

1 Cape Elizabeth Residential Pesticide Use Ordinance

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3 **A. TITLE**

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5 This ordinance shall be known as the “Residential Pesticide Use  
6 Ordinance”.

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8 **B. PURPOSE**

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10 The purpose of this ordinance is to safeguard the health, safety, and  
11 welfare of the residents of Cape Elizabeth and to conserve and protect the  
12 Town’s waterways and natural resources by restricting the use of toxic  
13 pesticides on private, residential property for cosmetic landscape uses and  
14 outdoor pest management. This ordinance is intended to encourage the  
15 adoption by private residential landowners in Cape Elizabeth of safe,  
16 responsible, and ethical alternatives to toxic pesticides. Such alternatives  
17 include adoption of integrated pest management practices recommended  
18 by the Maine Integrated Pest Management Council, the Division of Plant  
19 and Animal Health of the Maine Department of Agriculture, Conservation &  
20 Forestry, and the University of Maine Extension Service. By way of  
21 example and not limitation, BTI (bacillus thuringiensis israelensis),  
22 diatomaceous earth, essential oils, and plant extracts are specific  
23 biological, mechanical and organic chemical treatment alternatives to the  
24 broadcasting of toxic pesticides for lawn care and ornamental landscaping  
25 on private residential property. This ordinance is intended to facilitate  
26 adoption of additional treatment alternatives as the field of integrated pest  
27 management progresses.

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29 Nothing in this Ordinance is intended to regulate pesticide use in  
30 commercial agriculture or the maintenance of utility rights of way, or upon  
31 publicly owned or maintained property (including without limitation  
32 roadways, rights of way, paths, parks, playing fields, or grounds of  
33 municipal buildings). Nothing in this Ordinance requires the licensure of  
34 persons applying integrated pest management or alternatives to toxic  
35 pesticides for private residential properties or limits the application of  
36 integrated pest management practices to persons or companies licensed  
37 as pesticide applicators by the Maine Board of Pesticide Control.

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39 **C. PROHIBITED PESTICIDES AND ACTIVITIES**

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41 Except as expressly excepted or excluded below, the use of pesticides for  
42 the maintenance of lawns or of cosmetic or ornamental landscaping upon  
43 privately owned residential properties, or upon any privately owned  
44 property within seventy-five (75) feet of a body of water or wetland, is

1 prohibited.  
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3 **D. EXCEPTIONS AND EXCLUSIONS**  
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5 Notwithstanding the foregoing, the following properties, pesticide products,  
6 or applications are not made subject to this Residential Pesticide Use  
7 Ordinance:  
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- 9 1. The commercial raising of crops or animals for human or animal  
10 consumption or use;  
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- 12 2. Any non-residential property (i.e., property not owned, leased or occupied  
13 for any residential use, such as business or professional offices,  
14 commercial retail properties, golf courses or other recreational properties);  
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- 16 3. Pesticides applied within the interior of a residential structure or accessory  
17 structure for storage or animals, when used in the manner specified by the  
18 manufacturer or by an applicator licensed by the Maine Board of Pesticide  
19 Control;  
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- 21 4. Property owned, used or occupied by the Town or any governmental  
22 entity, including without limitation roadways, rights of way, trails, parks,  
23 playing fields, or the grounds of schools, library, police stations, fire  
24 stations, public works facilities, Town Hall or the like;  
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- 26 5. The clearing or maintenance of utility rights of way;  
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- 28 6. Pet supplies such as shampoos and tick and flea treatments, when used  
29 in the manner specified by the manufacturer;  
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- 31 7. Insect repellants for bodily application, when used in the manner specified  
32 by the manufacturer;  
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- 34 8. Rodent control products, when used in the manner specified by the  
35 manufacturer;  
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- 37 9. Swimming pool supplies when used in the manner specified by the  
38 manufacturer;  
39
- 40 10. General use paints, stains, and wood preservatives and sealants upon  
41 fences or similar exterior structures, when used in the manner specified by  
42 the manufacturer;  
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- 44 11. Disinfectants, germicides, bactericides, miticides, and virucides, when

1 used in the manner specified by the manufacturer;

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3 12. Pesticide applications specifically targeting the control of invasive insect  
4 infestations identified by the Maine Forest Service or the Maine  
5 Department of Agriculture (e.g., Emerald Ash Borer, Asian Longhorned  
6 Beetle, Hemlock Woolly Adelgid, Browntail Moth);

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8 **E. EMERGENCY WAIVERS**

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10 In an emergency situation warranting the use of non-exempt pesticides,  
11 the Code Enforcement Officer may grant one ten (10) day temporary  
12 waiver, with additional ten (10) day temporary waivers available on a case-  
13 by-case basis. Waiver approval shall permit only the least toxic material  
14 available to address the given emergency. The mere presence of weeds,  
15 common fungal diseases, grubs, mosquitos, and ticks in the usual course  
16 of turf maintenance shall not be deemed to constitute an emergency.

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18 **F. REGISTRY OF PROHIBITED PESTICIDES AND PRACTICES**

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20 The Town shall maintain a publicly-accessible registry of pesticides or  
21 pesticide practices prohibited or restricted under this Residential Pesticide  
22 Use Ordinance, to be updated no less frequently than annually. Such  
23 registry may be independently created and maintained by the Town or by  
24 contract with an organization having integrated pest management  
25 expertise, or by adoption by reference to such a registry maintained by an  
26 existing governmental or quasi-governmental entity. Applicators of  
27 pesticides upon private residential property, including property owners,  
28 occupants or contractors, are responsible for determining whether the  
29 pesticides intended to be applied are prohibited or restricted by this  
30 Residential Pesticide Use Ordinance.

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32 **J. PUBLIC NOTIFICATIONS AND SIGNAGE**

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34 If prohibited pesticides are to be used/applied, homeowners and/or  
35 applicators will be subject to all requirements of the Maine Board of  
36 Pesticides Control rules regarding public notifications  
37 and signage.

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39 **K. VIOLATIONS**

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41 Any person violating any of the provisions of this ordinance or failing or  
42 neglecting or refusing to obey any order or notice of the Code  
43 Enforcement Officer issued hereunder shall be subject to enforcement  
44 action as provided herein.

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**L. ENFORCEMENT**

The Cape Elizabeth Pesticide Use Ordinance shall be enforced by the Code Enforcement Officer, according to the policies governing enforcement of municipal ordinances of the Town of Cape Elizabeth. It shall be the duty of the Code Enforcement Officer to provide investigative assistance of complaints and to enforce the provisions of this ordinance. Fines will be imposed for violations as follows:

- 1st violation: \$250.00 fine
- 2nd violation: \$500.00 fine
- 3rd violation: \$1,000.00 fine

Notwithstanding the foregoing, in the case of a first violation which the Code Enforcement Officer determines was not committed with actual knowledge of the applicability of this ordinance and/or the potential violation arising from the owner or applicator’s action, the Code Enforcement Officer shall have authority to waive all or part of the fine. The Code Enforcement Officer shall in all instances work with violators to bring them into compliance by providing educational materials and advice on the use of less toxic chemicals to achieve desired results.

**M. SEVERABILITY**

Should any section or provision of this ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision.

**N. CONFLICTS WITH OTHER ORDINANCES**

Whenever a provision of this Residential Pesticide Use Ordinance conflicts with or is inconsistent with another provision of this ordinance or of any other ordinance, regulation, or statute, the more restrictive provision shall control.