

MEMORANDUM

TO: Cape Elizabeth Town Council
FROM: Ordinance Committee
DATE: December 4, 2012
SUBJECT: Miscellaneous Offenses Ordinance

At the November 19, 2012 meeting, the Ordinance Committee recommended by a vote of 3-0 the attached amendments to the Miscellaneous Offenses Ordinance.

The amendments are a companion piece to the recently adopted Short Term Rental Amendments. The amendments expand upon Sec. 12-1-1, Disturbing the Peace by adding a concept of "nighttime hours" when noise should not exceed the property line.

Police Chief Neil Williams participated in the drafting and discussion of this amendment. While he noted that officers will typically use Title 16 under the State statutes because they allow an officer to arrest an offender, this amendment does provide more guidance on what community expectations are for residents and visitors.

The draft amendment has been reviewed and revised by the Town Attorney.

CHAPTER 12 MISCELLANEOUS OFFENSES
(Revisions Eff. 12/14/11)

Article I. Offenses 12-1

Article II. Camping on Public Property 12-2

Article III. Loitering Dispersal 12-2

Article IV. Fort Williams Park Regulations 12-3

Article V. Consumer Fireworks Regulations 12-4

Sec. 12-1-1. Disturbing the Peace.

(a) Within the Town of Cape Elizabeth, no person shall make, continue or cause to be made, any loud, profane, boisterous, unnecessary or unusual noises, including an excessive volume of music, which shall either annoy, disturb, injure, or endanger the comfort, repose, health, peace or safety of others. In addition to ~~Regardless of the person making or causing the noise, the person responsible for the act cannot be determined, the property owner of any building, dwelling, structure, premises, shelter, boat or conveyance or any part thereof in the tTown shall also be responsible for such activity.~~

1. ~~The Town asserts~~ believes that residents have a reasonable expectation of peaceful quiet and enjoyment of their property during nighttime hours. During nighttime hours, no person shall generate substantial noise (per paragraph as defined above) beyond the property line. For the purposes of this Article, nighttime hours shall be from 10:00 p.m. to 7:00 a.m. on Sunday through Thursday, and from 11:00 p.m. to 7:00 a.m. on Friday and Saturday.

2. ~~The Town expects that t~~ The level of reasonable noise during daytime hours shall not exceed what is reasonable and consistent with daily living. ~~to occur during daytime hours.~~

(b) ~~These above provisions shall not apply to agricultural activities, to school sponsored events, to fireworks shows approved by the Fire Chief of the Fire Department, or to concerts or any other activity or event approved in advance by the Town Council.~~

(c) No person shall perform or carry on, or cause to be performed, or carried on, any construction or excavation work during the hours between 10:00 p.m. and 7:00 a.m. that produces noise of a sufficient volume to disturb the sleep or repose of occupants of neighboring properties. This paragraph shall not apply in the event of an emergency in which a sewer, conduit or utility in or under any street breaks, burst or otherwise is in such condition as to immediately endanger the property, life, health or safety of any individual. It shall also not apply to repairs necessitated by storm events, earthquakes ~~and other "acts of God"~~ and utility coordination of projects under construction. [Revised eff. 11/11/88.]

Sec. 12-1-2. Animal Control. No owner or person having charge of any horse, cow, ox, swine, goat or other grazing animal shall turn such animal into, or permit the same

to go at large in any street, highway or public place within the Town.

Sec. 12-1-3. Nude, Topless Bathing. No person in a nude state shall appear on a public way, nor swim or bathe in the waters of the town or waters adjacent thereto so as to be exposed to view of spectators.

Sec. 12-1-4. Disturbing Public Meeting. No person shall disturb any public meeting, school activity, or meeting of any kind, by making loud or unusual noises, by shouting, stamping, whistling, or standing around and obstructing the steps, passageways or entrance of any buildings where such meetings are held. [Revised eff. 10/08/08.]

Sec. 12-1-5. Destruction of Fruit Trees. No person shall willfully cut or scar or bruise any ornamental or fruit tree on any street, whether it be planted by the Town or by individuals who were duly authorized to plant it.

Sec. 12-1--6. Defacing, Injuring Public Property. No person shall mark or write on any public building, nor on any fence not his own nor any sidewalk, nor any other public place in this Town.

Sec. 12-1-7 Abandoned Well or Cistern. No person shall willfully abandon or cause to be abandoned any well or cistern without providing adequate protection by filling or covering the same. [Added eff. 3/14/60.]

Sec. 12-1-8. Use of Fish Fertilizer. All persons who apply fish or fish refuse as fertilizer to their land shall cause the same to be thoroughly plowed under within thirty six hours after the time when it is deposited on the land.

Sec. 12-1-9. Penalty. Any person found to have committed any of the foregoing listed offenses shall be punished by a fine not exceeding Two Hundred Fifty (\$250.00) for each offense, to be forfeited and paid to the use of the Town, unless different provision is made by the laws of the State of Maine. In addition, restitution shall be made for any damage to public property. [Revised eff. 10/08/08.]

Article II. Camping on Public Property. [Adopted eff. 10/13/71, under R. S. 1964, T. 30, Sec. 2151.]

Sec. 12-2-1. Permit Required. No person shall sleep, tent, camp or be housed in a camper, trailer or other mobile home upon any property owned by the Town of Cape Elizabeth after sunset or before sunrise except in accordance with a permit issued by the Chief of Police upon conditions sufficient to assure that adequate water and sanitary facilities will be preserved, that the normal use of the Town property will not be disrupted, that the peace and property of any abutters will not be disturbed, and that any liability which the Town might incur has been waived; such permit may be summarily revoked by the Chief of Police, or his duly authorized agent, upon the violation of any of the conditions recited therein.

Sec. 12-2-2. Penalty. Any person found to have violated Sec. 12-2-1 shall be punishable

by a fine not to exceed Two Hundred Fifty (\$250.00) to be recovered for the use of the Town. [Revised eff. 10/08/08.]

Article III. Loitering Dispersal. [Adopted eff. 9/27/72 under R.S. 1964, T. 30, Sec. 2151.]

Sec. 12-3-1 Unlawful Acts. It shall be unlawful for any person to loiter, loaf, wander, stand or remain idle either alone or in consort with others in a public place in such a manner as to:

(a) Obstruct any public street, public area, public sidewalk or any other public place or public building by hindering or impeding or tending to hinder or impede the free and uninterrupted passage of vehicles, traffic or pedestrians; or

(b) Commit in or upon any public street, public highway, public sidewalk or any other public place or public building any act or thing which is an obstruction to or interference with the free and uninterrupted use of property, or any business lawfully conducted by anyone in, upon, facing or fronting on any such street, public highway, public sidewalk or any other public place or public building, and which prevents the free and uninterrupted ingress, egress and regress therein, thereon and thereto.

12-3-2 Violation. When any person causes or commits any of the conditions, acts or things enumerated in Sec. 12-3-1 hereof, a police officer or any law enforcement officer shall order that person to stop causing or committing the same and to move on or disperse. Any person who fails or refuses to obey such order, or any person who obeys such order but within a period of four (4) hours after such order again causes or commits any of said conditions, acts or things, shall be guilty of a violation of this Article and upon conviction thereof in the District Court shall be subject to a fine not exceeding Two Hundred Fifty (\$250.00) to be recovered for the use of the Town. Any such violation shall constitute a separate offense on each successive day committed. [Revised eff. 10/08/08.]

Article IV. Fort Williams Park Regulations. [Adopted eff. 11/11/77 under R. S. 1964, T. 30, Sec. 2151 and Revised eff. 10/08/08.]

Sec. 12-4-1 Fires Restricted. No use which requires fires or burning of any kind shall be permitted within Fort Williams Park except as specifically authorized by the Town Council and as permitted by the Chief of the Fire Department in accordance with Sec. 8-2-5 or as may be allowed in accordance with Sec. 12-4-2.

Sec. 12-4-2 Permitted Fires. Any person or group of persons may use facilities provided by the Town within Fort Williams Park for fires for the sole purpose of cooking food for picnics upon the following conditions:

(a) Such use shall be limited to the hours during which Fort Williams Park is open to the general public;

(b) Such use shall be only within those areas posted for such use; and;

(c) Such persons or groups of persons shall use no facility other than provided by the Town and shall burn no fuel other than charcoal or charcoal brickets; however, any Underwriters Laboratory listed gas grill or appliance with a gas cylinder of no larger than 20 pounds may be utilized. Gas cylinders between 20 pounds and 100 pounds may be utilized with permission of the Cape Elizabeth Fire Department. Firewood may be used only at the fire pit area next to the picnic shelter. [Rev. eff. 4/29/88.]

Sec. 12-4-3 Open Hours. Fort Williams Park shall be open for use by the general public during daylight hours throughout the year, and it shall be closed to public use between sunset and sunrise during which time it shall be unlawful for any person to be within the limits of Fort Williams Park excepting for the use of leased premises by the lessees and their employees and agents within rights granted by their leases, and excepting during special events approved by the Town Council.

Sec. 12-4-4 Filming. Any commercial filming at Fort Williams Park and at Portland Head Light shall receive a permit from the Director of Public Works with all fees and regulations for the issuance of commercial filming permits to be determined by Town Council order.

Sec. 12-4-5 Weddings. All wedding and partnership ceremonies to be held at Fort Williams Park which include an assembly of more than 20 persons shall receive a permit from the Director of Public Works with all fees and regulations for the issuance of such permits to be determined by Town Council order. Weddings and similar ceremonies are not permitted on the Portland Head Light parcel.

Sec 12-4-6 Waste Materials. All refuse and recyclable materials brought into Fort Williams Park by visitors shall be removed by the same visitors from Fort Williams Park ~~provided-except~~ that groups permitted to utilize the park may remove material for all of their guests.

Sec 12-4-7 Pet Excrement Removal. All pet excrement deposited in Fort Williams Park shall be removed by the person in care of the pet.

Sec. 12-4-8 Penalty. Any person found to have violated any provision in Article IV shall be punishable by a fine not to exceed Two Hundred Fifty (\$250.00) to be recovered for the use of the Town. The Town shall also recover any fee that would have been assessed if a proper and timely permit had been granted.

Article V. Consumer Fireworks Regulations [Adopted eff. 12/14/11]

Sec 12-5-1. Definitions The following definitions shall apply to this article:

Consumer Fireworks: Shall have the same meaning as in 27 Code of Federal

Regulations, Section 555.11 or subsequent provision, but includes only products that are tested and certified by a 3rd party testing laboratory as conforming with United States Consumer Product Safety Commission standards, in accordance with 15 United States Code, Chapter 47. Consumer fireworks does not include missile type rockets, helicopter and aerial spinners, all as defined by the State Fire Marshal by rule. Nor does the definition include sky rockets and bottle rockets which for purposes of this section are defined as cylindrical tubes containing not more than 20 grams of chemical composition as defined by the State Fire Marshal by rule.

Display: An entertainment feature where the public or a private group is admitted or permitted to view a showing or discharge of fireworks or special effects.

Sec. 12-5-2. Consumer Fireworks Prohibited. No person shall use, possess with the intent to use, sell, possess with the intent to sell or offer for sale consumer fireworks within the Town of Cape Elizabeth. This section does not apply to a person issued a fireworks display permit by the Town of Cape Elizabeth and/or by the State of Maine pursuant to 8 M.R.S.A. §227-A.

Sec. 12-5-3. Seizure and Disposal of Fireworks. The Town may seize consumer fireworks that the Town has probable cause to believe are used, possessed or sold in violation of this Article and shall forfeit seized consumer fireworks to the State of Maine for disposal.

Sec. 12-5-4. Penalties.

(a) Any person who uses consumer fireworks or possesses consumer fireworks with the intent for use in the Town of Cape Elizabeth shall be punished by a fine of not less than two hundred dollars (\$200.00) and not more than four hundred dollars (\$400.00) plus costs. For second and subsequent offenses, a fine of not less than three hundred dollars (\$300.00) and not more than six hundred dollars (\$600.00) per violation plus costs shall be imposed.

(b) Any person who sells consumer fireworks or possesses consumer fireworks with the intent to sell in the Town of Cape Elizabeth shall be punished by a fine of not less than five hundred dollars (\$500.00) plus costs. For second and subsequent offenses, a fine of not less than one thousand dollars (\$1000.00) per violation plus costs shall be imposed.