

**Town of Cape Elizabeth
Ordinance Committee Minutes**

March 6, 2024

4:00 p.m.

Town Hall

Members Present: Stephanie Anderson, Chair
Caitlin Jordan Harriman
Tim Thompson

Staff: Maureen O'Meara, Town Planner
Ben McDougal, Code Enforcement Officer

Minutes

The February 15, 2024 minutes were approved by a vote of 2-0.

Public Comment

No member of the public wished to comment on items not on the agenda.

Floodplain Ordinance

Code Enforcement Officer Ben McDougal introduced the Floodplain Ordinance update, which is very important for residents who qualify for flood insurance. He has reviewed the ordinance and maps and sees no issue for adoption of the replacement ordinance.

Chair Anderson asked if there are significant differences from the ordinance adopted in 2008? Mr. McDougal said there are some map changes and most of the current maps date to 1985. The maps are now digitized and overlaid on aerials. The flood zone has expanded in some areas and retreated in others. The ordinance is similar to the existing ordinance with minor updates.

Chair Anderson confirmed there are no significant changes and Mr. McDougal concurred.

Mr. Thompson made a motion to send the Floodplain Ordinance to the Town Council, Chair Anderson seconded the motion and it passed 2-0.

Pesticide Amendments

Chair Anderson opened public comment.

Richard Bryant, 55 Spurwink Ave – He referenced his email and noted he drafted the ordinance that was adopted by referendum.

Chair Anderson asked how important it was to get the ordinance completed by April 1st? Mr. Bryant said it was not that important because there is the referendum ordinance currently in effect. He is suggesting improvements to the ordinance since there are significant changes proposed.

Chair Anderson is concerned with people starting the lawn care season.

Mr. Bryant said the existing ordinance is in effect now, so a delay on the amendments is reasonable. His comments are based on the current draft amendments. He is concerned that the definition includes as invasive plants such as lupins and rosa rugosa that are not harmful. He suggests using “may” be invasives. Chair Anderson said “may” does not solve the problem.

Councilor Thompson stated that it is too late to get these comments and he does not want to delay.

Mr. Bryant moved on to Exemptions, Sections 8, 9, and 10.

Councilor Jordan Harriman arrived at 4:15 p.m.

Mr. Bryant suggested adding to the waivers a larger lot exemption, which Councilor Thompson supported.

Chair Anderson said 3 acres is too big and perhaps consider 1 acre.

Councilor Harriman suggested reviewing a town map that depicts lots by size. Ms. O’Meara pulled up a map created as part of the Rooster amendments color coded by lot size. The committee agreed by consensus on 2 acres.

Mr. Bryant would like an appeal provision similar to the Portland and South Portland Ordinances.

Chair Anderson is unwilling to tinker with the provision and noted the Town Manager does not have the knowledge of the CEO and Public Works Director.

Councilor Harriman is concerned that 5 days is too short a time to find an expert, get a response and respond to the appeal.

Chair Anderson asked how abutters would know a waiver has been issued.

Mr. Bryant said the waiver would be published and can find out about activity next door.

Mr. Thompson is not in favor. There has been plenty of time to introduce this and it is too late. We can add it later after we see how Portland and South Portland uses it. He is ok with one change, but we are too far into the process and can look into it again in 6 months to a year.

It was clarified that appeal of the waiver can be if the waiver is issued or denied.

Chair Anderson said this is basically a redraft of the referendum ordinance. Why not include this in the ordinance before?

Mr. Bryant said he didn't think of it then. A year ago, he understood the Town Council would have an alternative in place. That didn't happen before the existing ordinance took effect. The amendments gutted the waiver provision and we addressed that. This draft was available 3 days before the meeting. He asked the committee to take the time to get it right, or these comments will be made at the Town Council meeting. It's important to get it right and you've done a great job improving what I drafted. Changes should not hugely impact the intent of the ordinance in place.

Chair Anderson is concerned the provision is burdensome.

Public Comment

Debbie Peck, 21 Cottage Farms Rd – She is concerned with the process where, if you deny a waiver, the only option is court, which costs more time and money. She supports providing an appeal, and most regulations offer that. Regarding the definition of invasive plants, if it is easier, then take out the second sentence. There are two directions that conflict.

Chair Anderson clarified that not all the invasives on the list cause harm?

Mrs. Peck suggested if you have no list, there is no gray area. We should focus on danger to people's health or go through the list of invasives to identify what should be included as a danger.

Chair Anderson wants to retain the list, otherwise who decides what is dangerous.

Councilor Harriman noted a challenge of interpretation, and your concern is harm.

Mrs. Peck confirmed the list is too long.

Councilor Harriman cautioned against wiggle room. If there is no list, no actual information, then all of it is up for debate. And it will be more difficult for the public to understand.

Councilor Thompson wants to leave it as is.

A discussion of who would the aggrieved party followed.

Mr. Bryant drew an analogy with the Building Permit notification process in the Zoning Ordinance. The courts decide aggrieved party.

Councilor Harriman noted that passionate people can appeal everything.

Chair Anderson supports an appeal by a waiver applicant or property abutter. The committee agreed not to add “may” to the definition.

Councilor Thompson is opposed to adding an appeal provision. He is not concerned with a waiver denial, based on the expertise of town employees. We can address it later on if it is an issue.

Chair Anderson said the period couldn’t be fewer than 5 days, should be 10.

Councilor Harriman said we can’t turn it around in a shorter period unless we add an employee.

Councilor Thompson does not support last minute changes.

John Griffith, 3 Blueberry Rd – Appeals are reasonable for both sides. These are not last minute changes. Only at the last meeting was the draft revised to back to a Waiver from Notification. This goes hand in hand with emergency waivers and is not a huge time burden.

Mr. Bryant suggested you could kick appeals to the Zoning Board. Chair Anderson responded that you would lose your entire lawn in that process and we need a nimble process. There was general agreement that aggrieved party would be a direct abutter and the appeal period is limited to 10 days.

Councilor Harriman summarized that the waiver is granted by the Public Works Director, and then direct abutters will have 10 days to appeal to the Code Enforcement Officer, who has 10 days to decide. The Town Manager would not be in the appeal process. The committee agreed.

Mr. Bryant commented that sections 8, 9, and 10 in the Exemption section should be relocated to the Waiver section. This was the genesis of the ordinance.

Mr. Griffith said this is a critical part of the ordinance. These sections should not have an automatic exemption. It is vital that every use of a non-exempt pesticide be subject to the waiver process. Invasives, ticks, grubs all need a waiver.

Chair Anderson asked why this was not in the ordinance before?

Mr. Bryant noted that the committee has just added them to the draft at the last meeting.

The committee discussed how ticks should be treated under the ordinance. Councilor Harriman noted ticks are all over and waivers may overburden the process. Councilor Thompson is concerned the ordinance will prevent fighting ticks and mosquitos.

Mr. Bryant said use of pesticides is prevented under the current ordinance. Your proposal allows spraying anything as long as invasives are involved. This guts the ordinance that voters passed. The intent of the amendments is to tighten up the ordinance adopted. Sometimes you may need a toxic, but in that instance the waiver applies. The focus of the ordinance is lawns.

Mr. Griffith stated that ticks and mosquitos are everywhere. This undos all the good of the ordinance. Every pesticide use should go through the waiver process as oversight.

Councilor Harriman confirmed that if you want to use pesticides for ticks, you need a waiver first. Mr. Bryant confirmed this is the current ordinance. She understands abuse but is concerned that people who cannot afford professional lawn care should be able to fight ticks and mosquitos.

Chair Anderson said the concern is lawn beautification.

Councilor Harriman said it is abuse to make lawns green, but not fair to people who want to protect kids who play in the lawn and get rid of ticks.

Councilor Thompson said this is late in the game and we should send it to the Town Council for next week's meeting.

Tony Owen, 19 Sea View Ave – He is an emergency physician. Spraying mosquitoes will not keep them away. He spoke with [Public Works Director] Jay Reynolds who uses a hotline and 3E is not an epidemic. Ticks can carry disease but spraying a lawn is not good for kids either. He is a beekeeper. It is confusing what is in effect now.

Ms. O'Meara explained that there is an existing Pesticide Ordinance that took effect in December. It is Chapter 28 on the town website.

Mr. Griffith asked that section 8, 9 and 10 not be left as an automatic exception. It is worthless to spray for mosquitos. Companies offer responsible lawn care and we should keep the guardrails up with a waiver as a last resort. Not many will apply for the waiver and folks will use less toxic options.

Chair Anderson asked if there are organic options to ticks? Yes, including diatomaceous earth (shells).

Councilors Harriman and Thompson agree to move sections 8 and 9 to the waiver section, then later consensus to move section 10 to waivers.

Mrs. Peck also confirmed there are many options people can use.

Councilor Harriman recommended that the committee review the proposed changes at the next meeting before sending them to the Town Council. Committee members concurred.

Ms. O'Meara proposed the next version will not include shading. She will provide both a red-line and "saved changes" version, which is easier to read. Staff will also send the draft to the Town Attorney for review.

Next meeting

The next meeting of the committee will be Monday, March 25th, beginning at 4:00 p.m. If there is no quorum for the meeting, a back-up date of Wednesday, March 27th, also at 4:00 p.m., was set. The agenda will include the Pesticide Ordinance and the Dyer Pond Road parking review. The committee also proposed an April 22nd, 4:00 p.m meeting date.

The meeting adjourned at 5:45 pm by a vote of 3-0.