

decision of the Zoning Board of Appeals may appeal that decision to the Maine Superior Court within 45 days of the date of the Zoning Board of Appeals decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.

e. **Enforcement Measures.** If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal to the Board of Appeals, within 45 days of a decision of the Board of Appeals affirming the Enforcement Authority's decision, then the Enforcement Authority may file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.

f. **Ultimate Responsibility of Discharger.** The standards set forth in this Ordinance are minimum standards. Compliance with this Ordinance does not ensure that a Person will not have contaminated, polluted or unlawfully discharged Pollutants into waters of the U.S. This Ordinance shall not create liability on the part of the Town, or any officer, agent or employee thereof for any damages that result from a Person's reliance on or compliance with this Ordinance or any administrative decision lawfully made under this Ordinance.

**Sec. 18-2-10 Severability.** If any part or parts, section or subsection, sentence, clause or phrase of this Ordinance or the rules and regulations promulgated thereunder is for any reason declared to be unconstitutional or invalid, such declaration shall not affect the validity or constitutionality of the remaining portions of this Ordinance or the rules and regulations promulgated thereunder.

**Article 111. Tree Ordinance.**

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

**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 and grounds owned or controlled by the Town of Cape Elizabeth.
- c. **Public Trees** shall include all trees growing 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 annually and need not be a resident of the Town but 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 Town Manager or a qualified alternate appointed by him.

**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. Shall 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. Shall have the authority to develop, formulate and revise a Master Tree Plan subject to the approval of the Conservation Commission. 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 he deems appropriate consistent with any funding available to him and with the Master Tree Plan where effective.
- e. Shall 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. Shall 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 first filing an application and 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 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. Applications for tree permits shall be made at the Town Office, directed to the Tree Warden, not less than 48 hours prior to the time of the work proposed. The application shall be accompanied by such fee as the Town Council may establish from time to time. The application 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. Applications for planting trees shall describe the location proposed, the method of planting, and the number, size, grade, species and variety of such trees;
  2. Applications 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. Applications 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. Applications 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. 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 \$100, 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            Post Construction Stormwater Management Ordinance**  
[Adopted eff. 04/08/2010]

**Sec. 18-4-1.        Purpose.** The purpose of this "Post-Construction Storm Water Management Ordinance" (the "Ordinance") is to provide for health, safety, and general welfare of the citizens of the Town of Cape Elizabeth through review and approval of post-construction storm water management plans and monitoring and enforcement of compliance with such plans as required by Federal and State law.

This Ordinance establishes methods for post-construction storm water management in order to comply with minimum control measure requirements of the Federal Clean Water Act, of federal regulations, of Maine's Small Municipal Separate Storm Sewer Systems General Permit, and the Town's Storm Water Program Management Plan.

The Town of Cape Elizabeth enacts this Post-Construction Storm Water Management Control Ordinance (the "Ordinance") pursuant to 30-A M.R.S.A. § 3001 (municipal home rule ordinance authority), 38 M.R.S.A. § 413 (the "Wastewater Discharge Law"), 33 U.S.C. § 1251 *et seq.* (the "Clean Water Act"), and 40 CFR Part 122 (U.S. Environmental Protection Agency's regulations governing the National Pollutant Discharge Elimination System ("NPDES")). The Maine Department of Environmental Protection, through its promulgation of the "General Permit for the Discharge of Storm Water from Small Municipal Separate Storm Sewer Systems," has listed the Town of Cape Elizabeth as having a Regulated Small Municipal Separate Storm Sewer System ("Small MS4"); under this General Permit, listing as a Regulated Small MS4 necessitates enactment of this Ordinance as part of the Town's Storm Water Management Program in order to satisfy the minimum control measures required by Part IV D 5 ("Post-construction storm water management in new development and redevelopment").

**Sec. 18-4-2.        Objectives.** The objectives of this Ordinance are:

- a. To reduce the impact of post-construction discharge of storm water on receiving waters; and
- b. To reduce storm water runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through use of Best Management Practices as promulgated by the Maine Department of Environmental Protection pursuant to its most current rules as may be updated or amended including its Chapters 500 and 502 Rules, and ensure that these management controls are properly maintained and pose no threat to public safety.

**Sec. 18-4-3.        Applicability.** This Ordinance applies to all New Development and Redevelopment within the Town that discharges storm water to the Town's Municipal Separate Storm Sewer System (MS4) and to associated storm water management facilities, which are considered to be an element or array of elements that convey water from or across