

CHAPTER 18
CONSERVATION ORDINANCE

TOWN OF CAPE ELIZABETH, MAINE

Effective March 13, 2019

CHAPTER 18
CONSERVATION

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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 Committee 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 Committee 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 Committee, 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 Committee 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 Committee 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 Committee 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 II. RESERVED (Effective November 5, 2016)

Article III. Tree Ordinance.

[Adopted eff. 10/25/1978 under R. S. 1964, T. 30,
Sec. 3901. Revised eff. 10/12/2010]

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 business 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 prohibit anyone from relocating or cutting a public tree that has fallen on a designated Cape Elizabeth Greenbelt trail at their own risk. 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. RESERVED (Effective November 5, 2016)

Article V. Open Space Management [Adopted eff. 06/14/2012]

Sec. 18-5-1. Purpose. Open spaces managed by the Town of Cape Elizabeth are for the benefit and enjoyment of all citizens and visitors. Town policy is to impose as few restrictions on use of these properties as possible, consistent with the desire to promote user safety in a natural environment, minimize conflicting uses, protect the natural features and generally exercise proactive stewardship of a valuable and enduring town asset. This ordinance establishes Town open space management rules to safeguard the essential character of Cape Elizabeth public open spaces for public use now and in the future.

Sec. 18-5-2. Applicability. The provisions of this chapter apply to all open space (as defined below) for which site-specific rules and/or management entities have not otherwise been approved by the Town Council. Town owned open space exempted from the chapter includes Fort Williams Park, Town athletic fields, Riverside Memorial Cemetery, and the

school campus. Town athletic fields shall mean any athletic field managed and/or scheduled by the Cape Elizabeth School Department Athletic Director. School campus shall mean all the groomed and improved portions of the school campus. Athletic fields and the school campus does not include the natural areas adjacent to groomed and maintained athletic fields and school campus.

Sec. 18-5-3. Definitions. The following terms shall have the meanings given herein. All words not defined herein shall carry their customary and usual meanings.

Animal Trap: Any device that is made to catch undomesticated animals.

Encroachment: An alteration of open space by a private party without permission of the Town of Cape Elizabeth. Encroachments may include, but are not limited to:

1. Placement of structures, buildings, fences, landscape objects, and play equipment;
2. Placement of yard and leaf waste;
3. Placement of household trash;
4. Planting of trees and vegetation;
5. Removal of trees and vegetation;
6. Unauthorized clearing, mowing and landscaping.

Greenbelt: A network of public trails located on Town owned or easement held land. Most greenbelt trails are marked with Town greenbelt trails signs and are included on the Town Greenbelt Trails Map.

Open Space: Land owned in fee or held in easement by the Town of Cape Elizabeth where public access is permitted and is included in the Town inventory of open space.

Sec. 18-5-4. Open Space Management Regulations. The following regulations shall govern the use of open space subject to this chapter.

- a. **Trail Closure.** The Town Manager may close a trail on a temporary basis to preserve trail surface stability, for trail maintenance or public safety. Notification of a closed trail shall be posted on the Town website and at the trail, when conditions permit, and shall be provided electronically to the Conservation Committee.
- b. **Hours of Operation.** Open space subject to this chapter shall be open at all hours for the enjoyment of the public. From the hours of sunset to sunrise, trail users shall limit activities to the quiet enjoyment of trails and open space. Snowmobiles may be operated in designated areas from sunrise until 8:00 p.m.
- c. **Encroachments.** Encroachments are prohibited. Open space is held for the benefit and enjoyment of public use, for its own use, and within the context of local ordinances, deed restrictions, and usage easements which the Town has purchased or been granted. The Town is responsible for protecting the public interest in public property, now and for future generations, and has a fiduciary responsibility to protect these assets.

When a possible encroachment occurs, the following process shall be used:

1. Identification of an encroachment. A potential encroachment on open space may be reported to the Town Manager by any party.
 2. Confirm encroachment. Following report of a potential encroachment, the potential encroachment shall be inspected by the Town and, if deemed necessary, a professional surveyor may be retained to confirm the property boundary and prepare a sketch showing the extent of the encroachment. When applicable, the deed for the open space shall be reviewed for restrictions. If the Conservation Committee identifies a possible encroachment, it may gather information as described above and report its findings to the Town Manager.
 3. Identification of party causing encroachment. The Town Manager shall attempt to identify who has caused the encroachment and initiate contact. If the responsible party cannot be determined, the Town may take action to remedy the encroachment under subsection 4 below. If the party can be identified, the Town Manager shall initiate contact and seek voluntary cooperation to remove, repair, restore and/or replace as necessary.
 4. Remediation. If the Town Manager is unable to obtain voluntary cooperation, all legal remedies available to a property owner may be undertaken by the Town. Remedies may include but are not limited to removal of structures, replanting of vegetation, installation of fencing or other visually prominent boundary markers, and a recovery of any costs incurred by the town. Appeal of the Town Manager's determination that an encroachment has occurred may be made to the Town Council.
- d. Vegetation Damage or Removal. No vegetation shall be removed on open space without the permission of the Town, except for blockage of Town trails. When vegetation blocks a trail marked with greenbelt trail signs, vegetative barriers such as trees and branches may be removed, only where the trail is located, without Town permission.
- e. Tree Stand. No tree stand shall be erected on open space without the permission of the Town Manager. Permission to erect a tree stand for the purpose of hunting may be obtained in compliance with the following requirements:
1. The tree stand must be installed in conformance with state law;
 2. The tree stand must be installed a minimum of 100 yards from any residential dwelling;
 3. The tree stand must be installed a minimum of 10 yards from any

Town of Cape Elizabeth greenbelt trail marked with greenbelt signs;
and

4. The tree stand must include the name and contact information of the owner on the tree stand.
- f. Animal Traps. The Town of Cape Elizabeth determines that all open space is located within one half (1/2) mile of the built-up section of the Town, as used in the State of Maine Trapping Rules, and therefore only “cage-type live traps and drowning sets” may be used in Cape Elizabeth. No traps may be set on open space without the Town Manager’s permission. Licensed trappers may be granted permission in order to remove animals causing damage to property or for wildlife survey and research purposes.
- g. Motorized vehicles. No motorized vehicles may operate on open space, except as follows:
 1. Snowmobiles may be operated on open space designated on the Uses and Activities Chart in the Management of Greenbelt and Open Space Plan;
 2. Motorized vehicles performing construction and maintenance work authorized by the Town; and
 3. Emergency services vehicles.
- h. Events. Group events on open space must obtain permission from the Town prior to the event. For an event that is not publicly advertised and involving the assembly of less than 50 persons, an application will be reviewed by the Town Manager or Town Manager’s designee. For an event that is publicly advertised and/or will include 50 or more attendees, an application will be reviewed by the Conservation Committee. For an event with 150 or more attendees, an application will be reviewed by the Conservation Committee, which shall then make a recommendation to the Town Council. The Town Council may make independent findings in approving or denying any request.

An application shall be made in writing and provide information for each of the following items:

1. The name of the applicant, a contact person, contact information and person supervising the event on-site;
2. A description of the event including the date and time of the activity, a description of the group’s mission or purpose and experience in holding events, purpose of the event and the anticipated number of attendees;
3. Event parking, event tent or other on-site set-up, and need for utilities such as sanitary waste disposal, electricity, amplified sound, power generator, trash removal, etc;

4. Insurance or other liability arrangements.

The reviewing authority will consider the following in reviewing an event application:

1. If an event has already been approved for the same open space on the same day (Priority shall be given to Town of Cape Elizabeth, Cape Elizabeth School Department, and Cape Elizabeth based organizations events when applications are submitted at the same time for the same open space);
2. If the event is in keeping with the desired recreational and cultural uses of the open space;
3. If the event is compatible with the enjoyment of the open space by non-event users;
4. If the event may expose the town to unreasonable safety related liabilities;
5. Experience of the applicant in handling large crowds;
6. The number of vehicles anticipated, parking available and traffic impacts;
7. The insurance coverage or liability arrangements of the applicant;
8. The need and availability of public safety personnel for event security;
9. Expected need and use of sanitary facilities, electrical service, refuse disposal and recycling;
10. Use of outside vendors;
11. Advertising for the event;
12. Extent of wear to the open space;
13. Potential noise or other impacts on abutters; and
14. Other impacts unique to the open space or the event.

Sec. 18-5-5. Penalties. The violation of any provision of this 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 \$1,000.00 to be recovered upon complaint to the use to the Town. Each day that any violation of this ordinance shall continue following notification thereof by the Town Manager shall constitute a separate offense.

Article VI. Open Space Evaluation and Preservation Program

Sec. 18-6-1. Purpose. The purpose of the open space evaluation and preservation program is to establish an ongoing, standardized effort for identifying, evaluating and recommending additions to the Town's inventory of preserved open spaces.

Sec. 18-6-2. Authority. The program shall be conducted by the Conservation Committee with updates at each stage to the Town Manager.

Sec. 18-6-3. Program Components. The Conservation Committee shall periodically conduct an evaluation and present a report to the Town Council. The evaluation shall include the following components.

- a. Identification and Evaluation. The Conservation Committee shall periodically undertake a review of existing open space and consider areas or specific parcels that may be desirable additions to the Town open space system.
- b. Open Space Evaluation Criteria. The Conservation Committee shall focus on land that meets open space criteria adopted by the Town Council. The evaluation process shall include a public participation component that invites suggestions and input from all members of the public and stakeholders. If specific parcels held in private ownership are under consideration, the Conservation Committee shall endeavor to meet with the property owner prior to making a recommendation. In the absence of criteria adopted by the Town Council, the following criteria shall be used:
 1. Agriculture – undeveloped lands used for agriculture.
 2. Greenbelt trails and recreation areas – land identified in the current Greenbelt Plan.
 3. Wildlife habitat – undeveloped lands that provide a habitat for wildlife as identified by the State of Maine such as the Beginning with Habitat information and field verified.
 4. Other – significant scenic, cultural and/or unique properties identified by the Town Council.
- c. Recommendation. At the completion of its evaluation, the Conservation Committee shall forward its open space recommendations to the Town Council. Recommendations shall include a description of how the evaluation criteria have been met and any other factors.

Article VII. Disposition of Shoreland Access Real Estate

Sec. 18-7-1. Any sale, release, transfer, conveyance or other disposition by the Town of an interest in real estate (whether held in fee, via easement, as incipient rights of dedication, or otherwise) providing direct or indirect access to shoreland areas and the retention of which by the Town has been recommended by the Conservation Committee, Fort Williams Park Committee, Comprehensive Plan Committee, Planning Board, or other duly authorized committee appointed by the Town Council, shall not be sold, released, transferred, conveyed or otherwise disposed of inconsistent with the recommendation of such committee or board except by either a vote of at least seventy percent (70%) of the Town Council members eligible to vote, or following submission to a public referendum which approves such disposition by majority vote. It shall be within the discretion of a majority of the Town Council to refer the matter to a public referendum.

Notwithstanding 1 M.R.S.A. §302, this provision shall apply to any proceeding involving the disposition by the Town of an interest in real estate not fully consummated prior to January 2, 2019. [Adopted Eff. 3/11/2019]