

**Town of Cape Elizabeth
Ordinance Committee Minutes**

July 26, 2023

7:00 p.m.

Town Hall

Members Present: Penny Jordan, Chair
Caitlin Jordan
Gretchen Noonan

Guest: Nicole Boucher, Town Councilor

Staff: Maureen O'Meara, Town Planner; Jay Reynolds, Public Works Director

Councilor Penny Jordan called the meeting to order at 7:10 p.m. The meeting is being recorded using the Owl.

Minutes

The June 28, 2023 meeting minutes were approved by a vote of 3-0.

Public comment

Chair Jordan explained that attendees could comment now but she will allow comment as part of committee review. The consensus was that no comments would be made initially.

Pesticide Ordinance

Chair Jordan stated she would like this to be the final reading of the draft ordinance.

Nancy Ross, 12 Elmwood Rd – She would like the term ecological pest management (EPM) used. IPM [Integrated Pest Management] is a great concept, but it has been coopted by the pesticide industry. You can use the Scott treatments, spraying on a calendar, under IPM. We just had 2 inches of rain and then a pesticide was sprayed.

Chair Jordan asked if the public understands EPM? She did not receive the promised definition from Heather Spalding.

Heather Spalding, MOFGA, apologized and has defined steps.

The committee discussed how IPM is understandable to the public and it is important to have a definition. Chair Jordan asked how EPM differs?

Ms. Spalding said noted that pesticides are not used to treat aesthetics of lawn care. EPM emphasizes prevention and education. IPM is used to explain calendar treatment programs.

Councilor Noonan noted that the prohibition provision in the ordinance addresses that.

Mrs. Ross and Ms. Spalding want non-chemical approaches to have priority and EPM makes chemicals a last resort. Chair Jordan stated that anyone using IPM uses chemicals as a last resort. It was the consensus that the ordinance as proposed would not allow chemical application on a calendar schedule, as typically practiced by lawn care companies.

Ms. Spalding supports diverting from the state IPM definition to emphasize chemicals are a last resort. Councilor Caitlin Jordan asked how we can put chemicals as a last resort into a definition? That should be in the purpose statement, not the definition.

Mrs. Ross is opposed to a blanket exemption for invasive species.

There was discussion about the need for an EPM definition and concluded it was not needed.

Jesse O'Brien stated there are 2 lists of invasive plants. The Forest Service only lists pests for that year.

The committee discussed lists of pests.

Ms. Spalding said that items on a list does not mean it is an invasive. It could just be a concern and use of the list feels wider than needed. Mr. O'Brien offered the list is a good source of information.

Mrs. Ross said the list is very long, and includes plants like *rosa rugosa*, and should not be a reason for using a toxic chemical. The same point applies for some insects, like the Hemlock Woolly Adelgid, where nontoxic methods are successful.

The consensus is that a definition is still needed.

Councilor Caitlin Jordan noted the "Natural, organic and non-synthetic" definition should probably be broken up so that it can be easier to find in an alphabetical list. The committee discussed the need for the definition and agreed to delete the word "organic" after searching the ordinance and finding it was not significantly used elsewhere. The remaining definition will be for "non-synthetic."

The committee continued to review the draft and discussed the Applicability section. The section states the same thing in two places, which is not the preferred ordinance structure, but the committee prefers the clear statements about exemptions and it will be retained.

Councilor Boucher supports keeping the text in the ordinance about exemptions, and would like to maintain an effort at public communication, although that would not be ordinance language.

The committee agreed to add a reference to town policy for town land.

The committee discussed the need for the licensure language, noted it came from the original “referendum” ordinance, and deleted it after discussing that it does not seem to serve a purpose.

The committee added language that pesticides used to control invasives are allowed only after demonstration that mechanical and non-synthetic methods have not been successful.

The committee discussed the Prohibited activities section and the reference to the use of pesticides within 25’ of a water body, which is language from the “referendum” ordinance. Since applying pesticides within 25’ of a water body is already prohibited (subject to a waiver process with the Board of Pesticides Control), the language was deleted.

The committee discussed the Waivers provision. There was concern that a waiver could be obtained to treat invasives that are not a threat to human health.

Mrs. Ross said the original ordinance only included invasive insects.

The committee wants the invasives definition broken into 2 definitions, one for insects and one for plants.

The committee discussed the process for obtaining a waiver.

Councilor Caitlin Jordan is concerned how the waiver will relate to “not be detrimental to public health, safety and welfare?”

Chair Jordan is concerned that the topic requires expert knowledge and the town should contract with an expert instead of the code enforcement officer granting waiver requests.

Mr. O’Brien said that on his board, made up of 3 members and a staff person, not a lot of waivers are granted. Staff is directed to obtain a waiver application from South Portland.

Mrs. Ross objects to the grub exemption. In South Portland, pre-emergent treatment of grubs is not allowed on private property, but it is allowed on city fields, resulting in complaints from property owners.

The committee put the grub discussion on hold.

Councilor Boucher wants more guidance for the code enforcement officer to grant a waiver.

The committee deleted criteria for granting a waiver and requirements that an applicant explain how they meet waiver criteria as too confusing.

The committee suggested that the South Portland waiver board could also process Cape Elizabeth waivers. Councilor Caitlin Jordan noted that board would not want to administer provisions different from the South Portland provisions, so further discussion on how waivers will be processed was tabled until the next review.

The committee reviewed the draft Pesticides policy prepared by Jay Reynolds, Public Works Director.

Mr. Reynolds asked if there are revisions needed? He uses IPM, and maybe more/revised definitions are needed.

Councilor Caitlin Jordan asked how he defined “organic” and Mr. Reynolds responded that it is an industry definition.

Mr. O’Brien offered that you need to add biosolids.

The committee agreed that Chair Jordan will redline the draft and return it to Mr. Reynolds for editing and review at the next meeting.

Councilor Noonan used the example of poison ivy, asking that it not be removed unless it is located in high traffic, groomed areas. Mr. Reynolds concurred.

Mrs. Ross likes the policy. Members of the public will submit their recommended names for the policy, with guidance from Councilor Caitlin Jordan that the name be limited to 6 words.

Home Business Amendments

Chair Jordan invited Stefan Rurak to explain what he would like to do.

Stefan Rurak, 11 Spruce Lane – He would like to build a studio on his property and wants land use policies to be more flexible for artists. He wants to build a studio, make art and sculpture with function. He has a studio in Biddeford, but owns a double lot in Cape. He could build an accessory structure as a hobby, but if he is generating revenue, it is a business and not allowed. He understands not wanting business in neighborhoods, but has a gallery in New York that sells his work. He won’t create traffic like a day care, and has 1 employee. He can do this without upsetting people and there are people doing this now without town approval. His neighbors aren’t upset by it and the ordinance is elitist if it’s ok as a hobby.

Chair Jordan said the world has changed and more people have nonintrusive home businesses.

Councilor Caitlin Jordan agrees. We should delete the accessory structure prohibition. We can tweak the existing ordinance, perhaps allow 2 employees.

Chair Jordan expressed her objective that we allow businesses that have minimal impact and not create commercial areas in neighborhoods.

Mr. Rurak said he is not manufacturing; his scale is small.

Councilor Noonan referenced the home business regulations in other towns and Cape is the only one that does not allow a separate building.

The committee reviewed the existing regulations and made revisions to the home business and home occupation definitions. They discussed making home businesses a permitted use, which may be problematic for the qualitative standards like noise, dust, fumes. For now, the committee wants to keep that standard, and left home business as a conditional use, but will revisit at the next meeting.

Staff was directed to make revisions as discussed for review at the next meeting.

LD 2003 next steps

Ms. O'Meara was directed to contact town attorney Mary Costigan about preparing her review of the LD 2003 amendments to confirm it is not exceeding state requirements.

Chair Jordan said there are concerns that need clarification and she will relisten to the Town Council public hearing. There is a lot of confusion about the draft amendments. Someone needs to explain what we did in a clear way. She contacted GPCOG (Greater Portland Council of Governments) to obtain communication assistance and Tom Bell has done some work for Freeport on a 295 bridge reconstruction. He would help with making the connection between what the ordinance amendments say and what the law says, and he may find some tweaks. We should hold another public forum in September.

Councilor Caitlin Jordan wants comment boxes added to the redline document explaining how each amendment relates to LD 2003. Committee members concurred and Ms. O'Meara will prepare that.

Chair Jordan asked Councilor Boucher for ways to inform the public and she would like to explore robo transcriptions with Owl recordings to build on what we have.

Next meeting

The committee agreed to schedule a meeting for August 8th, when LD 2003 amendments will be discussed. Tom Bell will be invited to attend.

Another meeting was scheduled for September 13th, when the Home Business amendments and Pesticide Ordinance will be discussed.

The meeting adjourned at 11:15 p.m.

Postscript: The town attorney will not have the LD 2003 review ready for the August 8th meeting but can have it ready for the September 13th meeting, so Chair Jordan approved flipping the agendas. The August 8th meeting will include Home Business Amendments and the Pesticide Ordinance.