

Chapter 28
Town of Cape Elizabeth
Residential Pesticide Use Ordinance
Effective 12/12/2023
Rev. Eff. 6/12/2024

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 and promoting Integrated Pest Management.

This ordinance is intended to encourage the adoption by private residential landowners in Cape Elizabeth safe, responsible, and ethical alternatives to toxic pesticides. Under this ordinance, chemicals should be used only as a last resort, after mechanical, cultural, and biological approaches have been attempted and shown ineffective. When chemicals are used, the lowest risk material available should be chosen and applied to minimize exposure to humans and all non-target organisms. 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 Cooperative 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 non-synthetic chemical treatment alternatives to the broadcasting of toxic pesticides for lawn care and ornamental landscaping on private residential property.

C. DEFINITIONS

For the purposes of this Ordinance, the following terms, words, and phrases shall have the meanings given herein. All words not defined herein shall carry their customary and usual meanings. Words used in the present tense shall include the future tense. Words used in the singular shall include the plural. Where so

indicated by the text, these definitions also include substantive regulations. Where reference is made to Town or State laws, ordinances, or regulations, each reference to a particular law, regulation, or section shall include all amendments and successor sections.

EPA: The United States Environmental Protection Agency.

FIFRA: The Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*

Integrated Pest Management: The selection, integration, and implementation of pest damage prevention and control based on predicted socioeconomic and ecological consequences, including: (a) understanding the system in which the pest exists; (b) establishing dynamic economic or aesthetic injury thresholds and determining whether the organism or organism complex warrants control; (c) monitoring pests and natural enemies; (d) when needed, selecting the appropriate system of cultural, mechanical, genetic, including resistant cultivars, biological or chemical prevention techniques or controls for desired suppression; and (e) systematically evaluating the pest management approaches utilized.

Invasive insects: An insect that is not native to a particular ecosystem, and whose introduction does or is likely to cause economic or environmental harm or harm to human health. Invasive insects include those listed by the Maine Department of Agriculture, Conservation and Forestry Maine Forest Service as threats to Maine’s forests and trees.

Invasive plants: A plant that is not native to a particular ecosystem, and whose introduction does or is likely to cause economic or environmental harm or harm to human health. Invasive plants include those listed under the Maine Department of Agriculture, Conservation and Forestry’s Natural Areas Program Advisory List of Invasive Plants 2019 or as updated (e.g. knotweed, bittersweet, beech leaf disease, oak wilt).

Non-synthetic: A substance that is derived from mineral, plant, or animal matter and does not undergo a “synthetic” process as defined in the Organic Foods Production Act, 7 U.S.C. § 6502(21), as the same may be amended from time to time.

Residential Property: Privately owned property with a principal use as a place of abode.

Pesticide: Any substance or mixture of substances intended for preventing,

destroying, repelling or mitigating any pest; any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant. It does not include multicellular biological controls such as mites, nematodes, parasitic wasps, snails or other biological agents not regulated as pesticides by the EPA. Herbicides, fungicides, insecticides and rodenticides are considered pesticides.

D. APPLICABILITY

1. Applicable: The following properties shall comply with this ordinance.
 - a. Residential property.
2. Exempt: The following properties are exempt from compliance with this ordinance.
 - a. commercial agriculture, including but not limited to the raising of crops or animals for human or animal consumption or use;
 - b. utility rights of way;
 - c. Publicly owned or maintained property (including without limitation roadways, rights of way, paths, parks, playing fields, or grounds of municipal buildings), however all properties are subject to the Town Healthy Landscape and Turf Maintenance Policy;
 - d. A mixed use building that include a multifamily dwelling and is located in a business district shall not be considered a residential property for the purpose of this ordinance;
 - e. any property not listed in subsection 1 above.

E. PROHIBITED PESTICIDES AND ACTIVITIES

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

F. EXCEPTIONS AND EXCLUSIONS

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

1. Pesticides applied within the interior of a residential structure or accessory structure for storage or animals, when used in according to label directions or by an applicator licensed by the Maine Board of Pesticides Control;
2. Pet supplies such as shampoos and tick and flea treatments, when used according to label directions;
3. Insect repellants for bodily application, when used according to label directions;
4. Rodent control products, when used according to label directions;
5. Swimming pool supplies, when used according to label directions;
6. General use paints, stains, and wood preservatives and sealants upon fences or similar exterior structures, when used according to label directions;
7. Disinfectants, germicides, bactericides, miticides, and virucides, when used according to label directions;

G. EXEMPT PESTICIDES

The following are exempt from restriction by this ordinance, when used according to label directions.

1. Synthetic substances specifically listed as allowed on the U.S. Department of Agriculture’s National List of Allowed and Prohibited Substances (the “National List”);
2. Non-synthetic substances that are not listed as prohibited on the “National List;”
3. Pesticides determined to be “minimum risk pesticides” pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and listed in 40 C.F.R. § 152.25(f)(1) or (2), as may be amended from time to time;
4. Pesticides certified by the Organic Materials Review Institute (OMRI).

H. WAIVERS

In an emergency situation where exempt pesticides and/or Integrated Pest Management methods that do not use non-exempt pesticides have been applied, and a public health and safety risk remains, a waiver may be requested. The Public Works Director may grant one ten (10) day temporary waiver, with additional ten (10) day temporary waivers available on a case-by-case basis.

1. Application. A written request for a waiver shall be submitted to the

Public Works Director and shall include the following information:

- a. The name of the property owner and location of the property where the pesticide is proposed to be used, along with the name, address, phone number and contact information of the applicant. If the applicant and the property owner are not the same, written confirmation that the property owner has granted permission to apply for a waiver;
 - b. Description of the pest that threatens the public health and safety and/or is an invasive species;
 - c. The pesticide(s) to be applied, location, dosage, and frequency of application;
 - d. The applicant shall describe the alternative methods and materials that have been used and what existing conditions merit use of additional methods;
2. Waiver. The Public Works Director may grant the waiver, and may prescribe conditions attached to the waiver request that protect the public health and safety. Waiver approval shall permit only the lowest risk material available to address the given emergency. A material with higher toxicity which may more completely address the emergency with fewer applications may be considered the lowest risk.
- a. 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.
 - b. Grub treatments timed to more effectively interrupt the grub life cycle and prevent lawn damage that is likely to result in erosion may be considered an emergency.
 - c. Pesticide applications specifically targeting the control of invasive insect infestations identified by the Maine Department of Agriculture, Conservation and Forestry Maine Forest Service as threats to Maine's forests and trees may be considered an emergency.
 - d. Pesticide applications specifically targeting the control of invasive plants identified by the Maine Department of Agriculture,

Conservation and Forestry's Natural Areas Program Advisory List of Invasive Plants 2019 or as updated, (e.g. knotweed, bittersweet, beech leaf disease, oak wilt) and which are also a threat to environmental or human health, such as plants that are poisonous to the touch (e.g. poison ivy) may be considered an emergency. Benign invasive plants, such as but not limited to lupin and rosa rugosa, shall not be considered a threat to environmental health. When the area of infestation exceeds two (2) acres in size on a single lot, the applicant may not be required to demonstrate that exempt pesticides and/or Integrated Pest Management methods that do not use non-exempt pesticides have been applied for the entire area before a finding can be made that a public health and safety risk remains.

- e. Pesticide applications specifically targeting significant health threats such as ticks and mosquitos, and animals or insects that may cause damage to a structure (e.g. carpenter ants, termites) may be considered an emergency.
3. Appeal. An applicant or direct abutter to the property subject to the waiver may appeal a waiver decision by the Public Works Director to the Code Enforcement Officer within ten (10) business days of the issuance of the waiver decision. The appeal shall be in writing and shall state the basis for the appeal. The Code Enforcement Officer shall act upon the appeal within ten (10) business days of receipt of the appeal. The decision of the Code Enforcement Officer shall be in writing, with copies provided to the appellant and property owner. The decision of the Code Enforcement Officer shall be final.

I. 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.

J. 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.

K. 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.

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.