

**Open Space Management Amendments
Conservation Ordinance**

**CHAPTER 18
CONSERVATION**

Article V. Open Space Management

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 Commission.
- 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 Commission 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 involving the assembly of more than 20 persons on open space not limited to trail use must apply to the Town Manager for permission to use the open space. Any such request shall be made in writing and provide information for each of the following items:
1. A description of the group use including the date and time of the activity, anticipated number of attendees, parking, and need for utilities such as sanitary waste disposal, electricity, trash removal, etc.

2. Is the group's proposed use in keeping with the desired recreational and cultural uses of the open space;
3. Is the proposed group use compatible with the enjoyment of the open space by non-group users;
4. Will the proposed group use expose the town to unreasonable safety related liabilities;
5. Is the group use commercial in nature;
6. Does the group have past history of not using open space in an appropriate manner;
7. Will the group use be advertised in advance to the general public;

The Town Manager may consider the following prior to granting or denying approval.

1. Priority shall be given to Town of Cape Elizabeth, Cape Elizabeth School Department, and Cape Elizabeth based organizations events;
2. Has a group already been approved for the same open space on the same day;
3. Experience of the requesting group in handling large crowds;
4. The number of vehicles anticipated, parking available and traffic impacts;
5. The insurance coverage of the group;
6. The need and availability of public safety personnel for event security;
7. Expected need and use of sanitary facilities, electrical service, refuse disposal and recycling;
8. Use of outside vendors;

9. Advertising for the event;
10. Extent of wear to the open space;
11. Potential noise impacts on abutters; and
12. Other impacts unique to the open space or the group use.

For any use exceeding # persons, the Town Manager shall make a recommendation to the Town Council, which may make independent findings in approving or denying any request.

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.