

MEMORANDUM

TO: Cape Elizabeth Town Council
FROM: Conservation Committee
DATE: October 18, 2018
SUBJECT: Dog Ordinance Review Concept

Introduction

The Town Council referred to the Conservation Committee review of the Dog Ordinance (March, 2018). At the October 9, 2018 meeting, the committee discussed multiple options. Before proceeding further, the Conservation Committee would like input from the Town Council on its recommended approach.

Scope of Review

The original referral from the Town Council specified review of Sec. 7-1-7, which regulates dogs on municipal property. The Conservation Committee considered three options, described below:

Option 1: Sec. 7-1-7 only

There has been significant interest and discussion over the last year about appropriate dog regulations on town owned open space. Sec. 7-1-7 of the Dog Ordinance regulates dogs on municipal property and the Conservation Committee review could be limited to just this section.

Option 2: Sec. 7-1-7 plus related sections only as needed

This option anticipates that changes to Sec. 7-1-7 could ripple into other sections, such as Definitions. This option still is a limited scope focused on municipal property.

Option 3: Full Ordinance modernization

This option acknowledges that it has been a long time since the entire Dog Ordinance has been reviewed and modernization changes may be appropriate. The focus would begin on Sec. 7-1-7, but input from the Police Department and the public would be used to update the ordinance.

The Conservation Committee has read ordinances from other communities. Much of the language in other municipal ordinances mirrors the Cape Dog

Ordinance, but some ordinances have obviously been updated. The Conservation Committee is recommending that it perform a full Dog Ordinance review (Option 3). The entire ordinance has not been reviewed in some time and likely will benefit from some modernization. At the same time, while a full review would be conducted, the expectation is that most sections would not be revised.

Proposal for Dog Ordinance/Management Plan interface

The Town Council adopted the Management of Greenbelt and Open Space Plan in 2012. This document establishes a comprehensive set of policies for managing town owned open space, with the Conservation Committee tasked with oversight as "steward" of the greenbelt. The Conservation Committee's role is codified in Chapter 18, Conservation Ordinance, Article V Open Space Management. The Management Plan noted that some revision to the Dog Ordinance may be needed to align policies.

How the Dog Ordinance and open space management interface will impact the town's ability to effectively manage town open space. For example, when the Conservation Committee attempted to introduce interim dog regulation policies for Cliff House Beach last spring, it learned that any policy would need an ordinance amendment for the Police Department to have enforcement authority.

If the town wants to more nimbly adjust open space management practices to respond to user demands/conflicts, it may be appropriate to update the management/ enforcement interface. The Conservation Committee is requesting Town Council input on replacing the current structure of Sec. 7-1-7 with enforcement categories.

Using an enforcement category approach would allow the town to more quickly respond to management issues and preserve clear enforcement authority. For example, municipal property can assigned to an enforcement category based on management needs. The Police Chief has agreed this approach can address his need for clarity in enforcement. It can also allow the town to more quickly respond to management changes.

A possible ordinance structure might look like:

Category 1: No dogs allowed

Category 2: Dog allowed on leash only

Category 3: Dogs allowed under voice control or on leash

For this system to be enforced, the town must maintain a list of all town land and the category assigned. The category assignment must be made by the party authorized under the ordinance and changes must only be made after public notice. This is the second part of the question for the Town Council. If the enforcement category approach is acceptable, how much delegation to change assignment of enforcement category is the Town Council comfortable with? For example:

Town property	Management Authority	Policy change Mechanism
Fort Williams Park	Town Council	Public Hearing
Athletic Fields	Athletic Director	Thirty day notice on town website
Other town owned open space	Conservation Committee	Committee meeting posted on town website
Remaining town land	Town Council or department head	Public Hearing Thirty day notice on town website

It must be emphasized that the ability of the Police Department to enforce this approach requires a clear public record of the management category assigned. Any delegation of authority by the Town Council would need to be adopted into the ordinance.

Using Cliff House Beach as an example, this system would have allowed the proposal developed by the Conservation Committee in May, 2018 to regulate dogs by season and time of day as follows.

Category 1: May 1 to October 1 9:00 am-5:59 am
October 2 - April 30, nighttime hours

Category 3: May 1 to October 1 6:00 am to 8:59 am
October 2 - April 30, day light hours

Summary

The Conservation Committee would like feedback on the following questions:

1. Is the Town Council comfortable with the Conservation Committee performing a review of the entire Dog Ordinance, with a focus on Sec. 7-1-7 and modernization of the rest of the ordinance?
2. Is the Town Council comfortable with a new format for Sec. 7-1-7 that creates enforcement categories for dog regulations on town properties?
3. How much delegation of authority is the Town Council comfortable with to change enforcement categories? For example:

Fort Williams Park - remains Town Council

Athletic Fields (except for Fort Williams Park) - Athletic Director

Riverside Cemetery - remains Town Council

Other town open space - Conservation Committee

Other town land (not open space) - town department head

CHAPTER 7 DOGS

Article I. Dog Control. [Adopted eff. 7/23/69, pursuant to R.S. 1964, T. 7, Sec. 3451 ff.; amended eff. 6/13/73; amended eff. 2/8/90; amended eff. 2/08/2018]

Sec. 7-1-1. Purpose. The purpose of this ordinance is to control dogs throughout the Town of Cape Elizabeth in the interest of the health, safety and general welfare of its residents.

Sec. 7-1-2. Definitions. As used in this ordinance, unless the context otherwise indicates.

- (a) "Dog" shall apply to both male and female dogs.
- (b) "Owner" shall mean any person or persons, firm, association or corporation owning, keeping or harboring a dog.
- (c) "At large" shall mean off the premises of the owner and not being under the control of any person by means of that person's proximity to the dog, and their ability to manipulate and command the animal.

Sec. 7-1-3.

- (a) License. License, record and tag requirements shall be as prescribed and required by Maine Statutes Annotated, and all rules and regulations duly promulgated thereunder.

- (b) **Failure to Display Tags.** It shall be unlawful for any dog owner or keeper to fail to have affixed to the dog's collar, the license identification tag. Said tag must be displayed on a collar constructed of a durable material and sized so as to ensure the tag's attachment.

Sec. 7-1-4. Barking and Howling. No person shall own, keep or harbor any dog which by loud, frequent, and habitual barking, howling or yelping, shall disturb the peace of any person or persons.

Sec. 7-1-5. Dangerous Dogs. A dangerous dog is hereby defined to be a dog which by its conduct shall cause reasonable fear of bodily injury to any person. The owner of any dangerous dog shall keep same confined in a secure enclosure or on a chain or leash controlled by the owner or his agent at all times. Procedures resulting in the disposal or method of restraint of an animal who has assaulted a person shall be as prescribed and required by Maine Statutes Annotated, Title 7 and succeeding amendments.

Sec. 7-1-6. Failure to Restrain. It shall be unlawful for any dog owner or keeper to fail to restrain such an animal either by enclosed run, leash, tether, radio collar, choke collar or voice command so that the animal attacks, harasses or menaces any pedestrian, jogger, cyclist or passerby on any property other than that which is in the care and control of the dog owner.

Sec. 7-1-7 Dogs to be Restrained on Municipal Property.

- (a) Any dog within the boundaries of a groomed and/or regularly maintained municipal property including, but not limited to, Fort Williams Park, public roads, municipal sidewalks and athletic fields, will be walked on a leash or tether at all times. The person accompanying the dog in these situations is required to collect any feces dropped by the animal and dispose of same in an area where it will not likely be encountered by any persons. The Cape Elizabeth Poor Farm, Lions' Field excluding the Little League field, and a portion of Fort Williams Park Southerly of Humphreys Road (as defined in paragraph (b) are not considered to be groomed and/or regularly maintained for purposes of this ordinance.
- (b) The Unleashed Dog Area in Fort Williams Park (encompassing the MultiPurpose Field) is defined as an area abutting the Southerly edge of the Central Parking Lot and extending westerly along the Southerly side of the Heavy Equipment Storage Building, continuing Westerly directly behind the long garages at the rear of the Officers Row buildings to Harrison Road; continuing on (and including) Merriman Road along the northerly border of Delano Park to the water's edge; then extending northerly along the shoreline turning westerly across "The Green" to the southern end of Battery Blair; turning northerly then westerly back to the Southerly edge of the Central Parking Lot (as referenced on the Unleashed

Dog Area Map dated (insert date)). Unleashed dogs are prohibited on the Multi-Purpose Athletic Field from April 1st to November 1st.

Sec. 7-1-8. Impoundment. Unlicensed dog, whether or not at large, and dogs found running at large, whether or not licensed, shall with or without complaint be taken up and impounded by a police officer or dog control officer in a shelter designated by the Town as the Town Animal Shelter and there confined in a humane manner for a period of not more than fourteen (14) days.

Sec. 7-1-9. Disposition of Impounded Dogs.

- (a) Any owner may regain possession of an impounded dog upon compliance with provision of Section 7-1-3 (a) of this ordinance, and upon payment of the impoundment and boarding fees set forth herein. Any dog impounded under the provisions of this ordinance and not reclaimed by the owner within said fourteen (14) days, shall be considered to be abandoned by the owner and the property of the Town Animal Shelter and may, after consultation with the Humane Society and/or the Animal Refuge League, be humanely destroyed or given to the Humane Society and/or the Animal Refuge League, or any person deemed to be responsible and a suitable owner.
- (b) Where the ownership of any such dog is known, or can be reasonably ascertained by a police officer or dog control officer, such officer shall, if possible, notify the owner within three (3) days of such impoundment, but failure to give such notice shall in no way impose any liability upon the Town for the destruction or transfer to another of any dog so impounded and not reclaimed within said period of fourteen (14) days.

Sec. 7-1-10. Fees and Boarding Charges. Any dog impounded hereunder may be reclaimed upon payment to the Town, through the Cape Elizabeth Police Department of an impoundment fee of \$5.00 for each dog, except upon the second impoundment of the same dog the fee shall be \$20.00, and upon the third and all subsequent impoundments of the same dog the fee shall be \$40.00; and upon presentation to the Animal Shelter, currently designated by the Town to receive impounded dogs, of evidence of such payment to the Town and upon payment to that animal shelter of a further board fee in accordance with the current fee schedule of the animal shelter.

Sec. 7-1-11. Interference Forbidden. No person shall interfere with, hinder or molest any police officer or dog control officer in the performance of any duty of such officer, or seek release of any dog in the custody of a police officer or dog control officer, except as herein provided.

Sec. 7-1-12. Records. It shall be the duty of a police officer or dog control officer to keep, or cause to be kept, an accurate and detailed record of the licensing, impoundment and disposition of all dogs coming into his custody.

Sec. 7-1-13. Enforcement. The Cape Elizabeth dog control officer and the Cape Elizabeth Police Department are hereby directed and empowered to enforce the provisions of this ordinance.

Sec. 7-1-14. Penalties. Whoever keeps a dog contrary to the provisions of Sections 7- 1- 3, 4, 5, 6, 7, or 11 of this ordinance shall be punished by a fine of not more than One Hundred Dollars (\$100.00) to be recovered by complaint for the use of the Town of Cape Elizabeth before the 9th District Court of Maine, Division of Southern Cumberland. In addition, said Court may make such further order regarding the destruction, restraint or other disposition of the offending dog as the Court deems appropriate. (Revised eff . 2/8/2018)