



*Attorneys at Law*

KENNETH M. COLE III  
NICHOLAS S. NADZO  
DAVID J. JONES  
MICHAEL A. NELSON  
RICHARD H. SPENCER, JR.  
LAWRENCE R. CLOUGH  
RONALD A. EPSTEIN  
WILLIAM H. DALE  
JOSEPH H. GROFF III  
F. BRUCE SLEEPER  
DEBORAH M. MANN  
LESLIE E. LOWRY III  
PATRICIA M. DUNN

MICHAEL J. QUINLAN  
R. LEE IVY  
ROGER P. ASCH  
NATALIE L. BURNS  
SALLY J. DAGGETT  
BRENDAN P. RIELLY  
NICHOLAS J. MORRILL  
MARCIA C. CORRADINI  
KATHLEEN T. KONKOLY  
MARK A. BOWER  
JENNIFER W. PETERS  
J. CASEY MCCORMACK  
TUDOR N. GOLDSMITH

TEN FREE STREET  
P.O. BOX 4510  
PORTLAND, MAINE 04112-4510  
(207) 775-7271 (Phone)  
(207) 775-7935 (Fax)

[www.jbgh.com](http://www.jbgh.com)

MERTON G. HENRY  
FRANK H. FRYE  
BRIAN C. BROWNE  
OF COUNSEL

RAYMOND E. JENSEN  
(1908-2002)

KENNETH BAIRD  
(1914-1987)

M. DONALD GARDNER  
(1918-2008)

YORK COUNTY  
OFFICE  
11 MAIN STREET, SUITE 4  
KENNEBUNK, MAINE 04043  
(207) 985-4676 (Phone)  
(207) 985-4932 (Fax)

November 22, 2013

Cape Elizabeth Town Council  
Town of Cape Elizabeth  
320 Ocean House  
P.O. Box 6260  
Cape Elizabeth, ME 04107

Attn: Mike McGovern, Town Manager

Re: Shooting Range Ordinance

Ladies and Gentlemen:

Pursuant to your direction, I was retained in June of this year to investigate the issue of whether the Town of Cape Elizabeth could adopt a shooting range ordinance. This issue has apparently come up on a number of other occasions in the past few decades, and relates specifically to the Spurwink Rod and Gun Club which has been in existence for more than 50 years at 1250 Sawyer Road in Cape Elizabeth.

My office researched the ability of Maine municipalities to regulate shooting ranges. Based on that research we prepared a Memorandum and discussed it at a workshop with the Town Council and members of the public. The Memorandum explained the Second Amendment protection afforded the use of firearms and various Maine Statutes regarding the same. We also discussed that the Town and its officers have tort immunity for their actions or inaction related to the Gun Club. I later met separately with members of the Cross Hill Neighborhood Association and with the Spurwink Rod and Gun Club membership, which included a tour of the facility. During that time, we performed additional research regarding the legal issues presented by such an ordinance and reviewed relevant reported decisions from across the nation. Thereafter, I met again with the Cape Elizabeth Town Council, this time in executive session, to discuss my progress to date and the possible scope of an ordinance. I enclose herewith the draft of such an ordinance.

~ Over 60 Years of Service ~

Jensen Baird  
Gardner Henry

Cape Elizabeth Town Council  
November 22, 2013  
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This ordinance differs from those that you reviewed from the neighboring communities of Scarborough, Falmouth and Brunswick, though we did include various ideas from those. Given Maine statutes, we are required to respect the Legislature's limited preemption with regard to the regulation of firearms and the noise they create. Therefore, although this ordinance requires both the existing, and any proposed shooting range, to be licensed by the Town, it respects the statutory limits on noise regulation while establishing baseline data regarding current use and addressing public safety concerns.

The proposed ordinance creates a firing range committee to initially review shooting range applications, that committee is comprised of two Town Councilors, a member of the Rod & Gun Club, a member of the public and the Code Enforcement Officer. The committee is charged with ensuring the compliance of the shooting range facility with the draft ordinance's performance standards regarding shot containment and noise mitigation. These standards are generally based on the NRA Range Source Book. We enclose a CD of the entire 793 book and a photocopy of the relevant range design sections including noise abatement. A copy of the EPA's Best Management Practices for Lead at Outdoor Shooting Ranges is also enclosed.

Based on the various safety and noise concerns raised by the neighbors, the ordinance contains specific management practices, hours of operation and liability insurance requirements. However, given the existing status of the Spurwink Rod and Gun Club, it also has considerable built-in flexibility with regard to the licensing requirements, and the time required to comply with them, including the ability of the Council, as the final party who would grant such a license, to extend time limits and grant other exceptions.

I look forward to your review of this ordinance. I understand it will be referred to your Ordinance Committee and I can be available to discuss it with that Committee at its convenience.

Very truly yours,



Kenneth M. Cole III

KMC/wf  
Enclosures

## SHOOTING RANGE ORDINANCE

### Section 1. Purpose.

This Shooting Range Ordinance (this “Ordinance”) is intended to regulate the establishment and operation of outdoor Shooting Range Facilities pursuant to 12 M.R.S.A. § 13201 (1) and 25 M.R.S.A. § 2011 (3), as they may be amended, and 30-A M.R.S.A. § 3001 *et seq.* (Maine’s Home Rule Law). Due to their potential noise impacts and safety concerns, Shooting Range Facilities merit careful review to minimize adverse effects on adjoining properties. This Ordinance does not otherwise apply to the general discharge of Firearms or the use of bows and arrows in accordance with all other applicable laws or regulations.

### Section 2. Intent.

It is the intent of this Ordinance to accomplish the following:

*A. Permitting, registration, and compliance.* New Shooting Range Facilities shall only be established and operated in accordance with a valid license issued by the municipal officers. In addition, existing Shooting Range Facilities shall submit a completed license application within one hundred eighty (180) days following the adoption of this Ordinance, subject to the requirements of Section 9 hereof and, if licensed, shall comply with all remaining provisions of this Ordinance thereafter.

*B. Shot containment.* Each Shooting Range Facility shall be designed to contain the bullets, shot, and ricochets of same discharged at or within the Shooting Range Facility.

*C. Noise mitigation.* Each Shooting Range Facility shall be designed to minimize off-site noise impacts generated by the activities conducted on the Shooting Range Facility.

### Section 3. Definitions.

As used in this Ordinance, the following terms shall have the respective meanings ascribed to them:

*dBA:* The sound pressure level, in decibels, as measured on a precision sound level meter on the A-weighted scale.

*EPA Lead Management Guidelines:* Shall mean, at any given time, the latest edition of the United States Environmental Protection Agency's Best Management Practices for Lead at Outdoor Shooting Ranges.

*Firearm(s):* A weapon, including but not limited to pistols, rifles, and shotguns, capable of firing a projectile using an explosive charge as a propellant.

*Firing Range Committee:* Shall have the meaning as set forth in Section 10.

*NRA Range Source Book*: Shall mean, at any given time, the latest edition of The Range Source Book, as published by the National Rifle Association.

*Occupied Dwelling(s)*: Shall mean any residential Structure which is legally occupied by one or more Persons.

*Person(s)*: Any individual, corporation, association, club, firm, or partnership.

*Shooting Range(s)*: An area designed and improved to encompass shooting stations or firing lines, Target areas, berms and baffles, and other related components.

*Shooting Range Facility(ies)*: A public or private facility, including individual Shooting Ranges, safety fans or Shotfall Zones, Structures, parking areas, and other associated improvements, designed for the purpose of providing a place for the discharge of various types of Firearms; provided, however, that a Shooting Range Facility shall not include incidental Target practice areas on private property.

*Shotfall Zone(s)*: An area within which the shot or pellets contained in a shotgun shell typically fall.

*Structure(s)*: A walled and roofed building that is principally above ground or any other permanent, manmade facilities.

*Surface Danger Zone*: Any area that may reasonably expect projectile impact resulting from direct fire, including misdirected and accidental discharges, and ricochets from any Firearm, which takes into consideration all mitigation efforts as submitted by the applicant and determined by a certified engineer.

*Target(s)*: Any object or area which is used as the intended recipient of the projectiles fired from a Firearm.

*Town*: Shall mean the town of Cape Elizabeth, Maine.

#### Section 4. Applicability.

This Ordinance is applicable to all existing and future Shooting Range Facilities in the Town.

#### Section 5. Performance Standards.

The following performance standards shall apply to all Shooting Range Facilities:

*A. Shot containment.* Shooting Range Facilities shall be designed to contain all of the bullets, shot or other projectiles or any other debris within the Shooting Range Facility.

*B. Noise mitigation.* Noise levels measured at the property line where the Shooting Range Facility is operated or, in the case of leased land, at the property line of any leased parcel,

shall not exceed sixty-five (65) dBA when said property line is located within one thousand (1,000) feet of an Occupied Dwelling, subject to the limitations of 30-A M.R.S.A. 3011, as it may be amended.

#### Section 6. Development Requirements.

A. *Minimum design requirements.* Where not otherwise specified within this Ordinance, Shooting Range Facilities shall meet or exceed the design standards specified by the NRA Range Source Book.

B. *Setbacks.* Notwithstanding the performance standards of Section 5 the following setbacks shall apply.

1. All shooting stations and Targets on a Shooting Range Facility shall be located a minimum of three hundred (300) feet from any property line; and

2. The Surface Danger Zone shall be contained within the property boundary line.

C. *Warning signs.* Warning signs meeting or exceeding the standards set forth in the NRA Range Source Book shall be posted at one hundred-foot intervals along the entire perimeter of the Shooting Range and along the entire perimeter of the property lines in the same intervals.

D. *Distance from Occupied Dwelling.* Except for existing Shooting Range Facilities, all shooting stations, Targets, and firing lines shall be located at least one-half (1/2) mile (two thousand six hundred forty (2,640) feet) from any existing Occupied Dwelling. Existing Shooting Range Facilities located closer than one-half (1/2) mile from any existing Occupied Dwelling shall not be permitted to relocate or enlarge said range to further encroach within said setback.

E. *Access to Shooting Range Facility.* Access to the Shooting Range Facility and Shooting Range shall be secured and controlled, with ingress and egress permitted only during those operating hours established in Section 7C.

#### Section 7. Operational Requirements.

A. *Maintenance.* Where not otherwise specified within this Ordinance, Shooting Range Facilities shall be operated and maintained in a manner that shall meet or exceed the standards specified in the NRA Range Source Book.

B. *Best Management Practices.* Outdoor Shooting Range Facilities shall provide a plan outlining its best management practices relating to lead management. Said plan shall meet or exceed the standards set forth in the EPA Lead Management Guidelines.

C. *Hours of operation.* Shooting Range Facilities shall be allowed to operate between one hour after sunrise and one hour before sunset Monday through Saturday and from noon to an hour before sunset on Sundays.

*D. Liability insurance.* The licensee shall be required to carry a minimum of Three Million Dollars (\$3,000,000.00) per occurrence of liability insurance. Such insurance shall name the Town as an additional insured and shall save and hold the Town, its elected and appointed officials, and employees acting within the scope of their duties harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising in favor of a Person or group's members or employees or third parties on account of any property damage arising out of the acts or omissions of the licensee, his/her group, club, or its agents or representatives. The Town shall be notified of any policy changes or lapses in coverage.

#### Section 8. Procedure for Securing Approval for New Ranges.

*A. License application.* An application for a license to establish and operate a Shooting Range Facility shall be submitted by the legal property owner(s) or lessees (or their agent) to the Firing Range Committee. Such license shall be secured prior to issuance of any other grading, building or improvement permit by the Town, but any licensee may thereafter construct any Structure or other improvement deemed necessary for the purpose of issuing said license.

*B. Fees.* There shall be no application fee, but the applicant shall be responsible to reimburse the Town for engineering and other professional services needed to review the application.

*C. Required information.* The applicant shall provide sufficient information to demonstrate compliance with these provisions.

*D. Site plan.* A site plan for the entire Shooting Range Facility which shows the following applicable information drawn to an appropriate scale, shall accompany the license application:

1. Property lines for any parcel upon which the Shooting Range Facility is to be located, north arrow, plan scale, date, and ownership information for the site;
2. Complete layout of each Shooting Range Facility, including, shooting stations or firing lines, Target areas, shot-fall zones or backstops, berms, and baffles, if any;
3. Projected noise contours sufficient to demonstrate compliance as determined by an engineer;
4. Existing and proposed Structures; Occupied Dwellings within one-half (1/2) mile (two thousand six hundred forty (2,640) feet)); roads, streets, or other access areas; buffer areas; and parking areas for the Shooting Range Facility; and
5. Any other appropriate information related to the specific type of Shooting Range Facility, whether existing or proposed.

*E. Action.* Within thirty (30) working days, the Firing Range Committee shall take one (1) of the following actions:

1. Reject the application as incomplete; or
2. Recommend that the license be approved by the municipal officers with or without conditions; or
3. Recommend that the license be denied by the municipal officers.

In any case, written findings to support the action taken shall be provided to the applicant and municipal officers.

#### Section 9. Registration and Compliance of Existing Shooting Range Facilities.

*A. Registration.* All existing Shooting Range Facilities shall provide a site plan, prepared in accordance with Section 8D, within ninety (90) days after the effective date of this Ordinance and comply with Section 5A and 6C within said ninety (90) days.

*B. Compliance.* Any existing Shooting Range Facility shall submit a complete license application in compliance with all remaining provisions of this Ordinance within one hundred eighty (180) days of the adoption of this Ordinance.

*C. Abandonment and discontinuance.* When an existing Shooting Range Facility is discontinued without the intent to reinstate the Shooting Range use, the property owner shall notify the Town of such intent. In any event, the discontinuance of the Shooting Range Facility or non-use of the Shooting Range Facility for a period in excess of one year shall create the presumption said Shooting Range Facility is abandoned, and any current, valid permits issued shall terminate. As established by 30-A M.R.S.A. § 3011, if there has been no shooting activity for a period of three (3) years, resumption of shooting shall require a license as a new Shooting Range Facility for purposes of this Ordinance.

#### Section 10. Firing Range Committee.

*A.* Firing Range Committee is hereby established to consist of the following:

1. One member of the Spurwink Rod & Gun Club who is certified by the National Rifle Association, to be designated by the Spurwink Rod & Gun Club;
2. One member of the public at large to be appointed by the Town Council;
3. The Town's Code Enforcement Officer; and
4. Two members of the Town Council to be appointed by the Town Council, one of whom shall serve as Chair of the Firing Range Committee. In the event that the Spurwink Rod & Gun Club fails to designate a member of its organization within 30 days after having received a written request to do so, the Town Council shall have the right to make an appointment to fill said position. All members shall be residents of the Town.

- B. The Police Chief of the Town shall serve as an ex officio member of the Firing Range Committee.
- C. Complaints regarding non-conformance by any licensee shall be brought initially to the Firing Range Committee which shall investigate the same and file a report of its findings with the municipal officers.
- D. The Firing Range Committee may present draft rules and regulations requiring additional details to be submitted for the establishment and operation of approved Shooting Range Facilities to the Town Council. Upon approval of these rules and regulations by the Town Council, such rules and regulations shall become effective and shall be placed on file in the office of the Town Clerk.

#### Section 11. Background Check.

Upon receipt of an application for a new Shooting Range Facility, the Town's Police Department will conduct a criminal records check on the owner and lessee, if any, of the property on which the Shooting Range Facility is to be located and on the individual designated by the owner to operate the Shooting Range Facility, if different from the owner. Upon completion of the criminal records check, the Police Department will forward its findings to the Firing Range Committee.

#### Section 12. Municipal Hearing; License.

*A. Municipal hearing.* Following receipt of the Firing Range Committee's recommendation, the municipal officers shall hold a public hearing to determine whether to issue a license. Such license will be valid for one year. Prior to the license's expiration, the Shooting Range Facility will be reinspected by the Firing Range Committee. In the event that any Shooting Range Facility, either new or existing is found to be in noncompliance with this Ordinance or rules and any regulations adopted by the Firing Range Committee and approved by the Town Council, no new license will be issued and any existing license will be declared void.

*B. License transferability.* A license issued pursuant to this Ordinance may not be transferred to another operator without the written approval and consent of the municipal officers.

*C. Changes or expansions.* If any Shooting Range Facility is intended to be substantially changed or expanded to include types of Shooting Ranges, operations, or activities not covered by an existing license, a new license for the entire facility shall be secured in accordance with all of the provisions of this Ordinance. Further, any license issued hereunder does not relieve the licensee of compliance with all other applicable Town ordinances.



### Section 13. Exceptions.

- A. The municipal officers shall have the authority to approve exceptions from the terms of this Ordinance, including extending the deadlines for performance where appropriate, when literal enforcement of provisions of this Ordinance will, in an individual case:
  1. Result in hardship;
  2. The hardship results from an application of this Ordinance;
  3. The hardship is related to the specific Shooting Range Facility involved and predates the adoption of this Ordinance;
  4. The hardship is not self-induced or self-created;
  5. The hardship is peculiar to the specific Shooting Range Facility involved; and
  
- B. In granting an exception the municipal officers shall find in addition to the above hardship that the requirements of this Section 13(B) also have been met and a written notice of the decision shall be prepared and furnished to the applicant detailing the following:
  1. There are unique conditions pertaining to the Shooting Range Facility in question because of its history, size, shape or topography;
  2. A literal interpretation of the provisions of this Ordinance would deprive the applicant of its rights to operate an existing Shooting Range Facility;
  3. The requested exception will not be materially affect the safety of surrounding neighborhoods or the general public welfare; and
  4. The exception requested is the minimum needed to allow continued use of the Shooting Range Facility in question.
  
- C. The Council may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violations of such conditions and safeguards, when made a part of the terms under which the exception is granted, shall be deemed a violation of this Ordinance.

### Section 14. Enforcement, Remedies, and Penalties.

*A. Enforcement and remedies.* The Town's Police Department shall be responsible for the enforcement of this Ordinance. Any violation of this Ordinance or of any condition or requirement adopted pursuant to these provisions may be restrained, corrected, or abated, as the case may be, by injunction or other appropriate proceedings as allowed by state law. Any license issued under this Ordinance may be suspended or revoked following a public hearing before the municipal officers following a review and recommendation by the Firing Range

Committee.

*B. Civil penalties.* Any Person who violates any of the provisions of this Ordinance shall be subject to a civil penalty of not less than \$100.00 per violation plus costs of prosecution, including but not limited to attorney's fees. No penalty shall be assessed until the Person alleged to be in violation has been notified of the violation. Each day of a continuing violation shall constitute a separate violation and any such penalty shall be recovered for the use of the Town.