

MEMORANDUM

TO: Cape Elizabeth Town Council
FROM: Ordinance Committee
DATE: May 1, 2017
SUBJECT: Shooting Range Ordinance Amendments

Introduction

The Town Council referred to the Ordinance Committee technical revisions to the Shooting Range Ordinance at the February 13, 2017 meeting. The review was needed to eliminate the role of the Firing Range Committee and to make typical adjustments after an ordinance is used in a "real-world" application. The Ordinance Committee is also recommending some reorganization for ease of use for all parties.

How to Review the proposed changes

When reviewing the ordinance, readers are cautioned that 2 versions are provided. The "tracked changes" version shows all added language (underlined) and deleted language (strike through). This version gives the impression that the ordinance has been extensively revised. In fact, almost all the text has been preserved, and relocated into better organized sections. The "saved changes" version is easier to read, shows how the ordinance will look if the changes are adopted, and demonstrates that the substance of the Shooting Range Ordinance has been preserved.

Process

The Ordinance Committee discussed the Shooting Range Ordinance at 6 meetings. Comments were solicited from the Police Chief, the Code Enforcement Officer, the Chair of the Firing Range Committee and the Spurwink Rod and Gun Club (see attachments). Over 20 public comments and emails was received from members of the public (including representatives from the Spurwink Rod and Gun Club). The draft ordinance revisions were also reviewed by acting town attorney Durward Parkinson. The Ordinance Committee made additional revisions based on comments received, and the decline in the number of public comments at the end of the process suggests that the proposed revisions have general support.

Summary of revisions

1. Reorganization for clarity. The current Shooting Range Ordinance represents a milestone effort by the Town to protect public safety by adopting an ordinance in an atmosphere charged with emotion. The ordinance has been applied to issue a license and significant public safety improvements have been implemented.

The Ordinance Committee is recommending that the existing ordinance be reorganized to make it easier for all parties to use. While the tracked changes document appears to depict substantial ordinance changes, almost all the existing ordinance text has been preserved and relocated. The proposed changes reorganize the license provisions into

functional sections of (1) review procedure, (2) submission requirements, and (3) license standards of review. This approach makes the information needed much clearer to the applicant, allows the reviewing authority to use a checklist for checking information and applying standards, and should make the process more accessible to the public.

2. Firing Range Committee removed. The current ordinance creates a meaningful role for the Firing Range Committee, both in reviewing licenses and enforcement. With no applications received to serve on the committee, committee responsibilities need to be reassigned. The amendments assign to the Police Chief the responsibility to receive and review a license application, and then to provide a recommendation to the Town Council. The Town Council would then hold a public hearing before voting to issue a license. The Police Chief is also responsible for renewals (see below). Enforcement and receipt of complaints has been clarified to be the responsibility of the Police Department.

3. License duration. The duration of a license has been expanded from 1 year to 3 years. This change allows both the licensee and town staff to focus resources on implementing the license improvements rather than procedural efforts. The Ordinance Committee also emphasizes that enforcement of the license and the ordinance is continuous and not limited to license renewals.

4. Renewal. The current ordinance provides for a 1 year license renewal and inspection by the Firing Range Committee. The Ordinance Committee considered several renewal options, ranging from retaining the 1 year renewal to no expiration of the original license (eliminating the need for a renewal). The Ordinance Committee also discussed how expansive a role town staff and the Town Council should have, and reasonable expectations of a volunteer organization with responsibility to manage a shooting range. The Ordinance Committee made clear that enforcement to protect public safety and to investigate complaints is ongoing and independent of the license renewal process.

The amendments clearly call out renewals in an easy to find, new section. A renewal of a license must be requested before the expiration date of the license. The renewal process is now specified as a written request from the licensee that includes an assertion that no material changes from the license have occurred. A renewal request is submitted to the Police Chief, who may issue the renewal or forward it to the Town Council. A renewal can be issued for 3 years and additional renewals can be requested without limitation. The Ordinance Committee appreciated the effort and cost of obtaining a license and supports focusing resources on complying with an existing license. (The Spurwink Rod and Gun Club estimates the cost to prepare materials for the current license at \$25,550).

5. Annual Inspection. With changes to the renewal provisions, the committee received public comment supporting an annual inspection. The Spurwink Rod and Gun Club supports visits by the Police Department. A new provision has been added that the Police Department will conduct an annual "walk-through" inspection.

6. Written notification. The Spurwink Rod and Gun Club expressed concern that a volunteer organization would lose track of expiration dates. There is also little support

for initiating a new license process if a license expires. The amendments require that the Town must provide written confirmation that a license has been issued, and that written confirmation should also include the expiration date. It will remain the responsibility of the licensee to keep track of expiration dates.

7. **Enforcement.** The current ordinance splits enforcement responsibilities. The amendments assign all enforcement authority to the Police Department. There have been comments supporting an annual inspection of a license holder and this has been added to Sec. VI under License Administration.

8. **Legal review.** The draft amendments have been reviewed by acting town attorney Durward Parkinson. He reviewed the status of the ordinance in light of LD 1500 and also the proposed revisions. He concluded that "Ultimately, this letter suggests that the Ordinance is legally valid, but cautions the Town regarding further regulation in this area." The proposed amendments include his recommendations for minor adjustments, such as specifying public notice to abutters prior to a public hearing.

9. **Insurance.** The minimum insurance amount has been reduced from 3 million to 1 million, recognizing the Town Council's granting of an exception to the Spurwink Rod and Gun Club.

Conclusion

At the April 27, 2017 meeting, the Ordinance Committee voted 3-0 to recommend to the Town Council the proposed amendments to the Shooting Range Ordinance.

Attachments:

Police Chief comments
Code Enforcement Officer comments
Firing Range Committee Chair comments
Spurwink Rod and Gun Club comments
Durward Parkinson letter

INTEROFFICE MEMORANDUM

TO: MAUREEEN O'MEARA
FROM: CHIEF NEIL R. WILLIAMS
SUBJECT: PROPOSED ADMENDMENTS TO CHAPTER 24
DATE: FEBRUARY 14, 2017

**PROPOSED ADJUSTMENTS TO CHAPTER 24
SHOOTING RANGE ORDINANCE**

Sec. 24-2-2 Shot Containment "should be designed to contain bullets, shot, and ricochets when range is used as intended." (There could be an accidental discharge)

Sec. 24-2-3 Noise Mitigation "designed to minimize of site noise" (what level are we talking about or how do we gauge it as a noise impact)

Sec. 24-5-2 Shot Containment The feeling is there is no 100% guarantee this can be achieved with an outdoor range.

Sec. 24-6-2 Setbacks (Subsection 2) What is the definition of "Surface Danger Zone."

Sec. 24-10-3 Complaints It states "complaints shall be investigated by Firing Range Committee"

However, Sec 24-14-1 Enforcement and Remedies It states "Police department shall be responsible for the enforcement of this ordinance." (It appears to us that these two sections should be clarified to be consistent.)

Sec. 24-12-1 Municipal Hearing This section needs discussion on how long the license is good for before reapplying. Thought is one year is too short. Looking at a possible three year permit?



Google

Maureen O'Meara <maureen.omeara@capeelizabeth.org>

Shooting Range Ordinance

2 messages

Benjamin McDougal <benjamin.mcdougal@capeelizabeth.org>
To: Maureen O'Meara <maureen.omeara@capeelizabeth.org>

Thu, Feb 16, 2017 at 7:57 AM

Maureen,

You asked me to provide you with any comments I have regarding potential changes to the Shooting Range Ordinance. Areas where specific comments from me are desirable include the licensing procedure for the Spurwink Rod and Gun club as it relates to noise, safety, and lead management.

Noise: The Spurwink Rod and Gun Club hired S.E. Ambrose & Associates to conduct a baseline sound test for the club. They proposed, and then installed several different noise mitigation techniques on the range.

Safety: The Spurwink Rod and Gun Club submitted a Range Evaluation Report, completed on 8/14/12 by Quirino Lucarelli, with their license application. In addition to this, the Town Council chose to hire Rick LaRosa, of R Design works to perform a safety evaluation of the range.

Lead Management: The Spurwink Rod and Gun Club submitted a lead management plan, prepared in house, and a letter from Soil Scientist Dale Brewer with their license application. They also submitted test results from MAI Environmental for the presence of lead in a stream that runs across the property. They also submitted a letter from Richard A. Sweet, Certified Geologist, stating that the Club's Lead Management Plan is adequate.

Regards,
Ben

Benjamin McDougal
Code Enforcement Officer
Town of Cape Elizabeth
320 Ocean House Road
P.O. Box 6260
Cape Elizabeth, ME 04107
(207) 799-1619
benjamin.mcdougal@capeelizabeth.org

Maureen O'Meara <maureen.omeara@capeelizabeth.org>

Thu, Feb 16, 2017 at 8:05 AM

To: Patricia Grennon <patricia.grennon@capeelizabeth.org>, Kathy Ray <retbank@maine.rr.com>, Caitlin Jordan <Caitlin.Jordan@capeelizabeth.org>

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Maureen O'Meara
Cape Elizabeth Town Planner
320 Ocean House Rd
Cape Elizabeth, Maine 04107
(207) 799-0115
maureen.omeara@capeelizabeth.org



Maureen O'Meara <maureen.omeara@capeelizabeth.org>

To Ordinance Committee

3 messages

Councilor Jordan <caitlin.jordan@capeelizabeth.org>
To: Maureen O'Meara <maureen.omeara@capeelizabeth.org>

Sun, Feb 5, 2017 at 4:54 PM

Dear Ordinance Committee,

As the former chair of the Shooting Range Committee, I was asked to give input on any flags or issues we had while going through the application process.

Some of the areas that could have a closer look;
Section 23-7-2 - the best management practices section discussing EPA Lead Management Guidelines, as a Committee we were not prepared to evaluate this, I am interested to hear from CEO on how he approached it.

Section 23-7-4 Three Million dollar requirement for liability insurance, the council provided an exception and allowed it to be reduced to one million, perhaps that is what it should be written for within the ordinance.

Section 23-8-4 - the requirements of the site plan, requiring projected noise contours, this was difficult for the applicant to provide this requirement and as a committee we attempted to bring in a sound specialist to help the committee understand the requirement itself. Perhaps the desired outcome for this requirement could be achieved another way.

Section 23-12-1 - this section speaks about the one year renewal, however it describes that the committee will reinspected the facility before the expiration of the previous license. While we did not have to handle this part of the ordinance, I did look at it, and question if this section could be better written and perhaps not buried with the section that speaks about the Municipal Hearing. Perhaps there should be a section titled renewal, that details the procedure to be followed.

I recommend the current ordinance committee examine the Drafted Checklist that was provided to the Fire Range Committee to see how the ordinance breaks down from a check list stand point as to what is included within all the sections.

Thank you

Caitlin Jordan

Sent from my iPad

Maureen O'Meara <maureen.omeara@capeelizabeth.org>
To: Councilor Jordan <caitlin.jordan@capeelizabeth.org>

Sun, Feb 5, 2017 at 7:08 PM

Nice! Thank you.

Maureen

Sent from my iPad
[Quoted text hidden]

Maureen O'Meara <maureen.omeara@capeelizabeth.org>
To: Councilor Jordan <caitlin.jordan@capeelizabeth.org>
Cc: Patricia Grennon <patricia.grennon@capeelizabeth.org>, Kathy Ray <retbank@maine.rr.com>

Mon, Feb 6, 2017 at 8:53 AM

Caitlin,

Your comments have been forwarded to the Ordinance Committee.

Maureen
[Quoted text hidden]



Maureen O'Meara <maureen.omeara@capeelizabeth.org>

Suggested Shooting Range Ordinance revisions

2 messages

Tammy Walter <tammyb@maine.rr.com>

Tue, Mar 21, 2017 at 10:01 PM

To: Maureen O'Meara <maureen.omeara@capeelizabeth.org>, mark Mayone <markmayone@yahoo.com>

Cc: Matthew Sturgis <matthew.sturgis@capeelizabeth.org>

March 21, 2017

Dear Ordinance Committee,

In reference to your email dated March 17, 2017 we would like to make the following comments and suggest the following changes.

Article V.

Sec. 24-5-2. Review Procedure

7. Renewal. 60 days prior to the license expiration, a certified USPS registered mail notification will be sent to any existing Shooting Range facilities notifying said facility of upcoming license expiration.

Failure to apply for a license renewal prior to license expiration date will result in a 60 day suspension of shooting range activities. Failure to apply for a license renewal after the 60 day suspension of shooting range activities, will require the submission of a new license application.

24-8-3. Submission Requirements

9. Noise. The sentence that reads, "A detailed description of the types and uses of firearms and ammunition either used or proposed to use at the site." should be given its own section (example number 15 on submission requirements).

A plan showing the projected dBa levels at the property line and noise contours at the sixty-five (65) dBa level shall not apply to existing shooting ranges, as this conflicts with Maine state law.

Regarding the sentence that reads, "For existing shooting ranges, dBa levels shall also be provided for any new firearms or ammunition not currently used." New firearms and ammunition are continually introduced to the shooting community. As long as the ballistics of the new ammunition falls within the boundaries of the initial license application, this will not require an existing shooting range to submit new information.

24-8-4. License Standards of Review

1. Surface Danger Zone. Please remove the sentence that reads, "For existing shooting ranges, no new shooting stations or targets shall be placed within 300 feet of the property boundary, unless they can demonstrate that the surface danger zone will be reduced in size." Because the first sentence seems self explanatory "The surface danger zone shall be contained within the property boundary line" it seems this would allow an existing club to make minor adjustments to it's shooting stations and targets areas. If this sentence were to remain it would cause existing shooting ranges a hardship because they would have to be reinspected every time a shooting station or target was to be adjusted. As long as the design of the range maintains the integrity of the Surface Danger Zone, it will prevent a projectile from crossing the property boundary.

Yours truly,

Tammy Walter
President
Spurwink Rod and Gun Club

Maureen O'Meara <maureen.omeara@capeelizabeth.org>

Wed, Mar 22, 2017 at 9:03 AM

To: Tammy Walter <tammyb@maine.rr.com>

Cc: mark Mayone <markmayone@yahoo.com>, Matthew Sturgis <matthew.sturgis@capeelizabeth.org>

Bcc: Patricia Grennon <patricia.grennon@capeelizabeth.org>, Kathy Ray <retbank@maine.rr.com>, Caitlin Jordan <Caitlin.Jordan@capeelizabeth.org>

Tammy,

Thank you for taking time to review the draft changes and to participate. Your comments have been forwarded to the Ordinance Committee.

Maureen

[Quoted text hidden]

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In Memoriam

C. Wesley Crowell
1955-2015

April 3, 2017

dparkinson@bergenparkinson.com

VIA E-MAIL

Town of Cape Elizabeth Ordinance Committee
Attn: Maureen O'Meara, Town Planner
320 Ocean House Road
Cape Elizabeth, ME 04107

Re: Proposed Changes to Shooting Range Ordinance

Dear Members of the Ordinance Committee:

The Town of Cape Elizabeth (the "Town") is considering changes to its Shooting Range Ordinance (the "Ordinance"), and in particular, changes to the licensing procedure for new and existing shooting ranges. In that light, this letter addresses the scope and purpose of the Ordinance, as amended, and how it fits within the regulatory scheme for gun clubs and shooting ranges created under Maine law. Ultimately, this letter suggests that the Ordinance is legally valid, but cautions the Town regarding further regulation in this area.

In general, Maine municipalities possess substantial power to pass ordinances that protect the health, safety, and welfare of their citizens. However, this power can be limited by the express act of the Legislature.¹ The regulation of shooting ranges and gun clubs is one such area where the State has saw fit to step in.² Thus, any ordinance adopted by the Town that regulates such facilities *must* comply with all of the precepts enacted under 30-A M.R.S.A. § 3011, or else risk being invalidated following what can often be expensive litigation.

From our review, it appears that the Ordinance attempts to regulate both new and existing gun ranges within the Town by way of a licensing program, not unlike the type of

¹ See 30-A M.R.S.A. § 3001 (2016) ("Any municipality, by the adoption, amendment or repeal of ordinances or bylaws, may exercise any power or function which the Legislature has to confer upon it, which is not denied either expressly or by clear implication . . .").

² 30-A M.R.S.A. § 3011 (2016).

regulation that restaurants and bars must undergo before operating.³ Any applicant for a shooting range license must pass a background check and then submit an application for review by the Police Chief and the Town Council that covers topics ranging from access, to hours of operation, to most importantly, measures to ensure safety of the range's users as well as adjoining neighbors and other members of the public.

Generally speaking, enacting a licensing requirement such as that proposed by the Town is well within the *home rule* authority granted by Maine law. However, given the specific requirements of § 3011, we want to highlight a number of areas within the Ordinance where the Town will want to express additional caution in the future.

First, the Ordinance requires that all new license applications include a plan from a professional noise expert showing that noise levels at the property line will not exceed 65 dBA, and that all existing shooting ranges will not add new firearms or ammunition that will exceed this limit.⁴ Although municipalities are *expressly prohibited* from enacting regulations that would "limit or eliminate"⁵ shooting activities at existing gun clubs, the Ordinance appears to effectively grandfather existing shooting ranges, while only restricting activities of *new* ranges, or *new* activities within existing ranges. As drafted, this system *does* seem to comply with state law, as it does not have the potential to curtail existing shooting range activities. However, we would caution the Town against enacting any *additional* noise regulations beyond those in the proposed amendments as they relate to shooting ranges as doing so may effectively "limit or eliminate" some preexisting shooting activities.

Second, the Ordinance requires that a license applicant submit materials relating to ongoing maintenance, safety design, and shot containment. Given Section 3011's emphasis on promoting the safety of existing and new shooting ranges, these provisions are likely valid. Not only does Section 3011(2) implicitly allow municipalities to curtail existing activities that do not conform to "generally accepted gun safety" regulations. The Ordinance's use of the NRA Range Source Book to provide the applicable safety standards also helps comply with this criterion, as the Source Book is considered to be the prevailing authority on "generally accepted gun safety." However, the Town should be aware that Section 3011(4) prohibits municipal interference with shooting ranges that wish to expand their safety mechanisms and procedures. Although the Town does not have any incentive to prevent shooting ranges from becoming *safer*, it is clear that the Legislature wanted to protect shooting ranges' ability to undertake generally-accepted safety measures without fear of municipal interference. The Town would do well to remember this should future issues arise.

³ However, it should also be noted that there is only one existing shooting range within the Town, and that the establishment of future ranges is likely impossible due the preclusion of such facilities from the Town's land use table.

⁴ Ordinance Sec. 24-5-3.

⁵ 30-A M.R.S.A. § 3011(2).

Finally, notwithstanding our general analysis, the Town would do well to consider this scenario before moving forward. Even if the licensing scheme is legal as drafted, problems could arise if an existing shooting range is *denied* a license at some point in the future. Section 3011(2) explicitly states that a municipal ordinance *may not* be applied so as to limit or eliminate existing shooting activities, so long as those activities are conducted in a safe manner. Ideally, the Ordinance would act as a means to ensure that any shooting range within the Town is operated safely. However, if a new or existing shooting range could not meet the Town's requirements, particularly in regards to condition not related to safety, it appears problematic for the Town to deny the application, which would likely violate Section 3011(2). This, of course, leaves the Town with a licensing scheme that has no means of enforcement. Again, this scenario may never occur, but the Town should consider these ramifications before enacting the Ordinance.

In conclusion, the Ordinance *does* appear to comply with all the requirements of 30-A M.R.S.A. § 3011. Nonetheless, as noted above, this area of municipal regulation can present numerous challenges, meaning that litigation related to the current Ordinance, as well as to any future amendments, is always a possibility – and predicting the outcome of any such litigation is difficult.

We appreciate the opportunity to review the Ordinance. Please let us know if we can be of more assistance in this matter.

Very truly yours,

BERGEN & PARKINSON, LLC

A handwritten signature in dark ink, appearing to read "Durward W. Parkinson". The signature is fluid and cursive, with the first name being the most prominent.

Durward W. Parkinson



Google

Maureen O'Meara <maureen.omeara@capeelizabeth.org>

Opinion letter regarding Shooting Range Ordinance

1 message

Durward Parkinson <dparkinson@bergenparkinson.com>
To: Maureen O'Meara <maureen.omeara@capeelizabeth.org>
Cc: Benjamin McCall <bmccall@bergenparkinson.com>

Mon, Apr 3, 2017 at 3:47 PM

Maureen:

Attached is our signed opinion letter regarding the Shooting Range Ordinance.

The letter addresses generally the validity of the Ordinance. As we discussed, there are some other drafting matters specific to the Ordinance which you may wish to consider—including the following:

Article I (Purpose): Adding a reference to the shooting range statute, 30-A MRS Section 301 and adding further language about promoting safety

Article IV

Section 23-8-2 (4) (Review procedure/hearing): Adding language about notifying abutters prior to the hearing

Section 24-8-2 (1) (Background Check): Amending language to make clear that the background check applies also to the principals of a corporation or partnership or trustees of a trust, in the event such an entity is the owner or lessee

Section 24-52-2 (6) (Approval): Adding language that denials may be appealed to the Superior Court pursuant to Rule 80B of the Maine Rules of Civil Procedure within 30 days of the issuance of the written decision and findings of fact

Section 24-5-2 (6) and (7): Clearing up any conflict between these sections regarding renewal of licenses

There are some other minor edits (Submissions) to consider such making references to the NRA Range Source Book more specific to the year (and including, or not, any further editions) and a more precise reference to "EPA lead management guidelines."

Thank you for the opportunity to review and comment on this Ordinance. Please let us know if you have any further questions.

Durward W. Parkinson, Esq.

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s Signed Letter to Ordinance Committee.PDF
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