

# Cape Elizabeth Residential Pesticide Use Ordinance

Draft 8-15-2023

## A. TITLE

This ordinance shall be known as the “Residential Pesticide Use Ordinance”.

## B. PURPOSE

The purpose of this ordinance is to safeguard the health, safety, and welfare of the residents of Cape Elizabeth and to conserve and protect the Town’s waterways and natural resources by restricting the use of toxic pesticides on private, residential property for cosmetic landscape uses and outdoor pest management and promoting Integrated Pest Management.

This ordinance is intended to encourage the adoption by private residential landowners in Cape Elizabeth of safe, responsible, and ethical alternatives to toxic pesticides. Under this ordinance, chemicals should be used only as a last resort, after mechanical, cultural, and biological approaches have been attempted and shown ineffective. When chemicals are used, the least toxic alternatives should be chosen, and applied to minimize exposure to humans and all non-target organisms. Such alternatives include adoption of integrated pest management practices recommended by the Maine Integrated Pest Management Council, the Division of Plant and Animal Health of the Maine Department of Agriculture, Conservation & Forestry, and the University of Maine Cooperative Extension Service. By way of example and not limitation, BTI (bacillus thuringiensis israelensis), diatomaceous earth, essential oils, and plant extracts are specific biological, mechanical and ~~non-synthetic-organic~~ chemical treatment alternatives to the broadcasting of toxic pesticides for lawn care and ornamental landscaping on private residential property. ~~This ordinance is intended to facilitate adoption of additional treatment alternatives as the field of integrated pest management progresses.~~

## C. DEFINITIONS

For the purposes of this Ordinance, the following terms, words, and phrases shall have the meanings given herein. All words not defined herein shall carry their customary and usual meanings. Words used in the present tense shall include the future tense. Words used in the singular shall include the plural. Where so indicated by the text, these definitions also include substantive regulations. Where reference is made to Town or State laws, ordinances, or regulations, each reference to a particular law, regulation, or section shall include all amendments

1 and successor sections.

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3 **EPA:** The United States Environmental Protection Agency.

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5 **FIFRA:** The Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §  
6 136 *et seq.*

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8 **Integrated Pest Management:** The selection, integration, and implementation of  
9 pest damage prevention and control based on predicted socioeconomic and  
10 ecological consequences, including: (a) understanding the system in which the  
11 pest exists; (b) establishing dynamic economic or aesthetic injury thresholds and  
12 determining whether the organism or organism complex warrants control; (c)  
13 monitoring pests and natural enemies; (d) when needed, selecting the  
14 appropriate system of cultural, mechanical, genetic, including resistant cultivars,  
15 biological or chemical prevention techniques or controls for desired suppression;  
16 and ( e) systematically evaluating the pest management approaches utilized.

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18 **Invasive insects:** An insect that is not native to a particular ecosystem, and  
19 whose introduction does or is likely to cause economic or environmental harm or  
20 harm to human health. Invasive insects include those listed by the Maine  
21 Department of Agriculture, Conservation and Forestry Maine Forest Service as  
22 threats to Maine’s forests and trees.

23  
24 **Invasive plants:** A plant that is not native to a particular ecosystem, and whose  
25 introduction does or is likely to cause economic or environmental harm or harm  
26 to human health. Invasive plants include those listed under the Maine  
27 Department of Agriculture, Conservation and Forestry’s Natural Areas Program  
28 Advisory List of Invasive Plants 2019 or as updated (e.g. knotweed, bittersweet,  
29 beech leaf disease, oak wilt).

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31 **Non-synthetic:** A substance that is derived from mineral, plant, or animal matter  
32 and does not undergo a “synthetic” process as defined in the Organic Foods  
33 Production Act, 7 U.S.C. § 6502(21), as the same may be amended from time to  
34 time.

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36 **Residential Property:** Privately owned property with a principal use as a place of  
37 abode.

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39 **Pesticide:** Any substance or mixture of substances intended for preventing,  
40 destroying, repelling or mitigating any pest; any substance or mixture of  
41 substances intended for use as a plant regulator, defoliant or desiccant. It does  
42 not include multicellular biological controls such as mites, nematodes, parasitic

1 wasps, snails or other biological agents not regulated as pesticides by the EPA.  
2 Herbicides, fungicides, insecticides and rodenticides are considered pesticides.

#### 3 4 **D. APPLICABILITY**

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6 1. Applicable: The following properties shall comply with this ordinance.

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8 a. Residential property.

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10 2. Exempt: The following properties are exempt from compliance with this  
11 ordinance.

12  
13 a.

14 ~~Nothing in this Ordinance is intended to regulate pesticide use in~~ commercial  
15 ~~agriculture, including but not limited to the raising of crops or animals for~~  
16 ~~human or animal consumption or use;~~

17 b. ~~or the maintenance of~~ utility rights of way;

18  
19 c. ~~, or upon~~ Publicly owned or maintained property (including  
20 without limitation roadways, rights of way, paths, parks, playing  
21 fields, or grounds of municipal buildings), however all properties  
22 are subject to the Town Healthy Landscape and Turf Maintenance  
23 Policy;

24 d. A mixed use building that include a multifamily dwelling and is  
25 located in a business district shall not be considered a residential  
26 property for the purpose of this ordinance;

27  
28 e. any property not listed in subsection 1 above.

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31 ~~Nothing in this Ordinance requires the licensure of persons applying~~  
32 ~~integrated pest management or alternatives to toxic pesticides for~~  
33 ~~private residential properties or limits the application of integrated pest~~  
34 ~~management practices to persons or companies licensed as pesticide~~  
35 ~~applicators by the Maine Board of Pesticide Control.~~

#### 36 37 **EG. PROHIBITED PESTICIDES AND ACTIVITIES**

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39 Except as expressly excepted or excluded below, the use of pesticides for the  
40 maintenance of lawns or of cosmetic or ornamental landscaping upon privately  
41 owned residential properties is prohibited. ~~, or upon any privately owned~~

property within seventy-five (75) feet of a body of water or wetland, is prohibited.

#### **FD. EXCEPTIONS AND EXCLUSIONS**

Notwithstanding the foregoing, the following ~~properties,~~ pesticide products, or applications are not made subject to this Residential Pesticide Use Ordinance:

- ~~1. The commercial raising of crops or animals for human or animal consumption or use;~~
- ~~2. Any non-residential property (i.e., property not owned, leased or occupied for any residential use, such as business or professional offices, commercial retail properties, golf courses or other recreational properties);~~
13. Pesticides applied within the interior of a residential structure or accessory structure for storage or animals, when used in according to label directions ~~the manner specified by the manufacturer~~ or by an applicator licensed by the Maine Board of Pesticides Control;
- ~~4. Property owned, used or occupied by the Town or any governmental entity, including without limitation roadways, rights of way, trails, parks, playing fields, or the grounds of schools, library, police stations, fire stations, public works facilities, Town Hall or the like;~~
- ~~5. The clearing or maintenance of utility rights of way;~~
26. Pet supplies such as shampoos and tick and flea treatments, when used according to label directions; ~~in the manner specified by the manufacturer;~~
37. Insect repellants for bodily application, when used according to label directions; ~~in the manner specified by the manufacturer;~~
48. Rodent control products, when used according to label directions ~~in the manner specified by the manufacturer;~~
59. Swimming pool supplies when used according to label directions; ~~in the manner specified by the manufacturer;~~
610. General use paints, stains, and wood preservatives and sealants upon fences or similar exterior structures, when used according to label directions ~~in the manner specified by the manufacturer;~~

- 1 711. Disinfectants, germicides, bactericides, miticides, and virucides, when used  
2 according to label directions in the manner specified by the manufacturer;
- 3 812. Pesticide applications specifically targeting the control of invasive insect  
4 infestations identified by the ~~Maine Forest Service or the~~ Maine Department of  
5 Agriculture, Conservation and Forestry Maine Forest Service as threats to  
6 Maine's forests and trees. (e.g., Emerald Ash Borer, Asian Longhorned Beetle,  
7 Hemlock Woolly Adelgid, Browntail Moth
- 8 9. Pesticide applications specifically targeting the control of invasive plants  
9 identified by the Maine Department of Agriculture, Conservation and Forestry's  
10 Natural Areas Program Advisory List of Invasive Plants 2019 or as updated, (e.g.  
11 knotweed, bittersweet, beech leaf disease, oak wilt), after demonstration that  
12 mechanical and non-synthetic methods have been applied and not been  
13 successful, the invasive plant is a threat to human health, and a notification,  
14 under Sec. H, has been submitted to the Public Works Director.

#### 15 **G. EXEMPT PESTICIDES**

16 The following are exempt from restriction by this ordinance, when used  
17 according to label directions.

- 18 1. Synthetic substances specifically listed as allowed on the U.S. Department  
19 of Agriculture's National List of Allowed and Prohibited Substances (the  
20 "National List");
- 21 2. Non-synthetic substances that are not listed as prohibited on the  
22 "National List;"
- 23 3. Pesticides determined to be "minimum risk pesticides" pursuant to the  
24 Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and listed in  
25 40 C.F.R. § 152.25(f)(1) or (2), as may be amended from time to time;
- 26 4. Pesticides certified by the Organic Materials Review Institute (OMRI).

#### 27 **E. EMERGENCY WAIVERS**

28 In an emergency situation warranting the use of non-exempt pesticides, the  
29 ~~Code Enforcement Officer may grant one ten (10) day temporary waiver, with~~  
30 ~~additional ten (10) day temporary waivers available on a case-by-case basis.~~  
31 ~~Waiver approval shall permit only the least toxic material available to address~~  
32 ~~the given emergency. The mere presence of weeds, common fungal diseases,~~  
33 ~~grubs, mosquitos, and ticks in the usual course of turf maintenance shall not be~~  
34 ~~deemed to constitute an emergency.~~

## **H. NOTIFICATION**

In an emergency situation where exempt pesticides and/or Integrated Pest Management methods that do not use non-exempt pesticides have been applied, and a public health and safety risk remains, the use of non-exempt pesticides may be applied. The mere presence of weeds, common fungal diseases, grubs, mosquitos, and ticks shall not be deemed to constitute an emergency. Grub treatments timed to more effectively interrupt the grub life cycle and prevent lawn damage that may result in erosion may be considered an emergency. Prior to application, a notification shall be provided to the Public Works Director a minimum of 48 hours prior to use including the following information.

1. The name of the property owner and location of the property where the pesticide is proposed to be used, along with the name, address, phone number and contact information of the licensed applicator, if applicable.
2. Identification of the target pest, description of the alternative methods and materials used and remaining risk to public health and safety.
3. Listing of the pesticide(s) to be applied, location, dosage, date of pesticide application, and frequency of application.
4. The property owner shall install a sign at least 48 hours prior to application. The sign shall be provided by the Public Works Department and installed in the area adjacent to the property driveway where it intersects the road.

The Public Works Director shall prepare a notification list that shall be posted to the town website. The list shall be updated as notifications are provided.

## **IF. REGISTRY OF PROHIBITED PESTICIDES AND PRACTICES**

The Town shall maintain a publicly-accessible registry of pesticides or pesticide practices prohibited or restricted under this Residential Pesticide Use Ordinance, to be updated no less frequently than annually. Such registry may be independently created and maintained by the Town or by contract with an organization having integrated pest management expertise, or by adoption by reference to such a registry maintained by an existing governmental or quasi-governmental entity. Applicators of pesticides upon private residential property, including property owners, occupants or contractors, are responsible for determining whether the pesticides intended to be applied are prohibited or

restricted by this Residential Pesticide Use Ordinance.

#### **J. PUBLIC NOTIFICATIONS AND SIGNAGE**

If prohibited pesticides are to be used/applied, homeowners and/or applicators will be subject to all requirements of the Maine Board of Pesticides Control rules regarding public notifications and signage.

#### **K. VIOLATIONS**

Any person violating any of the provisions of this ordinance or failing or neglecting or refusing to obey any order or notice of the Code Enforcement Officer issued hereunder shall be subject to enforcement action as provided herein.

#### **L. ENFORCEMENT**

The Cape Elizabeth Pesticide Use Ordinance shall be enforced by the Code Enforcement Officer, according to the policies governing enforcement of municipal ordinances of the Town of Cape Elizabeth. It shall be the duty of the Code Enforcement Officer to provide investigative assistance of complaints and to enforce the provisions of this ordinance. Fines will be imposed for violations as follows:

- 1st violation: \$250.00 fine
- 2nd violation: \$500.00 fine
- 3rd violation: \$1,000.00 fine

Notwithstanding the foregoing, in the case of a first violation which the Code Enforcement Officer determines was not committed with actual knowledge of the applicability of this ordinance and/or the potential violation arising from the owner or applicator's action, the Code Enforcement Officer shall have authority to waive all or part of the fine. The Code Enforcement Officer shall in all instances work with violators to bring them into compliance by providing educational materials and advice on the use of less toxic chemicals to achieve desired results.

#### **M. SEVERABILITY**

Should any section or provision of this ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision.

#### **N. CONFLICTS WITH OTHER ORDINANCES**

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Whenever a provision of this Residential Pesticide Use Ordinance conflicts with or is inconsistent with another provision of this ordinance or of any other ordinance, regulation, or statute, the more restrictive provision shall control.