A map of downstream areas, where the outflow rate is to be increased as described in Section 18-2-4 (c) giving sufficient information to calculate hydraulics and drainage design demonstrating the sufficiency of downstream capacity.
- b. The Storm Water Runoff System shall be fully coordinated with project site plans including consideration of street patterns, pedestrian ways, open space, building siting, parking areas, and other utilities, especially sanitary waste water disposal systems.
 - c. Planning of Storm Water Runoff Systems shall encompass the entire site that may ultimately be developed, and shall not be limited to an initial or limited section of the development.
 - d. The design of the Storm Water Runoff System shall be presented to the Planning Board in the form of engineering reports. A Preliminary Design concept shall be presented with the initial review submissions, and a Final Design Report shall be presented with the request for Final Subdivision or Site Plan approval.
 - e. The Preliminary Design concept shall include the following:
 1. Plans showing basic site data as required by subsection (a);
 2. Plans of the Storm Water Runoff System indicating coordination and compatibility with the proposed site plans;
 3. Computations comparing the runoff rates and characteristics of the development before and after the proposed development; and
 4. Computations illustrating the passage of upstream flow, if any, through the site.
 - f. The Final Design Report shall include the following:
 1. Detailed construction plans of the proposed Storm Water Runoff System including plans, profiles and channel sections, in such detail as necessary to construct the Storm Water Runoff System;
 2. Material and procedure specifications as necessary to construct the Storm Water

Runoff System;

3. Final design computations illustrating compliance with the intent of this Ordinance and with any conditions upon the preliminary approval;
4. Metes and bounds surveyed plans of all rights of way proposed for public ownership, made by a registered land surveyor, and assignment of maintenance responsibilities for the rights of way upon completion; and
5. Installation time schedule, including sequence and scheduling of Storm Water Runoff System installation, with particular attention to coordination with site erosion and sedimentation control plans.

Sec. 18-2-7. Design Adjustment. The Planning Board may waive any filing or design requirements unnecessary for full consideration of any proposed Storm Water Runoff System, such as data relating to site features and runoff rates downstream of the entrance to a piped Discharge directly to tidal waters. The Planning Board may also reduce or waive any requirements of this Ordinance where it finds from the basic site data furnished under Section 18-2-6 (a) that the estimated costs of construction and long-term maintenance resulting from compliance with the design requirements in any instance clearly outweigh the downstream benefits to be achieved by compliance.

Sec. 18-2-8. Non-Storm Water Regulation.

- a. **Objectives.** The objectives of this section are:
 1. To regulate Non-Storm Water Discharges to the Storm Water Runoff System; and
 2. To set forth the legal authority and procedures to carry out all inspection, monitoring and enforcement activities necessary to ensure compliance with this Ordinance.
- b. **General Prohibition.** Except as allowed in this Section, no Person shall create, initiate, originate or maintain a Non-Storm Water Discharge to the Storm Water Runoff System. Such Non-Storm Water Discharges are prohibited notwithstanding the fact that the Town may have approved the connections, drains or conveyances by which a Person discharges unallowed Non-Storm Water Discharges to the Storm Water Runoff System.
- c. **Allowed Non-Storm Water Discharges.** The creation, initiation, origination and maintenance of the following Non-Storm Water Discharges to the Storm Water Runoff System are allowed:
 1. Landscape irrigation; diverted stream flows; rising ground waters; uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)); uncontaminated pumped ground water; uncontaminated flows from foundation drains; air conditioning and compressor condensate; irrigation water; flows from

- uncontaminated springs; uncontaminated water from crawl space pumps; uncontaminated flows from footing drains; flows from riparian habitats and wetlands; residual street wash water (where spills/leaks of toxic or hazardous materials have not occurred, unless all spilled material has been removed and detergents are not used); hydrant flushing and fire fighting activity runoff; water line flushing and Discharges from potable water sources; and residential car washing;
2. Discharges authorized by the Enforcement Authority as being necessary to protect public health and safety; and
 3. Dye testing, with authorization from the Enforcement Authority prior to the time of the test.
- d. **Suspension of Access to the Town Storm Water Runoff System.** The Enforcement Authority may, without prior notice, physically suspend Discharge access to the Storm Water Runoff System when such suspension is necessary to stop an actual or threatened Non-Storm Water Discharge to the Storm Water Runoff System that presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the Storm Water Runoff System, or that may cause the Town to violate the terms of its environmental permits. Such suspension may include, but is not limited to, blocking pipes, constructing dams or taking other measures, on public ways or public property, to physically block the Discharge to prevent or minimize a Non-Storm Water Discharge to the Storm Water Runoff System. The Enforcement Authority may take such steps as deemed necessary to prevent or minimize damage to the Storm Water Runoff System, or to minimize danger to persons, provided, however, that in taking such steps the Enforcement Authority may enter upon the Premises that are the source of the actual or threatened Non-Storm Water Discharge to the Storm Water Runoff System only with the consent of the Premises' owner, occupant or agent, except in an emergency when consent shall not be required.
- e. **Monitoring of Discharges.** In order to determine compliance with this Ordinance, the Enforcement Authority may enter upon and inspect Premises subject to this Ordinance at reasonable hours with the consent of the Premises' owner, occupant or agent, to inspect the Premises and connections thereon to the Storm Water Runoff System; and to conduct monitoring, sampling and testing of the Discharge to the Storm Water Runoff System.

Sec. 18-2-9. Enforcement.

It shall be unlawful for any Person to violate any provision of or to fail to comply with any of the requirements of this Ordinance.

- a. **Notice of Violation.** Whenever the Enforcement Authority believes that a Person has violated this Ordinance, the Enforcement Authority may order compliance with this Ordinance by written Notice of Violation to that Person indicating the nature of

the violation and ordering the action necessary to correct it, including, without limitation:

1. The elimination of Non-Storm Water Discharges to the Storm Water Runoff System, including, but not limited to, disconnection of the Premises from the Storm Water Runoff System;
2. The cessation of Discharges, practices, or operations in violation of this Ordinance;
3. At the Person's expense, the abatement or remediation in accordance with best management practices in DEP rules and regulations of Non-Storm Water Discharges to the Storm Water Runoff System and the restoration of any affected property; and/or
4. The payment of fines, of the Enforcement Authority's remediation costs and of the Enforcement Authority's reasonable administrative costs and attorneys' fees and costs, in accordance with 30-A M.R.S.A Sec. 4452.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement or restoration must be completed.

- b. **Penalties/Fines/Injunctive Relief.** Any Person who violates this Ordinance shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the Town's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any Person who violates this Ordinance also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred by the Town for violation of Federal and State environmental laws and regulations caused by or related to that Person's violation of this Ordinance; this responsibility shall be in addition to other penalties, fines or injunctive relief imposed under this Section.
- c. **Consent Agreement.** The Enforcement Authority may, with the approval of the municipal officers, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this Ordinance for the purposes of eliminating violations of this Ordinance and of recovering fines, costs and fees without court action.
- d. **Appeal of Notice of Violation.** Any Person receiving a Notice of Violation or suspension notice may appeal the determination of the Town to the Zoning Board of Appeals. The notice of appeal must be received within 30 days from the date of receipt of the Notice of Violation. The Board of Appeals shall hold a de novo hearing on the appeal within 30 days from the date of receipt of the notice of appeal. The Board of Appeals may affirm, reverse or modify the Notice of Violation. A suspension under Section 18-2-8(d) of this Ordinance shall remain in place unless or until lifted by the Board of Appeals or by a reviewing court. A party aggrieved by the

decision of the Zoning Board of Appeals may appeal that decision to the Maine Superior Court within 45 days of the date of the Zoning Board of Appeals decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.

- e. **Enforcement Measures.** If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal to the Board of Appeals, within 45 days of a decision of the Board of Appeals affirming the Enforcement Authority's decision, then the Enforcement Authority may file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.

f. **Ultimate Responsibility of Discharger.** The standards set forth in this Ordinance are minimum standards. Compliance with this Ordinance does not ensure that a Person will not have contaminated, polluted or unlawfully discharged Pollutants into waters of the U.S. This Ordinance shall not create liability on the part of the Town, or any officer, agent or employee thereof for any damages that result from a Person's reliance on or compliance with this Ordinance or any administrative decision lawfully made under this Ordinance.

Sec. 18-2-10 Severability. If any part or parts, section or subsection, sentence, clause or phrase of this Ordinance or the rules and regulations promulgated thereunder is for any reason declared to be unconstitutional or invalid, such declaration shall not affect the validity or constitutionality of the remaining portions of this Ordinance or the rules and regulations promulgated thereunder.

Article 111. Tree Ordinance.

[Adopted eff. 10/25/1978 under R. S. 1964, T. 30,
Sec. 3901. Revised eff. 10/13/2010]

Sec. 18-3-1. Purpose. The purpose of this Ordinance is to protect the public safety and general welfare through the preservation and conservation of healthy trees in public areas of the Town, the regulation of the planting, maintenance and removal of trees in public areas, and the pruning and removal of trees on private property which endanger public safety.

Sec. 18-3-2. Definitions.

- a. **Property Owner** shall mean the person owning real estate in question as shown by the current tax maps on file in the office of the municipal assessor of the Town of Cape Elizabeth, unless the contrary is shown.
- b. **Public Areas** shall include all streets, treelawns, open space, forested lands, greenbelt trails and grounds owned or controlled by the Town of Cape Elizabeth.
- c. **Public Trees** shall include all trees growing or that have fallen in any public area and that part of any tree overhanging a public area.

- d. **Street** shall mean the entire width of every public way and every right of way in which the general public has a right of use.
- e. **Treelawn** shall mean that part of any street lying between the line of abutting private property and that portion of the street improved for use by vehicular traffic, except that area which may be covered by sidewalk or other paving.
- f. **Tree** shall mean any woody plant having one or more erect stems, including shrubs and woody vines, of any size if planted or set out under the authority of this Ordinance, but otherwise only those trees which exceed 8 feet in height.

Sec. 18-3-3. Tree Warden. The Tree Warden shall be appointed in accordance with the Administrative Code and shall have training or demonstrated experience in the arts and sciences of municipal arboriculture, ornamental or landscape horticulture, urban forestry or other closely related fields. In the absence of the Tree Warden, or during any vacancy in the position, his functions shall be carried out by the Director of Public Works or a qualified alternate appointed by the Town Manager.

Sec. 18-3-4. Duties of Tree Warden. The Tree Warden shall administer this Ordinance and in doing so shall:

- a. Regulate the planting, maintenance and removal of public trees in order to insure the safety of the public and preserve the aesthetics of public areas.
- b. Have the authority, subject to approval by the Town Council, to promulgate the rules and regulations of the "International Arborist Society's Arboricultural Specifications and Standards of Practice" governing the planting, maintenance, fertilization, pruning, bracing and removal of trees in public areas, with such variations and revisions as he deems advisable from time to time.
- c. Have the authority to develop, formulate and update a Master Tree Plan subject to the approval of the Town Council. The Master Tree Plan shall specify the species of trees to be planted on such public areas within the Town as the Tree Warden deems advisable, and after the effective date of any portion of the Master Tree Plan all plantings by the Town or other persons within the public areas covered by said Plan shall conform thereto. The Tree Warden shall consider all existing and future utility and environmental factors when designating specific species for public areas within the Plan.
- d. Undertake such planting, maintenance and removal programs for public trees as the Tree Warden deems appropriate with the Master Tree Plan.
- e. Have the authority to grant permits for the planting, maintenance or removal of trees within public areas of the Town, to impose reasonable conditions upon the work to be performed under any such permit consistent with the intent of this Ordinance, and to supervise and inspect work permitted and halt any work performed without a permit where a permit is required or performed in violation of the terms of a permit.

- f. Have the authority to have pruned or removed any trees or parts of trees on private property which endanger the public safety, but only after notice to the property owner and satisfaction of the following requirements:

The Tree Warden shall attempt to obtain agreement by the property owner to the procedures which the Tree Warden recommends, and in the absence of such agreement the Tree Warden shall undertake such work only upon the affirmative vote of the Town Council following opportunity for the Tree Warden and property owner to be heard before the Town Council; the cost of pruning or removal under this provision shall be paid or reimbursed by the property owner unless otherwise agreed.

Sec. 18-3-5. Tree Permits Required. No person shall plant, spray, fertilize, prune, remove or otherwise disturb any public tree, and no person shall excavate, ditch, tunnel, trench, lay any pavement or construct any building or structure within a distance of 10 feet from a public tree, or within the drip line of a public tree, whichever distance is greater, without obtaining a permit from the Tree Warden for such work, except that in emergency situations requiring immediate pruning or removal, the work may be done so long as the Tree Warden is informed thereof within two days. Any public tree planted without such permit, or in violation of the terms of a permit, may be removed by the Tree Warden unless such planting is otherwise consistent with the terms of this Ordinance, and the cost of such removal shall be paid or reimbursed by the person responsible for such planting. Any permit for the removal of a public tree shall require as a condition thereof that such tree be replaced, where possible and appropriate, in the same general location or on abutting private property, with a tree deemed comparable or appropriate by the Tree Warden.

Sec. 18-3-6. Tree Permit Procedures.

- a. Requests for tree permits shall be made at the Department of Public Works, directed to the Tree Warden, not less than two business days prior to the time of the work proposed. The request shall be accompanied by such fee as the Town Council may establish from time to time. The request shall be in such form and call for such information as the Tree Warden may require in order to determine compliance with this Ordinance and any regulations adopted thereunder, including the following:
 - 1. Requests for planting trees shall describe the location proposed, the method of planting, and the number, size, grade, species and variety of such trees;
 - 2. Requests for tree maintenance work shall state the number, kinds and size of the trees to be treated, the kind of treatment proposed and the composition of any fertilizer or spray material to be applied.
 - 3. Requests for the removal of any tree shall set forth the reason for the proposed removal and the procedures to be used, and shall set forth the information required under Paragraph 1 of this Section with respect to replacement trees to be planted or the reasons why such replacement is not deemed possible or appropriate; and

4. Requests for any excavation or construction work adjacent to a public tree shall describe the location of the public trees involved, the nature of the work proposed, and the structures, barriers and procedures to be used to protect such public trees during the course of such work.
- b. The Tree Warden shall issue the permit requested upon a finding that the activity proposed will not endanger the public safety and is not inconsistent with an effective Master Tree Plan, that any new trees to be planted are appropriate for the climate and soils condition of the location proposed, that any spray material or fertilizers proposed are lawful and appropriate, that the proposed procedures and workmanship are adequate, and that the activity proposed is consistent with any regulations adopted under this Ordinance. The activity proposed shall be carried out in compliance with any regulations adopted in accordance with Sec. 18-3-4 (b), and in compliance with any reasonable conditions imposed by the Tree Warden in order to assure compliance with this Ordinance. Any permit granted shall contain a definite expiration date by which the proposed activity shall be completed, provided that the Tree Warden may extend said expiration date for good cause; notice of completion shall be given to the Tree Warden for his inspection of the work within five days following completion.

Sec. 18-3-7. Abuse or Mutilation of Public Trees. Unless specifically authorized by the Tree Warden, no person shall intentionally damage, cut, carve, transplant or remove any public tree; attach any rope, wire, nails, advertising posters, or other contrivance to any public tree; allow any gaseous liquid, or solid substance which is harmful to any public tree to come in contact with it; set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of any public tree; deposit, place, store or maintain upon the ground any stone, brick, sand, concrete, or other materials which may impede the free passage of water, air, and fertilizer to the roots of any public tree. Nothing in this section shall be prohibit anyone from relocating or cutting a public tree that has fallen on a designated Cape Elizabeth Greenbelt trail. Any person who shall violate any provision of this Sec. 18-3-7 shall be liable, in addition to any applicable penalty under this Ordinance, to pay to the Town or reimburse the Town for any expense incurred in repairing any damage caused to a public tree or the cost of replacing such damaged public tree in the event that such damage cannot be repaired.

Sec. 18-3-8. Interference with Tree Warden. No person shall hinder, prevent, delay, or interfere with the Tree Warden or any of his assistants while engaged in carrying out the execution or enforcement of this Ordinance; provided, however, that nothing herein shall be construed as an attempt to prohibit the pursuit of any remedy, legal or equitable, in any court of competent jurisdiction for the protection of property rights by the owner of any property within the municipality.

Sec. 18-3-9. Penalties. The violation of any provision of this Tree Ordinance shall, in addition to any civil penalties available to the Town therefore, constitute a misdemeanor and be punishable by a fine not to exceed \$1000.00 to be recovered upon complaint to the use to

the Town. Each day that any violation of this Tree Ordinance shall continue following notification thereof by the Tree Warden shall constitute a separate offense.

Article IV Post Construction Stormwater Management Ordinance
[Adopted eff. 04/08/2010]

Sec. 18-4-1. Purpose. The purpose of this "Post-Construction Storm Water Management Ordinance" (the "Ordinance") is to provide for health, safety, and general welfare of the citizens of the Town of Cape Elizabeth through review and approval of post-construction storm water management plans and monitoring and enforcement of compliance with such plans as required by Federal and State law.

This Ordinance establishes methods for post-construction storm water management in order to comply with minimum control measure requirements of the Federal Clean Water Act, of federal regulations, of Maine's Small Municipal Separate Storm Sewer Systems General Permit, and the Town's Storm Water Program Management Plan.

The Town of Cape Elizabeth enacts this Post-Construction Storm Water Management Control Ordinance (the "Ordinance") pursuant to 30-A M.R.S.A. § 3001 (municipal home rule ordinance authority), 38 M.R.S.A. § 413 (the "Wastewater Discharge Law"), 33 U.S.C. § 1251 *et seq.* (the "Clean Water Act"), and 40 CFR Part 122 (U.S. Environmental Protection Agency's regulations governing the National Pollutant Discharge Elimination System ("NPDES")). The Maine Department of Environmental Protection, through its promulgation of the "General Permit for the Discharge of Storm Water from Small Municipal Separate Storm Sewer Systems," has listed the Town of Cape Elizabeth as having a Regulated Small Municipal Separate Storm Sewer System ("Small MS4"); under this General Permit, listing as a Regulated Small MS4 necessitates enactment of this Ordinance as part of the Town's Storm Water Management Program in order to satisfy the minimum control measures required by Part IV D 5 ("Post-construction storm water management in new development and redevelopment").

Sec. 18-4-2. Objectives. The objectives of this Ordinance are:

- a. To reduce the impact of post-construction discharge of storm water on receiving waters; and
- b. To reduce storm water runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through use of Best Management Practices as promulgated by the Maine Department of Environmental Protection pursuant to its most current rules as may be updated or amended including its Chapters 500 and 502 Rules, and ensure that these management controls are properly maintained and pose no threat to public safety.

Sec. 18-4-3. Applicability. This Ordinance applies to all New Development and Redevelopment within the Town that discharges storm water to the Town's Municipal

Separate Storm Sewer System (MS4) and to associated storm water management facilities, which are considered to be an element or array of elements that convey water from or across land, including, but not limited to, natural elements, roads, parking areas, catch basins, drainage swales, detention basins and ponds, pipes, conduits, and related structures that are part of the Post-Construction Storm Water Management Plan for a New Development or Redevelopment.

This ordinance does not apply to any development which has obtained subdivision approval and begun construction prior to the date this ordinance becomes effective. Construction shall mean (1) posting of a performance guarantee, (2) disturbance of soil, and (3) inspection by a town official.

Sec. 18-4-4. Definitions. For the purposes of this Ordinance, the following terms shall have the meanings given herein. All words not defined herein shall carry their customary and usual meanings.

Applicant: Any Person with requisite right, title, or interest or an agent for such Person who has filed an application for New Development or Redevelopment that requires a Post-Construction Storm Water Management Plan under this Ordinance.

Best Management Practices ("BMP"): Any schedule of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State of Maine. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Clean Water Act: The federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*, also known as the "Clean Water Act"), and any subsequent amendments thereto.

Construction Activity: Any Construction Activity including one acre or more of Disturbed Area. Construction Activity also includes activity with less than one acre of total land Disturbed Area if that area is part of a subdivision that will ultimately disturb an area equal to or greater than one acre.

Discharge: Any spilling, leaking, pumping, pouring, emptying, dumping, disposing, or other addition of Pollutants to Waters of the State.

Direct Discharge: Any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which Pollutants are or may be discharged (Also known as Point Source).

Disturbed Area: Any clearing, grading, and excavation. Mere cutting of trees, without grubbing, stump removal, disturbance or exposure of soil is not considered "Disturbed Area." "Disturbed Area" does not include routine maintenance but does include

Redevelopment. "Routine Maintenance" is maintenance performed to maintain the original line and grade, hydraulic capacity, and original purpose of land or improvements thereon.

Enforcement Authority: The Town Manager or his/her designee who is the person(s) or department authorized by the Town to administer and enforce this Ordinance.

Town: The Town of Cape Elizabeth.

Town Permitting Authority: The Town official or body that has jurisdiction over the land use approval or permit required for a New Development or Redevelopment.

Municipal Separate Storm Sewer System, or MS4: Conveyances for storm water, including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains (other than publicly owned treatment works and combined sewers) owned or operated by any municipality, sewer or sewage district, fire district, State agency or federal agency or other public entity that discharges directly to Waters of the State.

National Pollutant Discharge Elimination Systems (NPDES) Storm Water Discharge Permit: A permit issued by the United States Environmental Protection Agency ("EPA") or by the Maine Department of Environmental Protection ("DEP") that authorizes the Discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

New Development: Any Construction Activity on unimproved Premises and for purposes of this ordinance includes "Redevelopment" defined below.

Person: Any individual, firm, corporation, municipality, town, quasi-municipal Corporation, State or Federal agency, or other legal entity.

Pollutant: Any dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, solid waste, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, aggregate materials, and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

Post-Construction Storm Water Management Plan: BMPs and associated inspection and maintenance procedures for the Storm Water Runoff System employed by a New Development or Redevelopment to meet the standards of this Ordinance and approved by the Town's Permitting Authority.

Premises: Any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within the Town from which Discharges into the Town Storm Water Runoff System are or may be created, initiated, originated, or maintained.

Qualified Post-Construction Storm Water Inspector: A person who conducts post-construction inspections of Storm Water Runoff Systems and meets the following qualification:

- a. The Inspector shall not have any ownership or financial interest in the property being inspected nor be an employee or partner of any entity having an ownership or financial interest in the property, and
- b. The Inspector shall also meet the following criteria as approved by the Town's Enforcement Authority:
 1. Someone who has received the appropriate training for such inspection from DEP and holds a valid certificate from DEP for such inspection or;
 2. Have a working knowledge of the most current Maine DEP Storm Water Management Laws including but not limited to Chapter 500 and Chapter 502 Rules, Storm Water Management Rules and Maine's Storm Water BMP Manual, have a college degree in environmental science, civil engineering, or comparable expertise, or any combination of experience and training; have a demonstrated practical working knowledge of Storm Water hydrology and Storm Water management techniques, including the maintenance requirements for Storm Water Runoff Systems; and have the ability to determine if Storm Water Runoff Systems are performing as intended;

Redevelopment: Any Construction Activity on Premises already improved with buildings, structures, or activities or uses, but does not include such activities as exterior remodeling of structures.

Regulated Small MS4: Any Small MS4 regulated by the State of Maine "General Permit for the Discharge of Storm Water from Small Municipal Separate Storm Sewer Systems" ("General Permit"), including all those located partially or entirely within an Urbanized Area (UA) and those additional Small MS4s located outside a UA that as of the issuance of the General Permit have been designated by the DEP as Regulated Small MS4s.

Small Municipal Separate Storm Sewer System, or Small MS4: Any MS4 that is not already covered by the Phase I MS4 Storm Water program including municipally owned or operated storm sewer systems, State or federally-owned systems, such as colleges, universities, prisons, Maine Department of Transportation and Maine Turnpike Authority road systems and facilities, and military bases and facilities.

Storm Water: Runoff resulting from snowmelt, rain, precipitation, groundwater on the ground and drainage.

Storm Water Runoff System: An element or array of elements that convey water from or across land, including, but not limited to, natural elements.

Urbanized Area ("UA") means the areas of the State of Maine as defined by the latest decennial census by the U.S. Bureau of the Census.

Sec. 18-4-5. Post-Construction Storm Water Management Plan.

a. General Requirement

1. Except as provided in Sec. 18-4-3 b. above, no Applicant for a building permit, subdivision approval, site plan approval or other zoning, planning or other land use approval for New Development or Redevelopment to which this Ordinance is applicable shall receive such permit or approval for that New Development or Redevelopment unless the Town Permitting Authority for that New Development also determines that the Applicant's Post-Construction Storm Water Management Plan for the New Development meets the requirements of this Ordinance.
2. At the time of application, the Applicant shall notify the Town Permitting Authority if its Post-Construction Storm Water Management Plan includes any BMP(s) that will discharge to the Town's MS4 and shall include in this notification a listing of which BMP(s) will so discharge.

b. Performance Standards

1. The Applicant shall make adequate provisions for the management of the quantity and quality of all storm water generated by a New Development or Redevelopment through a Post-Construction Storm Water Management Plan. This Post-Construction Storm Water Management Plan shall be designed to meet the standards contained in the Maine Department of Environmental Protection's most current rules as may be updated or amended including its Chapters 500 and 502 Rules and shall comply with the practices described in the manual *Storm Water Management for Maine*, published by Maine Department of Environmental Protection, latest edition, which hereby are incorporated by reference pursuant to 30-A M.R.S.A. § 3003.
2. The Applicant shall meet the quantity and quality standards above either on-site or off-site. Where off-site facilities are used, the Applicant must submit to the Town documentation, approved as to legal sufficiency by the Town's attorney, that the Applicant has a sufficient property interest in the property where the off-site facilities are located – by easement, covenant or other appropriate legal instrument – to ensure that the facilities will be able to provide post-construction storm water management for the New Development

or Redevelopment and that the property will not be altered in a way that interferes with the off-site facilities.

3. Where the Applicant proposes to retain ownership of the Storm Water Management Facilities shown in its Post-Construction Storm Water Management Plan, the Applicant shall submit to the Town documentation, approved as to the legal sufficiency the Town's attorney that the Applicant, its successor, heirs and assigns shall have the legal obligation and the resources available to operate, repair, maintain and replace the Storm Water Management Facilities. Applications for New Development or Redevelopment requiring Storm Water Management Facilities that will not be dedicated to the Town shall enter into a Maintenance Agreement with the Town. A sample of this Maintenance Agreement is available from the Town.
4. Whenever elements of the Storm Water Runoff System are not within the right-of-way of a public street and the facilities will not be offered to the Town for acceptance as public facilities, the Town Permitting Authority may require that perpetual easements conforming substantially with the lines of existing natural drainage, and providing adequate access for maintenance in a form acceptable to the Town's attorney, shall be provided to the Town allowing access for maintenance, repair, replacement and improvement of the Storm Water Runoff System. When an offer of dedication is required by the Town Permitting Authority, the Applicant shall be responsible for the maintenance of these Storm Water Runoff Systems under this Ordinance until such time (if ever) as they are accepted by the Town.
5. In addition to any other applicable requirements of this Ordinance and the Town's Municipal Code, any New Development or Redevelopment which also requires a storm water management permit from the Maine Department of Environmental Protection (DEP) under 38 M.R.S.A. 420-D shall comply with the rules adopted by DEP under 38 M.R.S.A. 420-D(1), as the same may be amended from time to time, and the Applicant shall document such compliance to the Town Permitting Authority. Where the standards or other provisions of such storm water rules conflict with Town ordinances, the stricter (more protective) standard shall apply.

Sec. 18-4-6. Post-Construction Storm Water Management Plan Compliance.

- a. **General Requirements.** Any Person owning, operating, leasing or having control over Storm Water Runoff Systems required by a Post-Construction Storm Water Management Plan approved under this Ordinance shall demonstrate compliance with that Plan as follows:
 1. A Qualified Post-Construction Storm Water Inspector , shall, at least annually, inspect the Storm Water Runoff Systems, including but not limited to any roads, parking areas, catch basins, drainage swales, detention basins

and ponds, pipes, conduits, and related structures, in accordance with all Town and State inspection, cleaning and maintenance requirements of the approved Post-Construction Storm Water Management Plan.

2. If the Storm Water Runoff Systems require maintenance to function as intended by the approved Post-Construction Storm Water Management Plan, that Person shall take corrective action(s) to address the deficiency or deficiencies.
 3. A Qualified Post-Construction Storm Water Inspector shall provide, on or by May 1 of each year, a completed and signed certification to the Town Enforcement Authority in a form prescribed by the Town or in a similar form approved by the Town Enforcement Authority, certifying that the Storm Water Runoff Systems have been inspected, and that they are adequately maintained and functioning as intended by the approved Post-Construction Storm Water Management Plan, or that they require maintenance or repair, describing any required maintenance and any deficiencies found during inspection of the Storm Water Runoff Systems. If the Storm Water Runoff Systems require maintenance or repair of deficiencies in order to function as intended by the approved Post-Construction Storm Water Management Plan, the Person shall provide a record of the required maintenance or deficiency and corrective action(s) taken.
 4. In addition, any persons required to file an annual certification under this Sec. 18-4-6 of this Ordinance shall include with the annual certification a fee established by the Town Council in accordance with the Town Fee Schedule. The purpose of this fee is to pay the administrative and technical costs of review of the annual certification.
- b. **Right of Entry.** In order to determine compliance with this Ordinance and with the Post-Construction Storm Water Management Plan, the Town Enforcement Authority may enter upon property at reasonable hours with the consent of the owner, occupant or agent to inspect the Storm Water Runoff Systems.
- c. **Annual Report.** Beginning July 1, 2010 and each year thereafter, the Town shall include the following in its Annual Report to the Maine Department of Environmental Protection:
1. The cumulative number of sites that have Storm Water Runoff Systems discharging into their MS4;
 2. A summary of the number of sites that have Storm Water Runoff Systems discharging into their MS4 that were reported to the Town;
 3. The number of sites with documented functioning Storm Water Runoff Systems; and

4. The number of sites that required routine maintenance or remedial action to ensure that Storm Water Runoff Systems are functioning as intended.

Sec. 18-4-7. Enforcement. It shall be unlawful for any Person to violate any provision of or to fail to comply with any of the requirements of this Ordinance or of the Post-Construction Storm Water Management Plan. Whenever the Enforcement Authority believes that a Person has violated this Ordinance or the Post-Construction Storm Water Management Plan, the Enforcement Authority may enforce this Ordinance in accordance with 30-A M.R.S.A. § 4452.

Sec. 18-4-8. Notice of Violation. Whenever the Enforcement Authority believes that a Person has violated this Ordinance of the Post-Construction Storm Water Management Plan, the Enforcement Authority may order compliance with this Ordinance or with the Post-Construction Storm Water Management Plan by written notice of violation to that Person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:

- a. The abatement of violations, and the cessation of practices, or operations in violation of this Ordinance or of the Post-Construction Storm Water Management Plan;
- b. At the Person's expense, compliance with BMPs required as a condition of approval of the New Development or Redevelopment, the repair of Storm Water Runoff Systems and/or the restoration of any affected property; and/or
- c. The payment of fines, of the Town's remediation costs and of the Town's reasonable administrative costs and attorneys' fees and costs.

If abatement of a violation, compliance with BMPs, repair of Storm Water Management Facilities and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement, compliance, repair and/or restoration must be completed.

Sec. 18-4-9. Penalties/Fines/Injunctive Relief. Any Person who violates this Ordinance of the Post-Construction Storm Water Management Plan shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the Town's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day that such violation continues shall constitute a separate violation. Moreover, any Person who violates this Ordinance or the Post-Construction Storm Water Management Plan also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred by the Town for violation of federal and State environmental laws and regulations caused by or related to that Person's violation of this Ordinance or of the Post-Construction Storm Water Management Plan; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this Section.

Sec. 18-4-10. Consent Agreement. The Enforcement Authority may, with the approval of the municipal officers, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this Ordinance or of the Post-Construction Storm Water Management Plan for the purposes of eliminating violations of this Ordinance or of the Post-Construction Storm Water Management Plan and of recovering fines, costs and fees without court action.

Sec. 18-4-11. Appeal of Notice of Violation. Any Person receiving a Notice of Violation or suspension notice may appeal the determination of the Enforcement Authority to the Zoning Board of Appeals. The notice of appeal must be received within 30 days from the date of receipt of the Notice of Violation.

The Board of Appeals shall hold a *de novo* hearing on the appeal within 30 days from the date of receipt of the notice of appeal. The Board of Appeals may affirm, reverse or modify the decision of the Enforcement Authority. A party aggrieved by the decision of the Board of Appeals may appeal that decision to the Maine Superior Court within 45 days of that date of the Board of Appeals decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.

Sec. 18-4-12. Enforcement Measures. If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal to the Board of Appeals, within 45 days of a decision of the Board of Appeals affirming or modifying the Enforcement Authority's decision, then the Enforcement Authority may recommend to the municipal officers that the Town's attorney file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.

Sec. 18-4-13. Severability. The provisions of this Ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this Ordinance.