

Chapter 28
Residential Pesticide Use Ordinance
Effective December 12, 2023

A. TITLE

This ordinance shall be known as the "Residential Pesticide Use Ordinance".

B. PURPOSE

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

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

C. PERMITTED AND PROHIBITED PESTICIDES

(a) Permitted Pest Management Activities and/or Materials, except as provided in (b) (3) below:

1. Organic pest management, except as provided in (b) (2) below;
2. Use or application of synthetic substances specifically listed as "allowed" on the U.S. Department of Agriculture's National List of Allowed and Prohibited Substances (the "National List"); and/or
3. Use or application of pesticides determined to be "minimum risk pesticides" pursuant to the FIFRA and listed in 40 CFR. §152.25(f)(1) or (2), as may be amended from time to time.

(b) Prohibited Pest Management Activities and/or Materials:

1. Use or application of synthetic substances other than those described in (a) (2) above;
2. Use or application of non-synthetic substances specifically listed as "prohibited" on the National List; and/or
3. The use or application of any pesticides (whether natural, organic, "non-synthetic," synthetic or otherwise) within seventy five feet of a water body or wetland.

Except as expressly excepted or excluded below, the use or application of any prohibited pesticides for the maintenance of lawns or of cosmetic or ornamental landscaping upon privately owned residential properties, is prohibited.

The use or application of any prohibited pesticides to treat weeds, common fungal diseases, grubs, mosquitos, and ticks in the usual course of turf maintenance is prohibited.

D. EXCEPTIONS AND EXCLUSIONS

Notwithstanding the foregoing, the following properties, pesticide products, or applications are not made subject to this Residential Pesticide Use Ordinance:

1. The commercial raising of crops or animals for human or animal consumption or use;
2. Any non-residential property (i.e., property not owned, leased or occupied for any residential use, such as business or professional offices, commercial retail properties, golf courses or other recreational properties);
3. Pesticides applied within the interior of a residential structure or accessory structure for storage or animals, when used in the manner specified by the manufacturer or by an applicator licensed by the Maine Board of Pesticide Control;

4. Property owned, used or occupied by the Town or any governmental entity, including without limitation roadways, rights of way, trails, parks, playing fields, or the grounds of schools, library, police stations, fire stations, public works facilities, Town Hall or the like;
5. The clearing or maintenance of utility rights of way;
6. Pet supplies such as shampoos and tick and flea treatments, when used in the manner specified by the manufacturer;
7. Insect repellants for bodily application, when used in the manner specified by the manufacturer;
8. Rodent control products, when used in the manner specified by the manufacturer;
9. Swimming pool supplies when used in the manner specified by the manufacturer;
10. General use paints, stains, and wood preservatives and sealants upon fences or similar exterior structures, when used in the manner specified by the manufacturer;
11. Disinfectants, germicides, bactericides, miticides, and virucides, when used in the manner specified by the manufacturer;
12. Pesticide applications specifically targeting the control of invasive insect infestations identified by the Maine Forest Service or the Maine Department of Agriculture (e.g., Emerald Ash Borer, Asian Longhorned Beetle, Hemlock Woolly Adelgid, Browntail Moth).

E. EMERGENCY WAIVERS

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

F. REGISTRY OF PROHIBITED PESTICIDES AND PRACTICES

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

G. PUBLIC NOTIFICATIONS AND SIGNAGE

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

H. VIOLATIONS

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

I. 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.

J. 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.

K. 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.