

2018

Town of Cape Elizabeth Maine Ordinances

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**Addressing Ordinance
TOWN of CAPE ELIZABETH**

CHAPTER 22

ADDRESSING ORDINANCE

Adopted Eff. 10/14/98

Section 22-1-1. Purpose

The purpose of this ordinance is to enhance the easy and rapid location of properties by law enforcement, fire, rescue, and emergency medical service personnel in the Town of Cape Elizabeth. The Town recognizes that, in some instances, it will be necessary to modify published and displayed addresses of certain resident locations to further the intent and purpose of the addressing project. Whenever possible, the addressing committee will mitigate disruption to town residents by changing only those addresses where there is a compelling public safety need to do so, and by those other means practicably available to it.

Section 22-2-1. Authority

Powers as provided for in Article VIII, Part 2, Section 1 of the Constitution of the State of Maine and Title 30-A M.R.S.A. Section 3001.

Section 22-3-1. Administration

This ordinance shall be administered by the addressing coordinator, who shall be the Chief of Police. The addressing coordinator is authorized to and shall assign property numbers and recommend road names for consideration by the Town Council both on existing and proposed roads, in accordance with the criteria in Sections 4 and 5. The addressing coordinator shall be assisted in this effort by the enhanced 911 Street Numbering Committee, as appointed by the addressing coordinator. The addressing officer, who shall be the town tax assessor, shall be responsible for maintaining the following official records of this ordinance:

- A. A Town map for official use showing road names and numbers.
- B. An alphabetical list of all property owners as identified by current assessment records, by last name, showing the assigned numbers.
- C. An alphabetical list of all roads with property owners listed in order of their assigned numbers.

Section 22-4-1. Naming System

All roads that serve two or more properties shall be named regardless of whether the ownership is public or private. A "road" refers to any highway, road, street, avenue, lane, private way, or similar paved, gravel, or dirt thoroughfare. "Property" refers to any property on which a more or less permanent structure has been erected or could be placed. A road name assigned by the Town of Cape Elizabeth shall not constitute or

imply acceptance of the road as a public way. The enhanced 911 Street Numbering Committee shall invite the involvement of those residents of affected neighborhoods in determining new or modified street names necessary to establish enhanced 911 addressing protocols. The enhanced 911 Street Numbering Committee shall liaison with members of the Cape Elizabeth Historic Preservation Society (or similar organization) who may serve as an information resource to resident of affected neighborhoods, and to the enhanced 911 Street Numbering Committee.

The following criteria shall govern the naming system:

- A. No two roads shall be given (substantively) the same name or similar sounding name.
- B. Each road shall have the same name throughout its entire length.

Section 22-5-1. Numbering System

Where needed, numbers shall be assigned every 50 feet along both sides of the road, with even numbers appearing on the left side of the road and odd numbers appearing on the right side of the road.

The following criteria shall govern the numbering system:

- A. All number origins shall begin from the intersection of the primary or secondary through or cross street. For dead-end roads, numbering shall originate at the intersection of the adjacent road and terminate at the dead-end.
- B. The number assigned to each structure shall be that of the numbered interval falling closest to the front door or the driveway of said structure if the front door cannot be seen from the main road.
- C. Every structure with more than one principal use or occupancy shall have a separate number for each use or occupancy. For example, duplexes will have two separate numbers.
- D. Apartments will have one property number, followed by an apartment number, such as 235 Maple Street, Apt. 2.
- E. On those streets accessed from either end, the property numbers shall begin and originate from that end of the street egressing onto the adjoining street carrying the greatest traffic volume.
- F. Notwithstanding the above, streets with the same name continuing into Cape Elizabeth from another municipality shall be numbered consistently beginning with the next consecutive number succeeding from those of the other municipality (to that extent possible).
- G. New Construction. Whenever any residence or other structure is constructed or developed, it shall be the duty of the new owner to procure an assigned number from the Addressing Officer. This shall be done at the time of the issuance of the building permit.

Section 22-6-1 Compliance

All owners of structures shall, by the date stipulated in Section 8, display and maintain, in a conspicuous place on said structure, the assigned numbers in the following manner:

A. Number on Structure. Where the structure is within 50 (fifty) feet from the edge of the road right-of-way and clearly visible, the assigned number shall be displayed on the front of the structure in the vicinity of the front door or entry.

B. Number at the Street Line. Where the structure is over 50 (fifty) feet from the edge of the road right-of-way, or not visible from the road, the assigned number shall be displayed on a post, fence, wall, the mailbox, or on some other structure at the property line adjacent to the walk or access drive to the numbered structure.

C. Size and Color of Numbers. Numbers shall be a minimum four inches high and be of a contrasting color to its background.

D. Every person whose duty is to display the assigned street number shall remove any different number from the structure, mailbox, post or stanchion which might be mistaken for, or confused with, the number assigned in conformance with this ordinance.

E. Interior Location. All residents and other occupants are requested to post their assigned street number and road name adjacent to their telephone for emergency reference.

Section 22-7-1. Notification and Inspection

It shall be the duty of the addressing coordinator to notify by mail each property owner and the Post office of their new address at least 60 (sixty) days prior to the effective date of their use. It shall be the duty of each property owner to post new property numbers, in accordance with this ordinance, on the state date of effective use. On new structures, numbering will be installed prior to final inspection or when the structure is first occupied, whichever comes first.

Section 22-8-1. Enforcement

Whoever violates any provision of this ordinance shall be punished in accordance with those penalties identified in Chapter 1, Section 1-1-7 of the Revised Official Code of the Town of Cape Elizabeth.

CHAPTER 2

ADMINISTRATIVE CODE

**[Adopted eff. 8/13/2009 under Article III, Section 8
of the Council-Manager Charter of the
Town of Cape Elizabeth, Maine with Amendments through 06/13/2016]**

Article 1. Municipal Departments

- Sec. 2-1-1. General Provisions**
- Sec. 2-1-2. Administrative Services Department**
- Sec. 2-1-3. Assessment Department**
- Sec. 2-1-4. Building and Inspection Department**
- Sec. 2-1-5. Fire Department**
- Sec. 2-1-6. Thomas Memorial Library**
- Sec. 2-1-7. Planning Department**
- Sec. 2-1-8. Police Department**
- Sec. 2-1-9. Public Works Department**
- Sec. 2-1-10. Community Services Department**

Article II. Positions Not Part of Other Municipal Departments

- Sec. 2-2-1. Town Engineer**
- Sec. 2-2-2. Municipal Comptroller**
- Sec. 2-2-3. Cable Television Coordinator**
- Sec. 2-2-4. Webmaster**
- Sec. 2-2-5. Facilities Manager**
- Sec. 2-2-6. Museum Manager**

Article III. Purchasing Procedure

- Sec. 2-3-1. Purpose**
- Sec. 2-3-2. General Provisions**
- Sec. 2-3-3. Sale of Equipment**

Article IV. Improvements to Town Owned Land and Buildings

- Sec. 2-4-1. Town to be the Applicant**
- Sec. 2-4-2. Town Council to Review Plans**
- Sec. 2-4-3. Role for Community Groups and Individuals**
- Sec. 2-4-4. Use of Municipal Resources**

Article I. Municipal Departments.

Sec. 2-1-1. General Provisions.

(a) Town Manager. The Town Manager shall be the administrative head of the Town and shall perform all the duties and have all the responsibilities prescribed by the Town Charter and the Town Council.

(b) Responsibilities. The Town Manager shall supervise the heads of all departments established by this Code and the Town Charter, and shall have the power to suspend and discipline, and to perform or delegate the duties and responsibilities of such department heads and of statutory officers unless disqualified to do so by statute. The Town Manager shall prepare and revise a personnel code for adoption by the Town Council and be responsible for its administration.

(c) Rules and Regulations. The Town Manager may prescribe such rules and regulations not inconsistent with the Town Charter and Town ordinances as the Town Manager may deem necessary for the conduct of the various departments, and he may investigate and inquire into the affairs of any department at any time.

(d) Municipal Departments Established. The administrative service of the Town shall consist of the following departments and the department heads shall be known by the titles shown:

- | | |
|----------------------------------|-----------------------------|
| 1. Administrative Services | Town Clerk |
| 2. Assessment | Assessor |
| 3. Building & Inspection | Code Enforcement Officer |
| 4. Fire | Fire Chief |
| 5. Thomas Memorial Library | Library Director |
| 6. Planning | Town Planner |
| 7. Police | Chief of Police |
| 8. Public Works | Director of Public Works |
| 9. Community Services Department | Community Services Director |

(e) Powers and Duties of Department Heads

1. Department heads shall be responsible for the efficient operations of their department. They shall perform all the duties and exercise all the powers conferred upon each office by applicable laws and ordinances. The Town Manager may not overrule any department head or any statutory officer on a lawful decision made by their office in their statutory capacity or as enabled by ordinance unless specifically authorized in an applicable ordinance or statute. No department head may overrule any statutory officer or municipal official on a lawful decision made by their office in their statutory capacity or as enabled by ordinance unless the department head is specifically authorized to do so in an applicable ordinance or statute.
2. Department heads may, with the approval of the Town Manager, establish such departmental divisions as may be desirable in the interest of economy and efficiency, and in accordance with sound administrative principles and practices.
3. Department heads may prescribe departmental regulations subject to the approval of the Town Manager not inconsistent with law, the Town Charter, and other ordinances and regulations of the Town Council, for the administration of their various departments, conduct of their employees, and the proper performance of the department's business.
4. Department heads shall attend meetings called by the Town Manager and meetings of board and commissions to which they have been assigned a staff responsibility.
5. Department heads shall supply to the Town Manager such reports as are required by the Town Manager.

(f) Selection, Qualification, Compensation & Terms of Office of Department Heads

1. All department heads shall be appointed and removed as prescribed in the Town Charter and Maine statutes on the basis of merit and fitness to perform their duties.

2. The compensation of all department heads shall be determined by the Town Manager subject to appropriations provided and any pay classification plan that may be available from time to time.

(g) Department Staff

1. Department heads may establish subordinate positions and make appointments and removals as may be necessary within the limits of the appropriations provided, subject to the provisions of the Town Charter, the personnel rules and regulations, and the approval of the Town Manager.
2. All employees shall be under the immediate supervision of their respective department or division head, and all employees shall be compensated in a fair and equitable manner and on the basis of any pay classification schedule that may be available from time to time. Department heads are responsible for an annual written evaluation of all employees within their department and copies of evaluations shall be provided annually to the Town Manager.

Sec. 2-1-2. Administrative Services Department.

(a) Department Staff. The Administrative Services Department shall consist of the Town Clerk, and such other level of staffing as may be recommended by the Town Manager and approved by the Town Council.

(b) Function. The Administrative Services Department shall perform the following functions:

1. Prepare, maintain, publish and index proceedings of the Town Council.
2. Arrange for all elections, and maintain all election and voter records.
3. Obtain and maintain all statistics on births, marriages, and deaths as required by law.
4. File and preserve, as required, all contracts, bonds, oaths of office and other documents.
5. Maintain the official record of all ordinances of the Town and of the proceedings of all boards, commissions and committees.
6. Be responsible for the safekeeping of the Town Seal.
7. Maintain a master calendar of municipal meetings.
8. Collect daily revenues on behalf of the Tax Collector and Town Treasurer.
9. Prepare and file documents to perfect tax collections.
10. Oversee the operations of the Spurwink Church.
11. Provide administrative support to the Town Manager.
12. Perform all other related functions as required.

Sec. 2-1-3. Assessment Department.

(a) Department Staff. The Assessment Department shall consist of the Assessor and such other levels of staffing as may be recommended by the Town Manager and approved by the Town Council.

(b) Function. The Assessor shall perform the following functions:

1. Carry out all the duties required of an assessor by State statute.
2. Prepare all assessments, tax rolls and tax notices as required by law.
3. Check all property transfers and maintain all property records pertaining to

- assessing function.
4. Perform other related functions as required.

Sec. 2-1-4. Building and Inspection Department.

(a) Department Staff. The Building and Inspection Department shall be under the immediate supervision of the Code Enforcement Officer who shall also serve, while meeting any statutory qualifications therefore, as the Building Inspector, Health Officer, Plumbing Inspector, and Electrical Inspector for the Town unless and until a different person is appointed to any such office.

- (b) Function. The Department shall perform the following duties:
1. Review and issue when appropriate plumbing, building, and electrical permits.
 2. Inspect existing housing, new construction, remodeling and land use for conformity to the Zoning Ordinance and all other related and appropriate codes.
 3. Provide staff assistance to the Zoning Board of Appeals.
 4. Perform all other functions that may be required by statute or ordinance.
 5. Perform all related functions as required.

Sec. 2-1-5. Fire Department.

1. Fire Chief, Deputies and Emergency Preparedness
1. The Fire Department shall be under the immediate supervision of the Fire Chief who shall have all the rights, powers, duties and responsibilities prescribed in State statutes relating to fire chiefs and in the Town Ordinances.
2. Deputy fire chiefs, not exceeding three (3) in number, shall be appointed and may be removed by the fire chief subject to the approval of the Town Manager. The deputy fire chiefs shall be appointed from among the memberships of the department's companies and shall not be carried on the rolls, receive compensation as a member, hold office in, or be considered as a member of the company from which they were appointed. Deputy fire chiefs shall be subject to an annual evaluation by the Fire Chief.
3. The fire chief shall appoint a Director of Emergency Preparedness who shall prepare for disasters, interact with the Maine Emergency Management System and the County Department of Emergency Management and who shall support disaster response during a disaster event.

(b) Department Companies.

1. The department shall consist of at least five companies, consisting of not less than twenty (20) nor more than forty (40) persons each, and such other companies as shall be established by the Board of Fire Commissioners and approved by the Town Council. Two of the companies shall be fire companies, one shall be a rescue company, one a water rescue company and one a fire/police unit.
2. Each company shall have officers, consisting of a captain, first lieutenant and second lieutenant, secretary, and treasurer. The officers shall be chosen by the Fire Chief based upon merit and fitness for their respective position. The captains and

lieutenants shall be successively responsible for the condition of their apparatus and the training and response of the companies.

3. Each company shall meet once a month for inspection of equipment or training.

Sec. 2-1-6. Thomas Memorial Library

(a) Department Staff. The Thomas Memorial Library Department shall consist of the Library Director and such other level of staffing as may be recommended by the Town Manager and approved by the Town Council.

(b) Responsibilities. The Thomas Memorial Library Department shall perform the following functions:

1. Select and purchase books, magazines, periodicals and other media to best serve the needs of the community.
2. Catalog and organize all such materials to ensure easy accessibility.
3. Circulate library materials for general use.
4. Provide a reference service for answering requests for specific information.
5. Provide library services in the library during the hours which best meet the needs of the community and provide an online catalogue and website to enable patrons to access library services.
6. Promote the availability of the library material to stimulate a wider general interest in its use.
7. Promote special services and guidance to adults and children in the use of educational and recreational materials.
8. Cooperate with community organizations to provide assistance in program planning and projects.
9. Maintain and care for all property assigned to the library.
10. Prepare and maintain all records pertaining to the Thomas Memorial Library.

Sec. 2-1-7 Planning Department

(a) Department Staff. The Planning Department shall be under the supervision of the Town Planner and consist of the Town Planner and such level of staffing as may be recommended by the Town Manager and approved by the Town Council.

(b) Function: The Planning Department shall perform the following functions:

1. Provide staff assistance to the Planning Board, Conservation Commission, and to other committees when requested by the Town Manager.
2. Maintain the Town's geographic information system (GIS)
3. Maintain records and maps of the Town's open space and greenbelt.
4. Assist with all issues related to the Comprehensive Plan.
5. Assist citizens with accessing property records.
6. Provide clerical assistance to the Assessment and the Building and Inspection Departments.
7. Perform all other functions that may be required by statute or ordinance.
8. Perform all related functions as required.

Sec. 2-1-8. Police Department

(a) Department Staff. The Police Department, under the supervision of the Chief of Police, shall consist of such forces of officers, reserve officers and other personnel as may be recommended by the Town Manager and approved by the Town Council. The Chief of Police shall appoint and may remove a Harbormaster who shall be responsible for the administration of the Harbors Ordinance and undertake statutory duties and responsibilities given to harbormasters in Maine.

(b) Function. The Police Department shall perform the following functions:

1. Enforce the laws and ordinances.
2. Prevent crime and maintain law and order.
3. Protect lives and property from malicious damage and injury.
4. Maintain and care for all property of the Police Department.
5. Prepare and maintain all necessary records pertaining to the Police Department.
6. Provide assistance to the public in all matters of law enforcement
7. Liaison with the school department to ensure proper safety in the schools and on school grounds.
8. Coordinate the animal control and dispatch relationship with neighboring communities.
9. Coordinate the municipal street lighting program.
10. Perform all related functions as required.

Sec. 2-1-9. Public Works Department

(a) Department Division. The Public Works Department, under the supervision of the Director of Public Works, shall consist of the divisions of Highway, Parks, Sewer, Refuse Disposal and Garage. Each division shall consist of such level of staffing as may be recommended by the Town Manager and approved by the Town Council.

(b) Highway Division. The Highway Division shall perform the following functions:

1. Construct, maintain and repair all roads, bridges, and sidewalks, except where specific projects may be let to contractors.
2. Remove snow and distribute salt and sand on all highways, streets, bridges, municipal and school properties, and public ways.
3. Remove snow on sidewalks designated by the Director of Public Works.
4. Maintain and care for all property and equipment assigned to the Highway Department.
5. Issue all permits for street openings.
6. Perform all other related functions as required.

(c) Parks Division. The Parks Division shall perform the following functions:

1. Develop, maintain and care for all municipal parks, school grounds, municipal lots, and cemeteries.
2. Maintain and care for all property and equipment assigned to the Division.
3. Perform all other related functions as required.

(d) Sewer Division. The Sewer Division shall perform the following functions:

1. Repair, maintain and operate the Town sewer system and treatment facilities, except that part of the system maintained by the Portland Water District, and except where specific projects may be let out to contract.
2. Maintain and care for all property and equipment assigned to the Sewer Division.

3. Prepare and maintain all necessary records pertaining to the Sewer Division except sewer billing records.
 4. Perform all other related functions as required.
- (e) Refuse Disposal Division. The Refuse Disposal Division shall perform the following functions:
1. Operate, maintain and repair the Town Recycling Center and all other municipal refuse disposal and recycling facilities.
 2. Maintain and care for all property and equipment assigned to the Refuse Disposal Division.
 3. Perform all other functions as required.
- (f) Garage Division. The Garage Division shall perform the following functions:
1. Operate, maintain and repair the Town Garage and its facilities.
 2. Repair and maintain all the motorized Town vehicles and other public works equipment.
 3. Purchase stock and charge to the using department parts and accessories as required, in conformance with the purchasing procedure.
 4. Maintain and care for all property and equipment assigned to the Garage Division.
 5. Perform all other related functions as required.

(g) Tree Warden. The Tree Warden shall be appointed and may be removed by the Director of Public Works subject to approval by the Town Manager. The Tree Warden shall be charged with such duties and exercise such powers as shall be prescribed from time to time by statute, local ordinances and regulations.

Sec. 2-1-10. Community Services Department

(a) Department Staff. The Community Services Department shall consist of the Community Services Director, and such other level of staffing as may be recommended by the Town Manager and approved by the Town Council.

(b) Function. The Community Services Department shall perform the following functions:

1. Plan, implement, evaluate and promote a comprehensive program of recreational, educational, cultural and social activities as well as enrichment opportunities for citizens of all ages.
2. Promote the general fitness of the community through aquatics programs at the Donald Richards Community Pool, operation of a fitness center, and through providing classes and activities that are exercise related.
3. Provide day care and preschool services in the community center.
4. Provide a comprehensive program of activities and support for senior citizens.
5. Provide support and coordination in the use of municipal and school facilities for community groups.
6. Represent non-school interests in issues involving athletic field use and coordinate with the school athletic director and public works director on field use issues.
7. Provide staff assistance to the Community Services Committee.
8. Maintain a close liaison with the school department on the use of school facilities and on adult education opportunities.
9. Perform all other related functions as required.

Article II. Positions Not Part of Other Municipal Departments

Sec. 2-2-1. Town Engineer. The Town Engineer shall be appointed by, and may be removed by, the Town Manager and is charged with such powers as may be prescribed by statute, regulation and ordinance.

Sec. 2-2-2. Municipal Comptroller.

(a) Municipal Comptroller. The Municipal Comptroller, who shall also serve as School Department Business Manager, shall be appointed by the School Board and shall be an employee of the School Department, which shall establish the salary and other terms of employment. The Superintendent of Schools shall consult the Town Manager on appointments and removals from this position.

(b) Function. The Municipal Comptroller shall serve the following functions:

1. Coordination of the municipal/school computer system including planning of system enhancements, arrangement of personnel training, accounting control functions and system maintenance.
2. Supervision of municipal/school accounting practices including the establishment of the chart of accounts, preparation of required financial reports to outside agencies, drafting of the annual financial statement and provision of assistance to the independent auditors.
3. Attend meetings of Town Department Heads.
4. Perform such functions as the School Department may require.
5. Perform related functions as required.

Sec. 2-2-3. Cable Television Coordinator. The Cable Television Coordinator shall be appointed and removed by the Town Manager. The coordinator shall operate the Town's public access channel and bulletin board in conformance with guidelines approved by the Town Council and shall perform related functions as required.

Sec. 2-2-4. Webmaster. The Webmaster shall be appointed and removed by the Town Manager. The Webmaster shall maintain the municipal website in conformance with guidelines approved by the Cape Elizabeth Town Council and shall perform related functions as required.

Sec. 2-2-5. Facilities Manager. The Facilities Manager shall be appointed and removed by the Superintendent of Schools. The Facilities Manager shall oversee building and energy related projects on municipal and school property. The Facilities Manager shall also maintain records on all municipal and school properties including records of energy use and work completed on buildings and shall perform related functions as required.

Sec. 2-2-6. Museum Director. The Director of the Museum at Portland Head Light shall be appointed and removed by the Town Manager, subject to the approval of the Board of Directors of the Museum at Portland Head Light. . The Museum Director shall provide for the curatorial direction and operation of the Museum at Portland Head Light, shall operate the gift shop at Portland Head Light and perform related functions as required.

Article III. Purchasing Procedure

Sec. 2-3-1 Purpose. The primary purpose of this purchasing procedure is to ensure that the goods and services purchased by the Town are of the quality needed and are secured at the lowest

possible price. A second objective is to purchase goods and services in a manner that all qualified vendors have an equal opportunity to do business with the Town.

Sec. 2-3-2. General Provisions.

(a) Department heads may purchase goods and services not to exceed \$5,000 without prior specific approval of the Town Manager provided funds are available in the budget line item. All purchases over \$250 shall be done with three price quotes which shall be kept in a log record within the department.

(b) Department heads may purchase goods and services of value between \$5,000 and \$10,000 with specific approval of the Town Manager provided funds are available in the budget line item. Department heads shall provide quotes to the Town Manager from at least three vendors or provide evidence of having sought three quotes.

(c) The Town Manager may purchase goods and services of value between \$10,000 and .05% of the last state valuation provided funds are available in the budget line item. All purchases shall be made with written sealed competitive bids concurrently opened in public.

(d) The Town Manager may purchase goods and services of value over .05% of the late state valuation only after the purchase has been specifically authorized by the Town Council.

(e) The Town Manager may make recurring purchases of professional services based on a competitive selection process and the competition shall be opened at least once every five years.

(f) The Town Manager may purchase on a recurring basis without competitive bidding goods and services from regional and statewide organizations serving local government and from other units of government. Such purchases shall be specifically disclosed as part of the annual budget process.

(g) The Town may participate in collaborative bidding with other entities including regional entities and may utilize prices given to the collaborative bid processes and the State of Maine though their competitive bids in lieu of obtaining bids independently.

(h) The Department Head, Town Manager, or Town Council, as applicable, shall accept the lowest best bid/quotation meeting specifications and may decide to accept or reject any or all bids. The Town Manager may waive any provision of the purchasing policy in times of emergency and if an insufficient number of bids or quotations are able to be obtained. This purchasing procedure shall not apply to goods purchased for resale. In determining the lowest best bid/quotation meeting specifications, the following shall be considered:

1. The ability, capacity, and skill of the bidder to perform the contract or provide the service required,
2. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
3. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
4. The quality of performance of previous contracts or services;
5. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or services;

6. The quality, availability and adaptability of the supplies, or contractual services to the particular use required;
7. The sufficiency of the financial resources and any required performance guarantees required to perform the contract or provide the service.
8. The ability of the bidder to provide future maintenance and service for the subject of the contract;
9. The number and scope of conditions attached to the bid or proposal;
10. The life cycle costs of all good or service to be provided;
11. In the event of a tie bid, quality and service being equal, preference may be given to a local vendor.

Sec. 2-3-3. Sale of Equipment. No Town equipment or property may be sold without authorization of the Town Manager except goods specifically purchased for resale. Any equipment or property with a value in excess of \$15,000 may be only be sold upon authorization of the Town Council. Property in this instance is defined as “goods” and does not include real property and property interests which may be sold only with Town Council authorization.

Article IV Improvements to Town Owned Land and Buildings

Sec. 2-4-1. Town to be the Applicant. All projects on municipal and school property needing review or a permit shall be directly overseen by the Town Manager or a designee of the Town Manager. The Town manager shall be responsible for all permitting including local building permits, state and federal permits, and for coordinating presentation before all review agencies. Any private groups interested in a project may represent their own interest before any review board, but shall not be recognized as representing the Town.

Sec. 2-4-2. Town Council to Review Plans. Any project over \$50,000 in estimated costs and requiring a building permit shall not be submitted to any review agency without first being authorized by the Town Council. This shall not apply to drainage projects or to emergency repairs. The Town Council authorization shall include two separate authorizations. The first shall be for funding and project planning and design. The second authorization shall be for approval of the specific application/plans to be submitted.

Sec. 2-4-3 Role for Community Groups and Individuals. Some projects on municipal or school property may involve contributions of funds and/or in-kind services from groups or individuals. The Town Treasurer may not accept any gifts for projects without acceptance by the Town Council or unless the Town Council has authorized fund raising for the project. Persons and groups providing financial or in-kind support for a project may provide input into project planning, but the scope of any project must be approved by the Town Council. Any projects within school buildings involving community groups shall be subject to school department regulation.

Sec. 2-4-4 Use of Municipal Resources. Some projects on municipal and school property may be jointly funded by private groups and individuals and by the Town. The Town Council shall approve a cost sharing agreement for any joint project and no physical work may begin on a project or any construction contract signed unless funds are in place to complete the project or written cost sharing plan provides otherwise.

CHAPTER 14

BICYCLES

Adopted Effective 1/9/90

Sec. 14-1-1. Purpose. The purpose of this bicycle ordinance is to ensure the safety and welfare of bicyclists and the public at large relative to the ownership and operation of bicycles.

Sec. 14-1-2. Bicycle Licenses. The Cape Elizabeth Police Department shall as a public service provide a system of bicycle licensing in order to assist in the recovery of bicycles separated from their owner. A copy of this ordinance shall be given to each bicycle licensee and shall be distributed during any bicycle safety programs sponsored by the Cape Elizabeth Police Department.

Sec. 14-1-3. Bicycle Operation.

A. All operators of a bicycle shall:

1. Operate their bicycle as far as is practicable to the right side of the road except when making left turns.
2. Limit ridership on their bike only to the number of persons for which their bike is designed.
3. Not ride other than astride a regular or permanent seat.
4. Not operate a bicycle abreast or beside any part of another bicycle upon any public way except while passing another bicycle.
5. Be granted all the rights and shall be subject to all of the duties applicable to drivers of motor vehicles, except as to special regulations and to provisions in State Statutes which by their nature can have no application.
6. Not attach themselves to a moving vehicle.
7. Obey the instructions of official traffic control signals, signs and other control devices applicable to vehicles.
8. Stay within lined paved shoulders when at least three feet of pavement is available within a lined paved shoulder.
9. Yield the right-of-way to pedestrians and to oncoming motor vehicles.

10. Not exceed a posted motor vehicle speed limit.

B. All bicycles operated on a public way shall:

1. When used at nighttime, be equipped with a lighted lamp on the front.
2. Have reflectors or reflective tape clearly visible from the rear.
3. Be equipped with a functional brake.

Sec. 14-1-4. Penalties. Any person violating any provision of Sec. 14-1-3 by improperly operating a bicycle, or by operating an improper bicycle, shall be guilty of a misdemeanor and subject to a fine up to the amount of \$50.00, to be recovered for the use of the Town by action brought in the District Court or in another court of competent jurisdiction.

1
2 **Repeal CHAPTER 4, BOARDS AND COMMISSIONS and replace with**

3
4 **CHAPTER 4,**
5 **BOARDS AND COMMITTEES**

6
7
8 **SEC. 4-1-1. Establishment.** The Town Council shall have the authority to form boards
9 and committees as are required by statute, by town charter and ordinances adopted
10 thereunder, and by Town Council vote as it shall deem necessary from time to time. The
11 Town Council shall establish a charge and duties for each board and committee, as
12 described below or, in the case of future boards and committees, at the time the board
13 or committee is created. Except when boards and committees are designated by statute
14 with authority independent of the Town Council, all boards and committees shall be
15 advisory to the Town Council. The Town Manager shall assign staff support to boards
16 and commissions as appropriate.

17
18 **SEC. 4-1-2. Appointment.** Board and committee members shall be appointed by vote of
19 the Town Council. The Town Council shall consider board and committee
20 appointments recommended by the Appointments Committee. The Town Council may
21 forego the Appointments Committee process if the appointment is time-sensitive, is
22 related to unique subject matter, or the committee charge designates representatives
23 from existing committees. The Town Council may select a sitting board or committee
24 member to serve another term, but there should be no expectation of reappointment.

25
26 **SEC. 4-1-3. Removal and Vacancies.** Board and Committee members may be removed
27 by a vote of the Town Council for cause shown. When a Board or committee member
28 resigns prior to the end of the term, the Appointments Committee shall recommend a
29 replacement for the portion of the unexpired term.

30
31 **SEC. 4-1-4. Additional Town Council appointments.** The Town Council designates
32 itself to perform the duties of the following boards. The membership and terms of these
33 boards shall be the membership and terms of the Town Council.

- 34
35 A. Board of Trustees of the Thomas Memorial Library
36
37 B. Board of Trustees of the Riverside Memorial Cemetery
38
39 C. Board of Directors of the Museum at Portland Head Light
40
41 D. Board of Trustees of the Thomas Jordan Trust
42

1 **SEC. 4-1-5. Operations of all Boards and Committees.** All boards and committees shall
2 perform their duties in compliance with the following provisions.

3
4 A. Chair. Every board and committee shall elect or have designated by the Town
5 Council a Chair of the board or committee. The chair shall be responsible for
6 conducting meetings, for making reports to the Town Council upon request, and
7 for coordinating with town staff meeting logistics. The chair shall serve for one
8 calendar year on a standing board or committee or for the set duration of an ad
9 hoc committee. A standing board or committee chair shall not serve more than
10 two (2) consecutive years as chair. The chair shall be a full participating and
11 voting member of the board or committee.

12
13 B. Quorum. Board and committee meetings shall only begin when a quorum is
14 present. A quorum is more than fifty percent (50%) of the total board or
15 committee membership. Meetings sponsored by a board or committee when no
16 vote will be taken are not required to have a quorum and may include, but are
17 not limited to, site walks and public information meetings.

18
19 C. Public Participation. Boards and committees shall conduct all business in
20 compliance with the spirit and letter of the Maine Freedom of Access Act, as may
21 be amended, and Town Council policy. Compliance shall include, but not be
22 limited, to the following:

- 23
- 24 1. Agenda. Every meeting of a board or committee shall have an agenda that
25 includes the name of the committee holding the meeting, date, time, and
26 place of the meeting, subject areas to be discussed at the meeting, and the
27 public participation allowed at the meeting.
 - 28
29 2. Announcement. Board and committee meetings shall be announced in ample
30 time to allow public attendance, by posting on the town website and other
31 methods as appropriate. A meeting agenda shall be available prior to the
32 meeting. Board and committee meeting supplemental materials shall also be
33 available for the public to review at a designated town office.
 - 34
35 3. Minutes. Minutes of all board and committee meetings shall be prepared by
36 staff and posted to the town website. Minutes shall include the name of the
37 board or committee meeting, date, time and place of the meeting, board and
38 committee members present and a summary of any votes taken. The name
39 and address of members of the public who speak at the meeting, including a
40 brief summary of their comments, shall also be included. Board and
41 committee minutes shall be reviewed and adopted at the next meeting, except
42 for the last meeting of ad-hoc committees, when the minutes shall be
43 reviewed and approved by the board or committee chair.

1
2 4. Public Access. All board and committee meetings shall be open to the public
3 to attend. No board or committee business shall be conducted by board or
4 committee members outside of board or committee meetings. Individual
5 board or committee members may communicate with staff, and the board or
6 committee chair is expected to communicate with staff. Communications
7 relevant to board or committee business must be shared at the next meeting.
8 Nothing in this provision shall prohibit a board or committee from holding
9 an Executive Session as provided under state statute.

10
11 5. Public comment. Except as specified in board or committee bylaws, public
12 comment shall be allowed at every board and committee meeting. Boards and
13 committees shall also limit oral public comment at meetings to assure
14 completion of assigned duties. Boards and committees shall adopt public
15 participation rules, using the Town Council's rules of public participation as
16 guidance, and shall include public participation rules on each meeting
17 agenda. Written public comments shall be directed to the board or committee
18 staff, and staff shall distribute the comments to the board or committee
19 members and shall also keep a copy in the public file. Any written comments,
20 including email, received by a board or committee member regarding board
21 or committee business shall be forwarded to staff for distribution to all
22 members and added to the public file.

23
24 D. Conflict of Interest. Board and committee members should avoid both actual and
25 perceived conflicts of interest and bias. Determinations of conflict of interest
26 and/or bias shall be determined in accordance with state statute. Board and
27 committee members shall also be guided by the Code of Ethics for the Town
28 Council.

29
30 **SEC. 4-1-6. Standing Boards and Committees.** Boards and committees with ongoing
31 responsibilities and duties are considered standing boards and committees. Except
32 where specifically designated by statute and/or town ordinance with authority
33 independent of the Town Council, standing boards and committees are advisory to the
34 Town Council.

35
36 A. Composition. A standing board or committee shall be composed of a defined
37 number of members who are residents of the town, unless otherwise specified in
38 the board or committee description. Board and committee members shall be
39 appointed for staggered, three (3) year terms expiring on December 31st. A board
40 or committee member's service during an unexpired term shall not be included
41 in any term limit. Board and committee members shall be volunteers without
42 compensation.
43

1 B. Responsibilities. All standing boards and committees shall perform the following
2 duties:

- 3
- 4 1. Bylaws. If any board or committee promulgates bylaws in addition to the
5 provisions in Sec. 4-1-5, Operations of Boards and Committees, bylaws,
6 including amendments, must be submitted to the Town Council for approval.
7
- 8 2. Meetings. Boards and committees shall meet as needed commensurate with
9 their duties and responsibilities. When a board or committee will be meeting
10 several times a year, an effort shall be made to establish a regular meeting
11 schedule for the year to be posted on the town website.
12
- 13 3. Vacancy. All boards and committees shall notify the Town Clerk of any
14 vacancy (not related to the end of a term) on the board or committee.
15

16 C. Upon Request Responsibilities. All standing boards and committees shall
17 perform the following duties, and any other assigned tasks, upon Town Council
18 request.
19

- 20 1. Goals. All boards and committees shall develop annual goals for submission
21 to the Town Council.
22
- 23 2. Budget. All boards and committees shall submit to the town manager
24 funding requirements for the next fiscal year.
25
- 26 3. Year end report. All boards and committees shall provide a calendar year end
27 report.
28

29 **SEC. 4-1-7. Establishment of Standing Boards and Committees.** The following
30 standing boards and committees are established. The Town Council shall appoint
31 members with staggered terms of 3 years. Board and committee members are limited to
32 serve no more than 3 consecutive terms without a break in membership. In addition to
33 the responsibilities described below, boards and committees shall provide
34 recommendations and policy changes as the Town Council may require from time to
35 time.
36

37 A. Board of Assessment Review
38

- 39 1. Membership. The Board of Assessment Review shall consist of three
40 members (3).
41

- 1 2. Purpose. The purpose of the Board of Assessment Review shall be to
2 comply with the statutes of the State of Maine in the establishment of
3 assessments for the purpose of taxation.
4
5 3. Duties. The Board of Assessment Review shall have the power to:
6
7 a. Review, on complaint of property owner, and revise assessments
8 for the purpose of taxation of real and personal property within the
9 town limits made by the town assessor.
10
11 b. Administer oaths.
12
13 c. Take testimony.
14
15 d. Hold hearings.
16
17 e. Adopt regulations regarding the procedure of assessment review
18 not inconsistent with statutory provisions.
19
20 f. Hear an appeal of a decision of the Town Council relating to
21 applications for abatement of local property taxes.
22

23 B. Community Services Committee
24

- 25 1. Membership. The Community Services Committee shall consist of seven
26 (7) members.
27
28 2. Purpose. The purpose of the Community Services Committee shall be to
29 advocate for versatile community programs offering educational, cultural,
30 recreational and social enrichment opportunities.
31
32 3. Duties. The Community Services Committee shall have the following
33 duties and responsibilities:
34
35 a. Perform regular outreach efforts to assess satisfaction with current
36 programming and identify unmet needs.
37
38 b. Advise the Community Services Director on issues of interest that
39 relate to the programming offered by the Community Services
40 Department.
41

42 C. Conservation Committee
43

1. Membership. The Conservation Committee shall consist of seven (7) members.
 2. Purpose. The purpose of the Conservation Committee shall be to act in the role of conservation commission as described in the statutes of the State of Maine, to be the steward of the Cape Elizabeth Greenbelt, and to advise on wetland and natural resource issues.
 3. Duties. The Conservation Committee shall have the following duties and responsibilities:
 - a. Act as Steward of Town open space as described in the Conservation Ordinance, Chapter 18, Article V, Open Space Management.
 - b. Advise the Planning Board in the review of open space set aside as part of Subdivision Review, Subdivision Ordinance, Chapter 16, and in the review of Resource Protection Permits, Zoning Ordinance, Chapter 19.
 - c. Administer the Open Space Evaluation and Preservation Program, Chapter 18.
 - d. Prepare the Greenbelt Plan for Town Council consideration.
- D. Firing Range Committee
1. Membership. The Firing Range Committee shall consist of five (5) members.
 2. Purpose. The purpose of the Firing Range Committee shall be to make recommendations to the Town Council regarding licensing of shooting ranges as conferred in the Shooting Range Ordinance, Chapter 24.
 3. Duties. The Firing Range Committee shall have the following duties:
 - a. Review license applications and inspect firing ranges in accordance with the Shooting Range Ordinance, Chapter 24.
 - b. Recommend rules and regulations for shooting ranges for Town Council consideration.
 - c. Review complaints.

1
2 E. Fort Williams Park Committee
3

- 4 1. Membership. The Fort Williams Park Committee shall consist of seven (7)
5 members.
6
7 2. Purpose. The purpose of the Fort Williams Park Committee shall be to
8 advise the Town Council on policies for Fort Williams Park.
9
10 3. Duties. The Fort Williams Park Committee shall have the following duties:
11
12 a. Recommend policies regarding use of the park.
13
14 b. Prepare or update a master plan or special reports for park
15 improvements.
16
17 c. Review any special event proposed for Fort Williams Park in
18 accordance with the current Group Use Policy.
19

20 F. Personnel Appeals Board
21

- 22 1. Membership. The Personnel Appeals Board shall consist of three (3)
23 members.
24
25 2. Purpose. The purpose of the Personnel Appeals Board shall be to consider
26 appeals as provided for in the Personnel Code, Chapter 3, and any
27 collective bargaining agreement that may confer such jurisdiction.
28
29 3. Duties. The Personnel Appeals Board shall have the following duties and
30 responsibilities:
31
32 a. Hold hearings as provided for in the Personnel Code, Chapter 3.
33
34 b. Hold hearings as provided for in collective bargaining agreements
35 when jurisdiction has been conferred.
36

37 G. Planning Board
38

- 39 1. Membership. The Planning Board shall consist of seven (7) members.
40
41 2. Purpose. The purpose of the Planning Board shall be to advocate that
42 development of private and public property be done in an orderly manner
43 that protects the public health, safety and welfare.

- 1
2 3. Duties. The Planning Board shall have the following duties:
3
4 a. Exercise and perform such rights, powers, and duties as are
5 conferred or imposed under the provisions of the statutes, local
6 ordinances, and regulations thereunder, and as the same may from
7 time to time hereafter be amended.
8
9 b. Advise the Town Council in the amendment of the Zoning and
10 Subdivision Ordinances, and other ordinances upon request.
11
12 c. Advise the Town Council, upon request, on short and long-term
13 planning policies.
14
15 d. Advise the Town Planner on planning procedures and public
16 participation efforts.
17

18 H. Recycling Committee

- 19
20 1. Membership. The Recycling Committee shall consist of seven (7)
21 members.
22
23 2. Purpose. The purpose of the Recycling Committee shall be to promote
24 recycling of solid waste in the community, provide environmental
25 stewardship and protect the environment.
26
27 3. Duties. The Recycling Committee shall have the following duties:
28
29 a. Recommend policies that increase reuse and recycling in the
30 community and promote environmental stewardship.
31
32 b. Conduct public education and promotional efforts to increase
33 recycling.
34
35 c. Monitor recycling trends and changes in the solid waste industry.
36

37 I. Riverside Cemetery Committee

- 38
39 1. Membership. The Riverside Cemetery Committee shall consist of three (3)
40 members.
41
42 2. Purpose. The purpose of the Riverside Cemetery Committee shall be to
43 advise the Town Council on policies of Riverside Memorial Park.

1
2 3. Duties. The Riverside Cemetery Committee shall have the following
3 duties and responsibilities:
4

5 a. Administer management policies that preserve the park as a
6 respectful place for burial of town residents.
7

8 b. Monitor and manage capacity needs of the cemetery.
9

10 c. Prepare and update the master plan.
11

12 J. Thomas Memorial Library Committee
13

14 1. Membership. The Thomas Memorial Library Committee shall consist of
15 seven (7) members.
16

17 2. Purpose. The purpose of the Thomas Memorial Library Committee shall
18 be to advocate for a library that provides a wide range of services and
19 enrichment opportunities for the community.
20

21 3. Duties. The Thomas Memorial Library Committee shall have the
22 following duties and responsibilities:
23

24 a. Advise the Library Director on matters of the library, such as the
25 collection, services, programs, facilities, and policies.
26

27 b. Work cooperatively with groups that seek to assist the library.
28 Committee members may, upon request, serve on independent
29 boards whose purpose is to support the library.
30

31 K. Board of Zoning Appeals
32

33 1. Membership. The Board of Zoning Appeals shall consist of seven (7)
34 members.
35

36 2. Purpose. The purpose of the Board of Zoning Appeals shall be to provide
37 property owners an opportunity to seek relief from the provisions of the
38 Zoning Ordinance, as required by the statutes of the state of Maine, or the
39 decision of the Code Enforcement Officer.
40

41 3. Duties. The Board of Zoning Appeals shall have the following duties and
42 responsibilities:
43

- 1 a. Exercise and perform such rights, powers, and duties as are
2 conferred or imposed under the provisions of the statutes and the
3 Zoning Ordinance, Chapter 19, and as the same may from time to
4 time hereafter be amended.
5
6 b. Consider appeals, applications for special permits, and
7 interpretations of the Sewer Ordinance, Chapter 15 and the
8 Stormwater Ordinance, Chapter 25.
9

10 **SEC. 4-1-8. Ad Hoc Committees.** Committees formed by the Town Council to
11 complete defined tasks and then be disbanded are ad hoc committees. The Town
12 Council may create an ad hoc committee as needed. When creating an ad hoc
13 committee, the Town Council shall adopt a committee charge that includes the name,
14 composition, and purpose of the committee, tasks to be completed, a deadline for
15 completion of committee work (which may be extended by the Town Council), and
16 direction to the Town Manager to assign staff support as needed. Ad hoc committees
17 shall perform their duties in compliance with Sec. 4-1-5, Operation of Boards and
18 Committees.
19
20
21

COASTAL WATERS and HARBOR ORDINANCE

(Adopted Eff. May 10, 1989)
(Amended July 13, 2005 – Effective August 10, 2005)

CHAPTER 10

ARTICLE I General Provisions

Sec. 10-1-1. Purpose. This Ordinance is to establish regulations for marine activities within the harbors, waterways and tidal waters of the Town of Cape Elizabeth, Maine to ensure safety to persons and property, to promote availability and use of a valuable public resource and to create a fair and efficient framework for the administration of that resource. This Ordinance shall be subordinate to existing Federal and State Laws governing the same matters and is not intended to preempt other valid laws.

Sec. 10-1-2. Harbor Limits.

(a) Seal Cove Harbor Limits. The harbor limits of Seal Cove, sometimes referred to as Kettle Cove, shall include the area of water northerly of the straight line between McKenney Point and East Point, so called, on Richmond Island. The Inner Harbor at Seal Cove (northerly of a line from McKenney Point to black can buoy 'C-1' near the harbor entrance and easterly of a straight line from such can buoy through Crow Rock, so called, to the shore) is hereby designated as a mooring area.

(b) Maiden Cove Harbor Limits. The harbor limits of Maiden Cove shall include the area of water located southwesterly of a straight line running approximately 345 magnetic from the point forming the easterly end of Maiden Cove and located southeasterly of the rocks off the cliff at the westerly end of Maiden Cove. The waters within such harbor limits, excepting the swimming area utilized by the Cape Cottage Beach Association, are hereby designated as a mooring area.

(c) Additional Harbors. In addition to the two major harbors listed above, numerous other coves and inlets are used for mooring and anchorage of vessels. This Ordinance shall also apply to these coves and inlets although no harbor limits have been established.

ARTICLE II

Sec. 10-2-1, Definitions.

(a) Anchorage: Shall mean an area of a harbor set aside for the temporary anchoring of vessels.

(b) Auxiliary: Shall mean any vessel having both sails and either an inboard or outboard motor and which may be propelled by its sails or by its motor, or both.

(c) Basin: Shall mean a naturally or artificially enclosed or nearly enclosed body of water where small craft may lie (anchor).

(d) Beach: Shall mean a public or private beach area bordering the waters of Cape Elizabeth.

(e) Commercial Vessel: Shall mean any vessel whose primary use is fishing.

(f) Distress: Shall mean a state of disability or a present or obviously imminent danger, which, if unduly prolonged, could endanger life or property.

(g) Emergency: Shall mean a state of imminent or proximate danger to life or property in which time is of the essence.

(h) Fairway: Shall mean a navigable channel in a harbor.

(i) Float: Shall mean any floating structure normally used as a point of transfer for passengers and goods and/or for mooring purposes.

(j) Mooring: Shall mean any appliance used by a vessel for permanent anchoring purposes and which appliance is not carried aboard such vessel when underway as regular equipment.

(k) Non-Resident: Shall mean a person who does not fall within the definition of Resident.

(l) Resident: Shall mean any person whose principal residence is in the Town of Cape Elizabeth; or who owns property and uses that property as a residence for at least 60 days a year.

Proof of residency may be established through voter registration, payment of real estate taxes or rental receipts for residential property within the Town of Cape Elizabeth.

(m) Riparian Owner: Shall mean an owner of a parcel of land located in the Town of Cape Elizabeth which borders upon a harbor, cove or inlet commonly used for mooring or anchorage of vessels.

(n) Shore: Shall mean that part of the land in immediate contact with a body of water, including the area between the high and low water lines.

(o) Shall and May: 'Shall' is mandatory, 'May' is permissive.

(p) State: Shall mean the State of Maine.

(q) Stray Vessel: Shall mean (1) an abandoned vessel, (2) a vessel the owner of which is unknown, or (3) a vessel underway without a competent person in command.

(r) To Anchor: Shall mean to secure a vessel to the bottom within a body of water by dropping an anchor(s) or other ground tackle, which is carried aboard a vessel when underway as regular equipment.

(s) Underway: Shall mean the condition of a vessel not at anchor, without moorings, and not made fast to the shore nor aground.

(t) Vessel: Shall mean a floating object, boat or craft of any size designed for self-propelled travel on water.

(u) Wash: Shall mean a surge of water, wave.

(v) Waterway: Shall mean any water area providing access from one place to another, principally a water area providing a regular route for water traffic.

ARTICLE III Harbor Master

Sec. 10-3-1. Harbor Master Appointment. A Harbor Master for the Town of Cape Elizabeth shall be appointed and may be removed by the Chief of Police subject to the approval of the Town Manager and shall be subject to all the provisions of Title 38, Maine Revised Statutes Annotated Section 1 et seq. as amended.

In addition, the Harbor Master for the Town of Cape Elizabeth shall also be subject to the following local provisions:

Sec. 10-3-2. Maritime Agent. The Harbor Master is to be considered the maritime agent of the Cape Elizabeth Town Council and shall have full authority for the interpretation and enforcement of all regulations affecting the harbors, waterways and tidal waters of the Town of Cape Elizabeth.

Sec. 10-3-3. Appeals. The Town Manager shall serve as the appeal authority for any person (s) aggrieved by any decision, act or failure to act by the Harbor Master. Any party aggrieved by a decision of the Town Manager may seek review of such decision pursuant to Rule 80 of the Maine Rules of Civil Procedure, as may be amended.

Sec. 10-3-4. Responsibility for Equipment. The Harbor Master shall be the municipal overseer of all town owned marine oriented equipment not specifically included within the purview of any other Town Board or Department.

Sec. 10-3-5. Mooring Records. The Harbor Master shall maintain copies of all mooring records as well as any waiting list for mooring location assignment.

ARTICLE IV Anchoring of Vessels

Sec. 10-4-1. Anchoring Only With Permission. There shall be no anchoring of vessels in the designated mooring areas of Seal Cove and Maiden Cove without the permission of the Harbor Master except under extreme emergency conditions.

Sec. 10-4-2 Shifting Berths of Anchored Vessels. Anchoring will be permitted within all other tidal waters of the Town of Cape Elizabeth at the discretion of the vessel's operator. Anchored vessels may be required to shift their berth at the direction of the Harbormaster if they are the subject of noise or other complaints, or for the safety of the vessel or the safety of others.

Sec. 10-4-3 Anchored Vessels to Abide by Regulations. All anchored vessels shall abide by all Federal Regulations for anchored vessels including but not limited to Day Signals and/or lights for signals, etc.

ARTICLE V

Moorings

Sec. 10-5-1. Mooring Location Assignments. All mooring locations shall be assigned by the Harbor Master. No mooring shall be placed without a written permit from the Harbor Master authorizing placement of a mooring at a specific location. Moorings shall be placed within thirty (30) days of obtaining a permit or July first (1) of the year the permit is obtained, whichever is later.

Sec. 10-5-2. Mooring Permit. All permits issued hereunder shall be for a period of one (1) year, and shall be subject to renewal annually. Permit holders who elect not to renew must notify the Harbor Master and remove their mooring. The mooring permit of any person who violates any of the provisions of these regulations may be revoked by written notice to that effect signed by the Harbor Master.

Sec. 10-5-3. Moorings to be Registered and Numbered. Moorings shall be registered and numbered at all times. Mooring numbers shall be issued by the Harbor Master at the time a mooring permit is issued.

Sec. 10-5-4. Mooring Locations Subject to Change. All moorings shall be subject to change in location at the owner's expense if such change is deemed by the Harbor Master to be in the best interest of the Town.

Sec. 10-5-5. Harbor Master Empowered to Remove Moorings. If a mooring owner refuses to move his mooring after receiving written notice to do so, the Harbor Master is authorized, after a fourteen (14) day waiting period to remove the mooring float, mark the mooring chain with an identifying tag and drop the chain to the bottom. If the Harbor Master determines that the anchor and chain could pose a fouling hazard to anchoring vessels or there is other reason for removal, the mooring gear may be pulled and the permit holder billed for the cost. The Harbor Master shall store any removed mooring gear up to six (6) months. During that period of time, the owner may reclaim the equipment after payment of any expenses or fines as provided under Title 38 M.R.S.A. §4.

Sec. 10-5-6. Location and Waiting Lists. Within the limitations of Sections 3 and 6 of Title 38, the Harbor Master shall assign mooring locations and maintain a waiting list for mooring locations.

Sec. 10-5-7. Standards. All moorings shall be of sufficient size and weight with chain and rope in sound condition to properly secure the moored vessel and the float attached to the mooring line shall be of sufficient size and buoyancy to remain afloat when not attached to the vessel.

Moorings shall be equal or greater in size, strength and weight than the minimum standards as set by the Harbormaster. The adequacy of each mooring set remains the responsibility of the individual boat owner. Standards set by the Town are minimum standards.

Sec. 10-5-8. Fees. The Town Council shall establish mooring permit fees.

Sec. 10-5-9. Renewals and Abandoned Moorings. Any mooring not used by the vessel(s) named on the permit application for at least seven (7) days during the previous year may be refused a permit renewal if its presence is preventing applications for that mooring area from being approved or requiring new mooring installations to be placed in more exposed locations. All mooring gear is to be removed by the owner within two (2) weeks of permit expiration. Moorings without current permits may be removed by the Harbor Master as provided in Sec. 10-5-5 of this Ordinance.

Sec. 10-5-10. Inspection. All moorings shall be inspected according to a schedule and procedures to be posted by the Harbor Master. Inspection shall be performed only by individuals or organizations authorized by the Harbor Master and written reports of all inspections must be submitted to the Harbor Master. The mooring permit holder shall be responsible for all costs associated with mooring inspections.

Sec. 10-5-11. Buoys. Mooring marker buoys shall be visible at all tides. Buoys shall be white with a blue stripe.

Sec. 10-5-12. Town Moorings. Any moorings placed by the Town of Cape Elizabeth in any harbor under the jurisdiction of the Town shall not be used for a period longer than twelve (12) hours by any vessel, except by permission of the Harbor Master.

Sec. 10-5-13. Subletting of Mooring Space. The owner of any vessel having mooring space shall not sublet said mooring or mooring space to another user or vessel owner; however, another vessel owner may use the mooring, provided the original owner pays the fee or fees and has received permission from the Harbor Master to moor such vessel.

Sec. 10-5-14. Dinghies. Dinghies may not be tied astern of moored vessels for more than 24 hours.

Sec. 10-5-15. Mooring Limitations. Lobster crate or lobster car moorings are not to be used for vessel moorings.

ARTICLE VI

Channels

Sec. 10-6-1. Channel Designations and Restrictions. The Town Council may from time to time establish channels for the passage of vessels in the harbors and waterways of the Town after due consideration of the recommendations of the Harbor Master. There shall be no anchoring or mooring in any channels designated as such.

Sec. 10-6-2. Interference with Channel Markers. Whoever moors a vessel, boat, raft or scow to any buoy or beacon placed by the Town of Cape Elizabeth in any waters subject to its jurisdiction to define the channels for vessels, or in any manner make the same fast thereto, or willfully destroys any such buoy or beacon shall be in violation of this Ordinance and liable upon complaint of the Harbor Master as provided in Sec. 10-8-1 of this Ordinance.

Sec. 10-6-3. Obstruction of Channels and Removal of Sunken Vessels.

(a) It shall be unlawful to tie up or anchor a vessel in a Cape Elizabeth harbor in such a manner as to obstruct the fairways, launch ramps or channels or to prevent or obstruct the passage of other vessels; or to voluntarily or carelessly sink or allow to be sunk any vessel in any channel, fairway, berthing space; or to float loose timbers, debris, logs or piles in any channel, fairway or berthing space in such manner as to impede navigation or cause damage to vessels therein. It is understood that wrecked or sunken vessels within a harbor are subject to the published rules and regulations of the United States Coast Guard and any applicable state law, rules or regulations.

(b) Whenever the navigation of any waters within a Cape Elizabeth harbor or maritime facility, including anchorages and berths herein, shall be obstructed or endangered by any sunken vessel or other obstruction or danger which has existed for a period of more than ten (10) days, the vessel or obstruction shall be subject to removal, sale or other disposition. The owner(s) of such vessel or other property causing said obstruction or danger shall be liable to the Town of Cape Elizabeth for all costs incident to said removal and disposition, and the Town of Cape Elizabeth, its employees, agents and officers shall not be liable for damages of any nature whatsoever originating out of or in any way connected with removal, sale or disposition of such vessel or other property.

ARTICLE VII

General Boating and Traffic Control Regulations

Sec. 10-7-1. Traffic Control Authority. The Harbor Master shall have the authority to control water borne traffic in any portion of the waters of a harbor or maritime facility under the Town's jurisdiction by use of authorized State regulatory markers, signals, orders or directions at any time preceding, during and after any race, regattas, parade or other special event held in any portion of the waters of a harbor or maritime facility or at any time when the Harbor Master deems it necessary in the interest of safety of persons and vessels or other property, and it shall be unlawful for any person to willfully fail or refuse to comply with any authorized State regulatory marker utilized by the Harbor Master, or with any signal, orders or directions of the Harbor Master.

Sec. 10-7-2. Basic Speed Law. The operation of any vessel within the harbor area in excess of posted speed limits or, in the absence of such limits, in a manner to create a wash which endangers persons or property, shall constitute a violation of this Ordinance; provided that special written permission may be granted to conduct and engage in water sports and regattas in specific designated areas.

Sec. 10-7-3. Discharge of Refuse and Sewage. It shall be a violation of this Ordinance to discharge into the waters of the harbor any sewage, refuse, garbage or waste matter, petroleum or petroleum matter, paint, varnish, timber or any other foreign matter, including dead animals, fish and bait.

Sec. 10-7-4. Responsibility for Sanitation of Facilities. The owner, captain, lessee, agent, manager or person in charge of a vessel, facility or water area adjacent to or within a Cape Elizabeth harbor shall, at all times, maintain the premises under their charge in a clean, sanitary condition, free from malodorous materials and accumulations of garbage, refuse, debris and other waste materials. Should the Harbor Master find that any vessel, facility or water area is not so maintained, the Harbor Master shall, in writing, notify said

owner, captain, lessee, agent, manager or other person in charge of said vessel, facility or area to immediately commence and diligently prosecute to completion of the necessary correction of the unsanitary condition to the satisfaction of the Harbor Master. Failure to do so with reasonable dispatch shall be a violation of this Article, and the Harbor Master may then cause the condition to be corrected and charged to said owner, captain, lessee, agent, manager or person in charge.

Sec. 10-7-5. Buoys. No person shall place buoys of any type, other than lobster pot buoys and marker buoys, within the boundaries of the mooring areas established by these regulations without written permission of the Harbor Master.

Sec. 10-7-6. Water Skiing. There shall be no water skiing within established mooring areas.

Sec. 10-7-7. Launch Ramps. Motor vehicles are not to be left unattended on or near launch ramps. All motor vehicles are to be parked only in designated areas and motor vehicle operators are to comply with all parking regulations as posted by the Town of Cape Elizabeth or the State of Maine.

Sec. 10-7-8. Liability.

(a) Vessel Owner: Any person using the facilities within the limit of a harbor or maritime facility shall assume all risk of damage or loss to his property and the Town of Cape Elizabeth assumes no risk on account of fire, theft, Act of God or damages of any kind to vessels within harbors or maritime facility.

(b) Secure Berthing and Anchoring of Vessels. The owner of any vessel moored or anchored within Cape Elizabeth harbors or maritime facilities shall be responsible for causing such vessel to be tied and secured or anchored with proper care and equipment and in such manner as may be required to prevent breakaway and resulting damage, and shall, thereafter, provide for periodic inspection maintenance, replacement and adjustment of anchor, mooring or tie lines at reasonable intervals.

Sec. 10-7-9. Unseaworthy Vessels Prohibited in Harbor. A person shall not moor or permit to be moored, in any harbor, a vessel of any kind whatsoever which is unseaworthy or in a badly deteriorated condition or which is likely to sink or to damage docks, wharves, floats or other vessels or which may become a menace to navigation, except in cases of emergency.

Sec. 10-7-10. Correcting an Unsafe Berthing. If any vessel shall be found, in the judgment of the Harbor Master, to be anchored or moored with any harbor or maritime facility in an unsafe or dangerous manner, or in such a way as to create a hazard to other vessels, persons or property, the Harbor Master shall order and direct necessary measures to eliminate such unsafe or dangerous condition. Primary responsibility for compliance with such orders and directions shall rest with the owner of the improperly anchored or moored vessel or his authorized agent; in the absence of such owner or agent, said responsibility shall rest with the authorized operator of the facility at which the vessel is anchored or moored. In an emergency situation and in the absence of any such responsible person, the Harbor Master shall forthwith board such vessel and cause the improper situation to be corrected, and the owner of the vessel shall be liable for any costs incurred by the Town of Cape Elizabeth in effecting such correction.

Sec. 10-7-11. Removal and Custody of Illegally Berthed or Abandoned Vessels. If any unattended vessel shall be found to be anchored or moored illegally within a harbor or maritime facility, or if the Harbor Master has reasonable grounds to believe that a vessel has been abandoned within a Cape Elizabeth harbor or maritime facility, the Harbor Master may assume custody of such vessel and cause it to be removed and held or placed in storage. The Town of Cape Elizabeth or its officials shall not be held liable for any damage or loss to such vessel or its contents nor liable to its owner before or after assuming custody. Vessels so taken into custody shall be released to the owner by the Town Manager only after satisfactory proof of ownership has been presented and full reimbursement made to the Town for all costs incident to recovery, movement and storage.

Sec. 10-7-12. Damage to Harbor or Other Property. It shall be unlawful to willfully or carelessly destroy, damage, disturb or interfere with any public or private property in the harbor area.

Sec. 10-7-13. Tampering With or Boarding Vessels Without Permission. It shall be a violation of this Ordinance for any person willfully to board, break in, enter, damage, move or tamper with any vessel or part thereof located within the harbor unless authorized by the rightful owner of such vessel. Violation of this provision shall constitute a misdemeanor, punishable by the penalties hereinabove provided for violations of this Ordinance and to additional penalties not to exceed the aggregate \$1,000 and six months imprisonment for each offense. Any person violating this provision shall, in addition, be responsible to the rightful owner of any such vessel for any damages caused by such violation and to the reasonable costs incurred as a result thereof including any attorney's fees.

Sec. 10-7-14. Obstruction of facilities. It shall be a violation of this Ordinance for any person to willfully prevent any other person from the use and enjoyment of the harbor facilities.

ARTICLE VIII

Enforcement and Invalidity

Sec. 10-8-1. Enforcement. Except as enumerated elsewhere in this Ordinance or as stated by the Maine Revised Statutes Annotated, violation of this Ordinance shall be punishable as follows:

a) Any person who shall violate any provision of this Ordinance shall be punished upon conviction, by a fine of not less than twenty-five (\$25.00) and not more than one hundred (\$100.00) dollars. All fines shall be paid to the Town of Cape Elizabeth.

b) Each day that such violation continues to exist shall constitute a separate offense. Any law enforcement officer vested with the authority to carry a weapon and make arrests shall have the authority to enforce this Ordinance.

Sec. 10-8-2. Invalidity Provisions. If any provision of this Ordinance is held invalid or inoperative, the remainder shall continue in full force and affect as though such invalid or inoperative provisions had not been made.

TOWN OF CAPE ELIZABETH

CHAPTER 5

COMMERCIAL LICENSES AND PERMITS

ARTICLE 1'. SPECIAL AMUSEMENT ORDINANCE. [Adopted eff. 6/21/78, pursuant to M.R.S.A. 1964, T. 28, Sec. 702.]

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Sec. 5-1-7.	Admission	5-3
Sec. 5-1-8.	Penalty	5-3

Sec. 5-1-1. Purpose and Definitions.

The purpose of this ordinance is to regulate the provision of music, dancing, or other entertainment in premises within the Town licensed by the State for liquor to be consumed on the premises, as required by M.R.S.A. Sec. 702 as used in this Ordinance.

a. "Entertainment" shall include any amusement, performance, exhibition or diversion for patrons or customers of the licensed premises whether provided by professional entertainers or by full time or part-time employees of the licensed premises whose incidental duties include activities with an entertainment value.

b. "Licensee" shall mean the holder of an effective license issued by the State for the sale of liquor to be consumed on the premises within the Town.
Permit Required

No licensee shall permit, on his licensed premises, any music, except radio or other mechanical device, any dancing or entertainment of any sort unless the licensee shall have first obtained from the Town a special amusement permit signed by at least a majority of the municipal officers. The fee for a special amusement permit shall be \$10. A permit shall be valid only for the license year of the applicant's existing liquor license.

Applications for all special amusement permits shall be made in writing to the municipal officers and shall state the name of the applicant; his residence address; the name of the business to be conducted; his business address; the nature of his business; the location to be used; whether the applicant has ever had a license to conduct the business therein described either denied or revoked and, if so, the applicant shall describe those circumstances specifically; whether the applicant including all partners or corporate officers, has ever been convicted of a felony and, if so, the applicant shall describe specifically those circumstances; and any additional information as may be needed by the municipal officers in the issuing of the permit, including but not limited to a copy of the applicant's current liquor license.

The municipal officers shall, prior to action upon a new permit application, hold a public hearing at the next meeting of the Town Council to be held after receipt of the application and due notice of the hearing, which notice shall be given to the applicant and shall be published in a newspaper having general circulation within the Town at least 7

days prior to such hearing. At the hearing, the testimony of the applicant, its municipal officials and of any interested members of the public shall be taken. The municipal officers shall, prior to action upon a renewal application, provide a comment period at the next meeting of the Town Council to be held after receipt of the application to applicants, municipal officials and interested citizens, but no formal public hearing or newspaper advertising is required. [Amended Eff. 2/9/94]

The municipal officers shall grant a permit unless they find that the premises to be used for such music, dancing or other entertainment do not fully comply with all applicable ordinances and regulations of the Town or that issuance of the permit will be detrimental to the public health, safety or welfare, or would violate municipal ordinances, or rules and regulations, articles, or by-laws.

Sec. 5-1-3. Inspections.

Whenever inspections of the premises used in connection with the operation of a business which has obtained a special amusement permit are provided for or required by ordinance or State law, or are reasonably necessary to determine compliance with any ordinance provision or State law, it shall be the duty of the licensee, or the person in charge of the premises to be inspected, to admit any officer, official, or employee of the Town authorized to make the inspection at any reasonable time that admission be requested.

Whenever an analysis of any commodity or material is reasonably necessary to determine compliance with any ordinance provision or State law, it shall be the duty of the licensee, or the person in charge of the premises, to give to any authorized officer, official, or employee of the Town requesting the same sufficient samples of the material or commodity for analysis.

In addition to any other penalty which may be provided, the municipal officers may revoke the special amusement permit of any licensee in the Town who refuses to permit any such officer, official, analysis, provided that written demand for such inspection or sample is sought, or who interferes with such officer, official, or employee while in the performance of his duty.

Sec. 5-1-4. Suspension of Revocation of Permit.

The municipal officers may, after a public hearing preceded by notice to the licensee and any other interested parties, suspend, or revoke any special amusement permits which have been issued under this Ordinance on the grounds that the music, dancing, or entertainment so permitted constitutes a detriment to the public health, safety or welfare, or violates any municipal ordinances, articles, by-laws, or rules and regulations.

SEC. 5-1-5. Rules and Regulations.

The municipal officers are hereby authorized, after public notice and hearing, to establish written rules and regulations consistent with this ordinance governing the issuance, suspension, and revocation of special amusement permits, the classes of permits, the music, dancing, or entertainment permitted under each class, and other limitations on these activities required to protect the public health, safety and welfare. These rules and regulations may specifically determine the location and size of permitted premises, the facilities that may be required for the permitted activities on those premises, and the hours during which the permitted activities are permitted.

Sec. 5-1-6 Permit and Appeal Procedures

a. Decision. Any licensee requesting a special amusement permit from the municipal officers shall be notified in writing of their decision no later than fifteen (15) days from the date his request was received. In the event that a licensee is denied a permit, the licensee shall be provided with the reasons for the denial in writing. The licensee may not reapply for a permit within 30 days after an application for a permit which has been denied.

(b) Appeal. Any licensee who has requested a permit and has been denied, or whose permit has been revoked or suspended, may, within 30 days of the denial, suspension or revocation, appeal the decision to the Board of Zoning appeals established under Sec. 19-4-7 of the Code of Ordinances, the jurisdiction of which is expended for said purposes. The Board of Zoning Appeals may grant or reinstate the permit if it finds that the permitted activities would not constitute a detriment to the public health, safety, or welfare, or that the denial, revocation or suspension was arbitrary or capricious or that the denial, revocation or suspension was not based by a preponderance of the evidence upon a violation of any ordinance, article, by-law, or rule or regulation of the municipality.

Sec. 5-1-7. Admission.

A licensed hotel, Class A restaurant, Class A tavern or restaurant malt liquor licensee who has been issued a special amusement permit may charge admission to designated areas approved by the municipal special amusement permit.

Sec. 5-1-8. Penalty

Any licensee, or person in charge of his licensed premises, who is found to have violated any provision of ordinance upon complaint to the District Court shall be punished by a fine of not more than Seventy-five Dollars (\$75.00) for the first such offense, and of not more than One Hundred Dollars (\$100.00) for any subsequent offense, to be recovered for the use of the Town.

CHAPTER 20

COMMUNICATIONS

[Adopted Eff. 1/26/77 Under R.S.1964, T. 30, Sec. 2151
and Subsequent Amendments Through 1/12/94]]

CATV Ordinance

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Article I

Sec. 20-1-1. Purposes. The purposes of this ordinance are to provide for Town regulation and use of community antenna television systems, including their construction, operation and maintenance in, along, upon, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated, and all extensions thereof and additions thereto in the Town of Cape Elizabeth, including poles, wires, cables, underground conduits, manholes, conductors and fixtures necessary for the maintenance and operation in the Town of Cape Elizabeth of community antenna television systems; and to provide conditions accompanying the grant of franchises for the construction, installation, maintenance and operation of community antenna television systems.

Sec. 20-1-2. Definitions.

(a) **"Community Antenna Television System"**, referred to in this Ordinance as "CATV System", shall mean any facility that, in whole or in part, receives directly or indirectly, over the air or otherwise, and amplifies or otherwise modifies signals transmitting programs broadcast by one or more television or radio stations, or originates its own signal or signals or broadcasts or re-broadcasts signals originating from any other party, and distributes such signals by wire or cable to subscribing members of the public who pay for such services, but such term shall not include any such facility that serves only the residents or apartment dwellings under common ownership, control or management.

(b) **"Cable Television Company"** means any person, firm or corporation owning, controlling, operating, managing or leasing a CATV System within the Town of Cape Elizabeth, sometimes hereafter referred to as "the Company".

Sec. 20-1-3. Franchise Required. No person, firm, company, or corporation shall construct, install, maintain or operate within the Town any equipment or facilities for the operation of a CATV System unless a franchise authorizing the use of public streets or other properties or areas has first been obtained pursuant to the provisions of this Ordinance and unless said franchise is in full force and effect.

Sec. 20-1-4. Franchise Contract Procedures

(a) The Municipal Officers of the Town of Cape Elizabeth may grant exclusive or non-exclusive contracts, on such terms, conditions and fees as are in the best interests of the Town of Cape Elizabeth and its residents, to one or more Cable Television companies for the operation of CATV Systems throughout the Town, or any part or parts thereof, granting a franchise or franchises for the installation, construction, maintenance and operation thereof for a period not to exceed fifteen (15) years.

(b) Any person, firm or corporation desiring a franchise for the construction, installation, maintenance and operation of a CATV System within the Town of Cape Elizabeth shall make application therefor only in response to a Request for Applications issued by the Town. Any such Request for Applications shall be in a form approved by the Municipal Officers, shall be published, in a newspaper of general circulation within the Town, once in each of the three weeks next preceding the week in which applications are to be received, and shall be posted at two conspicuous places within the Town. The rules and conditions set forth by the Town in its Request for Applications shall govern all bidding procedures. The Town may in its Request for Applications reserve the right to waive any formalities in bidding procedure and to accept any particular bid, or to reject any or all such bids, if it is deemed in the best interests of the Town to do so.

(c) Each applicant for a franchise shall pay a non-refundable filing fee to the Town of Twenty-five Dollars (\$25.00) to defray the costs of public notice, advertising and the expenses of hearings relating to such application. All applications shall be filed with the Town Clerk in such form, and containing such information, as the Municipal Officers may require, including without limitation a general description of the applicant's proposed operation, a statement of all television and radio signals to be provided, a statement describing special services to be provided, a statement of its policy governing extensions of service, a schedule of proposed subscriber rates, installation and hook-up charges, and other charges, a statement detailing its business and corporate organization including a list of all stockholders, owners or partners thereof and any affiliates or subsidiaries thereof, a financial statement for the two previous fiscal years, an estimated financial projection for its proposed CATV System for the term applied for, a statement of the proposed annual Town franchise fee and the basis therefor, a statement detailing the prior operational experience of the applicant in CATV services including that of its

officers, management and staff to be associated with the proposed operation, a list of all existing franchises held by the applicant, and such other information as the Municipal Officers deem reasonably necessary for its determinations.

(d) Upon receipt of all applications pursuant to its Request for Applications, the Municipal Officers shall, with respect to each applicant, review the character and competence of the proposed management, their financial and technical qualifications, the adequacy and feasibility of their proposals to construct, maintain and operate a CATV System within the Town, and the reasonableness of the fees to be paid by each applicant. The Municipal Officers shall conduct a public hearing before the issuance of any franchise contract, at which each applicant may make such brief presentation as it desires and shall remain available for questioning by the public and the Municipal Officers; notice of special public hearing shall be posted in two conspicuous places within the Town and published in a newspaper having general circulation within the Town not less than seven days prior to the hearing.

Sec. 20-1-5 Franchise Contract Terms.

(a) Notwithstanding any other provisions included in a franchise contract by the Municipal Officers, all fees, rates, deposits or charges to subscribers including without limitation monthly subscriber rates and installation and hook-up charges, shall be fair and reasonable and shall be filed with the Municipal officers not less than 30 days prior to becoming effective. [Revised Eff. 8/10/77.]

(b) Any franchise contract granted hereunder may require the company to file such report or reports with the Municipal Officers in such form and at such times as the Municipal Officers may determine, including without limitation annual financial reports, annual facilities reports, annual service record reports, network maps, and certificates of performance.

(c) In addition to any remedies or other methods of enforcement specified in any contract franchise granted hereunder, any franchise may be revoked by the Municipal Officers for cause after due notice to the company and public hearing thereon, with the right to appeal such revocation to the Cumberland County Superior Court under Rule 80-B of the Superior Court Rules of Civil Procedure.

Sec. 20-1-6. Performance Bond and Insurance Coverage

Upon approval by the Federal Communications Commission of any franchise contract the Cable Television Company shall file and maintain a surety company performance bond in the amount of \$50,000 conditioned upon the faithful performance of said contract and full compliance with any laws, ordinances and regulations governing the same, so as to enable the Town to recover any loss, cost, damage or expense arising out of any failure to perform faithfully said franchise contract, including reasonable attorney fees and costs; when the Company commences customer service said bond shall

be reduced to \$25,000. Further, in accordance with the terms set by the Municipal Officers in said franchise contract, the Company shall file and maintain public liability insurance covering its activities in constructing, installing, maintaining and operating a CATV System in the Town. [Revised, Eff. 8/10/77]

Sec. 20-1-7. Rules, Regulations and Procedures. The Municipal Officers of Cape Elizabeth may:

(a) adopt such rules and regulations as they deem necessary for monitoring and regulating the construction, installation, maintenance and operation of CATV Systems in the Town;

(b) make recommendations to the Cable Television Company concerning educational and local interest programming and services;

(c) resolve any complaints, disputes or disagreements between subscribers and the Company, or concerning the installation, maintenance or operation of a CATV System; [Revised Eff. 8/10/77]

(d) conduct such public hearings and issue such appropriate orders as they may deem necessary to correct any deficiencies in the operation of any CATV System. The Municipal Officers' decisions and findings shall be final and binding upon all parties including the Company, except such decisions or findings may be appealed to the Cumberland County Superior Court under said Rule 80-B.

Sec. 20-1-8. Construction; Separability. All actions required or permitted hereunder shall be taken, all regulations and decisions shall be adopted, and this Ordinance shall be construed, in a manner consistent wherever possible with the regulations and requirements of the Federal Communications Commission. If any section, subdivision, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction or by any federal regulatory agency, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof. [Revised Eff. 8/10/77]

CHAPTER 18
CONSERVATION ORDINANCE

TOWN OF CAPE ELIZABETH, MAINE

Effective November 5, 2016

CHAPTER 18

CONSERVATION

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Article I. Sprague Conservation Area.
[Adopted eff. 5/8/1974 under R. S. 1964, T. 30, Sec.
1916 & Sec. 2151.]

Sec. 18-1-1. Nighttime Closure of Town Ways. Charles E. Jordan Road and that portion of Fowler Road southwesterly from its intersection with Bowery Beach Road shall be closed each day between the hours of sunset and sunrise to use by the general public, and by all persons excepting those requiring access to residences from said roads, their agents and guests, or requiring access to provide necessary governmental services; such closure shall be indicated by appropriate signs and may be enforced by installation of an appropriate gate, chain or other device, which signs, device and the necessity therefore shall be determined by the Cape Elizabeth Conservation Committee after consultation with the Town Manager.

Sec. 18-1-2. Speed Limits for Vehicles. The Town Council shall submit for appropriate State authorization such restriction of the speed for vehicles on Charles E. Jordan Road and that portion of Fowler Road that lies southwesterly from its intersection with Bowery Beach Road as the Cape Elizabeth Conservation Committee may recommend to the Town Council as being necessary for the proper conservation of wildlife in the lands through which such roads pass.

Sec. 18-1-3. Parking Prohibited; Traffic Direction. The parking of motor vehicles along Charles E. Jordan Road and that portion of Fowler Road which lies southwesterly from its intersection with Bowery Beach Road shall be limited to points designated by the Cape Elizabeth Conservation Committee, which points may differentiate between occupied standing vehicles and unattended vehicles and shall be fixed from time to time in order to minimize possible obstruction of traffic, assure opportunities to view from such roads, and otherwise enhance the development and proper management of wildlife and other natural resources. The Conservation Committee may cause the erection from time to time of signs designating and restricting such parking where appropriate, if it determines such signs to be necessary to accomplish the foregoing purposes.

Sec. 18-1-4. Authority to Further Wildlife Management. The Cape Elizabeth Conservation Committee is authorized and empowered to cooperate and negotiate with Sprague Corporation, the State Department of Inland Fisheries and Game and other persons or bodies interested in the enhancement and proper management of the wildlife resources within lands abutting or adjacent to Charles E. Jordan Road and that portion of Fowler Road which lies southwesterly of its intersection with Bowery Beach Road, in order (a) to designate and set aside appropriate parking areas or turn-outs along said roads, (b) to obtain appropriate conservation easements for the Town, (c) to further appropriate wildlife and natural resources management practices in the areas adjacent to said roads, (d) to designate, regulate and assist in administering wildlife viewing and feeding areas for use by the general public within said lands; provided that final action for the benefit of or binding upon the

Town of Cape Elizabeth which may result from such negotiations by the Committee shall be taken only after vote of the Town Council approving such specific action.

Sec. 18-1-5. Violation, Penalty. Any person who shall violate the closure of the southwesterly portion of Fowler Road or of Charles E. Jordan Road as provided in Sec. 18-1-1, or any parking restrictions established and posted under Sec. 18-1-3 of this Ordinance shall, upon conviction therefore in the District Court, be punished by a fine not exceeding One Hundred Dollars (\$100) for each such violation, to be forfeited and paid over to the use of the Town, and such fine shall not be less than Twenty-Five Dollars (\$25) in the event of a conviction for violation of Sec. 18-1-1 hereof and not less than Ten Dollars (\$10) upon conviction for violation of Sec. 18-1-3 hereof.

Article II. RESERVED (Effective November 5, 2016)

Article III. Tree Ordinance.

[Adopted eff. 10/25/1978 under R. S. 1964, T. 30,
Sec. 3901. Revised eff. 10/12/2010]

Sec. 18-3-1. Purpose. The purpose of this Ordinance is to protect the public safety and general welfare through the preservation and conservation of healthy trees in public areas of the Town, the regulation of the planting, maintenance and removal of trees in public areas, and the pruning and removal of trees on private property which endanger public safety.

Sec. 18-3-2. Definitions.

- a. **Property Owner** shall mean the person owning real estate in question as shown by the current tax maps on file in the office of the municipal assessor of the Town of Cape Elizabeth, unless the contrary is shown.
- b. **Public Areas** shall include all streets, treelawns, open space, forested lands, greenbelt trails and grounds owned or controlled by the Town of Cape Elizabeth.
- c. **Public Trees** shall include all trees growing or that have fallen in any public area and that part of any tree overhanging a public area.
- d. **Street** shall mean the entire width of every public way and every right of way in which the general public has a right of use.
- e. **Treelawn** shall mean that part of any street lying between the line of abutting private property and that portion of the street improved for use by vehicular traffic, except that area which may be covered by sidewalk or other paving.
- f. **Tree** shall mean any woody plant having one or more erect stems, including shrubs and woody vines, of any size if planted or set out under the authority of this Ordinance, but otherwise only those trees which exceed 8 feet in height.

Sec. 18-3-3. Tree Warden. The Tree Warden shall be appointed in accordance with the Administrative Code and shall have training or demonstrated experience in the arts and sciences of municipal arboriculture, ornamental or landscape horticulture, urban forestry or other closely related fields. In the absence of the Tree Warden, or during any vacancy in the position, his functions shall be carried out by the Director of Public Works or a qualified alternate appointed by the Town Manager.

Sec. 18-3-4. Duties of Tree Warden. The Tree Warden shall administer this Ordinance and in doing so shall:

- a. Regulate the planting, maintenance and removal of public trees in order to insure the safety of the public and preserve the aesthetics of public areas.
- b. Have the authority, subject to approval by the Town Council, to promulgate the rules and regulations of the "International Arborist Society's Arboricultural Specifications and Standards of Practice" governing the planting, maintenance, fertilization, pruning, bracing and removal of trees in public areas, with such variations and revisions as he deems advisable from time to time.
- c. Have the authority to develop, formulate and update a Master Tree Plan subject to the approval of the Town Council. The Master Tree Plan shall specify the species of trees to be planted on such public areas within the Town as the Tree Warden deems advisable, and after the effective date of any portion of the Master Tree Plan all plantings by the Town or other persons within the public areas covered by said Plan shall conform thereto. The Tree Warden shall consider all existing and future utility and environmental factors when designating specific species for public areas within the Plan.
- d. Undertake such planting, maintenance and removal programs for public trees as the Tree Warden deems appropriate with the Master Tree Plan.
- e. Have the authority to grant permits for the planting, maintenance or removal of trees within public areas of the Town, to impose reasonable conditions upon the work to be performed under any such permit consistent with the intent of this Ordinance, and to supervise and inspect work permitted and halt any work performed without a permit where a permit is required or performed in violation of the terms of a permit.
- f. Have the authority to have pruned or removed any trees or parts of trees on private property which endanger the public safety, but only after notice to the property owner and satisfaction of the following requirements:

The Tree Warden shall attempt to obtain agreement by the property owner to the procedures which the Tree Warden recommends, and in the absence of such agreement the Tree Warden shall undertake such work only upon the affirmative vote of the Town Council following opportunity for the Tree Warden and property owner to be heard before the Town Council; the cost of pruning or removal under this provision shall be paid or reimbursed by the property owner unless otherwise agreed.

Sec. 18-3-5. Tree Permits Required. No person shall plant, spray, fertilize, prune, remove or otherwise disturb any public tree, and no person shall excavate, ditch, tunnel, trench, lay any pavement or construct any building or structure within a distance of 10 feet from a public tree, or within the drip line of a public tree, whichever distance is greater, without obtaining a permit from the Tree Warden for such work, except that in emergency situations requiring immediate pruning or removal, the work may be done so long as the Tree Warden is informed thereof within two business days. Any public tree planted without such permit, or in violation of the terms of a permit, may be removed by the Tree Warden unless such planting is otherwise consistent with the terms of this Ordinance, and the cost of such removal shall be paid or reimbursed by the person responsible for such planting. Any permit for the removal of a public tree shall require as a condition thereof that such tree be replaced, where possible and appropriate, in the same general location or on abutting private property, with a tree deemed comparable or appropriate by the Tree Warden.

Sec. 18-3-6. Tree Permit Procedures.

- a. Requests for tree permits shall be made at the Department of Public Works, directed to the Tree Warden, not less than two business days prior to the time of the work proposed. The request shall be accompanied by such fee as the Town Council may establish from time to time. The request shall be in such form and call for such information as the Tree Warden may require in order to determine compliance with this Ordinance and any regulations adopted thereunder, including the following:
 1. Requests for planting trees shall describe the location proposed, the method of planting, and the number, size, grade, species and variety of such trees;
 2. Requests for tree maintenance work shall state the number, kinds and size of the trees to be treated, the kind of treatment proposed and the composition of any fertilizer or spray material to be applied.
 3. Requests for the removal of any tree shall set forth the reason for the proposed removal and the procedures to be used, and shall set forth the information required under Paragraph 1 of this Section with respect to replacement trees to be planted or the reasons why such replacement is not deemed possible or appropriate; and
 4. Requests for any excavation or construction work adjacent to a public tree shall describe the location of the public trees involved, the nature of the work proposed, and the structures, barriers and procedures to be used to protect such public trees during the course of such work.
- b. The Tree Warden shall issue the permit requested upon a finding that the activity proposed will not endanger the public safety and is not inconsistent with an effective Master Tree Plan, that any new trees to be planted are appropriate for the climate and soils condition of the location proposed, that any spray material or fertilizers proposed are lawful and appropriate, that the proposed procedures and workmanship are adequate, and that the activity proposed is consistent with any regulations adopted under this Ordinance. The activity proposed shall be carried out in compliance with any regulations adopted in accordance with Sec. 18-3-4 (b), and in compliance with any reasonable conditions imposed by the Tree Warden in order to assure compliance with this Ordinance. Any permit granted shall contain a definite

expiration date by which the proposed activity shall be completed, provided that the Tree Warden may extend said expiration date for good cause; notice of completion shall be given to the Tree Warden for his inspection of the work within five days following completion.

Sec. 18-3-7. Abuse or Mutilation of Public Trees. Unless specifically authorized by the Tree Warden, no person shall intentionally damage, cut, carve, transplant or remove any public tree; attach any rope, wire, nails, advertising posters, or other contrivance to any public tree; allow any gaseous liquid, or solid substance which is harmful to any public tree to come in contact with it; set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of any public tree; deposit, place, store or maintain upon the ground any stone, brick, sand, concrete, or other materials which may impede the free passage of water, air, and fertilizer to the roots of any public tree. Nothing in this section shall prohibit anyone from relocating or cutting a public tree that has fallen on a designated Cape Elizabeth Greenbelt trail at their own risk. Any person who shall violate any provision of this Sec. 18-3-7 shall be liable, in addition to any applicable penalty under this Ordinance, to pay to the Town or reimburse the Town for any expense incurred in repairing any damage caused to a public tree or the cost of replacing such damaged public tree in the event that such damage cannot be repaired.

Sec. 18-3-8. Interference with Tree Warden. No person shall hinder, prevent, delay, or interfere with the Tree Warden or any of his assistants while engaged in carrying out the execution or enforcement of this Ordinance; provided, however, that nothing herein shall be construed as an attempt to prohibit the pursuit of any remedy, legal or equitable, in any court of competent jurisdiction for the protection of property rights by the owner of any property within the municipality.

Sec. 18-3-9. Penalties. The violation of any provision of this Tree Ordinance shall, in addition to any civil penalties available to the Town therefore, constitute a misdemeanor and be punishable by a fine not to exceed \$1000.00 to be recovered upon complaint to the use to the Town. Each day that any violation of this Tree Ordinance shall continue following notification thereof by the Tree Warden shall constitute a separate offense.

Article IV. RESERVED (Effective November 5, 2016)

Article V. Open Space Management [Adopted eff. 06/14/2012]

Sec. 18-5-1. Purpose. Open spaces managed by the Town of Cape Elizabeth are for the benefit and enjoyment of all citizens and visitors. Town policy is to impose as few restrictions on use of these properties as possible, consistent with the desire to promote user safety in a natural environment, minimize conflicting uses, protect the natural features and generally exercise proactive stewardship of a valuable and enduring town asset. This ordinance establishes Town open space management rules to safeguard the essential character of Cape Elizabeth public open spaces for public use now and in the future.

Sec. 18-5-2. Applicability. The provisions of this chapter apply to all open space (as defined below) for which site-specific rules and/or management entities have not otherwise been approved by the Town Council. Town owned open space exempted from the chapter includes Fort Williams Park, Town athletic fields, Riverside Memorial Cemetery, and the

school campus. Town athletic fields shall mean any athletic field managed and/or scheduled by the Cape Elizabeth School Department Athletic Director. School campus shall mean all the groomed and improved portions of the school campus. Athletic fields and the school campus does not include the natural areas adjacent to groomed and maintained athletic fields and school campus.

Sec. 18-5-3. Definitions. The following terms shall have the meanings given herein. All words not defined herein shall carry their customary and usual meanings.

Animal Trap: Any device that is made to catch undomesticated animals.

Encroachment: An alteration of open space by a private party without permission of the Town of Cape Elizabeth. Encroachments may include, but are not limited to:

1. Placement of structures, buildings, fences, landscape objects, and play equipment;
2. Placement of yard and leaf waste;
3. Placement of household trash;
4. Planting of trees and vegetation;
5. Removal of trees and vegetation;
6. Unauthorized clearing, mowing and landscaping.

Greenbelt: A network of public trails located on Town owned or easement held land. Most greenbelt trails are marked with Town greenbelt trails signs and are included on the Town Greenbelt Trails Map.

Open Space: Land owned in fee or held in easement by the Town of Cape Elizabeth where public access is permitted and is included in the Town inventory of open space.

Sec. 18-5-4. Open Space Management Regulations. The following regulations shall govern the use of open space subject to this chapter.

- a. Trail Closure. The Town Manager may close a trail on a temporary basis to preserve trail surface stability, for trail maintenance or public safety. Notification of a closed trail shall be posted on the Town website and at the trail, when conditions permit, and shall be provided electronically to the Conservation Committee.
- b. Hours of Operation. Open space subject to this chapter shall be open at all hours for the enjoyment of the public. From the hours of sunset to sunrise, trail users shall limit activities to the quiet enjoyment of trails and open space. Snowmobiles may be operated in designated areas from sunrise until 8:00 p.m.
- c. Encroachments. Encroachments are prohibited. Open space is held for the benefit and enjoyment of public use, for its own use, and within the context of local ordinances, deed restrictions, and usage easements which the Town has purchased or been granted. The Town is responsible for protecting the public interest in public property, now and for future generations, and has a fiduciary responsibility to protect these assets.

When a possible encroachment occurs, the following process shall be used:

1. Identification of an encroachment. A potential encroachment on open space may be reported to the Town Manager by any party.
 2. Confirm encroachment. Following report of a potential encroachment, the potential encroachment shall be inspected by the Town and, if deemed necessary, a professional surveyor may be retained to confirm the property boundary and prepare a sketch showing the extent of the encroachment. When applicable, the deed for the open space shall be reviewed for restrictions. If the Conservation Committee identifies a possible encroachment, it may gather information as described above and report its findings to the Town Manager.
 3. Identification of party causing encroachment. The Town Manager shall attempt to identify who has caused the encroachment and initiate contact. If the responsible party cannot be determined, the Town may take action to remedy the encroachment under subsection 4 below. If the party can be identified, the Town Manager shall initiate contact and seek voluntary cooperation to remove, repair, restore and/or replace as necessary.
 4. Remediation. If the Town Manager is unable to obtain voluntary cooperation, all legal remedies available to a property owner may be undertaken by the Town. Remedies may include but are not limited to removal of structures, replanting of vegetation, installation of fencing or other visually prominent boundary markers, and a recovery of any costs incurred by the town. Appeal of the Town Manager's determination that an encroachment has occurred may be made to the Town Council.
- d. Vegetation Damage or Removal. No vegetation shall be removed on open space without the permission of the Town, except for blockage of Town trails. When vegetation blocks a trail marked with greenbelt trail signs, vegetative barriers such as trees and branches may be removed, only where the trail is located, without Town permission.
- e. Tree Stand. No tree stand shall be erected on open space without the permission of the Town Manager. Permission to erect a tree stand for the purpose of hunting may be obtained in compliance with the following requirements:
1. The tree stand must be installed in conformance with state law;
 2. The tree stand must be installed a minimum of 100 yards from any residential dwelling;
 3. The tree stand must be installed a minimum of 10 yards from any

Town of Cape Elizabeth greenbelt trail marked with greenbelt signs;
and

4. The tree stand must include the name and contact information of the owner on the tree stand.
- f. Animal Traps. The Town of Cape Elizabeth determines that all open space is located within one half (1/2) mile of the built-up section of the Town, as used in the State of Maine Trapping Rules, and therefore only “cage-type live traps and drowning sets” may be used in Cape Elizabeth. No traps may be set on open space without the Town Manager’s permission. Licensed trappers may be granted permission in order to remove animals causing damage to property or for wildlife survey and research purposes.
- g. Motorized vehicles. No motorized vehicles may operate on open space, except as follows:
1. Snowmobiles may be operated on open space designated on the Uses and Activities Chart in the Management of Greenbelt and Open Space Plan;
 2. Motorized vehicles performing construction and maintenance work authorized by the Town; and
 3. Emergency services vehicles.
- h. Events. Group events on open space must obtain permission from the Town prior to the event. For an event that is not publicly advertised and involving the assembly of less than 50 persons, an application will be reviewed by the Town Manager or Town Manager’s designee. For an event that is publicly advertised and/or will include 50 or more attendees, an application will be reviewed by the Conservation Committee. For an event with 150 or more attendees, an application will be reviewed by the Conservation Committee, which shall then make a recommendation to the Town Council. The Town Council may make independent findings in approving or denying any request.

An application shall be made in writing and provide information for each of the following items:

1. The name of the applicant, a contact person, contact information and person supervising the event on-site;
2. A description of the event including the date and time of the activity, a description of the group’s mission or purpose and experience in holding events, purpose of the event and the anticipated number of attendees;
3. Event parking, event tent or other on-site set-up, and need for utilities such as sanitary waste disposal, electricity, amplified sound, power generator, trash removal, etc;

4. Insurance or other liability arrangements.

The reviewing authority will consider the following in reviewing an event application:

1. If an event has already been approved for the same open space on the same day (Priority shall be given to Town of Cape Elizabeth, Cape Elizabeth School Department, and Cape Elizabeth based organizations events when applications are submitted at the same time for the same open space);
2. If the event is in keeping with the desired recreational and cultural uses of the open space;
3. If the event is compatible with the enjoyment of the open space by non-event users;
4. If the event may expose the town to unreasonable safety related liabilities;
5. Experience of the applicant in handling large crowds;
6. The number of vehicles anticipated, parking available and traffic impacts;
7. The insurance coverage or liability arrangements of the applicant;
8. The need and availability of public safety personnel for event security;
9. Expected need and use of sanitary facilities, electrical service, refuse disposal and recycling;
10. Use of outside vendors;
11. Advertising for the event;
12. Extent of wear to the open space;
13. Potential noise or other impacts on abutters; and
14. Other impacts unique to the open space or the event.

Sec. 18-5-5. Penalties. The violation of any provision of this ordinance shall, in addition to any civil penalties available to the Town therefore, constitute a misdemeanor and be punishable by a fine not to exceed \$1,000.00 to be recovered upon complaint to the use to the Town. Each day that any violation of this ordinance shall continue following notification thereof by the Town Manager shall constitute a separate offense.

Article VI. Open Space Evaluation and Preservation Program

Sec. 18-6-1. Purpose. The purpose of the open space evaluation and preservation program is to establish an ongoing, standardized effort for identifying, evaluating and recommending additions to the Town's inventory of preserved open spaces.

Sec. 18-6-2. Authority. The program shall be conducted by the Conservation Committee with updates at each stage to the Town Manager.

Sec. 18-6-3. Program Components. The Conservation Committee shall periodically conduct an evaluation and present a report to the Town Council. The evaluation shall include the following components.

- a. Identification and Evaluation. The Conservation Committee shall periodically undertake a review of existing open space and consider areas or specific parcels that may be desirable additions to the Town open space system.
- b. Open Space Evaluation Criteria. The Conservation Committee shall focus on land that meets open space criteria adopted by the Town Council. The evaluation process shall include a public participation component that invites suggestions and input from all members of the public and stakeholders. If specific parcels held in private ownership are under consideration, the Conservation Committee shall endeavor to meet with the property owner prior to making a recommendation. In the absence of criteria adopted by the Town Council, the following criteria shall be used:
 1. Agriculture – undeveloped lands used for agriculture.
 2. Greenbelt trails and recreation areas – land identified in the current Greenbelt Plan.
 3. Wildlife habitat – undeveloped lands that provide a habitat for wildlife as identified by the State of Maine such as the Beginning with Habitat information and field verified.
 4. Other – significant scenic, cultural and/or unique properties identified by the Town Council.
- c. Recommendation. At the completion of its evaluation, the Conservation Committee shall forward its open space recommendations to the Town Council. Recommendations shall include a description of how the evaluation criteria have been met and any other factors.

Chapter 6
CONSTRUCTION CODE
(With amendments eff. through 10/08/2008)

Article I.	In General.....	6-1
Article II.	Building Code.....	6-2
Article III.	Electrical Code.....	6-3
Article IV.	Oil Burner Equipment Code.....	6-4
Article V.	Plumbing Code.....	6-5
Article VI.	Building & Development in Flood Hazard Areas.....	6-6

Article I. In General. Adopted eff. 11/12/76 under R.S. 1964, T. 30, Sec. 2151]

Sec. 6-1-1. Permits Required; Fee Schedules. No person, firm, corporation or association shall enter into, engage in or work at any activity regulated by this Chapter without having obtained all permits required by the provisions of this Chapter, by the provisions of Chapter 19, Zoning Ordinance, Article IV, and by other town ordinances, state statutes, and regulations thereunder. The fee schedule for such permits shall be prescribed from time to time by order of the town council, unless otherwise specifically provided for.

Sec. 6-1-2. Conflicting Regulations. In the event of any conflict between the provisions of any Cape Elizabeth ordinance, state statute or regulation thereunder and the provisions of this Chapter,

- (a.) Where such conflict arises between more and less severe requirements the more severe requirements shall govern, and;
- (b.) Otherwise the provisions of state statutes and regulations shall prevail over local provisions, and those of local ordinances shall prevail over those of this Chapter.

Sec. 6-1-3. Penalty for Violation. Any person who violates any provision of this Construction Code set forth in this Chapter 6, or who fails or refuses to obey any order or notice issued under any such Construction Code, shall severally for each and every such violation be guilty of a misdemeanor punishable by a fine of not less than twenty-five dollars (\$25.00) nor more than one thousand dollars (\$1,000.00), to be recovered for the use of the Town. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue; and all such persons shall be required to correct or remedy such violations or defects within a reasonable time; when not otherwise specified, each day that prohibited conditions are maintained shall constitute a separate offense.

[Amended Eff. 11/14/90]

Article II Building Code (Revised eff. 08/10/2007)

Section 6-2-1. Adoption of Codes; Copies on file That a certain document, being marked and designated as the *International Residential Code, 2003 edition*, including Appendix Chapters, as published by the International Code Council, be and is hereby adopted for regulating and governing the construction, alteration, movement, enlargement, replacement, repair, equipment, location, removal and demolition of detached one and two family dwellings and multiple single family dwellings (townhouses) not more than three stories in height with separate means of egress as here in provided; providing for the issuance of permits and collection of fees therefore; and each and all of the regulations, provisions, penalties, conditions and terms of said *Residential Code*. That another certain document, being marked and designated as the *International Building Code, 2003 edition*, including Appendix Chapters, as published by the International Code Council, be and is hereby adopted for regulating and governing the conditions and maintenance of all property, buildings and structures; by providing the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupation and use; and the condemnation of buildings and structures unfit for human occupancy and use and the demolition of such structures as herein provided; providing for the issuance of permits and collection of fees therefore; and each and all of the regulations, provisions, penalties, conditions and terms of said *Building Code*. That the *International Residential Code, 2003* and the *International Building Code, 2003* as published by the International Code Council, two (2) copies of each being on file in the Cape Elizabeth Town Offices, be and are hereby adopted as Article II “Building Code” of Chapter 6, “Construction Codes” of the Town of Cape Elizabeth in the State of Maine and are hereby referred to, adopted, and made a part hereof, as if fully set out in this Ordinance, with the additions, insertions, deletions and changes, if any, prescribed in Section 6-2-2 of this Ordinance.

Section 6-2-2. Additions, Insertions and Changes That the following sections the *International Residential Code, 2003* and the *International Building Code, 2003* are hereby revised as follows:

International Residential Code

Chapter 1 Administration

Section R101.1 Title - Insert *Town of Cape Elizabeth*

Section R103.1 Creation of Enforcement Agency - Add after the first sentence: *The words “building official”, where used, shall mean the code enforcement officer. The words “department of building inspection”, where used, shall mean the code enforcement office.*

Section R103.3 Deputies – delete “building official” in two places and replace with *town manager*

Section R107.3 Temporary Service - delete “ICC Electrical Code” and insert *Town of Cape Elizabeth Chapter 6, Construction Code, Article III Electrical Code*

Section R108.5 Refunds – delete and replace with: *There shall be no refunds of permit fees if a project is abandoned or discontinued or if a permit expires. Fees for permits not approved will be refunded at an amount equal to the total fee less administrative costs. In the case of a revocation of a permit no refund shall be issued unless in the judgment of the town manager exceptional circumstances so warrant.*

Section R112.1 Board of Appeals, General – delete everything after the first sentence and insert *Local Zoning Board of Appeals shall serve as the Board of Appeals.*

Chapter 3 Building Planning

Table R301.2 (1) Climatic and Geographic Design

- a. Ground snow load – insert *50 lb/sq. ft*
- b. Wind speed – Insert *100 mph*
- c. Seismic design category – Insert *C*
- d. Subject to damage from: weathering – Insert *severe*
- e. Frost line depth – Insert *48”*
- f. Termite – insert *none to slight*
- g. Decay – Insert *none to slight*
- h. Winter design temp – Insert *-1 degree f*
- i. Ice shield underlayment required – Insert *yes*
- j. Flood hazard – Insert *6/19/85*
- k. Air freezing index – Insert *1500*
- l. Mean Annual Temp – Insert *45 degrees F*

Section R310.1.1 Minimum Opening Area – delete the exception

Section R323 Flood-Resistant Construction – Delete wording in entire Section and replace with *All flood resistant construction shall comply with the Town of Cape Elizabeth Chapter 6, Construction Code, Article VI Buildings & Development in Flood Hazard Areas.*

Chapter 25 thru 32

Delete and refer to *Town of Cape Elizabeth Chapter 6, Construction Code, Article V, Plumbing Code*

Chapter 33 thru 42

Delete and refer to *Town of Cape Elizabeth Chapter 6, Construction Code*

Chapter 6, Article III Electrical Code

Appendix I – Private Sewage Disposal

Section AI101.1 Scope - Delete International Private Sewage Disposal Code and insert *Town of Cape Elizabeth Chapter 15 Sewer, Article II Private Sewage Disposal Ordinance*

International Building Code, 2003

Chapter 1 Administration

Section 101.1 Title – Insert *Town of Cape Elizabeth*

Section 101.4.1 Electrical – delete ICC Electrical Code and insert *Town of Cape Elizabeth Chapter 6 Construction Code, Article III Electrical Code*

Section 101.4.4 Plumbing – delete International Plumbing Code and insert *Town of Cape Elizabeth Chapter 6 Construction Code, Article V Plumbing Code*.

Section 107.3 Temporary Power – delete ICC Electrical Code and insert *Town of Cape Elizabeth Chapter 6 Construction Code, Article III Electrical Code*

Section 112.1 Board of Appeals, General – delete everything after the first sentence and insert *Local Zoning Board of Appeals shall serve as the Board of Appeals*.

Chapter 10 Means of Egress

Section 1025.2 Minimum Size – delete the exception without replacement.

Chapter 16 Structural Design

Section 1612.3 – Insert *Town of Cape Elizabeth* and the date *June 19, 1985*.

Chapter 27 Electrical

Section 2701.1 Scope – delete the ICC Electrical Code and insert *Town of Cape Elizabeth Chapter 6 Construction Code, Article III Electrical Code*

Section 2702.1 Installation - delete the ICC Electrical Code and insert *Town of Cape Elizabeth Chapter 6 Construction Code, Article III Electrical Code*

Chapter 29 Plumbing Systems

Section 2901.1 Scope – delete International Plumbing Code in two locations and insert *Town of Cape Elizabeth Chapter 6 Construction Code, Article V Plumbing Code*. Delete International Private Sewage Disposal Code and insert *Town of Cape Elizabeth Chapter 15 Sewer, Article II Private Sewage Disposal Ordinance*. Delete remainder of Chapter.

Chapter 34 Existing Structures

Section 3410.2 Insert: 11/12/76

Section 6-2-3. Saving Clause That nothing in this Ordinance or in the Building Code hereby adopted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed as cited in Section 2 of this Ordinance; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

Section 6-2-4. Date of Effect That the Town Clerk shall certify to the adoption of this Ordinance and cause the same to be published as required by law; and this Ordinance shall take full force and effect thirty (30) days after this date of final passage and approval.

Article III. Electrical Code. [Adopted eff. 11/12/76, R. S. 1964, T. 30, Sec 2151.]

Sec. 6-3-1. Standards and Specifications for Electrical Installation. All work in connection with the installation, alteration, repair or maintenance of, or additions to, electrical equipment of any nature whatsoever in the Town of Cape Elizabeth shall hereafter be done in accordance with the standards lawfully established by statute (see 32 M.R.S.A., Sec. 1153-A, adopting the current edition of the National Electrical Code, pamphlet #70, published by the National Fire Protection Association), and with local ordinances and regulations there under as the same may from time to time hereafter be amended, and shall be subject to inspection by the Town Electrical Inspector.

Sec. 6-3-2. Electrical Inspector. The town electrical inspector shall be governed by, and shall exercise and perform the rights, powers and duties lawfully conferred or imposed under, the provisions of the Maine Revised Statutes Annotated (see 30 M.R.S.A., Sec 25251-22560), local ordinance, and regulations there under, as the same may from time to time hereafter be amended.

Article IV. Oil Burner Equipment Code. [Adopted eff. 11/12/76, R. S. 1964, T. 230 Sec. 2151.]

Sec. 6-4-1. Standards and specifications for oil burner installation. All work in connection with the installation, repair or maintenance of oil burner equipment and fuel storage tanks to be used in connection therewith of any nature whatsoever in the Town of Cape Elizabeth shall hereafter be done in accordance with the standards lawfully established by statute (see 32 M.R.S.A. Sec. 2303, adopting the then current edition of the National Fire Protection Association Standard No. 31), and with local ordinances, and regulations there under, as the same may from time to time hereafter be amended, and shall be subject to inspection by the town electrical inspector.

Sec. 6-4-2. Oil Burner Inspection. The town electrical inspector shall be governed by, and shall exercise and perform the rights, powers and duties lawfully conferred or imposed under, the provisions of the Maine Revised Statutes Annotated (see 32 M.R.S.A. Sec. 2303-2305), local ordinances, and regulations there under, as the same may from time to time hereafter be amended.

Article V. Plumbing Code. [Adopted eff. 11/12/76. R.S. 1964, T. 30 Sec. 2151.]

Sec. 6-5-1. Standards and Specifications for Plumbing Installation. All work in connection with the installation, repair or maintenance of plumbing and equipment to be added in connection therewith of any nature whatsoever in the Town of Cape Elizabeth shall hereafter be done in accordance with rules and regulations lawfully established by statute (see 22 M. R. S. A., Sec. 42 and 30 M.R.S.A., Sec. 3221), local ordinance, and regulations there under, as the same may from time to time hereafter be amended, and shall be subject to inspection by the plumbing inspector.

Sec. 6-5-2. Plumbing Inspector. The plumbing inspector shall be governed by, and shall exercise and perform the rights, powers and duties lawfully conferred or imposed under, the provisions of the Maine Revised Statutes Annotated (see 30 M.R.S.A, Sec. 3222-3223), local ordinance, and regulations there under, as the same may from time to time hereafter be amended.

Article VI Floodplain Management Ordinance (Revised eff. 10/08/08)

Sec. 6-6-1. Purpose and Establishment. Certain areas of the Town of Cape Elizabeth, Maine are subject to periodic flooding, causing serious damages to properties within these areas. Relief is available in the form of flood insurance as authorized by the National Flood Insurance Act of 1968.

Therefore, the Town of Cape Elizabeth, Maine has chosen to become a participating community in the National Flood Insurance Program, and agrees to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as delineated in this Floodplain Management Ordinance.

It is the intent of the Town of Cape Elizabeth, Maine to require the recognition and evaluation of flood hazards in all official actions relating to land use in the floodplain areas having special flood hazards.

The Town of Cape Elizabeth has the legal authority to adopt land use and control measures to reduce future flood losses pursuant to Title 30-A MRSA, Sections 3001-3007, 4352, 4401-4407, and Title 38 MRSA, Section 440.

The National Flood Insurance Program, established in the aforesaid Act, provides that areas of the Town of Cape Elizabeth having a special flood hazard be identified by the Federal Emergency Management Agency and that floodplain management measures be

applied in such flood hazard areas. This Ordinance establishes a Flood Hazard Development Permit system and review procedure for development activities in the designated flood hazard areas of the Town of Cape Elizabeth, Maine.

The areas of special flood hazard, A, A1-30, AO, and V1-30, are identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study - Town of Cape Elizabeth, Maine, Cumberland County," dated December 19, 1985 with accompanying "Flood Insurance Rate Map" dated July 15, 1992 and "Flood Boundary and Floodway Map" dated June 19, 1985, which are hereby adopted by reference and declared to be a part of this Ordinance.

Sec. 6-6-2 Permit Required. Before any construction or other development (as defined in Section 6-6-14), including the placement of manufactured homes, begins within any areas of special flood hazard established in Section 6-6-1, a Flood Hazard Development Permit shall be obtained from the Code Enforcement Officer except as provided in Section 6-6-7. This permit shall be in addition to any other permits which may be required pursuant to the codes and ordinances of the Town of Cape Elizabeth, Maine.

Sec. 6-6-3 Application for Permit. The application for a Flood Hazard Development Permit shall be submitted to the Code Enforcement Officer and shall include:

- A. The name, address and phone number of the applicant, owner, and contractor;
- B. An address and a map indicating the location of the construction site;
- C. A site plan showing location of existing and/or proposed development, including but not limited to structures, sewage disposal facilities, water supply facilities, areas to be cut and filled, and lot dimensions;
- D. A statement of the intended use of the structure and/or development;
- E. A statement of the cost of the development including all materials and labor;
- F. A statement as to the type of sewage system proposed;
- G. Specification of dimensions of the proposed structure and/or development;

[Items H-K.3. apply only to new construction and substantial improvements.]

H. The elevation in relation to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD), or to a locally established datum in Zone A only, of the:

1. base flood at the proposed site of all new or substantially improved structures, which is determined:

a. in Zones A1-30, AO, and V1-30 from data contained in the "Flood Insurance Study - Town of Cape Elizabeth, Maine," as described in Section 6-6-1; or,

b. in Zone A:

- (1) from any base flood elevation data from federal, state, or other technical sources (such as FEMA's Quick-2 model, FEMA 265/July 1995), including information obtained pursuant to Section 6-6-6.K. and Section 6-6-9.D.;
- (2) from the contour elevation extrapolated from a best fit analysis of the floodplain boundary when overlaid onto a USGS Quadrangle Map or other topographic map prepared by a Professional Land Surveyor or registered professional engineer, if the floodplain boundary has a significant correlation to the elevation contour line(s); or, in the absence of all other data,
- (3) to be the elevation of the ground at the intersection of the floodplain boundary and a line perpendicular to the shoreline which passes along the ground through the site of the proposed building.
- (4) in coastal zones use the *U.S. Army Corps of Engineers' Tidal Flood Profiles New England Coastline*, September 1988 to select the 100-year Frequency Tidal Flood appropriate for the development site's location on the profile.
- (5) highest and lowest grades at the site adjacent to the walls of the proposed building;
- (6) lowest floor, including basement; and whether or not such structures contain a basement; and,
- (7) level, in the case of non-residential structures only, to which the structure will be floodproofed;

A description of an elevation reference point established on the site of all developments for which elevation standards apply as required in Section 6-6-6;

I. A written certification by a Professional Land Surveyor, registered professional engineer or architect, that the base flood elevation and grade elevations shown on the application are accurate

J. The following certifications as required in Section 6-6-6 by a registered professional engineer or architect:

1. a Floodproofing Certificate (FEMA Form 81-65, 01/03, as amended), to verify that the floodproofing methods for any non-residential structures will meet the floodproofing criteria of Section 6-6-3.H.4.; Section 6-6-6.G.; and other applicable standards in Section 6-6-6;

2. a V-Zone Certificate to verify that the construction in coastal high hazard areas, Zones V1-30 and VE, will meet the criteria of Article VI.P.; and other applicable standards in Section 6-6-6;
3. a Hydraulic Openings Certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of Section 6-6-6.L.2.a.;
4. a certified statement that bridges will meet the standards of Section 6-6-6.M.;
5. a certified statement that containment walls will meet the standards of Section 6-6-6.N.;

K. A description of the extent to which any water course will be altered or relocated as a result of the proposed development; and,

L. A statement of construction plans describing in detail how each applicable development standard in Section 6-6-6 will be met.

Sec. 6-6-4 Application Fee and Expert's Fee. A non-refundable application fee of \$100.00 shall be paid to the Town of Elizabeth and a copy of a receipt for the same shall accompany the application.

An additional fee may be charged if the Code Enforcement Officer and/or Board of Appeals needs the assistance of a professional engineer or other expert. The expert's fee shall be paid in full by the applicant within 10 days after the town submits a bill to the applicant. Failure to pay the bill shall constitute a violation of the ordinance and be grounds for the issuance of a stop work order. An expert shall not be hired by the municipality at the expense of an applicant until the applicant has either consented to such hiring in writing or been given an opportunity to be heard on the subject. An applicant who is dissatisfied with a decision to hire expert assistance may appeal that decision to the Board of Appeals.

Sec. 6-6-5 Review Standards for Flood Hazard Development Permit Applications

The Code Enforcement Officer shall:

1. Review all applications for the Flood Hazard Development Permit to assure that proposed developments are reasonably safe from flooding and to determine that all pertinent requirements of Section 6-6-6 (Development Standards) have been, or will be met;
2. Utilize, in the review of all Flood Hazard Development Permit applications:

1. the base flood and floodway data contained in the "Flood Insurance Study - Town of Cape Elizabeth, Maine," as described in Section 6-6-1.;
2. in special flood hazard areas where base flood elevation and floodway data are not provided, the Code Enforcement Officer shall obtain, review and reasonably utilize any base flood elevation and floodway data from federal, state, or other technical sources, including information obtained pursuant to Section 6-6-3.H.1.b.; Section 6-6-6.K.; and Section 6-6-9.D., in order to administer Section 6-6-6 of this Ordinance; and,
3. when the community establishes a base flood elevation in a Zone A by methods outlined in Section 6-6-3.H.1.b., the community shall submit that data to the Maine Floodplain Management Program in the State Planning Office.
 - C. Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in Section 6-6-1 of this Ordinance;
 - D. In the review of Flood Hazard Development Permit applications, determine that all necessary permits have been obtained from those federal, state, and local government agencies from which prior approval is required by federal or state law, including but not limited to Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1344;
 - E. Notify adjacent municipalities, the Department of Environmental Protection, and the Maine Floodplain Management Program in the State Planning Office prior to any alteration or relocation of a water course and submit copies of such notifications to the Federal Emergency Management Agency;
 - F. If the application satisfies the requirements of this Ordinance, approve the issuance of one of the following Flood Hazard Development Permits, based on the type of development:
 1. A two-part Flood Hazard Development Permit for elevated structures. Part I shall authorize the applicant to build a structure to and including the first horizontal floor only above the base flood level. At that time the applicant shall provide the Code Enforcement Officer with a second Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer or architect based on the Part I permit construction, "as built", for verifying compliance with the elevation requirements of Section 6-6-6, paragraphs F, G, H, or P. Following review of the Elevation Certificate data, which shall take place within 72 hours of receipt of the application, the Code Enforcement Officer shall

issue Part II of the Flood Hazard Development Permit. Part II shall authorize the applicant to complete the construction project; or,

2. A Flood Hazard Development Permit for Floodproofing of Non-Residential Structures that are new construction or substantially improved non-residential structures that are not being elevated but that meet the floodproofing standards of Section 6-6-6.G.1.a.,b., and c. The application for this permit shall include a Floodproofing Certificate signed by a registered professional engineer or architect; or,
3. A Flood Hazard Development Permit for Minor Development for all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. Minor development also includes, but is not limited to: accessory structures as provided for in Section 6-6-6.J., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

For development that requires review and approval as a Conditional Use, as provided for in this Ordinance, the Flood Hazard Development Permit Application shall be acted upon by the Planning Board as required in Section 6-6-7.

G. Maintain, as a permanent record, copies of all Flood Hazard Development Permit Applications, corresponding Permits issued, and data relevant thereto, including reports of the Board of Appeals on variances granted under the provisions of Section 6-6-10 of this Ordinance, and copies of Elevation Certificates, Floodproofing Certificates, Certificates of Compliance and certifications of design standards required under the provisions of Sections 6-6-3, 6-6-6, and 6-6-8 of this Ordinance.

Sec. 6-6-6 – Development Standards. All developments in areas of special flood hazard shall meet the following applicable standards:

A. **All Development** - All development shall:

1. be designed or modified and adequately anchored to prevent flotation (excluding piers and docks), collapse or lateral movement of the development resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
2. use construction materials that are resistant to flood damage;
3. use construction methods and practices that will minimize flood damage;
and

4. use electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located to prevent water from entering or accumulating within the components during flooding conditions.

B. **Water Supply** - All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.

C. **Sanitary Sewage Systems** - All new and replacement sanitary sewage systems shall be designed and located to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood waters.

D. **On Site Waste Disposal Systems** – On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during floods.

E. **Watercourse Carrying Capacity** - All development associated with altered or relocated portions of a watercourse shall be constructed and maintained in such a manner that no reduction occurs in the flood carrying capacity of the watercourse.

F. **Residential** - New construction or substantial improvement of any residential structure located within:

1. Zones A1-30 shall have the lowest floor (including basement) elevated to at least two feet above the base flood elevation.
2. Zone AO shall have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.
3. Zone AO shall have the lowest floor (including basement) elevated above the highest adjacent grade:
 - a. at least two feet higher than the depth specified in feet on the community's Flood Insurance Rate Map; or,
 - b. at least three feet if no depth number is specified.
4. Zone A shall have the lowest floor (including basement) elevated to at least two feet above the base flood elevation utilizing information obtained pursuant to Section 6-6-3.H.1.b.; Section 6-6-5.B.; or Section 6-6-9.D.
5. Zones V1-30 and VE shall meet the requirements of Section 6-6-6.P.

G. **Non Residential** - New construction or substantial improvement of any non-residential structure located within:

1. Zones A1-30 shall have the lowest floor (including basement) elevated to at least two feet above the base flood elevation, or together with attendant utility and sanitary facilities shall:

a. be floodproofed to at least two feet above the base flood elevation so that below that elevation the structure is watertight with walls substantially impermeable to the passage of water;

b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,

c. be certified by a registered professional engineer or architect that the floodproofing design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Section 6-6-3.K. and shall include a record of the elevation above mean sea level to which the structure is floodproofed.

2. Zone AO shall have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.

3. Zone AO shall have the lowest floor (including basement) elevated above the highest adjacent grade:

a. at least two feet higher than the depth specified in feet on the community's Flood Insurance Rate Map; or,

b. at least three feet if no depth number is specified; or,

c. together with attendant utility and sanitary facilities be floodproofed to meet the elevation requirements of this section and floodproofing standards of Section 6-6-6.G.1.

4. Zone A shall have the lowest floor (including basement) elevated to at least two feet above the base flood elevation utilizing information obtained pursuant to Section 6-6-3.H.1.b.; Section 6-6-5.B.; or Section 6-6-9.D., or

a. together with attendant utility and sanitary facilities meet the floodproofing standards of Section 6-6-6.G.1.

5. Zones V1-30 shall meet the requirements of Section 6-6-6.P.

H. **Manufactured Homes** - New or substantially improved manufactured homes located within:

1. Zones A1-30, AE, and AH shall:
 - a. be elevated such that the lowest floor (including basement) of the manufactured home is at least two feet above the base flood elevation;
 - b. be on a permanent foundation, which may be poured masonry slab or foundation walls, with hydraulic openings, or may be reinforced piers or block supports, any of which support the manufactured home so that no weight is supported by its wheels and axles; and,
 - c. be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to:
 - (1) over-the-top ties anchored to the ground at the four corners of the manufactured home, plus two additional ties per side at intermediate points (manufactured homes less than 50 feet long require one additional tie per side); or by,
 - (2) frame ties at each corner of the home, plus five additional ties along each side at intermediate points (manufactured homes less than 50 feet long require four additional ties per side).
 - (3) all components of the anchoring system described in Section 6-6-6.H.1.c.(1)&(2) shall be capable of carrying a force of 4800 pounds.
2. Zone AO shall have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.
3. Zone AO shall have the lowest floor (including basement) of the manufactured home elevated above the highest adjacent grade:

- a. at least two feet higher than the depth specified in feet on the community's Flood Insurance Rate Map; or,
 - b. at least three feet if no depth number is specified; and,
 - c. meet the anchoring requirements of Section 6-6-6.H.1.c.
- 4. Zone A shall:
 - a. be elevated on a permanent foundation, as described in Section 6-6-6.H.1.b., such that the lowest floor (including basement) of the manufactured home is at least two feet above the base flood elevation utilizing information obtained pursuant to Section 6-6-3.H.1.b.; Section 6-6-5.B; or Section 6-6-9.D.; and
 - b. meet the anchoring requirements of Section 6-6-6.H.1.c.
- 5. Zones V1-30 shall meet the requirements of Section 6-6-6.P.

I. Recreational Vehicles - Recreational Vehicles located within:

- 1. Zones A, and A1-30 shall either:
 - a. be on the site for fewer than 180 consecutive days,
 - b. be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or,
 - c. be permitted in accordance with the elevation and anchoring requirements for "manufactured homes" in Section 6-6-6.H.1.
- 2. Zones V1-30 shall meet the requirements of either Section 6-6-6.I.1.a. or b., or Section 6-6-6.P.

J. Accessory Structures - Accessory Structures, as defined in Section 6-6-14, located within Zones A1-30, AO, and A, shall be exempt from the elevation criteria required in Section 6-6-6.F. & G. above, if all other requirements of Section 6-6-6 and all the following requirements are met. Accessory Structures shall:

1. be 500 square feet or less and have a value less than \$3000;
2. have unfinished interiors and not be used for human habitation;
3. have hydraulic openings, as specified in Section 6-6-6.L.2., in at least two different walls of the accessory structure;
4. be located outside the floodway;
5. when possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than is the primary structure; and,
6. have only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and when possible outside the Special Flood Hazard Area.

K. **Floodways** -

1. In Zones A1-30 riverine areas, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted within a regulatory floodway which is designated on the community's Flood Boundary and Floodway Map, unless a technical evaluation certified by a registered professional engineer is provided demonstrating that such encroachments will not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

2. In Zones A1-30, and A riverine areas, for which no regulatory floodway is designated, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted in the floodway as determined in Section 6-6-6.K.3. unless a technical evaluation certified by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development:

a. will not increase the water surface elevation of the base flood more than one foot at any point within the community; and,

b. is consistent with the technical criteria contained in Chapter 5 entitled "Hydraulic Analyses," *Flood Insurance Study - Guidelines and Specifications for Study Contractors*, (FEMA 37/ January 1995, as amended).

3. In Zones A1-30, and A riverine areas for which no regulatory floodway is designated, the regulatory floodway is determined to be the channel of the river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain as measured from the normal high water mark to the upland limit of the floodplain.

L. **Enclosed Areas Below the Lowest Floor** - New construction or substantial improvement of any structure in Zones A1-30, AO, and A that meets the development standards of Section 6-6-6, including the elevation requirements of Section 6-6-6, paragraphs F, G, or H and is elevated on posts, columns, piers, piles, "stilts," or crawl spaces may be enclosed below the base flood elevation requirements provided all the following criteria are met or exceeded:

1. Enclosed areas are not "basements" as defined in Section 6-6-14;
2. Enclosed areas shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood water. Designs for meeting this requirement must either:
 - a. be engineered and certified by a registered professional engineer or architect; or,
 - b. meet or exceed the following minimum criteria:
 - (1) a minimum of two openings having a total net area of not less than one square inch for every square foot of the enclosed area;
 - (2) the bottom of all openings shall be below the base flood elevation and no higher than one foot above the lowest grade; and,
 - (3) openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the entry and exit of flood waters automatically without any external influence or control such as human intervention, including the use of electrical and other non-automatic mechanical means;
3. The enclosed area shall not be used for human habitation; and,

4. The enclosed areas are usable solely for building access, parking of vehicles, or storage.

M. **Bridges** - New construction or substantial improvement of any bridge in Zones A1-30, AO, A, and V1-30 shall be designed such that:

1. when possible, the lowest horizontal member (excluding the pilings, or columns) is elevated to at least two feet above the base flood elevation; and
2. a registered professional engineer shall certify that:
 - a. the structural design and methods of construction shall meet the elevation requirements of this section and the floodway standards of Section 6-6-6.K.; and
 - b. the foundation and superstructure attached thereto are designed to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all structural components. Water loading values used shall be those associated with the base flood.

N. **Containment Walls** - New construction or substantial improvement of any containment wall located within:

1. Zones A1-30, A, and V1-30 shall:
 - a. have the containment wall elevated to at least two feet above the base flood elevation;
 - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
 - c. be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Section 6-6-3.K.
2. Zone AO shall have adequate drainage paths around containment walls on slopes, to guide floodwater away from the proposed walls.

3. Zone AO shall have the top of the containment wall elevated above the highest adjacent grade:
 - a. at least two feet higher than the depth specified in feet on the community's Flood Insurance Rate Map; or,
 - b. at least three feet if no depth number is specified; and,
 - c. shall meet the requirements of Section 6-6-6.N.1.b. & c.

O. Wharves, Piers and Docks - New construction or substantial improvement of wharves, piers, and docks are permitted in Zones A1-30, AO, A, and V1-30, in and over water and seaward of the mean high tide if the following requirements are met:

1. wharves, piers, and docks shall comply with all applicable local, state, and federal regulations; and
2. for commercial wharves, piers, and docks, a registered professional engineer shall develop or review the structural design, specifications, and plans for the construction.

P. **Coastal Floodplains -**

1. All new construction located within Zones A1-30, A, and V1-30 shall be located landward of the reach of mean high tide except as provided in Section 6-6-6.P.6.
2. New construction or substantial improvement of any structure located within Zones V1-30 shall:
 - a. be elevated on posts or columns such that:
 - (1) the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to two feet above the base flood elevation;
 - (2) the pile or column foundation and the elevated portion of the structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting

simultaneously on all building components;
and,

- (3) water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable state and local building standards.

b. have the space below the lowest floor:

- (1) free of obstructions; or,
- (2) constructed with open wood lattice-work, or insect screening intended to collapse under wind and water without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting piles or columns; or,
- (3) constructed with non-supporting breakaway walls that have a design safe loading resistance of not less than 10 or more than 20 pounds per square foot.

c. require a registered professional engineer or architect to:

- (1) develop or review the structural design, specifications, and plans for the construction, which must meet or exceed the technical criteria contained in the Coastal Construction Manual, (FEMA-55/June, 2000); and,
- (2) certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the criteria of Section 6-6-6.P.2.

3. The use of fill for structural support in Zones V1-30 is prohibited.

4. Human alteration of sand dunes within Zones V1-30 is prohibited unless it can be demonstrated that such alterations will not increase potential flood damage.

5. The area below the lowest floor shall be used solely for parking vehicles, building access, and storage.

6. Conditional Use - Lobster sheds and fishing sheds may be located seaward of mean high tide and shall be exempt from the elevation requirement in Section 6-6-6.G. only if permitted as a Conditional Use following review and approval by the Planning Board, as provided in Section 6-6-7, and if all the following requirements and those of Section 6-6-6.A., K. and L. are met:

- a. The conditional use shall be limited to low value structures such as metal or wood sheds 200 square feet or less and shall not exceed more than one story.
- b. The structure shall be securely anchored to the wharf or pier to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components.
- c. The structure will not adversely increase wave or debris impact forces affecting nearby buildings.
- d. The structure shall have unfinished interiors and shall not be used for human habitation.
- e. Any mechanical, utility equipment and fuel storage tanks must be anchored and either elevated or floodproofed to one foot above the base flood elevation.
- f. All electrical outlets shall be ground fault interrupt type. The electrical service disconnect shall be located on shore above the base flood elevation and when possible outside the Special Flood Hazard Area.

Sec. 6-6-7 Conditional Use Review The Planning Board shall hear and decide upon applications for conditional uses provided for in this Ordinance. The Planning Board shall hear and approve, approve with conditions, or disapprove all applications for conditional uses. An applicant informed by the Code Enforcement Officer that a Conditional Use Permit is required shall file an application for the permit with the Planning Board.

A. Review Procedure for a Conditional Use Flood Hazard Development Permit

1. The Flood Hazard Development Permit Application with additional information attached addressing how each of the conditional use criteria specified in the Ordinance will be satisfied, may serve as the permit application for the Conditional Use Permit.

2. Before deciding any application, the Planning Board shall hold a public hearing on the application within thirty days of their receipt of the application.

3. If the Planning Board finds that the application satisfies all relevant requirements of the ordinance, the Planning Board must approve the application or approve with conditions within 45 days of the date of the public hearing.

4. A Conditional Use Permit issued under the provisions of this Ordinance shall expire if the work or change involved is not commenced within 180 days of the issuance of the permit by the Planning Board.

5. The applicant shall be notified by the Planning Board in writing over the signature of the Chairman of the Planning Board that flood insurance is not available for structures located entirely over water or seaward of mean high tide.

B. Expansion of Conditional Uses

1. No existing building or use of premises may be expanded or enlarged without a permit issued under this section if that building or use was established or constructed under a previously issued Conditional Use Permit or if it is a building or use which would require a Conditional Use Permit if being newly-established or constructed under this Ordinance.

Sec. 6-6-8 - Certificate Of Compliance No land in a special flood hazard area shall be occupied or used and no structure which is constructed or substantially improved shall be occupied until a Certificate of Compliance is issued by the Code Enforcement Officer subject to the following provisions:

A. For New Construction or Substantial Improvement of any elevated structure the applicant shall submit to the Code Enforcement Officer:

1. an Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer, or architect, for compliance with Section 6-6-7, paragraphs F, G, H, or P and,

2. for structures in Zones V1-30, certification by a registered professional engineer or architect that the design and methods of construction used are in compliance with Section 6-6-6.P.2.

B. The applicant shall submit written notification to the Code Enforcement Officer that the development is complete and complies with the provisions of this ordinance.

C. Within 10 working days, the Code Enforcement Officer shall:

1. review the required certificate(s) and the applicant's written notification; and,
2. upon determination that the development conforms to the provisions of this ordinance, shall issue a Certificate of Compliance.

Sec. 6-6-9 Review of Subdivision and Development Proposals The Planning Board shall, when reviewing subdivisions and other proposed developments that require review under other federal law, state law, local ordinances or regulations, and all projects on 5 or more disturbed acres, or in the case of manufactured home parks divided into two or more lots, assure that:

- A. All such proposals are consistent with the need to minimize flood damage.
- B. All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damages.
- C. Adequate drainage is provided in order to reduce exposure to flood hazards.
- D. All proposals include base flood elevations, flood boundaries, and, in a riverine floodplain, floodway data. These determinations shall be based on engineering practices recognized by the Federal Emergency Management Agency.
- E. Any proposed development plan must include a condition of plan approval requiring that structures on any lot in the development having any portion of its land within a Special Flood Hazard Area, are to be constructed in accordance with Section 6-6-6 of this ordinance. Such requirement will be included in any deed, lease, purchase and sale agreement, or document transferring or expressing an intent to transfer any interest in real estate or structure, including but not limited to a time-share interest. The condition shall clearly articulate that the municipality may enforce any violation of the construction requirement and that fact shall also be included in the deed or any other document previously described. The construction requirement shall also be clearly stated on any map, plat, or plan to be signed by the Planning Board or local reviewing authority as part of the approval process.

Sec. 6-6-10 - Appeals and Variances The Board of Appeals of the Town of Cape Elizabeth may, upon written application of an aggrieved party, hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer in the administration or enforcement of the provisions of this Ordinance.

The Board of Appeals may grant a variance from the requirements of this Ordinance consistent with state law and the following criteria:

- A. Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.

B. Variances shall be granted only upon:

1. a showing of good and sufficient cause; and,
2. a determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances; and,
3. a showing that the issuance of the variance will not conflict with other state, federal or local laws or ordinances; and,
4. a determination that failure to grant the variance would result in "undue hardship," which in this sub-section means:
 - a. that the land in question cannot yield a reasonable return unless a variance is granted; and,
 - b. that the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and,
 - c. that the granting of a variance will not alter the essential character of the locality; and,
 - d. that the hardship is not the result of action taken by the applicant or a prior owner.

C. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and the Board of Appeals may impose such conditions to a variance as is deemed necessary.

D. Variances may be issued for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that:

1. other criteria of Section 6-6-10 and Section 6-6-6.K. are met; and,
2. the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

E. Variances may be issued for the repair, reconstruction, rehabilitation, or restoration of Historic Structures upon the determination that:

1. the development meets the criteria of Section 6-6-10, paragraphs A. through D. above; and,
2. the proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as a Historic Structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

F. Any applicant who meets the criteria of Section 6-6-10, paragraphs A. through E. shall be notified by the Board of Appeals in writing over the signature of the Chairman of the Board of Appeals that:

1. the issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage;
2. such construction below the base flood level increases risks to life and property; and,
3. the applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.

G. Appeal Procedure for Administrative and Variance Appeals

1. An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party within thirty days after receipt of a written decision of the Code Enforcement Officer.
2. Upon being notified of an appeal, the Code Enforcement Officer shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
3. The Board of Appeals shall hold a public hearing on the appeal within thirty-five days of its receipt of an appeal request.
4. The person filing the appeal shall have the burden of proof.
5. The Board of Appeals shall decide all appeals within thirty-five days after the close of the hearing, and shall issue a written decision on all appeals.

6. The Board of Appeals shall submit to the Code Enforcement Officer a report of all variance actions, including justification for the granting of the variance and an authorization for the Code Enforcement Officer to issue a Flood Hazard Development Permit, which includes any conditions to be attached to said permit.
7. Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to the Superior Court in accordance with State laws within forty-five days from the date of any decision of the Board of Appeals.
8. Any aggrieved party of a decision of the Planning Board may take an appeal to the Superior Court in accordance with State law within forty-five days from the date of said decision.

Sec. 6-6-11 Enforcement and Penalties

- A. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance pursuant to Title 30-A MRSA § 4452.
- B. The penalties contained in Title 30-A MRSA § 4452 shall apply to any violation of this Ordinance.
- C. In addition to other actions, the Code Enforcement Officer (CEO) shall, upon identifying a violation, submit a declaration to the Administrator of the Federal Insurance Administration requesting a flood insurance denial. The valid declaration shall consist of;
 1. the name of the property owner and address or legal description of the property sufficient to confirm its identity or location;
 2. a clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation, or ordinance;
 3. a clear statement that the public body making the declaration has authority to do so and a citation to that authority;
 4. evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and,
 5. a clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

Sec 6-6-12 Validity and Severability If any section or provision of this Ordinance is declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.

Sec. 6-6-13 Conflict with Other Ordinances This Ordinance shall not in any way impair or remove the necessity of compliance with any other applicable rule, ordinance, regulation, bylaw, permit, or provision of law. Where this Ordinance imposes a greater restriction upon the use of land, buildings, or structures, the provisions of this Ordinance shall control.

Sec. 6-6-14 Definitions Unless specifically defined below, words and phrases used in this Ordinance shall have the same meaning as they have at common law, and to give this Ordinance its most reasonable application. Words used in the present tense include the future, the singular number includes the plural, and the plural number includes the singular. The word "may" is permissive; "shall" is mandatory and not discretionary.

Accessory Structure - a small detached structure that is incidental and subordinate to the principal structure.

Adjacent Grade - the natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Area of Shallow Flooding - a designated AO and AH zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of Special Flood Hazard - land in the floodplain having a one percent or greater chance of flooding in any given year, as specifically identified in the Flood Insurance Study cited in Section 6-6-1 of this Ordinance.

Base Flood – a flood having a one percent chance of being equaled or exceeded in any given year, commonly called the 100-year flood.

Basement - area of a building that includes a floor that is subgrade (below ground level) on all sides.

Breakaway Wall - a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

Building - see **Structure**.

Certificate of Compliance - a document signed by the Code Enforcement Officer stating that a structure is in compliance with all of the provisions of this Ordinance.

Code Enforcement Officer – a person certified under Title 30-A MRSA, Section 4451 (including exceptions in Section 4451, paragraph 1) and employed by a municipality to enforce all applicable comprehensive planning and land use laws.

Conditional Use - a use that, because of its potential impact on surrounding areas and structures, is permitted only upon review and approval by the Planning Board pursuant to Section 6-6-7.

Containment Wall – wall used to convey or direct storm water or sanitary water from the initial source to the final destination.

Development – a manmade change to improved or unimproved real estate. This includes, but is not limited to, buildings or other structures; mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials; and the storage, deposition, or extraction of materials.

Elevated Building - a non-basement building that is:

- a. built, in the case of a building in Zones A1-30, A, or AO, so that the top of the elevated floor, or in the case of a building in Zones V1-30, to have the bottom of the lowest horizontal structural member of the elevated floor, elevated above the ground level by means of pilings, columns, post, piers, or "stilts;" and
- b. adequately anchored to not impair the structural integrity of the building during a flood of up to one foot above the magnitude of the base flood.

In the case of Zones A1-30, A, or AO, **Elevated Building** also includes a building elevated by means of fill or solid foundation perimeter walls with hydraulic openings sufficient to facilitate the unimpeded movement of flood waters, as required in Article VI.L. In the case of Zones V1-30, **Elevated Building** also includes a building otherwise meeting the definition of elevated building, even though the lower area is enclosed by means of breakaway walls, if the breakaway walls meet the standards of Section 6-6-6.P.2.b.(3).

Elevation Certificate - an official form (FEMA Form 81-31, 02/06, as amended) that:

- a. is used to verify compliance with the floodplain management regulations of the National Flood Insurance Program; and,
- b. Is required for purchasing flood insurance.

Flood or Flooding

- a. A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters.
 2. The unusual and rapid accumulation or runoff of surface waters from any source.
- b. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph a.1. of this definition.

Flood Elevation Study - an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

Flood Insurance Rate Map (FIRM) - an official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

Flood Insurance Study - see **Flood Elevation Study**.

Floodplain or Floodprone Area - land area susceptible to being inundated by water from any source (see flooding).

Floodplain Management - means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

Floodplain Management Regulations - zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance, and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Floodproofing - any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and contents.

Floodway - see **Regulatory Floodway**.

Floodway Encroachment Lines - the lines marking the limits of floodways on federal, state, and local floodplain maps.

Freeboard - a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for the many unknown factors, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed, which could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions.

Functionally Dependent Use - a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Historic Structure - means any structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
- c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 1. By an approved state program as determined by the Secretary of the Interior, or
 2. Directly by the Secretary of the Interior in states without approved programs.

Locally Established Datum - for purposes of this ordinance, an elevation established for a specific site to which all other elevations at the site are referenced. This elevation is generally not referenced to the National Geodetic Vertical Datum (NGVD) or any other established datum and is used in areas where Mean Sea Level data is too far from a specific site to be practically used.

Lowest Floor - the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's

lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements described in Section 6-6-6.L. of this Ordinance.

Manufactured Home - a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term manufactured home also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

Manufactured Home Park or Subdivision - a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Mean Sea Level – when related to the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

Minor Development - means all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. It also includes, but is not limited to: accessory structures as provided for in Section 6-6-6.J., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

National Geodetic Vertical Datum (NGVD) - the national vertical datum, a standard established in 1929, which is used by the National Flood Insurance Program (NFIP). NGVD is based upon mean sea level in 1929 and also has been called “1929 Mean Sea Level (MSL)”.

New Construction - structures for which the "start of construction" commenced on or after the effective date of the initial floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

100-year flood - see **Base Flood**.

Recreational Vehicle - a vehicle that is:

- a. built on a single chassis;
- b. 400 square feet or less when measured at the largest horizontal projection, not including slideouts;
- c. designed to be self-propelled or permanently towable by a motor vehicle;
and

- d. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory Floodway –

- a. the channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot, and
- b. when not designated on the community's Flood Insurance Rate Map or Flood Boundary and Floodway Map, it is considered to be the channel of a river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain, as measured from the normal high water mark to the upland limit of the floodplain.

Riverine - relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Special Flood Hazard Area - see **Area of Special Flood Hazard**.

Start of Construction - the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, or modification of any construction element, whether or not that alteration affects the external dimensions of the building.

Structure - means, for floodplain management purposes, a walled and roofed building. A gas or liquid storage tank that is principally above ground is also a structure.

Substantial Damage - means, damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement - means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes

structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- b. Any alteration of a Historic Structure, provided that the alteration will not preclude the structure's continued designation as a historic structure, and a variance is obtained from the Board of Appeals.

Variance - means a grant of relief by a community from the terms of a floodplain management regulation.

Violation - means the failure of a structure or development to comply with a community's floodplain management regulations.

Sec. 6-6-15 Abrogation This ordinance repeals and replaces any municipal ordinance previously enacted to comply with the National Flood Insurance Act of 1968 (P.L. 90-488, as amended).

CHAPTER 7

DOGS

Article I. Dog Control. [Adopted eff. 7/23/69, pursuant to R.S. 1964, T. 7, Sec. 3451 ff.; amended eff. 6/13/73; amended eff. 2/8/90; amended eff. 2/08/2018]

Sec. 7-1-1. Purpose. The purpose of this ordinance is to control dogs throughout the Town of Cape Elizabeth in the interest of the health, safety and general welfare of its residents.

Sec. 7-1-2. Definitions. As used in this ordinance, unless the context otherwise indicates.

(a) "Dog" shall apply to both male and female dogs.

(b) "Owner" shall mean any person or persons, firm, association or corporation owning, keeping or harboring a dog.

(c) "At large" shall mean off the premises of the owner and not being under the control of any person by means of that person's proximity to the dog, and their ability to manipulate and command the animal.

Sec. 7-1-3.

(a) License. License, record and tag requirements shall be as prescribed and required by Maine Statutes Annotated, and all rules and regulations duly promulgated thereunder.

(b) Failure to Display Tags. It shall be unlawful for any dog owner or keeper to fail to have affixed to the dog's collar, the license identification tag. Said tag must be displayed on a collar constructed of a durable material and sized so as to ensure the tag's attachment.

Sec. 7-1-4. Barking and Howling. No person shall own, keep or harbor any dog which by loud, frequent, and habitual barking, howling or yelping, shall disturb the peace of any person or persons.

Sec. 7-1-5. Dangerous Dogs. A dangerous dog is hereby defined to be a dog which by its conduct shall cause reasonable fear of bodily injury to any person. The owner of any dangerous dog shall keep same confined in a secure enclosure or on a chain or leash controlled by the owner or his agent at all times. Procedures resulting in the disposal or method of restraint of an animal who has assaulted a person shall be as prescribed and required by Maine Statutes Annotated, Title 7 and succeeding amendments.

Sec. 7-1-6. Failure to Restrain. It shall be unlawful for any dog owner or keeper to fail to restrain such an animal either by enclosed run, leash, tether, radio collar, choke collar or voice command so that the animal attacks, harasses or menaces any pedestrian, jogger, cyclist or passerby on any property other than that which is in the care and control of the dog owner.

Sec. 7-1-7 Dogs to be Restrained on Municipal Property.

(a) Any dog within the boundaries of a groomed and/or regularly maintained municipal property including, but not limited to, Fort Williams Park, public roads, municipal sidewalks and athletic fields, will be walked on a leash or tether at all times.

The person accompanying the dog in these situations is required to collect any feces dropped by the animal and dispose of same in an area where it will not likely be encountered by any persons. The Cape Elizabeth Poor Farm, Lions' Field excluding the Little League field, and a portion of Fort Williams Park Southerly of Humphreys Road (as defined in paragraph (b)) are not considered to be groomed and/or regularly maintained for purposes of this ordinance.

(b) The Unleashed Dog Area in Fort Williams Park (encompassing the Multi-Purpose Field) is defined as an area abutting the Southerly edge of the Central Parking Lot and extending westerly along the Southerly side of the Heavy Equipment Storage Building, continuing Westerly directly behind the long garages at the rear of the Officers Row buildings to Harrison Road; continuing on (and including) Merriman Road along the northerly border of Delano Park to the water's edge; then extending northerly along the shoreline turning westerly across "The Green" to the southern end of Battery Blair; turning northerly then westerly back to the Southerly edge of the Central Parking Lot (as referenced on the Unleashed Dog Area Map dated (insert date)). Unleashed dogs are prohibited on the Multi-Purpose Athletic Field from April 1st to November 1st .

Sec. 7-1-8. Impoundment. Unlicensed dog, whether or not at large, and dogs found running at large, whether or not licensed, shall with or without complaint be taken up and impounded by a police officer or dog control officer in a shelter designated by the Town as the Town Animal Shelter and there confined in a humane manner for a period of not more than fourteen (14) days.

Sec. 7-1-9. Disposition of Impounded Dogs.

(a) Any owner may regain possession of an impounded dog upon compliance with provision of Section 7-1-3 (a) of this ordinance, and upon payment of the impoundment and boarding fees set forth herein. Any dog impounded under the provisions of this ordinance and not reclaimed by the owner within said fourteen (14) days, shall be considered to be abandoned by the owner and the property of the Town Animal Shelter and may, after consultation with the Humane Society and/or the Animal Refuge League, be humanely destroyed or given to the Humane Society and/or the Animal Refuge League, or any person deemed to be responsible and a suitable owner.

(b) Where the ownership of any such dog is known, or can be reasonably ascertained by a police officer or dog control officer, such officer shall, if possible, notify the owner within three (3) days of such impoundment, but failure to give such notice shall in no way impose any liability upon the Town for the destruction or transfer to another of any dog so impounded and not reclaimed within said period of fourteen (14) days.

Sec. 7-1-10. Fees and Boarding Charges. Any dog impounded hereunder may be reclaimed upon payment to the Town, through the Cape Elizabeth Police Department of an impoundment fee of \$5.00 for each dog, except upon the second impoundment of the same dog the fee shall be \$20.00, and upon the third and all subsequent impoundments of the same dog the fee shall be \$40.00; and upon presentation to the Animal Shelter, currently designated by the Town to receive impounded dogs, of evidence of such payment to the Town and upon payment to that animal shelter of a further board fee in accordance with the current fee schedule of the animal shelter.

Sec. 7-1-11. Interference Forbidden. No person shall interfere with, hinder or molest any police officer or dog control officer in the performance of any duty of such officer, or seek release of any dog in the custody of a police officer or dog control officer, except as herein provided.

Sec. 7-1-12. Records. It shall be the duty of a police officer or dog control officer to keep, or cause to be kept, an accurate and detailed record of the licensing, impoundment and disposition of all dogs coming into his custody.

Sec. 7-1-13. Enforcement. The Cape Elizabeth dog control officer and the Cape Elizabeth Police Department are hereby directed and empowered to enforce the provisions of this ordinance.

Sec. 7-1-14. Penalties. Whoever keeps a dog contrary to the provisions of Sections 7-1-3, 4, 5, 6, 7, or 11 of this ordinance shall be punished by a fine of not more than One Hundred Dollars (\$100.00) to be recovered by complaint for the use of the Town of Cape Elizabeth before the 9th District Court of Maine, Division of Southern Cumberland. In addition, said Court may make such further order regarding the destruction, restraint or other disposition of the offending dog as the Court deems appropriate.

(Revised eff. 2/8/2018) 4

Chapter 8 FIRE PROTECTION AND PREVENTION

Article 1 Fire Code

Section 8-1-1 Adoption of International Fire Code, 2003 edition That a certain document, two (2) copies of which are on file in the Cape Elizabeth Town Offices, being marked and designated as the *International Fire Code, 2003 edition*, including the Appendix Chapters, as published by the International Code Council, be and is hereby adopted as the Fire Code of the Town of Cape Elizabeth in the State of Maine regulating and governing the safeguarding of life and property from fire and explosion hazards arising from the storage, handling and use of hazardous substances, materials and devices, and from conditions hazardous to life or property in the occupancy of buildings and premises as herein provided; providing for the issuance of permits and the collection of fees therefore; and each and all of the regulations, provisions, penalties, conditions and terms of said Fire Code on file in the office of the Town of Cape Elizabeth are hereby referred to, adopted, and made a part hereof, as if fully set out in this chapter, with the additions, insertions, deletions and changes, if any, prescribed in Section 8-1-2 of this Ordinance.

Section 8-1-2 Additions, Insertions and Changes That the following sections of the *International Fire Code, 2003* are hereby revised as follows:

Chapter 1 Administration

Section 101.1 Title – Insert *Town of Cape Elizabeth*

Section 103.1 General – Add at the end of the paragraph: *The words “fire code official”, where used, shall mean the fire chief or his/her duly authorized agent. The words “department of fire prevention”, where used, shall mean the fire department.*

Section 108.3 Qualifications – delete language after “The board of appeals shall” and replace with *be the Cape Elizabeth Town Council.*

Section 109.3 Violation penalties – delete language after “shall be guilty” and add *as allowed by Section 8-2-6 of Chapter 8 Fire Protection and Prevention of the Town of Cape Elizabeth Ordinances.*

Section 111.4 Failure to comply – delete the wording “shall be liable” and add *as allowed by Section 8-2-6 of Chapter 8 Fire Protection and Prevention of the Town of Cape Elizabeth Ordinances.*

Section 8-1-3 Underground Utility Lines, Flammable Type. The following requirements shall be included in the Town Fire Prevention Code:

Section 1. Discontinued Service. When gas or other flammable service to any building is discontinued, the existing service line shall be terminated and blocked from the building under the supervision of the Chief of the Fire Department at or near the street line. At the request of the owner of any building to which gas or other flammable service has been discontinued at any time prior to or following the

enactment of these provisions, the person, firm or corporation which has provided such service shall terminate the service line for such service under the supervision of the Chief of the Fire Department at or near the street line and shall seal off the line from the building at that point by replacing a section of pipe with compacted backfill, capping the line or other equivalent methods as approved by the Fire Chief.

Section 2. Cutoffs and Fire Valves. When any new gas or other flammable service is to be provided to any building after the enactment of these provisions, the service line for such service shall be provided with a cutoff outside the exterior wall of such building at or near the street line, and a fire valve and excess flow valve shall be installed at the point where the service pipe enters the building.

Section 3. Supervision of Works. The discontinuance of any flammable utility service line within the town and the provision of any new flammable service line to any building shall be subject to the provision of the Chief of the Fire Department. Such supervising officer shall be advised when any such action is proposed and shall inspect the same before any such opening or trench is filled. Such supervising officer may impose reasonable requirements regarding sealing off, backfill, compaction and repaving in order to assure a safe and workmanlike installation and a proper finished surface. Any powers given the Chief of the Fire Department under these provisions may be exercised by the duly authorized representative of such supervising officer.

Section 8-1-4 Saving Clause That nothing in this Article or in the International Fire Code hereby adopted shall be construed to affect any lawsuit or proceeding impending in any court, or any rights accrued, or liability incurred, or any causes of action acquired or existing, under any act or ordinance hereby repealed as cited in Section 2 of this Ordinance; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Article.

Section 8-1-5 Date of Effect That the Town Clerk shall certify to the adoption of this Article and cause the same to be published as required by law; and this Article shall take full force and be in effect thirty (30) days after this date of final passage and approval.

Sec. 8-1-3. Underground Utility Lines, Flammable Type. The following requirements shall be included in the Town Fire Prevention Code:

Section 1. Discontinued Service. When gas or other flammable service to any building is discontinued, the existing service line shall be terminated and blocked from the building under the supervision of the Chief of the Fire Department at or near the street line. At the request of the owner of any building to which gas or other flammable service has been discontinued at any time prior to or following the enactment of these provisions, the person, firm or corporation which has provided such service shall terminate the service line for such service under the supervision of the Chief of the Fire Department at or near the street line and shall seal off the line from the building at that point by replacing a section of pipe with compacted backfill, capping the line or other equivalent methods approved by the Fire Chief.

Section 2. Cutoffs and Fire Valves. When any new gas or other flammable service is to be provided to any building after the enactment of these provisions, the service line for such service shall be provided with a cutoff outside the exterior wall of such building at or near the street line, and a fire valve and excess flow valve shall be installed at the point the service pipe enters the building.

Section 3. Supervision of Works. The discontinuance of any flammable utility service line within the town and the provision of any new flammable service line to any building shall be subject to the provision of the Chief of the Fire Department. Such supervising officer shall be advised when any such action is proposed and shall inspect the same before any such opening or trench is filled. Such supervising officer may impose reasonable requirements regarding sealing off, backfill, compaction and repaving in order to assure a safe and workmanlike installation and a proper finished surface. Any powers given the Chief of the Fire Department under these provisions may be exercised by the duly authorized representative of such supervising officer."

Sec. 8-1-4. Saving Clause That nothing in this Article or the Fire Prevention Code hereby adopted shall be construed to affect any lawsuit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed as cited in Section 2 of this Article; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Article.

Sec. 8-1-5. Date of Effect. That the Town Clerk shall certify to the adoption of this Article and cause the same to be published as required by law; and this Article shall take full force and be in effect thirty (30) days after this date of final passage and approval.

Article II. Violations. [Adopted eff. 11/12/76, under R.S. 1964, T. 30, Sec. 2151.]

Sec. 8-2-1. Tampering with Fire Alarms. No person except a duly authorized electrician and his assistants shall tamper with the town fire alarm, bells, signal or Fire Department system or cut any wire or break or interfere with any circuits thereof.

Sec. 8-2-2. Fire Alarms. No person shall willfully or maliciously give or cause to be given a false alarm of fire by ringing an alarm bell or by pulling in an alarm at any box of the fire alarm system or shall willfully or maliciously break, destroy or tamper with in any way the apparatus comprising the fire alarm system.

Sec. 8-2-3. Driving on Fire Hose Prohibited. No person shall drive any vehicle over any fire hose within the Town of Cape Elizabeth, laid at the occurrence of a fire or at any alarm of fire.

Sec. 8-2-4. Obstruction of Firefighter. No person shall assault or in any manner willfully obstruct, intimidate or hinder or attempt to obstruct, intimidate or hinder any firefighter while in the lawful discharge of their official duties.

Sec. 8-2-5. Exposed Fires Prohibited. No person shall kindle, maintain or assist in maintaining any bonfire or other exposed fire within the Town, excepting under specific permission from the Fire Chief or otherwise as provided by statute; such burning shall be done in metallic receptacles approved by him, or under proper safeguards as he may direct as to time and weather conditions, and on condition that such permittee keep sufficient control of said fire and be responsible for all damages thereof, and that all embers shall be extinguished and the hot ashes removed or wet down at the close of said fire.

Sec. 8-2-6. Penalty. Any person who violates any provision of Article I or II of this Chapter 8 shall, severally for each and every such violation and noncompliance respectively, be guilty of a misdemeanor punishable by a fine of not less than Twenty-five Dollars (\$25.00) nor more than One Hundred Dollars (\$100.00), or by imprisonment for not less than one (1) day nor more than five (5) days or both such fine and imprisonment. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue; and all such persons shall be required to correct or remedy such violations or defects within a reasonable time; when not otherwise specified, each ten (10) days that prohibited conditions are maintained shall constitute a separate offense. The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

Article III. Mutual Fire Aid Agreements. [Adopted eff. 1/27/71 under R.S. 1964, T. 30, Sec. 3777.]

Sec. 8-3-1. Mutual Aid Authorized. The chief, or the chief's duly authorized representative, of the Fire Department of the Town of Cape Elizabeth, upon request for aid from a duly authorized representative of a municipal or incorporated volunteer Fire Department of another municipality, within or without the state, is hereby authorized to send to such other municipal or incorporated volunteer Fire Department such equipment and/or personnel belonging to the Fire Department of the Town of Cape Elizabeth as he shall deem feasible for the purpose of rendering aid in extinguishing a fire within such other municipality.

Sec. 8-3-2. Liability. During the course of rendering such aid to another municipality, the aiding municipality shall, as between municipalities having similar ordinances or other regulations, be responsible for and shall assume the risk or any personal injury or property damage caused to or by its own personnel or equipment, and for any payments required to be made to any member of its Fire Department or the member's surviving spouse or other dependents, on account of injuries or death so required by the Worker's Compensation Act of the State of Maine, all without affecting the right of the aiding municipality to recover damages from any other person or entity legally liable therefore.

Sec. 8-3-3. Town Manager to Execute Agreement. The Town Manager may execute, with authorization of the Town Council, for and on behalf of the Town of Cape Elizabeth, a mutual aid agreement in accordance with the provisions of the above sections

with any other municipality of municipalities having a similar ordinance or other regulation.

Article IV. Alarm Systems Ordinance. [Adopted eff. 1/9/80, under R.S. 1964, T. 30, Sec. 2151.]

Sec. 8-4-1. Title. This ordinance shall be known and may be cited as the "Alarm Systems Ordinance of the Town of Cape Elizabeth, Maine."

Sec. 8-4-2. Purpose. This ordinance recognizes the need for regulations of the installation and use of Alarm Systems in order to assure compatibility of equipment with the facilities of the Public Safety Communications Center, to avoid use of improper equipment, to assure adequate installation of equipment, to minimize false alarms or other interference with the orderly conduct of Town business and to clarify the rights and responsibilities of the property owner and of the Town.

Sec. 8-4-3 Definitions. As used herein, the following terms shall have the following meanings:

(a) **"Alarm system"** means any mechanism, equipment or device designed to automatically transmit a signal, message or warning indicating fire, burglary, health emergency or like need for public safety assistance, from a private facility through telephone facilities to the Public Safety Communication Center.

(b) **"Appropriate"**, with respect to a Chief or Department, means the Fire Department for fire or rescue alarms and the Police Department for alarms of unlawful entry, theft or other criminal activity.

(c) **"Center"** means the Public Safety Communications Center for the Town of Cape Elizabeth, Maine.

Sec. 8-4-4. Permit Required. No person shall install, operate, maintain, alter, or replace an Alarm System within the Town after December 31, 1979, without an effective permit therefore signed by the Chief of the appropriate Department.

Sec. 8-4-5. Application Procedure. Application for an Alarm System permit shall be made to the appropriate Department by the owner of the premises to be protected, upon forms prepared by the Town, accompanied by prepayment of the first annual service fee and tender of an agreement signed by the applicant releasing and discharging the Town of Cape Elizabeth, its officers, agents and employees, from any liability arising from the failure of such Alarm System to operate properly, or from any other act or omission by the Town, its officers, agents and employees excepting any knowing and intentional act or omission. The application shall require the full name, telephone number and address of

the owner of the premises to be protected, of his designated agent with the Town, and of the proposed installer who must have the capacity to maintain and service such Alarm System from a point within the Greater Portland area; the application shall also require a description of the principal use of the premises to be protected, a description of the proposed system and the location for its installation, and such other data as the Chiefs may reasonably require in order to assure the use of appropriate equipment and its proper installation. The appropriate Chief shall issue any permit with such conditions as he deems reasonably designed to assure the foregoing objectives, and the Chiefs shall establish procedures and guidelines for processing such applications.

Sec. 8-4-6. Service Fee. The annual service fee for each Alarm System shall be fixed and may be changed by order of the Town Council and is initially fixed at \$25.00. Such fee shall apply to each Alarm System connected from the same premises or by the same owner, and to any dialer Alarm System programmed to activate the Center telephone. For any Alarm System installed after June 30th of the calendar year, the fee shall be one-half the regular annual fee. Such fee shall be for the calendar year and, after the initial prepayment, shall be payable prior to January 31st of each year. Alarm Systems not connected to the Center shall pay a \$25.00 annual registration fee to the Town. It shall be collected in the same manner as service fees for alarm systems connected to the Center.

Sec. 8-4-7. Prohibited Systems. No system shall be permitted which automatically transmits to the Center telephone lines except to a number designated by the permit issued or as otherwise approved by the appropriate Chief. Each alarm shall be reported individually, and no system shall be permitted which uses a constant signal for one type of alarm and a pulsating signal for another.

Sec. 8-4-8. Use Regulated. No Alarm System shall be placed in operation until its location, equipment and installation have been finally approved by the appropriate Chief as conforming to the terms of the permit and the provisions of this ordinance. Thereafter the appropriate Chief may inspect, or cause the inspection by a qualified person of, any Alarm System to determine that its condition, location and use comply with its permit and this ordinance, and to assure that it will not interfere with the operation of the Center; access shall be permitted at all reasonable hours for such purpose. Any deficiency noted shall be reported to, and promptly corrected by, the owner. Information concerning any Alarm System shall be maintained confidentially and release of any such information by any person to one not concerned with the maintenance or operation thereof, or the enforcement of this ordinance, shall constitute a violation of this ordinance.

Sec. 8-4-9. Alarm Response. The property owner or his designated agent, as kept on file at the Center, shall respond to each alarm at the request of the appropriate Department for the purpose of securing the premises.

Sec. 8-4-10. False Alarms. Any permit holder whose system causes the transmittal of a non-emergency alarm more than three (3) times in any calendar year, after a 30-day start-up period for new installations, shall pay a fee of \$25.00 for each instance of a non-emergency alarm in excess of that number, upon demand by the appropriate Chief;

the appropriate Chief shall give suitable written warning to any permit holder, or to his designated agent, whose alarm sends a third non-emergency alarm in any calendar year. Non-emergency alarms shall include, but shall not be limited to, false alarms caused by malfunctioning equipment, accidental or negligent activation of the alarm, or improperly monitored equipment. In the event an alarm is activated as a result of a natural or unnatural event beyond the property owner's control (i.e. disruption of electrical service due to storm, motor vehicle accident, and the like), no fee shall be imposed at the direction of the appropriate Chief.

Sec. 8-4-11. Permit Revocation. The appropriate Chief may revoke the permit for any Alarm System in the event that:

- (a) Payment of any fee therefore is not made within sixty (60) days after the due date therefore;
- (b) Any deficiency therein reported to the owner is not corrected within a reasonable time;
- (c) Such Alarm System persistently causes an excessive number of non-emergency alarms or otherwise persistently interferes with the orderly operation of the Center;
- (d) The owner refuses reasonable access for inspection of such System;
- (e) Such System is placed in operation without final approval by the appropriate Chief, or
- (f) Any date provided in the application for such System is found to have been falsified willfully or through gross negligence of the applicant. Such revocation shall not be effective until the appropriate Chief has given the permit holder or his designated agent actual notice of the reason therefore and reasonable opportunity to justify the same.

Sec. 8-4-12. Appeal. In the event of the refusal to issue or the revocation of any permit hereunder, the permit holder may appeal to the Town Manager within twelve (12) business days after actual notice of such decision is given to the permit holder or his designated agent. The Town Manager may affirm, modify or rescind such decision, and his action thereon shall be final and conclusive without right of further appeal.

Sec. 8-4-13. Civil Violation. In addition to the foregoing grounds for revocation of a permit hereunder, the following events shall each constitute a civil violation, punishable in proceedings before the District Court by a fine not exceeding \$300.00.

- (a) The installing, operation, maintenance, alteration or replacement of an Alarm System in the absence of an effective permit therefore signed by the Chief of the appropriate Department;
- (b) The falsification of any data provided in an application for an Alarm System, done willfully or through gross negligence;
- (c) The release of any information concerning any Alarm System to one not concerned with the maintenance or operation thereof or with the enforcement of this ordinance.

CHAPTER 9

FIREARMS

Article I. Discharge of Firearms.

[Adopted eff. 3/9/64; R.S. 1964, T. 30, Sec. 2151. Revised eff. 8/7/91.]

Sec. 9-1-1. Prohibition of Discharge of Firearms. The discharge of firearms, air rifles or pistols is prohibited in all areas of Town excepting the salt marshes, property owned by the Spurwink Rod and Gun Club, and property under federal jurisdiction, and excepting the use of such weapons at military exercises or in the lawful defense of person, family or property of any individual or entity. Use of rifles except on target ranges authorized by the Police Department is prohibited within all areas of the Town.

Sec. 9-1-2. Killing Wildlife Damaging Crops. No person shall discharge firearms at any deer, raccoons, skunks, woodchucks or other wild animals doing damage to any orchards or growing crops except in accordance with applicable state statutes. Such person shall notify the Police Department, prior to commencing such activity, of the time and location where such activity is proposed and shall also notify the Police Department immediately upon the completion of each such activity, unless other arrangements are made with the Police Chief. Such person shall exhibit to the Police Department once during its effective period any written permission required by state statute or regulation for such activity. The Police Department may impose such reasonable restrictions upon the time or location of said activities, and the type of firearms to be used, as may be necessary to protect the public health and safety; it shall not prevent any such activity unless it has evidence that the person proposing the same is not competent to do so safely, and it shall not require that any police officer observe or take part in such activities. [Added, eff. 12/22/76.]

Sec. 9-1-3. Penalty. Any person found guilty of violating Sec. 9-1-1 or Sec. 9-1-2 shall be subject to a fine for each such violation in an amount not to exceed \$500.00, to be recovered for use of the Town by complaint to the District Court. [Revised, eff. 12/22/76.]

GENERAL ASSISTANCE ORDINANCE



**Prepared by Maine Municipal Association
September 2013**

GENERAL ASSISTANCE ORDINANCE

The Municipality of _____ enacts the following General Assistance Ordinance. This Ordinance is filed with the Department of Health & Human Services (DHHS) in compliance with Title 22 M.R.S.A. §4305(4).

Signed the _____ day of _____, _____, by the municipal officers:
(day) (month) (year)

(Print Name)

(Signature)

(Print Name)

(Signature)

(Print Name)

(Signature)

(Print Name)

(Signature)

(Print Name)

(Signature)

(Print Name)

(Signature)

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ARTICLE I

Statement of Policy

The Municipality of _____ administers a program of general assistance (GA) available to all persons who are eligible to receive assistance in accordance with the standards of eligibility as provided within this ordinance, Department of Health and Human Services (DHHS) GA policy and in 22 M.R.S.A. § 4301 et seq.

Every effort will be made to recognize the dignity of the applicant while encouraging self-reliance. The program will strive to help eligible persons achieve self-maintenance by promoting the work incentive. When possible, it will seek to alleviate needs other than financial through rehabilitative, preventive and protective services. The general assistance program will place no unreasonable restrictions on the personal rights of the applicant or recipient, nor will there be any unlawful discrimination based on sex, age, race, nationality, religion, sexual orientation or disability. The municipality is committed to including qualified individuals with disabilities, in municipal services, programs, and activities. As a result, the municipality will promote a GA program that when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. GA applicants with physical or mental disabilities that require a reasonable accommodation in order to access and/or utilize the municipal GA program are encouraged to provide the municipality with advance notice regarding the accommodation request.

The general assistance administrator will act promptly on all applications for assistance and requests for fair hearings. GA applicants will be provided information regarding their rights and responsibilities under the GA program. Within 24 hours of receiving an application, the administrator will provide the applicant a written decision, whether or not assistance is granted, that will state the specific reasons for the decision. The administrator will also provide the applicant written notice that the applicant may appeal to the municipal fair hearing authority if dissatisfied with the decision. When an

applicant is determined to be eligible, assistance appropriate to the need will be furnished within 24 hours after the completed application is submitted except when the administrator issues non-emergency assistance conditionally on the successful completion of a workfare assignment (*see section 5.6 of this ordinance*).

The administrator will maintain complete and accurate records pertaining to each applicant and recipient. These records are confidential as a matter of law (*see 22 MRSA §4306*).

The administrator will post notice stating the day(s) and hours the administrator will be available. The administrator, or other designated person/entity, will be available to take applications in the event of an emergency at all other times. A copy of this ordinance and Maine General Assistance law will be readily available to any member of the public upon request. Notice to this effect will be posted.

ARTICLE II

Definitions

Section 2.1—Common Meaning of Words

Unless otherwise apparent or defined, all words in this ordinance will have their common meaning.

Section 2.2—Special Definitions

Applicant. A person who has submitted, either directly or through an authorized representative, an application for general assistance or who has, in an emergency, requested assistance without first completing an application. In addition, all persons on whose behalf an authorized application has been submitted or on whose behalf benefits have been granted shall be considered applicants.

Application Form. A standardized form used by the general assistance administrator for the purpose of allowing a person to apply for general assistance and confirming the fact that a person has made application. The application form must be signed by the applicant to be considered complete.

Basic Necessities. Food, clothing, shelter, fuel, electricity, non-elective essential medical services as prescribed by a physician, nonprescription drugs, basic telephone service where it is necessary for medical reasons, property taxes when a tax lien placed on the property threatens the loss of the applicant's place of residence, and any other commodity or service determined essential by the municipality.

"Basic necessities" do not include:

- Phone bills
- Cable or satellite dish television
- Mail orders
- Vehicle payments
- Credit card debt**
- Furniture
- Loan re-payments**

- | | |
|--|--|
| <ul style="list-style-type: none"> • Cigarettes • Alcohol • Pet care costs • Vacation costs • Legal fees • Late fees • Key deposits • Security deposits for rental property(except for those situations where no other | <p>permanent lodging is available unless a security deposit is paid, and a waiver, deferral or installment arrangement cannot be made between the landlord and tenant to satisfy the need for the immediate payment of the security deposit or payment in full) (22 M.R.S.A. § 4301(1)).</p> |
|--|--|

****Repayments of loans or credit will be treated as having been spent on basic necessities when the applicant can provide verification of this fact.**

Case Record. An official file containing application forms; correspondence; narrative records and all other communications pertaining to an applicant or recipient; written decisions regarding eligibility including reasons for those decisions as well as the types and amounts of assistance provided; and all records concerning an applicant's request for fair hearing and those fair hearing decisions.

Categorical Assistance. All state and federal income maintenance programs.

Claimant. A person who has requested a fair hearing.

Deficit. An applicant's deficit is the appropriate overall maximum level of assistance for the household as provided in section 6.8 of this ordinance less the household income as calculated pursuant to section 6.7 of this ordinance, provided such a calculation yields a positive number. If the household income is greater than the appropriate overall maximum level of assistance, the household has no deficit.

Disabled Person. A person who is presently unable to work or maintain a home due to a physical or mental disability that is verified by a physician or qualified mental health provider.

Dwelling Unit. A building or part thereof used for separate living quarters for one or more persons living as a single housekeeping unit (22 M.R.S.A. § 4301(2)).

Eligible Person. A person who is qualified to receive general assistance from the municipality according to the standards of eligibility set forth in this ordinance (22 M.R.S.A. § 4301(3)). “Eligible Person” does not include a fugitive from justice as defined in 15 M.R.S.A. § 201(4).

Emergency. Any life threatening situation or a situation beyond the control of the individual which, if not alleviated immediately, could reasonably be expected to pose a threat to the health or safety of a person. At the municipality’s option, a situation which is imminent and which may result in undue hardship or unnecessary cost to the individual or municipality if not resolved immediately. (22 M.R.S.A. §§ 4301(4), 4308(2), 4310).

General Assistance Program. A service administered by a municipality for the immediate aid of persons who are unable to provide the basic necessities essential to maintain themselves or their families. A general assistance program provides a specific amount and type of aid for defined needs during a limited period of time and is not intended to be a continuing “grant-in-aid” or “categorical” welfare program. This definition shall not in any way lessen the responsibility of each municipality to provide general assistance to a person each time that the person is in need and is found to be otherwise eligible to receive general assistance (22 M.R.S.A. § 4301(5)).

General Assistance Administrator. A municipal official designated to receive applications, make decisions concerning an applicant’s right to receive assistance, and prepare records and communications concerning assistance. He or she may be an elected overseer or an authorized agent such as a town manager, welfare director, or caseworker (22 M.R.S.A. § 4301(12)).

Household. “Household” means an individual or a group of individuals who share a dwelling unit. When an applicant shares a dwelling unit with one or more individuals, even when a landlord-tenant relationship may exist between individuals residing in the dwelling unit, eligible applicants may receive assistance for no more than their pro rata share of the actual costs of the shared basic needs of that household according to the maximum levels of assistance established in the municipal ordinance. The pro rata share is calculated by dividing the maximum level of assistance available to the entire household by the total number of household members. The income of household members not legally liable shall be considered as available to the applicant only when there is a pooling of income (22 M.R.S.A. § 4301(6)).

Income. “Income” means any form of income in cash or in kind received by the household including:

- Net remuneration for services performed
- Cash received on either secured or unsecured credit
- Payments received as an annuity, retirement or disability benefits
- Veterans’ pensions and/or benefits
- Retirement accounts or benefits
- Workers’ compensation
- Unemployment benefits
- Federal and/or state tax returns
- Benefits under any state or federal categorical assistance
- program such as, TANF, Supplemental Security Income, Social Security and any other payments from governmental sources (unless specifically prohibited by any law or regulation)
- Court ordered support payments, e.g., child support
- Income from pension or trust funds
- Household income from any other source, including relatives or unrelated household members
- Student loans
- Rental income

The following items shall not be considered as income or assets that must be liquidated for the purposes of deriving income:

- 1) Real or personal income-producing property, tools of trade, governmental entitlement specifically treated as exempt assets by state or federal law;
- 2) Actual work-related expenses, whether itemized or by standard deduction, such as taxes, retirement fund contributions, union dues, transportation costs to and from work, special equipment costs and child care expenses; or
- 3) Earned income of children below the age of 18 years who are full-time students and who are not working full time.

In determining need, the period of time used as a basis for the calculation shall be a 30-day period commencing on the date of the application. This prospective calculation shall not disqualify an applicant who has exhausted income to purchase basic necessities, provided that the income does not exceed the income standards established by the municipality (22 M.R.S.A. § 4301(7)).

- 4) Certain public benefit programs are specifically exempt from being counted as income for purposes of GA. These programs include:
 - Food Stamps (7 USCS § 2017(b))
 - Li-Heap (42 USCS § 8624)
 - Family Development Accounts (22 M.R.S. § 3762)
 - Americorp VISTA program benefits (42 USCS § 5044 (f))
 - Property tax rebates issued under the Maine Property Tax Fairness Credit program, only so long as the money is spent on basic necessities. (22 M.R.S.A. § 4301(7))
 - Aspire Support Service Payments (10-144 CMR Chapter 323)

Initial Applicant. A person who has not applied for assistance in this or any other municipality is considered an initial applicant.

Just Cause. A valid, verifiable reason that hinders an individual from complying with one or more conditions of eligibility or from attending a scheduled fair hearing (22 M.R.S.A. § § 4301(8), 4316-A(5)).

Lump Sum Payment. A one-time or typically nonrecurring sum of money issued to an applicant or recipient. Lump sum payment includes, but is not limited to, retroactive or settlement portions of social security benefits, workers' compensation payments, unemployment benefits, disability income, veterans' benefits, severance pay benefits, or money received from inheritances, lottery winnings, personal injury awards, property damage claims or divorce settlements. A lump sum payment includes only the amount of money available to the applicant after payment of required deductions has been made from the gross lump sum payment. A lump sum payment does not include conversion of a non-liquid resource to a liquid resource if the liquid resource has been used or is intended to be used to replace the converted resource or for other necessary expenses. (22 MRSA § 4301 (8-A)).

Material Fact. A material fact is a fact that necessarily has some bearing on the determination of an applicant's general assistance eligibility, and which would, if disclosed to the administrator, have some determinable effect on the calculation of eligibility or the issuance of a grant of assistance.

Maximum Levels of Assistance. The amount of financial assistance for a commodity or service as established in section 6.8 of this ordinance or the actual cost of any such basic necessity, whichever is less.

Misconduct. For purposes of the GA work requirement (*see 22 MRSA §4316-A*) misconduct shall have the same meaning as misconduct defined in 26 MRSA §1043 (23). (*See Appendix I of this ordinance for the official definition of misconduct.*) Generally, employees are guilty of misconduct when the employee violates his or her

duties or obligations to the employer. Employees who engage in a pattern of irresponsible behavior to the detriment of the employer's interest may also be found guilty of misconduct.

Municipality. Any city, town or plantation administering a general assistance program.

Municipality of Responsibility. The municipality which is financially liable for the support of an eligible person at the time of application (22 M.R.S.A. § § 4301(9), 4307).

Need. The condition whereby a person's income, money, property, credit, assets or other resources available to provide basic necessities for the individual and the individual's family are less than the maximum levels of assistance (22 M.R.S.A. § § 4301(10), 4308).

Net General Assistance Costs. Those direct costs incurred by a municipality in providing assistance to eligible persons according to standards established by the municipal officers. These do not include the administrative expenses of the general assistance program (22 M.R.S.A. §§ 4301(11), 4311).

Period of Eligibility. The time for which a person has been granted assistance. The period of eligibility may vary depending on the type of assistance provided, however, in no event shall this period extend beyond one month (22 M.R.S.A. § 4309(1)).

Pooling of Income. "Pooling of income" means the financial relationship among household members who are not legally liable for mutual support in which there occurs any commingling of funds or sharing of income or expenses. Municipalities may by ordinance establish as a rebuttable presumption that persons sharing the same dwelling unit are pooling their income. Applicants who are requesting that the determination of eligibility be calculated as though one or more household members are not pooling their income have the burden of rebutting the presumed pooling of income.

Real Estate. Any land, buildings, homes, mobile homes and any other things affixed to the land (22 M.R.S.A. § 4301(13)).

Recipient. A person who has applied for and is currently receiving general assistance.

Repeat Applicants. All applicants for general assistance that are not initial applicants are repeat applicants. For purposes of this ordinance repeat and subsequent shall have the same meaning.

Resident. A person who is physically present in a municipality with the intention of remaining in that municipality in order to maintain or establish a home and who has no other residence. A person who applies for assistance in a municipality who is not a resident of that municipality or any other municipality is the responsibility of the municipality where the person first applies. That municipality must take an application and grant assistance to the applicant if he/she is eligible, until he/she establishes a new residence in another municipality (22 M.R.S.A. § 4307).

Resources. Resources include any program, service, or other sources of support which are an alternative to or supplement for general assistance. There are two kinds of resources: “available” and “potential”. Potential resources are programs, services, non-liquid assets, or trusts that typically require people to apply in writing and/or wait a period of time before eligibility is determined or the potential income is released.

Potential resources include but are not limited to any state or federal assistance program, employment benefits, governmental or private pension program, available trust funds, support from legally liable relatives, child support payments, and jointly held resources where the applicant or recipient share may be available to the individual (22 M.R.S.A. § 4317). Potential resources include the TANF (previously known as AFDC) program, Food Stamps, fuel assistance (HEAP), subsidized housing, and similar programs.

Available resources include resources which are immediately available to the applicant or which can be conveniently secured by the applicant without delay, such as cash on hand or in bank accounts, assets for which there is an immediate and available market, or support from relatives which is being made available at the time of application and for

which the applicant does not have to take any unreasonable steps to secure (e.g., relocation beyond the immediate region). At the discretion of the GA administrator a necessary minimum balance required by a financial institution in order to obtain free checking or in order to maintain the account shall not be considered an available resource.

The municipal GA administrator reserves the right to inform GA clients of services, commodities or facilities made available by private organizations or charities. Although GA applicants/recipients may be informed of the existence of a charitable resource and/or organization, GA eligibility shall not be based or conditioned on the use of a private charitable resource(s).

30-Day Need. An applicant's 30-day need is the sum of the household's prospective 30-day costs, from the date of application, for the various basic necessities. For the purpose of this calculation, the 30-day cost for any basic need shall be the household's actual 30-day cost for the basic necessity or the maximum 30-day cost for the basic necessity as established by this ordinance, whichever is less.

Unforeseen Repeat Applicants. Are repeat applicants who have not applied for assistance within the last twelve months and who have been regularly employed or receiving support from a public benefit or private source and who have unexpectedly become unemployed through no fault of their own or whose benefits (e.g., through an available resource) have ceased through no fault of their own.

Unmet Need. An applicant's unmet need is the household's 30-day need as established by section 6.6 of the ordinance less the household income as calculated pursuant to section 6.7 of this ordinance, provided such a calculation yields a positive number. If the household income is greater than the household's 30-day need, the household does not have an unmet need.

Work Requirements. Work requirements are those obligations the municipal administrator places on applicants for general assistance as directed and/or authorized

by 22 M.R.S.A. § 4316-A to the extent such obligations ensure a continuing potential eligibility for general assistance when complied with, result in ineligibility when violated, and are not merely optional, discretionary, or advisory. Work requirements include registering for work, looking for work in good faith, accepting all suitable job offers, maintaining employment, performing workfare, and participating in training, educational, or rehabilitation programs that will assist the participant in securing employment.

ARTICLE III

Administrative Rules and Regulations

The following are rules and regulations for the administration of general assistance.

Section 3.1—Confidentiality of Information

Case records and all other information relating to an applicant or recipient of general assistance are confidential and will not be disclosed to the general public, unless the applicant or recipient states in writing what information is to be released (22 M.R.S.A. § 4306).

Release of Information. Applicants, recipients and their legal representatives have the right to review their case records. No record will be released to a third party, however, unless the administrator receives a consent form signed by the applicant expressly authorizing the release of his or her records to the specified parties. Whenever the administrator releases any information, he/she will make a notation in the applicant's file stating to whom the record was released and the date. The administrator may charge a reasonable fee for the reproduction of any records when appropriate.

Information from Other Sources; Penalty. Information furnished to the municipality by the Department of Health and Human Services or any other agency or institution pursuant to 22 M.R.S.A. § 4314, is confidential. The general assistance administrator will also comply with laws relating to the confidentiality of vital statistic records such as those concerning birth, marriage and death. (22 M.R.S.A. § 2706).

Any representative of a financial institution (except national banks) or any employer of a general assistance applicant who refuses to provide necessary information to the administrator in order to verify an applicant's eligibility must state in writing the reason for the refusal. Any such person who refuses to provide information, without just cause, may be subject to a civil penalty of not less than \$25 nor more than \$100. Any person, including the applicant, who knowingly and willfully makes a false representation of a

material fact to the administrator is committing a Class E crime (22 M.R.S.A. § § 4314, 4315).

Misuse of Information. Misuse of any information relating to an applicant or recipient is a punishable offense (22 M.R.S.A. § 42(2)).

Section 3.2—Maintenance of Records

The general assistance administrator will keep complete and accurate general assistance records (22 M.R.S.A. § 4306). These records are necessary to:

- a) provide a valid basis of accounting for municipal expenditures;
- b) document and support decisions concerning an applicant or recipient; and
- c) ensure the availability of all relevant information in the event of a fair hearing or judicial review of a decision by the general assistance administrator.

Case Records. The administrator will establish and maintain a separate case record, either in paper format or digital format for each applicant or recipient. Each case record will include at least:

- | | |
|---------------------------------|----------------------------------|
| • household applications | deficit or unmet need, |
| • budget sheets | whichever is less) |
| • information concerning the | • written decisions |
| types and amounts of | • requests for fair hearings and |
| assistance provided | the fair hearing authority |
| • narrative statements | decisions |
| describing the nature of the | • workfare participation records |
| emergency situation | • repayments to the |
| whenever general assistance | municipality |
| is granted in amounts greater | • narrative writings |
| than the applicant's | documenting the need for |
| mathematical eligibility (i.e., | general assistance, the |

- results of home visits,
 - collateral information,
 - referrals, changes in status
- client authorization(s) for the release of GA information and/or reason(s) for the release of confidential information
- adjustments in aid, and suspension or termination of eligibility
- physician's documentation
- Supplemental Security Income (SSI) interim assistance reimbursement authorization forms
- vendor forms

Case records will not include information or material that is irrelevant to either the applicant's or recipient's application or the administrator's decisions.

Retention of Records. General assistance records shall be retained for a minimum of three full years. The three year period shall coincide with the State's fiscal year which begins July 1 and ends on the following June 30. Records may be destroyed after three years by one of the two preferred methods of destruction for confidential records, i.e., supervised shredding, burning or appropriate digital deletion/destruction process. In the event a client's records contain SSI reimbursement forms, the client's records should be maintained so that the municipality may seek reimbursement.

ARTICLE IV

Application Procedure

Section 4.1—Right to Apply

Who May Apply. Anyone may apply for general assistance. The head of the family, any other responsible household member, or an authorized representative must apply in person, except in special emergency situations as provided in section 4.9 of this ordinance or except when the applicant is a resident of an emergency shelter and the municipality has made an agreement with that emergency shelter to presume shelter residents to be eligible for general assistance (22 M.R.S.A. §4304(3)). In such cases, the administrator may require a representative to present a signed statement documenting that he/she is in fact authorized to apply for general assistance on behalf of the named applicant. The applicant or representative must complete a written application and any other required forms so that the administrator can determine eligibility (22 M.R.S.A. § § 4305, 4308). With notice, all members of the household receiving general assistance may be required to physically present themselves to the administrator. Note that fugitives from justice are ineligible for general assistance.

Application Via Telephone. When a person has an emergency but is unable to apply in person due to illness, disability, lack of child care, lack of transportation or other good cause, and he/she cannot send an authorized representative, the administrator will accept an application by telephone. The telephone application process will include the administrator receiving written verification by mail and visiting the applicant's home with his or her permission (22 M.R.S.A. § 4304).

Written Application Upon Each Request. Each request for assistance will be administered in accordance with these guidelines. The administrator will make an independent determination of eligibility for general assistance each time a person applies (22 M.R.S.A. § § 4308, 4309).

Applications Accepted; Posted Notice. Application forms will be available during regular business hours at the municipal office and when the general assistance administrator is conducting interviews with applicants. Notice will be posted stating when and where people may apply for assistance and the name of the administrator available to take emergency applications at all other times. In addition, the posted notice shall include the fact that the municipality must issue a written decision on all applications within 24 hours, and the DHHS toll-free telephone numbers for reporting alleged violations or complaints. Completed applications will be accepted and interviews given only during the regular hours established and posted by the administrator. In an emergency, however, the administrator or his or her designee will be available to accept applications for assistance whenever necessary (22 M.R.S.A. § 4304).

Section 4.2—Application Interview

Except when it is impractical, the general assistance administrator will interview each applicant personally before making a decision. The interview will be conducted in private, although the applicant may be accompanied by a legal representative, friend or family member.

Section 4.3—Contents of the Application

At a minimum, the application will contain the following mandatory information:

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|--|---|
| a) applicant's name, address, date of birth, Social Security number or appropriate United States Customs and Immigration Services (USCIS) documentation, and phone number; | household members for whom the applicant is seeking assistance; |
| b) names, date(s) of birth, and Social Security number(s) or appropriate USCIS documentation of other | c) total number of individuals living with the applicant; |
| | d) employment and employability information; |

- e) all household income, resources, assets, and property;
- f) household expenses;
- g) types of assistance being requested;
- h) penalty for false representation;
- i) applicant's permission to verify information;
- j) signature of applicant and date.

In the event an initial applicant is unable to provide identification records (e.g., Social Security card/number) because the record may have been lost, stolen or misplaced, the initial applicant may be provided a reasonable amount of time, e.g., five working days, in order to obtain copies of identification records. Provided the initial applicant makes a good faith effort to obtain the item/record sought, GA required to cure an immediate and/or emergency need shall not be withheld. In such cases the municipality may elect to provide only a prorated amount of GA, e.g., five day's worth, while the applicant proceeds to obtain the required information.

Section 4.4—General Assistance Administrator's Responsibilities at the Time of the Application

The administrator will make every effort to inform all applicants of their rights and responsibilities as well as the general program requirements associated with applying for and receiving general assistance, including application requirements, eligibility guidelines, applicant rights, and applicant reimbursement obligations.

Application Requirements. The administrator will help the applicant fill out the application form as described in the preceding section. The administrator will inform the applicant of any other information or documentation that the applicant will have to provide in order for the administrator to evaluate the applicant's eligibility for assistance. The administrator will fully explain the purpose of any release of information form or reimbursement agreement before seeking to obtain the applicant's signature or written authorization.

Eligibility Requirements. The administrator will inform, either verbally or in writing, the applicant of the eligibility requirements of the program, including:

- the income standard of need;
- the applicant's ongoing use-of-income, work-related, and resource-related responsibilities, as described in the section immediately below;
- the financial reduction in assistance that is the consequence of spending household income on non-basic necessities; and
- the disqualification penalties associated with committing fraud, failing to perform work-related assignments without just cause, or failing to make a good faith effort to secure potential resources when the requirement to attempt to obtain those resources has been explained to the applicant in writing.

Applicant Rights. The administrator will inform all applicants of their rights to:

- review the municipal General Assistance ordinance and Maine General Assistance law;
- apply for assistance;
- receive a written decision concerning eligibility within 24 hours of applying for assistance;
- confidentiality;
- contact the DHHS;
- challenge the administrator's decision by requesting a fair hearing.

Reimbursement/Recovery. The administrator will inform the applicant that he/she must reimburse the municipality for the amount of general assistance he/she has been granted in the event of a subsequent ability to pay. The municipality may also, as appropriate, contact the client's legal representative to inform him or her of the client's obligation to repay the municipality under the GA program. In addition to seeking repayment from a recipient, the municipality also may recover the amount of assistance granted to a recipient during the previous 12 months from any relative legally liable for

the applicant's support (spouses, parents of persons under the age of 25, see Article VIII, "Recovery of Expenses") (22 M.R.S.A. § § 4318, 4319). Whenever applicable, the administrator will explain the various liens a municipality may place against a recipient's real or personal property, such as the mortgage or capital improvement lien, the Workers' Compensation lump sum payment lien, or the SSI "interim assistance agreement" lien, as these liens are described in Article VIII, "Recovery of Expenses".

Section 4.5—Responsibilities of the Applicant at the Time of Application

The applicant has the responsibility at the time of each application to provide accurate, complete and current household information and verifiable documentation concerning:

- Income
- Resources
- Assets
- Employment
- Use of income
- Names and addresses of any relatives legally liable for the applicant's support
- Any change in this information from a previous application that would affect household eligibility (22 M.R.S.A. §4309).

In addition, the applicant must accurately report and provide verifiable documentation that shows the applicant:

- a) has remained employed, if previously employed, and not quit work without just cause or been discharged from employment for misconduct;
- b) has been seeking employment, if previously unemployed or employed on a part-time basis, has accepted any suitable offer of employment, and has satisfactorily performed all workfare assignments or had just cause not to perform those assignments;

- c) has made use of all available and potential resources when directed in writing to such a program by the administrator, including, but not limited to, other government benefit programs or the assistance of liable relatives of sufficient means; and
- d) has participated in any training, retraining, educational or rehabilitative program when appropriate and when directed in writing to such a program by the administrator, in order to diminish the applicant's need for general assistance (22 M.R.S.A. § §4316-A, 4317).

Section 4.6—Action on Applications

Written Decision. The general assistance administrator will give a written decision to the applicant concerning his or her eligibility within 24 hours after the applicant submits a written application. Assistance will be furnished to eligible applicants within that period except when the municipality is permitted by law (and pursuant to section 5.6 of this ordinance) to issue assistance conditionally on the successful completion of a workfare assignment (22 M.R.S.A. § § 4305, 4316-A, 4321). A written decision will be given each time a person applies, whether assistance is granted, denied, reduced or terminated.

Content. The written decision will contain the following information:

- a) the type and amount of aid the applicant is being granted or the applicant's ineligibility;
- b) the period of eligibility if the applicant is eligible for assistance;
- c) the specific reasons for the decision;
- d) the applicant's right to a fair hearing; and

- e) the applicant's right to notify the DHHS if he/she believes the municipality has acted illegally (22 M.R.S.A. § 4321).

Section 4.7—Withdrawal of an Application

An application is considered withdrawn if:

- a) the applicant requests in writing that his or her application be withdrawn; or
- b) the applicant refuses to complete or sign the application or any other form needed by the general assistance administrator.

Section 4.8—Temporary Refusal to Accept Application

Under special circumstances, the general assistance administrator may temporarily refuse to accept applications. Such circumstances may include, but are not limited to, the following:

- a) When the applicant's conduct is abusive, disruptive, or harassing, or when the applicant is under the influence of drugs or alcohol. In these situations, the applicant will be asked to leave, and if the applicant refuses to leave, the police may be summoned. The applicant will be informed that an application will only be accepted when his or her conduct is under control.
- b) If the administrator believes that an applicant's behavior presents a threat to the health or safety of the public or to a municipal employee, or if such behavior is violent, or if an applicant has engaged in abusive, disruptive or harassing behavior and has been required to leave on more than one occasion, then the applicant may be required to designate a third party to apply for assistance on his or her behalf and the applicant may be prohibited from entering the municipal building;

- c) When a third person applies for assistance on behalf of the applicant that person may be required to provide written verification that he/she has been duly authorized to act as a representative for the applicant (22 M.R.S.A. § 4308).

Section 4.9—Emergencies

An emergency is considered to be any life threatening situation or a situation beyond the control of the applicant which if not alleviated immediately could reasonably be expected to pose a threat to the health or safety of the applicant or a member of the household (22 M.R.S.A. § 4301(4)). Although they may be considered otherwise ineligible to receive general assistance, persons who apply for assistance to alleviate an emergency may be granted assistance, except as provided below, if they do not have sufficient income and resources to meet an actual emergency need and have not had sufficient income and resources to avert the emergency (22 M.R.S.A. § 4308).

A municipality may provide emergency assistance when the municipality determines that an emergency is imminent and that failure to provide assistance may result in undue hardship and unnecessary costs to either the client or the municipality.

Disqualification. A person who is currently disqualified from receiving General Assistance due to a violation of sections 5.5, 5.6, 5.7, 5.8, 5.9 or 6.4 of this ordinance is ineligible to receive emergency assistance (22 M.R.S.A. § 4308(2)(A)). However, dependents of a disqualified person may be eligible for assistance. For the purposes of this section, “dependents” are defined as: 1) a dependent minor child; 2) an elderly, ill or disabled person; or 3) a person whose presence is required to provide care for any child under the age of 6 years or any ill or disabled member of the household (22 M.R.S.A. § 4309(3)).

In the event one or more members of a household are disqualified and assistance is requested for the remaining dependents, the eligibility of those dependents will be calculated by dividing the maximum level of assistance available to the entire household by the total number of household members.

Assistance Prior to Verification. Whenever an applicant informs the administrator that he/she needs assistance immediately, the administrator will grant, pending verification, the assistance within 24 hours, provided that:

- a) after interviewing the applicant the administrator has determined that the applicant will probably be eligible for assistance after a verification of information is completed; and
- b) the applicant submits documentation when possible, to verify his or her need. The administrator may contact at least one other person to confirm the applicant's statements about needing emergency assistance. No further assistance will be authorized until the applicant's eligibility is confirmed (22 M.R.S.A. § 4310).

Telephone Applications. If a person has an emergency need and cannot apply in person due to illness, disability, lack of transportation, or other good cause, and if there is no authorized representative who can apply on behalf of the applicant, the administrator shall accept an application over the telephone (22 M.R.S.A. § 4304).

The administrator will not grant any assistance as the result of a telephone application if the applicant refuses to allow the administrator to verify the information either by visiting his or her home or by mail and the administrator cannot determine his or her eligibility through any other means.

Limitation on Emergency Assistance. Applicants are not automatically eligible for emergency assistance. If applicants had income which could have been used to prevent all or part of an emergency, but they spent that income on items which are not basic necessities, they will not be eligible to receive general assistance to replace the misspent money (22 MRSA § § 4308(2) & 4315-A).

All applicants have the responsibility to provide the administrator with verifiable documentation demonstrating that the applicant did not have sufficient income to avert

the emergency situation. According to the following criteria, the administrator may limit emergency assistance to cover only the difference between the amount of money necessary for the household to avoid the emergency and the amount of income available to the household during the applicable time period.

- a) The applicable time period shall be the 30 days preceding the application for emergency assistance, except in those cases where the emergency was created by a negative account balance for a commodity or service (such as rent, mortgage or utility payments), and the negative account balance was created over a longer period of time. In such cases, the applicable time period shall be the consecutive length of time the account balance has been in the negative.
- b) The administrator shall seek from the applicant all information pertinent to the applicant's ability to provide for his or her basic necessities for the applicable time period, including evidence of all income and resources received over that period of time.
- c) The administrator shall calculate all costs for the household's basic necessities during the applicable time period, per month, in accordance with the maximum levels established by this ordinance for the specific basic necessity or the actual monthly cost, whichever is less, including all costs associated with averting the particular emergency situation for which the applicant is seeking assistance.
- d) From the total household costs for basic necessities during the applicable time period, the administrator shall subtract the total income and lump sum payments available to the household for the applicable time period as well as the total general assistance actually received during the applicable time period.
- e) The administrator may restrict the issuance of emergency assistance to the difference yielded by the computation in subsection (d), even when such a grant will not totally alleviate the emergency situation.

- f) The administrator may waive this limitation on emergency assistance in life threatening situations or for initial applicants; that is, persons who have never before applied for general assistance.
- g) Nothing in these criteria may be construed as prohibiting a municipality from electing to alleviate an emergency situation in the most cost-effective manner available, provided such a determination of eligibility for emergency assistance is in conformance with general assistance law.

Section 4.10—Residence

The administrator shall provide general assistance to all eligible persons applying for assistance who are residents of this municipality. A resident is a person who has no other residence and is physically present in this municipality and who intends to remain here and establish a household.

The municipality also recognizes its responsibility to provide assistance to eligible persons who apply here and who are not residents of this municipality or any other municipality. If a person who is not a resident of any municipality applies in this municipality first, the administrator will determine his or her eligibility and, if eligible, will grant assistance until he/she establishes a residence in another municipality (22 M.R.S.A. § 4307).

Moving/Relocating. The municipality will not consider moving or transporting an applicant or recipient into another municipality unless the person requests assistance to relocate to another municipality. If the administrator determines the applicant is eligible and grants financial assistance to help with the requested relocation, this municipality will be responsible for providing assistance to the applicant for 30 days after he/she moves provided the recipient remains eligible.

Institutions. If a resident of this municipality enters an institution located in another municipality (such as a group home, shelter, rehabilitation center, nursing home, or

hospital) and requests assistance while at the institution, he/she will be the responsibility of this municipality for up to 6 months after he/she enters the institution if the conditions of 22 M.R.S.A. § 4307 and §4313 are met. The municipality thereafter retains responsibility for an applicant in an institution only if the applicant has maintained a home in this municipality to which he/she intends to return. The municipality also recognizes its responsibility for applicants residing in an institution in this municipality if such an applicant had no residence prior to entering the institution (22 M.R.S.A. § 4307(4)).

Temporary Housing. Hotels/motels and similar places of temporary lodging are considered institutions if the municipality grants financial assistance for, makes arrangements for, or advises or encourages an applicant to stay in temporary lodging.

Note: Municipalities which illegally deny housing assistance and, as a result of the denial, the applicant stays in temporary lodging are responsible for the applicant for up to 6 months and may be subject to other penalties (22 M.R.S.A. § 4307(4)).

Disputes. When the administrator believes that an applicant is a resident of another municipality but that municipality disputes its responsibility the administrator will notify the DHHS in Augusta (287-3654 or 1-800-442-6003). If the applicant applies in this municipality first, the administrator will determine his or her eligibility and, if eligible, will grant assistance until the DHHS has concluded which municipality is responsible for providing assistance. If another municipality was responsible, the DHHS will recover the amount due from the other municipality. (22 M.R.S.A. § § 4307(5), 4307(6)).

ARTICLE V

Eligibility Factors

A person will be eligible for general assistance if he/she is in need and has complied with the eligibility requirements set forth below.

Section 5.1—Initial Application

Initial Application. For initial applicants, except as provided immediately below, need will be the sole condition of eligibility. The exception to this general rule, as provided by law, applies to all applicants, including initial applicants, who are disqualified for a defined period for quitting employment without just cause or for being discharged from employment for misconduct (22 M.R.S.A. § 1043 (23)) (*see section 5.5 of this ordinance*) and to fugitives from justice as defined in 15 M.R.S.A. § 201(4) (22 M.R.S.A. § 4301(3)). An initial applicant is a person who has never before applied for general assistance in any municipality in Maine (22 M.R.S.A. § 4308(1)).

“Need” means that the applicant’s income (including prorated income, where applicable), property, credit, assets or other resources are less than the overall maximum level of assistance contained in section 6.8 of this ordinance or the applicant’s 30-day need, whichever is less, and he/she does not have adequate income or other resources available to provide basic necessities.

Subsequent Applicants. Persons who are not initial applicants are repeat applicants. Repeat applicants are people who have applied for general assistance at any time in the past. Repeat applicants are also people on whose behalf a general assistance application was made at any time in the past, provided that at such a time the applicant was not a dependent minor in the household. For repeat applicants to be eligible for general assistance, they must be in need and meet all other eligibility requirements. The eligibility of repeat applicants may also be adversely affected to the extent they have not used their income and resources to secure basic necessities.

Section 5.2—Eligibility for Categorical Assistance

Receipt of categorical assistance will not disqualify a person from receiving general assistance if the applicant is otherwise eligible. Benefits received from other assistance programs will be considered as income when determining need, with the exception of Food Stamps, which will not be counted as income or resources or otherwise taken into consideration when determining need (7 U.S.C. § 2017 (b)).

In addition, any fuel assistance (HEAP/ECIP) received by an applicant will not be considered as income; that is, the administrator will always compute the heating needs of an applicant who has received HEAP or ECIP as if that applicant paid all costs associated with his or her fuel needs (42 U.S.C. §8624(f)). The calculation of general assistance for heating energy needs when an applicant has received HEAP or ECIP shall be accomplished in accordance with subsection (c) under “Types of Income” at section 6.7 of this ordinance. For several additional exceptions please refer to the definition of “Income” in this ordinance (see page 7, subsection 4).

Applicants or recipients must apply for other program benefits within 7 days after being advised in writing to do so by the general assistance administrator. Persons who, without just cause, make no good faith effort to obtain a potential resource will be disqualified from receiving assistance until they make a good faith effort to obtain the benefit (22 M.R.S.A. § 4317).

Section 5.3—Personal Property

- a) **Liquid Assets.** No person owning assets easily convertible into cash, including but not limited to, bank deposits, stocks, bonds, certificates of deposit, retirement accounts, life insurance policies and other marketable security, will be eligible for general assistance unless and until he or she uses these assets to meet his or her basic needs, and thereby exhausts them. At the discretion of the GA administrator, liquid assets do not mean a reasonable minimum balance necessary for obtaining free checking. Although one checking account per

household may be allowed, any monies over the minimum required to obtain free checking are to be considered available liquid assets.

- b) **Tangible Assets.** No person owning or possessing personal property, such as but not limited to: a motor vehicle (except as provided immediately below in subsection c), or a boat, trailer, recreation vehicle or other assets that are convertible into cash and are non-essential to the maintenance of the applicant's household, will be eligible for general assistance. Exceptions may be made when a person is making an initial application or is an unforeseeable repeat applicant as defined in Section 2.2 or when reasonable efforts to convert assets to cash at fair market value are unsuccessful. Tools of a trade, livestock, farm equipment and other equipment used for the production of income are exempt from the above category and are not considered available assets.
- c) **Automobile Ownership.** Ownership of one automobile per household will not make a person ineligible for assistance if such vehicle is essential for transportation to employment or for seeking employment, obtaining medical care, rehabilitation or training facilities, or for any other reason the GA administrator determines reasonable for the maintenance of the applicant's household. Recipients of general assistance who own an automobile with a market value greater than \$8000 may be required, with written, 7-day notice, to make a good faith effort to trade that automobile for an automobile with a market value of less than \$8000. Any income received by the applicant by virtue of such a trade down must be used for his or her basic necessities. Failure to liquidate or trade down the excess value of any automobile asset can result in disqualification (22 M.R.S.A. § 4317).

The municipality will neither pay nor consider as necessary any car payment or vehicle maintenance cost including insurance for which the applicant is responsible. However, provided the vehicle value is \$8000 or less and the applicant is utilizing the vehicle for any of the above mentioned "essential"

reasons, the municipality in its discretion may choose to not consider reasonable car payments, reasonable car insurance and reasonable associated costs of maintenance as “misspent” income. General assistance for travel-related needs shall be computed in accordance with section 6.8(F)(7), (8) “Work Related/Travel Expenses.”

- d) **Insurance.** Insurance that is available to an applicant on a non-contributory basis or that is required as a condition of employment will not be a factor in determining eligibility for general assistance. Life insurance with a cash surrender value may, at the discretion of the GA administrator, be considered as a tangible asset.
- e) **Transfer of Property.** Applicants who transfer assets for less than fair market value to someone else solely for the purpose of establishing eligibility for general assistance will not be granted general assistance to replace the uncompensated value of the transferred asset. Assistance will be denied within a 120-day limit up to the uncompensated value of the asset which was transferred unless the transfer of asset is fraudulently misrepresented, in which case a 120-day disqualification will be issued. There will be a presumption that the applicant transferred his or her assets in order to be eligible for general assistance whenever property is sold for less than the fair market value or when the transfer occurred within 30 days prior to applying for general assistance unless the applicant can demonstrate the existence of a good faith transaction.

Section 5.4—Ownership of Real Estate

- a) **Principal Residence.** For purposes of General Assistance solely, the applicant’s principal residence, including any adjoining land, is considered an exempt resource, even if temporarily unoccupied because of employment, job training, education, illness or disaster, provided there is demonstrated an intent to return. If the applicant owns land in excess of the minimum lot size for the zone or district in which the home is located, then that land may be considered a potential resource if:

1. The applicant has received General Assistance for the last 120 consecutive days; and
2. The applicant has the legal right to sell the land (e.g., any mortgagee will release any mortgage, any co-owners agree to the sale, zoning or other land use laws do not render the sale illegal or impracticable); and
3. The applicant has the financial capability to put the land into a marketable condition (e.g., the applicant can pay for any necessary surveys); and
4. The land is not utilized for the maintenance and/or support of the household; and
5. A knowledgeable source (e.g., a realtor) indicates that the land in question can be sold at fair market value, for an amount which will aid the applicant's financial rehabilitation; and
6. No other circumstances exist which cause any sale to be unduly burdensome or inequitable.

If the above conditions are met, then the administrator may condition the receipt of future assistance on the applicant's good faith efforts to sell, or render saleable, land which could be used to provide necessary support for the applicant (e.g., the applicant owns 100 "excess" acres. Sale of 10 of the acres would provide for the necessary support and therefore not all the land need be sold at the present time.) Assistance shall not be denied during the time that the applicant is making a good faith effort to sell or render saleable the land in question.

Once the applicant ceases to receive assistance the obligations under this section shall also cease.

b) **Other Property.** If the applicant or dependents own real property other than that occupied as the principal residence, continued eligibility will depend on the applicant making a reasonable effort to:

1. Dispose of the property at fair market value in order to convert the property into cash which can be applied toward meeting present need; or
2. Obtain a loan against such property which may be used to meet present need. Applicants who transfer their excess property to a third party in order to become eligible for general assistance will be ineligible.

If an applicant is granted assistance in the form of a mortgage payment or capital improvement payment, the municipality may claim a lien against the property.

The lien shall not be enforceable until the time of sale of the property or upon the death of the recipient (*see also section 6.8 of this ordinance*) (22 M.R.S.A. § 4320).

Section 5.5—Work Requirement

All general assistance recipients are required to register for work, look for work, work to the extent of available employment, and otherwise fulfill the work requirements, unless the applicant is exempt from such requirements as provided below.

Employment; Rehabilitation. All unemployed applicants and members of their households who are 16 years of age or older and who are not attending a full-time primary or secondary school intended to lead to a high school diploma will be required to accept any suitable job offer and/or meet with job counselors, attend employment workshops and rehabilitative services, except as provided below (*see “Exemptions”*). Applicants must demonstrate to the administrator that they are available for work and are actively seeking employment.

A “suitable job” means any job, which the applicant is mentally and physically able to perform. “Available for work” means that applicants must make themselves available for

work during normal business hours prevailing in the area, and show that no circumstance exists which would prevent them from complying with the work requirement.

Verification. Unemployed applicants or applicants employed on a part-time basis will be required to provide verifiable documentation of their pursuit of employment at the time of each application. At a minimum, such documentation shall consist of a list of the employers contacted, the date and time of the application contact, and the name of the employer representative contacted. "Pursuit of employment" means actually submitting a written application or applying for a job in person when reasonable, or submitting a written application or letter of inquiry to employers.

For the duration of any repeat applicant's period of unemployment or partial employment, the administrator will establish the number of employers per week to whom each non-exempt applicant shall be required to apply in order to fulfill his or her work search requirements. The number of weekly employer contacts required by the administrator shall be reasonably related to the number of potential employers in the region and the number of hours in the week the applicant has available for work search activities after considering all time the applicant must devote to existing employment obligations, workfare obligations, and required classroom or on-site participation in job training, educational, or rehabilitation programs. Fulfillment of these requirements will not be expected at the time of the initial application, but will be a condition of eligibility for subsequent assistance.

Ineligibility. After being granted assistance at the time of initial application, applicants will be considered ineligible for further assistance for 120 days if they, without just cause:

- a) refuse to register for employment with the Maine Job Service;
- b) refuse to search diligently for employment when the search is reasonable and appropriate; recipients who unreasonably seek work at the same places

repeatedly will not be considered to be performing a diligent worksearch and will be disqualified;

- c) refuse to accept a suitable job offer;
- d) refuse to participate in an assigned training, education or rehabilitation program that would assist the applicant in securing employment;
- e) fail to be available for work; or
- f) refuse to participate or participate in a substandard manner in the municipal work program (*see section 5.6*).

Ineligibility Due to Job Quit or Discharge for Misconduct. No applicant, whether an initial or repeat applicant, who has quit his or her full-time or part-time job without just cause or who has been discharged from employment for misconduct (*see Appendix I, 26 M.R.S.A. § 1043 (23) for the definition*) will be eligible to receive general assistance of any kind for a 120-day period from the date of separation from employment (22 M.R.S.A. § § 4301(8), 4316-A (1-A)).

Just Cause. Applicants will be ineligible for assistance for 120 days if they refuse to comply with the work requirements of this section without just cause. With respect to any work requirement, just cause will be considered to exist when there is reasonable and verifiable evidence that:

- a) the applicant has a physical or mental illness or disability which prevents him/her from working;
- b) the work assignment pays below minimum wages;
- c) the applicant was subject to sexual harassment;
- d) the applicant is physically or mentally unable to perform required job tasks, or to meet piece work standards;

- e) the applicant has no means of transportation to or from work or a training or rehabilitation program;
- f) the applicant is unable to arrange for necessary child care or care of ill or disabled family members; or
- g) any reason found to be good cause by the Maine Department of Labor, or any other verifiable reason the administrator considers reasonable and appropriate will be accepted as just cause. (22 M.R.S.A. § 4316-A(5)).

Applicant's Burden of Establishing Just Cause. If the administrator finds that the applicant has violated a work-related rule without just cause, it shall be the responsibility of the applicant to establish the presence of just cause (22 M.R.S.A. § 4316-A).

Eligibility Regained. Persons who are disqualified for 120 days because they violated a work requirement may regain their eligibility if and only when they become employed or otherwise satisfy the administrator that they are complying with the work requirement by fulfilling the work requirement or requirements they violated.

For the purpose of regaining eligibility by becoming employed, "employment" shall mean employment by an employer as defined in 26 M.R.S.A. § § 1043 et seq., or the performance of a service for an employer who withholds from the employee a social security tax pursuant to federal law.

The special provisions regarding the opportunity to regain eligibility after a disqualification for workfare violations are detailed in section 5.6 of this ordinance, under "Eligibility Regained".

Dependents. Failure of an otherwise eligible person to comply with the work requirements shall not affect the eligibility of any member of the person's household who is not capable of working, including:

- a) a dependent minor child;
- b) an elderly, ill, or disabled person; and

- c) a person whose presence is required in order to provide care for any child under 6 years of age or for any ill or disabled member of the household (22 M.R.S.A. § 4309(3)).

In the event one (or more) member(s) of a household is disqualified and assistance is requested for those remaining members of the household who are dependents, the eligibility of those dependents will be calculated by dividing the maximum level of assistance available to the entire household by the total number of household members.

Exemptions. The above work requirements do not apply to any person who is elderly, physically or mentally ill or disabled. Any person whose presence is required to care for any pre-school age child or for any ill or disabled member of the household is also exempt from these requirements.

The requirements of this section will not be imposed so as to interfere with an applicant's existing employment, ability to pursue a bona fide job offer, ability to attend an interview for possible employment, classroom participation in a primary or secondary educational program intended to lead to a high school diploma, classroom or on site participation in a training program which is either approved by the Department of Labor or determined by the Department of Labor to be expected to assist the applicant in securing employment, or classroom participation in a degree-granting program operated under the control of the Department of Labor.

Section 5.6—Municipal Work Program

Each applicant and any member of the household who is capable of working may be required to perform work for the municipality, including work for a non-profit organization, as a condition of receiving assistance (22 M.R.S.A. § 4316-A(2)).

As part of the municipal work program, the municipality can require recipients to participate in training, education, or rehabilitative programs that will assist the recipient

in securing employment. The work requirement provisions found in section 5.5 regarding just cause, dependents, and exemptions also apply to the municipal workfare program.

Consent. Persons assigned to the work program are required to sign a form stating that they understand the requirements of general assistance and the work program. Prior to signing the form, the administrator will read it to the applicants or the applicants will read it themselves. The form will also state the number of hours the applicants must work and the hourly rate by means of which the duration of the work assignment is calculated. In addition, the consent form shall describe the consequences of failing to adequately perform part or all of the workfare or workfare-first assignment.

Subtracting Value of Workfare Performed from Client's GA Debt. Pursuant to 22 MRSA § 4318 individuals owing the municipality funds for general assistance provided to them are obligated to repay the municipality when and if they become able (*see Article VIII*). However, persons performing workfare shall have the value of the workfare performed deducted from any and all GA debt including GA liens (e.g., Workers' Compensation Settlement, SSI Retroactive Payment, Capital Improvement, Home Mortgage) that might exist against their settlements, payments or other such property.

Limitations. The work requirement is subject to the following limitations (22 M.R.S.A. § 4316-A(3)).

- 1) No person shall, as a condition of eligibility, be required to do any amount of work that exceeds the value of the net general assistance that the person receives under municipal general assistance standards. Any person performing work under this subsection shall be provided with net general assistance, the value of which is calculated at a rate of at least the prevailing minimum wage under state or federal law at the time the workfare was performed.
- 2) No workfare participant shall be required to work for a nonprofit organization if that work would violate the participant's basic religious beliefs.

- 3) In no case shall eligible persons performing work under this subsection replace regular municipal employees.
- 4) In no case will work performed under this subsection interfere with an eligible person's:
 - a) existing employment;
 - b) ability to follow up on a bona fide job offer;
 - c) attendance at an interview for possible employment;
 - d) classroom participation in a primary or secondary educational program intended to lead to a high school diploma; or
 - e) classroom or on site participation in a training program which is approved by the Department of Labor or determined by the Department of Labor to be reasonably expected to assist the person in securing employment, or classroom participation in a degree-granting program administered by the DHHS or the Department of Labor.
- 5) In no case may an eligible person be required to work more than 40 hours per week. An eligible person who has full or part-time employment shall be exempt from the work requirement to the extent that the work requirement in combination with his or her regular employment would result in the person working more than 40 hours per week.
- 6) In no case will an eligible person be required to perform work beyond his or her capabilities. However, when an illness or disability is claimed, an eligible person may be required as a condition of receiving assistance to present a doctor's statement detailing the extent of the disability or illness (22 M.R.S.A. § 4309).

If the administrator requires a doctor's statement to verify an applicant's illness or disability and the applicant is not currently under the care of a provider, the municipality may pay for the doctor's evaluation if the applicant has no means to pay for the exam. However in such a case the administrator will choose the doctor. If there is a no-cost or low-cost health care option, the municipality may elect to refer the client to such a resource. The administrator will not require

verification of medical conditions which are apparent or which are of such short duration that a reasonable person would not ordinarily seek medical attention (22 M.R.S.A. § 4316(5)).

- 7) In no case may an eligible person with an immediate need (i.e., a person in an emergency situation who has not been disqualified from receiving assistance for committing a program violation) be required to perform work under this subsection prior to receiving general assistance. The administrator shall meet immediate needs upon receiving written assurance from the eligible person that he/she is willing to work to maintain eligibility for general assistance. When the recipient has no immediate need, workfare participation may be required prior to receiving general assistance in accordance with the following “workfare first” policy.

“Workfare First” Policy. Under the authority of 22 M.R.S.A. § 4316-A(2)(D), the administrator may, in accordance with the following guidelines, require a recipient of general assistance to perform a workfare assignment prior to the actual issuance of the general assistance benefit conditionally granted.

- 1) In no circumstance will emergency general assistance for which an applicant is eligible be withheld pending the satisfactory performance of workfare.
- 2) All workfare participants under this policy will be provided a written decision, as otherwise required by law, within 24 hours of submitting an application for general assistance and prior to performing any workfare for the municipality associated with that request for assistance. That written decision must include:
 - a) a specific description of the amount of general assistance being conditionally granted to the household, and for which basic needs;
 - b) the period of eligibility for which the general assistance grant is being issued (in days or weeks, but not to exceed 30 days);

- c) the rate, at a dollar-per-hour basis (but not less than the prevailing minimum wage), upon which the duration of the workfare assignment is calculated;
 - d) the actual duration of the workfare assignment that must be performed, in hours, before the general assistance grant will be actually issued;
 - e) the specifics of the workfare assignment(s), including the general nature of the type of work being assigned, location(s) of work-site, date(s) and time(s) of assigned workfare, workfare supervisors' names and contact telephone numbers; and
 - f) any other pertinent information related to the workfare assignment(s) the recipient will be expected to perform.
- 3) As previously provided in this section, all workfare participants under this policy must sign a consent form that informs the participant of his or her workfare-related rights and responsibilities, including the consequences of failing to perform all or part of the workfare assigned without just cause.
- 4) If a portion of the workfare-first assignment is satisfactorily performed but there has been a failure to perform the remainder of the assignment, without just cause, the administrator shall issue a grant of general assistance in the amount of the number of workfare hours satisfactorily performed times the hourly rate used to calculate the duration of the workfare assignment. In addition to any disqualification penalty that may apply, the remaining value of the conditionally issued general assistance grant shall be terminated, and notice of the partial termination, and the reasons therefore, will be issued to the workfare participant in accordance with section 6.10 of this ordinance.
- 5) Any amount of the workfare assignment that is not performed because the workfare participant was temporarily unable to perform the assignment for just

cause reasons shall be reassigned or excused at the discretion of the GA administrator.

Work-Related Expenses. A participant's expenses related to work performed under this section will be added to the amount of net general assistance to be provided to the person (22 M.R.S.A. § 4316-A(2)(E)). The municipality will provide any special clothes or equipment the recipient needs to perform his or her work assignment.

Disqualification. Any person who either willfully fails to perform or willfully performs below average standards the work assigned by the municipality, will be ineligible for assistance for 120 days (22 M.R.S.A. § 4316-A(1)). As soon as the administrator knows that a recipient failed to fulfill the work assignment, the administrator will notify the recipient in writing that he/she is disqualified for 120 days starting from the last date of authorized assistance unless the recipient can show just cause. The burden of demonstrating a just cause failure to perform a workfare assignment falls on the workfare participant.

Eligibility Regained. Recipients who are disqualified from receiving assistance because they have violated the requirements of the municipal work program may regain their eligibility under the following conditions.

Recipients who fail to complete the first municipal work assignment they have been given will be disqualified from receiving assistance during the next 120 days, although dependents in the household may be eligible (*see section. 5.5, "Dependents"*).

If during the 120-day disqualification period the recipient requests an opportunity to perform the work assignment which he or she, without just cause failed to perform, the disqualified recipient will be given one opportunity to regain eligibility. The administrator will give the recipient a work assignment as soon as possible.

If under such a set of circumstances the recipient has an emergency need and the administrator is unable to schedule a work assignment in time to alleviate the emergency, the administrator will provide sufficient assistance to the recipient to avert the emergency. However, the provision of such emergency assistance will not bar the administrator from subsequently enforcing the previously issued 120-day disqualification if the recipient fails to regain eligibility by satisfactorily performing the work assignment. The amount of emergency assistance granted will be considered in the computation of the total number of hours the recipient must work.

Recipients who have asked for the opportunity to regain their eligibility during a 120 day disqualification period and who agreed to fulfill the assignment which they previously failed to perform and who, without just cause, fail to fulfill their municipal work assignment will be considered to have acted in bad faith. In such a circumstance, the administrator will enforce the 120-day disqualification for the term of its initial duration.

If a workfare participant regains eligibility under this section but is subsequently disqualified within the initial 120-day period of ineligibility for failing to comply with the municipal work program, that participant will be ineligible for a new 120-day period beginning with the new disqualification date, but will be provided no opportunity to requalify.

Any recipient who intentionally causes damage to property, harasses or harms other employees or who otherwise conducts themselves in a disruptive manner and is discharged by the work supervisor will not be entitled to regain eligibility by returning to the work program. Eligibility may be regained by otherwise becoming employed and meeting the definition of need.

Reports. The administrator will itemize the assistance that has been provided to persons who work for the municipality in reports to the DHHS (22 M.R.S.A. § 4316-A(2)).

Section 5.7—Use of Resources

Each applicant has the responsibility to make a good faith effort to utilize every available or potential resource that may reduce his or her need for general assistance (*see section 2.2 for definition of “Resources”*). People who refuse or fail to make a good faith effort to secure a potential resource after receiving written notice to do so are disqualified from receiving assistance until they make an effort to secure the resource. Applicants are required to prove that they have made a good faith effort to secure the resource (22 M.R.S.A. § 4317).

Minors. A minor under the age of 18 who has never married and is applying independently for general assistance and who is pregnant or has a dependent child or children will be eligible to receive general assistance only if the minor is residing in the home of his or her parent, legal guardian or other adult relative, in which case the entire household will be evaluated for eligibility. Exceptions to this limitation on eligibility will be made when:

- 1) the minor is residing in a foster home, maternity home, or other adult-supervised supportive living arrangement; or
- 2) the minor has no living parent or the whereabouts of the both parents are unknown; or
- 3) no parent will permit the minor to live in the parent’s home; or
- 4) the minor has lived apart from both parents for at least one year before the birth of any dependent child; or
- 5) the DHHS determines that the physical or emotional health or safety of the minor or the minor’s dependent child or children would be jeopardized if the minor and his or her child or children lived with a parent; or
- 6) the DHHS determines, in accordance with its regulation, that there is good cause to waive this limitation on eligibility (22 M.R.S.A. § 4309(4)).

Any person under the age of 25 who is applying independently from his or her parents for general assistance will be informed that until he or she reaches the age of 25, the applicant's parents are still legally liable for his or her support and the municipality has the right to seek recovery from the parents of the cost of all assistance granted to such a recipient to the extent his or her parents are financially capable of repaying the municipality (22 M.R.S.A. § 4319).

With regard to such application, the municipality may seek verification of the applicant's need for general assistance by contacting his or her parents. If the applicant's parents declare a willingness to provide the applicant with his or her basic needs directly, and there is no convincing evidence that the applicant would be jeopardized by relying on his or her parents for basic needs, the administrator may find the applicant not to be in need of general assistance for the reason that his or her needs can be provided by a legally liable relative.

Mental or Physical Disability. Any applicant who has a mental or physical disability must make a good faith effort to utilize any medical or rehabilitative services which have been recommended by a physician, psychologist or other professional retraining or rehabilitation specialist when the services are available to the applicant and would not constitute a financial burden or create a physical risk to the individual.

Written Notice; Disqualification. The administrator will give each applicant written notice whenever the applicant is required to utilize any specific potential resource(s). Any applicant who refuses to utilize potential resources, without just cause, after receiving written 7-day notice will be ineligible for further assistance until he/she has made a good faith effort to utilize or obtain the resources. General assistance will not be withheld from the applicant pending receipt of a resource if the applicant has made, or is in the process of making, a good faith effort to obtain the resource.

Forfeiture of Benefits. Any applicant who forfeits receipt of or causes a reduction in benefits from another public assistance program due to fraud, misrepresentation, a knowing or intentional violation of program rules or a refusal to comply with that program's rules without just cause will be ineligible to receive general assistance to replace the forfeited benefits. To the extent the forfeited benefits can be considered income under general assistance law, the worth of the forfeited benefits will be considered income that is available to the applicant for the duration of the forfeiture.

To the extent the forfeited benefits were provided not in the form of income but, rather, in the form of a specific, regularly issued resource of a calculable value, that resource, up to its forfeited value, need not be replaced with general assistance for a period of 120 days from the date of the forfeiture—unless the municipality is prohibited by federal or state law from considering the forfeited resource as available with respect to local public assistance programs (22 M.R.S.A. § 4317).

Section 5.8—Period of Ineligibility

No one will have his or her assistance terminated, reduced, or suspended prior to being given written notice and an opportunity for a fair hearing (22 M.R.S.A. § § 4321-4322). Each person will be notified in writing of the reasons for his or her ineligibility, and any person disqualified for not complying with the ordinance will be informed in writing of the period of ineligibility.

Work Requirement. Applicants/recipients who do not comply with a work requirement are disqualified from receiving assistance for a period of 120 days (unless they regain their eligibility) (*see sections 5.5, 5.6*). If an applicant/recipient is provided assistance and does not comply with the work requirement, the applicant/recipient shall be disqualified for 120 days following the end of the period covered by the grant of assistance. The administrator shall give recipients written notice that they are disqualified as soon as the administrator has sufficient knowledge and information to render a decision of ineligibility.

Fraud. People who commit fraud are disqualified from receiving assistance for a period of 120 days (*see section 6.4, "Fraud"*). The administrator shall give recipients written notice that they are ineligible as soon as the administrator has sufficient knowledge and information to render a decision. If the disqualification for fraud is issued before the expiration of a grant of assistance, the period of ineligibility shall commence on the day following the end of the period covered by the grant of assistance. If fraud is discovered after the period covered by the grant of assistance has expired, the period of ineligibility will commence on the day of the written notice of ineligibility.

Section 5.9 – Unemployment Fraud

An applicant who is found ineligible for unemployment compensation benefits because of a finding of fraud by the Department of Labor pursuant to 26 M.R.S.A. § 1051(1) is ineligible to receive general assistance to replace the forfeited unemployment compensation benefits for the duration of the forfeiture established by the Department of Labor. 22 M.R.S.A. § 4317.

ARTICLE VI

Determination of Eligibility

Section 6.1—Recognition of Dignity and Rights

Any determination or investigation into an applicant's eligibility will be conducted in a manner that will not violate the applicant's privacy or personal dignity or violate his or her individual rights.

Section 6.2—Determination; Redetermination

The administrator will make an individual, factual determination of eligibility each time a person applies or reapplies for general assistance. The administrator will make a redetermination of eligibility at least monthly but may do so as often as necessary to administer the program efficiently and meet the needs of the applicants. Upon any application, the administrator will determine the applicant's eligibility on the basis of a 30-day prospective analysis, but may elect to disburse that applicant's assistance periodically, e.g., weekly, throughout a 30-day period of eligibility pursuant to that initial eligibility determination.

The administrator may redetermine a person's eligibility at any time during the period he or she is receiving assistance if the administrator is notified of any change in the recipient's circumstances that may alter the amount of assistance the recipient may receive. Once a recipient has been granted assistance, the administrator may not reduce or rescind the grant without giving prior written notice to the recipient explaining the reasons for the decision and offering the recipient an opportunity to appeal the decision to the fair hearing authority (22 M.R.S.A. § 4309).

Section 6.3—Verification

Eligibility of applicant; duration of eligibility. The overseer shall determine eligibility each time a person applies or reapplies for general assistance. The period of eligibility will not exceed one month. At the expiration of this period applicants/recipients may reapply for assistance and the person's eligibility will be redetermined.

Applicant's responsibilities. Applicants and recipients for general assistance are responsible for providing to the overseer all information necessary to determine eligibility. If further information or documentation is necessary to demonstrate eligibility, the applicant must have the first opportunity to provide the specific information or documentation required by the overseer. When information required by the overseer is unavailable, the overseer must accept alternative available information, which is subject to verification.

Each applicant and recipient has the responsibility at the time of application and continuing thereafter to provide complete, accurate and current information and documentation concerning his/her:

- Need
- Income
- Employment
- Use of income
- Expenses
- Assets & liabilities
- Use of available resources
- Household composition

Initial Applicants. Persons who have not applied for assistance in this or any other municipality are considered initial applicants and must have their eligibility determined solely on the basis of need. Initial applicants are not subject to eligibility conditions placed on repeat applicants (*see below*). However, such applicants are still responsible for providing the GA administrator with reasonably obtainable documentation adequate

to verify that there is a need for assistance. In addition, initial applicants must also comply with both lump sum and relevant work rules (i.e. job quit).

Repeat Applicants. All applicants for general assistance that are not initial applicants are repeat applicants. The eligibility of repeat applicants must be determined on the basis of need and all other conditions of eligibility established by law and this municipal ordinance.

The administrator will require documentation of a repeat applicant's income, use of income, assets and resources plus actual bills and receipts for rent, utilities, fuel, telephone, medical services and other basic necessities. In addition, repeat applicants instructed to seek employment shall verify their work search results, e.g., provide a list of the employers contacted, the date and time of the application contact, and the name of the employer representative contacted, as required by the GA administrator.

Repeat applicants are also responsible for providing any changes of information reported on previous applications including changes in his/her household or income that may affect his/her eligibility.

Unforeseen Repeat Applicants. Unforeseen repeat applicants are applicants who have not applied for assistance within the last twelve months and who have been regularly employed or receiving support from a public benefit or private source who have unexpectedly become unemployed through no fault of their own or whose income and/or benefits (e.g., through an available resource) have ceased through no fault of their own. Such unforeseen repeat applicants may be considered initial applicants for purposes of verification requirements and misspent income if the administrator finds that imposing the general verification requirements and misspent income rules imposed on repeat applicants would be unreasonable or inappropriate.

Overseer's responsibilities. In order to determine an applicant's eligibility for general assistance, the overseer first must seek information and documentation from the applicant. Once the applicant has presented the necessary information, the overseer is

responsible for determining eligibility. The overseer will seek verification necessary to determine eligibility. In order to determine eligibility, the overseer may contact sources other than the applicant for verification only with the specific knowledge and consent of the applicant, except that the overseer may examine public records without the applicant's knowledge and consent.

Appropriate sources, which the overseers may contact, include, but are not limited to:

- DHHS and any other department/agency of the state or non-profit organizations
- financial institutions
- creditors
- utility companies
- employers
- landlords
- physicians
- persons with whom the applicant/recipient is a cohabitant
- legally and non-legally liable relatives

Assistance will be denied or terminated if the applicant is unwilling to supply the overseer with necessary information, documentation, or permission to make collateral contacts, or if the overseer cannot determine that eligibility exists based on information supplied by the applicant or others.

Redetermination of eligibility. The overseer may redetermine a person's eligibility at any time during the period that person is receiving assistance if the overseer is informed of any change in the recipient's circumstances that may affect the amount of assistance to which the recipient is entitled or that may make the recipient ineligible, provided that once a determination of eligibility has been made for a specific time period, a reduction in assistance for that time period may not be made without prior written notice to the recipient with the reasons for the action and an opportunity for the recipient to receive a fair hearing upon the proposed change.

Penalty for Refusing to Release Information. Any person governed by 22 M.R.S.A. § 4314 who refuses to provide necessary information to the administrator after it has been requested must state in writing the reasons for the refusal within 3 days of receiving the request. Any such person who refuses to provide the information, without just cause, commits a civil violation and may be subject to a fine of not less than \$25 nor more than \$100 which may be adjudged in any court of competent jurisdiction. Any person who willfully renders false information to the administrator is guilty of a Class E crime (22 M.R.S.A. § § 4314(5), 4314(6), 4315).

Section 6.4—Fraud

It is unlawful for a person to make knowingly and willfully a false representation of a material fact to the administrator in order to receive general assistance or cause someone else to receive general assistance (22 M.R.S.A. § 4315). False representation shall consist of any individual knowingly and willfully:

- a) making a false statement to the general assistance administrator, either orally or in writing, in order to obtain assistance to which the applicant or the applicant's household is not entitled;
- b) concealing information from the general assistance administrator in order to obtain assistance to which the applicant or applicant's household is not entitled; or
- c) using general assistance benefits for a purpose other than that for which they were intended.

No person may be denied assistance solely for making a false representation prior to being given an opportunity for a fair hearing.

Period of Ineligibility. When the general assistance administrator finds that a person has knowingly and willfully misrepresented material facts for the purpose of making

himself or herself eligible for general assistance, the administrator shall notify that applicant in writing that he or she has been disqualified from receiving assistance for 120 days. For the purpose of this section, a material misrepresentation is a false statement about eligibility factor in the absence of which some or all of the assistance would not be or would not have been granted.

The notification of ineligibility issued by the administrator shall inform the applicant of his or her right to appeal the administrator's decision to the fair hearing authority (FHA) within 5 working days of receipt. The period of ineligibility shall commence on the day following the end of the period covered by the grant of assistance fraudulently received or upon the date of notification of ineligibility, whichever is later.

Right to a Fair Hearing. Any applicant who is denied assistance for making a false representation will be afforded the opportunity to appeal the decision to the fair hearing authority (FHA) in accordance with Article VII of this ordinance. No recipient shall have his or her assistance reduced or revoked during the period of eligibility before being notified and given the opportunity to appeal the decision. Any person who is dissatisfied with the decision of the FHA may appeal that decision to the Superior Court pursuant to Rule 80-B of the Maine Rules of Civil Procedure (22 M.R.S.A. § 4309(3)).

Reimbursement. If a recipient does not appeal the decision or if the fair hearing authority determines that a recipient did make a false representation, the recipient will be required to reimburse the municipality for any assistance received to which he/she was not entitled.

Dependents. In no event will the ineligibility of a person under this section serve to disqualify any eligible dependent in that household (22 M.R.S.A. § 4309(3)). In the event one or more members of a household are disqualified and assistance is requested for the remaining dependents, the eligibility of those dependents will be

calculated by dividing the maximum level of assistance available to the entire household by the total number of household members.

Section 6.5—Period of Eligibility

The administrator will grant assistance to all eligible persons for a period that is sufficient to meet their need but in no event may a grant of assistance cover a period in excess of one month (22 M.R.S.A. § 4309). Upon receiving a completed and signed application the administrator will determine the applicant's eligibility on the basis of a 30-day prospective analysis.

When an applicant submits an incomplete or unsigned application, due to the 24-hour decision requirement placed on the GA administrator, the GA administrator shall render a notice of "ineligibility" and advise the applicant that he or she has a right to reapply as soon as he or she has the necessary information and/or as soon as is practicable for the applicant.

Although eligibility is determined on a 30-day basis, for reasons of administrative efficiency the administrator may elect to disburse an applicant's assistance for shorter periods of time, such as weekly, throughout the 30-day period of eligibility. When the administrator elects to disburse general assistance for a period of time less than 30 days, subsequent grants of assistance during that 30-day period may be issued pursuant to the initial determination of need unless the applicant's financial situation changes substantially enough to warrant a redetermination of eligibility.

Section 6.6—Determination of Need

The period of time used to calculate need will be the next 30-day period from the date of application (22 M.R.S.A. § 4301(7)). The administrator will calculate applicants' expenses according to the actual expense of the basic necessity or the maximum levels for the specific necessities allowed in section 6.8, whichever is less. The sum of these

expenses, as calculated for a prospective 30-day period, is the applicant's 30-day need. Applicants will not be considered eligible if their income and other resources exceed this calculation except in an emergency (22 M.R.S.A. § 4308(2)) (*see section 4.9 of this ordinance*).

Applicants will also not be considered in need of general assistance if their income, property, credit, assets or other resources available to provide basic necessities for their household are greater than the applicable overall maximum level of assistance set forth in the beginning of section 6.8 (22 M.R.S.A. § § 4301(10), 4305(3-B)). The difference between the applicant's income and the overall maximum levels of assistance established by this ordinance is the applicant's deficit.

Once an applicant's deficit has been determined, the specific maximum levels of assistance for each basic necessity (*see Appendixes A-H of this ordinance*) shall be used by the administrator to guide the distribution of assistance for which the applicant is eligible. The specific maximum levels of assistance for each basic necessity are intended to be reasonable and sufficient to help recipients maintain a standard of health and decency (22 M.R.S.A. § 4305(3-A)).

Income for Basic Necessities. Applicants are required to use their income for basic necessities. Except for initial applicants, no applicant is eligible to receive assistance to replace income that was spent within the 30-day period prior to an application for assistance on goods and services that are not basic necessities. All income spent on goods and services that are not basic necessities will be considered available to the applicant and combined with the applicant's prospective 30-day income for the purposes of computing eligibility (22 M.R.S.A. § 4315-A). Applicants who have sufficient income to provide their basic necessities but who use that income to purchase goods or services which are not basic necessities will not be considered eligible for assistance. Persons who exhaust their income on basic necessities and who still need

assistance with other basic necessities will be eligible, provided that their income does not exceed the overall maximum level of assistance.

Use-of-Income Requirements. The administrator may require that anyone applying for general assistance provide documentation of his or her use of income. This documentation can take the form of cancelled checks and/or receipts which demonstrate that the applicant has exhausted all household income received over the last 30-day period. Except as is deemed appropriate by the GA administrator for “unforeseen” repeat applicants (*See Section 6.3 of this ordinance*), repeat applicants may be required to verify that expenditure of income was for basic necessities. Income expended that cannot be verified will generally be considered available and in such case will be added to the 30-day prospective income.

Allowable expenditures include reasonable shelter costs (rent/mortgage); the cost of heating fuel, electricity, and food up to the ordinance maximums; telephone costs at the base rate if the household needs a telephone for medical reasons, the cost of nonelective medical services as recommended by a physician which are not otherwise covered by medical entitlement, Hospital Free Care or insurance; the reasonable cost of essential clothing and non-prescription drugs, and the costs of any other commodity or service determined essential by the administrator.

Items not considered to be basic necessities and thus will not be allowed in the budget computation include:

- Internet services
- Cable or satellite television
- Cellular phones
- Cigarettes/alcohol
- Gifts purchased
- Pet care costs
- Costs of trips or vacations
- Paid court fines
- Repayments of unsecured loans
- Legal fees
- Late fees
- Credit card debt.

The municipality reserves the right to apply specific use-of-income requirements to any applicant, other than an initial applicant, who fails to use his or her income for basic necessities or fails to reasonably document his or her use of income (22 M.R.S.A. § 4315-A). Those additional requirements will be applied in the following manner:

- 1) The administrator may require the applicant to use some or all of his or her income, at the time it becomes available, toward specific basic necessities. The administrator may prioritize such required expenditures so that most or all of the applicant's income is applied to housing (i.e., rent/mortgage), energy (i.e., heating fuel, electricity), or other specified basic necessities;
- 2) The administrator will notify applicants in writing of the specific use-of-income requirements placed on them;
- 3) If upon subsequent application it cannot be determined how the applicant's income was spent, or it is determined that some or all of the applicant's income was not spent as directed and was also not spent on basic necessities, the applicant will not be eligible to receive either regular or emergency general assistance to replace that income; and
- 4) If the applicant does not spend his or her income as directed, but can show with verifiable documentation that all income was spent on basic necessities up to allowed amounts, the applicant will remain eligible to the extent of the applicant's eligibility and need.

Calculation of Income and Expenses. When determining eligibility, the administrator will subtract the applicant's net income from the overall maximum level of assistance found at the beginning of section 6.8. If income is greater than the overall maximum level of assistance, the applicant will not be eligible except in an emergency (*see section 4.9*). If income is less than the overall maximum level of assistance, the applicant has a deficit.

The municipality will provide assistance in an amount up to the deficit to the extent the applicant also has an unmet need and is in need of basic necessities. The municipality will not grant assistance in excess of the maximum amounts allowed in section 6.8 of this ordinance for specific basic necessities except in an emergency or when the administrator elects to consolidate the applicant's deficit, as provided immediately below.

Consolidation of Deficit. As a general rule and to the extent of their deficit, applicants will be eligible for assistance for any basic necessity up to, but not exceeding, the maximum amount allowed for that necessity in this ordinance or the actual 30-day cost of the necessity, whichever is less. Under certain circumstances, however, and in accordance with the following conditions, the administrator may consolidate the applicant's deficit and apply it toward a basic necessity in an amount greater than the ordinance maximum for that necessity.

- 1) The practice of consolidating the deficit and applying it toward a basic necessity in amounts greater than the ordinance maximum shall be the exception rather than the rule;
- 2) The total general assistance grant cannot exceed the total deficit unless the applicant is in an emergency situation; and
- 3) The need for the application of the recipient's consolidated deficit toward a basic necessity was not created by the recipient mispending his or her income or resources in violation of the use-of-income requirements of this ordinance.

Section 6.7—Income

Income Standards. Applicants whose income exceeds the overall maximum level of assistance provided in section 6.8 shall not be eligible for general assistance except in an emergency. The administrator will conduct an individual factual inquiry into the applicant's income and expenses each time an applicant applies.

Calculation of Income. To determine whether applicants are in need, the administrator will calculate the income they will receive during the next 30-day period commencing on the date of application, and identify any assets or resources that would alleviate their need. For all applicants other than initial applicants, the administrator will also consider as available income any income that was not spent during the previous 30-day period on basic necessities, as well as any income that was spent on basic necessities in unreasonable excess of the ordinance maximums for specific basic necessities. If a household's income exceeds the amount of the household's need for basic necessities, up to the maximum levels contained in section 6.8, applicants will not be considered in need.

Exceptions will be made in emergency situations, which may necessitate that the maximum levels be exceeded (22 M.R.S.A. § 4308) (*see section 4.9 of this ordinance*). To calculate weekly income and expenses, the administrator will use actual income received or actual anticipated income.

Types of Income. Income that will be considered in determining an applicant's need includes:

- a) **Earned income.** Income in cash or in kind earned by the applicant through wages, salary, commissions, or profit, whether self-employed or as an employee, is considered earned income. If a person is self-employed, total income will be computed by subtracting reasonable and actual business expenses from gross income. When income consists of wages, the amount computed will be the income available after taxes, social security and other payroll deductions required by state, federal, and local law. Rental income and profit from produce that is sold is considered earned income. Income that is held in trust and unavailable to the applicant or the applicant's dependents will not be considered as earned income.

Note: Actual work-related expenses such as union dues, transportation to and from work, special equipment or work clothes, and child care costs will be deducted from an applicant's income (22 M.R.S.A. § 4301(7)).

- b) **Income from Other Assistance or Social Services Programs.** State/federal categorical assistance benefits, SSI payments, Social Security payments, VA benefits, unemployment insurance benefits, and payments from other government sources will be considered as income, unless expressly prohibited by federal law or regulation. Federal law prohibits Food Stamps and fuel assistance payments made by the Home Energy Assistance Program (HEAP and EPIC) from being considered income. The value of the food stamps or fuel assistance will not be used to reduce the amount of general assistance the applicant is eligible to receive. Although applicants may have only a limited or reduced need for general assistance for heating fuel or electricity if a recently received HEAP/ECIP benefit has sufficiently credited their account or otherwise prevented the fuel-related costs for the prospective 30-day period.

The administrator's obligation is to always compute the heating needs of an applicant who has received HEAP or ECIP as if that applicant paid for his or her total fuel costs. Accordingly, in such cases, the administrator will budget for the household's heating energy needs according to actual usage, up to the ordinance maximums, but the administrator may, with written notice to the applicant, hold in reserve the heating energy portion of the applicant's deficit until such a time during the period of eligibility that the applicant has a demonstrable need for the disbursement of heating energy assistance; that is, the applicant's fuel tank can accept a minimum fuel delivery or the applicant no longer has a positive credit balance with his or her utility company. The municipality is not obligated to divert any recipient's heating energy allowance toward non-heating purposes solely on the basis of the recipient's receipt of HEAP/ECIP.

Other programs whose income cannot be counted for purposes of GA eligibility include:

- Family Development Accounts (22 M.R.S. § 3762)
- Americorp VISTA program benefits (42 USCS § 5044 (f))
- Property tax rebates issued under the Maine Property Tax Fairness Credit program, only so long as the money is spent on basic necessities. (22 M.R.S.A. § 4301(7))

- c) **Court-Ordered Support Payments.** Alimony and child support payments will be considered income only if actually received by the applicant. The general assistance administrator will refer cases where support payments are not actually received to the State Department of Health and Human Services' Child Support Enforcement Unit. In order to be eligible for future GA, applicants being referred to DHHS for such enforcement services shall be required to follow-through with such services. Because child support payments are considered a resource, applicants must make a good faith effort to secure such payments.
- d) **Income from Other Sources.** Payments from pensions and trust funds will be considered income. Payments from boarders or lodgers will be considered income as will cash or in-kind contributions provided to the household from any other source, including relatives (22 M.R.S.A. § 4301(7)).
- e) **Earnings of a Son or Daughter.** Earned income received by sons and daughters below the age of 18 who are full-time students and who are not working full-time will not be considered income. The unearned income of a minor in the household will be considered available to the household.
- f) **Income from Household Members.** Income from household members will be considered available to the applicant, whether or not the household member is legally obligated for the support of the applicant, if the household members pool

or share their income and expenses as a family or intermingle their funds so as to provide support to one another.

- g) **The Pooling or Non-Pooling of Income.** When two or more individuals share the same dwelling unit but not all members of the household are applying for general assistance, the administrator shall make a finding under a rebuttable presumption that the entire household is pooling income (22 M.R.S.A. § 4301(12-A)).

One or more applicants for assistance can successfully rebut the presumption that all household income is being pooled by providing the administrator with verifiable documentation affirmatively demonstrating a pattern of non-pooling for the duration of the shared living arrangement. Such documentation would include evidence of the entire household expenses as well as bank statements, cancelled checks, receipts, landlord statements or other vendor accounts clearly supporting a claim that the applicant has been and is presently solely and entirely responsible for his or her pro-rata share of household costs.

If the applicant is unable to successfully rebut the municipality's presumption that all household income is being pooled, eligibility of the entire household will be determined based on total household income. If the applicant successfully rebuts the municipality's presumption that all household income is being pooled, the applicant's eligibility will be determined on the basis of his or her income and his or her pro-rata share of actual household expenses.

- h) **Lump Sum Income.** A lump sum payment received by any GA applicant or recipient prior or subsequent to the date of application for general assistance will be considered as income available to the household. However, verified required payments (i.e., any third party payment which is required as a condition of receiving the lump sum payment, or any payments of bills earmarked for the

purpose for which the lump sum payment was made) and any amount of the lump sum payment which the applicant can document was spent on basic necessities, as described below, will not be considered available income.

Where a household receives a lump sum payment at any time prior or subsequent to the date of application for general assistance, the administrator will assess the need for prorating an applicant's eligibility for general assistance according to the following criteria (22 M.R.S.A. § 4301(7), (8-A)):

- 1) identify the date the lump sum payment was received;
- 2) subtract from the lump sum payment all required payments;
- 3) subtract from the lump sum any amount the applicant can demonstrate was spent on basic necessities, including all basic necessities as defined by the general assistance program such as: reasonable payment of funeral or burial expenses for a family member; any reasonable travel costs related to the illness or death of a family member; repair or replacement of essentials lost due to fire, flood or other natural disaster; repair or purchase of a motor vehicle essential for employment, education, training or other day-to-day living necessities. Repayments of loans or credit, the proceeds of which can be verified as having been spent on basic necessities; and payment of bills earmarked for the purpose for which the lump sum is paid must also be subtracted. (22 M.R.S.A. § 4301(7), (8-A));
- 4) add to the remainder all income received by the household between the date of receipt of the lump sum payment and the date of application for general assistance; and
- 5) divide the sum created in subsection (4) by the verified actual monthly amounts for all of the household's basic necessities. 22 M.R.S.A. § 4305(3-B)

This dividend represents the period of proration determined by the administrator to commence on the date of receipt of the lump sum payment. The prorated sum for each month must be considered available to the household for 12 months from the date of application or during the period of proration, whichever is less.

The household of an initial applicant that is otherwise eligible for emergency assistance may not be denied emergency assistance to meet an immediate need solely on the basis of the proration of a lump sum payment. (22 MRSA § 4308)

Section 6.8—Basic Necessities; Maximum Levels of Assistance

Overall Maximum Levels of Assistance. Notwithstanding any of the maximum levels of assistance for specific basic necessities listed in Appendices B-H of this ordinance, an applicant's eligibility for general assistance will be first determined by subtracting his or her income from the overall maximum level of assistance designated in Appendix A for the applicable household size (22 M.R.S.A. § 4305 (3-B)). The difference yielded by this calculation shall be the applicant's deficit.

Applicants will be eligible for general assistance up to the calculated deficit to the extent the applicant is unable to otherwise provide the basic necessities essential to maintain themselves or their families. Applicants with no deficit shall be found ineligible for general assistance unless they are in an emergency, in which case eligibility for emergency general assistance will be determined according to section 4.9 of this ordinance.

Maximum Levels of Assistance for Specific Basic Necessities. The municipality will grant assistance to eligible applicants for basic necessities according to the maximum levels for specific types of assistance set forth below. The administrator, in consultation with the applicant, may apply the amount of the applicant's deficit toward assistance

with any one or combination of necessities not to exceed the total deficit. These maximum levels will be strictly adhered to unless the administrator determines that there are exceptional circumstances and an emergency is shown to exist, in which case these absolute levels will be waived in order to meet immediate needs. In all cases either the actual expenses the applicant incurs for basic necessities or the maximum amount allowed in each category, whichever is less, will be used in determining need.

In roommate situations, the applicant's need for common living expenses for rent, fuel, electricity, etc., will be presumed to be reduced by an amount equal to the other household members' proportionate fair share of the common living expenses. No applicant will be allowed to claim a need for any expense which has been or will be paid by another person. In addition, as a general rule the municipality will not provide a benefit toward a basic need by paying a bill that is issued to a person not living with the applicant's household or that has otherwise been incurred by a person who has not been found eligible to receive assistance.

Temporary exceptions to this general rule may be made by the administrator in the following circumstances: (1) a recent, unplanned separation has occurred in the household resulting in the sustained or permanent absence of a former household member in whose name the bill was customarily issued; (2) the applicant and members of the applicant's household were or will be the sole recipients of the commodities or services covered by any bill to be paid or partially paid with general assistance; and (3) the applicant will make a good faith effort to direct the vendor to issue future bills in the name of the applicant or other responsible person residing in the household.

A) **Food**. The administrator will provide food assistance to eligible persons up to the allowed maximum amounts designated by the U.S.D.A. Thrifty Food Plan for the appropriate household size.

For this purpose, the municipality hereby incorporates by reference the U.S.D.A. Thrifty Food Plan, as distributed by the Maine Department of Health and Human

Services on or about October of each year. See Appendix B of this ordinance for the current year's food maximums.

In determining need for food the administrator will not consider the value of the food stamps an applicant receives as income (22 M.R.S.A. § 4301.7(A); 7 U.S.C. §2017(b)). The municipality will authorize vouchers to be used solely for approved food products.

The administrator will exceed the maximums when necessary for households having members with special dietary needs. The administrator may require a doctor's statement verifying there is a special dietary need requiring an expenditure for food that is greater than the ordinance maximums.

- B) **Housing**. The administrator will provide assistance with rent or mortgage payments that are reasonable and/or within the allowed maximum levels. See Appendix C of this ordinance for the current year's housing maximums. It is the applicant's responsibility to find suitable housing, although the administrator may help the applicant find housing when appropriate. The administrator will inform the applicant of the allowed housing maximums to assist the applicant in his or her search for housing. The allowed maximum for any applicant will be the categorical housing maximum representing the minimum dwelling unit space necessary to adequately shelter the applicant household. Applicants requesting assistance for housing that contains more bedrooms than are necessary for the number of household members will be provided assistance according to the maximum level for the number of rooms actually needed.

Rental Payments to Relatives. The municipality may elect to not issue any rental payment to an applicant's relatives unless the rental relationship has existed for at least three months and the applicant's relative(s) rely on the rental payment for their basic needs. For the purpose of this section, a "relative" is defined as the applicant's

parents, grandparents, children, grandchildren, siblings, parent's siblings, or any of those relative's children (22 M.R.S.A. § 4319(2)).

Rental Payments to Non-Relatives. When applicants are living in private homes with the owner or sharing dwelling units with people who are not pooling income or who are not legally liable relatives, the amount allowed as the applicant's shelter expense will be the applicant's pro rata share of the actual, total shelter cost, up to the ordinance maximum (22 M.R.S.A. § 4301(6)).

Any housing assistance issued to a recipient in such a circumstance will be issued, whenever reasonably possible, to the landlord or property owner with the most superior interest in the property; i.e., to a landlord before a tenant, or to a mortgagee before a mortgagor.

When the municipality issues in aggregate more than \$600 in rental payments to any landlord in any calendar year, a 1099 form declaring the total amount of rental payments issued during the calendar year will be forwarded to the Internal Revenue Service (IRS) pursuant to IRS regulation (see section 6041(a) of Internal Revenue Code).

Any landlord wishing to regularly receive rental payments from the municipality on behalf of applicants renting rooms from the landlord's own residence must, at a minimum, make a good faith effort to obtain a lodging license from the Department of Health and Human Services, Division of Health Engineering, pursuant to 10-144A Code of Maine Regulations, Chapter 201, as a condition of that landlord receiving future general assistance payments on behalf of his or her tenants.

Mortgage Payments. In the case of a request for assistance with a mortgage payment, the general assistance administrator will make an individual factual determination of whether the applicant has an immediate need for such aid. In

making this determination, the administrator will consider the extent and liquidity of the applicant's proprietary interest in the housing. Factors to consider in making this determination include:

- (1) the marketability of the shelter's equity;
- (2) the amount of equity;
- (3) the availability of the equity interest in the shelter to provide the applicant an opportunity to secure a short-term loan in order to meet immediate needs;
- (4) the extent to which liquidation may aid the applicant's financial rehabilitation;
- (5) a comparison between the amount of mortgage obligations and the anticipated rental charges the applicant would be responsible for if he/she were to be dislocated to rental housing;
- (6) the imminence of the applicant's dislocation from owned housing because of his or her inability to meet the mortgage payments;
- (7) the likelihood that the provision of housing assistance will prevent such dislocation; and
- (8) the applicant's age, health, and social situation.

These factors shall be considered when determining whether the equity in the shelter is an available asset which may be substituted for the assistance the municipality would otherwise be required to provide.

The administrator shall consider issuing a benefit in response to the applicant's request for mortgage assistance to the extent the applicant is otherwise eligible for general assistance if after reviewing the above criteria the administrator determines that:

- (1) the monthly mortgage obligation is in accordance with the maximum levels of assistance available for housing appropriate to the applicant's household size;
- (2) there is no capacity in the accumulated equity in the property, when considered in the context of the applicant's borrowing capacity with the mortgagee or the general lending community, to suspend the mortgage obligation temporarily or reamortize the mortgage in such a way as to suspend or reduce the mortgage obligation; and
- (3) the failure to provide a mortgage payment in a timely manner could jeopardize the applicant's continued right of possession of the property.

If a mortgage payment is necessary, the administrator will pay the actual amount due, up to the amount allowed according to the maximum levels listed below. After an initial application, assistance with such payments will be given only after the applicant has made all reasonable efforts to borrow against the equity of his or her home. If there is not sufficient equity in the home with which to secure a loan, and if the monthly mortgage payments are not realistically in line with the rental rates for similar housing in the area that could meet the applicant's needs, the administrator will inform the applicant that he/she is responsible for finding alternative housing within his or her ability to pay and will be obligated to make all reasonable efforts to secure such housing.

Liens. The municipality may place a lien on the property in order to recover its costs of granting assistance with mortgage payments. In addition, a municipality may claim a lien against the owner of real estate for the amount of money spent by it to make capital improvements to the real estate (22 M.R.S.A. § 4320). No lien may be enforced against a recipient except upon his or her death or the transfer of the property. Further, no lien may be enforced against a person who is currently receiving any form of public assistance, or who would again become eligible for general assistance if the lien were enforced.

If the municipality determines that it is appropriate to place a lien on a person's property to recover its costs of providing general assistance for a mortgage payment or capital improvement it must file a notice of the lien with the county registry of deeds where the property is located within 30 days of making the mortgage payment. That filing shall secure the municipality's or the state's interest in an amount equal to the sum of that mortgage or capital improvement payment and all subsequent mortgage or capital improvement payments made on behalf of the same eligible person, plus interest and costs.

Not less than 10 days prior to filing the lien in the registry, the municipal officers must send notice to the owner of the real estate, the general assistance recipient, and any record holder of the mortgage by certified mail, return receipt requested, that a lien on the property is going to be filed with the registry. This notice must clearly inform the recipient of the limitations upon enforcement plus the name, title, address and telephone number of the person who granted the assistance. The municipal officers must also give written notice to the recipient each time the amount secured by the lien is increased because of an additional mortgage payment. This notice must include the same information that appeared on the original intent-to-file notice sent to the recipient.

The municipality may charge interest on the amount of money secured by the lien. The municipal officers will establish the interest rate not to exceed the maximum rate of interest allowed by the State Treasurer to be charged against delinquent taxes. The interest will accrue from the date the lien is filed.

Property Taxes. In the event an applicant requests assistance with his or her property taxes, the administrator will inform the applicant that there are two procedures on the local level to request that relief: the poverty abatement process (36 M.S.R.A. § 841(2)) and General Assistance. If the applicant chooses to seek

property tax assistance through General Assistance, or if the applicant is denied a poverty tax abatement, the administrator may consider using general assistance to meet this need only if:

- a) the property tax in question is for the applicant's place of residence;
- b) there is a tax lien on the property which is due to mature within 60 days of the date of application;
- c) as a matter of municipal policy or practice, or on the basis of information obtained from the applicant's mortgagee, if any, it is reasonably certain that a tax lien foreclosure will result in subsequent eviction from the residential property; and
- d) the applicant, with sufficient notice, applies for property tax relief through the Maine Property Tax Fairness Credit program, when available.

Housing Maximums. The maximum levels of housing assistance contained in this ordinance have been derived either from a locally accomplished fair market rental survey or the fair market rental values developed by the United States Department of Housing and Urban Development (HUD). If the maximum levels of housing are derived from the HUD values made effective as of every October 1, and adjusted to disregard the current and averaged utility allowances as developed by the Maine State Housing Authority, those levels are hereby incorporated by reference. See Appendix C of this ordinance for the current year's housing maximums.

If and when the maximum levels of housing contained in this ordinance are derived from a locally developed fair market rental survey, a record of that survey will be submitted to the DHHS, General Assistance Unit, and the maximum levels of housing assistance will be incorporated into this ordinance pursuant to the ordinance adoption and amendment procedures found at 22 M.R.S.A. § 4305.

C) **Utilities**. Expenses for lights, cooking, and hot water will be budgeted separately if they are not included in the rent. Applicants are responsible for making arrangements with the utility company regarding service, including entering into a special payment arrangement if necessary.

Assistance will be granted to eligible applicants on the basis of their most recent bill. The municipality is not obligated to pay back bills or utility security deposits. Exceptions may be made in emergency situations pursuant to section 4.9.

Disconnection of utility service will not be considered an emergency in all cases. The administrator will make an individual, factual analysis to determine if the termination of utility service constitutes an emergency. The administrator will consider the household composition, the time of year, the age and health of the household members, and other appropriate factors in reaching a decision.

Applicants who had sufficient income, money, assets or other resources to pay their utility bill when it was received, but who spent all or part of their income on items which were not basic necessities, will not be eligible to receive general assistance to replace those funds.

Applicants have the burden of providing evidence of their income and use of income for the applicable time period (22 M.R.S.A. § 4308(2)) (*see section 4.9 and 6.3*).

The administrator will notify applicants in writing that they must give the administrator prompt notice if their utility service is to be terminated or if their fuel supply is low. It is the applicant's responsibility to attempt to make arrangements with the utility company to maintain their service and to notify the administrator if assistance is needed with a utility bill prior to service being terminated.

Electricity Maximums for Households Without Electric Hot Water. See Appendix D of this ordinance for the current year's electricity maximums.

Electricity Maximums for Households that Use Electrically Heated Hot Water. See Appendix D of this ordinance for the current year's electricity maximums.

Non-Electric Utilities. The allowed amount for water and sewer utility service will be budgeted at a 30-day reasonable usage rate.

- D) **Fuel.** Expenses for home heating will be budgeted according to the actual need for fuel during the heating season (September through May) provided such expenses are reasonable, and at other times during the year when the administrator determines the request for fuel assistance is reasonable and appropriate.

Assistance will be granted to eligible applicants on the basis of their most recent bill. The municipality is not responsible for back bills except in an emergency as provided in section 4.9. Applicants are responsible for monitoring their fuel supply and requesting assistance prior to depleting their fuel supply. When applicants who have been informed of this responsibility run out of fuel nonetheless, and can show no just cause for failing to give the administrator timely notice of their need for fuel, the administrator shall find that the emergency was not beyond the applicants' control, and process the emergency request accordingly, pursuant to section 4.9 of this ordinance.

See Appendix E of this ordinance for the current year's fuel maximums.

- E) **Personal Care and Household Supplies.** Expenses for ordinary personal and household supplies will be budgeted and allowed according to the applicant's actual need for these items. Personal and household supplies include: hand soap, toothpaste, shampoo, shaving cream, deodorant, dish detergent, laundry supplies and costs, household cleaning supplies, razors, paper products such as toilet paper, tissues, paper towels, garbage/trash bags light bulbs and supplies for children under

5 years of age. See Appendix F of this ordinance for the current year's personal care and household supplies maximums.

F) **Other Basic Necessities.** Expenses falling under this section will be granted when they are deemed essential to an applicant's or recipient's health and safety by the general assistance administrator and, in some cases, upon verification by a physician. Assistance will be granted only when these necessities cannot be obtained through the utilization of available resources.

- 1) **Clothing.** The municipality may assist a household with the purchase of adequate clothing. Before assistance will be granted for clothing, the general assistance administrator must be satisfied that the applicant has utilized all available resources to secure the necessary clothing. In some circumstances, clothing will be a postponable item. Exceptions to this would be, for example, if fire, flood or unusually cold weather makes extra clothing an immediate necessity, special clothing is necessary for the applicant's employment, or a household member is without adequate clothing.
- 2) **Medical.** The municipality will pay for essential medical expenses, other than hospital bills (*see below*), provided that the municipality is notified and approves the expenses and services prior to their being made or delivered. Medical expenses include prescriptions, devices, treatments, or services that are determined to be 'medically necessary' by a licensed physician. The municipality will grant assistance for medical services only when assistance cannot be obtained from any other source and the applicant would not be able to receive necessary medical care without the municipality's assistance. The applicant is required to utilize any resource, including any federal or state program, that will diminish his or her need to seek general assistance for medical expenses. The municipality will grant assistance for non-emergency medical services only if a physician verifies that the services are essential.

Provided there is no cost to the applicant, the administrator may require a second medical opinion from a physician designated by the municipality to verify the necessity of the services.

Generally, the municipality will issue general assistance at the established Medicaid rates for all medical services, prescriptions, or other medical commodities. Before authorizing general assistance for any medical expenses, the administrator will inform the pharmacy or medical service provider of the municipality's intention to pay for the medical service at the Medicaid rate, and ask to be billed accordingly.

Ordinary medical supplies/non-prescription drugs will be budgeted at the actual amount when the applicant can demonstrate a need for such items. Allowable supplies include bandages, aspirin, cough syrup, and other generic brand, non-prescription medicines. In addition, the basic monthly rate for telephone service will be budgeted when a telephone is essential to the health and safety of the household. In order for telephone service to be considered an allowable expense the applicant must provide a written statement from a physician certifying that the telephone is essential.

- 3) **Hospital Bills.** In the event of an emergency admission to the hospital, the hospital must notify the administrator within 5 business days of the admission. Notification must be by telephone, confirmed by certified mail, or by certified mail only. If a hospital fails to give timely notice to the administrator, the municipality will have no obligation to pay the bill.

Any person who cannot pay his or her hospital bill must apply to the hospital for consideration under the Hospital's Free Care Program as provided in Title 22 M.R.S.A. § 1716. Anyone who is not eligible for the hospital's free care program may apply for general assistance. Applicants must apply for

assistance within 30 days of being discharged from the hospital and provide a notice from the hospital certifying that they are not eligible for the hospital's free care program.

Before the administrator will consider whether to allow a hospital bill as a necessary expense, the applicant must enter into a reasonable payment arrangement with the hospital. The payment arrangement will be based upon the Medicaid rate. In determining an applicant's eligibility, the municipality will budget the monthly payment to the hospital the applicant has agreed to pay. The applicant's need for assistance with a hospital bill will be considered each time he/she applies by including the amount of the bill in the applicant's monthly budget, but the recipient will be responsible for making any necessary payments to the hospital pursuant to the use-of-income requirements found at section 6.6 of this ordinance.

- 4) **Dental.** The municipality will pay for medically necessary dental services only. As is the case with medical services generally, the municipality will issue general assistance for dental services at the established Medicaid rates for those services, and before authorizing the general assistance benefit for dental services, the administrator will inform the dentist or dental surgeon of the municipality's intention to pay at the Medicaid rate. If full mouth extractions are necessary, the municipality will pay for dentures provided the applicant has no other resources to pay for the dentures. The applicant will be referred to a dental clinic in the area whenever possible. The administrator will expect the applicant to bear a reasonable part of the cost for dental services, including extractions and dentures, taking into account the applicant's ability to pay.
- 5) **Eye Care.** In order to be eligible to receive general assistance for eyeglasses, an applicant must have his or her medical need certified by a person licensed to practice optometry. The general assistance administrator will provide

assistance for eyeglasses to eligible persons only after the applicant has exhausted all other available resources and generally only at the Medicaid rate.

- 6) **Telephone Charge.** A payment for basic telephone will only be allowed if a telephone is necessary for medical reasons as verified by a physician. At the discretion of the GA administrator, minimum/basic telephone services may be allowed for households with children, for households where job search or job related reasons exist and/or for any other reasons the administrator deems necessary.
- 7) **Work-Related Expenses.** In determining need, reasonable and actual work-related expenses will be deducted from earned income. These expenses include childcare costs, work clothes, supplies and transportation at the actual costs not to exceed the ordinance maximum (*see Appendix G for this year's maximum mileage allotment*). The applicant is required to provide documentation substantiating the costs and that the expenses were necessary.
- 8) **Travel Expenses.** In determining need, necessary travel which is not work-related will be budgeted if the applicant can satisfy the administrator that the prospective need for travel is necessary. For applicants in rural areas, weekly transportation to a supermarket will be considered, as will any medically necessary travel. See Appendix G for the current rate at which such necessary travel will be budgeted. This rate shall be construed to subsidize all costs associated with automobile ownership and operation, including gas/oil, tires, maintenance, insurance, financing, licensing/registration, excise tax, etc.
- 9) **Burials, Cremations.** Under the circumstances and in accordance with the procedures and limitations described below (*see section 6.9*), the municipality recognizes its responsibility to pay for the burial or cremation of eligible persons. See Appendix H for the current maximums.

10) **Capital Improvements.** The costs associated with capital improvements/repairs (e.g., heating/water/septic system repair) will generally not be budgeted as a basic necessity. Exceptions can be made only when the capital improvement/repair has been pre-approved by the administrator as a necessary expense and the monthly cost of the capital improvement/repair has been reduced as far as reasonably possible; for example, by means of the applicant entering into an installment payment arrangement with the contractor. The administrator may grant general assistance for capital improvements when:

- 1) the failure to do so would place the applicant(s) in emergency circumstances;
- 2) there are no other resources available to effect the capital repair; and
- 3) there is no more cost-effective alternative available to the applicant or municipality to alleviate an emergency situation.

In some cases, the entire immediate cost of the capital improvement can be mitigated by the applicant entering into an installment payment arrangement with a contractor. The municipality reserves the right to place a lien on any property pursuant to 22 M.R.S.A. § 4320 when general assistance has been used to effect a capital improvement. The lien process shall be accomplished in the same manner as for mortgage payments, as described in subsection (B) “Liens”, above.

Section 6.9—Burials; Cremations

Funeral Director Must Give Timely Notice. In order for the municipality to be liable for a burial or cremation expense, the funeral director must notify the administrator prior to the burial or cremation or by the end of three business days following the funeral director’ receipt of the body, whichever is earlier (22 M.R.S.A. §4313(2)). This contact by the funeral director shall begin the process of developing an application for

burial/cremation assistance on behalf of the deceased. It is the funeral director's responsibility to make a good-faith effort to determine if the family or any other persons are going to pay all or part of the burial expenses. If family members or others are unable to pay the expenses, and the funeral director wants the municipality to pay all or part of the expenses, the funeral director must make timely contact to the municipal administrator. In addition, the funeral director may refer legally liable relatives to the administrator so that a timely determination of financial capacity may be accomplished.

Application for Assistance Shall be Calculated on Behalf of the Deceased. For the purposes of determining residency, calculating eligibility and issuing general assistance for burial or cremation purposes, an application for assistance shall be completed by the administrator on behalf of the deceased.

With regard to residency, the municipality of responsibility for burial expenses shall be the municipality in which the eligible deceased person was a resident at the time of death as residency is determined under section 4.10 of this ordinance.

Although legally liable relatives may be asked to provide information regarding their income, assets, and basic living expenses, that information will not be construed as an application for general assistance inasmuch as living persons are not eligible for burial assistance. To clarify this point of law, although legally liable relatives have a financial responsibility to pay for the burial or cremation of their relatives, that financial responsibility only exists to the extent the legally liable relatives have a financial capacity to do so. Therefore, legally liable relatives who are eligible for general assistance, by virtue of their eligibility, have no legal obligation to pay for the burial or cremation of their relatives. For these reasons, all general assistance issued for burial or cremation purposes shall be issued on behalf of, and in the name of, the deceased.

The Financial Responsibility of Certain Family Members. Grandparents, parents, children and grandchildren of the deceased, who live in Maine or own property in Maine,

are financially responsible for the burial or cremation of the deceased to the extent those relatives, individually or as a group, have a financial capacity to pay for the burial or cremation either in lump sum or by means of a budgeted payment arrangement with the funeral home. Accordingly, at the request of the administrator, all legally liable relatives must provide the municipal administrator with any reasonably requested information regarding their income, assets, and basic living expenses.

Consideration of the Financial Responsibility of Family Members. Generally, when the administrator can make a finding that one or more of the deceased's legally liable relatives have an obvious and demonstrable financial capacity to pay for the burial or cremation, by lump sum payment or by means of a reasonable payment arrangement, the municipality will not grant the requested burial or cremation assistance. When the administrator is unable to make such a finding, the following proration of familial responsibility will be implemented.

Proration of Familial Responsibility. A proration of familial financial responsibility will be used when no legally liable relative possesses an obvious and demonstrable capacity to pay for the burial or cremation, but one or more of the financially liable relatives is found to have a financial capacity to make a partial financial contribution, or the administrator is unable to determine the financial capacity of one or more of said relatives.

Under these circumstances, each legally liable relative is considered to be responsible for his or her pro rata share of the total municipal contribution that would exist if no legally liable relatives had a financial capacity to contribute. Furthermore, and as long as all other eligibility factors have been satisfied, the municipality will provide as a burial or cremation benefit the aggregate of all pro rata shares less the share of any legally liable relative who refuses to cooperate with the administrator by providing information or documentation reasonably necessary to determine that relative's financial capacity, and less any share or part of a share attributable to a legally liable relative who can

financially contribute or partially contribute toward the burial or cremation to the extent of that relative's share.

Eight Days to Determine Eligibility. The administrator may take up to 8 days from the date of contact by the funeral director to issue a written decision regarding the amount of the municipal contribution toward the burial or cremation. The 8-day eligibility determination period from the date of contact by the funeral director shall be used as necessary to make third-party collateral contacts, verify the listing of legally liable family members and determine their respective financial capacities to contribute to the burial or cremation, contact the personal representative of the deceased's estate, if any, and other related administrative tasks. The administrator shall not use this 8-day period allowed by law to unreasonably delay the municipality's decision.

The Municipal Obligation to Pay When Legally Liable Relatives or Others Can Contribute. The figures provided in this section are the maximum benefits provided by the municipality when no contributions toward the burial or cremation are available from any other source. To the extent any legally liable relatives of the deceased have a financial capacity to pay for the burial or cremation, that financial capacity shall be deducted from the maximum burial costs allowed by this section. In addition, any other benefits or resources that are available, such as Social Security burial benefits, veterans' burial benefits, or contributions from other persons, will be deducted from the maximum amount the municipality will pay, except there will be no deduction from the municipal benefit level with respect to any contribution provided for the purpose of publishing an obituary notice up to an aggregate contribution limit for this purpose of \$75 when a paid receipt demonstrating the purchase of an obituary notice is provided to the administrator.

Burial Expenses. The administrator will respect the wishes of family members with regard to whether the deceased is interred by means of burial or cremated. See Appendix H for the maximum levels of assistance granted for the purpose of burials.

Cremation Expenses. In the absence of any objection by any family members of the deceased, or when neither the administrator nor the funeral director can locate any family members, the administrator may issue general assistance for cremation services. See Appendix H for the maximum levels of assistance granted for the purpose of cremations.

Section 6.10—Notice of Decision

Written Decision. The administrator will give a written decision to each applicant after making a determination of eligibility each time a person applies. The decision will be given to the applicant within 24 hours of receiving a completed and signed application (22 M.R.S.A. § 4305(3)) (*see Article IV, section 4.6*).

When an applicant submits an incomplete or unsigned application, due to the 24-hour decision requirement placed on the GA administrator, the GA administrator may decide to render a notice of “ineligibility” and provide the applicant with another application to submit as soon as is practicable for the applicant.

In order to ensure that applicants understand their rights, it is the responsibility of the general assistance administrator to explain the applicants’ right to a fair hearing in the written notice of decision.

Contents. After an application has been completed, applicants will be given written notice of any decision concerning their eligibility for assistance. In addition to the contents of a written decision listed in section 4.6 of this ordinance, the notice will state that applicants:

- a) have the right to a fair hearing and the method by which they may obtain a fair hearing and;

- b) have the right to contact the DHHS if they believe the municipality has violated the law. The decision will state the method for notifying the department.

Disbursement of General Assistance. Except when determined impractical by the administrator, all general assistance will be provided in the form of a voucher or purchase order payable to a vendor or through direct municipal payment to a provider of goods or services. General assistance will not be issued in the form of a cash payment to an applicant unless there is no alternative to making such a cash payment, in which case the administrator shall document the circumstances for issuing general assistance in the form of cash (22 M.R.S.A. § 4305(6)).

ARTICLE VII

The Fair Hearing

Section 7.1—Right to a Fair Hearing

Within 5 working days of receiving a written notice of denial, reduction or termination of assistance, or within 10 working days after any other act or failure to act, the applicant or his or her authorized representative has the right to request a fair hearing (22 M.R.S.A. § 4322). The right to review a decision of the general assistance administrator is a basic right of the applicant to a full evidentiary hearing and is not limited solely to a review of the decision.

Section 7.2—Method of Obtaining a Fair Hearing

Upon receiving notification of the decision of the general assistance administrator, all claimants will be informed of the method of obtaining a fair hearing. All complaints that are not clear requests for a fair hearing will be answered by a personal interview or in writing by the general assistance administrator. If the client is satisfied with the adjustment or explanation, the administrator will make an entry in the case record and file any correspondence involved.

Written Request. To obtain a fair hearing, the claimant, or his or her authorized representative, must make a written request within 5 working days of receiving the administrator's decision to grant, deny, reduce or terminate assistance, or within 10 working days after any other act or failure to act. The administrator will make available a printed form for requesting a fair hearing and will assist the claimant in completing it if necessary. On the printed form, the claimant will give the following information:

- a) the decision on which review is sought;
- b) the reason(s) for the claimant's dissatisfaction and why the claimant believes he/she is eligible to receive assistance; and

- c) the relief sought by the claimant.

The administrator cannot deny or dismiss a request for a hearing unless it has been withdrawn (in writing) by the claimant.

Scheduling the Fair Hearing. Upon receipt of the completed written request the fair hearing authority must meet and hold the hearing within 5 working days. The administrator will notify the claimant in writing when and where the hearing will be held (22 M.R.S.A. § 4322). In addition to the date, time and place of the hearing, the notice of fair hearing sent to the claimant shall include, at a minimum, the claimant's rights to:

- a) be his or her own spokesperson at the fair hearing, or be represented by legal counsel or other spokesperson at the hearing, at the claimant's own expense;
- b) confront and cross-examine any witnesses presented at the hearing against the claimant; and
- c) present witnesses on his or her own behalf.

Arrangements for the date, time, and place of the hearing will take into consideration the convenience of the claimant and hearing authority. The claimant will be given timely notice to allow for preparation and will also be given adequate preliminary information about the hearing procedure to allow for effective preparation of his or her case.

Section 7.3—The Fair Hearing Authority

The municipal officers will appoint a fair hearing authority (FHA) that will determine, based on all the evidence presented at the fair hearing, whether the claimant(s) were eligible to receive assistance at the time they applied for GA. The FHA is charged with the responsibility of ensuring that general assistance is administered in accordance with the state law and local ordinance.

The fair hearing authority may consist of the municipal officers, one or more persons appointed by the municipal officers to act as the FHA , or, if designated, the board of appeals created under 30-A M.R.S.A. § 2691 (22 M.R.S.A. § 4322). In determining the organization of the fair hearing authority, the municipal officers will use the following criteria. The person(s) serving as FHA must:

- a) not have participated in the decision which is the subject of the appeal;
- b) be impartial;
- c) be sufficiently skilled in interviewing techniques to be able to obtain evidence and the facts necessary to make a fair determination; and
- d) be capable of evaluating all evidence fairly and realistically, explaining to the claimant the laws and regulations under which the administrator operated, and interpreting to the administrator any evidence of unsound, unclear, or inadequate policies, practices or actions.

Section 7.4—Fair Hearing Procedure

When a claimant requesting a fair hearing is notified of the date, time, and place of the hearing in writing, he/she will also be given adequate preliminary information about the hearing procedure to allow for effective preparation of his or her case. The claimant shall be permitted to review his or her file prior to the hearing. At a minimum, the claimant will be told the following information, which will govern all fair hearings. All fair hearings will:

- a) be conducted privately, and will be open only to the claimant, witnesses, legal counsel, or others whom the claimant wants present, and the general assistance administrator, his or her agents, counsel and witnesses;
- b) be opened with a presentation of the issue by the fair hearing authority;
- c) be conducted informally, without technical rules of evidence, but subject to the requirements of due process;

- d) allow the claimant and the administrator the option to present their positions for themselves or with the aid of others, including legal counsel;
- e) give all participants an opportunity to present oral or written testimony or documentary evidence, offer rebuttal; question witnesses presented at the hearing; and examine all evidence presented at the hearing;
- f) result in a decision, based exclusively on evidence or testimony presented at the hearing; and
- g) be tape recorded, and result in a written decision that is given to the claimant and filed with evidence introduced at the hearing. The fair hearing authority will allow the claimant to establish all pertinent facts and circumstances, and to advance any arguments without undue interference. Information that the claimant does not have an opportunity to hear or see will not be used in the fair hearing decision or made part of the hearing record. Any material reviewed by the fair hearing authority must be made available to the claimant or his or her representative. The claimant will be responsible for preparing a written transcript if he/she wishes to pursue court action.

The fair hearing authority shall admit all evidence if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs (22 M.R.S.A. § 4322).

Claimant's Failure to Appear. In the event the claimant fails to appear, the FHA will send a written notice to the claimant that the GA administrator's decision was not altered due to the claimant's failure to appear. Furthermore, the notice shall indicate that the claimant has 5 working days from receipt of the notice to submit to the GA administrator information demonstrating "just cause," for failing to appear. For the purposes of a claimant's failure to appear at a fair hearing, examples of "just cause" include:

- a) a death or serious illness in the family;

- b) a personal illness which reasonably prevents the party from attending the hearing;
- c) an emergency or unforeseen event which reasonably prevents the party from attending the hearing;
- d) an obligation or responsibility which a reasonable person in the conduct of his or her affairs could reasonably conclude takes precedence over the attendance at the hearing; or
- e) lack of receipt of adequate or timely notice; excusable neglect, excusable inadvertence, or excusable mistake.

If the claimant (or their attorney) establishes just cause, the request for the hearing will be reinstated and a hearing rescheduled.

In the event a claimant who is represented by legal counsel fails to appear at a fair hearing, legal counsel shall not testify in place of the claimant on matters of 'fact' but may cross examine witnesses and make 'legal' arguments on behalf of the claimant.

Section 7.5—The Fair Hearing Decision

The decision of the fair hearing authority will be binding on the general assistance administrator, and will be communicated in writing to the claimant within 5 working days after completion of the hearing. Written notice of the decision will contain the following:

- a) a statement of the issue;
- b) relevant facts brought out at the hearing;
- c) pertinent provisions in the law or general assistance ordinance related to the decision; and
- d) the decision and the reasons for it.

A copy of the notice of the decision will be given to the claimant. The hearing record and the case record will be maintained by the general assistance administrator.

The written notice of the decision will state that if the claimant is dissatisfied with the fair hearing decision, he/she has a further legal right to appeal the decision pursuant to the Maine Rules of Civil Procedure, Rule 80B. To take advantage of this right, the claimant must file a petition for review with the Superior Court within 30 days of receipt of the fair hearing decision.

When the decision by the fair hearing authority or court authorizes assistance to the claimant, the assistance will be provided within 24 hours.

ARTICLE VIII

Recovery of Expenses

Recipients. The municipality may recover the full amount of assistance granted to a person from either the recipient or from any person liable for the recipient, or his or her executors or administrators in a civil action. However, prior to recovering assistance granted, the municipality shall “offset” the value of any workfare performed by a GA recipient, at a rate not less than minimum wage.

Prior to taking a recipient to court to recover the amount of assistance, the municipality will seek voluntary repayment from the recipient by notifying him/her in writing and discussing it with the recipient. The municipality shall not attempt to recover such costs if, as a result of the repayment, the person would again become eligible for general assistance (22 M.R.S.A. § 4318).

Recipients Anticipating Workers’ Compensation Benefits. The municipality shall claim a lien for the value of all general assistance payments made to a recipient on any lump sum payment made to that recipient under the Workers’ Compensation Act or similar law of any other state (22 M.R.S.A. § 4318, 39-A M.R.S.A. § 106). After issuing any general assistance on behalf of a recipient who has applied for or is receiving Workers’ Compensation, the municipality shall file a notice of the municipal lien with the general assistance recipient and the Office of Secretary of State, Uniform Commercial Code division.

The notice of lien shall be filed on a UCC-1 form which must be signed by the recipient of general assistance who has applied for or is receiving Workers’ Compensation. Any general assistance applicant who has applied for or who is receiving Workers’ Compensation benefits and who refuses to sign a properly prepared UCC-1 form will be found ineligible to receive general assistance until he or she provides the required

signature. The municipality shall also send a photocopy of that filing to the recipient's Worker's Compensation attorney, if known, the applicant's employer or the employer's insurance company, and, at the administrator's discretion, to the Workers' Compensation Board. The lien shall be enforced at the time any lump sum Workers' Compensation benefit is issued.

Recipients of SSI. All applicants who receive general assistance while receipt of their Supplemental Security Income (SSI) assistance is pending or suspended, and which therefore may be retroactively issued to the applicant at a later date, will be required to sign a statement on an Interim Assistance Agreement form distributed by the DHHS that authorizes the Social Security Administration to direct a portion of any retroactive SSI payment to the municipality and/or the state in repayment for the general assistance granted. Any general assistance applicant who has applied for or who may be applying for SSI, or who may be required to apply for SSI pursuant to 22 M.R.S.A. § 4317, and who refuses to sign the Interim Agreement SSI authorization form will be found ineligible to receive general assistance until he or she provides the required signature (22 M.R.S.A. § 4318).

Relatives. The spouse of an applicant, and the parents of any applicant under the age of 25, are liable for the support of the applicant (22 M.R.S.A. § 4319). In addition, grandchildren, children, parents and grandparents are liable for the burial costs of each other. The municipality considers these relatives to be available resources and liable for the support of their relatives in proportion to their respective ability. The municipality may complain to any court of competent jurisdiction to recover any expenses made on the behalf of a recipient if the relatives fail to fulfill their responsibility (22 M.R.S.A. § 4319).

ARTICLE IX

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 of the ordinance.

2017-2018 GA Overall Maximums

Metropolitan Areas

COUNTY	Persons in Household				
	1	2	3	4	5*
Bangor HMFA: Bangor, Brewer, Eddington, Glenburn, Hampden, Hermon, Holden, Kenduskeag, Milford, Old Town, Orono, Orrington, Penobscot Indian Island Reservation, Veazie	714	788	994	1,242	1,506
Penobscot County HMFA: Alton, Argyle UT, Bradford, Bradley, Burlington, Carmel, Carroll plantation, Charleston, Chester, Clifton, Corinna, Corinth, Dexter, Dixmont, Drew plantation, East Central Penobscot UT, East Millinocket, Edinburg, Enfield, Etna, Exeter, Garland, Greenbush, Howland, Hudson, Kingman UT, Lagrange, Lakeville, Lee, Levant, Lincoln, Lowell town, Mattawamkeag, Maxfield, Medway, Millinocket, Mount Chase, Newburgh Newport, North Penobscot UT, Passadumkeag, Patten, Plymouth, Prentiss UT, Seboeis plantation, Springfield, Stacyville, Stetson, Twombly UT, Webster plantation, Whitney UT, Winn, Woodville	605	682	847	1,095	1,269
Lewiston/Auburn MSA: Auburn, Durham, Greene, Leeds, Lewiston, Lisbon, Livermore, Livermore Falls, Mechanic Falls, Minot, Poland, Sabattus, Turner, Wales	641	726	915	1,169	1,397
Portland HMFA: Cape Elizabeth, Casco, Chebeague Island, Cumberland, Falmouth, Freeport, Frye Island, Gorham, Gray, Long Island, North Yarmouth, Portland, Raymond, Scarborough, South Portland, Standish, Westbrook, Windham, Yarmouth; Buxton, Hollis, Limington, Old Orchard Beach	1,002	1,131	1,431	1,931	2,097
York/Kittery/S.Berwick HMFA: Berwick, Eliot, Kittery, South Berwick, York	982	1,025	1,333	1,714	2,173
Cumberland County HMFA: Baldwin, Bridgton, Brunswick, Harpswell, Harrison, Naples, New Gloucester, Pownal, Sebago	761	807	1,072	1,561	1,780

Appendix A
Effective: 10/01/17-09/30/18

COUNTY	1	2	3	4	5*
Sagadahoc HMFA: Arrowsic, Bath, Bowdoin, Bowdoinham, Georgetown, Perkins UT, Phippsburg, Richmond, Topsham, West Bath, Woolwich	781	863	999	1,318	1,600
York County HMFA: Acton, Alfred, Arundel, Biddeford, Cornish, Dayton, Kennebunk, Kennebunkport, Lebanon, Limerick, Lyman, Newfield, North Berwick, Ogunquit, Parsonsfield, Saco, Sanford, Shapleigh, Waterboro, Wells	745	872	1,079	1,457	1,477

***Note:** Add \$75 for each additional person.

Non-Metropolitan Areas

Persons in Household

COUNTY	1	2	3	4	5*
Aroostook County	618	642	760	965	1,049
Franklin County	646	671	793	985	1,400
Hancock County	693	787	992	1,249	1,367
Kennebec County	722	746	928	1,216	1,297
Knox County	754	755	928	1,186	1,315
Lincoln County	783	834	987	1,234	1,470
Oxford County	630	646	771	1,110	1,343
Piscataquis County	595	672	828	1,090	1,125
Somerset County	675	704	835	1,133	1,146
Waldo County	680	751	887	1,206	1,281
Washington County	630	645	763	985	1,173

*** Please Note:** Add \$75 for each additional person.

2017-2018 Food Maximums

Please Note: The maximum amounts allowed for food are established in accordance with the U.S.D.A. Thrifty Food Plan. As of October 1, 2017, those amounts are:

Number in Household	Weekly Maximum	Monthly Maximum
1	44.65	192
2	81.86	352
3	117.21	504
4	148.84	640
5	176.74	760
6	212.33	913
7	234.65	1,009
8	268.14	1,153

Note: For each additional person add \$144 per month.

2017-2018 GA Housing Maximums (Heated & Unheated Rents)

NOTE: NOT ALL MUNICIPALITIES SHOULD ADOPT THESE SUGGESTED HOUSING MAXIMUMS! Municipalities should ONLY **consider** adopting the following numbers, if these figures are consistent with local rent values. If not, a market survey should be conducted and the figures should be altered accordingly. The results of any such survey must be presented to DHHS prior to adoption. **Or, no housing maximums should be adopted and eligibility should be analyzed in terms of the Overall Maximum—Appendix A. (See Instruction Memo for further guidance.)**

Non-Metropolitan FMR Areas

<u>Aroostook County</u>	<u>Unheated</u>		<u>Heated</u>	
Bedrooms	Weekly	Monthly	Weekly	Monthly
0	111	476	130	559
1	111	476	134	578
2	130	558	159	684
3	167	718	204	878
4	177	762	221	949
<u>Franklin County</u>	<u>Unheated</u>		<u>Heated</u>	
Bedrooms	Weekly	Monthly	Weekly	Monthly
0	117	503	137	587
1	117	503	141	607
2	137	591	167	717
3	173	743	209	898
4	258	1,108	302	1,300
<u>Hancock County</u>	<u>Unheated</u>		<u>Heated</u>	
Bedrooms	Weekly	Monthly	Weekly	Monthly
0	124	535	147	633
1	139	599	167	720
2	183	788	213	915
3	227	976	270	1,159
4	242	1,041	294	1,264
<u>Kennebec County</u>	<u>Unheated</u>		<u>Heated</u>	
Bedrooms	Weekly	Monthly	Weekly	Monthly
0	131	564	154	662
1	131	564	158	679
2	168	724	198	851
3	219	943	262	1,126
4	226	971	278	1,194

Non-Metropolitan FMR Areas

<u>Knox County</u>	<u>Unheated</u>		<u>Heated</u>	
Bedrooms	Weekly	Monthly	Weekly	Monthly
0	139	596	161	694
1	139	596	161	694
2	168	724	198	851
3	212	913	255	1,096
4	230	989	282	1,212
<u>Lincoln County</u>	<u>Unheated</u>		<u>Heated</u>	
Bedrooms	Weekly	Monthly	Weekly	Monthly
0	145	625	168	723
1	150	646	178	767
2	182	783	212	910
3	223	961	266	1,144
4	266	1,144	318	1,367
<u>Oxford County</u>	<u>Unheated</u>		<u>Heated</u>	
Bedrooms	Weekly	Monthly	Weekly	Monthly
0	110	472	133	570
1	110	472	135	579
2	132	567	161	694
3	195	837	237	1,020
4	237	1,017	288	1,240
<u>Piscataquis County</u>	<u>Unheated</u>		<u>Heated</u>	
Bedrooms	Weekly	Monthly	Weekly	Monthly
0	106	457	126	540
1	118	508	143	613
2	147	630	177	759
3	198	853	235	1,011
4	198	853	240	1,034
<u>Somerset County</u>	<u>Unheated</u>		<u>Heated</u>	
Bedrooms	Weekly	Monthly	Weekly	Monthly
0	120	517	143	615
1	121	519	148	637
2	147	631	176	758
3	202	869	243	1,043
4	202	869	243	1,043

Non-Metropolitan FMR Areas

<u>Waldo County</u>	<u>Unheated</u>		<u>Heated</u>	
Bedrooms	Weekly	Monthly	Weekly	Monthly
0	121	522	144	620
1	131	563	159	684
2	159	683	188	810
3	217	933	260	1,116
4	222	955	274	1,178
<u>Washington County</u>	<u>Unheated</u>		<u>Heated</u>	
Bedrooms	Weekly	Monthly	Weekly	Monthly
0	110	472	133	570
1	110	472	134	578
2	130	559	160	686
3	166	712	208	895
4	208	847	249	1,070

Metropolitan FMR Areas

<u>Bangor HMFA</u>	<u>Unheated</u>		<u>Heated</u>	
Bedrooms	Weekly	Monthly	Weekly	Monthly
0	129	556	152	654
1	140	600	168	721
2	184	790	213	917
3	225	969	268	1,152
4	275	1,180	326	1,403
<u>Penobscot Cty. HMFA</u>	<u>Unheated</u>		<u>Heated</u>	
Bedrooms	Weekly	Monthly	Weekly	Monthly
0	104	447	127	545
1	115	494	143	615
2	149	643	179	770
3	191	822	234	1,005
4	219	943	271	1,166
<u>Lewiston/Auburn MSA</u>	<u>Unheated</u>		<u>Heated</u>	
Bedrooms	Weekly	Monthly	Weekly	Monthly
0	112	483	135	581
1	125	538	153	659
2	165	711	195	838
3	208	896	251	1,079
4	249	1,071	301	1,294

Metropolitan FMR Areas

<u>Portland HMFA</u>	<u>Unheated</u>		<u>Heated</u>	
Bedrooms	Weekly	Monthly	Weekly	Monthly
0	196	844	219	942
1	219	943	247	1,064
2	285	1,227	315	1,354
3	386	1,658	428	1,841
4	412	1,771	464	1,994
<u>York/Kittery/S. Berwick HMFA</u>	<u>Unheated</u>		<u>Heated</u>	
Bedrooms	Weekly	Monthly	Weekly	Monthly
0	192	824	214	922
1	195	837	223	958
2	263	1,129	292	1,256
3	335	1,441	378	1,624
4	430	1,847	481	2,070
<u>Cumberland Cty. HMFA</u>	<u>Unheated</u>		<u>Heated</u>	
Bedrooms	Weekly	Monthly	Weekly	Monthly
0	140	603	163	701
1	144	619	172	740
2	202	868	231	995
3	299	1,288	342	1,471
4	338	1,454	390	1,677
<u>Sagadahoc Cty. HMFA</u>	<u>Unheated</u>		<u>Heated</u>	
Bedrooms	Weekly	Monthly	Weekly	Monthly
0	145	623	168	721
1	157	675	185	796
2	185	795	214	922
3	243	1,045	286	1,228
4	296	1,274	348	1,497
<u>York Cty. HMFA</u>	<u>Unheated</u>		<u>Heated</u>	
Bedrooms	Weekly	Monthly	Weekly	Monthly
0	136	587	159	685
1	159	684	187	805
2	203	875	233	1,002
3	275	1,184	318	1,367
4	275	1,184	320	1,374

2017-2018 GA MAXIMUMS SUMMARY SHEET

Note: The overall maximums found in *Appendices A, B, C, D, E, and F* are effective from **October 1, 2017 to September 30, 2018.**

APPENDIX A - OVERALL MAXIMUMS

<u>County</u>	<u>Persons in Household</u>					
	1	2	3	4	5	6
<p>NOTE: For each additional person add \$75 per month.</p> <p>(The applicable figures from Appendix A, <i>once adopted</i>, should be inserted here.)</p>						

APPENDIX B - FOOD MAXIMUMS

<u>Number in Household</u>	<u>Weekly Maximum</u>	<u>Monthly Maximum</u>
1	44.65	192
2	81.86	352
3	117.21	504
4	148.84	640
5	176.74	760
6	212.33	913
7	234.65	1,009
8	268.14	1,153
<p>NOTE: For each additional person add \$144 per month.</p>		

APPENDIX C - HOUSING MAXIMUMS

Number of Bedrooms	<u>Unheated</u>		<u>Heated</u>	
	Weekly	Monthly	Weekly	Monthly
0				
1				
2				
3				
4				
(The applicable figures from Appendix C, <i>once adopted</i> , should be inserted here.)				

FOR MUNICIPAL USE ONLY

APPENDIX D - UTILITIES

ELECTRIC

NOTE: For an electrically heated dwelling also see “Heating Fuel” maximums below. But remember, an applicant is *not automatically* entitled to the “maximums” established—applicants must demonstrate need.

1) **Electricity Maximums for Households Without Electric Hot Water:** The maximum amounts allowed for utilities, for lights, cooking and other electric uses *excluding* electric hot water and heat:

<u>Number in Household</u>	<u>Weekly</u>	<u>Monthly</u>
1	\$14.00	\$60.00
2	\$15.70	\$67.50
3	\$17.45	\$75.00
4	\$19.90	\$86.00
5	\$23.10	\$99.00
6	\$25.00	\$107.00

NOTE: For each additional person add \$7.50 per month.

2) **Electricity Maximums for Households With Electrically Heated Hot Water:** The maximum amounts allowed for utilities, hot water, for lights, cooking and other electric uses *excluding* heat:

<u>Number in Household</u>	<u>Weekly</u>	<u>Monthly</u>
1	\$20.65	\$89.00
2	\$23.75	\$102.00
3	\$27.70	\$119.00
4	\$32.25	\$139.00
5	\$38.75	\$167.00
6	\$41.00	\$176.00

NOTE: For each additional person add \$10.00 per month.

NOTE: For electrically heated households, the maximum amount allowed for electrical utilities per month shall be the sum of the appropriate maximum amount under this subsection and the appropriate maximum for heating fuel as provided below.

APPENDIX E - HEATING FUEL

<u>Month</u>	<u>Gallons</u>	<u>Month</u>	<u>Gallons</u>
September	50	January	225
October	100	February	225
November	200	March	125
December	200	April	125
		May	50

FOR MUNICIPAL USE ONLY

NOTE: When the dwelling unit is heated electrically, the maximum amount allowed for heating purposes will be calculated by multiplying the number of gallons of fuel allowed for that month by the current price per gallon. When fuels such as wood, coal and/or natural gas are used for heating purposes, they will be budgeted at actual rates, if they are reasonable. No eligible applicant shall be considered to need more than 7 tons of coal per year, 8 cords of wood per year, 126,000 cubic feet of natural gas per year, or 1000 gallons of propane.

APPENDIX F - PERSONAL CARE & HOUSEHOLD SUPPLIES

<u>Number in Household</u>	<u>Weekly Amount</u>	<u>Monthly Amount</u>
1-2	\$10.50	\$45.00
3-4	\$11.60	\$50.00
5-6	\$12.80	\$55.00
7-8	\$14.00	\$60.00

NOTE: For each additional person add \$1.25 per week or \$5.00 per month.

SUPPLEMENT FOR HOUSEHOLDS WITH CHILDREN UNDER 5

When an applicant can verify expenditures for the following items, a special supplement will be budgeted as necessary for households with children under 5 years of age for items such as cloth or disposable diapers, laundry powder, oil, shampoo, and ointment up to the following amounts:

<u>Number of Children</u>	<u>Weekly Amount</u>	<u>Monthly Amount</u>
1	\$12.80	\$55.00
2	\$17.40	\$75.00
3	\$23.30	\$100.00
4	\$27.90	\$120.00

FOR MUNICIPAL USE ONLY

Appendix G

Mileage Rate

This municipality adopts the State of Maine travel expense reimbursement rate as set by the Office of the State Controller. The current rate for approved employment and necessary medical travel etc. is 44 cents (44¢) per mile.

Please refer to the Office of State Controller for changes to this rate: Telephone: 626-8420 or visit: <http://www.state.me.us/osc/>

Funeral Maximums

Burial Maximums

The maximum amount of general assistance granted for the purpose of burial is **\$1,125**. Additional costs may be allowed by the GA administrator, where there is an actual cost, for:

- the wholesale cost of a cement liner if the cemetery by-laws require one;
- the opening and closing of the grave site; and
- a lot in the least expensive section of the cemetery. If the municipality is able to provide a cemetery lot in a municipally owned cemetery or in a cemetery under municipal control, the cost of the cemetery lot in any other cemetery will not be paid by the municipality.

The municipality's obligation to provide funds for burial purposes is limited to a reasonable calculation of the funeral director's direct costs, not to exceed the maximum amounts of assistance described in this section. Allowable burial expenses are limited to:

- removal of the body from a local residence or institution
- a secured death certificate or obituary
- embalming
- a minimum casket
- a reasonable cost for necessary transportation
- other reasonable and necessary specified direct costs, as itemized by the funeral director and approved by the municipal administrator.

Cremation Maximums

The maximum amount of assistance granted for a cremation shall be **\$785**. Additional costs may be allowed by the GA administrator where there is an actual cost, for:

- a cremation lot in the least expensive section of the cemetery
- a reasonable cost for a burial urn not to exceed \$50
- transportation costs borne by the funeral director at a reasonable rate per mile for transporting the remains to and from the cremation facility.

26 MRSA §1043 (23)

Misconduct. “Misconduct” means a culpable breach of the employee’s duties or obligations to the employer or a pattern of irresponsible behavior, which in either case manifests a disregard for a material interest of the employer. This definition relates only to an employee’s entitlement to benefits and does not preclude an employer from discharging an employee for actions that are not included in this definition of misconduct. A finding that an employee has not engaged in misconduct for purposes of this chapter may not be used as evidence that the employer lacked justification for discharge. [1999, c. 464, §2 (rpr).]

A. The following acts or omissions are presumed to manifest a disregard for a material interest of the employer. If a culpable breach or a pattern of irresponsible behavior is shown, these actions or omissions constitute “misconduct” as defined in this subsection. This does not preclude other acts or omissions from being considered to manifest a disregard for a material interest of the employer. The acts or omissions included in the presumption are the following:

- (1) Refusal, knowing failure or recurring neglect to perform reasonable and proper duties assigned by the employer;
- (2) Unreasonable violation of rules that are reasonably imposed and communicated and equitably enforced;
- (3) Unreasonable violation of rules that should be inferred to exist from common knowledge or from the nature of the employment;
- (4) Failure to exercise due care for punctuality or attendance after warnings;
- (5) Providing false information on material issues relating to the employee’s eligibility to do the work or false information or dishonesty that may substantially jeopardize a material interest of the employer;
- (6) Intoxication while on duty or when reporting to work or unauthorized use of alcohol while on duty;
- (7) Using illegal drugs or being under the influence of such drugs while on duty or when reporting to work;
- (8) Unauthorized sleeping while on duty;
- (9) Insubordination or refusal without good cause to follow reasonable and proper instructions from the employer;
- (10) Abusive or assaultive behavior while on duty, except as necessary for self-defense;
- (11) Destruction or theft of things valuable to the employer or another employee;
- (12) Substantially endangering the safety of the employee, coworkers, customers or members of the public while on duty;
- (13) Conviction of a crime in connection with the employment or a crime that reflects adversely on the employee’s qualifications to perform the work; or
- (14) Absence for more than 2 work days due to incarceration for conviction of a crime.

Appendix I

[1999, c. 464, §2 (new).]

B. “Misconduct” may not be found solely on:

- (1) An isolated error in judgment or a failure to perform satisfactorily when the employee has made a good faith effort to perform the duties assigned;
- (2) Absenteeism caused by illness of the employee or an immediate family member if the employee made reasonable efforts to give notice of the absence and to comply with the employer’s notification rules and policies; or
- (3) Actions taken by the employee that were necessary to protect the employee or an immediate family member from domestic violence if the employee made all reasonable efforts to preserve the employment.

[1999, c. 464, §2 (new).]

CHAPTER 1

GENERAL PROVISIONS

Article 1. Use of Code.

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Article II. Administrative Ordinances.

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Article I. Use of Code. [Adopted eff. 11/12/76 under R.S. 1964, T. 30, Sec. 2154.]

Sec. 1-1-1. How Code Designated and Cited. The ordinances and codes embraced in the following chapters and sections shall constitute and be designated the "**1981 Revised Official Code, Town of Cape Elizabeth, Maine**", and may be so cited. Chapters 2 and 3 hereof shall constitute and be designated the "**Administrative Code, Town of Cape Elizabeth**", and this Chapter 1 and Chapters 4 through 21 hereof shall constitute and be designated the "**Code of Ordinances, Town of Cape Elizabeth**", and each may be so cited. [Revised eff. 6/10/81.]

Sec. 1-1-2. Rules of Construction and Definitions. In the construction of this Revised Official Code (hereinafter "**this Code**"), and of all ordinances and codes set forth herein, the rules and definitions set out in this section shall be observed, unless such construction would be inconsistent with the manifest intent of the Town Council. The rules of construction and definitions set out herein shall not be applied to any section of this Code which shall contain any express provision excluding such construction, or where the subject matter of context of such action may be repugnant thereon. [Revised eff. 6/10/81.]

In the interpretation and application of any provisions of this Code, they shall be held to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare.

Where any provision of the Code imposes greater restrictions upon the subject matter than the general restrictions imposed by the Code, the provision imposing the greater restriction or regulation shall be deemed to be controlling.

Generally. All general provisions, terms, phrases and expressions contained in this Code shall be liberally construed in order that the true intent and meaning of the Town Council may be fully carried out.

Computation of Time. Whenever a notice is required to be given or an act to be done a certain length of time before any proceeding shall be had, the day on which such notice is

given, or such act is done, shall not be counted in computing the time, but the day on which such proceeding is to be held shall be counted.

Corporate of Town Limits. The term "corporate limits" or "town limits" shall mean the legal boundaries of the Town of Cape Elizabeth, Maine.

County. The words "the county" or "this county" shall mean the County of Cumberland in the State of Maine.

Delegation of Authority. Whenever a provision appears requiring the head of a department or some other town officer to do some act or perform some duty, it is to be construed to authorize the head of the department or other officer to designate, delegate and authorize subordinates to perform the required act or perform the duty unless the terms of the provision or section specify otherwise.

Gender. A word importing the masculine gender only shall extend and be applied to females and to firms, partnerships and corporations as well as to males.

Joint Authority. All words giving a joint authority to three (3) or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.

Nontechnical and Technical Words. Words and phrases and such others as may have acquired a peculiar and appropriate meaning in law, technology or other specialized usage, shall be construed and understood according to such meaning.

Number. A word importing the singular number only may extend and be applied to several persons and things as well as to one person and thing.

Oath. The word "oath" shall be construed to include an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases, the words "swear" and "sworn" shall be equivalent to the words "affirm" and "affirmed".

Officials, Boards, Commissions. Whenever reference is made to officials, boards, and commissions by title only, i.e., "Town Council", "Town Manager", etc., they shall be deemed to refer to the officials, boards and commissions of the Town of Cape Elizabeth, Maine.

Owner. The word "owner", applied to a building or land, shall include any part owner, joint owner, tenant in common, tenant in partnership or joint tenant of the whole or of a part of such building or land.

Person. The word "person" shall extend and be applied to associations, clubs, societies, firms, partnerships and bodies politic and corporate as well as to individuals.

Personal Property. Includes every species of property except real property as herein described.

Preceding, Following. The words "preceding" and "following" mean next before and next after, respectively.

Property. The word "property" shall include real and personal property.

Real Property. The word "real property" shall include lands, tenements and hereditaments.

Shall. The word "shall" is mandatory.

Signature or Subscription. The word "signature" or "subscription" shall include a mark when the person cannot write.

State. The words "the state" or "this state" shall be construed to mean the State of Maine.

Street. The word "street" shall be construed to embrace streets, avenues, boulevards, roads, alleys, lanes, viaducts and all other public or private ways in the town, and shall include all areas thereof embraced between the property lines or dedicated to the public use, or to the private use of two or more land owners.

Tenant or Occupant. The word "tenant" or "occupant", applied to a building or land, shall include any person holding a written or oral lease or who occupies the whole or a part of such building or land, either alone or with others.

Tense. Words used in the past or present tense include the future as well as the past and present.

Town. The word "town" shall mean the Town of Cape Elizabeth, Cumberland County, Maine.

Town Council, Council. When the term "Council" or "Town Council" is used, it shall be construed to mean the Town Council of the Town of Cape Elizabeth, Maine.

Written or in Writing. shall be construed to include any representation of words, letters or figures, whether by printing or otherwise.

Year. The word "year" shall mean a calendar year, and the term "fiscal year" shall mean budget and accounting year adopted by the Town Council.

Sec. 1-1-3. Catchlines of Sections. The catchlines of the several sections of this Code printed in boldface type are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titles of such sections, nor as any part of the section, nor unless expressly so provided, shall they be so deemed when any of such sections including the catchlines, are amended or reenacted.

Sec. 1-1-4. Amendments to Code. All ordinances passed subsequent to this Code which amend, repeal or in any way affect this Code may be numbered in accordance with the numbering system of this Code and printed for inclusion herein, or in the case of repealed chapters, sections and subsections or any part thereof, by subsequent ordinances, such repealed portions may be excluded from the Code by omission from reprinted pages affected thereby and the subsequent ordinances as numbered and printed or omitted, in the case of repeal, shall be prima facie evidence of such subsequent ordinances until such time as this Code of Ordinances and subsequent ordinances numbered or omitted are readopted as a new code of ordinances by the Town Council.

Sec. 1-1-5. Effect of Repeal of Ordinances When any ordinance repealing a former. ordinance, clause or provision shall be itself repealed, such repeal shall not be construed to revive the former ordinance, clause or provision unless it shall be therein so expressly provided. The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of the repeal, for an offense committed or cause of action arising under the ordinance repealed.

Sec. 1-1-6. Severability of Parts of Code. The sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional, invalid or unenforceable by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality, invalidity, or unenforceability shall not effect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code.

Sec. 1-1-7. General Penalty for Violation of Code; Continuing Violations. Whenever in this Code or in any ordinance of the Town any act is prohibited or is made or declared to be unlawful or a misdemeanor, or whenever in such Code or ordinance the doing of any act is declared to be unlawful or a misdemeanor, where no specific penalty is provided therefor, the violation of any such provision of this Code or any ordinance shall be punished by a fine of not more than one hundred dollars (\$100.00), plus costs, to be recovered for the use of the Town. Each day any violation of any provision of this Code or of any ordinance shall continue shall constitute a separate offense.

Article II. Administrative Ordinances.

Sec. 1-2-1. Town Seal. The Town Seal shall be a circular disc with the words "Town of Cape Elizabeth, Maine" on the periphery, the words "Incorporated Nov. 1, 1765" within the periphery, and the form of Portland Head Light in the center.

Sec. 1-2-2. Treasurer's Warrants. The chairman of the Town Council and the chairman of its finance committee shall be jointly authorized during their terms of office to draw warrants for and in behalf of all of the municipal officers authorizing the disbursement of municipal funds at any time made or to be made by the town treasurer. Execution of warrants by said officers shall be deemed for all purposes to constitute execution by the municipal officers. [Adopted, effective March 29, 1978, under R.S.1964, T. 30, Sec. 5002.]

CHAPTER 11

HEALTH and SANITATION

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Article 1. Food and Food Service Establishments.

[Adopted eff. 1/4/67 under R. S. 1964, T. 30, Sec. 2151; amended eff. 1/10/74, 11/12/76 and 1/8/86, amend eff.12/6/2017.]

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Sec. 11-1-1. Purpose.

This Article shall govern the registration and requirements of food service establishments, and the manufacture, sale, storage, delivery and distribution of food and food stuffs in the Town of Cape Elizabeth.

Sec. 11-1-2. Definitions.

(a) "Food" shall include all substances, used for food or drink, and all substances used as components of any article of food or drink, for human consumption.

(b) "Food establishment" shall mean any permanent or temporary public or private place within the Town at which food or drink, other than live shellfish, raw vegetables or fruit is processed, prepared, packaged, mixed, cooked, served, sold in an unpackaged condition, or offered for direct or ultimate distribution to and consumption by the public including butcher shops or departments, home bakeries, restaurants, dining rooms, lunch rooms or counters, soda fountains, diners, boarding house food services, church, school, or other municipal kitchens, cafeteria and facilities, and all areas and facilities used in conjunction therewith.

(c) "Food handler" shall mean any person who is employed in a food establishment or who handles food during storage, manufacture, preparation, handling, sale or serving in such a manner that some portion of his clothes or body may come in contact with such food or with utensils used in connection therewith.

(d) "Food packager" shall mean any person located within the Town who places meat, eggs, bakery products, or other food in packaging materials for the purpose of retail sale of those products.

(e) "Health Officer" shall mean the Town health officer, or his/her duly authorized representative.

(f) "Perishable food" is food that is not preserved in a manner so as to prevent the quality of the food from being adversely affected if held longer than 7 days under normal shipping and storage conditions.

(g) "Person" shall mean human being as well as a firm, a corporation, or an association.

(h) "Polystyrene foam" shall mean blown polystyrene and expanded and extruded foams (sometimes incorrectly called Styrofoam, a Dow Chemical Company trademarked form of polystyrene foam insulation) that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene). Polystyrene foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons. For the purposes of this ordinance, the term "polystyrene" shall not include clear polystyrene known as "oriented polystyrene".

(i) "Prepared food" shall mean food or beverages which are served at the food vendor's location having been previously prepared elsewhere, or are prepared at the vendor's location by cooking, chopping, slicing, mixing, brewing, freezing or squeezing. Prepared food does not mean raw uncooked meat or eggs. Prepared food may be eaten either on or off premises.

(j) "Retail vendor" shall mean any person, restaurant, store, shop, sales outlet or other establishment including, without limitation, a grocery store, convenience store or delicatessen, located within the Town that offers prepared food for retail sale.

(k) “Temporary food service establishment” shall be any food service establishment which operates for a temporary period of time, not to exceed two (2) weeks, in connection with a fair, carnival, circus, public exhibition, or similar transitory gathering.

(l) “Utensils” shall include all kitchenware, tableware, glassware, cutlery, containers, and other kinds of utensils and equipment with which food comes in contact during preparation, processing, storage, handling or sale.

Sec. 11-1-3. Permit Required.

No person, firm, or corporation shall engage in the business of conducting a food establishment in the Town of Cape Elizabeth without first obtaining a permit therefor issued upon application to the health officer and upon his approval of plans for such establishment, the character and qualifications of the applicant and inspection of the location of said establishment. The fee for permanent, temporary or seasonal food service establishments shall be as determined by the Town Council from time to time. The permit shall be posted in a conspicuous place at the establishment for which issued, visible to the public on an inside wall; the permits is the property of the Town and shall at all times be kept in a clean condition, protected against mutilation, soil or damage. Each permit shall be for the person and location specified therein and shall not be transferable to any other person or location. Upon the transfer of a food service establishment, the transferee shall submit new application to the health officer and shall not commence operations until a new permit is issued therefor.

Sec. 11-1-4. Application for Permit.

Application forms shall be furnished by the health officer upon which shall be supplied the following information.

- (a) The name of the person, firm or corporation.
- (b) The residence of such applicant or of each of the individual members of such firm and its principal place of business.
- (c) The kind of food establishment and the nature of the undertaking to be performed or carried on.
- (d) The street address, if any, where such food establishment is to be located.
- (e) New applicants shall be of reputable character regarding which two references shall be provided and such character shall be established to the satisfaction of the health officer.
- (f) Any other relevant information required by the health officer in respect to the undertaking proposed to be conducted, the facilities and equipment of the establishment and the qualification of the applicant.

Sec. 11-1-5. Requirements for Establishments.

The following basic requirements shall apply to all food establishments, provided that the health officer may establish from time to time rules and regulations which amplify and augment these requirements with respect

to sanitation, cleanliness and adequacy of facilities, equipment and structure for particular types of food establishments:

(a) Floors. Floors shall be of such construction as to be easily cleaned, equipped with proper drainage when necessary, and shall be kept clean and in good repair.

(b) Walls and Ceilings. Walls and ceilings shall be kept clean and in good repair. All walls and ceilings of areas in which food is stored shall have a smooth, washable, light-colored surface and shall be maintained in a clean and sanitary condition.

(c) Doors and Windows. When flies are prevalent, all openings into the outer air shall be effectively screened, and doors shall be self-closing, unless other effective means are provided to prevent the entrance of flies. The presence of flies or flying insects within the structure shall be presumptive evidence of failure to comply with this section.

(d) Lighting. In all areas in which food is prepared, stored, handled, served, or sold, and in all areas in which food utensils are washed, rinsed or dried, lighting shall be adequate for working purposes and for effective and thorough cleaning.

1. The source of light (bulb, tube, or others) in any area shall be protected by fixtures which will prevent any contamination of food should the source of light shatter.
2. Adequate lighting for preparation and handling of food and for cleaning utensils shall consist of an intensity of not less than 20 foot candles of light as measured by an appropriate device. (While light intensity is dependent on several factors including wattage, reflectors, distance, etc., Generally a double 4-foot tube per 64 sq. ft. is deemed adequate.

(e) Ventilation. All areas in which food is prepared, stored, handled, served or sold, or in which utensils are washed shall be well ventilated.

(f) Toilet Facilities. Toilet and lavatory facilities for employees shall be provided on the premises. Food establishments with a seating capacity of 30 or more shall provide separate lavatories and toilets for males and females conveniently located for patrons. All lavatories and toilet rooms shall be kept in a clean condition, in good repair, well lighted, and with self-closing doors. Toilet facilities shall not open directly into any room in which food is being prepared, stored, handled, served or processed, or in which utensils are being washed.

(g) Water Supply. Running water under pressure shall be readily accessible to all areas in which food is prepared or utensils washed. The water supply shall be adequate and of a safe, sanitary quality approved by the health officer.

(h) Lavatory Facilities. Adequate and convenient hand washing facilities shall be provided, including hot and cold running water, soap and approved sanitary tissues or air drier. The use of a common towel is prohibited. No employee shall resume work after

using the toilet without first washing hands. Soiled linens, aprons, etc., used in preparation, storage, service of food, shall be kept in separate, closed, ventilated containers.

(i) Utensils. All multi-use utensils and all show and display cases or windows, work surface, counters, shelves, refrigerating equipment, sinks, stoves, hood, and other equipment or utensils used for the transportation, storage or display of food in connection with the operation of any food establishment shall be so constructed as to be easily cleaned and shall be kept clean and in good repair. Utensils containing or plated with cadmium or lead or other poisonous substances shall not be used, except that lead solder may be used for jointing. Approved single-service utensils may be substituted for multiuse utensils; provided that such single-service utensils shall be used only once.

(j) Cleaning and bactericidal treatment of utensils. Utensils and all show and display cases or windows, work services, counters, shelves, tables, refrigerating equipment, stoves, sinks, hoods and other equipment for the transportation of food used in connection with the operation of any food establishment shall be kept clean and free from chips, cracks, open seams, insects, and other contaminating material; furthermore they shall be disinfected in such a manner as to be free from bacilli of the coliform group and to have a total bacteria count of not more than 100 per utensil as determined by test in a laboratory approved for the purpose. All cloths used shall be clean and sanitary. Utensils used in the preparation, storage handling or sale of food shall be thoroughly cleansed and effectively subject to an approved bactericidal process immediately following the day's operation or more frequently if necessary. An adequate supply of hot running water, maintained at not less than 180° temperature and 15 pounds per inch pressure shall be provided for the purpose of cleansing and disinfection. Drying cloths if used shall be clean and sanitary and used for no other purposes. No article, polish, or other substance containing any poisonous material shall be used for cleaning or polishing any utensils or equipment. No substance containing any poisonous material shall be kept or used as an insecticide or exterminator in any place where food is exposed during sale, preparation, holding or dispensing or in such manner as to contaminate such food.

(k) Storage and handling of equipment. After bactericidal treatment, utensils shall be stored in a clean, dry place, protected from dust or other contamination and shall be handled in such manner as to prevent contamination. Single-service utensils shall be purchased only in sanitary containers and stored in a clean, dry place until used, and shall be handled in a sanitary manner.

(l) Disposal of Wastes. Pending ultimate removal, all garbage, trash and other waste shall be kept in suitable receptacles and disposed of in an approved manner, in accordance with the Housing Code.

(m) Refrigeration. All readily perishable food shall be kept properly refrigerated at all times except when being processed, prepared or served.

(n) Wholesomeness of Food. All Food shall be clean, wholesome, free from

spoilage and so prepared as to be safe for human consumption. All food shall be from approved sources.

(o) Preparation, storage, handling and sale of food. All food shall be prepared, stored, handled, displayed or sold in such manner as to be protected from dust, fumes, toxic substances, flies, vermin, depredation, and pollution by rodents, droplet infection, overhead leakage, or other contamination. No live animals, or live fowl, except those which are themselves intended for food, shall be kept or allowed in any food establishment and such animals or poultry intended for slaughter shall be cared for in areas entirely and completely segregated from any room where food is processed, stored or prepared. All approved means necessary for the elimination of flies, roaches, other vermin, and rodents shall be used (see Housing Code).

(p) Employees. No food handlers in any food establishment shall engage in any practice which is unsanitary or which tends to be detrimental to the cleanliness and sanitation of the food establishment or the health of the patrons thereof, all persons working in food establishments shall keep clean and shall wear clean outer garments. Head bands, caps or hair nets or head cover shall be worn by food handlers working over unprotected food and shall be kept reasonably clean and shall be used for no other purpose than for use during food handling. Special types of clothing as are deemed essential by the health officer may be required.

No person who is affected with any disease in a communicable form or who is a carrier of such disease or any person with open lesion or sores shall work in a food establishment except upon authorization of the health officer. The use of tobacco in any room where food is cooked or prepared is prohibited.

(q) Premises. The premises, both inside and out, of all food establishments shall be kept clean and free of litter and refuse. Stoves, counter tops, tables, bare floors, lavatories, and other frequently used solid surfaces shall be cleaned daily under the supervision of the manager or owner. Soap and hot water of not less than 180° F. shall be used for washing and there shall be a hot water rinse for all these surfaces.

(r) Polystyrene Foam. Polystyrene foam food containers shall be replaced with reusable compostable, or recyclable alternatives, as specified below:

- i. No retail vendor in the Town shall serve or sell prepared food in polystyrene foam containers and no food packager shall package meat, eggs, bakery products, or other food in polystyrene foam containers.
- ii. No retail vendor in the town that sells tangible personal property at retail shall sell polystyrene foam food or beverage containers.
- iii. The Town shall not use polystyrene foam food or beverage containers at any Town facility or Town sponsored event.

- iv. No Town department or facility shall purchase or acquire polystyrene foam food or beverage containers.
- v. All parties who contract with the Town shall be prohibited from using polystyrene foam food and beverage containers in Town facilities or on Town funded projects within the Town.
- vi. Exemptions from a prohibition in using polystyrene foam food containers shall apply to:
 - a. The sale and packaging of perishable food for shipment, which may include live shellfish, or raw meat, raw vegetables or raw fruits;
 - b. A retail vendor or food packager existing in the Town of Cape Elizabeth prior to December 6, 2017 that has received an exemption from the Town Manager or his/her designee. Prior to granting an exemption, the Town Manager or his/her designee shall receive a written request for an exemption. The written request shall state and the Town Manager or his/her designee shall consider: (1) If polystyrene foam food containers were used by the vendor or food packager prior to December 6, 2017; and (2) If the use of polystyrene foam food container alternatives will constitute an undue hardship. Undue hardship includes, but is not limited to situations unique to the food vendor that are not generally applicable to other retail vendors or food packagers in similar circumstances. The Town Manager or his/her designee shall make a written decision on each exemption request.
 - c. A federal, state or local government emergency when the immediate preservation of public health, safety or welfare requires the use of polystyrene foam.

Sec. 11-1-6. Temporary Food Service Establishment.

A temporary food service establishment shall comply with all of the provisions of this Article with only such exceptions as the health officer may specifically authorize as not threatening any imminent hazards to public health. Temporary food service establishments which do not fully meet the requirements of this Article may be permitted to operate when food preparation and service are restricted in whatever manner may be prescribed by the health officer.

Sec. 11-1-7. Inspection of Food Establishments.

The health officer or his representative shall make or cause to be made periodic unannounced inspections, surveys and investigations of food establishments at least every

six (6) months for year-round facilities and every 12 months for seasonal facilities in order to determine that all food establishments are constructed, operated and maintained in accordance with the provisions of this ordinance and all rules and regulations hereunder. Similar inspections, surveys and investigations shall be made upon written complaint filed against any establishment. A copy of each inspection report shall be issued to the permit holder or applicant, the Town Manager and any complainant.

Sec. 11-1-8. Orders to Correct.

If the health officer finds any violation of any provision of this ordinance, any regulations issued hereunder, or any other applicable state or local requirement, he shall issue a written order to the operator of such establishment noting such violations and directing their correction within a reasonable period of time specified in the order, not exceeding 60 days. If the violation imperils the health of the public, he may immediately order the establishment closed until its correction, for a period not exceeding 30 days. If any violations are not corrected as so ordered, the health officer may issue such further order as he deems required, including the closing to the establishment until correction, or he may seek criminal prosecution therefor under Section 11-1-17.

Sec. 11-1-9. Right of Entry.

The health officer or his representative shall be accorded free access to all food establishments, and to all premises he has reasonable cause to believe is being used as a food establishment, at all reasonable times for the purpose of inspection and examination of such places. It shall be unlawful to hinder, prevent, or refuse to permit any lawful inspection or investigation authorized in pursuance of this ordinance.

Sec. 11-1-10. Rules and Regulations.

In order to prevent the consumption by humans of any food that is unwholesome, unsanitary, or otherwise unfit, and in order to prevent such items from moving in commerce or contaminating other products intended for consumption by humans, the health officer in conjunction with the Town Manager may promulgate, from time to time, rules and regulations pertaining to requirements of sanitation, cleanliness and adequacy of facilities, equipment and construction of all food establishments. Such rules and regulations shall also provide for the inspection of such food establishments by the health officer in accordance with, but not in derogation of, the provisions of this ordinance. Such rules and regulations shall establish criteria designed to protect the health and safety of those who prepare, store, handle, or sell such food and shall provide for the condemnation of unwholesome, unsanitary, or otherwise unfit food. The inspection of any food by the health officer may result in approval, or order of condemnation of unwholesome, unsanitary, or otherwise unfit food. The inspection of any food by the health officer may result in approval, or order of disseminate, or an order to retain and hold the same pending further investigation and examination by the Town Manager. It shall be unlawful to dispose of any food ordered retained or held except by the express instructions of the health officer.

Sec. 11-1-11. Disposal of Unwholesome, Unsanitary or Unfit Food.

The health officer may order condemned any food which is found to be unwholesome, unsanitary or otherwise unfit for purposes of human consumption or dangerous to the public health. Such items shall be destroyed, in such a manner as to prevent consumption by humans, under direct supervision of the health officer or his representative and in accordance with the rules and regulations promulgated by the health officer. The health officer may order to be retained under embargo and held apart from all other food and not utilized for any purpose until such time as has been further inspected or examined and either approved or ordered condemned.

Sec. 11-1-12. Sampling.

Samples of food in a quantity sufficient for analysis or examination may be taken by the health officer, without cost, whenever necessary for the efficient conduct of inspections and investigatory procedure. When samples are taken the investigators shall provide some responsible person in the food establishment with a receipt therefor in which is identified the type and quantity of the sample obtained.

Sec. 11-1-13. Approved Sources.

All milk and milk products, ice cream, clams, shellfish, meat and meat products shall be from approved sources. All oysters and clams shall be from a source approved by the State Department of Agriculture. Shippers from sources out of state shall be on the approved list issued by the U.S.P.H.S. All shucked shellfish shall be kept until used in containers in which they are placed at the shucking plant. Such containers shall have thereon or attached thereto, a label, stamp or tag which shall show clearly and legibly the source, shipper's name and address.

Sec. 11-1-14. Uninspected Meat Prohibited.

No meat or meat products shall be sold, let, transported or offered for sale unless such meat or meat products shall bear in a clear and legible manner the "inspected and passed" stamp or other recognized identification of the U.S. or State Department of Agriculture or that of the Department of Health of the City of Portland.

Sec. 11-1-15. Records and Reports.

It shall be the duty of every person holding a permit to operate or maintain a food establishment to furnish such records and information as the health officer shall deem necessary to ascertain compliance with this ordinance.

Sec. 11-1-16. Plans and Specifications.

Whenever it is proposed to erect, alter or remodel any food establishment, it shall be necessary to submit to the building inspector, and to the health officer, detailed plans and specifications, for their approval as complying with this ordinance and any applicable state or local health requirements, prior to starting construction. Such plans shall include the location and layout of equipment and facilities; the layout and arrangement of all areas in which operations are to be conducted; and the materials to be used in construction of working areas and in utensils and equipment.

Sec. 11-1-17. Penalty.

Any person, firm or corporation who shall violate any order of the health officer, under this ordinance or any rule or regulation promulgated under authority of this ordinance shall, upon conviction, be fined a sum not less than \$25.00 and not to exceed \$100.00 or be sentenced to six months imprisonment, or both, and each day's continuation of violation hereunder shall be deemed a separate offense.

Sec. 11-1-18. Appeal.

Any person who is denied a permit under the provisions of this ordinance may file an appeal within ten days from the date of such denial to the Town Manager, who may permit exceptions to or variations from the specific terms of this ordinance in such cases where the enforcement of this provision of the ordinance may result in undue hardship.
[Amended eff. 1/12/94]

Sec. 11-1-19. Applicability.

Wherever the requirements of this ordinance vary from those of any other lawfully adopted regulation, the more restrictive provision or that imposing the higher standards shall govern.

Sec. 11-1-20. Severability.

If any part or provision of this ordinance or the application thereof to any person or circumstances are held invalid, the remainder of the ordinance including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable.

Article II Solid Waste Disposal Ordinance
[Adopted eff. 9/18/68 under R.S. 1965, T. 30, Sec. 2151; repealed and replaced in its
entirety eff. 6/21/78; Revised eff. 1/8/86; 11/11/94; 12/10/03; 07/08/2009 and
12/15/2012]

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Sec.11-2-1. Purpose.

The purpose of this ordinance is to protect the health, safety and general well-being of the citizens of the town; enhance and maintain the quality of the environment; conserve natural resources; prevent water and air pollution; gain management control over solid waste; and enable the reclamation of natural resources, including energy, from solid wastes by providing for a comprehensive, rational and effective means of regulating the disposal of solid waste generated in the Town of Cape Elizabeth.

Sec. 11-2-2. Definitions.

For the purposes of this ordinance, the following words and phrases shall have the meanings ascribed to them in this section.

- (a) *Acceptable waste* shall mean ordinary household, municipal, institutional, commercial and industrial solid waste including, but not limited to, the following:
 - (1) Garbage, trash, rubbish, paper and cardboard, plastics, refuse, beds, mattresses, sofas, and automobile or small vehicle tires, to the extent that **ecomaine** determines that the air emission criteria and standards applicable to and at the **ecomaine** disposal facility are not violated; and
 - (2) Processible portions of commercial and industrial solid waste; and

- (3) Wood and lumber, tree limbs, branches, ties, logs and trees, if no more than four and one-half (4 1/2) feet long and twelve (12) inches in diameter; leaves; twigs; grass; and plant cuttings; and
 - (4) Residential recyclable materials and commercial recyclable materials.
- (b) *Commercial recyclable materials* means that portion of commercial solid waste which consists of recyclable materials.
- (c) *Commercial hauler* means any person or entity hauling or depositing material under this article for a fee.
- (d) *Commercial solid waste* means solid waste generated by a sole proprietorship, partnership, professional association, corporation or other business organization, provided that commercial solid waste shall not include residential solid waste, or solid waste generated by a municipal or quasi-municipal organization or by a state-approved school administration.
- (e) *Construction and demolition debris* shall mean solid waste consisting of one or more of the following materials resulting from construction, remodeling, repair, and demolition of structures:
 - (1) Inert fill;
 - (2) Land clearing debris;
 - (3) Asphalt;
 - (4) Masonry;
 - (5) Wall board;
 - (6) Pipes; and
 - (7) Metal conduits.
- (f) *Disposal* shall mean the discharge, deposit, dumping or placing of any solid waste into or on any land.
- (g) *ecomaine* shall mean **ecomaine**, a non-capital stock, non-profit corporation created pursuant to Title 30-A, Chapter 115 and Title 13-B, and Title 38, Section 1304-B(5) of the Maine Revised Statutes, or any successor thereto or assignee thereof.

- (h) *ecomaine disposal facility* shall mean any land or structure or combination of land area and structures, including waste to energy plants, landfills, transfer stations and recycling containers owned or operated by or under a contract with **ecomaine**, and/or any other site designated by **ecomaine** for storing, salvaging, reducing, incinerating, reclaiming or disposing of acceptable waste pursuant to the waste handling agreement and amendments thereto entered into between the Town of Cape Elizabeth and **ecomaine**.
- (i) *Hazardous waste* shall mean a waste substance or material in any physical state, designated as hazardous by the terms of the waste handling agreement between the Town of Cape Elizabeth and **ecomaine** and/or as defined by the Maine Department of Environmental Protection.
- (j) *Municipal disposal facility* shall mean any land or structure or combination of land area and structures owned or operated by, or under contract with the Town of Cape Elizabeth, including the Cape Elizabeth Recycling Center on Dennison Drive in Cape Elizabeth and the Riverside Land Reclamation Facility in Portland, Maine for disposal of acceptable waste.
- (k) *Person* shall mean any natural person, corporation, partnership, sole proprietorship, professional association or other legal entity.
- (l) *Public solid waste disposal facility or disposal facility* shall mean any land or structure or combination of land area and structures, including transfer stations, used for storing, salvaging, reducing, incinerating, reclaiming or disposing of solid wastes; this term shall include the **ecomaine** disposal facility and municipal disposal facility.
- (m) *Recyclable materials* shall mean solid waste which has useful physical or chemical properties after serving a specific purpose and can be reused or recycled for the same or other purposes, including: leaf and yard wastes, wood wastes, newspapers; magazines; paperboard; paper products; cardboard; plastics; metal; foil; and glass.
- (n) *Residential recyclable materials* means that portion of residential solid waste which consists of recyclable materials.
- (o) *Residential solid waste* means household waste, residential refuse, or solid waste generated in a residence.
- (p) *Solid waste* shall mean useless, unwanted or discarded solid material with insufficient liquid content to be free flowing, including by way of example, and not by limitation, rubbish, garbage, scrap materials, junk, refuse, and inert fill material, but shall not include septage tank sludge nor agricultural or hazardous wastes; it shall include acceptable waste, unacceptable waste and construction and demolition debris as defined herein.

- (q) *Unacceptable waste* shall mean solid waste which is not acceptable waste and includes, but is not limited to, sewage and its derivatives, non-wood construction and demolition debris, products containing asbestos, asphalt, junk vehicles, special nuclear or by-product materials within the meaning of the Atomic Energy Act of 1954, as amended, and hazardous waste, including hazardous chemicals.

Sec 11-2-3. Designation.

In accordance with the provisions of Title 38 M.R.S.A. §1304-B, the town hereby designates **ecomaine** disposal facilities, the Cape Elizabeth Recycling Center on Dennison Drive in Cape Elizabeth, Maine and the Riverside Land Reclamation Facility in Portland, Maine as its public solid waste disposal facilities for the purposes cited in this ordinance. The disposal by any person, including any person licensed as a waste hauler in accordance with this ordinance, of any acceptable waste, except commercial recyclable materials, generated within the municipality at any place other than at these designated facilities is prohibited; provided, however, the owner of any lot, or any other person with the permission of the lot owner, may dispose of inert substances such as earth, rocks, concrete or similar material at such lot for fill purposes only, subject to state or local land use regulations.

Sec 11-2-4. Governing body.

- (a) The town council shall establish any necessary rules and regulations governing the availability and use of its public solid waste disposal facilities on Dennison Drive and for its recycling program.
- (b) The operation of the municipal disposal facilities shall conform to all pertinent regulations or directives of all local, county, state or federal agencies which may have jurisdiction.

Sec. 11-2-5. Restrictions.

- (a) No person shall permanently dispose of solid waste of any kind upon any land within the corporate limits of the town unless such land has been designated by the Town as a public solid waste disposal facility.
- (b) Certain materials may be excluded by regulation from that solid waste which may be deposited at a public solid waste disposal facility. These excluded materials may include junk automobile bodies and similar bulky waste which may require special processing prior to any disposal; burning materials or materials containing hot or live coals; hazardous wastes; and other materials which the town deems necessary to exclude. Hazardous wastes shall be handled in accordance with 38 M.R.S.A. § 1319-0.

- (c) Except for licensed disposal of hazardous or infectious wastes, it shall be unlawful for any person to burn or incinerate any solid waste within the Town other than leaves or brush with a proper permit.

Sec 11-2-6. Authorized disposal facility users.

- (a) The availability and use of municipal disposal facilities shall be limited to residents of the Town and to those residents of any other municipality which may, by mutual agreement, be authorized to use the designated municipal disposal facilities. Non-resident Cape Elizabeth property owners and their agents may dispose of materials generated within Cape Elizabeth in accordance with procedures established by the Director of Public Works.
- (b) As a means of user control, the attendant of the municipal disposal facilities or an approved agent of the town shall:
 - (1) Authenticate a user's right to use the facility;
 - (2) Affix permit stickers only onto vehicles registered in the Municipality.
- (c) Any vehicle equipped with mechanized compaction equipment carrying items destined for the compactor unit shall not be allowed to use the Recycling Center. Vehicles not requiring a Commercial Driver's License (CDL), as defined by M.R.S.A. shall be permitted access to, or use of the Recycling Center. Vehicles requiring a Commercial Driver's License (CDL), as defined by M.R.S.A. shall not be allowed access to the Recycling Center, unless otherwise approved by the Director of Public Works.
- (d) Any site clearing shall as much as possible result in all wood wastes and stumps being recycled. No stumps shall be deposited at the municipal facility on Dennison Drive in Cape Elizabeth.

Sec. 11-2-7. Resource recovery.

- (a) The municipality may require solid waste and recyclable materials to be separated into such categories as may be established by regulation or governed by signage at municipal disposal facilities. Solid waste and recyclable materials may be disposed of only in such manner and at such sites and locations as designated.
- (b) No recyclable materials may be placed in the hopper at the transfer station at the Cape Elizabeth Recycling Center.

Sec. 11-2-8. Property rights.

Any solid waste and recyclable materials deposited within the designated public solid waste disposal facilities or into any recyclable bin on town property shall become the property of the Town of Cape Elizabeth or **ecomaine**. No one shall salvage, remove, or carry off any such deposited solid waste or recyclable materials without prior approval of the Town. Material placed in a municipally designated “swap shop” may be removed without prior approval of the town. The Director of Public Works may limit usage of the “swap shop” to 15 minutes per day and may establish other usage rules for the “swap shop” so that the structure is accessible for local residents.

Sec. 11-2-9. Permit required.

No person shall collect or transport solid waste, including but not limited to garbage and recyclables, generated within the Town without obtaining a refuse permit from the municipality and paying the required fee. Any commercial hauler shall obtain a commercial hauler permit upon such terms and conditions established by the town council. Such permits shall be subject to the terms and requirements set forth in this article.

Sec. 11-2-10.

Application for refuse permit. In order to acquire a permit for the collection or disposal of solid waste within the town, the applicant shall submit to the Town such information as the Director of Public Works deems necessary, together with the required fees. Fees for obtaining permits for the collection or transport of solid waste generated within the town shall be established by order of town council.

Sec. 11-2-11. Term of permit.

Commercial hauler permit issued under this article shall be for the calendar year and other permits shall be for such duration as determined by the Director of Public Works.

Sec. 11-2-12. Violations.

Any failure to comply with the requirements of this Article shall be considered a violation. In addition to the penalty provisions set forth in this article, the Director of Public Works may suspend a refuse permit for up to thirty (30) days for a first violation of this Ordinance and for up to sixty (60) days for a second violation. Any such suspension is appealable to the town manager who after hearing may alter the suspension in any manner but may not extend the suspension period. The town council upon referral of the town manager may suspend or revoke a refuse ~~hauler~~ permit any violation of this for up to 12 months except that any person or entity placing unauthorized hazardous wastes within the town may be suspended permanently from use of the town’s municipal disposal facilities. Prior to taking any action on a potential suspension or revocation of

a refuse permit, the town council shall notify any person or business to whom the permit was issued and shall hold a hearing.

Sec 11-2-13. Penalties.

Any person who violates any provision of this Ordinance commits a civil violation, punishable by a civil penalty of not less than \$200 and not more than three thousand dollars (\$3000.00) for each violation. Fines shall be recovered upon complaint made by the municipality. Each day upon which a violation continues shall be considered a separate violation. The municipality shall be entitled to recover its attorney's fees and court costs in any action in which the court finds that a violation has occurred. In addition to penalties, the municipality may seek injunctive relief to prevent the continuance of an ongoing or recurring violation.

Article III. Rodent and Vermin Control.

[Adopted eff. 10/1/63 under R. S. 1954, C. 90-A, Sec. 3 (R S. 1964, T30, Sec. 2151).]

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Sec. 11-3-1. Definitions.

For the purpose of this Article, the following definitions shall apply:

(a) The term "building" shall mean any structure, whether public or private, whether vacant or occupied, that is adopted or used: for dwelling occupancy; for the transaction of business; for the rendering of professional service, amusement, the display or sale or storage of goods, wares, merchandise, articles of equipment; for the performance of work or labor; for office buildings, public buildings, stores, theaters, markets, restaurants, warehouses, grain processing, factories, abattoirs, workshops, garages, or structures where domestic or other animals or fowl are kept; for sheds, barns, outbuildings, or other structures or premises used as necessary to any such use.

(b) The term "rodent-proof" or "rodent-proofing" applies to a form of construction which will prevent ingress or egress of rats to or from a given space of building, or gaining access to food, water, or harborage. It consist of the closing and keeping closed, by the use of material impervious to rodents, every opening in foundations, basements, cellars, exterior and interior walls, ground or first floors, roofs, sidewalk gratings, sidewalk openings and other places that may be reached and entered by rodents by climbing, burrowing or gnawing.

(c) The term "openings" shall mean and refer to any openings in the foundation, sidewalls, ground or first floor, basements, and roofs including chimneys, caves, grills, windows, vents, vent pipes, ventilators, sidewalk grates, elevators and space around any pipe, wire or other installations connected with buildings through which rodents may enter.

(d) The term "rodent harborage" shall mean any condition which provides shelter or protection for rodents, thus favoring their multiplying and continued existence.

(e) The term "vermin" shall include noxious little animals or insects such as larvae, flies, bed-bugs, roaches, fleas, and mites.

(f) The term "owner" shall mean the actual owner of the buildings, whether individual, partnership, or corporation, or the agent of the building, or other person having custody of the buildings or to whom the rent is paid.

(g) The term "occupant" as used herein shall mean the individual, partnership, or corporation that has the use of or occupancy of any building, or a portion thereof, whether the actual owner or tenant. In the case of vacant buildings or any vacant portion of a building, the owner, agent or other person having the custody of the building shall have the responsibility of an occupant of a building.

(h) The term "health officer" shall mean the town health officer or his duly appointed representative, of the Town of Cape Elizabeth.

Sec. 11-3-2. Rules and Regulations.

The Town Manager is hereby empowered to promulgate and enforce all reasonable rules and regulations for carrying out the purpose and intent of this ordinance.

Sec. 11-3-3. Written Notice;

Unlawful to Maintain in Infested Condition. It shall be unlawful for the owner or occupant of any premises within the Town of Cape Elizabeth to maintain said premises in a vermin or rodent infested condition after he has notice of that condition.

Sec. 11-3-4. Erection, Alteration, Repair or Extension of Buildings.

It shall be unlawful to erect, repair, alter or extend any building or structure unless such construction, repair or alteration shall render the building or structure rodent-proof in accordance with the definitions contained herein; provided that only such construction, repair or alteration as affects the rat-proof condition of any building or structure shall be considered as subject to the provisions of this Ordinance.

Sec. 11-3-5. Effective Date.

Every existing building and every alteration, addition or extension thereto, shall be rodent-proofed and maintained in such condition, and all vacant or unimproved property shall be kept free of rodent harborage at all times.

Sec. 11-3-6. Permit Required.

It shall be unlawful to demolish any building or structure unless provision is made for rodent and vermin eradication. No permit for the demolition of a building or structure shall be issued by the building inspector until and unless provisions for rodent and vermin eradication have been carried out under supervision of a registered pest control operator.

Sec. 11-3-7. License.

On and after one year from the effective date of this ordinance, no license shall be issued for the storing, processing, preparing, manufacturing, selling or offering for sale of any food, food stuff, or food products until the town health officer or his duly authorized agent certifies that the building or structure where such operation is to be conducted is of rodent-proof construction or has been rendered rodent-proof.

Sec. 11-3-8. Inspections.

The town health officer or his duly authorized representative is empowered to make such inspections of the interior and exterior of any building or structure as, in his opinion may be necessary, to determine full compliance with the provisions of this ordinance.

Sec. 11-3-9 Notice in Writing.

When any building, structure or premises is found to be rodent or vermin infested, the town health officer or his duly authorized representative shall issue a notice in writing to the owner or occupant setting forth the conditions of such premises and a reasonable time limit to correct the conditions found. Such notice may require the use of necessary measures for rodent eradication, rodent harborage removal, rodent-proofing or vermin eradication deemed essential by the town health officer. Notices may be served by the Town Manager or his duly authorized representative, by the Police Department or by certified mail addressed to the person to be notified.

Sec. 11-3-10. Power to Declare Premises Unfit

If the town health officer or his duly authorized representative, shall find any building, structure or premises so heavily infested with vermin or rodents as to result in an actual or potential hazard to the health of the occupants or to the public health, he shall have the authority to declare the premises unfit for any occupancy or use until vermin or rodents have been eradicated or while vermin or rodents are being eradicated. On each and every occasion, a full report of such findings shall be made to the Town Manager who shall be empowered to take such action as may be necessary to abate the hazard.

Sec. 11-3-11. Creation of Unlawful Condition in Structures.

It shall be unlawful for the occupant, owner, contractor, public utility employee, plumber, or any other person to remove, damage or destroy any part of a building or its appurtenances intended to protect such premises against ingress of rodents, or in any other way create a condition by which ingress for rodents is made possible; provided that this section shall not apply where the interference with the rodent-proofing is made necessary in connection with lawful construction, or repair and the rodent-proofing is promptly restored.

Sec. 11-3-12. Consent to dispose of waste.

No person shall throw, place, deposit or permit any person under his control or employ to throw, place, or deposit any putrid substance, human or animal excretion, dead animal, night soil, filth of any kind, garbage, rubbish, refuse piles, old lumber, or any unwholesome material in or upon any vacant lot, alley, lane, sidewalk or street, beach, harbor, pond, or stream, or upon any private lot or public grounds within the Town of Cape Elizabeth without the consent of the town health officer or his duly authorized representative.

Sec. 11-3-13. Containers for Garbage.

Sufficient watertight covered metal containers shall be used to receive for storage until collected all accumulation of garbage, petrescible waste, rubbish or other waste.

Sec. 11-3-14. Separate Containers for garbage and nonputrescible waste to be used.

Separate containers shall be provided for garbage and other putrescible waste, and separate containers shall be provided for ashes, rubbish, paper and nonputrescible waste.

Sec. 11-3-15. Animal and bird feeding.

No person shall place food in the open for the feeding of any domesticated fowl, birds, or animals except in such containers that will prevent the scattering of such food upon the ground. After such feeding, such food shall not be allowed to remain where it is accessible to rodents.

Sec. 11-3-16. Storage of feed.

All food and feed for feeding chickens, cows, horses, and other animals shall be kept and stored in rodent free and rodent-proof containers, compartments, or rooms unless kept in a completely rat-proofed building.

Sec. 11-3-17. Registration for pest control.

All persons, firms or corporations intending to engage in the business of pest control in the Town of Cape Elizabeth shall register in writing with the town health official before so engaging and thereafter annually, on or before June 1st stating the name, business affiliation, address and telephone number of the operator as well as the pest control operations that the registrant is equipped to undertake, together with such other information that the Town Health Officer may require. Such registration will also include a signed agreement by the responsible person in charge of the pest control operation to comply with all rules and regulations established by the town health officer and the Town Manager for the safety of the public.

Sec. 11-3-18. Revocation of pest control registration.

Failure on the part of a pest control operator to give evidence or satisfactory performance of control operations on two successive occasions shall be cause for revocation of registration.

Sec. 11-3-19. Proof of certificate of registration before pest control work.

The owner or occupant of any building or structure shall not permit any person, firm, or corporation, to enter upon any building or structure for the purpose of disinfestation or extermination of vermin or rodents until such person, firm or corporation presents a currently valid certificate of registration issued by town health officer.

Sec. 11-3-20. Permit for use of disinfestation or extermination.

No person shall employ for disinfestation or for extermination of rodents or vermin from any building, vessel, or enclosed space, any highly toxic chemical; any poisonous or dangerous gas; any substance emitting poisonous gas, fumes or vapor; cyanide in any form; or sodium fluoroacetate, commonly known as "1080", without first holding a special permit for each such use issued by the town health officer subject to such conditions as the Board of Health may require. When such permits are issued both the Police and Fire Departments shall be notified immediately by the town health officer.

Sec. 11-3-21. Violation; penalty.

Whoever violates any provision of this ordinance or any regulation of the Town Manager made pursuant thereto or any order of the town health officer or his duly authorized representative, or obstructs or interferes with the execution of such order or regulation, shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not less than \$25.00 nor more than \$100.00 and each days violation or part thereof shall be a separate offense.

Sec. 11-2-22. Appeals from Order.

Any person who feels aggrieved by an order of the town health officer may file an appeal within 10 days from the date of such order to the Town Manager who may reverse the decision; the Town Manager may permit exceptions to or variations from the specific terms of the ordinance in such cases where the enforcement of the provisions of the ordinance may result in undue hardship, subject always to the rule that the Town Manager shall give due consideration to the purposes of the ordinance in promoting public health, safety and welfare.

Article IV. Single Use Carryout Bags

[Adopted eff. December 6, 2017]]

Sec. 11-4-1	Purpose	11-20
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Sec. 11-4-5	Enforcement	11-22
Sec. 11-4-6	Severability	11-22

Sec. 11-4-1. Purpose.

The purpose of this article is to reduce the distribution of single use carryout bags by stores in the Town of Cape Elizabeth, and to encourage the use of reusable bags by residents and visitors of the Town.

Sec. 11-4-2. Definitions.

For the purpose of this Article, the following definitions shall apply:

(a) **Single Use Carryout Bag** shall mean a bag other than a Reusable Bag provided at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment. The term Single Use Carryout Bag includes compostable and biodegradable bags¹ but does not include Reusable Bags, Produce Bags, Product Bags or bags provided by pharmacists to contain prescription drugs.

¹ Compostable and biodegradable bags are included in this list because they do not naturally decompose and require processing in an industrial facility to biodegrade.

(b) **Produce Bag or Product Bag** shall mean any bag without handles used exclusively to carry produce, meats, seafood, other food items or merchandise to the point of sale inside a store or to prevent such items from coming into direct contact with other purchased items.

(c) **Reusable Bag** shall mean a bag that:

- i. is designed and manufactured to withstand repeated uses over a period of time;
- ii. is machine washable or made from a material that can be cleaned and disinfected regularly;
- iii. is at least 2.25 millimeters thick if made from plastic;
- iv. has a minimum lifetime of 75 uses; and
- v. has the capability of carrying a minimum of 18 pounds.

(d) **Store** shall mean any of the following retail establishments located within the Town:

- i. a full-line, self-service market located in a permanent building that sells at retail a line of staple foodstuffs, meats, seafood, produce, household supplies, dairy products or other perishable items;
- ii. a drug store, pharmacy, supermarket, grocery store, convenience store, gift store, or other entity engaged in the retail sale of goods; or
- iii. farm stand

Sec. 11-4-3. Single Use Carryout Bag.

The following provisions shall regulate the use of Single Use Carryout Bags by a store.

(a) No Store shall provide a Single Use Carryout Bag to a customer at the check stand, cash register, point of sale or other point of departure for the purpose of

transporting food or merchandise out of the establishment except as provided in this section.

(b) A Store may make available for sale to a customer a Single Use Carryout Bag for a minimum charge of five cents (\$0.05).

(c) All monies collected by a Store for Single Use Carryout Bags under this ordinance may be used by the Store for any lawful purpose.

(d) All Stores must post signage clearly indicating the per bag charge for Single Use Carryout Bags.

(e) No Store shall rebate or otherwise reimburse a customer any portion of the minimum charge required in subsection (b).

Sec. 11-4-4. Exemptions.

A Store is exempt from the provisions of this ordinance in a federal, state or local government emergency when the immediate preservation of the public health, safety or welfare requires the use of a Single Use Carryout Bag.

Sec. 11-4-5. Enforcement.

The Town Manager or his/her designee(s) shall have the primary responsibility for enforcement of this ordinance. If the Town Manager or his/her designee(s) determine(s) that a violation of this ordinance has occurred, he/she shall issue a written warning notice to the Store that a violation has occurred. A second violation shall be subject to a fine not exceeding \$100. A third and/or subsequent violation shall be subject to a fine not exceeding \$250 for each violation.

Sec. 11-4-6. Severability.

If any part or provision of this ordinance or the application thereof to any person or circumstances are held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable.

TOWN OF CAPE ELIZABETH ORDINANCE PROHIBITING RETAIL MARIJUANA ESTABLISHMENTS AND RETAIL MARIJUANA SOCIAL CLUBS

Section 1. Authority.

This Ordinance is enacted pursuant to the Marijuana Legalization Act, 7 M.R.S.A. c. 417; and Municipal Home Rule Authority, Me. Const., art. VIII, pt. 2; and 30-A M.R.S.A. § 3001.

Section 2. Definitions.

For purposes of this Ordinance, retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities and retail marijuana testing facilities, and retail marijuana social clubs are defined as set forth in 7 M.R.S.A. § 2442.

Section 3. Prohibition on Retail Marijuana Establishments and Retail Marijuana Social Clubs.

Retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities, and retail marijuana testing facilities, and retail marijuana social clubs, are expressly prohibited in the Town of Cape Elizabeth, whether as a principal use, accessory use, or otherwise.

No person or organization shall develop or operate a business in the Town of Cape Elizabeth that engages in retail or wholesale sales of a retail marijuana product, as defined by 7 M.R.S.A. § 2442.

Nothing in this Ordinance is intended to prohibit any lawful use, possession or conduct pursuant to the Maine Medical Use of Marijuana Act, 22 M.R.S.A. c. 558-C.

Section 4. Effective date; duration.

This Ordinance shall take effect immediately upon enactment by the municipal legislative body unless otherwise provided and shall remain in effect until it is amended or repealed.

Section 5. Penalties.

This Ordinance shall be enforced by the municipal officers of the Town of Cape Elizabeth or their designee. Violations of this ordinance shall be subject to the enforcement and penalty provisions of 30-A M.R.S.A. § 4452.

Section 6. Relationship with Other Ordinances. Whenever a provision of this Ordinance is inconsistent with another provision of any other ordinance of the Town of Cape Elizabeth, regulation, or statute, the more restrictive provision shall control.

Section 7. Validity and Severability. Should any section or provision of this Ordinance be declared by any court to be invalid, such a decision shall not invalidate any other section or provision of this Ordinance.

CHAPTER 12
MISCELLANEOUS OFFENSES
(Revisions Eff. Through 11/10/2017)

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Sec. 12-1-1. Disturbing the Peace.

(a) Within the Town of Cape Elizabeth, no person shall make, continue or cause to be made, any loud, profane, boisterous, unnecessary or unusual noises, including an excessive volume of noise which shall either annoy, disturb, injure, or endanger the comfort, repose, health, peace or safety of others. In addition to the person making or causing the noise, the property owner of any building, dwelling, structure, premises, boat or conveyance or any part thereof in the town shall also be responsible for such activity.

1. The Town believes that residents have a reasonable expectation of peaceful quiet and enjoyment of their property during nighttime hours. During nighttime hours, no person shall generate substantial noise as defined above beyond the property line. For the purposes of this Article, nighttime hours shall be 10:00 p.m. to 7:00 a.m. on Sunday through Thursday, and from 11:00 p.m. to 7:00 a.m. on Friday and Saturday.

2. The level of noise during daytime hours shall not exceed what is reasonable and consistent with daily living.

(b) The above provisions shall not apply to agricultural activities, school sponsored events, fireworks shows approved by the Chief of the Fire Department or concerts or any other activity or event approved in advance by the Town Council.

(c) No person shall perform or carry on, or cause to be performed, or carried on, any construction or excavation work during the hours between 10:00 p.m. and 7:00 a.m. that produces noise of a sufficient volume to disturb the sleep or repose of occupants of neighboring properties. This paragraph shall not apply in the event of an emergency in which a sewer, conduit or utility in or under any street breaks, burst or otherwise is in such condition as to immediately endanger the property, life, health or safety of any individual. It shall also not apply to repairs necessitated by storm events, earthquakes, "acts of God" and utility coordination of projects under construction. [Revised eff. 02/07/13.]

Sec. 12-1-2. Animal Control. No owner or person having charge of any animal shall turn such animal into, or permit the same to go at large in any street, highway or public place within the Town, or onto private property without the permission of the property owner.

For the purposes of this section, “animal” shall not include dogs, which are regulated under Chapter 7 of the Ordinance. A rooster may not be kept on a lot of less than 40,000 sq. ft. in size. [Revised eff. 11/10/2017]

Sec. 12-1-3. Nude, Topless Bathing. No person in a nude state shall appear on a public way, nor swim or bathe in the waters of the town or waters adjacent thereto so as to be exposed to view of spectators.

Sec. 12-1-4. Disturbing Public Meeting. No person shall disturb any public meeting, school activity, or meeting of any kind, by making loud or unusual noises, by shouting, stamping, whistling, or standing around and obstructing the steps, passageways or entrance of any buildings where such meetings are held. [Revised eff. 10/08/08.]

Sec. 12-1-5. Destruction of Fruit Trees. No person shall willfully cut or scar or bruise any ornamental or fruit tree on any street, whether it be planted by the Town or by individuals who were duly authorized to plant it.

Sec. 12-1--6. Defacing, Injuring Public Property. No person shall mark or write on any public building, nor on any fence not his own nor any sidewalk, nor any other public place in this Town.

Sec. 12-1-7 Abandoned Well or Cistern. No person shall willfully abandon or cause to be abandoned any well or cistern without providing adequate protection by filling or covering the same. [Added eff. 3/14/60.]

Sec. 12-1-8. Use of Fish Fertilizer. All persons who apply fish or fish refuse as fertilizer to their land shall cause the same to be thoroughly plowed under within thirty six hours after the time when it is deposited on the land.

Sec. 12-1-9. Penalty. Any person found to have committed any of the foregoing listed offenses shall be punished by a fine not exceeding Two Hundred Fifty (\$250.00) for each offense, to be forfeited and paid to the use of the Town, unless different provision is made by the laws of the State of Maine. In addition, restitution shall be made for any damage to public property. [Revised eff. 10/08/08.]

Article II. Camping on Public Property.

[Adopted eff. 10/13/71, under R. S. 1964, T. 30, Sec. 2151.]

Sec. 12-2-1. Permit Required. No person shall sleep, tent, camp or be housed in a camper, trailer or other mobile home upon any property owned by the Town of Cape Elizabeth after sunset or before sunrise except in accordance with a permit issued by the Chief of Police upon conditions sufficient to assure that adequate water and sanitary facilities will be preserved, that the normal use of the Town property will not be disrupted, that the peace and property of any abutters will not be disturbed, and that any liability which the Town might incur has been waived; such permit may be summarily

revoked by the Chief of Police, or his duly authorized agent, upon the violation of any of the conditions recited therein.

Sec. 12-2-2. Penalty. Any person found to have violated Sec. 12-2-1 shall be punishable by a fine not to exceed Two Hundred Fifty (\$250.00) to be recovered for the use of the Town. [Revised eff. 10/08/08.]

Article III. Loitering Dispersal.

[Adopted eff. 9/27/72 under R.S. 1964, T. 30, Sec. 2151.]

Sec. 12-3-1 Unlawful Acts. It shall be unlawful for any person to loiter, loaf, wander, stand or remain idle either alone or in consort with others in a public place in such a manner as to:

- (a) Obstruct any public street, public area, public sidewalk or any other public place or public building by hindering or impeding or tending to hinder or impede the free and uninterrupted passage of vehicles, traffic or pedestrians; or
- (b) Commit in or upon any public street, public highway, public sidewalk or any other public place or public building any act or thing which is an obstruction to or interference with the free and uninterrupted use of property, or any business lawfully conducted by anyone in, upon, facing or fronting on any such street, public highway, public sidewalk or any other public place or public building, and which prevents the free and uninterrupted ingress, egress and regress therein, thereon and thereto.

12-3-2 Violation. When any person causes or commits any of the conditions, acts or things enumerated in Sec. 12-3-1 hereof, a police officer or any law enforcement officer shall order that person to stop causing or committing the same and to move on or disperse. Any person who fails or refuses to obey such order, or any person who obeys such order but within a period of four (4) hours after such order again causes or commits any of said conditions, acts or things, shall be guilty of a violation of this Article and upon conviction thereof in the District Court shall be subject to a fine not exceeding Two Hundred Fifty (\$250.00) to be recovered for the use of the Town. Any such violation shall constitute a separate offense on each successive day committed. [Revised eff. 10/08/08.]

Article IV. Fort Williams Park Regulations.

[Adopted eff. 11/11/77 under R. S. 1964, T. 30, Sec. 2151 and Revised eff. 10/08/08 and 08/08/13]

Sec. 12-4-1 Fires Restricted. No use which requires fires or burning of any kind shall be permitted within Fort Williams Park except as specifically authorized by the Town Council and as permitted by the Chief of the Fire Department in accordance with Sec. 8-2-5 or as may be allowed in accordance with Sec. 12-4-2.

Sec. 12-4-2 Permitted Fires. Any person or group of persons may use facilities provided by the Town within Fort Williams Park for fires for the sole purpose of cooking food for picnics upon the following conditions:

(a) Such use shall be limited to the hours during which Fort Williams Park is open to the general public;

(b) Such use shall be only within those areas posted for such use; and;

(c) Such persons or groups of persons shall use no facility other than provided by the Town and shall burn no fuel other than charcoal or charcoal brickets; however, any Underwriters Laboratory listed gas grill or appliance with a gas cylinder of no larger than 20 pounds may be utilized. Gas cylinders between 20 pounds and 100 pounds may be utilized with permission of the Cape Elizabeth Fire Department. Firewood may be used only at the fire pit area next to the picnic shelter. [Rev. eff. 4/29/88.]

Sec. 12-4-3 Open Hours. Fort Williams Park shall be open for use by the general public during daylight hours throughout the year, and it shall be closed to public use between sunset and sunrise during which time it shall be unlawful for any person to be within the limits of Fort Williams Park except for the use of leased premises by the lessees and their employees and agents within rights granted by their leases, and except during special events approved by the Town Council.

Sec. 12-4-4 Filming. Any commercial filming at Fort Williams Park and at Portland Head Light shall receive a permit from the Director of Public Works with all fees and regulations for the issuance of commercial filming permits to be determined by Town Council order.

Sec. 12-4-5 Weddings. All wedding and partnership ceremonies to be held at Fort Williams Park which include an assembly of more than 20 persons shall receive a permit from the Director of Public Works with all fees and regulations for the issuance of such permits to be determined by Town Council order. Weddings and similar ceremonies are not permitted on the Portland Head Light parcel.

Sec 12-4-6 Waste Materials. All refuse and recyclable materials brought into Fort Williams Park by visitors shall be removed by the same visitors from Fort Williams Park provided that groups permitted to utilize the park may remove material for all of their guests.

Sec 12-4-7 Pet Excrement Removal. All pet excrement deposited in Fort Williams Park shall be removed by the person in care of the pet.

Sec. 12-4-8 Regulation of Park Activities. The town council is hereby authorized to adopt rules and regulations to manage commercial activities in the Park, activities that include, but are not limited to, vending. (Added eff. 08/08/13)

Sec. 12-4-9 Smoking Prohibited. Smoking in the Park is prohibited. *Smoking* means the lighting, inhaling, exhaling, burning or carrying of any cigar, cigarette, pipe, other tobacco product or e-cigarette, or carrying or having in one's possession any lighted object giving off smoke from tobacco or any other substance that emits smoke that is customarily used and intended for inhalation (Added eff. 05/15/14)

Tobacco or tobacco product means any form of tobacco, including but not limited to cigarettes, cigars, pipe tobacco, chewing tobacco or snuff, and any material or device used in the smoking, chewing or other form of tobacco consumption, including but not limited to cigarette papers or pipes. (Added eff. 05-15-14)

Sec. 12-4-10 Penalty. Any person found to have violated any provision in Article IV shall be punishable by a fine not to exceed Two Hundred Fifty (\$250.00) per day of infraction to be recovered for the use of the Town. The Town shall also recover any fee that would have been assessed if a proper and timely permit had been granted. (Amended eff. 08/08/13)

Article V. Consumer Fireworks Regulations **[Adopted eff. 12/14/11]**

Sec 12-5-1. Definitions The following definitions shall apply to this article:

Consumer Fireworks: Shall have the same meaning as in 27 Code of Federal Regulations, Section 555.11 or subsequent provision, but includes only products that are tested and certified by a 3rd party testing laboratory as conforming with United States Consumer Product Safety Commission standards, in accordance with 15 United States Code, Chapter 47. Consumer Fireworks does not include missile type rockets, helicopter and aerial spinners, all as defined by the State Fire Marshal by rule. Nor does the definition include sky rockets and bottle rockets which for purposes of this section are defined as cylindrical tubes containing not more than 20 grams of chemical composition as defined by the State Fire Marshal by rule.

Display: An entertainment feature where the public or a private group is admitted or permitted to view a showing or discharge of fireworks or special effects.

Sec. 12-5-2. Consumer Fireworks Prohibited. No person shall use, possess with the intent to use, sell, possess with the intent to sell or offer for sale Consumer Fireworks within the Town of Cape Elizabeth. This section does not apply to a person issued a fireworks Display permit by the Town of Cape Elizabeth and/or by the State of Maine pursuant to 8 M.R.S.A. §227-A.

Sec. 12-5-3. Seizure and Disposal of Fireworks. The Town may seize Consumer Fireworks that the Town has probable cause to believe are used, possessed or sold in violation of this Article and shall forfeit seized consumer fireworks to the State of Maine for disposal.

Sec. 12-5-4. Penalties

- (a) Any person who uses Consumer Fireworks or possesses Consumer Fireworks with the intent for use in the Town of Cape Elizabeth shall be punished by a fine of not less than Two Hundred Dollars (\$200.00) and not more than Four Hundred Dollars (\$400.00) plus costs. For second and subsequent offenses, a fine of not less than Three Hundred Dollars (\$300.00) and not more than Six Hundred Dollars (\$600.00) per violation plus costs shall be imposed.
- (b) Any person who sells Consumer Fireworks or possesses Consumer Fireworks with the intent to sell in the Town of Cape Elizabeth shall be punished by a fine of not less than Five Hundred Dollars (\$500.00) plus costs. For second and subsequent offenses, a fine of not less than One Thousand Dollars (\$1000.00) per violation plus costs shall be imposed.

**Town of Cape Elizabeth
Chapter 23
Property Assessed Clean Energy (PACE) Ordinance
Effective January 12, 2011**

ARTICLE I - PURPOSE AND ENABLING LEGISLATION

Sec. 23-1-1 Purpose. By and through this Ordinance, the Town of Cape Elizabeth declares as its public purpose the establishment of a municipal program to enable its citizens to participate in a Property Assessed Clean Energy ("PACE") program so that owners of qualifying property can access financing for energy saving improvements to their properties located in Cape Elizabeth. The Town of Cape Elizabeth declares its purpose and the provisions of this Ordinance to be in conformity with federal and State laws.

Sec. 23-1-2 Enabling Legislation. The Cape Elizabeth Town Council enacts this Ordinance pursuant to Public Law 2009, Chapter 591 of the 124th Maine State Legislature -- "An Act To Increase the Affordability of Clean Energy for Homeowners and Businesses," also known as "the Property Assessed Clean Energy Act" or "the PACE Act" (codified at 35-A M.R.S.A. § 10151, *et seq.*).

ARTICLE II - TITLE AND DEFINITIONS

Sec. 23-2-1 Title. This Chapter/Ordinance shall be known and may be cited as "the Cape Elizabeth Property Assessed Clean Energy (PACE) Ordinance" (the "Ordinance").

Sec. 23-2-2 Definitions. Except as specifically defined below, words and phrases used in this Ordinance shall have their customary meanings; as used in this Ordinance, the following words and phrases shall have the meanings indicated:

1. Energy saving improvement. "Energy saving improvement" means an improvement to qualifying property that is new and permanently affixed to qualifying property and that:

- A. Will result in increased energy efficiency and substantially reduced energy use and:
 - (1) Meets or exceeds applicable United States Environmental Protection Agency and United States Department of Energy Energy Star program or similar energy efficiency standards established or approved by the Trust; or
 - (2) Involves air sealing, insulating, and other energy efficiency improvements of residential, commercial or industrial property in a manner approved by the Trust; or
- B. Involves a renewable energy installation or an electric thermal storage system that meets or exceeds standards established or approved by the trust.

2. **Municipality.** “Municipality” shall mean the Town of Cape Elizabeth.
3. **PACE agreement.** “Pace agreement” means an agreement between the owner of qualifying property and the Trust that authorizes the creation of a PACE mortgage on qualifying property and that is approved in writing by all owners of the qualifying property at the time of the agreement, other than mortgage holders.
4. **PACE assessment.** “PACE assessment” means an assessment made against qualifying property to repay a PACE loan.
5. **PACE district.** “Pace district” means the area within which the Municipality establishes a PACE program hereunder, which is all that area within the Municipality’s boundaries.
6. **PACE loan.** “PACE loan” means a loan, secured by a PACE mortgage, made to the owner(s) of a qualifying property pursuant to a PACE program to fund energy saving improvements.
7. **PACE mortgage.** “PACE mortgage” means a mortgage securing a loan made pursuant to a PACE program to fund energy saving improvements on qualifying property.
8. **PACE program.** “PACE program” means a program established under State statute by the Trust or a municipality under which property owners can finance energy savings improvements on qualifying property.
9. **Qualifying property.** “Qualifying property” means real property located in the PACE district of the Municipality.
10. **Renewable energy installation.** “Renewable energy installation” means a fixture, product, system, device or interacting group of devices installed behind the meter at a qualifying property, or on contiguous property under common ownership, that produces energy or heat from renewable sources, including, but not limited to, photovoltaic systems, solar thermal systems, biomass systems, landfill gas to energy systems, geothermal systems, wind systems, wood pellet systems and any other systems eligible for funding under federal Qualified Energy Conservation Bonds or federal Clean Renewable Energy Bonds.
11. **Trust.** “Trust” means the Efficiency Maine Trust established in 35-A M.R.S.A. § 10103 and/or its agent(s), if any.

ARTICLE III - PACE PROGRAM

Sec. 23-3-1 Establishment; funding. The Municipality hereby establishes a PACE program allowing owners of qualifying property located in the PACE district who so choose to access financing for energy saving improvements to their property through PACE loans administered by the Trust or its agent. PACE loan funds are available from the Trust in municipalities that 1) adopt a PACE Ordinance, 2) adopt and implement a

local public outreach and education plan, 3) enter into a PACE administration contract with the Trust to establish the terms and conditions of the Trust's administration of the municipality's PACE program, and 4) agree to assist and cooperate with the Trust in its administration of the municipality's PACE program.

Sec. 23-3-2 Amendment to PACE program. In addition, the Municipality may from time to time amend this Ordinance to use any other funding sources made available to it or appropriated by it for the express purpose of its PACE program, and the Municipality shall be responsible for administration of loans made from those other funding sources.

ARTICLE IV – CONFORMITY WITH THE REQUIREMENTS OF THE TRUST

Sec. 23-4-1 Standards adopted; Rules promulgated; model documents. If the Trust adopts standards, promulgates rules, or establishes model documents subsequent to the Municipality's adoption of this Ordinance and those standards, rules or model documents substantially conflict with this Ordinance, the Municipality shall take necessary steps to conform this Ordinance and its PACE program to those standards, rules, or model documents.

ARTICLE V – PROGRAM ADMINISTRATION; MUNICIPAL LIABILITY

Sec. 23-5-1. Program Administration

A. PACE Administration Contract. Pursuant to 35-A M.R.S.A. §10154(2)(A)(2) and (B), the Municipality will enter into a PACE administration contract with the Trust to administer the functions of the PACE program for the Municipality. The PACE administration contract with the Trust will establish the administration of the PACE program including, without limitation, that:

- i. the Trust will enter into PACE agreements with owners of qualifying property in the Municipality's PACE district;
- ii. the Trust, or its agent, will create and record a Notice of the PACE agreement in the appropriate County Registry of Deeds to create a PACE mortgage;
- iii. the Trust, or its agent, will disburse the PACE loan to the property owner;
- iv. the Trust, or its agent, will send PACE assessment statements with payment deadlines to the property owner;
- v. the Trust, or its agent, will be responsible for collection of the PACE assessments;
- vi. the Trust, or its agent, will record any lien, if needed, due to nonpayment of the assessment;

vii. the Municipality, or the Trust or its agent on behalf of the Municipality, promptly shall record the discharges of PACE mortgages upon full payment of the PACE loan.

B. Adoption of Education and Outreach Program. In conjunction with adopting this Ordinance, the Municipality shall adopt and implement an education and outreach program so that citizens of the Municipality are made aware of home energy saving opportunities, including the opportunity to finance energy saving improvements with a PACE loan.

C. Assistance and Cooperation. The Municipality will assist and cooperate with the Trust in its administration of the Municipality's PACE program.

D. Assessments Not a Tax. PACE assessments do not constitute a tax but may be assessed and collected by the Trust in any manner determined by the Trust and consistent with applicable law.

Sec. 23-5-2. Liability of Municipal Officials; Liability of Municipality

A. Notwithstanding any other provision of law to the contrary, municipal officers and municipal officials, including, without limitation, tax assessors and tax collectors, are not personally liable to the Trust or to any other person for claims, of whatever kind or nature, under or related to a PACE program, including, without limitation, claims for or related to uncollected PACE assessments.

B. Other than the fulfillment of its obligations specified in a PACE administration contract with the Trust entered into under Article VI, §1(A) above, a municipality has no liability to a property owner for or related to energy savings improvements financed under a PACE program.

CHAPTER 3
CAPE ELIZABETH PERSONNEL CODE

[Adopted effective 10/12/94 with amendments through 06/13/2016]

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Statement of Personnel Policy

This Personnel Code is to guide the Town Manager and each department head in the administration of personnel activities. Presentation of this information to all regular employees will also serve to instruct them in their rights as well as their responsibilities while in the employment of the Town. All provisions of this Personnel Code shall apply to all Town employees except as may otherwise be specified in this Personnel Code, in the Town Charter, or in any collective bargaining agreement that may exist. This Personnel Code shall not be construed as limiting in any way the right and authority of the Town Manager and department heads to manage and direct the operations of the Town departments and working force, including the right to plan, direct and control department activities, to schedule and assign work to employees, to determine means, methods, procedures and equipment to maintain the efficiency of departments and their employees, to determine the manning of jobs, create, revise and eliminate jobs, to establish and require observance of reasonable rules and regulations not inconsistent with this Personnel Code, to formulate and adopt ordinances and other regulations incidental to the management of the affairs of the Town and to maintain order. The Personnel Code does not constitute a contract of employment.

Note: In any instance where any provision of this personnel code is in conflict with any collective bargaining agreement that may exist, the collective bargaining agreement shall take precedence for employees covered under the agreement.

Article I General Provisions

Sec. 3-1-1 Employment

(a) Equal Employment Opportunity

The Town shall employ, without discrimination as to race, color, religion, sex, national origin, ancestry, age, political affiliation, physical or mental disability, Veteran's status, status as a whistleblower, sexual orientation or any other legally protected status, the best qualified persons who are available at the salary levels established for Town employment, first preference being given always to citizens of Cape Elizabeth, all other factors being equal. In order to ensure confidence in Town personnel practices, favoritism or nepotism will not be tolerated.

Within the limits of time in which a position must be filled, there shall be as wide a search for qualified candidates as is practicable. The character of the search will vary from position to

position, but may include advertising, open competitive examinations and contacts with special sources of information in each case. It shall be the duty of the Town Manager, or other responsible person or body, to seek out the most desirable employees for the Town.

(b) Police Department Entry Level Vacancies

Vacancies for regular patrol officers and dispatchers within the Police Department shall be filled by the Chief of Police after a process with which scheduled appearances by not less than three (3) candidates receiving the highest scores before an oral interview board of not less than three members who shall be selected as required by the Chief of Police with the approval of the Town Manager. Any applicant who fails to appear for an examination or interview at the time and place specified by the Chief of Police may be dropped from the list of applicants. The oral interview board shall rate each candidate and such rating, the results of the written examination and an evaluation of experience and training, shall be used by the Chief of Police in his final selection of a candidate for the vacant position. All ratings shall remain in force for one year after the date of the written examination from which such ratings were made. If an additional vacancy becomes effective within the aforementioned one-year period, the Chief may, at his option, fill the vacancy utilizing the ratings still in effect or may begin the process anew. [Adopted eff. 6/22/82 and Revised eff. 1/9/02]

(c) Physical Examination

The final candidate for any full-time police, fire or public works positions and part-time volunteer public safety positions shall, at the Town's expense, have a complete medical history and examination made by a licensed physician designated by the Town. The physician shall recommend whether any condition exists which would make the candidate unsuitable for Town employment. Copies of the physician's report shall be forwarded to the appropriate department head and shall be made a part of any successful applicant's personnel record.

(d) Psychiatric and Polygraph Examination

The Chief of Police is authorized to arranged for psychiatric and/or polygraph examination of candidates for original and promotional appointments within the Police Department. The opinion of a licensed psychiatrist that a candidate is mentally, emotionally or temperamentally unsuited for police service shall be sufficient cause for rejection. Polygraph examinations shall be used only to verify qualifications and suitability for police service.

(e) Application Forms

Applications for employment must be filled out on forms approved by the Town Manager. Such forms may require whatever relevant information is deemed desirable and all applications must be signed by the applying person. All applications shall be kept on file for not less than three years. The application process will be public to the extent required by the Maine Freedom of Information Act.

(f) Residency Requirement

There is no residency requirement for Town employees. However, all regular employees should live in close proximity to Cape Elizabeth in order to be readily available for emergency duties and to be at their work site in inclement weather. Department heads may, with the approval of the Town Manager, establish residency requirements for departmental employees provided such requirements are uniformly applied and do not require any employee to live less than 15 miles under/ or 30 minutes response time from the Town Hall. Any such requirements established shall not apply to persons employed at the time of adoption of the requirements, unless such persons move substantially outside a required area after the adoption of any requirements.

(g) Other requirements

All candidates for regular positions must be of high moral character, high school graduates or equivalent and at least 18 years of age. In evaluating moral character, the Town shall consider sufficient evidence of criminal, infamous, and/or dishonest conduct. Any applicant who has been convicted of a felony or who has been convicted of a misdemeanor involving moral turpitude may not be considered for employment.

(h) Immigration Law Compliance

In compliance with the Immigration Reform and Control Act of 1986, the Town is committed to employing only those individuals who are authorized to work in the United States and does not unlawfully discriminate on the basis of citizenship or national origin. All new employees, as a condition of employment, will be required to complete the Employment Eligibility Verification Form I-9 and must present documentation establishing identity and employment authorization. This form must be completed within 3 days of your start date. Failure to comply with this requirement will result in termination of employment.

Sec. 3-1-2 Promotion

Town employees shall be given maximum opportunity for promotions. Any vacant positions, which are not entry level, shall be filled in the same manner as detailed in Sec. 3-1-1 (b) or Sec. 3-1-1 (c) when applicable, unless otherwise specified by the Town Charter. Advertising, however, may be limited to within the department involved. Unless waived by the Town Manager at the request of the department head, no person shall be considered for promotion to a supervisory position unless he shall have served at least twelve months in the next lower grade. Promotion shall be based on merit and competence and upon the superior qualifications of the person, and due weight shall be given to seniority.

Sec. 3-1-3 Compensation

It is the intent that Town employees be paid on a basis that is commensurate with salaries and wages for comparable public and private work in the Cumberland County area and that will attract and retain well-qualified employees. Compensation of Town personnel shall be fixed by the Town Manager in accordance with a pay classification plan approved by the Town Council or in conformance with any collective bargaining agreement that may exist.

Sec. 3-1-4 Training

Both the Town and its employees profit from the provision of educational training opportunities for employees. The Town strongly encourages participation in programs and courses, which enhance an employee's ability to provide effective service to the community.

Each year, at the time of the annual employee evaluation, supervisors and employees shall prepare a training program for each employee. Training may include specific technical skills, personal development programs and/or course work leading to a degree or a professional designation.

As scheduling permits, the Town will provide release time for any training specifically required by the Town. For required training outside the normal work schedule, the time spent within the training program shall be paid or compensatory leave shall be provided in accordance with the Fair Labor Standards Act.

The Town will pay fees and expenses for required training programs and for optional programs when prior approval is given.

Optional course work intended to lead to a degree or a professional designation, or for a specific course related to one's work, may be reimbursed provided the employee earns a grade of "C" or better. Reimbursement shall be at no higher than the resident rate charged by the University of Southern Maine per credit hour for the same level course. Reimbursement is limited to fifteen credit hours per fiscal year per employee. No reimbursement shall be granted unless the employee received written signed approval from their supervisor and the Town Manager prior to the commencement of the course. The Town may withhold approval if sufficient funds have not been budgeted or if the course being taken does not relate to the training plan agreed upon during the employee's most recent evaluation. The Town does not pay for mileage or for other expenses related to optional course work.

Representing the Town at out-of-state conferences shall be authorized by the Town Manager, if funds permit, and upon such conditions as the Town Manager may determine.

Sec. 3-1-5 Retirement

There is no mandatory retirement age for municipal employees in the State of Maine.

Sec. 3-1-6 Hours of Work

As a general rule, the regular workweek is 40 hours per week, or 8 hours per day. Occasionally overtime work in excess of forty hours per week shall be compensated at the rate of 1-1/2 times the regular hourly rate, or compensatory time off in accordance with Sec. 3-1-8.

Sec. 3-1-7 Employment Conditions

(a) Probationary Period

Every person receiving an original or promotional appointment to a position in any department shall be evaluated during a probationary period beginning upon appointment and continuing for one year for police department employees and for 180 days for employees of all other departments. The appointing department head may at any time during such period reject for any reason any person appointed to a position. The department head shall forthwith report to the Town Manager in writing each rejection during such period, stating the date the rejection becomes effective and the reason for the rejection. Any probationer rejected as provided in this rule shall be considered permanently separated from the position he has held and shall have no appeal under provisions of this ordinance. Any probationer rejected following a promotional appointment shall revert to the position and pay status from which he was promoted.

(b) Regular Employee Appointment

A regular employee is defined as one who has completed satisfactorily the probationary period, and works a regular weekly work schedule of at least 35 hours per week as determined by the Town Manager and department head. However, all benefits described in Article II of this Personnel Code shall be provided after 120 days for all employees who work a regular weekly work schedule of at least 35 hours per week unless otherwise specified in the Personnel Code or in any collective bargaining agreement, which may exist.

(a) Part-time Employee

A part-time employee is a person who is hired to work less than 35 hours per week, and/or who works a position which is seasonal or temporary in nature, or who works on an on call basis. Part-time employees are eligible for only those benefits, which are required by federal and/or state laws unless as otherwise provided in this policy. If a part-time employee with at least 120 days of service becomes a full-time employee, the 120-day waiting period for holiday, sick pay and vacation time shall be waived for that employee.

(b) Outside Employment

Regular employees may engage in active part-time outside employment on approval of their department head, so long as the department head determines the outside work does not affect the efficiency of the employee's work for the Town, and that the part-time position is not in conflict with the Town position. Department heads may engage in active part-time employment on approval of the Town Manager utilizing the same criteria as departments utilize for regular employees.

Sec. 3-1-8 Overtime

As a general rule, occasional overtime work in excess of established regular hours may be required and will be compensated by overtime pay at the regular rate or by compensatory leave, except it is understood that the salaried positions are paid on the basis of job responsibility and it is the responsibility of the person filling the position to accomplish the work assigned to that

position regardless of hours required to do the work, within reason. Attached in Appendix A is a listing of positions that are salaried. All compensatory leave shall be taken within the pay period that it is earned however, an employee may, in writing, request that during a calendar year up to a total of forty (40) cumulative hours may be taken as compensatory leave outside the pay periods when earned. All compensatory leave shall be scheduled at the convenience of the Town of Cape Elizabeth by the appropriate department head.

Sec. 3-1-9 Attendance at Work

Employees shall be at their respective places of work in accordance with the general departmental regulations pertaining to the hours of work. All departments shall keep regular attendance records and furnish to the Town Manager such periodic reports, as he shall request. In the event of necessary absence because of illness or any other cause, it is the responsibility of employees to see that their department head is advised of the reason for absence within a reasonable time, and at least before the time the employee is expected to report to work.

Sec. 3-1-10 Disciplinary Proceedings

Each department head may discipline any member of his department on account of violation of department rules, inefficiency, incompetence, misconduct, negligence, insubordination, disloyalty or other cause, by suspending the employee from the performance of his duties without pay for not more than ten consecutive workdays for any one offense, but not more than an aggregate of thirty days in any calendar year for more than one offense, or on account of the same or other sufficient cause may, with the approval of the Town Manager, demote or dismiss any such employee. At the time of taking such action the department head shall present to the employee if possible, otherwise mailed to their most recent residence, charges specifically stating the cause for complaint and specifying the sanction therefor, and shall promptly file copies of such charges with the Town Manager. The sanction imposed shall be effective immediately unless otherwise stated. Department heads may also reprimand, in writing, any member of their department on account of violation of department rules, inefficiency, incompetence, misconduct, negligence, insubordination, disloyalty or other cause. Reprimands may be appealed only to the Town Manager and not to the Personnel Appeals Board.

(a) Appeal to the Manager

An employee who is dissatisfied with the disciplinary action taken by the department head, may appeal in writing the same within three working days to the Town Manager. The Town Manager shall make a separate investigation and inform the employee in writing of his decision and the reasons therefore within seven (7) days or as soon thereafter as practicable. The Town Manager may confirm or reverse the action appealed from or may modify such action including more stringent or more lenient punishment.

(b) Appeal to Personnel Appeals Board

Any full-time employee who is not a department head, against whom disciplinary action other than reprimands has been taken under this Section, may appeal the same to the Personnel Appeals Board (established under Sec. 4-1-1 of the Code of Ordinances), hereinafter in this

Section “Board,” by filing notice thereof with the Town Clerk within three working days after the decision of the Town Manager. The Board shall promptly fix the time for such hearing, which shall be within ten days following receipt of the charges by the department member or such longer time as the department member may require for preparation of his defense.

(c) Hearing

Such appeal shall be heard by the Board in executive session, unless otherwise requested by the employee as set forth in the notice of appeal. Court rules of evidence shall not be applicable and the Board shall hear and weigh all evidence presented which it deems relevant. The employee and department head may each present and cross-examine witnesses, and all testimony shall be given under oath. If the employee against whom charges have been presented shall fail or refuse to give testimony before the Board, the hearing may continue and action may be taken by the Board without the participation of the employee.

(d) Decision

The decision of the Board, which shall be rendered no later than 14 days after the close of the hearing, may confirm or reverse the action appealed from or may modify such action including more stringent or more lenient punishment. If the Board reverses the action appealed from, it may make appropriate orders.

(e) Deadlines

Any deadline for decisions in any Disciplinary Proceeding within this section may be extended if any party in the proceeding had a previously scheduled vacation or an illness requiring hospitalization. Any such extension shall be reasonably granted by any party and no employee shall suffer loss of pay as the consequence of any such extension. Extensions shall be granted under the same conditions if the Personnel Appeals Board is not fully appointed,

(f) Further Appeals

The decision of the Board shall constitute final administrative action and may be further appealed only as provided by the Maine Rules of Civil Procedures; provided, however, that if any provision for arbitration is then in effect and applicable to the charges and department in question, the department head or employee charged may appeal the decision of the Board under the procedures so established, which shall govern all further proceedings.

Sec. 3-1-11 Job Performance

The Town Manager may establish reasonable criteria and standards of job performance to be used for the purpose of evaluating candidates for vacant positions and for evaluating current regular employees. All regular employees shall be given annual performance evaluations by their immediate supervisor. These evaluations may be utilized in disciplinary proceedings and in determining compensation. The criteria and standards of job performance shall be consistent for all persons in the same or similar job classification and shall be applied fairly to all persons regardless of age. They shall be consistent with provisions of the Maine Human Rights Act and

the Americans With Disabilities Act, including those provisions relating to the employment of physically and mentally handicapped persons.

Sec. 3-1-12 Political Activity

While working for the Town, all employees shall refrain from seeking or accepting nomination or election to any elective office in the Town government, and from using influence publicly in any way for or against any candidate for elective office in the Town government. Town employees shall not work at the polls or circulate petitions or campaign literature for elective Town officials, or be in any way concerned with soliciting or receiving subscriptions, contributions, or political service from any person for any political purpose pertaining to the Town government. This rule is not to be construed to prevent Town employees from becoming, or continuing to be, members of any political organization, from attending political meetings, from expressing their views on political matters, or from voting with complete freedom in any local, state or national election. This section shall not apply to volunteer/call public safety personnel unless they have another position with the town, nor shall it apply to family members of employees.

Sec. 3-1-13 Order of Layoffs

In the event it becomes necessary to lay off employees for any reason, employees shall be laid off in inverse order of their seniority, by job title, with displacement rights in the same department. No new employee shall be hired until all employees in the same department on layoff status for not more than twelve months, who desire to return to work, have been recalled. (Rev. Eff. 01/10/11)

Sec. 3-1-14 Grievances

(a) Definition

A grievance is a misunderstanding or disagreement that relates to working conditions or relationships considered by an employee, other than a department head, as grounds for complaint, excepting a complaint concerning position classification, pay, demotion, suspension or dismissal, or a complaint concerning the interpretation of application by the Town of any provision in any collective bargaining agreement that may exist.

(b) Policy

The most effective accomplishment of the work of the Town requires prompt consideration and equitable adjustment of employee grievances. It is the desire of the Town to adjust grievances informally and department heads, supervisors and employees are expected to make every effort to resolve problems as they arise. However, it is recognized that there will be grievances, which will be resolved only after a formal appeal and review. Accordingly, the following procedure is established.

(c) Procedure

An employee shall first present the grievance to the department head who shall make a careful inquiry into the facts and circumstances of the complaint. The department head shall attempt to resolve the problem promptly and fairly. Whenever a grievance is submitted in writing to a department head, the department head shall investigate the grievance and provide a written response with reasons to the employee within seven (7) calendar days after receipt of the grievance.

An employee who is dissatisfied with the decision of the department head shall, within thirty (30) calendar days of the decision, submit the grievance in writing to the Town Manager. The Town Manager shall make a separate investigation and inform the employee and the department head in writing of a decision and the reasons therefor within seven (7) calendar days after receipt of the employee's grievance. The decision of the Town Manager shall be final. The above mentioned seven (7) calendar days response time may only be extended by mutual agreement between the employee and the party required to respond.

Sec. 3-1-15 Payroll Deductions

The Town provides optional payroll deductions for banks and credit unions and for an annual combined charitable appeal for umbrella organizations in accordance with a Town Council adopted policy. Direct deposit of payroll checks is also available. Payroll deductions and direct deposit shall be authorized in writing by each employee.

Sec. 3-1-16 Mileage Reimbursement

The town shall reimburse employees who use their vehicles for approved municipal purposes at the rate set by the State of Maine for reimbursing state employees. Any employee with a municipal vehicle or with a set monthly mileage allowance shall annually provide a report to the town on use of the vehicle or mileage stipend so that the town may properly report any private use to the Internal Revenue Service.

Sec. 3-1-17 Solicitation

Employees may not solicit members of the public for purposes unrelated to town business while on duty or while on municipal property.

Sec. 3-1-18 Smoking

The Town of Cape Elizabeth maintains a tobacco free environment for its employees and visitors to municipal facilities. There is no tobacco use permitted in any municipal building or in any municipal vehicle. Employees and other visitors shall not utilize tobacco products at any entranceway to any building. Employees may use their regular breaks for use of tobacco products and are not entitled to additional breaks. (Rev. Eff. 3/10/2013)

Sec. 3-1-19 Firearms

Employees, other than those authorized to do so, may not possess or carry firearms of any kind in Town buildings, Town vehicles, or otherwise while working for the Town. Employees may keep their firearm in their personal vehicle, as long as it is covered and the vehicle is locked. (Add. Eff. 9/14/2015)

Sec. 3-1-20 Proper Dress (Add. Eff. 9/14/2015)

Workplace attire and grooming must be neat, clean and appropriate for the work being performed and the setting in which the work is performed. Natural and artificial scents may also become a distraction from a well-functioning workplace, and are also subject to this policy. Department heads may determine appropriate workplace attire and grooming for their area. Managers should communicate their department's workplace attire and grooming guidelines to employees during the orientation and evaluation period. Any questions about the department's guidelines for attire should be discussed with the department head.

Employees are expected to present a professional, businesslike image to residents, taxpayers, visitors, and the public. Acceptable personal appearance, like proper maintenance of work areas, is an ongoing requirement of employment with the Town.

The Police and Fire Department staff may be required to meet special dress, grooming and hygiene standards, such as wearing uniforms or protective clothing, depending on the nature of their job. Uniforms and protective clothing may be required for certain positions and will be provided to employees by the Police or Fire Departments.

At its discretion, a department may, such as during unusually hot or cold weather or during special occasions, allows staff to dress in a more casual fashion than is normally required. On these occasions, employees are still expected to present a neat appearance and are not permitted to wear ripped, frayed or disheveled clothing, athletic wear, tight, revealing or otherwise inappropriate clothing.

Any employee who does not meet the attire or grooming standards set by his or her department will be required to take corrective action, for example leaving the premises to change clothing. Hourly-paid staff will not be compensated for any work time missed because of failure to comply with designated workplace standards.

The Town recognizes the importance of individually held religious beliefs to persons within its workforce. The Town will reasonably accommodate a staff member's religious beliefs in terms of workplace attire unless the accommodation creates an undue hardship. Accommodation of religious beliefs in terms of attire may be difficult in light of issues of safety for the particular employee as well as co-workers. Employees requesting a workplace attire accommodation based on religious beliefs should be referred to the Town Manager.

Violations of the policy can range from inappropriate clothing items to offensive perfumes, body odor and tattoos. If an employee comes to work in inappropriate dress, the employee will be

required to go home, change and return to work.

If an employee's poor hygiene or use of too much perfume/cologne is an issue, the department head should discuss the problem with the employee in private and should point out the specific areas to be corrected. If the problem persists, managers should follow the normal corrective action process.

Sec 3-1-21 Safety and Health (Add. Eff. 9/14/2015)

Fire Safety

Work areas should be kept clean and free of rubbish and other material that could be a potential fire hazard. Flammable and other potentially dangerous materials are to be stored and maintained in accordance with federal, state and local fire regulations.

Fire extinguishers are located in clearly marked spots throughout the premises. The extinguishers should be checked once each month to make sure they are in proper working condition. They are also certified once a year. Department heads are responsible for showing employees under their supervision and each new employee where the extinguishers are located and for instructing employees in the proper use of the extinguishers. They are also responsible for reporting quickly any fire and for seeing that their employees and visitors to our facility know where the exits are located and that all their people are safely out of the building in the event of a fire.

Well-being

Employees are entitled to a safe and healthful place in which to work. The Town's goal is to minimize human injury, illness, and property damage caused by accidents, fire or other hazards.

Each employee is expected to fully accept accountability for safety and health inherent in its operations, recognize hazards, anticipate possible risks, and then act to eliminate or control hazards or risks. Safety goes hand in hand with the Town's goals of production efficiency and quality control. A good safety program enhances the Town's opportunity to achieve these goals. Equally important, a good safety program, which is conscientiously implemented and enforced, avoids suffering and hardship resulting from injuries.

The Town aims to:

- a) Develop and establish operating methods with consideration for safety and health;
- b) Maintain compliance with Federal and State agencies;
- c) Encourage and support employees safety training programs;
- d) Hold regular meetings to review and upgrade safety performance;
- e) Recognize achievements through inspection/auditing methods; and
- f) Take immediate action where necessary to improve safety conditions.

Each department head and manager is expected to:

- a) Give sincere, active and constant support to all safety activities and procedures;

- b) Instill a safety awareness in each employee;
- c) Teach each employee what the hazards are involved during his or her employment and how to avoid them;
- d) Assure that each employee is provided with the needed and appropriate safety equipment and protective devices, and to assure that the devices are used;
- e) Take prompt corrective action whenever unsafe conditions or acts are noted;
- f) Make regular safety appraisals of his or her assigned area; and
- g) Investigate and find the cause of accidents and to take corrective action, if possible, through the post injury response program.

Each employee is responsible for keeping his or her own work area clean. Good housekeeping is especially important in our business. Good housekeeping is a necessary adjunct to the maintenance of a safe and healthy workplace. A basic rule of fire prevention is good housekeeping and management will make periodic inspections of the premises, including individual offices, to insure that potential hazards are eliminated and that any and all dangerous practices and conditions are quickly corrected.

Observance of all the Town safety procedures and OSHA standards is a requirement for continued employment, and violators may be appropriately disciplined.

Any safety matter should be referred to the Town Manager.

Sec. 3-1-22 Accidents and Injuries (Add. Eff. 9/14/2015)

Any injury, which occurs on the job, must be reported immediately to the department head regardless how slight the injury may seem. The same applies to illnesses, which appear to be related to the job in any way. A job-related injury or illness, which is not reported by an employee, can result in medical complications, unnecessary loss of time and wages, and delay in or even loss of applicable benefits under the Workers' Compensation Insurance Program. Failure to report such incidents also denies the Town the opportunity to remedy the cause of the injury or illness in the first place.

The department head will determine whether or not the injury requires only basic first aid treatment by the Town personnel trained in first aid, or if it is more serious so as to require treatment at a doctor's office or at a hospital. Whenever there is any doubt about an employee's condition, the department head should escort or make arrangements for the person to be taken to the medical provider or to a hospital.

When a job-related injury/illness, or incident is reported, the department head or manager, with the employee, is responsible for gathering all the pertinent facts about the situation such as: time, place, cause, extent, equipment or process. This information is then put in the First Report of Injury Form and forwarded, within 24 hours of the incident, to the Payroll Supervisor, who is responsible for sending it to the insurance company and the Workers' Compensation Board. Department heads are responsible for conducting an accident analysis and developing modified duty jobs, where or when applicable.

Each employee is expected to observe safety practices on his or her shift so as to keep accidents and injuries at the Town to a minimum.

Department heads are expected to ensure that each employee follows the procedures, which have been established to assure a safe and healthful workplace.

Sec. 3-1-23 Modified Duty (Add. Eff. 9/14/2015)

When possible and appropriate for the Town's staffing needs, modified, short-term, or early return-to-work assignments ("modified-duty") may be made available to an employee as a positive means of rehabilitation following a disabling work injury.

A medical provider must approve any candidate for modified-duty. Temporary assignments may not last longer than 30 working days. Employees on modified duty can be utilized in any department, performing any function that they are able to do.

As soon as Modified-duty is requested or appropriate, the Town Manager will evaluate any health restrictions and search for modified-duty at the employee's worksite. If none exists in that area the Town Manager may deem it necessary to look elsewhere within the Town to provide Modified-Duty. If there is no Modified-Duty available or appropriate under the circumstances, the employee will be instructed to return to work on a date when such work exists or when full-duty is possible, whichever comes first. The Town Manager will notify an employee as to availability of work.

The duration of Modified-Duty is limited to an initial period of 30 working days, but the period of Modified-Duty may be extended upon determination of the Town Manager. Extensions may be approved based upon an assessment of the medical evidence, which is presented. Any extension will be re-evaluated by the Town Manager on a weekly basis.

All employees returning to full-duty work must present the Town Manager with appropriate medical documentation authorizing the employee's return to full-duty work.

Article II Benefits

Note: In any instance where the benefits listed in this Personnel Code are not consistent with benefits provided for in any collective bargaining agreement that may exist, the collective bargaining agreement shall take precedence.

Sec. 3-2-1 Holidays

Paid holidays for all employees shall be as follows:

New Year's Day	Martin Luther King, Jr. Day
President' Day	Patriots' Day
Memorial Day	Independence Day
Labor Day	Columbus Day
Veterans' Day	Thanksgiving Day
Thanksgiving Friday	December 25 th

Holiday pay is earned from the first day of employment for full-time employees and part-time employees working a regular weekly schedule of fifteen or more hours. Part-time employees who work a regular weekly schedule of 15 or more hours per week on a year-round basis shall receive holiday time on a pro rata basis. Specifically, an employee shall earn holiday pay at the percentage of a 40-hour workweek they are regularly scheduled to work. For example, an employee who works 16/40ths of a week would earn 16/40th of a holiday or 3.2 hours.

Sec. 3-2-2 Sick Leave and Family Sick Leave

Sick leave shall accrue for regular, employees at the rate of one (1) day for each calendar month of service accumulative to a maximum of one hundred forty days. Upon separation in good standing, an employee will receive reimbursement for one-third of accumulated sick leave after 10 years service but not to exceed 40 days, one-half of accumulated sick leave after 15 years service, but not to exceed 60 days, both computed at the employee's final base rate. Illness for which sick leave may be granted is defined as actual personal illness or bodily injury, doctor's visits, Family Medical Leave as provided for in Sec. 3-2-6, and Family Sick Leave as described below.

The Town Manager or the department head may at any time, as a condition precedent to the continuance of sick pay, require a doctor's certificate or other medically reliable evidence to justify the employee's continued absence from employment.

Probationary employees shall not be entitled to paid sick leave until they have completed 30 days of employment. At the completion of 30 days employment by probationary employees, cumulative sick leave days shall be computed from the original date of full-time employment.

Five days of sick leave will be charged for each calendar week of qualified absence. Absence from duty when sick leave is paid shall not constitute a break in service.

Part-time employees who work a regular weekly schedule of 15 or more hours per week on a year-round basis shall receive sick time on a pro rata basis.

Family Sick Leave: Employees may utilize accrued sick, vacation or compensatory time to care for a child, spouse or parent who is ill. Employees are entitled to elect which type and amount of paid leave to apply to family sick leave. The Town Manager or Department Head may require a doctor's certificate or other medically reliable evidence for the illness of a child, spouse or parent requiring continued absence of the employee.

Sec. 3-2-3 Special Leave and Jury Duty

Special leave with pay shall be granted regular employees as follows:

- (a) A regular employee shall be excused from work for up to five (5) days upon request as required due to death of a spouse, partner, child, stepchild, parent or step-parent residing in the household.

- (b) A regular employee shall be excused from work due to the death of parents, brother, sister, brother-in-law, sister-in-law, grandparents, mother-in-law, father-in-law, stepparent or stepchild, for up to three (3) days. It is intended that this time be used for the purpose of handling necessary arrangements and attendance at the funeral.
- (c) Extension to special leave may be made by the department head upon request of the employee. Extensions may be of time and/or for other family members.
- (d) Part-time employees who work a regular weekly schedule of 15 or more hours per week on a year-round basis shall receive special leave on a pro rata basis.

Any full time employee or part time employee working a regular weekly schedule of 15 or more hours per week called to jury duty shall have full pay and benefits during that period. The employee shall provide the Town all reimbursements received from the court and shall report to work when released from jury duty if during their regular hours.

Sec. 3-2-4 Military Service Leave (USERRA)

In accordance with state and federal law, all employees will be granted time off from work for annual training obligations or active service in the United States uniformed services. Employees engaged in active military service will be placed on military leave of absence status.

Full-time employees will be granted paid military service leave, not to exceed two weeks in any calendar year. For each such period of military service leave, the Town will pay the employee the balance between service pay and the employee's regular compensation, the total equaling the regular pay of the employee had he or she been in the service of the Town during the period of leave, provided that the employee on military service leave furnishes the Department head an official statement by military authorities giving the rank, pay and allowances.

Part-time employees who work a regular weekly schedule of 15 or more hours per week on a year-round basis shall receive paid military service leave time on a pro rata basis.

Sec. 3-2-5 Leave for Victims of Domestic Violence

In accordance with Maine Law, Cape Elizabeth will grant you a reasonable and necessary amount of time off from work without pay if you are a victim of domestic violence, domestic assault, sexual assault or stalking, and you need the time to:

- Prepare for or attend court proceedings,
- Receive medical treatment, or
- Obtain necessary services to remedy a crisis caused by domestic violence, sexual assault or stalking.

You must request the leave as soon as circumstances make it clear that time off is necessary. Approval of leave will be dependent upon (a) whether your absence will create an undue hardship for the Town, (b) whether you requested leave within a reasonable time, and (c) whether the requested leave is impractical, unreasonable or unnecessary given the facts made available to the Town at the time of your request.

Vacation and sick days do not accrue and holidays are not paid while you are on unpaid leave. You will not be discriminated against for taking or asking for leave.

Sec. 3-2-6 Vacation

Vacation is earned from the first day of employment.

	Per Week Hours	Per Year Days
Date of Hire to the 5th Anniversary of Date of Hire	1.84	12
5th Anniversary of Date of Hire to 14th Anniversary	2.61	17
14th Anniversary of Date of Hire to 19th Anniversary	3.38	22
19th Anniversary of Date of Hire to Separation	3.70	24

Vacation time may be granted only for time already accumulated. Vacation cannot be given to another employee.

Part-time employees who work a regular weekly schedule of 15 or more hours per week on a year-round basis shall receive vacation time on a pro rata basis based on a forty hour work week. For example, an employee who averages 16 hours work each week shall earn vacation time at 16/40th of the applicable accumulation rate.

If a holiday falls within a vacation period, it shall not be treated as a vacation day.

An employee may utilize vacation time if sick leave has become depleted. If an employee becomes sick while on vacation, the Town reserves the right, but has no obligation, to offer the employee the option of charging the previously scheduled vacation time to sick leave.

At the end of each calendar year, an employee can carry over to the next year accumulated vacation time not to exceed ten days. Any extension beyond this amount shall be approved by the department head and the Town Manager. As the Town believes it is in the best interest of both the Town and employees for vacation time to be taken each year, no extension may be granted by the department head and the Town Manager unless a specific use of the additional accumulated time has been identified.

Vacation time shall not accumulate after an employee has been absent due to a Workers' Compensation injury after the lapsing of one year from the first date of absence.

Vacation scheduling shall be approved by the department head or by the Town Manager in the case of department heads.

Accrued vacation shall be approved by the department head or by the Town Manager in the case of department heads.

Accrued vacation leave shall be paid to a regular employee in good standing upon separation from the service or to a beneficiary or estate upon death.

Sec. 3-2-7 Unpaid Leaves of Absence

- (a) **Unpaid Leaves.** A regular employee may be granted a leave of absence without pay by the Town Manager upon recommendation of the department head concerned. Such leave of absence without pay shall not exceed one year in length and shall only be granted when it appears because of the past record of the employee, or because of the purpose for which the leave is requested, that it is to the best interest of the Town to grant the leave. Absence from employment for an approved leave of absence shall not constitute a break in service. During such a leave, employment benefits such as vacation and sick pay, pension, etc., shall not accrue.

Family and Medical Leave (FMLA) (Rev. eff 9-14-2015)

The Town may grant up to 12 weeks of family and medical leave during a rolling 12-month period to eligible employees (or up to 26 weeks of military caregiver leave to care for a covered service member with a serious injury or illness), in accordance with the Family and Medical Leave Act of 1993 (FMLA). The leave may be paid, unpaid, or a combination of paid and unpaid, depending on the circumstances and as specified.

In order to qualify to take family and medical leave under this law, the requesting employee must meet all of the following conditions:

1. The employee must have worked at least 1250 hours during the 12 month, or 52 weeks period, immediately before the date when the FMLA leave will begin; and
2. The employee must have worked for the Town for more than 12 months or 52 weeks. The 12 months, or 52 weeks, need not have been consecutive. For eligibility purposes, an employee will be considered to have been employed for the entire week even if the employee was on the payroll for only part of a week or if an employee is on leave during the week. Separate periods of employment will be counted, provided that the break in service does not exceed seven years. Separate periods of employment will be counted if the break in service exceeds seven years due to National Guard or Reserve military service obligations or when there is a written agreement, including a collective bargaining agreement, stating the employer's intention to rehire the employee after the service break.

In order to qualify for FMLA leave, an employee must be taking the leave for one of the reasons listed below:

1. The birth of a child in order to care for the child.
2. The placement of a child for adoption or foster care.
3. To care for a spouse, child, or parent with a serious health condition.
4. The serious health condition of the employee.

An employee may take FMLA leave for a serious health condition if the health conditions make the employee unable to perform the functions of the employee's position. A serious health condition is defined as a condition, which requires inpatient care at a hospital, hospice, or residential medical care facility, or a condition which requires continuing care by a licensed health care provider. Illnesses of a serious and long-term nature, resulting in recurring or lengthy absences may be considered a serious health condition. Workers' compensation injuries are considered serious health conditions. Employees with questions about what illnesses are covered under this FMLA policy or under the Town's sick leave policies are encouraged to consult with the Town Manager.

The Town may require an employee to provide a doctor's certification of a serious health condition.

If an employee is taking paid sick leave for a condition which progresses into a serious health condition and the employee requests unpaid leave, the Town may designate all or some portion of related leave taken as FMLA, to the extent that the earlier leave meets the necessary qualifications.

An eligible employee may take up to 12 weeks of FMLA leave under this guideline during any 12-month period. The Town will measure the 12-month period as a rolling 12-month period measured backward from the date the employee uses any leave under this policy. Each time an employee takes FMLA leave, the Town will compute the amount of FMLA leave the employee has taken and subtract it from the 12 weeks of available leave. The balance remaining is the amount the employee is entitled to take at that subsequent time.

If a husband and wife are both employed by the Town, and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care, or to care for a parent (but not a parent "in-law") with a serious health condition, the husband and wife together may only take a total of 12 weeks of leave.

5. Qualifying exigency leave for families of members of the National Guard or Reserves or of a regular component of the Armed Forces when the covered military member is on covered active duty or called to covered active duty.

An employee whose spouse, son, daughter or parent either has been notified of an impending call or order to covered active military duty or who is already on covered active duty may take up to 12 weeks of leave for reasons related to or affected by the family member's call-up or service. The qualifying exigency must be one of the following: 1) short-notice deployment, 2) military

events and activities, 3) child care and school activities, 4) financial and legal arrangements, 5) counseling, 6) rest and recuperation, 7) post-deployment activities and 8) additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on timing and duration of the leave.

“Covered active duty” means:

- (a) In the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and
- (b) In the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code.

The leave may commence as soon as the individual receives the call-up notice. (Son or daughter for this type of FMLA leave is defined the same as for child for other types of FMLA leave except that the person does not have to be a minor.) This type of leave would be counted toward the employee’s 12-week maximum of FMLA leave in a 12-month period.

- 6. Military caregiver leave (also known as covered service member leave) to care for an injured or ill service member or veteran.

An employee whose son, daughter, parent or next of kin is a covered service member may take up to 26 weeks in a single 12-month period to care for that service member.

Next of kin is defined as the closest blood relative of the injured or recovering service member.

The term “covered service member” means:

- (a) A member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or
- (b) A veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

The term “serious injury or illness”:

- (a) In the case of a member of the Armed Forces (including a member of the National Guard or Reserves), means an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating; and

(b) In the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during a period when the person was a covered service member, means a qualifying (as defined by the Secretary of Labor) injury or illness that was incurred by the member in line of duty on an active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

While an employee is on FMLA leave, the Town will continue the employee's health benefits during the FMLA leave period at the same level and under the same conditions as if the employee had continued to work.

An employee presently pays a portion of the premium for his or her health care. While on paid FMLA leave, the Town will continue payroll deductions to collect the employee's share of the premium. While on unpaid FMLA leave, the employee must continue to make this payment, either in person or by mail. The payment must be received in the Payroll Department by the first day of each month. If the payment is more than 30 days late, the employee's health care coverage may be dropped for the duration of the leave. The Town will provide 15 days' notification prior to the employee's loss of coverage.

If the employee chooses not to return to work for reasons other than a continued serious health condition, the Town will require the employee to reimburse the Town the amount it paid for the employee's health insurance premium during the FMLA leave period.

Employee Status During FMLA Leave

An employee who takes leave under this policy may be asked to provide a fitness for duty (FFD) clearance from the health care provider. This requirement will be included in the employer's response to the FMLA request. Generally, an employee who takes FMLA leave will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms. The position will be the same or one, which is virtually identical in terms of pay, benefits and working conditions. The Town may choose to exempt certain key employees from this requirement and not return them to the same or similar position.

An employee who is taking FMLA leave because of the employee's own serious health condition or the serious health condition of a family member must use all available vacation and compensatory time prior to being eligible for unpaid leave. Sick leave and workers' compensation may be run concurrently with FMLA leave if the reason for the FMLA leave is covered by the established sick leave or workers' compensation policy. The remainder of the FMLA leave will be unpaid, except that some employees may qualify for disability benefits or workers' compensation benefits. Employees should consult with the Town Manager for eligibility and available benefits.

Disability leave for the birth of the child and for an employee's serious health condition, including workers' compensation leave (to the extent that it qualifies), will be designated as FMLA leave and will run concurrently with FMLA. An employee who is taking leave for the adoption or foster care of a child must use all vacation or compensatory time leave prior to being

eligible for unpaid leave.

An employee who is using military FMLA leave for a qualifying exigency must use all paid vacation or compensatory time prior to being eligible for unpaid leave. An employee using FMLA military caregiver leave must also use all vacation, compensatory time or sick leave (as long as the reason for the absence is covered by the Town's sick day policy) prior to being eligible for unpaid leave.

The employee may take FMLA leave in 12 consecutive weeks, may use the leave intermittently (take a day periodically when needed over the year) or, under certain circumstances, may use the leave to reduce the work week or workday, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of 12 work weeks (or 26 work weeks to care for an injured or ill service member over a 12-month period).

The Town may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule, in instances of when leave for the employee or employee's family member is foreseeable and for planned medical treatment, including recovery from a serious health condition or to care for a child after birth, or placement for adoption or foster care.

For the birth, adoption or foster care of a child, the Town and the employee must mutually agree to the schedule before the employee may take the leave intermittently or work a reduced hour schedule. Leave for birth, adoption or foster care of a child must be taken within one year of the birth or placement of the child.

If the employee is taking leave for a serious health condition or because of the serious health condition of a family member, the employee should try to reach agreement with the Town before taking intermittent leave or working a reduced hour schedule. If this is not possible, then the employee must prove that the use of the leave is medically necessary.

The Town may request certification by a physician of the serious health condition. The employee must respond to such request within 15 days of the request, or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of FMLA leave or continuation of the FMLA leave.

Certification of a serious health condition shall include: the date when the condition began or begins, its expected duration, diagnosis, and a brief statement of treatment. For FMLA leave because of the employee's own medical condition, the certification should also include a statement that the employee is unable to perform the essential functions of the employee's position. For a seriously ill family member, the certification must include a statement that the patient requires assistance and that the employee's presence would be beneficial or desirable.

If the employee plans to take intermittent FMLA leave or work a reduced schedule, the certification must also include dates and the duration of treatment and a statement of medical necessity for taking intermittent FMLA leave or working a reduced schedule.

The Town has a right to ask for a second opinion if it has reason to doubt the certification. The Town will pay for the employee to get a certification from a second doctor, which the Town will select.

If necessary to resolve a conflict between the original certification and the second opinion, the Town may require the opinion of a third doctor. The Town will pay for the opinion. This third opinion will be considered final.

All employees requesting FMLA leave must first notify their department head. The employee will be required to apply, in writing, for an FMLA leave to the Town Manager or designee. Within five business days after the employee has provided this notice, the Town Manager or designee will complete and provide the employee with the DOL Notice of Eligibility and Rights.

When the need for the leave is foreseeable, the employee must provide the Town with at least 30 days' notice. When an employee becomes aware of a need for FMLA leave less than 30 days in advance, the employee must provide notice of the need for the leave either the same day or the next business day. When the need for FMLA leave is not foreseeable, the employee must comply with the Town's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

Sec. 3-2-8 Workplace Injuries and Workers' Compensation Insurance Coverage

The Town of Cape Elizabeth provides upon employment Workers' Compensation Insurance Coverage for all employees. Any employee who sustains a personal injury or compensable illness arising out of and in the course of employment shall be paid during each week of incapacity to work resulting from the injury an amount sufficient, when added to the weekly payment of Workers' Compensation paid pursuant to the laws of the State, to equal regular salary or normal wage for a period not to exceed eight weeks. No additional payments shall be made in any instance when, in the opinion of the department head and Town Manager, the accident occurred as a result of intoxication, willful intent, or violation of rules and regulations on the part of the employee. Eligible employees will automatically be placed on a Family And Medical leave (FMLA) after three days of absence due to the work related injury or illness. (Rev. Eff. 01/10/11)

Sec. 3-2-9 Retirement and Disability

(a) Social Security

Social Security benefits were adopted on March 3, 1952, and now extend upon employment to all employees of the Town except teachers and volunteer fire fighters. Payroll deductions and Town matching contributions are made in accordance with current regulations. (Rev. Eff. 01/10/11)

(b) Maine Public Employees Retirement System (MainePERS)

The Town of Cape Elizabeth became a participating district in the Maine State Retirement System on April 1, 1966. Membership is limited to those who joined the Cape Elizabeth district prior to July 1, 1990 and to all law enforcement personnel. All employees who participate must contribute a percentage of wages determined by MainePERS ; the contribution being in the form of a deduction from each paycheck. If an employee withdraws from the system, the employee receives only their own contribution plus interest and not any funds the Town may have contributed. (Rev. Eff. 01/10/11)

(c) Defined Contribution Plan

The Town of Cape Elizabeth became a participant in the ICMA Retirement Corporation, Sec. 401A Money Purchase Plan in 1990. The Town will match effective on the employment date regular employees' contributions at 7% of gross wages level with employee's contributions to be paid through payroll deductions. Employees are fully responsible for any fees assessed to participants by the Plan and are responsible for choosing from among a number of investment options for the balances in their accounts. The withdrawal of funds is in accordance with federal regulations. Employees who participate in the MainePERS are not eligible for this defined contribution plan. (Rev. Eff. 01/10/11)

Part-time employees who work a regular weekly schedule of 15 or more hours per week on a year-round basis are eligible for this program.

(d) Deferred Compensation Plan

The Town of Cape Elizabeth became a participant in the ICMA Retirement Corporation, Section 457 Plan on November 14, 1983. The Town does not make a contribution for employees. Employee contributions are as provided by federal law and more information is available at www.icmarc.org. Investment options are the same as in the Sec. 401A Plan. Part-time employees who work a regular weekly schedule of 15 or more hours per week on a year-round basis are eligible for this program.

(e) Disability.

Employees in the ICMA Retirement Corporation, Sec. 401A Money Purchase Plan are eligible for participation in a disability plan effective January 1991. Coverage is effective on the first day of the next month after employment commences provided the disability carrier has accepted the enrollment. The Town contributes up to 1% of an employee's annual base salary into the Plan. Any additional cost shall be paid by the employee through payroll deductions. Employees in MainePERS are eligible for disability payments in accordance with the regulations of the MainePERS. Part-time employees who work a regular weekly schedule of 15 or more hours per week on a year-round basis are eligible for this program. (Rev. Eff. 01/10/11)

Sec. 3-2-10 Maine State Group Life Insurance

Employees are eligible to participate in the Maine State Group Life Insurance and Group Accidental Death and Dismemberment Plan. Coverage is effective on the first day of the next month after employment commences provided the insurance carrier has accepted the enrollment. The Plan is offered through MainePERS separate from retirement plan membership. (Rev. Eff. 01/10/11)

Sec. 3-2-11 Employee Health Benefits

The Town participates in the Maine Municipal Employees Health Trust (MMEHT) Comprehensive Plan. Employees have the option of choosing the MMEHT Comprehensive Point of Service Plan (POS C), and effective March 1, 2015 may also choose from among the MMEHT PPO 500 plan and the MMEHT PPO 2500 plan. Single employees shall assume 10% of the cost of their health insurance premium. Employees who have coverage other than single coverage shall assume 20% of the total premium. Any employee who chooses the MMEHT PPO 500 plan or the MMEHT PPO 2500 plan will have established a Health Reimbursement Account which shall provide reimbursement of deductibles and co-pays for up to 70% of the applicable out of pocket maximum. The amount of the monthly premium paid by the employee shall not be included as part of the out of pocket expense. (Rev. eff. 12/08/14)

Coverage will begin on the first day of the next month after employment begins provided the MMEHT has approved all required forms. The Town of Cape Elizabeth reserves the right to participate in a different medical insurance plan, with comparable or better benefits, costs and claims service. The Town also reserves the right to change the health insurance plans if mandated to do so by the federal or state governments. Upon leaving Town employment, federal COBRA requirements permit employees to continue on the Town policy at employee expense. MMEHT will notify departing employees of their options.

Any employee eligible for more than single coverage, but who opts for single coverage or no coverage, shall receive in lieu of coverage, \$120.00 in each two week paycheck or if an employee elects for no coverage and is eligible for family coverage, then that employee shall receive \$250.00 in each two week paycheck in lieu of coverage. If an employee elects for employee and children coverage and is eligible for full family coverage, then that employee shall receive \$90.00 in each two week pay check in lieu of coverage. These in lieu of coverage payment provisions shall not apply to employees who receive coverage under a spouse/partner's plan provided through the Town of Cape Elizabeth or the Cape Elizabeth School Department. All payments shall be prorated for part time employees. Any employee who opts for no coverage must annually show that evidence of coverage elsewhere. The payment shall not be considered part of compensation for purposes of retirement, life insurance and computing hourly wages. The employee shall be responsible for any tax liability. Affected employees must elect their coverage level once a year during the enrollment period or upon hiring. Coverage must be elected before they become effective. (Rev. eff. 12/08/14 and 3/14/16)

The Town pays 90% of the cost of the premium for those with single coverage. The Town pays 80% of the cost of the premium for those with dependent coverage.

Regular permanent employees working at least 30 hours per week are eligible for the above premium payments. Employees working a regular year round schedule of at least 20 hours per week, but less than 30 hours per week receive a pro rata health benefit based on their percentage of hours worked based on a 40 hour work week. (For example, an employee working 25 hours year round per week would receive 25/40ths or 62.5% of the applicable premium. A single employee would have 62.5% of their premium paid. An employee with dependents would have 62.5% of 80% of their premium paid which is 50%)

Elections are binding for the plan year unless during the year the employee has a lifestyle change such as:

1. Marriage or divorce
2. Birth, adoption, or change in custody of a child
3. Death of a spouse or child
4. Gain or loss of a spouse's employment
5. Change in job status from full time to part time by you or your spouse and/or
6. An unpaid leave of absence by you or your spouse.

The change an employee makes must be on account of and consistent with the event.

(a) Section 125 Plan

The Town of Cape Elizabeth offers a Section 125 Plan reimbursement account through Horace Mann Insurance. The Town may choose another provider at its option. Medical expense reimbursement accounts are limited to the maximum permitted under federal law. Dependent care reimbursement accounts are limited to \$5,000 per calendar year per family but may be lower if the maximum allowed by federal law is less than \$5,000. The enrollment period for this program occurs once annually or on the initial hire date. (Amended Eff 12/10/2012)

(b) Fitness

The Town shall provide up to \$270.00 per calendar year to reimburse any employee who works a regular schedule of at least 20 hours per week for a fitness class, health club membership, a smoking cessation or weight loss program or for any other bona fide program leading to better fitness and health. Reimbursement shall be upon Town receipt of a paid invoice or copy of a cancelled check. (Amended Eff 04/14/2014)

Sec. 3-2-12 Health Insurance Coverage During Leaves of Absences (Add. Eff. 9/14/2015)

Health Insurance coverage is continued during a Family and Medical Leave, Disability Leave and Workers' Compensation Leave for a period of twelve weeks, provided the employee continues to pay the employee portion of the health insurance premium. If such a leave goes beyond twelve weeks, coverage will terminate unless the employee elects coverage under COBRA.

For Military Leave, coverage terminates when an employee enters the military. Coverage is continued in the case of short term absences for Military Reserve or National Guard encampments.

With the exception of the above, benefit coverage, in general, terminates when an employee begins the leave of absence. Employees should contact the Payroll Supervisor with specific questions prior to beginning a leave of absence.

During an employee leave of absence, where the Town is prevented from collecting medical insurance premiums through standard payroll procedures, the Town will set up a payment schedule with each employee at the start of the leave. Failure to make the payments on a timely basis will result in termination of the coverage.

Sec. 3-2-13 COBRA (Add. Eff. 9/14/2015)

When health insurance coverage terminates, employees are eligible to continue to receive health insurance under the group plan for a specified period. If an employee quits, is laid off, or is discharged, their health insurance is terminated immediately. Employees may elect continuation of their coverage for themselves and/or dependents for a certain period of time. Employees who elect coverage are required to make monthly payments at the full group rate. Coverage may terminate whenever an employee:

- Fails to make timely payments under the plan;
- Becomes entitled to Medicare benefits; or
- The Town provided plan ceases for all employees, or the contribution coverage period expires;
- The law otherwise requires or allows termination of coverage.

Article III Miscellaneous Policies

Sec. 3-3-1 Non-Discrimination and Anti-Harassment Policy

The Town is committed to providing a workplace that is free from discrimination and discriminatory harassment. Harassment is defined as conduct that has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. It is a violation of Town policy and/or state and federal law for any employee, Town official, or any other person to discriminate against or harass an employee based on race, color, religion, national origin, ancestry, age, sex, sexual orientation, physical or mental disability, veteran status, or status as a whistleblower, and for any supervisory employee to permit any such act of harassment in the workplace by anyone, whether or not an employee. Any

employee who believes that he or she has been harassed or discriminated against in any way should follow the "Internal Complaint Procedure" set forth below.

DEFINITION OF SEXUAL HARASSMENT

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- A. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- B. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- C. Such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

DESCRIPTION OF SEXUAL HARASSMENT

The following type of conduct is considered to be sexual harassment and is not permitted:

- A. Physical assaults of a sexual nature such as:
 - (1) rape, sexual battery, molestation or attempts to commit these assaults; and
 - (2) intentional physical conduct which is sexual in nature, such as touching, pinching, patting, grabbing, brushing against another employee's body, or poking another employee's body.
- B. Unwanted sexual advances, propositions or other sexual comments, such as:
 - (1) sexually-oriented gestures, noises, remarks, jokes, or comments about a person's sexuality or sexual experience directed at or made in the presence of any employee who indicates or has indicated in any way that such conduct in his or her presence is unwelcome;
 - (2) preferential treatment or promise of preferential treatment to an employee for submitting to sexual conduct, including soliciting or attempting to solicit any employee to engage in sexual activity for compensation or reward; and
 - (3) subjecting, or threats of subjecting, an employee to unwelcome sexual attention or conduct or intentionally making performance of that employee's job more difficult because of that employee's sex.

C. Sexual or discriminatory displays or publications anywhere in the work place by employees, such as:

- (1) displaying pictures, posters, electronic materials, calendars, graffiti, objects, promotional materials, reading materials, or other materials that are sexually suggestive, sexually demeaning, or pornographic, or bringing into the work environment or possessing any such material to read, display or view at work.

A picture will be presumed to be sexually suggestive if it depicts a person of either sex who is not fully clothed or in clothes that are not suited to or ordinarily accepted for the accomplishment of routine work in and around the workplace and who is posed for the obvious purpose of displaying or drawing attention to private portions of his or her body.

- (2) reading or otherwise publicizing in the work environment materials that are in any way sexually revealing, sexually suggestive, sexually demeaning or pornographic; and
- (3) displaying signs or other materials purporting to segregate an employee by sex in any area of the workplace (other than restrooms and similar semi-private lockers/changing rooms).

INTERNAL COMPLAINT PROCEDURE

Any employee who believes he or she has been the subject of discriminatory harassment should report the incident or act immediately to his/her supervisor or to the Town Manager. In the event a complaint relates to the Town Manager, the complaint should be brought to the Council Chair. The Town will promptly investigate all complaints. Each employee alleging discriminatory harassment will be requested, but not required, to put the specifics in writing. All information will be held in confidence to the extent possible and will be discussed only with those who have a need to know in order to either investigate or resolve the complaint. Any employee who the Town determines has engaged in discriminatory harassment will be promptly disciplined. Disciplinary measures may consist of suspension or termination depending upon the severity of the offense.

No employee will be punished or penalized in any way for reporting, complaining about or filing a claim concerning discriminatory harassment, or for participating in any investigation of a discriminatory harassment complaint.

Sec. 3-3-2 Disability Accommodation

The Town is committed to complying fully with the Americans with Disabilities Act (ADA) and the Maine Human Rights Act, and ensuring equal opportunity in employment for qualified persons with disabilities. All employment practices and activities are conducted on a non-discriminatory basis.

Hiring procedures have been reviewed and provide persons with disabilities meaningful employment opportunities. Pre-employment inquiries are made only regarding an applicant's ability to perform the essential duties of the position.

Reasonable accommodation is available to all disabled employees where their disability affects the performance of job functions. Employees who believe they may require an accommodation should consult with their supervisor. All employment decisions are based on the merits of the situation, not the disability of the individual.

Qualified individuals with disabilities are entitled to equal pay and other forms of compensation (or changes in compensation) as well as in job assignments, classification, organizational structures, position descriptions, lines of progression and seniority lists. Leave of all types will be available to all employees on an equal basis.

The Town will not discriminate against any qualified employees or applicants because they are related to or associated with a person with a disability. Furthermore, the Town is committed to taking all other actions necessary to ensure equal employment opportunity for persons with disabilities in accordance with the ADA and the Maine Human Rights Act.

Sec. 3-3-3 Employee Computer and Internet Use Guidelines

The intent of these rules is to provide employees with general requirements for utilizing the Town's computers, networks and Internet services.

These rules provide general guidelines and examples of prohibited uses for illustrative purposes but do not attempt to state all required or prohibited activities by users. Employees who have questions regarding whether a particular activity or use is acceptable should seek further guidance from their department head.

Failure to comply with this policy, these rules and/or other established procedures or rules governing computer use may result in disciplinary action, up to and including discharge. Illegal uses of the Town's computers will also result in referral to law enforcement authorities.

A. Access to Town Computers, Networks and Internet Services

The level of access that employees have to the Town's computers, networks and Internet services is based upon specific employee job requirements and needs. The computer system is town property and intended for municipal business. All data and other electronic messages within municipal computers and servers are the property of the Town of Cape Elizabeth. E-mail messages and computer use records have been found to be public records and may be subject to the right-to-know laws, depending on their content.

In addition, the town, through its manager and department heads, reserves the right to review the contents of employees' e-mail communications and records of computer use when necessary for town business purposes. Employees may not intentionally intercept, eavesdrop, record, read, alter, or receive other persons' e-mail messages without proper authorization.

B. Acceptable Use

Employee access to the Town's computers, networks and Internet services are provided for administrative, educational, communication and research purposes.

General rules and expectations for professional behavior and communication apply to use of the Town's computers, networks and Internet services.

Employees are to utilize the Town's computers, networks and Internet services for Town-related purposes and performance of job duties. Incidental personal use of Town computers is permitted as long as such use does not interfere with the employee's job duties and performance, with system operations or other system users. "Incidental personal use" is defined as use by an individual employee for occasional personal communications. Employees are reminded that such personal use must comply with this policy and all other applicable policies, procedures and rules.

C. Prohibited Use

The employee is responsible for his/her actions and activities involving Town's computers, networks and Internet services and for his/her computer files, passwords and accounts. General examples of unacceptable uses, which are expressly prohibited, include but are not limited to the following:

1. Any use that is illegal or in violation of other Town policies, including harassing, discriminatory or threatening communication and behavior, violations of copyright laws, etc.;
2. Any use involving materials that are obscene, pornographic, sexually explicit or sexually suggestive;
3. Any inappropriate communications with students or minors;
4. Any use for private financial gain, or commercial, advertising or solicitation purposes;
5. Any use as a forum for communicating by e-mail or any other medium with internal or outside parties to solicit, proselytize, advocate or communicate the views of an individual or non-town-sponsored organization; to solicit membership in or support of any non-town-sponsored organization, or to raise funds for any non-town-sponsored purpose, whether for-profit or not-for-profit. Employees who are uncertain as to whether particular activities are acceptable should seek further guidance from their department head;
6. Opening or forwarding any e-mail attachments (executable files) from unknown sources and/or that may contain viruses;

7. Any malicious use or disruption of the Town's computers, networks and Internet services or breach of security features;
8. Any misuse or damage to the Town's computer equipment;
9. Misuse of the computer passwords or accounts (employee or other users);
10. Any communications that are in violation of generally accepted rules of network etiquette and/or professional conduct;
11. Any attempt to access unauthorized sites;
12. Failure to report a known breach of computer security to the Department head;
13. Using Town computers, networks and Internet services after such access has been denied or revoked;
14. Any attempt to delete, erase or otherwise conceal any information stored on a Town computer that violates these rules.

Sec. 3-3-4 Substance Abuse Policy

To meet the Town's responsibilities to its employees and the public, the Town must maintain a healthy, productive and safe workplace free from the effects of alcohol or drug abuse. Misusing or abusing controlled substances on the job is prohibited, as is selling, manufacturing, distributing, possessing, using, or being under the influence of alcohol or illegal substances on the job.

Any employee who displays any signs of impairment or substance abuse, or who is in possession of alcohol or illegal drugs, whether on Town premises or while on Town business, is subject to disciplinary action including suspension without pay and/or termination. Where warranted, such employees will be encouraged to obtain proper treatment.

The legal use of prescription medications is permitted on the job only if such use does not impair an employee's ability to perform the essential functions of the job effectively and in a safe manner that does not endanger the employee or others. If employees are taking a prescribed medication that may affect their work performance, they are required to advise their supervisor of that fact. If employees are taking a prescribed medication, including medical marijuana, that may affect their work performance, they are required to advise their supervisor of that fact. The law does not permit anyone using prescription medication, including medical marijuana, from performing any safety sensitive tasks while under the influence of the drug, including operating a vehicle.

Drivers who are subject to Department of Transportation regulations will be required to undergo testing for alcohol and controlled substances prior to being permitted to drive. Tests will be

conducted before an employee is initially assigned to driver responsibilities; additionally drivers may be subject to “reasonable suspicion” testing and random testing, as well as testing conducted following an accident. No driver will be allowed to drive or continue driving unless the results of all tests are negative. The Town’s drug and alcohol testing policy for employees required to hold commercial drivers licenses is maintained in the Employee Manual of the Public Works Department.

APPENDIX A

Town of Cape Elizabeth Salaried Positions

Town Manager
Assistant Town Manager
Town Clerk
Town Planner
Assessor
Codes Officer
Chief of Police
Police Captain
Fire Chief
Director of Public Works
Head Librarian
Director - Museum at Portland Head Light
Community Services Director
Aquatics Director

Employee Acknowledgement Form

The Personnel Code describes important information about Cape Elizabeth and I understand I should consult my department head regarding any questions not answered in the Code. Since the information, policies, and benefits described here are necessarily subject to change, I acknowledge that revisions to the Personnel Code may occur. All such changes will be communicated through official notices, and I understand that revised information may supersede, modify or eliminate existing policies. Only the Town Council has the ability to adopt any revisions to the policies in this code.

I have received the Personnel Code, and I understand that it is my responsibility to read and comply with the policies contained in this Code and any revisions made to it.

Employee's Name: _____

Employee's Signature: _____

Date: _____

CHAPTER 15

SEWER

Article I. Sewage Ordinance. [Originally adopted eff. 12/22/1971 under R.S.1964, T.30. §2151 & 4353; Amended eff. 3/15/1995; Amended eff. 6/7/1995, Amended eff. 12/10/2003 and Amended eff. 8/10/2007)

Sec. 15-1-1. Purpose. The purpose of this ordinance is to promote the health and general welfare of the citizens of the Town of Cape Elizabeth by regulating and restricting the construction and use of sewage systems and the accumulation, transportation, treatment and disposal of sewage in such a manner that the creation of any sewage system, whether public, private or industrial, shall not result in pollution, health hazard or other nuisance. It is the further purpose of this ordinance to provide for the equitable allocation of the capital and operating costs of the public sewage system among municipal use and the general public benefit, private use and the availability of use to properties not connected to the system. [2nd sentence added eff. 9/27/1978.]

Sec. 15-1-2. Scope. Hereafter any person owning any building or structure within the Town of Cape Elizabeth which is the source of sewage and/or industrial wastes or who proposes to erect such building or structure shall conform to the requirements of the statutes, the State Plumbing Code, this ordinance and any regulations thereunder.

Sec. 15-1-3. Definitions. Unless the context specifically indicates otherwise, the meaning of terms used in this Article shall be as follows:

- (a) "Appeals Board" shall mean the Board of Zoning Appeals as provided in accordance with Section 15-1-10 [Amended eff. 3/15/1995].
- (b) "Building Drain" shall mean that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning eight (8) feet outside the inner face of the building wall.
- (c) "Building Inspector" shall mean the Building Inspector of the Town of Cape Elizabeth.
- (d) "Building Sewer" shall mean the extension from the building drain to the public sewer or other place of disposal.
- (e) "Combined Sewer" shall mean a sewer receiving both surface runoff and sewage.
- (f) "Engineer" shall mean the Engineer for the Town of Cape Elizabeth.

(g) "Garbage" shall mean solid wastes from the domestic and commercial preparation, cooking, and dispensing of food, and from the handling, storage, and sale of produce.

(h) "Industrial Wastes" shall mean the liquid wastes from industrial manufacturing processes, trade or business as distinct from sanitary sewage, and including any waste flow with a five-day biochemical oxygen demand of over 350 MG/L or outside a permissible Ph range of 5.5 to 8.5.

(i) "Natural Outlet" shall mean any outlet into a watercourse, pond, ditch, lake, or other body of groundwater.

(j) "Non-Residential Use" shall mean any use of a house, building or other structure requiring the disposal of sewage other than a Residential Use. [Added eff. August 13, 1986]

(k) "Properly Shredded Garbage" shall mean the wastes from the preparation, cooking, and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half (1/2) inch in any dimension.

(l) "Public Sewer Line" shall mean the public gravity sanitary sewer leading to a sewage treatment plant. [Added eff. 8/13/1986]

(m) "Public Sewer Plan" shall mean the plan entitled "Pollution Control Planning Sewerage Service Areas" dated January 22, 1993 prepared by T.Y. Lin International/Hunter-Ballew Associates, as may be amended from time to time, as approved by the Town Council. [Added eff. 3/15/1995]

(n) "Residence" shall mean a house, building or other structure used for human occupancy by one or more family units in conformance with the Zoning Ordinance at the time of adoption of this definition, or for which a building permit was issued at the time of adoption of this definition. [Added eff. 8/13/1986]

(o) "Residential Use" shall mean the use of a house, building or other structure for human occupancy by one or more family units in conformance with the Zoning Ordinance. [Added eff. 8/13/1986]

(p) "Sanitary Sewer" and "Public Sewer" shall mean a sewer which carries sewage and to which storm, surface, and groundwaters are not intentionally admitted. [Amended eff. 3/15/1995]

(q) "Sewage" shall mean any one or a combination of waste capable of being water carried from residences, business buildings, institutions, and industrial establish-

ments, together with such incidental ground, surface, and storm waters as may be present.

(r) "Sewage Treatment Plant" shall mean any arrangement of devices and structures used for at least secondary treatment and disinfection of sewage.

(s) "Shall" is mandatory; "May" is permissive.

(t) "Storm Drain" (sometimes termed "storm sewer") shall mean a sewer which carries storm and surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.

(u) "Superintendent" shall mean the Director of Public Works of The Town of Cape Elizabeth or his authorized representative.

(v) "Suspended Solids" shall mean solids that either float on the surface of, or are in suspension in water, sewage, or other liquids, and which are removable by skimming, settling or filtering.

(w) "Watercourse" shall mean a channel in which a flow of water occurs, either continuously or intermittently.

Section 15-1-4. Use of Public Sewers Required.

(a) Violations :

1. It shall be unlawful for any person to place, deposit, or permit to be deposited any sewage on public or private property within the Town of Cape Elizabeth, or in any area under the jurisdiction of said Town, except in a manner approved by the Superintendent and at a site located on soils from which such sewage will not contaminate ground or surface waters and will not create a health hazard as determined from time to time by the Superintendent and the Town Health Officer.

2. It shall be unlawful for any person to discharge wastewater into any collection line, lateral sewer, interceptor or other means of conveying wastewater to the Town treatment facilities, if such wastewater originates from any building facility or other manner of construction which is erected or otherwise placed on or after the effective date of this ordinance, in whole or part upon land which is defined as a wetland area within the meaning of Executive Order 11990 for the Protection of Wetlands or is located within the 100 year flood boundaries shown on the Southern Cape Elizabeth Hazard Boundary Map issued through the National Flood Insurance Program. (Amended eff. 3/11/1989)

(b) Eligibility for existing residences:

A lot owner may connect an existing residence to the public sewer provided the residence is within a Sewage Service Area as shown upon the Public Sewer Plan, and such connection is not prohibited by Section 15-1-4(a) or any other applicable provision of local, State or federal law or regulation. Such connection, and any extension for such connection, shall be made at the sole cost of the lot owner.
[Amended eff. 3/15/1995]

(c) Eligibility for new residences:

A lot owner may connect a new residence to the public sewer if such lot is within a Sewage Service Area as shown on the Public Sewer Plan, provided the criteria set forth above in subparagraph b) are met and the lot owner pays any charges levied pursuant to Section 15-1-11, as such sewer charges may be amended and approved from time to time by the Town Council.

(d) Eligibility for multiple connections:

An owner of two or more lots located within a Sewage Service Area as shown on the Public Sewer Plan may connect two or more new residences to the public sewer, provided each lot to be connected:

- 1) meets the criteria set forth in paragraph c above, and
- 2) such owner satisfies the Town Engineer that there exists sufficient capacity in the public sewer system proposed to serve the proposed lots giving consideration to, among other things, the number of units/uses presently connected, the number of units/uses approved but not yet connected, the number of residential units which are eligible but have not yet connected pursuant to the provisions of this ordinance, as well as the secondary impact of the foregoing on the public sewage system.
[Amended eff. 3/15/1995]

(e) Eligibility for Non-Residential Uses:

A lot owner may connect an existing or proposed structure designed or used for non-residential use, provided:

1. The structure is within a Sewage Service Area shown upon the Public Sewer Plan; and
2. The Town Engineer has determined there is sufficient capacity in the public sewage system to which the structure would be connected giving consideration to, among other things, those factors set forth in paragraph (d)(2) above. The Planning Board

shall approve or deny a requested non-residential connection as part of its Site Plan review and approval process under Section 19-2-9 based upon the Engineer's determination of capacity. [Added eff. 3/15/1995]

f. Lots Which Must Connect to the Public Sewer.

The owner of any house, building or other structure used for human occupancy, employment, recreational or other purpose which requires the disposal of sewage and which is located upon a lot eligible to connect to the public sewer as provided above, shall at the owner's expense connect its sewer facility directly to the public sewer, in accordance with the provisions of this ordinance, unless:

- (1) such house, building or other structure is located more than one hundred fifty (150) feet from the public sewer line; or
- (2) such house, building or other structure has as of the effective date of this ordinance disposed of its sewage by a private subsurface sewage disposal system, and such owner has filed with the local plumbing inspector a certification by an authorized soils evaluator that the private subsurface sewage disposal system is not malfunctioning. Such certification shall be presumed valid and accurate but shall not bind the Town or local plumbing inspector in regard to compliance with private sewage requirements set forth elsewhere in this ordinance, the State Plumbing Code, or as otherwise applicable.
- (3) such house, building, or other structure is located in the Town Center Zone as of June 7, 1995 and is in compliance with paragraph (2) above with regard to an existing private subsurface sewage disposal system. Connection to the public sewer shall not be required for a change of use or addition to an existing house, building or other structure located in the Town Center Zone, subject to compliance with the sewage requirements set forth elsewhere in this ordinance, the State Plumbing Code, or as otherwise applicable. [Amended Eff. 6/7/1995]

For the purpose of calculating the one hundred fifty (150) foot measurement set forth in Sub-paragraph 1 above, the measurement shall be made (i) from the end of any stub provided by the Town, otherwise from the public sewer line, (ii) to a point on the building foundation other than the foundation for any garage or other attached accessory building unless it contains a toilet or sink, or contains other facilities regularly generating sewage, (iii) by the shortest route passing through the property in which the owner has the right to install, use and maintain a building sewer. [Added eff. 9/27/1978, Revised eff. 8/13/1986]

(g) Mechanical Pumping Required:

In any building in which any building drain is too low to permit gravity flow to a public sewer, sewage or industrial wastes carried therein shall be lifted by approved mechanical means by the owner and discharged to the public sewer.

(h) No Connections Prior to Treatment Facilities Construction:

In the event that a public sewer be constructed before the treatment facilities to which it will lead have been placed in operation, no owner shall connect to such sewer prior to the placing of such facility in operation unless the Superintendent has first determined that such connection and the ultimate sewage discharge therefrom are lawful and that the sewers to be utilized are adequate for such additional use. [Revised eff. 12/22/1976]

(i) Amendments to the Sewer Service Area (Added eff. 12/10/2003)

The sewer service area plan may be expanded by vote of the Town Council, after receiving a recommendation from the Cape Elizabeth Planning Board, if:

1. The Town Council finds that the sewer system, including all impacted pipes, pump stations and treatment works, has sufficient non-peak and peak capacity for potential service within the area encompassed by the expansion;
2. The expansion is in conformance with the Town's comprehensive plan; and
3. The expanded sewer service area is:
 - a. A lot designated on the Town Neighborhood Sewer Connection Eligibility Map;
 - b. A lot within 500' of an existing Sewer Service Area; or
 - c. An area proposed for new development in accordance with the Open Space Zoning Standards, Sec. 19-7-2, of the Zoning Ordinance.

If the expanded sewer service area is an area proposed for new development in accordance with the Open Space Zoning Standards, Sec. 19-7-2 of the Zoning Ordinance, no connection to the sewer system shall be permitted until the development receives approval from the Cape Elizabeth Planning Board for compliance with Sec. 19-7-2, Open Space Zoning Standards.

4. All sewer extensions shall be designed by a registered engineer. Its design shall be subject to review and approval by the Town

Engineer, and its design, construction and acceptance shall be in accordance with the provisions of Sec. 15-1-7. An extension of the sewer system shall be at the expense of the lot owner(s) requesting the extension, unless the Town Council elects to fund all or part of the sewer extension costs.

Sec. 15-1-5. Private Sewage Disposal. [Revised eff. 6/10/1981]

- (a) Where a public sewer is not available under the provisions of Sec. 15-1-4(b), any new building sewer shall be connected to a private disposal system complying with the provisions of all applicable local, state and federal statutes, ordinances, rules and regulations, as amended from time to time, including particularly Article II, Private Sewage Disposal Ordinance, of this Chapter 15.
- (b) When a property owner is required to connect an existing structure to the public sewer in accordance with the provisions hereof, the building sewer shall be connected to said sewer within 90 days after date of official notice and the private septic tank or cesspool shall be cleaned of sludge and filled with clean bank-run gravel or soil.
- (c) The contents pumped or otherwise removed from private sewage disposal systems or sewage holding tanks of Cape Elizabeth residents may be discharged to a part of the public sewer system leading to a sewage treatment plant, upon approval from, and proof of source satisfactory to, the Superintendent and upon payment of such fees as the Town Council shall from time to time determine.

Sec. 15-1-6. Building Sewers and Connections.

- (a) Any person proposing a new discharge into the public sewer system or a substantial change in the volume or character of pollutants that are being discharged into the public sewer system shall notify the Superintendent at least forty-five (45) days prior to the proposed change or connection. No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereto without first obtaining a written permit from the Superintendent.
- (b) There shall be two classes of building sewer permits: (a) for residential and commercial services, and (b) for service to establishments producing industrial wastes. In either case, the owner or his agent shall make application on a special form furnished by the Town. This permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the Superintendent. The Town Council shall establish, alter from time to time and levy upon persons making sewer connections permit and inspection fees for both classes of building sewer permits in such amounts and

with such reasonable classifications and differentiations as the Town Council may from time to time deem adequate and reasonable.

(c) The owner of any property which the Town extends a sewer stub to a point outside the paved way, or on which the Town connects a building sewer to the public sewer, shall be charged a start-up assessment in such amount and payable at such time as the Town Council may determine from time to time. [Revised eff. 9/27/1978]

(d) All cost and expense incident to the installation, connection, maintenance, repair, replacement or use of the building sewer, including any stub provided by the Town, shall be paid by the owner. The owner shall reimburse the Town for any loss or damage that may be occasioned directly or indirectly, to the public sewer, street or other property, by the installation and connection of the building sewer. [Revised eff. 9/27/1978]

(e) A separate and independent sewer shall be provided for every building. Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the Superintendent, to meet all requirements of this ordinance.

(f) All building sewer design, materials, excavation, joints and connections shall be made so as to prevent infiltration of surface or subsurface waters and in accordance with standards adopted by the Superintendent, which standards shall be published and shall follow good engineering practice. The diameter of the building sewer shall not be less than four (4) inches. The depth of building sewers shall be sufficient to afford protection from the frost, but in no event shall be less than three (3) feet. The building sewer shall be laid at uniform grade and in straight alignment insofar as possible. Changes in direction shall be made only with properly curved pipe and fittings and with properly installed curvilinear sewers with a minimum radius of 150 feet on a uniform grade. The ends of building sewers which are not connected to the building drain of the structure for any reason, shall be sealed against infiltration by a suitable stopper, plug, or other approved means. [First sentence revised eff. 9/27/1978]

(g) The connection of the building sewer into an existing public sewer shall be made at the existing public sewer. The method of connection of the building sewer to the public sewer will be dependent upon the type of pipe material used and in all cases shall be approved by the Superintendent. The connection of the building sewer into the public sewer shall be made at the "Y" or "T" branch. If none is available, a connection may be made by tapping the existing sewer by a method approved by the Superintendent.

(h) The applicant for the building sewer permit shall notify the Superintendent when the building sewer is ready for inspection and connection to the public sewer. The connection shall be made under the supervision of the Superintendent.

When trenches are opened for the laying of building sewer pipes, such trenches shall be inspected by the Superintendent before the trenches are filled; and the person performing such work shall notify the Superintendent when the installation of the building sewer is completed. If the trench is filled before inspection, the Superintendent shall require it to be re-excavated for inspection.

(i) When any building sewer is to serve a school, hospital, or similar institution or public building, or is to serve a complex of industrial or commercial buildings, or will receive sewage or industrial wastes of such volume or character that frequent maintenance of said building sewer can reasonably be anticipated, then such building sewer shall be connected to the public sewer through one or more manholes. The Engineer shall determine whether this type of connection to the public sewer is required, and the manner of accomplishing it. Connections to existing manholes shall be made as directed by the Superintendent.

(j) All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the Engineer.

Sec. 15-1-7. Sewer Extensions. (Revised eff. 12/10/2003 and 8/10/2007)

(a) The installation of all sewer extensions must be subject to periodic inspection by the Superintendent and the expenses for this inspection shall be paid for by the owner, builder or developer. The Superintendent's decisions shall be final in matters of quality and methods of construction.

(b) Any sewer extension constructed in accordance with Sec. 15.1-7 shall comply with minimum standards developed by the sewer superintendent and approved by the town manager. A copy of the minimum standards shall be filed with the town clerk. [Amended eff. 7/14/1987 and 8/10/2007]

Sec. 15-1-8. Use of Public Sewers.

(a) Except as provided in paragraph (c) below, no person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water, or unpolluted industrial process waters to any public sewer.

(b) Except as provided in paragraph (c) below, stormwater and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as storm sewers, or to a natural outlet approved by the Superintendent. Industrial cooling water or unpolluted process waters may be discharged, on approval of the Superintendent, to a storm sewer, or natural outlet, provided that any required waste discharge license is first obtained by the person generating such discharge.

(c) An owner of a residence as defined in this ordinance may apply to the Zoning Board of Appeals for a special permit to be allowed to continue to drain stormwater, surface water, or melting snow or ice from roofs of such residence into the public sewer. The Zoning Board of Appeals may grant such permit only upon finding that the cost to disconnect the present roof draining system from the public sewer is prohibitively expensive. The Zoning Board of Appeals shall also consider any likely physical damage which would result to the property of the applicant, neighboring property, and any Town property which may be affected by such discontinuance. The Zoning Board of Appeals shall condition the granting of any such special permit upon the payment to the Town of an annual special permit fee of not less than the estimated cost, including capital and operating, of processing such additional flow in the public sewer system, which amount shall not be less than the minimum annual residential sewer charge. If a special permit is granted, the Zoning Board of Appeals shall require an attested copy thereof to be recorded in the Cumberland County Registry of Deeds setting forth the name of the record owner(s), a description of the property affected (including a book and page reference to such owner(s) for source of title) and any conditions which may be imposed. [Added eff. 3/15/1995]

(d) Except as hereinafter provided, no person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewer:

1. Any liquid or vapor having a temperature higher than 150 degrees F.
2. Any waters or wastes containing fats, grease, or oils, whether emulsified or not, exceeding an average of 50 parts per million.
3. Any gasoline, benzine, naphtha, fuel oil, mineral oil, or other flammable or explosive liquid, solid, or gas.
4. Any noxious or malodorous gas such as hydrogen sulfide, sulfur dioxide or nitrous oxide or other substance, which either singly or by interaction with other waste, is capable of creating a public nuisance or hazard to life or of preventing entry into sewers for their maintenance and repair.
5. Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor of 3/4 horsepower or greater shall be subject to the review and approval of the Superintendent.
6. Any ashes, cinder, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastic, cardboard, wood, or any other solid or viscous substance capable of causing obstruction to the flow of the sewers, or other interference with the proper operation of the sewage works.

7. Any waters or wastes containing a radioactive, toxic or poisonous substance, a high chloride demand or suspended solids in sufficient quantity to injure or interfere with any sewage works or treatment process, constitute a hazard to humans or animals or create any hazard in the receiving waters or the effluent of the Town's sewage treatment plant.

(e) All industrial wastes which are compatible with domestic sewage shall be permitted to enter any public sewer. The Town reserves the right to require pretreatment of any non-compatible industrial waste to prevent shock loads and insure its compatibility with domestic sanitary sewage, and it further reserves the right to require a firm, long-term service contract for all waste source generating more than 10,000 gallons of waste water/sewage per day or generating more than 200 pounds of 5-day biochemical oxygen demand per day, under which a special sewer service charge may be established in accordance with Sec. 15-1-11(d).

(f) In the event that grease, oil or sand may be in the wastes, such wastes may be discharged into a public sewer provided that there shall be installed interceptors in the building sewer which shall be of a type and of a capacity approved by the Superintendent, shall be located so as to be readily and easily accessible for cleaning and inspection, shall be constructed of impervious material capable of withstanding abrupt and extreme changes in temperature, and shall be of substantial construction watertight and gastight. Such interceptors shall be maintained by the persons owning same, at their expense, and in continuously efficient operation at all times.

(g) All other industrial wastes shall be transported in a building sewer to a sewage disposal system which shall be controlled and maintained by the person causing the potential nuisance, which has been specifically designed by a registered engineer to take care of the load to which it will be subjected, and which shall be built and maintained in accordance with the State Plumbing Code and with all other applicable requirements.

(h) All industries discharging into a public sewer shall perform such monitoring of their discharges as the Superintendent and/or other duly authorized employees of the Town may reasonably require, including installation, use and maintenance of monitoring equipment, keeping records and reporting the results of such monitoring to the Superintendent. The Superintendent shall make such records available upon request to other agencies having jurisdiction over discharges to the receiving waters.

Sec. 15-1-9. Entry on Private Property.

(a) The Superintendent, the Engineer, and other duly authorized employees of the Town bearing proper credentials and identification shall be permitted to enter upon all properties for the purpose of inspection, observation, measurement, sampling and testing, in accordance with the provisions of this ordinance.

(b) The Superintendent and other duly authorized employees of the Town bearing proper credentials and identification shall be permitted to enter all private properties through which the Town holds a duly negotiated easement for the purpose of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the sewage works lying within said easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

Sec. 15-1-10. Appeals. (Revised eff. 9/9/1987)

Appeals from acts or failure or refusal to act by the proper authorities of the Town under the provisions of this ordinance shall be to the Board of Zoning Appeals and shall be governed by Sec. 19-4-7 et seq of the Zoning Ordinance. [Amended eff. 5/10/1994 and 3/15/1995]

Sec. 15-1-11 Sewer Service Charges.

(a) The Town Council is hereby authorized to establish, alter from time to time, and levy upon persons owning land eligible to connect to the public sewer as provided in Sec. 15-1-4 whether such public sewer has been constructed prior to or after the effective date of this ordinance, a service charge for the use of and for the services furnished by such public sewer, or available to such land, whether or not such land is connected thereto or is improved.

If the owner of land eligible to connect to the public sewer is not required to so connect pursuant to the provision of 15-1-4, the owner shall nonetheless be liable for such service charges. An owner of land eligible for more than one sewer connection for residential use pursuant to Sec. 15-1-4 who desires to perpetually combine two (2) or more contiguous developable lots or to perpetually restrict a single lot that could otherwise be developed into two or more lots by subdivision or for two or more dwelling units by application of Multiplex Housing Standards, may do so by executing and recording in the Cumberland County Registry of Deeds an instrument effectively so committing his or her land in perpetuity upon a form prepared by or satisfactory to the Town. Such commitment shall be effective from and after its recording at the expense of the owner. Should such owner or subsequent owner of the parcel or parcels so committed desire to be relieved of such commitment in the future, the Town Council may approve the release from such commitment, provided it is satisfied there is sufficient capacity in the public sewer, upon such terms and conditions as are just and equitable, including the requirement that the owner reimburse the Town for all taxes, sewer service charges and/or other assessments, plus interest, that were uncollected due to such commitment. [Amended eff. 7/8/1987 and 3/15/1995]

- (b) The user charge system shall comply with appropriate Federal and State rules and regulations pertaining to the costs associated with the construction and use of public sewers, and shall further the equitable allocation of the capital and operating costs of the public sewage system among municipal use and the general public benefit, private use, and the availability of use to properties not connected to the system. Subject to these requirements, such charges and any classification thereon shall be fair and reasonable, bearing a substantial relationship to the cost of providing sewage facilities and services to the municipality. Such charges shall be at a rate sufficient to approximate not less than 90% of the total annual cost on providing sewage facilities and services to the municipality. The remainder of such total annual cost shall be raised by taxation. Such amount raised by taxation, and all receipts from readiness-to-serve charges, shall be used to defray construction expenditures and debt service. [Amended eff. 9/27/1978.]
- (c) Sewer service charges shall be billed periodically at such intervals as the Town Council may determine and the Town may use the service, procedures and personnel of a third party for such purpose. Sewer service charges shall be collected as provided by statute and an interest charge at the same rate as currently established by the Town Council for uncollected property taxes shall be made upon all bills not paid within such period after the date of billing as the Town Council may determine. [Amended eff. 9/27/1978 and 7/23/1980.]
- (d) A special sewer service charge and industrial cost recovery charge shall be established for any industrial firm or organization which contributed process waste water to the public sewer system. Such charges shall comply with appropriate federal and state rules and regulations pertaining to the costs associated with the use of the sewer by an industry. The Town Council, after appropriate study and advice from the Engineer, shall establish such special sewer service charge and cost recovery charge to the industrial firm by separate agreement with said firm.
- (e) Any person may place on his or her property, at his or her own expense, a meter which shall be approved by the Town manager to measure the amount of water used on the property which does not enter the public sewer, and an adjustment of the sewer charge shall be made in conformance with said metered use. [Added eff. 5/23/1979.]

Sec. 15-1-12 Penalties.

- (a) Any person, individual, firm, corporation, or partnership who violates any provision of this ordinance, other than those provisions pertaining to the payment of charges for services established herein, shall be guilty of a civil violation and shall be punishable by a civil penalty of not less than \$25.00 nor more than \$100.00 to be recovered for the use of the Town. The continued violation of any provision of this ordinance shall constitute a separate offense for each and every day such violation shall continue. [Amended eff. 3/15/1995]

(b) The proper authorities of the Town, in addition to other remedies, may institute any appropriate action or proceedings including request for injunctive relief to prevent any unlawful use, construction or maintenance of cesspools, septic tanks, sewage disposal systems, pipes or drains, to restrain, correct or abate such violation or to prevent the occupancy of any building, structure or land where said violations are found.

(c) Any person violating any provision of this ordinance shall become liable to the Town for any expense, including legal fees and costs, loss, or damage occasioned to the Town by reason of such violation.

Sec. 15-1-13. Validity.

(a) The invalidity of any section, clause, sentence, or provision of this ordinance shall not affect the validity of any other part of this ordinance which can be given effect without such invalid part or parts.

(b) In any case where a provision of this ordinance is found to be in conflict with a provision of any other ordinance or code of the Town existing on the effective date of this ordinance, the provision which established the higher standard for the promotion and protection of health, safety and welfare shall prevail.

Article II.

Private Sewage Disposal Ordinance [Adopted eff. 12/10/1980 under R.S. 1964, T.30, Sec. 2151 & Sec. 3221 revised eff. 4/8/1981 and revised eff. 08/10/2007]

Sec. 15-2-1 Regulation of Private Sewerage Disposal Systems

The regulation of private sewerage disposal systems shall be in accordance with the latest revision of the Maine Subsurface Waste Water Disposal Rules 144 CMR 241 adopted under the authority of Title 22 MRSA Sec. 42.

CHAPTER 24

SHOOTING RANGE ORDINANCE

TOWN OF CAPE ELIZABETH, MAINE

Effective July 12, 2017

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ARTICLE I. 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), 25 M.R.S.A. § 2011 (3) and 30-A MRS § 301, 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.

ARTICLE II. INTENT

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

SEC. 24-2-1. PERMITTING, REGISTRATION, AND COMPLIANCE

All Shooting Range Facilities shall be established and operated in accordance with a valid license issued by the municipal officers.

SEC. 24-2-2. 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.

SEC. 24-2-3. 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.

ARTICLE III. 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.

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.

ARTICLE IV. APPLICABILITY

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

ARTICLE V. SHOOTING RANGE LICENSE PROCEDURE

SEC. 24-5-1. APPLICABILITY

Any new or existing Shooting Range Facility shall obtain a Shooting Range license. 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 license amendment shall be secured in accordance with all of the provisions of Article V, Shooting Range License Procedure. Further, any license issued hereunder does not relieve the licensee of compliance with all other applicable Town ordinances.

Such license shall be secured prior to issuance of any grading, or any building permit or other 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.

SEC. 24-5-2. REVIEW PROCEDURE

The following procedures shall be used to review a Shooting Range license application. The applicant shall be responsible to reimburse the Town for engineering and other professional services needed to review the application.

1. Background Check. An application, which shall include 3 paper copies and one electronic copy, for a Shooting Range license shall be submitted to the Police Chief. 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, and on the principals of a corporation or partnership or trustees of a trust, in the event such an entity is the owner or lessee. Upon completion of the criminal records check, the Police Department shall add its findings to the application.
2. Completeness. The Police Chief will review the application for completeness. If the application is deemed incomplete, a list of the items needed to make the application complete shall be provided to the applicant. If the application is deemed complete, review of the application for compliance with the License Standards of review shall commence.
3. License review. Once the Police Chief finds the application complete, the Police Chief shall review the application for compliance with the License Standards of Review. The review shall be completed within thirty (30) days of the determination that the application is complete. Upon conclusion of the review, the Police Chief shall provide a written recommendation to the Town Council and to the applicant. The written determination shall include one of the following findings:
 - a. Recommend that the license be approved with or without conditions, which conditions may include specific findings regarding phasing for said application; or
 - b. Recommend that the license be denied.
4. Municipal Hearing. Once the Police Chief has provided a recommendation to the Town Council, the Town Council shall hold a public hearing. The public hearing shall be scheduled for the next regular Town Council meeting for which the submission deadline has not yet passed. Public notice of the public hearing shall be provided to the abutters in accordance with the procedures in Sec. 16-2-1(b) of the Subdivision Ordinance.
5. Town Council decision. Once a public hearing has been held, the Town Council has thirty-five (35) days to grant the license, with or without conditions, which conditions may include specific findings regarding phasing of said application, or deny the license. A decision to table the license vote to the next Town Council meeting may be considered with the consent of the applicant.
6. Approval. If the license is approved by the Town Council, the license shall be valid for three (3) years from the date of the Town Council vote for approval. Any conditions placed on the approval shall be satisfied prior to use of the Shooting Range facility. The Shooting Range Facility shall be used only as specified in the approval. The Town shall provide

- a written notification of the Town Council decision, including the expiration date of the license if the license has been granted. Denial of a license may be appealed to the Superior Court pursuant to Rule 80B of the Maine Rules of Civil Procedure within thirty (30) days of the Town Council decision.
- 7. Renewal. Prior to the license expiration, the Shooting Range facility may request a license renewal, in accordance with Sec. 24-6-1, Renewals.

SEC. 24-5-3. SUBMISSION REQUIREMENTS

The Shooting Range License application shall include the following information:

1. Ownership. Information demonstrating that the applicant is the legal property owner(s) or lessees (or their agent), and shall also include the contact information for the applicant.
2. Written description. Written description of the shooting range facility, its location and uses abutting the property.
3. Survey. A standard boundary survey made and certified by a licensed land surveyor in the State of Maine, a copy of the deed for the property and copies of any easements, restrictions or covenants.
4. Site Plan. A site plan for the entire shooting range to a scale of no less than one (1) inch equals one hundred (100) feet. The site plan shall depict the property lines for any parcel upon which the shooting range is located, north arrow, plan scale, date, and ownership information for the site. The complete layout of the shooting range facility, including existing and proposed structures, shooting stations, firing lines, target areas, shot fall zones, surface danger zone, berms, baffles and other significant elements of the shooting range. The site plan shall also depict adjacent streets, access roads, and parking areas for the shooting range facility. The Town may allow different site plan scales where it deems appropriate.
5. Occupied Dwelling. A map depicting Occupied Dwellings within one-half (1/2) mile (two thousand six hundred forty (2,640) feet)).
6. Secure Access. Fencing, gates, and other features used by the Shooting range facility to control access to the facility.
7. Hours of Operation. A note shall be added to the site plan stating the hours of operation of the shooting range.
8. Shot Containment. The license application shall include a plan describing how all of the bullets, shot or other projectiles or any other debris shall be contained on the Shooting Range facility. Structures or devices that shall be installed for shot containment shall be shown on the site plan. Shooting Range rules of operation that promote shot containment shall be provided when applicable.
9. Noise. A plan showing the projected dBA levels at the property line and at the sixty-five (65) dBA level prepared by a professional noise expert. For existing shooting ranges, dBA levels shall also be provided for any new firearm with a caliber not currently used or ammunition not currently used.
10. Firearms. A detailed description of the types and uses of firearms and ammunition

used and proposed to be used at the site.

11. Lead. A plan describing how lead will be managed on the site and how that plan complies with the EPA lead management guidelines.
12. Warning signs. Locations where warning signs will be installed, a detail indicating the size and material of the warning sign, and a description of how the proposed signage compares to the NRA Source Book.
13. Maintenance. A maintenance plan for the shooting range and a description of how the maintenance plan compares with the NRA Range Source Book.
14. Safety Design. A description of how the proposed shooting range design compares to the design standards in the NRA Range Source Book.
15. Insurance. Documentation of the insurance coverage of the shooting range facility.

SEC. 24-5-4. LICENSE STANDARDS OF REVIEW

The following standards shall be used to review a shooting range license application. The license shall be issued unless the Town Council determines that one or more standards have not been met. In each instance, the burden of proof shall be on the applicant to produce sufficient information to warrant a finding that the standards have been met.

1. Surface Danger Zone. The Surface danger zone shall be contained within the property boundary line. For new shooting ranges, the surface danger zone is satisfactory when all shooting stations and targets on a shooting range facility shall be located a minimum of three hundred (300) feet from any property line. For existing shooting ranges, no new shooting stations or targets shall be placed within 300' of the property boundary, unless they can demonstrate that the surface danger zone will be reduced in size. For existing shooting stations and targets, the applicant shall demonstrate that the shooting range facility will contain the surface danger zone within the property boundary.
2. Occupied Dwelling. For new shooting ranges, 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. For existing shooting ranges located closer than one-half (1/2) mile from any existing Occupied Dwelling, shooting range facilities shall not be permitted to relocate or enlarge said range to further encroach within said setback, unless they can demonstrate that shot containment will be improved and the surface danger zone will be reduced in size.
3. Access. Access to the shooting range facility and shooting range shall be secured and controlled, with ingress and egress permitted only during approved operating hours, except for access to perform routine maintenance or other business that does not involve discharge of firearms.
4. Hours of Operation. The Shooting range shall be allowed to operate between 8 a.m. to one-half hour before sunset Monday through Saturday and from noon to one-half hour before sunset on Sundays.
5. 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.

6. Noise. For new shooting ranges, 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. For existing shooting ranges, noise shall be mitigated where practicable and subject to the limitations of 30-A M.R.S.A.3011, as it may be amended, regarding existing shooting ranges. Firearm types that have not previously been used at the Shooting Range shall not produce noise that exceeds sixty-five (65) dBA at the property line.
7. Lead. Shooting range facilities shall provide a plan using best management practices for lead management which meets or exceeds EPA lead management guidelines.
8. Warning Signs. Warning signs meeting or exceeding the standards set forth in the NRA Range Source Book shall be posted at one-hundred (100) foot intervals along the entire perimeter of the Shooting range and along the entire perimeter of the property boundary in the same intervals.
9. Maintenance. 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.
10. Safety Design. Shooting range facilities shall meet or exceed the design standards for general and utility type of range specified by the NRA Range Source Book, unless otherwise specified in this ordinance.
11. Insurance. The shooting range facility shall be covered by a minimum one million dollar (\$1,000,000) 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 the their duties harmless from and against all claims, demands, and causes of action of any kind of 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.

ARTICLE VI. LICENSE ADMINISTRATION

SEC. 24-6-1 ANNUAL INSPECTION

A licensed shooting range facility shall be inspected by the Town's Police Department at least once during a calendar year for compliance with the license and general protection of public safety. The code enforcement officer may also attend the inspection.

SEC. 24-6-2 RENEWAL

Prior to the expiration of a license, the Shooting Range Facility may request a three (3) year renewal of the license. The request shall be submitted in writing to the Police Chief. The request shall include an assertion that there have been no material changes to the Shooting Range Facility that are not in compliance with the current license. Upon receipt of a request for a renewal, the Police Chief shall inspect the Shooting Range Facility, and may request the attendance of the Code Enforcement officer at the inspection. The Police Chief shall prepare a report of any complaints received during the license period and a summary of the site inspection. Within thirty (30) days of

receiving a request for renewal, the Police Chief shall determine if the license will be renewed or if there are facility concerns that warrant forwarding the renewal request to the Town Council. The Police Chief shall provide the licensee with written notification that the license has been renewed with the date of expiration of the renewal or that the renewal request has been forwarded to the Town Council. Upon final decision of the Town Council, a written notification of the Town Council's decision, including an expiration date if the license has been renewed, shall be provided to the licensee. There shall be no limit on the number of renewals of a license that remains in good standing.

A Shooting Range Facility which received a license prior to July 12, 2017 shall have thirty (30) days from July 12, 2017 to submit a request for a renewal, at which time it shall be considered" prior to the expiration of its license."

SEC. 24-6-3. 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 as soon as practicable. 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.

SEC. 24-6-4. LICENSE TRANSFERABILITY

A license issued pursuant to this Ordinance may not be transferred to another operator without the written approval and consent of the Town Council.

ARTICLE VII. EXCEPTIONS

SEC. 24-7-1. EXCEPTIONS

The Town Council shall have the authority to accept phased applications and 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 was not self-induced or self-created following the effective date of this Ordinance; and
5. The hardship is peculiar to the specific Shooting Range Facility involved.

SEC. 24-7-2. ADDITIONAL FINDINGS

In granting an exception, the Town Council shall find in addition to the above hardship that the requirements of this Section 24-7-1 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 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.

ARTICLE VIII. ENFORCEMENT, REMEDIES, AND PENALTIES

SEC. 24-8-1. ENFORCEMENT AND REMEDIES

The Town's Police Department shall be responsible for the enforcement of this Ordinance. Complaints, preferably in writing, regarding non-conformance with any license shall be reported to the Police Department, which shall investigate the same and file a report of its findings with the Town Council. 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 Town Council, which may include a review and recommendation by the Police Chief.

SEC. 24-8-2. 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.

End of ordinance.

CHAPTER 21
SIGNS
(eff. 2/9/2017)

SEC. 21-1-1 Purpose

The purpose of this ordinance is to protect the public health, safety and welfare by providing for signage to direct safe and orderly traffic movement¹. Signs shall be allowed to express the First Amendment right to free speech, and to promote local businesses and events. Signs shall be regulated in a content neutral manner to preserve community character and aesthetics.

SEC. 21-1-2 Definitions

Banner: A sign on a textile or plastic material, which is secured, to a pole or structure in a fashion, which may allow movement by the atmosphere.

Electronic Message Board sign: A sign capable of displaying words, symbols, figures or images utilizing a series or grid of lights that may be changed through electrostatic means using light emitting diode (LED) display, plasma screen, or other similar technology.

Flag: A temporary or permanent sign on a textile, which is secured to a pole on one end, and allows movement by the atmosphere.

Freestanding sign: A sign in a fixed location supported by structure, supports, or the ground and not attached to or dependent for support upon any building.

Message board sign: A sign designed for or operated with changeable copy.

Permanent Sign: A sign erected for a period of more than 8 weeks in a calendar year.

¹ Studies documenting the relationship between traffic safety and signs include:

Bendak, S. & Al-Saleh, K. (2010). The role of roadside advertising signs in distracting drivers. *International Journal of Industrial Ergonomics* 40(3), 233-236.

Austroads Ltd (2013). *Impact of Roadside Advertising on Road Safety*. Austroads, Research Report AP-R420-13.

Permanent window display: A sign attached to, placed upon or painted on the interior of a window or door of a building, which is intended for viewing from the exterior of a building.

Private Traffic Control Sign: Any sign, permanent or temporary, erected on private property to promote the safety of members of the public on the property and for the sole purpose of providing direction regarding entrances and exits, parking, direction to facilities, caution and keep out of the property to visitors and does not include any advertising.

Projecting or suspending sign: A sign fixed at an angle or perpendicular to the wall of any building in such a manner as to read perpendicular or at an angle to the wall on which it is mounted.

Property Address sign: A sign located on private property to promote the safety of members of the public seeking entrance to the property and depicting the property address information A sign indicating the name of a neighborhood erected in a manner to aid in traffic control and promotion of public safety during an emergency may also be a property address sign.

Road Right-of-way: A strip of land acquired by conveyance, reservation, dedication, forced dedication, prescription or condemnation and intended to be occupied by a road.

Roof sign: Any sign where more than 50% of the surface area extends directly above the roof or parapet line of a building.

Sign: Any structure, display, logo, device or representation which is designed or used to advertise or call attention to any item, business activity or place, or is an expression of free speech, and is visible from outside a building.

Sign area: The entire area of a sign with a single continuous perimeter enclosing the extreme limits of the sign surface. For a sign painted on or applied to a structure, the area shall include any background of a different color than the color or finish of the structure. For a sign consisting of individual letters or symbols without a distinguishable background, the area shall be that of the smallest rectangle which encompasses all of the letters and symbols. Total sign area shall be the aggregate of all exposed faces. Dimensions of signs shall not include supporting structures but shall include any frames.

Sign Height: The distance from the average grade of the land beneath the sign to the top of the sign.

Temporary Sign: Any sign erected for a period of 8 weeks or less in a calendar year. For the purpose of measuring length of time a temporary sign is displayed, use of a sign for any length of time in a 24-hour period shall constitute 1 day.

Traffic Control Sign: Any sign, permanent or temporary, erected within the public right of way or on municipal property for to promote the safety of members of the public on the property by providing direction or information (wayfinding) to citizens and visitors.

Visible: Any sign capable of being seen without visual aid by a person of normal visual acuity who is not located on the property where the sign is located.

Wall Sign: Any sign affixed to a wall or printed on a wall in such a manner as to read parallel to the wall on which it is mounted, but shall also include awnings and canopies.

SEC. 21-2-1 Location

Signs shall be regulated by the location in which the sign is installed.

- A. Town wide signage.** The following signs shall be permitted throughout the Town and shall not require a permit. Upon request of the Code Enforcement Officer, a property owner shall provide an inventory of the number and square footage of signs erected on the property.
1. Traffic Control sign. The Town of Cape Elizabeth and the Maine Department of Transportation may erect any traffic control sign within the right-of-way of any public road or public property. This signage shall be in conformance with the Manual on Uniform Traffic Control Devices (MUTCD) standards to the maximum extent feasible.
 2. Private Traffic Control sign. Any private property owner may erect upon his/her property traffic control signage. No sign shall exceed 6 sq. ft. per side and no more than a total of 72 sq. ft. of permanent private traffic control signage shall be allowed.
 3. Property address sign. Any property owner may erect upon his/her property a sign indicating the street address of the property. No sign shall exceed 6 sq. ft. per side and no more than a total of 12 sq. ft. of signage shall be allowed.

A property address sign may also be erected indicating the name of a neighborhood. The sign may be erected within the road right-of-way with the permission of the town or within a private road right-of-way with the

permission of the owner of the private right-of-way. No sign shall exceed 36 sq. ft. per side and no more than a total of 72 sq. ft. per entrance to the neighborhood.

- B. Residential and non-commercial zone signage.** The following signs may be allowed after issuance of a permit from the Code Enforcement Officer in the Residence A, Residence B, Residence C, and all other noncommercial districts, and as further defined by street frontage. For properties with frontage on more than one street, the amount of signage allowed for one street shall be the total signage allowed for the property.

1. Property with frontage on an Arterial, Collector or Rural Connector Road (Appendix B, Zoning Ordinance). In addition to the town-wide signage allowed in SEC. 21-2-1.A, a sign may be erected on a property located in a residential or non-commercial zoning district and upon which permitted non-residential uses are occurring. No sign shall exceed 32 sq. ft. per side and no more than a total of 32 sq. ft. per property.
2. Property with frontage on a Feeder, Local or Private Rd (Appendix B, Zoning Ordinance). In addition to the town-wide signage allowed in SEC. 21-2-1.A, a sign may be erected on a property located in a residential or non-commercial zoning district and upon which permitted non-residential uses are occurring. No sign shall exceed 12 sq. ft. per side and no more than a total of 12 sq. ft. per property.

- C. Business zone signage.** The following signage may be allowed after issuance of a permit from the Code Enforcement Officer in the Town Center District, Business A District, Business B District and Business C District.

1. Permanent Signs. Permanent signage may be erected on a property located in the Town Center, Business A, Business B and Business C Districts. Excluding the Town wide signage allowed in SEC. 21-2-1.A, permanent signage on the property shall not exceed a total of 75 sq. ft. Individual sign square footage shall comply with the following table and proposed signs shall be assigned the most applicable sign type category by the Code Enforcement Officer.

Commercial Signage Table					
Type of Sign	Permit Issued By	Max. Total Sign Area 2 Exposed Faces	Max. Total Sign Area 1 Exposed Face	Max. Height in Feet	Maximum # Allowed
Freestanding Permanent Sign	Code Enforcement Officer	40 s.f.	20 s.f.	15	1
Wall Sign	Code Enforcement Officer		40 s.f. or 10% of Wall Area whichever is smaller	20	1
Projecting/ Suspending	Code Enforcement Officer	12 s.f.	6 s.f.	20	1
Banner	Code Enforcement Officer	30 s.f.	15 s.f.	20	1
Awning	Code Enforcement Officer	4 s.f.	4 s.f.	10	1 per building
Permanent Window Display	Code Enforcement Officer		50% of Total Glass Storefront	—	1
Message Board	Code Enforcement Officer	24 s.f. Maximum Dimension 4 feet	12 s.f.	4	1

D. **Temporary Signage.** Temporary signs shall be allowed based on their location adjacent to roadways. The name, address and phone number or email address of the sign owner and date the sign was placed shall appear on the sign. A temporary sign may be installed for no more than 8 weeks per calendar year and shall not be lighted.

1. Temporary signs adjacent to an Arterial, Collector or Rural Connector Road.
 - a. Road Right-of-way. Within the right-of-way of an arterial, collector or rural connector road, as classified in Appendix B of the Zoning Ordinance, temporary signage may be placed. No temporary sign shall exceed 8 sq. ft. per side and no more than a total of 16 sq. ft. The maximum dimension of a temporary sign shall not exceed 4 feet and the maximum sign height shall not exceed 3.5 ft. as measured from the ground.

- b. Private Property. On private property adjacent to an arterial, collector or rural connector road, as classified in Appendix B of the Zoning Ordinance, temporary signage may be erected on private property. No temporary sign shall exceed 6 sq. ft. per side and no more than a total of 12 sq. ft. The maximum dimension of a temporary sign shall not exceed 4 feet and the maximum sign height shall not exceed 3.5 ft. as measured from the ground.
- 2. Temporary signs adjacent to a Feeder, Local or Private Road.
 - a. Road right-of-way. Within the right-of-way of a feeder, local or private road, as classified in Appendix B of the Zoning Ordinance, temporary signage may be placed. No temporary sign shall exceed 8 sq. ft per side and no more than a total of 8 sq. ft. The maximum dimension of temporary sign shall not exceed 4 feet and the maximum sign height shall not exceed 3.5 ft. as measured from the ground.
 - b. Private Property. On private property adjacent to a feeder, local or private road, as classified in Appendix B of the Zoning Ordinance, temporary signage may be erected on private property. No temporary sign shall exceed 6 sq. ft. per side and no more than a total of 12 sq. ft. The maximum dimension of a temporary sign shall not exceed 4 feet and the maximum sign height shall not exceed 3.5 ft. as measured from the ground.

SEC. 21-2-2 Prohibited Signs

The following signs are not permitted.

- A. Projecting or suspending signs in excess of 6 sq. ft per side or 12 sq. ft. in total area.
- B. Roof signs, where more than 50% of the sign face is erected above the roof or parapet line of the building.
- C. Banners extending over the public right-of-way.
- D. Signs with flashing lights, beacons, moving parts or are lighted in a manner inconsistent with Sec. 21-3-1(C)(5).
- E. Signs on parked motor vehicles that in the judgement of the Code Enforcement Officer violate the intent of this ordinance.

- F. Signs obstructing sight distance in a public or private right-of-way, as measured in accordance with Sec. 16-3-2, Subdivision Ordinance.
- G. Internally lit signs, including electronic message board signs.

SEC. 21-3-1 Sign Permit Procedure

- A. **Application.** Prior to installing any sign that requires a permit, a completed application to install the sign shall be submitted to the Code Enforcement Officer. The application shall include the information listed in subsection B below and a description of how the standards in subsection C below are met.
- B. **Submission information.** The application shall include the following information:
 - 1. Name, address and contact information of the applicant;
 - 2. Proposed location of the sign;
 - 3. Evidence of right, title or interest in the sign installation site;
 - 4. Sketch of the sign showing dimensions, height as measured from the ground and total square footage of the sign;
 - 5. Methods and materials to construct and install the sign;
 - 6. Impact of the sign on sight distance; and
 - 7. Expected light levels if the sign will be lighted.
- C. **Review Standards.** If the applicant demonstrates compliance with the following standards, the Code Enforcement Officer shall issue a permit.
 - 1. The sign will be installed in a public right-of-way or an area the applicant has right, title or interest to erect a sign.
 - 2. The sign will comply with the location and dimensional requirements of this ordinance and is not a sign included in Sec. 21-2-2, Prohibited Signs.

3. The sign will be constructed and installed in a manner that is structurally sound, as determined by the Code Enforcement Officer. When the Code Enforcement Officer determines that the sign may not be structurally sound, the sign shall be installed in a manner consistent with the IBC Code Sign provisions.
 4. The sign will not reduce sight distance below the minimum requirements in Sec. 16-3-2, Subdivision Ordinance Road Classifications Standards Table.
 5. If the sign will be lighted, the light source shall be shielded to prevent glare onto rights-of-way or private properties and to direct lighting on to the sign. Sign lighting shall not exceed 0.5 footcandles more than fifty (50) feet from the sign.
- D. **Permit Duration.** Once issued, the sign permit shall be valid for one year, or if the sign is installed, for the life of the sign.

SEC. 21-4-1 Maintenance

- A. **Standard of Maintenance.** All signs permitted under this ordinance shall be appropriately maintained. Appropriate maintenance consists of no missing lettering, no peeling paint, no cracked or broken glass or plastic, a solid foundation for fixed signs, all lighting being fully operational or discontinued, and no unsafe conditions. Signs not intended to be permanently affixed to the ground shall be weighted or secured to withstand inclement weather.
- B. **Failure to Maintain.** The Code Enforcement Officer shall determine if a sign is adequately maintained. If, in his/her judgment, a sign is not adequately maintained, he/she shall give thirty days notice to have it repaired or removed. The owner of the sign shall have the option to repair or remove the sign. Anyone not complying with the order of the Code Enforcement Officer may be subject to a fine as provided in Section 21-6-1.

SEC. 21-5-1 Nonconformance

- A. **Temporary Sign.** Any temporary sign in place after February 9, 2017 that is not in conformance with this ordinance may be removed by the Code Enforcement Officer or a designee.

- B. **Permanent Sign.** Any permanent sign erected after February 9, 2017 that is not in conformance with this ordinance shall be removed by the owner within seven business days of receiving notice from the Code Enforcement Officer.
- C. **Nonconforming Sign.** Any permanent sign in place prior to February 9, 2017 and not in conformance with this ordinance may remain in place. The nonconforming permanent sign may also be replaced with a permit from the Code Enforcement Officer, as provided for in SEC. 21-3-1. The nonconforming sign permit application shall include documentation of the location, dimensions and height as measured from the ground of the existing nonconforming sign. If a nonconforming sign is removed and not replaced within six (6) months from the date it is removed, any sign installed must be in conformance with this ordinance.
- D. **Hazard.** Any sign that poses an immediate hazard to public safety may be removed by any authorized municipal agent.

SEC. 21-6-1 Administration

- A. **Enforcement/Penalties.** Any person, or entity owning, occupying, or having the control and the use of, any building, land, sign or part thereof, who violates any of the provisions of this ordinance, shall be punished by a fine of not less than \$50.00 and not more than \$100.00. Each day such violation is permitted to exist after notification thereof by the Code Enforcement Officer shall constitute a separate offense.
- B. **Substitution.** A non-commercial sign may be substituted for any permitted sign, except as provided in Sec. 21-2-1.A.
- C. **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 of the Ordinance.
- D. **Fees.** Fees shall be as shown on the most recently adopted Fee Schedule adopted by the Cape Elizabeth Town Council.
- E. **Hold Harmless.** The Town of Cape Elizabeth shall be held harmless from any damage to signs installed in the public right-of-way, nor for any sign removed under this ordinance.

CHAPTER 25

STORM WATER

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Article I. Storm water and Non-storm water Control

Sec. 25-1-1. Purpose.

The purpose of this Ordinance is to require the disposal of storm water on the land at the site of development through the wise use of the natural features of the site and to regulate storm water and non-storm water Discharges to the Town Storm Water Runoff System as required by federal and state law. Storm water and non-storm water shall be deposited in a manner so that it does not pose dangers of flooding, soil erosion, pollution of receiving waters, or otherwise constitute a threat to public health, safety or welfare.

Sec. 25-1-2. Applicability.

The provisions of this chapter shall apply to:

- a. Any proposed activity subject to Planning Board review and involving 43,560 square feet or more of added impervious surface, paving, clearing, or vegetative alterations, or any development requiring Subdivision Review (Chapter 16, Subdivision Ordinance)
- b. Any Discharge of storm water or non-storm water from any premises into the Town Storm Water Runoff System.
- c. All extensions of the storm water runoff system must be constructed to comply with minimum standards developed by the Enforcement Authority.

Sec. 25-1-3. Definitions.

For the purposes of this Ordinance, the following terms shall have the meanings given herein. All words not defined herein shall carry their customary and usual meanings.

Best Management Practices ("BMP"): Any schedule of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State of Maine. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Clean Water Act: The federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*, also known as the "Clean Water Act"), and any subsequent amendments thereto.

CFR: Code of Federal Regulations.

Developed area. "Disturbed area" excluding area that within one calendar year of being disturbed is returned to a condition with the same drainage pattern that existed prior to the disturbance and is revegetated, provided the area is not mowed more than once per year.

Discharge: Any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of Pollutants to Waters of the State.

Disturbed area. All land areas that are stripped, graded, grubbed, filled, or excavated at any time during the site preparation or removing vegetation for, or construction of, a project. "Disturbed area" does not include routine maintenance, but does include re-development and new impervious areas. "Routine maintenance" is maintenance performed to maintain the original line and grade, hydraulic capacity, and original purpose of the facility. Paving impervious gravel surfaces while maintaining the original line and grade, hydraulic capacity and original purpose of the facility is considered routine maintenance. Cutting of trees, without grubbing, stump removal, disturbance or exposure of soil is not considered "disturbed area." A disturbed area

continues to be considered as a "disturbed area" if it meet the definition of "developed area" or impervious area" following final stabilization.

Direct Discharge: Any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, container, concentrated animal feeding operation or vessel or other floating craft, from which Pollutants are or may be discharged. (Also known as Point Source.)

Enforcement Authority: The Town of Cape Elizabeth Public Works Director or his/her designee.

Impervious Surface: The total area of a parcel that consists of buildings and associated constructed facilities or areas that will be covered with a low-permeability material, such as asphalt or concrete, and areas such as gravel roads and unpaved parking areas that will be compacted through design or use to reduce their permeability. Common impervious areas include, but are not limited to, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and macadam or other surfaces which similarly impede the natural infiltration of storm water. A natural or man-made waterbody is not considered an impervious area, but is treated as an immediate runoff surface in curve number calculations.

Industrial Activity: Activity subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit: A permit issued by the United States Environmental Protection Agency (EPA) or by the Maine Department of Environmental Protection (DEP) that authorizes the Discharge of pollutants to waters of the United States.

Non-Storm Water Discharge: Any Discharge to the Town Storm Water Runoff System that is not composed entirely of Storm Water.

Person: Any individual, firm, corporation, municipality, quasi-municipal corporation, State or Federal agency or other legal entity.

Pollutant: Any dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, aggregate materials, and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

Premises: All or any part of a building, lot, parcel of land, whether improved or unimproved, including adjacent sidewalks and parking areas from which Discharges into the Town Storm Water Runoff System that is created, initiated, originated or maintained.

Storm Water: Runoff resulting from snowmelt, rain, precipitation or groundwater on the ground.

Storm Water Maintenance agreement. An agreement describing maintenance of storm water runoff system for development reviewed by the Planning Board. All privately owned facilities shall be included in the maintenance agreement. A maintenance agreement must include, at a minimum, the party responsible for maintenance, a list of the storm water runoff system components that require maintenance, inspection frequency, maintenance requirements, and submission of an annual report to the Town. Storm water runoff system components that will be privately owned until such time they are conveyed to the Town require a maintenance agreement until they are conveyed.

Storm Water Runoff System: An element or array of elements that convey water from or across land, including but not limited to natural elements.

Tidal Waters: Waters contiguous to the Atlantic Ocean where the surface rises and falls due to gravitational pull.

Town: The Town of Cape Elizabeth.

Waters of the State: Any and all surface and subsurface waters that are contained within, flow through, or under or border upon the State of Maine or any portion of the State of Maine, including the marginal and high seas, except such waters as are confined and retained completely upon the property of one person and do not drain into or connect with any other waters of the State of Maine, but not excluding waters susceptible to use in interstate or foreign commerce, or whose use, degradation or destruction would affect interstate or foreign commerce.

Uncontaminated: Free of Pollutants.

Sec. 25-1-4. Storm Water Runoff System Design.

- a. Applicability. This section shall be applicable to the following development:
 1. Any development involving 43,560 sq. ft. or more of impervious surface and which requires Site Plan (Chapter 19, Zoning Ordinance); and
 2. Any development requiring Subdivision Review_(Chapter 16, Subdivision Ordinance) by the Planning Board.
- b. Submission Requirements. The following information shall be submitted to the Planning Board.
 1. Professional Engineer. Designation of a professional engineer licensed in the State of Maine who will design, sign and stamp the storm water runoff system.
 2. Base information. The existing site information required for subdivision or site plan review, including but not limited to standard boundary survey, topographic contours, location of water bodies and water courses, shall be used as the base for the storm water runoff system plan.

3. Impervious surface. On the storm water runoff plan and in the written materials, the calculated square footage of existing impervious surface and proposed impervious surface.
4. Pre- and post construction calculations. Storm water runoff calculations based on the 2- and 25-year storm for the property.
5. Existing system. On the storm water runoff plan and in the written materials, show and describe the existing storm water runoff system, including but not limited to storm water infrastructure, drainage channels, culverts and other conveyances, and deficiencies that result in storm water surcharge or flooding on the property.
6. Proposed improvements. On the storm water runoff plan and in the written materials, show and describe the proposed storm water runoff plan, including but not limited to proposed storm water runoff system components, showing design of all facilities and conveyances. The storm water runoff plan and written materials shall include information describing the difference in the pre and post-development flows, infiltration on the site, storm water runoff discharge downstream impacts, accommodation of upstream flows, and include all necessary design details and components.
7. Easements. When storm water runoff plan components are not located in the public right-of-way, executable easement deeds providing the Town with access and maintenance rights.
8. Maintenance. When all or part of the storm water runoff system infrastructure will not be conveyed to the Town, provide a draft maintenance agreement and include the following note on the plans: The site requires (a) a Maintenance Agreement for the storm water runoff system to be executed with the Enforcement Authority and filed with the Cumberland County Registry of Deeds, and (b) after construction is complete, provide annually a certification to the Enforcement Authority that the storm water runoff system has been inspected and maintained in accordance with the Post Construction storm water runoff system management plan approved for this site.
9. Record drawings. On the storm water runoff plan a note that "a reproducible set of record drawings, as well as digital files in a format used by the project engineer during project design or other format approved by the Public Works Director suitable for import into the Town Geographic Information System (GIS), indicating the storm water runoff work constructed and how the record drawings were compiled shall be provided to the Enforcement Authority upon completion of construction."

c. Review Standards.

1. Professional Engineer. The storm water runoff system shall be prepared by a professional engineer licensed in the State of Maine.
2. 2 and 25 year storm. The storm water runoff system shall be designed for a storm of intensity equal to the 2 and 25-year storm. No non-storm water structures shall be permitted in areas of the site that flood or surcharge during the 2 and 25-year storm. Where state or federal law is more restrictive, such provisions shall supersede this section.
3. Infiltration. The storm water runoff system shall maximize to the greatest extent practical the amount of storm water infiltrating on the site during storm events, except that development located in the Town Center District shall design a storm water plan that is consistent with the Town Center Storm water Management Plan, updated September 2015 or most recent version.
4. Downstream impacts. The storm water runoff system shall provide for the discharge of storm water from the site without damage to streets and storm water infrastructure, adjacent properties, downstream properties, soils and vegetation. When post-development flows exceed pre-development flows, the development shall demonstrate that either (1) storm water runoff will be stored on-site and released at a rate not to exceed pre-development flows or (2) that the storm water runoff system has sufficient capacity to carry the increased flow without adverse impacts. Direct discharge to tidally influenced areas shall be considered sufficient capacity to carry increased flow.
5. Upstream flows. The storm water runoff system shall be designed to accommodate all existing up stream flows that pass through the site.
6. System components. The storm water runoff system shall be completely designed and include built structures and natural channels, technical specifications and design details. Where components of the storm water runoff system are located outside of public right-of-way, easements shall be provided to the town for access and maintenance.
7. Maintenance. A permanent routine maintenance plan shall be prepared for the storm water runoff system. The note requiring maintenance of the storm water runoff system is on the plan.
8. Record Drawings. The storm water runoff system plans shall include a note that, upon completion of the storm water runoff system installation, a reproducible set of record drawings indicating the storm water runoff system work accomplished and how the record drawings were compiled will be submitted to the Enforcement Authority.

Sec. 25-1-5. System Responsibility.

The developer shall maintain all components of the Storm Water Runoff System until they are formally accepted by the Town or transferred to a property owners association whose charter and powers for financing and maintaining the Storm Water Runoff System shall be approved by the Town Attorney. Storm Water Runoff System components within proposed public ways shall become Town property upon formal acceptance. Storm Water Runoff System components outside of public ways may be accepted by the Town but shall otherwise be deeded to a property owners association, as required by the Planning Board or as agreed by the Town and the developer prior to project approval. In all cases the Town shall have the right to access and enter the Storm Water Runoff system to conduct emergency maintenance, as it deems necessary.

Sec. 25-1-6 Non Planning Board reviewed storm water runoff

Any Discharge of storm water or non-storm water into the Town Storm Water Runoff System for which the Planning Board has not conducted a storm water runoff system review shall be subject to Best Management Practices for Erosion and Sedimentation control. The Enforcement Authority may direct additional erosion control measures to be taken if there is a reasonable expectation that storm water runoff will cause erosion and sediment to leave the development site.

Sec. 25-1-7. Design Adjustment.

The Planning Board may waive any filing or design requirements unnecessary for full consideration of any proposed Storm Water Runoff System, such as data relating to site features and runoff rates downstream of the entrance to a piped Discharge directly to tidal waters. The Planning Board may also reduce or waive any requirements of this Ordinance where it finds from the basic site data furnished under Section 25-1-4.b that the estimated costs of construction and long-term maintenance resulting from compliance with the design requirements in any instance clearly outweigh the downstream benefits to be achieved by compliance.

Sec. 25-1-8. Non-Storm Water Regulation.

a. **Objectives.** The objectives of this section are:

1. To regulate Non-Storm Water Discharges to the Storm Water Runoff System; and
2. To set forth the legal authority and procedures to carry out all inspection, monitoring and enforcement activities necessary to ensure compliance with this Ordinance.

b. **General Prohibition.** Except as allowed in this Section, no Person shall create, initiate, originate or maintain a Non-Storm Water Discharge to the Storm Water Runoff System. Such Non-Storm Water Discharges are prohibited notwithstanding the fact that the Town may have approved the connections, drains or conveyances by which a Person discharges unallowed Non-Storm Water Discharges to the Storm Water Runoff System.

- c. **Allowed Non-Storm Water Discharges.** The creation, initiation, origination and maintenance of the following Non-Storm Water Discharges to the Storm Water Runoff System are allowed:
1. Landscape irrigation; diverted stream flows; rising ground waters; uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)); uncontaminated pumped ground water; uncontaminated flows from foundation drains; air conditioning and compressor condensate; irrigation water; flows from uncontaminated springs; uncontaminated water from crawl space pumps; uncontaminated flows from footing drains; flows from riparian habitats and wetlands; residual street wash water (where spills/leaks of toxic or hazardous materials have not occurred, unless all spilled material has been removed and detergents are not used); dechlorinated hydrant flushing discharges and firefighting activity runoff; water line flushing and discharges from potable water sources; individual residential car washing; lawn watering runoff, and dechlorinated swimming pool discharges.
 2. Discharges authorized by the Enforcement Authority as being necessary to protect public health and safety; and
 3. Dye testing, with authorization from the Enforcement Authority prior to the time of the test.
- d. **Suspension of Access to the Town Storm Water Runoff System.** The Enforcement Authority may, without prior notice, physically suspend Discharge access to the Storm Water Runoff System when such suspension is necessary to stop an actual or threatened Non-Storm Water Discharge to the Storm Water Runoff System that presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the Storm Water Runoff System, or that may cause the Town to violate the terms of its environmental permits. Such suspension may include, but is not limited to, blocking pipes, constructing dams or taking other measures, on public ways or public property, to physically block the Discharge to prevent or minimize a Non-Storm Water Discharge to the Storm Water Runoff System. The Enforcement Authority may take such steps as deemed necessary to prevent or minimize damage to the Storm Water Runoff System, or to minimize danger to persons, provided, however, that in taking such steps the Enforcement Authority may enter upon the Premises that are the source of the actual or threatened Non-Storm Water Discharge to the Storm Water Runoff System only with the consent of the Premises' owner, occupant or agent, except in an emergency when consent shall not be required.
- e. **Monitoring of Discharges.** In order to determine compliance with this Ordinance, the Enforcement Authority may enter upon and inspect Premises subject to this Ordinance at reasonable hours with the consent of the Premises' owner, occupant or agent, to inspect the Premises and connections thereon to the Storm Water Runoff System; and to conduct monitoring, sampling and testing of the Discharge to the Storm Water Runoff System.

Sec. 25-1-9. Enforcement.

It shall be unlawful for any Person to violate any provision of or to fail to comply with any of the requirements of this Ordinance.

- a. **Notice of Violation.** Whenever the Enforcement Authority believes that a Person has violated this Ordinance, the Enforcement Authority may order compliance with this

Ordinance by written Notice of Violation to that Person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:

1. The elimination of Non-Storm Water Discharges to the Storm Water Runoff System, including, but not limited to, disconnection of the Premises from the Storm Water Runoff System;
2. The cessation of Discharges, practices, or operations in violation of this Ordinance;
3. At the Person's expense, the abatement or remediation in accordance with best management practices in DEP rules and regulations of Non-Storm Water Discharges to the Storm Water Runoff System and the restoration of any affected property; and/or
4. The payment of fines, of the Enforcement Authority's remediation costs and of the Enforcement Authority's reasonable administrative costs and attorneys' fees and costs, in accordance with 30-A M.R.S.A Sec. 4452. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement or restoration must be completed.

- b. **Penalties/Fines/Injunctive Relief.** Any Person who violates this Ordinance shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the Town's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any Person who violates this Ordinance also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred by the Town for violation of Federal and State environmental laws and regulations caused by or related to that Person's violation of this Ordinance; this responsibility shall be in addition to other penalties, fines or injunctive relief imposed under this Section.

- c. **Consent Agreement.** The Enforcement Authority may, with the approval of the municipal officers, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this Ordinance for the purposes of eliminating violations of this Ordinance and of recovering fines, costs and fees without court action.

- d. **Appeal of Notice of Violation.** Any Person receiving a Notice of Violation or suspension notice may appeal the determination of the Town to the Zoning Board of Appeals. The notice of appeal must be received within 30 days from the date of receipt of the Notice of Violation. The Board of Appeals shall hold a de novo hearing on the appeal within 30 days from the date of receipt of the notice of appeal. The Board of Appeals may affirm, reverse or modify the Notice of Violation. A suspension under Section 18-2-8(d) of this

Ordinance shall remain in place unless or until lifted by the Board of Appeals or by a reviewing court. A party aggrieved by the decision of the Zoning Board of Appeals may appeal that decision to the Maine Superior Court within 45 days of the date of the Zoning Board of Appeals decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.

- e. **Enforcement Measures.** If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal to the Board of Appeals, within 45 days of a decision of the Board of Appeals affirming the Enforcement Authority's decision, then the Enforcement Authority may file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.
- f. **Ultimate Responsibility of Discharger.** The standards set forth in this Ordinance are minimum standards. Compliance with this Ordinance does not ensure that a Person will not have contaminated, polluted or unlawfully discharged Pollutants into waters of the U.S. This Ordinance shall not create liability on the part of the Town, or any officer, agent or employee thereof for any damages that result from a Person's reliance on or compliance with this Ordinance or any administrative decision lawfully made under this Ordinance.

Sec. 25-1-10 Severability.

If any part or parts, section or subsection, sentence, clause or phrase of this Ordinance or the rules and regulations promulgated thereunder is for any reason declared to be unconstitutional or invalid, such declaration shall not affect the validity or constitutionality of the remaining portions of this Ordinance or the rules and regulations promulgated thereunder.

Article II. Post Construction Storm water Management

Sec. 25-2-1. Purpose.

The purpose of this "Post-Construction Storm Water Management Ordinance" (the "Ordinance") is to provide for health, safety, and general welfare of the citizens of the Town of Cape Elizabeth through review and approval of postconstruction storm water management plans and monitoring and enforcement of compliance with such plans as required by Federal and State law. This Ordinance establishes methods for post-construction storm water management in order to comply with minimum control measure requirements of the Federal Clean Water Act, of federal regulations, of Maine's Small Municipal Separate Storm Sewer Systems General Permit, and the Town's Storm Water Program Management Plan. The Town of Cape Elizabeth enacts this Post-Construction Storm Water Management Control Ordinance (the "Ordinance") pursuant to 30-A M.R.S.A. § 3001 (municipal home rule ordinance authority), 38 M.R.S.A. § 413 (the "Wastewater Discharge Law"), 33 U.S.C. § 1251 *et seq.* (the "Clean Water Act"), and 40 CFR Part 122 (U.S. Environmental Protection Agency's regulations governing the National Pollutant Discharge Elimination System ("NPDES")). The Maine Department of Environmental Protection, through its promulgation of the "General Permit for the Discharge of Storm Water

from Small Municipal Separate Storm Sewer Systems," has listed the Town of Cape Elizabeth as having a Regulated Small Municipal Separate Storm Sewer System ("Small MS4"); under this General Permit, listing as a Regulated Small MS4 necessitates enactment of this Ordinance as part of the Town's Storm Water Management Program in order to satisfy the minimum control measures required by Part IV D 5 ("Post-construction storm water management in new development and redevelopment").

Sec. 25-2-2. Objectives.

The objectives of this Ordinance are:

- a. To reduce the impact of post-construction discharge of storm water on receiving waters; and
- b. To reduce storm water runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through use of Best Management Practices as promulgated by the Maine Department of Environmental Protection pursuant to its most current rules as may be updated or amended including its Chapters 500 and 502 Rules, and ensure that these management controls are properly maintained and pose no threat to public safety.

Sec. 25-2-3. Applicability.

This Ordinance applies to all New Development and Redevelopment within the Town that discharges storm water to the Town's Municipal Separate Storm Sewer System (MS4) and to associated storm water management facilities, which are considered to be an element or array of elements that convey water from or across land, including, but not limited to, natural elements, roads, parking areas, catch basins, drainage swales, detention basins and ponds, pipes, conduits, and related structures that are part of the Post-Construction Storm Water Management Plan for a New Development or Redevelopment. This ordinance does not apply to any development which has obtained subdivision approval and begun construction prior to the date this ordinance becomes effective. Construction shall mean (1) posting of a performance guarantee, (2) disturbance of soil, and (3) inspection by a town official.

Sec. 25-2-4. Definitions.

For the purposes of this Ordinance, the following terms shall have the meanings given herein. All words not defined herein shall carry their customary and usual meanings.

Applicant: Any Person with requisite right, title, or interest or an agent for such Person who has filed an application for New Development or Redevelopment that requires a Post- Construction Storm Water Management Plan under this Ordinance.

Best Management Practices ("BMP"): Any schedule of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State of Maine. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Clean Water Act: The federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*, also known as the "Clean Water Act"), and any subsequent amendments thereto.

Construction Activity: Any Construction Activity including one acre or more of Disturbed Area. Construction Activity also includes activity with less than one acre of total land Disturbed Area if that area is part of a subdivision that will ultimately disturb an area equal to or greater than one acre.

Discharge: Any spilling, leaking, pumping, pouring, emptying, dumping, disposing, or other addition of Pollutants to Waters of the State.

Direct Discharge: Any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which Pollutants are or may be discharged (Also known as Point Source).

Disturbed Area: Any clearing, grading, and excavation. Mere cutting of trees, without grubbing, stump removal, disturbance or exposure of soil is not considered "Disturbed Area." "Disturbed Area" does not include routine maintenance but does include Redevelopment. "Routine Maintenance" is maintenance performed to maintain the original line and grade, hydraulic capacity, and original purpose of land or improvements thereon.

Enforcement Authority: The Town Manager or his/her designee who is the person(s) or department authorized by the Town to administer and enforce this Ordinance.

Town: The Town of Cape Elizabeth.

Town Permitting Authority: The Town official or body that has jurisdiction over the land use approval or permit required for a New Development or Redevelopment.

Municipal Separate Storm Sewer System, or MS4: Conveyances for storm water, including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains (other than publicly owned treatment works and combined sewers) owned or operated by any municipality, sewer or sewage district, fire district, State agency or federal agency or other public entity that discharges directly to Waters of the State.

National Pollutant Discharge Elimination Systems (NPDES) Storm Water Discharge Permit: A permit issued by the United States Environmental Protection Agency ("EPA") or by the Maine Department of Environmental Protection ("DEP") that authorizes the Discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

New Development: Any Construction Activity on unimproved Premises and for purposes of this ordinance includes "Redevelopment" defined below.

Person: Any individual, firm, corporation, municipality, town, quasi-municipal Corporation, State or Federal agency, or other legal entity.

Pollutant: Any dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, solid waste, sewage sludge, munitions, chemicals, biological or radiological materials, oil,

petroleum products or by-products, heat, wrecked or discarded equipment, aggregate materials, and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

Post-Construction Storm Water Management Plan: BMPs and associated inspection and maintenance procedures for the Storm Water Runoff System employed by a New Development or Redevelopment to meet the standards of this Ordinance and approved by the Town's Permitting Authority.

Premises: Any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within the Town from which Discharges into the Town Storm Water Runoff System are or may be created, initiated, originated, or maintained.

Qualified Post-Construction Storm Water Inspector: A person who conducts postconstruction inspections of Storm Water Runoff Systems and meets the following qualification:

- a. The Inspector shall not have any ownership or financial interest in the property being inspected nor be an employee or partner of any entity having an ownership or financial interest in the property, and
- b. The Inspector shall also meet the following criteria as approved by the Town's Enforcement Authority:
 1. Someone who has received the appropriate training for such inspection from DEP and holds a valid certificate from DEP for such inspection or;
 2. Have a working knowledge of the most current Maine DEP Storm Water Management Laws including but not limited to Chapter 500 and Chapter 502 Rules, Storm Water Management Rules and Maine's Storm Water BMP Manual, have a college degree in environmental science, civil engineering, or comparable expertise, or any combination of experience and training; have a demonstrated practical working knowledge of Storm Water hydrology and Storm Water management techniques, including the maintenance requirements for Storm Water Runoff Systems; and have the ability to determine if Storm Water Runoff Systems are performing as intended;

Redevelopment: Any Construction Activity on Premises already improved with buildings, structures, or activities or uses, but does not include such activities as exterior remodeling of structures.

Regulated Small MS4: Any Small MS4 regulated by the State of Maine "General Permit for the Discharge of Storm Water from Small Municipal Separate Storm Sewer Systems" ("General Permit"), including all those located partially or entirely within an Urbanized Area (UA) and those additional Small MS4s located outside a UA that as of the issuance of the General Permit have been designated by the DEP as Regulated Small MS4s.

Small Municipal Separate Storm Sewer System, or Small MS4: Any MS4 that is not already covered by the Phase I MS4 Storm Water program including municipally owned or operated storm sewer systems, State or federally-owned systems, such as colleges, universities, prisons, Maine Department of Transportation and Maine Turnpike Authority road systems and facilities, and military bases and facilities.

Storm Water: Runoff resulting from snowmelt, rain, precipitation, groundwater on the ground and drainage.

Storm Water Runoff System: An element or array of elements that convey water from or across land, including, but not limited to, natural elements.

Urbanized Area ("UA") means the areas of the State of Maine as defined by the latest decennial census by the U.S. Bureau of the Census.

Sec. 25-2-5. Post-Construction Storm Water Management Plan.

a. General Requirement

1. Except as provided in Sec. 25-2-3 b. above, no Applicant for a building permit, subdivision approval, site plan approval or other zoning, planning or other land use approval for New Development or Redevelopment to which this Ordinance is applicable shall receive such permit or approval for that New Development or Redevelopment unless the Town Permitting Authority for that New Development also determines that the Applicant's Post- Construction Storm Water Management Plan for the New Development meets the requirements of this Ordinance.
2. At the time of application, the Applicant shall notify the Town Permitting Authority if its Post-Construction Storm Water Management Plan includes any BMP(s) that will discharge to the Town's MS4 and shall include in this notification a listing of which BMP(s) will so discharge.

b. Performance Standards

1. DEP Chapter 500 Quality and Quantity Standards apply. The Applicant shall make adequate provisions for the management of the quantity and quality of all storm water generated by a New Development or Redevelopment through a Post-Construction Storm Water Management Plan. This Post-Construction Storm Water Management Plan shall be designed to meet the standards contained in the Maine Department of Environmental Protection's most current rules as may be

updated or amended including its Chapters 500 and 502 Rules and shall comply with the practices described in the manual *Storm Water Management for Maine*, published by Maine Department of Environmental Protection, latest edition, which hereby are incorporated by reference pursuant to 30-A M.R.S.A. § 3003.

2. Use of Onsite or Offsite Treatment Facilities. The Applicant shall meet the quantity and quality standards above either onsite or off-site. Where off-site facilities are used, the Applicant must submit to the Town documentation, approved as to legal sufficiency by the Town's attorney, that the Applicant has a sufficient property interest in the property where the off-site facilities are located – by easement, covenant or other appropriate legal instrument – to ensure that the facilities will be able to provide post-construction storm water management for the New Development or Redevelopment and that the property will not be altered in a way that interferes with the off-site facilities.
3. Maintenance Agreement Required. Where the Applicant proposes to retain ownership of the Storm Water Management Facilities shown in its Post-Construction Storm Water Management Plan, the Applicant shall submit to the Town documentation, approved as to the legal sufficiency the Town's attorney that the Applicant, its successor, heirs and assigns shall have the legal obligation and the resources available to operate, repair, maintain and replace the Storm Water Management Facilities. Applications for New Development or Redevelopment requiring Storm Water Management Facilities that will not be dedicated to the Town shall enter into a Maintenance Agreement with the Town. A sample of this Maintenance Agreement is available from the Town.
4. Easements and Access. Whenever elements of the Storm Water Runoff System are not within the right-of-way of a public street and the facilities will not be offered to the Town for acceptance as public facilities, the Town Permitting Authority may require that perpetual easements conforming substantially with the lines of existing natural drainage, and providing adequate access for maintenance in a form acceptable to the Town's attorney, shall be provided to the Town allowing access for maintenance, repair, replacement and improvement of the Storm Water Runoff System. When an offer of dedication is required by the Town Permitting Authority, the Applicant shall be responsible for the maintenance of these Storm Water Runoff Systems under this Ordinance until such time (if ever) as they are accepted by the Town.
5. Other Standards and Conflicts. In addition to any other applicable requirements of this Ordinance and the Town's Municipal Code, any New Development or Redevelopment which also requires a storm water management permit from the Maine Department of Environmental Protection (DEP) under 38 M.R.S.A. 420-D shall comply with the rules adopted by DEP under 38 M.R.S.A. 420-D(1), as the same may be amended from time to time, and the Applicant shall document such compliance to the Town Permitting Authority. Where the standards or other provisions of such storm water rules conflict with Town ordinances, the stricter (more protective) standard shall apply.

Sec. 25-2-6. Post-Construction Storm Water Management Plan Compliance.

- a. **General Requirements.** Any Person owning, operating, leasing or having control over Storm Water Runoff Systems required by a Post-Construction Storm Water Management Plan approved under this Ordinance shall demonstrate compliance with that Plan as follows:
1. Annual Inspection. A Qualified Post-Construction Storm Water Inspector , shall, at least annually, inspect the Storm Water Runoff Systems, including but not limited to any roads, parking areas, catch basins, drainage swales, detention basins and ponds, pipes, conduits, and related structures, in accordance with all Town and State inspection, cleaning and maintenance requirements of the approved Post-Construction Storm Water Management Plan.
 2. Corrective Actions. If the Storm Water Runoff Systems require maintenance to function as intended by the approved Post-Construction Storm Water Management Plan, that Person shall take corrective action(s) to address the deficiency or deficiencies.
 3. Annual Reporting to Town. A Qualified Post-Construction Storm Water Inspector shall provide, on or by August 1 of each year, a completed and signed certification to the Town Enforcement Authority in a form prescribed by the Town or in a similar form approved by the Town Enforcement Authority, certifying that the Storm Water Runoff Systems have been inspected, and that they are adequately maintained and functioning as intended by the approved Post-Construction Storm Water Management Plan, or that they require maintenance or repair, describing any required maintenance and any deficiencies found during inspection of the Storm Water Runoff Systems. If the Storm Water Runoff Systems require maintenance or repair of deficiencies in order to function as intended by the approved Post-Construction Storm Water Management Plan, the Person shall provide a record of the required maintenance or deficiency and corrective action(s) taken.
 4. Fee. In addition, any persons required to file an annual certification under this Sec. 25-2-6 of this Ordinance shall include with the annual certification a fee established by the Town Council in accordance with the Town Fee Schedule. The purpose of this fee is to pay the administrative and technical costs of review of the annual certification.
- b. **Right of Entry.** In order to determine compliance with this Ordinance and with the Post-Construction Storm Water Management Plan, the Town Enforcement Authority may enter upon property at reasonable hours with the consent of the owner, occupant or agent to inspect the Storm Water Runoff Systems.
- c. **Annual Report.** Each year the Town shall include the following in its Annual Report to the Maine Department of Environmental Protection:

1. The cumulative number of sites that have Storm Water Runoff Systems discharging into their MS4;
2. A summary of the number of sites that have Storm Water Runoff Systems discharging into their MS4 that were reported to the Town;
3. The number of sites with documented functioning Storm Water Runoff Systems; and
4. The number of sites that required routine maintenance or remedial action to ensure that Storm Water Runoff Systems are functioning as intended.

Sec. 25-2-7. Enforcement.

It shall be unlawful for any Person to violate any provision of or to fail to comply with any of the requirements of this Ordinance or of the Post-Construction Storm Water Management Plan. Whenever the Enforcement Authority believes that a Person has violated this Ordinance or the Post-Construction Storm Water Management Plan, the Enforcement Authority may enforce this Ordinance in accordance with 30-A M.R.S.A. § 4452.

Sec. 25-2-8. Notice of Violation.

Whenever the Enforcement Authority believes that a Person has violated this Ordinance of the Post-Construction Storm Water Management Plan, the Enforcement Authority may order compliance with this Ordinance or with the Post-Construction Storm Water Management Plan by written notice of violation to that Person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:

- a. The abatement of violations, and the cessation of practices, or operations in violation of this Ordinance or of the Post-Construction Storm Water Management Plan;
- b. At the Person's expense, compliance with BMPs required as a condition of approval of the New Development or Redevelopment, the repair of Storm Water Runoff Systems and/or the restoration of any affected property; and/or
- c. The payment of fines, of the Town's remediation costs and of the Town's reasonable administrative costs and attorneys' fees and costs. If abatement of a violation, compliance with BMPs, repair of Storm Water Management Facilities and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement, compliance, repair and/or restoration must be completed.

Sec. 25-2-9. Penalties/Fines/Injunctive Relief.

Any Person who violates this Ordinance of the Post-Construction Storm Water Management Plan shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the Town's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day that such violation continues shall constitute a separate violation. Moreover, any Person who violates this Ordinance or the Post-Construction Storm Water Management Plan also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred by the Town for violation of federal and State environmental laws and regulations caused by or related to that Person's violation of this Ordinance or of the Post-Construction Storm Water Management Plan; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this Section.

Sec. 25-2-10. Consent Agreement.

The Enforcement Authority may, with the approval of the municipal officers, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this Ordinance or of the Post-Construction Storm Water Management Plan for the purposes of eliminating violations of this Ordinance or of the Post-Construction Storm Water Management Plan and of recovering fines, costs and fees without court action.

Sec. 25-2-11. Appeal of Notice of Violation.

Any Person receiving a Notice of Violation or suspension notice may appeal the determination of the Enforcement Authority to the Zoning Board of Appeals. The notice of appeal must be received within 30 days from the date of receipt of the Notice of Violation. The Board of Appeals shall hold a *de novo* hearing on the appeal within 30 days from the date of receipt of the notice of appeal. The Board of Appeals may affirm, reverse or modify the decision of the Enforcement Authority. A party aggrieved by the decision of the Board of Appeals may appeal that decision to the Maine Superior Court within 45 days of that date of the Board of Appeals decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.

Sec. 25-2-12. Enforcement Measures.

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal to the Board of Appeals, within 45 days of a decision of the Board of Appeals affirming or modifying the Enforcement Authority's decision, then the Enforcement Authority may recommend to the municipal officers that the Town's attorney file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.

Sec. 25-2-13. Severability.

The provisions of this Ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this Ordinance.

CHAPTER 16
SUBDIVISION ORDINANCE
(Adopted effective November 5, 2016)

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ARTICLE I. Purpose, Authority, Scope, Definitions.

Sec. 16-1-1. Purpose. This Ordinance is designed to promote the health, safety, convenience and general welfare of the Inhabitants of the Town of Cape Elizabeth by encouraging and ensuring sound planning, the use of the environment under healthful conditions, the imaginative and orderly use of land, compliance with the goals and objectives of the Comprehensive Plan, and development that fits harmoniously into the existing natural environment and rural character.

Sec. 16-1-2. Authority. This Ordinance shall apply to all land within the limits of the Town of Cape Elizabeth, Cumberland County, Maine and shall be administered by the Planning Board of the Town of Cape Elizabeth, hereinafter called “the Planning Board”, and the Town’s designated staff.

Sec. 16-1-3 Scope.

- (a) Any person, firm, corporation or other legal entity proposing to sell, lease or convey, or to offer or agree to sell, lease or convey, any land in a subdivision any portion of which is within the limits of the Town of Cape Elizabeth, shall first submit such subdivision for approval by the Planning Board in accordance with this Ordinance and shall record in the Cumberland County Registry of Deeds a plan thereof bearing the approval of the Planning Board.
- (b) No utility installations; no ditching, grading or construction of roads; no grading of land or lots; and no construction of buildings shall be done on any part of the proposed subdivision until a subdivision application has been submitted, reviewed and finally approved as provided by this Ordinance.

Sec. 16-1-4 Definitions.

In general, words and terms used in this Ordinance shall have their customary dictionary meanings, but the following words and terms as used in this Ordinance are defined as follows:

“**Applicant**” - the record owner, or a person having an interest in the land either through written option or contract.

“**Access Road**” - any road which includes (1) an eighteen (18) feet wide traveled way, (2) deeded and actual rights of public emergency access, and (3) year-round maintenance, including snow plowing of the road, the responsibility of which is documented in a binding written agreement if the road is not located within a public right-of-way.

“**Arterial**” - a road which is a major link with other communities. This road typically averages in excess of three thousand (3,000) trips per day with an average length of each trip of more than one mile. Arterials accommodate residential, agricultural and most of the Town’s commercial development. Direct access by residential development should be

discouraged, and commercial access should be combined with adjacent commercial uses where feasible.

“AASHTO” - the American Association of State Highway and Transportation Officials, an organization that establishes transportation specifications.

“Building Envelope” - the area within a lot where the main and accessory buildings shall be located.

“Cluster Development” - a type of subdivision development for single family detached dwellings, multiplex dwellings, or a combination of both, where lot sizes, lot widths, and building setbacks are reduced below the minimum requirements of this Ordinance and the land gained thereby is set aside as open space.

“Collector” - a road that collects traffic from the most densely settled areas and typically connects to an adjacent community. This road averages in excess of two thousand (2,000) trips per day with an average length of each trip over more than one mile. Collectors are located in areas with a dense, suburban pattern of development. The design of collectors must provide heavy traffic flow capacity and protect sensitive scenic areas and neighborhoods. Direct access by single driveway should be discouraged.

“Dead-end road” - a road with a single, common means of ingress and egress.
[Rev. eff. 7/13/94]

“Ditch” - a channel for conveying surface water outside the traveled way.

“Dwelling unit” - any part of a structure which, through sale or lease, is intended for human habitation, including single-family and multi-family housing, condominiums, apartments and time-share units.

“Easement” - a grant of one or more of the property rights by the property owner to and/or for use by the public, a corporation, or another person or entity. Examples of easements include but are not limited to drainage, conservation, emergency access, pedestrian, utility, road and open space easements.

“Emergency Access Lane” - a public or private paved road with a minimum width of eighteen (18) feet which is not open to through vehicular traffic. This type of road may provide secondary emergency access to an area served by a dead-end road. [Rev. eff. 6/12/91]

“Esplanade” - a landscaped strip of land located between a road and a sidewalk or between two roads.

“Farmland” - a parcel consisting of five (5) or more acres of land that is (1) classified as prime farmland, unique farmland or farmland of statewide or local importance by the Natural Resources Conservation Service within the United States Department of Agriculture; or (2) used for the production of agricultural products as defined in Title 7 M.R.S.A. Sec. 152, subsection 2.

“Feeder” - a road that connects local roads to other roads. This road is typically densely developed and serves more than one-hundred (100) dwellings or approximately one-thousand (1,000) trips per day. Feeders primarily serve residential traffic where access by single driveway is common.

“Local Road” - a road that provides direct access to adjacent residential land or the Town center area. The local road is the most common road classification and carries a low volume of trips in residential areas, although higher volumes are also common in the Town center area. Local roads should be designed for slow speeds and frequent pedestrian travel.

“Lot” - an area of land in one ownership, regardless of the dates or sources of acquisition thereof and regardless of the buildings and uses existing thereon, having definite boundaries by recorded plan or deed and having an area of less than forty (40) acres.

“Manufactured Housing Unit” - structures, transportable in one or more sections, which were constructed in a manufacturing facility and are transported to a building site and designed to be used as dwellings when connected to the required utilities, including the plumbing, heating, air conditioning and electrical systems contained therein.

“Manufactured Housing Park” - a parcel of land under unified ownership designed and/or used to accommodate three or more manufactured housing units.

“Manufactured Housing Park Lot” - the area of land on which an individual home is situated within a manufactured housing park and which is reserved for use by the occupants of that home.

“MDOT” - the State of Maine Department of Transportation.

“M.R.S.A” - Maine Revised Statutes Annotated.

“MUTCD” - the Manual on Uniform Traffic Control Device Standards.

“Multiplex Housing” - attached dwelling units, as defined in the Zoning Ordinance (Chapter 19).

“Performance Guarantee” - any security that may be accepted by the Town to assure that improvements required as part of an application for development will be completed in compliance with the approved plans.

“Planner” - that person designated by the Town to assist the Planning Board in its subdivision and site plan review.

“Planning Board Decision” - the Planning Board vote to approve or conditionally approve the preliminary or final plan.

“Principal Structure” - any building other than one that is used for purposes wholly incidental or accessory to the use of another building on the same premises.

“Private Road” - a road or way that provides access to more than one principal structure and which is not owned by the Town.

“Resubdivision” - the replatting of all or part of the land included in a subdivision plan already approved by the Planning Board.

“Right-of-way” - (1) a strip of land acquired by conveyance, reservation, dedication, forced dedication, prescription or condemnation and intended to be occupied by a road, sidewalk,

crosswalk, railroad, electric transmission lines, oil or gas pipeline, water line, sanitary storm sewer, or other similar uses; (2) generally, the right of one to pass over the property of another.

“Road” - a public or private way for vehicular traffic however designated, serving more than one residential unit or more than one lot.

“Rural Connector” - a road that handles trips between different parts of Town and connects rural residential development to arterials. This road typically carries less than (1,000) trips per day with an average length of more than one (1) mile. Rural connectors are located in primarily rural residential areas and the rural character should be maintained. Access by residential development should preferably be by a local road, but may be from a single driveway.

“Sight Distance” - see Section 16-3-2 (a) (1) of this Ordinance.

“Site Improvement” - all changes and construction required of a subdivision to be in compliance with Planning Board approval and Town Standards.

“Spaghetti lot” - any lot in a proposed subdivision with shore frontage on a river, stream, brook, great pond, or coastal wetland, as these features are defined in Title 38 M.R.S.A. Section 480(B), with a lot depth to shore frontage ratio greater than 5 (five) to 1 (one).

“Standard Boundary Survey” - a map of a quantity of real estate prepared by a professional land surveyor registered in the State of Maine and based on (1) adequate research to support a professional opinion of boundary location, (2) field work including an inspection of the real estate and (3) the preparation of a plan, drawn to scale and including property boundary lines, easements and rights-of-way and existing structures, suitable for recording.

“Structure” - anything constructed or erected with a fixed location on or in the ground, or attached to something having a fixed location on or in the ground, including, but not limited to, buildings, mobile homes, retaining walls, billboards, signs, piers and floats. It does not include a wharf, fish weir or trap that may be licensed under Title 38 M.R.S.A. Sections 1021-1027. A new structure or structures includes any structures for which construction begins on or after September 23, 1988. The area included in the expansion of an existing structure is deemed to be a new structure for the purposes of the Subdivision Ordinance.

“Subdivision” - the division of a tract or parcel of land into three (3) or more lots within any five (5) year period, which period begins after September 22, 1971, whether accomplished by sale, lease, development, buildings or otherwise. The term “subdivision” also includes the division of a new structure or structures on a tract or parcel of land into three (3) or more dwelling units within a five (5) year period, the construction or placement of three (3) or more dwelling units on a single tract or parcel of and the division of an existing structure or structures previously used for commercial or industrial use into three (3) or more dwelling units within a five (5) year period.

- A. In determining whether a tract or parcel of land is divided into three (3) or more lots, the first dividing of such tract or parcel is considered to create the first two (2) lots and the next dividing of either of said first two lots, by whomever accomplished, is considered to create a third lot, unless:

- (1) Both dividings are accomplished by a subdivider who has retained one of the lots for the subdivider's own use as a single family residence for a period of at least five (5) years immediately preceding the second division: or
 - (2) The division of the tract or parcel is otherwise exempt under subsection D below.
- B. The dividing of a tract or parcel of land and the lot or lots so made, which dividing or lots when made are not subject to the Ordinance, do not become subject to the Ordinance by the subsequent dividing of that tract or parcel of land or any portion of that tract or parcel of land. The municipal reviewing authority shall consider the existence of the previously created lot or lots in reviewing a proposed subdivision created by a subsequent dividing.
- C. A lot of forty (40) or more acres shall not be counted as lots when the lot is located entirely outside of the Shoreland Performance Overlay District.
- D. Exceptions.
- (1) A division accomplished by devise does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of the Ordinance.
 - (2) A division accomplished by condemnation does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of the Ordinance.
 - (3) A division accomplished by order of court does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of the Ordinance.
 - (4) A division accomplished by gift to a person related to the donor of an interest in property held by the donor for a continuous period of five (5) years prior to the division by gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of the Ordinance. If the real estate exempt under this definition is transferred within five (5) years to another person not related to the donor of the exempt real estate as provided in this paragraph, then the previously exempt division creates a lot or lots for the purposes of the Ordinance. "Person related to the donor" means a spouse, parent, grandparent, brother, sister, child or grandchild related by blood, marriage or adoption. A gift under this definition can not be given for consideration that is more than one-half (1/2) the assessed value of the real estate.
 - (5) A division accomplished by a gift to a municipality if that municipality accepts the gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of the Ordinance.
 - (6) A division accomplished by the transfer of any interest in land to the owners of land abutting that land does not create a separate lot does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of the Ordinance. If the real estate exempt under this paragraph is transferred within five (5) years to another person without all of the merged land,

then the previously exempt division creates a lot or lots for the purposes of the Ordinance.

- (7) The grant of a bona fide security interest in an entire lot that has been exempted from the definition of subdivision under subsection D above, or subsequent transfer of that entire lot by the original holder of the security interest or that person's successor in interest, does not create a lot for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of the Ordinance.
- E. The division of a tract or parcel of land into three (3) or more lots and upon each of which lots permanent dwelling structures legally existed before September 23, 1971 is not a subdivision.
- F. In determining the number of dwelling units in a structure, the provisions of the Ordinance regarding the determination of the number of lots apply, including exemptions from the definition of a subdivision of land.
- G. Notwithstanding the provisions of the Ordinance, leased dwelling units are not subject to subdivision review if the municipal reviewing authority has determined that the units are otherwise subject to Site Plan Review under the Zoning Ordinance.

“Major Subdivision” - a subdivision containing more than five (5) lots, or requiring substantial extension of municipal facilities or any new public road.

“Minor Subdivision” - a subdivision containing not more than five (5) lots and is not otherwise defined as a major subdivision.

“Through road” - a road with more than one means of ingress or egress. Both means of ingress and egress must, at a minimum, meet the standards of an access road.

“Tract or parcel of land”- tract or parcel of land means all contiguous land in the same ownership, except that lands located on opposite sides of a public or private road are considered each a separate tract or parcel of land unless the road was established by the owner of land on both sides of the road after September 22, 1971.

“Town Engineer”- that person designated by the Town to provide engineering advice to the Planning Board in its subdivision and site plan review.

“Traveled Way” - that portion of a right-of-way which is regularly used for vehicular traffic.

Article II. Review Procedures

Sec. 16-2-1. General Procedures. In all stages of the subdivision review process, the burden of proof shall be upon the applicant proposing the subdivision.

(a) **Public Record.** The Planning Board shall maintain a permanent record of all its meetings, proceedings and correspondence. The Planning Board shall specify in writing its decisions and findings of fact.

(b) **Public Notice.** When notice to abutters is required, the Planner shall cause notice to be given by mail to the owners, as currently listed by the Town Tax Assessor, of all

properties within 500' of the proposed project property line boundary. If the project abuts an adjacent municipality, the Planner shall notify the adjacent municipality's planning staff and request that all pertinent property owners be notified of the project proposal. Such notice shall include the date, time and location of the meeting and the location and general description of the proposed development.

If a public hearing is scheduled, mailed notice shall be provided as described above. In addition, the Planner shall cause notice of the date, time and place of the hearing to be published at least two (2) times in a newspaper having general circulation in the Town of Cape Elizabeth. The date of the first publication must be at least seven (7) days before the public hearing.

(c) Review Escrow Account. In addition to the application fees set by the Town Council, a Review Escrow Fee to defray the Town's costs for application review by the Town Engineer and/or other independent consulting services shall be provided. The fee shall be recommended by the Town Engineer or consultant and approved by the Town Manager upon initial review of the application and paid to the Town by the applicant prior to the next meeting with the Planning Board. The fee shall be deposited in a Review Escrow Account designated for that application. If the costs of application review by the Town Engineer and/or other consulting services exceed the amount of the Review Escrow Account, the applicant shall pay an additional fee to the Town that shall be recommended by the Town Engineer or consultant and approved by the Town Manager based upon the status of the application. Any balance in the account remaining after a final decision on the application by the Planning Board and satisfaction of any approval conditions shall be returned to the applicant unless there is an appeal or other legal action pending with respect to the Planning Board's approval. All interest from the Review Escrow Account shall accrue to the account and shall be applied toward the Town's cost in reviewing the application.

(d) Duration of Time. Unless otherwise specified, number of days shall be calculated as calendar days.

Sec. 16-2-2. Pre-Application Process. Prior to submitting an application for subdivision review, the applicant shall meet with the Planning Board at a workshop at least once to discuss the proposal generally, acquaint the Planning Board with the nature of the proposal and the location, topography and other attributes of its site, review potential submission waivers and obtain preliminary classification of the proposal as either a minor or major subdivision. The Planner shall arrange for public notice of the meeting in accordance with Sec. 16-2-1(b) of this Ordinance.

Sec. 16-2-3. Review and Approval of Minor Subdivisions

(a) Procedures.

1. Formal Submission. The subdivision applicant or an agent duly authorized in writing, shall submit to the Planner a subdivision application for consideration by the Planning Board together with the fee therefore as prescribed by the Town Council, and fourteen (14) complete copies of the proposed subdivision plans and materials. All plans and materials shall be submitted at least eighteen (18) days prior to the Planning Board's next scheduled meeting. Prior to the first meeting with the Planning Board, the applicant

shall also establish a Review Escrow Account under the terms in Sec. 16-2-1(c) of this Ordinance.

2. Preliminary Completeness. Within thirty (30) days of the receipt of a subdivision application and accompanying materials, the Planner, in consultation with the Planning Board Chair, shall make a preliminary determination as to completeness. If the application is preliminarily determined to be incomplete, the Planner shall so notify the applicant in writing and shall list in the written determination the materials that must be submitted in order to make the application complete. If an applicant fails to submit a complete application within four (4) months of the date of the Planner's preliminary written determination, the application shall be deemed withdrawn. When the Planner makes the preliminary determination that an application is complete, the application shall be scheduled for consideration at the next available Planning Board meeting. Once scheduled, the Planner shall promptly notify the applicant of the time and place of such meeting. No action taken by the Planner, either alone or in consultation with the Planning Board Chair, with respect to reviewing a subdivision application, shall result in an application being deemed pending for the purposes of Title 1 M.R.S.A. Sec. 302. The Planner, either alone or in consultation with the Planning Board Chair, shall have no authority to review the substance of a subdivision application to determine whether it complies with the subdivision review criteria.
3. Public Notice. The Planner shall arrange for public notice of the meeting in accordance with Sec. 16-2-1 (b) of this Ordinance.
4. Planning Board Completeness. At its first meeting for consideration of an application for approval of a subdivision, the Planning Board shall determine whether the application is complete or incomplete. Within seven (7) days of the first regular meeting, the Planning Board shall provide to the applicant a dated letter acknowledging receipt of the application and the Planning Board's determination as to completeness. If the application is determined to be incomplete, the Planning Board shall list in its written determination the materials that must be submitted in order to make the application complete. If an applicant fails to submit a complete application within four (4) months of the Planning Board letter or within four (4) months of the written determination of the Planner, the application shall be deemed withdrawn, unless said time limitation is otherwise extended by the Planning Board for good cause. When the application is deemed complete, the Planning Board shall begin review of the proposed subdivision.
5. Site Walk. One or more site walks may be scheduled by the Planning Board. The applicant shall provide temporary markers of key subdivision elements, such as but not limited to road centerlines and wetland boundaries, on the site prior to the site walk at the request of the Planning Board.
6. Public Hearing. The Planning Board shall hold a public hearing on a minor subdivision application within thirty (30) days of the date that the application is determined to be complete. Public notice shall be provided in accordance with Section 16-2-1(b) of this Ordinance.

The Planning Board shall conduct the hearing as to assure full, but not repetitive, public participation. The applicant shall be prepared to respond fully to questioning by the public and the Planning Board. The Planning Board may, upon its own motion, extend the hearing once for a period not exceeding thirty (30) days and to a date that shall be announced.

7. Planning Board Decision. The Planning Board shall approve, or approve with conditions, or disapprove the Subdivision Plan: (i) within sixty (60) days from the date of the date that the application is determined to be complete, or (ii) within such other time that may be mutually agreed upon by both the Planning Board and the applicant.

(b) Submission Requirements. Minor Subdivision Plan submissions shall conform to the standards and requirements contained in Appendix A of this Ordinance.

Sec. 16-2-4. Review and Approval of Major Subdivision Plans.

(a) Preliminary Plan Procedures.

1. Formal Submission. The subdivision applicant, or an agent duly authorized in writing, shall submit to the Planner a subdivision application for consideration by the Planning Board together with the fee therefore as prescribed by the Town Council, and fourteen (14) complete copies of the proposed preliminary subdivision plans and materials. All plans and materials shall be submitted at least eighteen (18) calendar days prior to the Planning Board's next scheduled meeting. Prior to the first meeting with the Planning Board, the applicant shall also establish a Review Escrow Account under the terms in Sec. 16-2-1(c) of this Ordinance.
2. Preliminary Completeness. Within thirty (30) days of the receipt of a preliminary subdivision application and accompanying materials, the Planner, in consultation with the Planning Board Chair, shall make a preliminary determination as to completeness. If the application is preliminarily determined to be incomplete, the Planner shall so notify the applicant in writing and shall list in the written determination the materials that must be submitted in order to make the application complete. If an applicant fails to submit a complete application within four (4) months of the date of the Planner's preliminary determination, the application shall be deemed withdrawn. When the Planner makes the preliminary determination that an application is complete, the application shall be scheduled for consideration at the next available Planning Board Meeting. Once scheduled, the Planner shall promptly notify the applicant of the time and place of such meeting. No action taken by the Planner, either alone or in consultation with the Planning Board Chair, with respect to reviewing a subdivision application, shall result in an application being deemed pending for the purposes of Title 1 M.R.S.A. Section 302. The Planner, either alone or in consultation with the Planning Board Chair, shall have no authority to review the substance of a subdivision application to determine whether it complies with the subdivision review criteria.
3. Public Notice. The Planner shall arrange for public notice of the meeting in accordance with Sec. 16-2-1(b) of this Ordinance.

4. Planning Board Completeness. At its first meeting for consideration of an application for preliminary approval of a subdivision, the Planning Board shall determine whether the application is complete or incomplete. Within seven (7) days of the first regular meeting, the Planning Board shall provide to the applicant a dated letter acknowledging receipt of the application and the Planning Board's determination of completeness. If the application is determined to be incomplete, the Planning Board shall list in its written determination the materials that must be submitted in order to make the application complete. If an applicant fails to submit a complete application within four (4) months of the Planning Board letter or within four (4) months of the written determination of the Planner, the application shall be deemed withdrawn unless said time limitation is otherwise extended by the Planning Board for good cause. When the application is deemed complete, the Planning Board shall begin review of the proposed subdivision.
5. Site Walk. One or more site walks may be scheduled by the Planning Board. The applicant shall provide temporary markers of key subdivision elements, such as but not limited to road centerlines and wetland boundaries, on the site prior to the site walk at the request of the Planning Board.
6. Public Hearing. The Planning Board shall hold a public hearing on a major subdivision application within thirty (30) days of the date that the preliminary subdivision application is determined to be complete. Public notice shall be provided in accordance with Sec. 16-2-1(b) of this Ordinance.

The Planning Board shall conduct the hearing as to assure full, but not repetitive, public participation. The applicant shall be prepared to respond fully to questioning by the public and the Planning Board. The Planning Board may, upon its own motion, extend the hearing once for a period not exceeding thirty (30) days and to a date that shall be announced.

7. Planning Board Decision. The Planning Board shall approve, or approve with conditions, or disapprove the Preliminary Plan: (i) within thirty (30) days after the date of the public hearing, or (ii) within such other time that may be mutually agreed upon by both the Planning Board and the applicant. Preliminary Plan approval shall not constitute approval of the Final Plan, but rather shall be deemed an expression of approval of the approach submitted on the Preliminary Plan as a guide to preparation of the Final Plan.

(b) Preliminary Plan Submission Requirements.

Preliminary Plan submissions shall conform to the standards and requirements contained in Appendix B of this Ordinance.

(c) Final Plan Procedures.

1. Formal Submission. Within six (6) months following the Planning Board's approval or approval with conditions of an applicant's Preliminary Plan, the applicant shall file with the Planner for Planning Board consideration, a Final Plan application for the subdivision with fourteen (14) copies of the materials herein prescribed. If such

application is not filed within such period, the application shall be deemed withdrawn and shall no longer be considered a pending subdivision application, unless said time limitation is otherwise extended by the Planning Board for good cause.

2. Final Subdivision Plan Preliminary Completeness. Within thirty (30) days of the receipt of a final subdivision application and accompanying materials, the Planner in consultation with the Planning Board Chair, shall make a preliminary determination of completeness. If the application is preliminarily determined to be incomplete, the Planner shall so notify the applicant in writing and shall in the written determination the materials that must be submitted in order to make the application complete. If an applicant fails to submit a complete application within four (4) month of the date of the Planner's preliminary written determination, the application shall be deemed withdrawn. When the Planner makes the preliminary determination that an application is complete, the application shall be scheduled for consideration at the next available Planning Board meeting. Once scheduled, the Planner shall promptly notify the applicant of the time and place of such meeting. No action taken by the Planner, either alone or in consultation with the Planning Board Chair, with respect to reviewing a subdivision application, shall result in an application being deemed pending for the purposes of Title 1 M.R.S.A. Sec. 302. The Planner, either alone or in consultation with the Planning Board Chair, shall have no authority to review the substance of a subdivision application to determine whether it complies with the subdivision review criteria.
3. Public Notice. Once a Planning Board meeting is scheduled, the Planner shall also cause notice to be given per Sec. 16-2-1(b) of this Ordinance.
4. Planning Board Final Subdivision Plan Completeness. At its first meeting for consideration of an application for final approval of a subdivision, the Planning Board shall determine whether the application is complete or incomplete. Within seven (7) days of the first regular meeting, the Planning Board shall provide to the applicant a dated letter acknowledging receipt of the application and the Planning Board's determination of completeness. If the application is determined to be incomplete, the Planning Board shall list in its written determination the materials that must be submitted in order to make the application complete. If an applicant fails to submit a complete application within four (4) months of the Planning Board letter or within four (4) months of the written determination of the Planner, the application shall be deemed withdrawn and shall no longer be considered a pending subdivision application, unless said time limitations is otherwise extended by the Planning Board for good cause. When the application is deemed complete, the Planning Board shall begin review of the proposed subdivision.
5. Site walk. One or more site walks may be scheduled by the Planning Board. The applicant shall provide temporary markers of key subdivision elements, such as but not limited to road centerlines and wetland boundaries, on the site prior to the site walk at the request of the Planning Board.

6. Public Hearing. The Planning Board may schedule a public hearing on the final Subdivision plan if it considers any changes in the plan sufficient to warrant further public comment. Public notice shall be given in accordance with Section 16-2-1 (b) of this Ordinance.

If a public hearing is held, the Planning Board shall conduct the hearing as to assure full, but not repetitive, public participation. The applicant shall be prepared to respond fully to questioning by the public and the Planning Board. The Planning Board may, upon its own motion, extend the hearing once for a period not exceeding thirty (30) days and to a date which shall be announced.

7. Planning Board Decision. The Planning Board shall approve, or approve with conditions or disapprove the Final Subdivision Plan: (i) within thirty (30) days of the date of the public hearing; (ii) within sixty (60) days of the date that the application was determined to be complete if no public hearing is held; or (iii) within such other time that may be mutually agreed upon by both the Planning Board and the applicant.

(d) Final Plan Submission Requirements. Final Subdivision Plan submissions shall conform to the standards and requirements contained in Appendix B of this Ordinance.

Sec. 16-2-5. Amendments to Previously Approved Subdivision Plans

(a) Scope. Any change in an approved final subdivision plan including but not limited to lot lines, road layout, and location of structures and improvements must be reviewed and approved by the Planning Board. De minimus changes to an approved subdivision plan may be placed on the Planning Board Consent Agenda at the discretion of the Planner.

(b) De minimus Changes. De minimus changes shall not include (1) an increase in the number of lots or units, (2) a change to a public or private right-of way or easement, (3) a decrease in proposed buffering or landscaping, or (4) any issue involving a condition placed on the Subdivision approval. Prior to placement on the Consent Agenda, the applicant shall meet with the Planner to review the proposed changes and shall provide eight (8) copies of the revised recording plat to the Planner at least eighteen (18) days prior to the next regular Planning Board meeting. The decision of the Planner to not place an item on the Consent Agenda may be appealed to the Planning Board upon submission of fourteen (14) copies of the proposed change to the Planner eighteen (18) days prior to the next Planning Board meeting.

(c) Procedure. A public hearing may be held concerning a subdivision amendment as prescribed in Sec. 16-2-1(b) of this Ordinance. The Planning Board may request the submission of information included in Appendix A or B and shall review the subdivision amendment for compliance with the standards in Sec. 16-3-1 of this Ordinance. All amended plans must make specific reference to the original plan and its recording information. The Planning Board Decision shall be to approve, approve with conditions or deny the subdivision amendment.

- (d) Subdivision vacation.** Once a subdivision has been recorded, a subdivision where no lots have been sold or the entire subdivision is owned by one entity and no alteration to commence the subdivision has occurred on the site, may be vacated in its entirety by a vote of the Town Council at the request of the subdivision owner. Anything less than a complete vacation of the subdivision must be submitted to the Planning Board as an amendment. Approval by the Town Council to vacate the subdivision must be recorded in the Cumberland County Registry of Deeds.

Sec. 16-2-6. Post Approval Requirements.

- (a) Satisfaction of Planning Board Conditions of Approval.** Following the Planning Board Decision, the subdivision plans and materials shall be revised by the applicant to comply with any conditions placed on the approval by the Planning Board. Two (2) sets of revised plans shall be submitted to the Planner. The Planner, and other town staff as necessary, shall review all plans for compliance with the Planning Board conditions of approval. The Planner shall determine whether the plans have been revised to comply with the Planning Board approval. If the applicant fails to obtain confirmation from the Planner that the plans are in compliance with the conditions placed on the approval, the applicant may submit the revised subdivision plans to the Planning Board in accordance with Sec. 16-2-3(a)(1) of this Ordinance for minor subdivisions or Sec. 16-2-4(c)(1) of this Ordinance for major subdivisions.
- (b) Plan Recording.** Once the plans are determined to be in compliance with the Planning Board approval, the recording plan shall be properly signed by a majority of the Planning Board, and shall be recorded by the subdivider in the Cumberland County Registry of Deeds. If the subdivision approval includes phasing of the subdivision, the recording plan shall depict all phases of the subdivision. Any final plans not so recorded within ninety (90) days following the date of Planning Board Decision shall become null and void. The applicant may request, prior to the expiration date, that the Planning Board grant an extension due to particular circumstances of the applicant which extension shall not exceed an additional period of ninety (90) days. Once recorded, the subdivider shall provide the Planner with three (3) paper copies of the subdivision plat with the Planning Board signatures and the book and page recording information from the Registry of Deeds.
- (c) Performance Guarantee.** There shall be no sale of lots, nor building permits issued, nor site work commenced until a Performance Guarantee has been approved by and posted with the Town of Cape Elizabeth Town Manager.
1. Form. The Performance Guarantee shall be in the form of an irrevocable letter of credit or escrow account in favor of the Town. Such Performance Guarantee shall be satisfactory to the Town Manager and to the Town Attorney as to the issuer, substantive sufficiency, surety and manner of execution. All performance guarantees shall contain a provision requiring the issuer to notify the Town Manager in writing of the scheduled expiration date at least thirty (30) days and not more than ninety (90) days in advance of its scheduled expiration date. Extensions of the Performance Guarantee may be granted by the Town Manager

for up to three (3) years from the initial expiration date at the request of the applicant for good cause.

2. Amount. The Performance Guarantee amount shall be based on a detailed estimate prepared by the applicant, broken down by unit cost and quantity, and reviewed by the Town Engineer. Costs included in the estimate shall include, but not be limited to, completion of all roads, sewer, water, drainage, open space, landscaping, lighting and other required improvements shown on the approved plans. The cost estimate shall also include a contingency amount equal to ten (10) percent of the Performance Guarantee estimate. When the Performance Guarantee estimate exceeds two hundred fifty thousand (\$250,000) dollars, the contingency amount shall be calculated at a rate of five (5) percent for that portion of the Performance Guarantee estimate in excess of two-hundred fifty thousand (\$250,000) dollars.
 3. Phasing. When the Planning Board has approved phasing of a subdivision, a Performance Guarantee may be posted for one (1) or more phases. The amount, terms and conditions of the Performance Guarantee shall correspond with the phase or phases scheduled to be constructed. Construction activity shall only be located and permitted in phases for which a Performance Guarantee has been posted.
 4. Reductions and Release. All requests for reduction or release of the Performance Guarantee shall be submitted in writing to the Town Manager. Reduction requests should only be submitted after significant construction has been accomplished. Prior to approving a reduction or release of a Performance Guarantee, the Town Manager shall request a report from the Town Engineer confirming the quality and value of the construction completed. Any reduction or release shall preserve the Town's ability to require or complete construction that is consistent with the approved plans and the Town's construction standards and/or restore and stabilize the site if construction will not be continued. There shall be no final release of any Performance Guarantee until the record drawings have been received and approved by the Town Engineer.
- (d) Inspection Fee.** In addition to the Performance Guarantee, the applicant shall pay an inspection fee. When the Performance Guarantee equals five hundred thousand dollars (\$500,000) or less, the inspection fee amount shall be five percent (5%) of the amount of the total performance guarantee, except that the minimum inspection fee amount shall be one-thousand five hundred dollars (\$1,500). When the Performance Guarantee exceeds five hundred thousand dollars (\$500,000), the inspection fee amount shall be two and one-half percent (2.5%) of the cost of the total Performance Guarantee. The fee shall be payable to the Town of Cape Elizabeth. The inspection fee shall be held by the Town to defray the Town's cost for inspection by the Town Engineer and Town staff. Any funds not disbursed for this purpose shall be returned to the applicant upon release of the Performance Guarantee. If the costs for inspection exceed the amount of the inspection fee, the applicant shall pay an additional fee to the Town, which shall be recommended

by the Town Engineer and approved by the Town Manager based on the status of the development.

- (e) **Record drawings.** Upon completion of construction, the subdivider or, when a private road is built, the owner shall present to the Town one (1) set of reproducible mylar, one (1) hard copy, and digital files in a format used by the project engineer during project design or other format approved by the Public Works Director suitable for import into the Town Geographic Information System (GIS). The record drawings shall be based on the field logs of the construction monitor and of a quality acceptable to the Town. The record drawings shall include an engineer's seal, distances, angles and bearings for complete and accurate determinations of locations on the ground, right-of-way monuments and as set, as-built profiles of the centerlines of traveled ways, ledge elevations encountered during construction and information on the locations, size, materials and elevations of storm drains, sanitary sewers and other underground utility lines, including but not limited to water, electric, telephone, natural gas, cable television.

Sec. 16-2-7. Construction Administration

- (a) **Commencement of Construction.** At least ten (10) days prior to commencing construction of required improvements, the subdivider shall request a pre-construction meeting with the Town Manager. At the meeting, the subdivider shall submit plans for construction of the subdivision and notify the Town Manager when construction of such improvements will commence. The subdivider is also responsible for communicating ongoing progress of construction so that the Town can cause inspections and so that requirements shall be met during construction and to assure satisfactory completion of all improvements and utilities required by the Planning Board. [Revised eff. 11/11/83; Revised eff. 6/13/90]
- (b) **Notice of Inspection.** To assure proper inspection of roads and other required improvements, the Town Engineer should be given not less than twenty-four (24) hour notice by the subdivider for inspections required at the following construction stages: (1) before backfilling of any surface water, sanitary sewer, domestic water or other underground lines or improvements, (2) at completion of road subgrades and after installation of gravel surface, (3) at the commencement of paving, loaming, or other final surface preparation, and (4) upon final completion.
- (c) **Inspection of Required Improvements.** All required subdivision improvements for which a Performance Guarantee are required shall be constructed under the observation of a qualified construction monitor. The qualifications of the construction monitor shall be subject to the review and approval of the Town. Construction monitoring costs shall be borne by the subdivider. The construction monitor shall be on the site during all periods of time when significant construction is taking place. Significant construction shall include (1) embankments, (2) bedding and backfilling of all underground utilities including water lines, unless the installation is supervised by the utility company, (3) installation of storm drainage and associated structures, (4) installation of sanitary

sewers and associated structures, (5) roadway subbase material, (6) roadway base material, (7) paving, (8) compaction testing, and (9) sewer and manhole testing. The duties of the construction monitor shall also include (1) knowledge of product reports and material submittals, (2) maintenance of a diary of construction progress, and (3) implementation of remedial measures.

- (d) Authority of Town Engineer.** The Town Engineer shall have access to the site at all times to review the progress of the work and shall have the authority to review the field logs maintained by the construction monitor. Any deficiencies noted by the Town Engineer shall be brought to the attention of the construction monitor who shall see that remedial measures are taken.

If the Town Engineer finds upon inspection of required improvements, including an inspection to be done by the Town Engineer before expiration of the Performance Guarantee, that any of such improvements are not constructed in accordance with plans and specifications filed by the subdivider, or that in the Town Engineer's judgment the applicant will be unable to complete the required improvement within the period specified in the Performance Guarantee, the Town Engineer shall then so notify the subdivider and the Town Manager, who shall take all necessary steps to preserve the rights of the Town under the Performance Guarantee, including authorization to the Town Engineer to stop the construction of said improvements.

- (e) Field Changes.** If at any time before or during the construction of the required improvements the subdivider demonstrates to the satisfaction of the Town Engineer that unforeseen conditions make it desirable to modify the design of such improvements, the Town Engineer may, in consultation with the Public Works Director and Planner, authorize modifications provided that they are within the spirit and intent of the Planning Board approval and do not constitute waiver or substantial alteration of the function of any improvements required by the Planning Board. The Town Engineer shall issue any authorization under this section in writing, and shall transmit a copy of such authorization to the Planner and Planning Board.
- (f) Record drawings.** Upon completion of construction, the subdivider shall present to the Town one (1) set of reproducible mylar, one (1) hard copy, and one (1) electronic file of record drawings indicating facilities as constructed. The record drawings shall be based on the field logs of the construction monitor and of a quality acceptable to the Town. The record drawings shall include an engineer's seal, distances, angles and bearings for complete and accurate determinations of locations on the ground, right-of-way monuments and as set, as-built profiles of the centerlines of traveled ways, ledge elevations encountered during construction and information on the locations, size, materials and elevations of storm drains, sanitary sewers and other underground utility lines, including but not limited to water, electric, telephone, natural gas, cable television.
- (g) Completion and Acceptance.** Upon completion of the subdivision infrastructure, the subdivider shall request that the Town Council accept proposed public improvements. The request shall include confirmation from the Town Manager that the improvements have been constructed consistent with the approved plans and town construction standards and that any applicable deeds have been submitted in a form acceptable to the

Town Attorney and signed by the subdivider. The applicant shall be required to maintain all improvements and to provide for snow removal on roads and sidewalks, until their acceptance by the Town or the assumption of those responsibilities under such other approved arrangements. Any applicable Storm water Maintenance Plan shall also be recorded in the Cumberland County Registry of Deeds.

Article III. Standards

Sec. 16-3-1. Subdivision Review Standards. A subdivision shall meet all of the following standards of review, as determined by the Planning Board.

(a) Pollution

The proposed subdivision will not result in undue water pollution. Factors to consider include:

1. The elevation of the land above sea level and its relation to the floodplains.
2. The nature of soils and subsoils and their ability to adequately support waste disposal.
3. The slope of the land and its effect on effluents.
4. The availability of streams for disposal of effluents.
5. The applicable state and local health and water resource rules and regulations.

(b) Sufficient Potable Water

The proposed subdivision has sufficient water available for the reasonably foreseeable needs of the subdivision. If a public water supply will be used, the proposed subdivision will not cause an unreasonable burden on the existing public water supply.

(c) Erosion

The proposed subdivision will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.

(d) Traffic

1. Road congestion and safety. The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed, and if the proposed subdivision requires driveways or entrances onto a state or state aid highway located outside the urban compact area of an urban compact municipality as defined by Title 23, M.R.S.A. Section 745, the Department of Transportation has provided documentation indicating that the driveways or entrances conform to Title 23, M.R.S.A Section 704 and any rules adopted under that section.
2. Comprehensive Plan. The proposed subdivision road(s) shall conform to the Comprehensive Plan as adopted in whole or in part by the Town Council.

3. Connectivity. The Planning Board may require provision for the projection of roads or for access to adjoining property, whether subdivided or not. The Planning Board shall require that access from the subdivision to previously existing or proposed public ways include two means of such vehicular access, as described in Sec. 16-3-2(5) of this Ordinance.
4. Safety. All roads within a subdivision and roads providing access to a subdivision shall be designed so that they will provide safe vehicular and pedestrian travel and traffic patterns.
5. Through traffic. The Planning Board may require that local roads be laid out so that their use by through traffic will be discouraged.
6. Topography. Roads in the proposed subdivision shall be laid out in an attractive manner, in order to enhance the livability and amenity of the subdivision. Insofar as possible, roads shall conform to existing topography, and high cuts and fills shall be avoided.
7. Block Length. Block lengths shall not exceed one thousand (1,000) feet except where a greater length suits the topography or character of the subdivision and does not result in an awkward road pattern or detrimental effect to adjacent property.
8. Lot Access. Each property shall be provided with vehicular access to each lot by an abutting public or private road. A private road shall be protected by a permanent easement which shall conform to the Road Classification Standards Table and which shall be shown on the plan.
9. Sidewalks/pedestrian connections. The Planning Board may require sidewalks and/or curbing on either or both sides of any road, where they are or may be necessary for maintenance and/or public safety, as determined by the Planning Board.

Provision of pedestrian easements or other types of pedestrian accessways not less than ten (10) feet wide may be recommended to the applicant, where a pedestrian accessway would add to the Town's Greenbelt System or where the Planning Board deems it important for pedestrian enjoyment or to provide access to but not limited to schools, playgrounds, shopping centers, recreation areas, open space, trails, shore frontage, and other facilities. Where feasible, the easements shall connect to existing and proposed recreation trails.

10. Road Name. Road names shall not be used which will duplicate or may be confused with the names of existing roads. Road names shall be subject to the approval of the Planning Board and be in compliance with the Town of Cape Elizabeth Addressing Ordinance, Chapter 22, as determined by the Police Chief.

11. Road Construction Standards. Proposed roads are designed in compliance with the Road Construction and Design Standards, Sec. 16-3-2.

(e) Sewage Disposal

The proposed subdivision will provide for adequate sewage disposal and will not cause an unreasonable burden on municipal services if they are utilized. All systems proposed for the disposal of sewage for developments regulated by this Ordinance shall be in compliance with the provisions of the Town of Cape Elizabeth Sewer Ordinance, Chapter 15.

(f) Solid Waste Disposal

The proposed subdivision will provide for adequate disposal of solid waste. The proposed subdivision will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be utilized.

(g) Aesthetic, cultural and natural values

The proposed subdivision will not have an undue adverse effect on scenic or natural areas, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.

1. Scenic. Consideration shall be given by the applicant and the Planning Board to the impact of the proposed development on scenic vistas and view corridors to and from significant natural features, historic sites, and important topographic features as identified in the Town's Comprehensive Plan. The Planning Board may consider the impact of other design features such as building bulk, architectural style, building placement and landscaping to encourage visual harmony.
2. Wildlife. The applicant shall make adequate provision for the protection of wildlife habitat and fisheries areas, which may include but are not limited to maintenance of wildlife travel lanes, and the preservation and buffering of wildlife habitat areas from proposed development activities.
3. Natural features. The applicant, whenever practical, shall be required to preserve natural features such as water courses or bodies, existing trees of ten (10) inches or more in diameter (base height), open space, scenic points, historic spots, and unusual or striking topographic features which, if preserved, would add to the attractiveness of the subdivision.
4. Farmland. All farmland within the proposed subdivision shall be identified on maps submitted as part of the application.

(h) Conformity with local ordinances

1. Comprehensive Plan. The proposed subdivision is consistent with applicable provisions of the Comprehensive Plan.
2. Zoning Ordinance. The area and width of lots shall conform to the requirements of the Zoning Ordinance. Side lot lines shall be substantially at right angles or radial to road lines.
3. Multiplex Housing. Multiplex housing and cluster developments shall be so designed, sited and laid out as to minimize disturbance of existing topography and ground cover, provide maximum usable natural or improved open space, reflect imaginative use of the site, and be compatible with any surrounding land uses and their character. The minimum lot size and density requirements for any proposed multiplex housing or cluster development shall comply with the Zoning Ordinance.
4. Addressing Ordinance. The street numbering of the individual residential dwelling units and/or lots must be clearly visible on the plans and shall be done in compliance with the Town of Cape Elizabeth Addressing Ordinance, Chapter 22. For any development with more than one set of attached or multiplex dwelling units, signs clearly identifying the house numbers in each set of dwelling units shall be required to be placed along the road leading to each set of units and shall be subject to approval of the Fire Chief and Police Chief.

(i) Financial and Technical Capability

The applicant shall demonstrate adequate technical and financial capability to complete the project as proposed. In the case where the applicant asserts that public disclosure of confidential financial information may prove detrimental to the applicant or to the success of the subdivision, the Town Manager may review the financial records of the applicant and recommend to the Planning Board that financial capability is adequate.

(j) Surface Waters

Whenever situated entirely or partially within the watershed of any pond or lake or within two hundred fifty (250) feet of any wetland, great pond or river as defined in Title 38 M.R.S.A. Chapter 3, subchapter I, article 2-B, the proposed subdivision will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water. The Planning Board may determine that the proposed subdivision will not adversely affect surface water quality if the subdivision has been designed to comply with the Shoreland Performance Overlay District.

(k) Ground Water

The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.

(l) Flood Areas

The Planning Board shall review all subdivision proposals to assure that: (1) they are designed to minimize flood damage; (2) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located, elevated, and constructed to minimize or eliminate flood damage; (3) adequate drainage is provided so as to reduce exposure to flood hazards; and (4) the proposed subdivision otherwise meets the standards of the Town of Cape Elizabeth Construction Code, Chapter 6, Floodplain Regulations.

(m) Wetlands

Any proposed alteration of wetlands shall adhere to the requirements and standards of Section 19-6-9 and Section 19-8-3 of the Zoning Ordinance.

(n) Stormwater

The proposed subdivision will provide for adequate stormwater management.

For any subdivision involving more than ten thousand (10,000) square feet of impervious surface, paving, clearing or vegetative alteration, the provisions and improvements for the control of storm water runoff shall be governed by the provisions of the Town of Cape Elizabeth Storm Water and Non-Storm Water Control Ordinance Chapter 18, Article II and Post Construction Stormwater Management Ordinance, Chapter 18, Article IV. In the case of any subdivision involving less than ten thousand (10,000) square feet of such impervious surfaces, where a subdivision is traversed by a stream, drainage way or other watercourse, or where the Planning Board with the advice of the engineer feels that surface water drainage to be created by the subdivision should be controlled for the protection of the subdivision and owners of property abutting it, there shall be provided an easement or drainage right-of way conforming substantially with the lines of such watercourse, and culverts, catch basins or other means of channeling surface water within such subdivision and over the property of owner abutting upon it of such nature, width and location as the Planning Board with the advice of the Town Engineer, deems adequate.

(o) Lake Phosphorus concentration

The long term cumulative effects of the proposed subdivision will not unreasonably increase a great pond's phosphorus concentration during the construction phase and life of the proposed subdivision. The Planning Board may consider compliance with the Great Pond Watershed Overlay District, Sec. 19-6-12, Zoning Ordinance, as demonstration of no unreasonable increase.

(p) Impact on adjoining municipality

For any proposed subdivision that crosses municipal boundaries, the proposed subdivision will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located.

(q) Land subject to Liquidation Harvesting

The proposed subdivision is not located on land where timber has been harvested in violation of rules adopted pursuant to Title 12 M.R.S.A. Section 8869, subsection 14 or the violation occurred at least five (5) years before the subdivision application has been submitted.

(r) Access to Direct Sunlight

Consideration shall be given by the applicant and the Planning Board to the sensitivity of the proposed subdivision design for the purpose of protecting and assuring access to direct sunlight. The Planning Board may, to protect and ensure access to direct sunlight for solar energy systems, prohibit, restrict, or control development through methods such as but not limited to restrictive covenants, height restrictions, and side yard and setback requirements.

(s) Buffering

Plants or other types of vegetative cover shall be preserved or placed throughout and around the perimeter of any proposed subdivision to provide for an adequate buffer, reduction of noise and lights, separation between the subdivision abutting properties, and enhancement of its appearance.

Off-road parking lots, storage areas, rubbish disposal areas, or similar improvements exposed to public roads or to residential areas shall be screened by walls, earth berms, fences, or vegetation, and shall be properly landscaped.

(t) Open Space Impact Fee

1. Purpose. In order to accommodate the expected needs of the subdivision for open space and recreational areas without diminishing the community standard of public open space, the applicant shall be required to donate land with legal public access or otherwise conserved with a public benefit or a cash contribution in lieu of actual land dedication, or a combination of the above, at the option of the Planning Board and with the advice of the Conservation Commission. When a subdivision is designed in compliance with Sec. 19-7-2, Open Space Zoning, the open space conserved shall be deemed to satisfy the Open Space Impact Fee. (Effective November 14, 2015)

2. Community Standard. Public open space shall include the inventory of open space for which there is legal public access, including:
 - i. Open space owned by the Town;
 - ii. Open space encumbered by an easement owned by the Town which allows public access;
 - iii. Open space owned by the Cape Elizabeth Land Trust; and
 - iv. Open space encumbered by an easement owned by the Cape Elizabeth Land Trust which allows public access. The Community Standard of public open space shall be defined as the total acreage of open space divided by the Town's population, as of the most recent U.S. Census.
3. Land donation. The required land donation of open space shall be calculated by multiplying the number of lots/units in the proposed subdivision by the average number of persons per household as published in the most recent U.S. Census, and then multiplying the resulting number by the Community Standard of public open space. At least twenty percent (20%) of the land donated shall be land which is not a Resource Protection Zone or buffer and has a slope not to exceed fifteen percent (15%).
4. Fee. If the resulting land dedication would be too small to be useful, or inappropriately located, the Planning Board may require the applicant to pay a fee in lieu of all or part of the required land dedication. The fee shall be calculated by multiplying the amount of acreage which otherwise would have been required to be donated with the proposed subdivision (rounded to the nearest one-hundredth of an acre) by the average fair market value of one acre of vacant land (rounded to the nearest dollar) determined by the Town Assessor using accepted professional valuation methods.
5. Administration. The type of land donated and land conveyance by fee ownership deed or easement shall be consistent with the land included in the town inventory. Open space impact fees shall be segregated from the Town's general revenues and expended only for the acquisition or improvement of public open space. The Town shall refund to the applicant that portion of the collected open space impact fee that is not expended within ten (10) years from the date of receipt. The Community Standard of public open space, average fair market value of one (1) acre of vacant land, and open space impact fee therein derived shall be published in the Fee Schedule approved and periodically updated by the Town Council. The Fee Schedule shall be available for inspection at the office of the Town Clerk. Any required fee shall be paid prior to the commencement of construction of the subdivision and/or issuance of a building permit.

(u) Utility Access.

All lots shall have access to water, electrical, and telephone and other utilities.

(v) Phasing.

If a subdivision is proposed for development in phases, no portion of the subdivision may be left out of the phasing plan. Sequence of construction of subdivision phases shall be determined. Each phase or, as applicable, sequence of phases shall preserve the standards of review of Sec. 16-3-1 of this Ordinance, with emphasis on emergency vehicle access. The Planning Board may impose such conditions as it deems necessary to assure the orderly development of the subdivision to assure that all necessary improvements are made for each separate phase.

Sec. 16-3-2. Road Design and Construction Standards The purposes of the subdivision road standards are to minimize traffic safety hazards and the cost of municipal maintenance and reconstruction, to ensure that roads are consistent with the Town's rural character, to promote a sense of community, and to be consistent with the Comprehensive Plan. The standards shall be flexible where an applicant can demonstrate that alternative approaches will meet the above stated purposes. Roads within a subdivision shall be classified by the Planning Board in accordance with their location and their present and contemplated usage. A road which is likely to be upgraded in classification in the foreseeable future shall be laid out to the standards of the potential future classification. The widths and grades for all subdivision roads shall be determined in accordance with the **Road Classification Standards Table**, subject to the following qualifications:

1. Where an existing road with right-of-way of less than fifty (50) feet is being extended, the new right-of-way may be the same width as the existing road upon approval by the Planning Board and Public Works Director.
2. Width of right-of-way may be forty (40) feet for a road shorter than three-hundred (300) feet which ends in a cul-de-sac, upon approval by the Planning Board and Town Engineer.
3. Notwithstanding the **Road Classification Standards Table**, dead-end roads in excess of one thousand (1,000) feet in length must comply with Sec. 16-3-2 (a)(9) of this Ordinance.

A. Road Design

1. Sight Distance

a. New Subdivision Road sight distance.

(1) Measurement. Sight distance shall be measured from a height 3.5 (three and one half) feet above the traveled way, in each direction of the road to a height .5 (one-half) foot above the pavement.

(2) Standard. The road shall be designed to achieve a sight distance in the range indicated on the **Road Classification Standards Table**. The maximum sight

distance range shall not be exceeded without reasonable justification which shall be presented by the applicant.

b. Road Intersections.

(1) Measurement. The sight distance for a road entering onto a second road shall be measured from a location fifteen (15) feet behind the edge of traveled way of the side road or drive at an elevation of three and one half (3.5) feet above the finished grade surface to a point four and one quarter (4.25) feet above the pavement in the centerline of the travel lane approaching the intersection. Where unavoidable obstructions are encountered at the fifteen (15) foot setback, the location may be moved to a point no closer than ten (10) feet from the traveled way. Isolated interruptions of minimal time duration in sight distance due to obstructions, such as a single tree, shall not be included in the measurement of sight distance.

(2) Standard. The road intersection shall be designed to achieve a sight distance in the range indicated on the **Road Classification Standards Table**.

c. Single Family driveways. When the Planning Board requires that an individual driveway be shown on the subdivision plan, the sight distance measurement and standard shall meet the requirements in the **Road Classification Standards Table**.

2. Road Geometry. New subdivision roads shall be designed to comply with the **Road Classification Standards Table** and the following standards:

a. Horizontal Alignment. At all changes in alignment, road sidelines shall be connected by horizontal curves. All changes in slope shall be connected with vertical curves whose length shall be consistent with the **Road Classification Standards Table**. When the degree of curvature exceeds two (2) degrees on rural connector, collector, or arterial roads, the curves shall be super-elevated to meet the criteria established by AASHTO, most current edition.

b. Intersection Design

(1) Roadway grades approaching an intersection shall not exceed three (3) percent for a distance of fifty (50) feet from the edge of paving of the road being entered.

(2) Road intersections shall be separated at least one hundred twenty-five (125) feet whenever possible. A separation of less than one hundred twenty-five (125) feet may be acceptable when a low volume of traffic allows for safe traffic circulation.

- (3) At intersections and common boundaries of subdivisions, roads shall be continuous and in alignment with existing roads if possible. Roads shall be laid out so as to intersect as nearly as possible at right angles, and no road shall intersect any other road at less than a sixty (60) degree angle.
- c. **Traveled Way.** The traveled way shall be designed consistent with the **Road Classification Standards Table**. Every traveled way shall maintain a constant width and shall be centered in its right-of-way. The Planning Board may also shift the traveled way up to five (5) feet from the center to preserve existing mature trees or minimize wetland alterations.
- d. **Radii.** Radii of curves and lengths of tangents between curves shall be consistent with the **Road Classification Standards Table**. At a minimum, road radii shall provide adequate turning radius for a B-40 vehicle as defined by AASHTO. To measure turning radius, the full width of pavement of both lanes of traffic shall be included, exclusive of shoulder areas. Minimum turning radius shall be required from both directions of the intersecting road.
- e. **Shoulders.** The width of shoulders and surfacing shall be determined by reference to the **Road Classification Standards Table**. The road lanes shall be striped to provide a traveled way in compliance with the **Road Classification Standards Table**.
3. **Sidewalks.** Sidewalks shall be five (5) feet wide and shall be separated from the traveled way by a grassed esplanade in accordance with the **Road Classification Standards Table**. When locating the sidewalk, a one (1) foot wide buffer strip shall be preserved along the right-of-way between the back edge of the sidewalk and the right-of-way. Sidewalks shall be required on one side of the road and notwithstanding Sec. 16-3-5 of this Ordinance, shall not be waived by the Planning Board. The design of a Rural Connector shall include a sidewalk path within ten (10) feet of the outside edge of the right-of-way. The sidewalk path shall be field located to avoid significant vegetation.
4. **Curbing.**
- a. **Installation.** Curbing shall be installed at road intersections and have a radius of at least twenty-five (25) feet, unless otherwise approved by the Town Engineer. Curbing may be required to aid in slope stabilization.
- b. **Material.** Curbing shall consist of granite, extruded concrete or bituminous concrete; design and choice of materials for curbing shall be based upon the anticipated use of the road involved and shall be subject to the approval of the Town Engineer and the Public Works Director. Granite curbing specifications shall be five inch by seventeen (5 x 17) inch vertical plus or minus one (1) inch vertical as required by the Public Works Director. Granite curbing installed at intersection shall be set in concrete.

5. Drainage. All roads shall have an underground enclosed drainage system, and no surface drainage shall be conveyed or diverted across a traveled way.
6. Road Signs. Road signs shall be approved by the Public Works Director and installed in compliance with MUTCD (Manual on Uniform Traffic Control Device) standards .
7. Road Trees.
 - a. **Adjacent to Road**. Each road shall be designed to include, within the right-of-way, at least one (1) tree for every fifty (50) feet of each side of road frontage. Up to twenty (20) percent of road trees may be ornamental trees. All trees shall comply with tree species and size standards further described in Appendix C Road Tree List. Existing trees within the right-of-way which have been preserved may be counted toward this requirement if the species, size, preservation measures, and post-construction condition of the trees are approved by the Tree Warden. Where an esplanade is included in the road design, road trees required on that side of the street shall be planted in the esplanade. The esplanade shall be filled with soil, such as common borrow, suitable for growing trees. Where the esplanade provides insufficient soil volume to support a road tree, structural soils may be used underneath the sidewalk to expand the tree growth area. See also Appendix C, Road Tree List.
 - b. **Cul-de-sac**. Landscaping including trees and other plant materials shall be required in the center island of a cul-de-sac.
8. Dead-End Roads.
 - a. **Length**. Dead-end roads shall not be longer than two thousand (2,000) feet in length and shall not serve more than twenty (20) dwelling units. The maximum length, the maximum number of dwelling units and the mandatory requirements of dead-end roads shall not be waived by the Planning Board, notwithstanding the waiver provision in Sec. 16-3-5 of this Ordinance.
 - b. **Minimum Requirements**. Any dead-end road in excess of one thousand (1,000) feet in length shall meet mandatory requirements for the entire length of the dead-end road. Mandatory requirements shall include (1) the placement of all utilities underground, (2) the dedication to the Town of a fifty (50)foot wide right-of-way, and (3) a minimum pavement width of twenty-two (22) feet.
 - c. **Added Requirements**. The Planning Board may require improvements such as (1) the placement of sidewalks to Town specifications, (2) limited clearing of the right of-way with the advice of the Town Tree Warden on the stability of adjacent tree growth, (3) the provision of an emergency access lane with a

minimum width of eighteen (18) feet and (4) a minimum esplanade width of six (6) feet for divided entrances.

- d. Measurement.** A dead-end road shall be measured from the end of the existing or proposed dead-end road to the closest intersecting through road. The measurement shall include proposed road(s) and existing road(s), public or private, whether within or beyond the limits of the proposed subdivision. The length of the road shall be measured from the center line of the closest through road, along the center line of the dead-end road to the end of pavement or traveled way. Divided entrances shall be allowed only if they provide direct access to arterial roads as classified by the Town.
- e. Termination.** All dead-end roads shall end in a cul-de-sac or a T-shaped turnaround and be designed according to the dimensions shown on Appendix D. All cul-de-sacs shall be so designed that water will drain from all portions into a storm water drainage system. The interior of all cul-de-sacs shall be neat and orderly, and shall either be left in its natural condition or be graded, loamed and seeded. Granite monuments shall be installed by the developer at the intersection of each side of the road with the cul-de-sac and at the radius point of the cul-de-sac, as shown in the cul-de-sac diagrams.

A T or L-shaped turnaround may be used and placed on the right side of the road. All T-shaped turnarounds, whether temporary or permanent, shall be paved. No parking is allowed in a turnaround. See also Appendix D, Turnaround Design.

- 9. Private Road. The first fifty (50) feet of a private road from the edge of the road shall be paved. A private road shall be constructed in accordance with the right-of-way width, gravel base, traveled way width and monumentation of a local road. The Planning Board may require that a road be constructed to public road standards; further the Planning Board shall require dedication of the roads as public rights-of-way if there is potential for future development that could be accessed through the proposed subdivision.
- 10. Monuments. A four (4) inch square granite monument shall be set at each point of curvature and angle point on both sides of every road and at every property line intersection. A surveyor's pin shall be set at each property line corner. Except with the permission of Public Works Director, all monumentation shall set flush with existing grade. At road intersections and at locations where monuments on one road line would fall within two hundred (200) feet of each other, the Public Works Director may reduce this requirement provided that the reduced monumentation is adequate for road line surveys. (Revised eff. 12/10/03)

B. Road Construction

1. Clearing

- a. Prior to site alteration, a land surveyor registered in the State of Maine shall mark the layout of the road and verify for the Town Engineer that the layout is in conformance with the approved plans.
- b. The construction area shall be selectively cleared of all trees, brush and vegetation only as necessary for construction of the roadway, shoulder, utilities and any drainage ways as approved by the Planning Board. Clearing provisions shall be accomplished in accordance with the most recent revision of the Standard Specifications of the Maine Department of Transportation, Section 201.
- c. Limits of clearing shall be marked in the field and may be inspected by the Town Engineer prior to further site preparation. In a Rural Connector, a ten (10) foot wide strip shall be preserved at the edge of the right-of-way, where a sidewalk path may be placed. The ten (10) foot wide strip shall be retained in a natural state and serve as a buffer, although trimming may be allowed to preserve scenic views.

2. Grading to Subgrade

The roadway shall be brought to subgrade through the process of excavation and/or placement of fill. Such earthwork shall be accomplished in compliance with the technical provisions of Section 203 of said MDOT Specifications. Blasted ledge, which is, less than fourteen (14) inches in any dimension, may be used as fill up to a level one foot and one-half (1.5) feet below subgrade, and shall be mixed with sufficient finer material to make a firm, stable embankment. Revised eff. 12/10/03)

3. Base Gravel for Roadways & Sidewalks

- a. **Base Course.** The gravel base course shall be a minimum of one and one-half (1.5) feet in depth. When subgrade materials are marginal, the Town Engineer may require additional base gravel. The lower one (1) foot of material shall conform to the requirement of Section 703.06 (b). Types D or E of the said MDOT Specifications, except that no particle of rock shall exceed three (3) inches as determined by a three (3) inch square mesh sieve.
- b. **Upper Course.** The upper six (6) inches of material shall conform to the requirements of Section 703.06 (a). Types A and B of said MDOT Specifications except that maximum particle size for Type B shall be three (3) inches.
- c. **Compaction.** The base gravel shall be placed and compacted in accordance with technical requirements of Section 304 of said MDOT Specifications. Initial compaction tests shall be taken at a minimum interval of every fifty (50) linear feet along the roadway for each lift of material placed, and then compaction tests

at a greater separation if initial tests pass. Retesting of any failed areas must be conducted after remedial action has been accomplished. Additional compaction tests may be required by the Public Works Director.

- d. Sidewalk.** Gravel for sidewalk base shall be eight (8) inches in depth and shall meet the requirements of Section 703.06 (a) of said MDOT specifications, Types A,B, or D, placed in one lift compacted to ninety-five (95) percent of optimum density.
- e. Esplanade.** The base of the esplanade located between the road and the sidewalk shall not be filled with gravel. The underlying material under the loam layer shall be common borrow or a similar material conducive to tree growth. The maximum grade of the esplanade cross-slope shall be two (2) percent.

4. Paving.

- a. HMA.** Paving shall be of Hot Mix Asphalt (HMA) meeting the requirements of Section 401 and 403 of said MDOT Specifications. Placement of HMA shall conform to MDOT Specifications (Section 401). Sidewalk HMA shall be placed in two (2) one and one quarter (1.25) inch lifts using 9.5 mm mix. HMA thickness shall be as follows:

	Base Course 19 mm Mix unless otherwise noted	Surface Course 12.5 mm Mix, except local roads which shall be 9.5 mm	Surface Course 9.5 mm fine Mix	Total
Arterial	2.5 inches	1.5 inches"	--	4 inches
Collector	2.5 inches	1.5 inches	--	4 inches
Rural Connector	2.5 inches	1.5 inches	--	4 inches
Feeder	2.5 inches	1.5 inches	--	4 inches
Local Roads	2.5 inches of 19 mm	1.5 inches	--	4 inches
Sidewalks	--	--	2.5 inches	2.5 inches

- b. Base Course.** The HMA base course shall be 19 mm mix for all classes of roads, except local roads and sidewalks which shall be 9.5 mm mix as defined in Section 703.09 of said MDOT Specifications. Sidewalk paving shall be 9.5 mm (fine) mix.
- c. Placement.** Placement of all HMA shall be in compliance with the technical requirements of Section 401 of said MDOT Specifications.
- d. Driveways.** Driveway entrances shall include a paved apron starting at the edge of road pavement and extending four (4) feet toward the property being served.

In locations where driveways are coincident with sidewalks, the paved apron shall extend from the edge of the road pavement to four (4) feet beyond the back of the sidewalk. Driveway aprons shall meet the criteria for local road paving.

- e. **Curb Platform.** Where bituminous or extruded concrete curbing is to be placed, the paving shall extend one (1) foot beyond the back of curb to serve as a curb platform.
5. **Curbing.** Curbing shall be placed in accordance with Section 609 of said MDOT Specifications. Bituminous concrete curbing shall meet the requirements of Section 712.36 of said MDOT Specifications. Extruded concrete curbing shall meet the requirements of Section 712.03 of said MDOT specifications. The curb cross section shall be of the low profile berm curb type and shall be placed on top of the HMA base course.
6. **Stone Fill, Riprap, Stone Ditch Protection.** When required for erosion control, stone fill, riprap and stone ditch protection shall be placed in accordance with Section 610 of said MDOT Specifications.
7. **Sodding - Erosion Control Mesh.** Where required to prevent erosion and when indicated on the plans, sod shall be placed in accordance with the technical requirements of Section 616 of said MDOT Specifications. When required to prevent erosion and where indicated on the plans, erosion control mesh shall be placed in accordance with the technical requirements of Section 613 of said MDOT Specifications.
8. **Seeding.** All exposed slopes and areas not to be paved shall be seeded in accordance with the technical requirements of Section 618 of said MDOT Specifications. Seeding Method 1 shall be used. Mulch shall be applied to all seeded surfaces in accordance with the technical requirements of Section 619 of said MDOT Specifications.

Road Classification Standards Table

	Right of Way	Traveled Way	Minimum Intersection Sight Distance	Width of Shoulder	Horizontal Sight Distance	Design Speed	Sidewalk	Esplanade	Center Line Radius
ARTERIAL	52'	24'	200'	5'	200-400	30-45	5' (1)	5'	300-800
COLLECTOR	50'	24'	200'	1'	200-250	30-35	5' (1)	6'	300-400

RURAL CONNECTOR	66'	24'	200'	4'	200-250	30-35	5'	7'	300-400
FEEDER	50'	24'	150'	0'	150-200	25-30	5'	7'	150-300
LOCAL	50'	22'	125'	0'	125-150	20-25	5'	8'	125-150
(1) Either sidewalk or bikeway. Width should increase for dual purpose									

See also Appendix E, Road Profiles

Sec. 16-3-3. Design of Other Improvements

A. Storm and Surface Water Drainage

1. Storm water collection and transport systems shall comply with the Town of Cape Elizabeth Stormwater and Non-Stormwater Control Ordinance, Chapter 18, Article II and the Town of Cape Elizabeth Post Construction Stormwater Management Ordinance, Chapter 18, Article IV.
2. Ditches, where permitted, on the approved plans shall have a slope of at least two (2) percent and side slopes not exceeding three to one (3:1). Where required to prevent erosion, ditches shall be riprapped, sodded, or otherwise protected.
3. Storm drain pipelines and culverts shall be installed in accordance with the technical requirements of Section 603 of said MDOT Specifications. All pipes shall be designed to withstand earth backfill plus H-20 wheel loadings. Trench backfill over drain lines within the paved way shall be compacted to ninety-five (95) percent of optimum density. Outside of paved areas backfill shall be compacted to ninety (90) percent of optimum density.
4. When required to assure a stable subbase, rigid perforated underdrain pipe shall be installed in accordance with the technical requirements of Section 605 of said MDOT Specifications. Coiled underdrain pipe will not be permitted. (Revised eff. 12/10/03)
5. Manholes and catch basins on storm drain lines shall meet the technical requirements of Section 604 of said MDOT Specifications. Shop drawings for the units desired for use shall be submitted to the Town Engineer for approval prior to placement.

B. Underground Utility Lines

1. All sanitary sewer lines and appurtenances shall be constructed in accordance with the requirements of the Town of Cape Elizabeth Sewer Ordinance, particularly Sec. 15-1-6 and 15-1-7.
2. Any road to be accepted shall be served by a water main if said road joins a road containing a water main. No water main shall be less than eight (8) inches in diameter unless the fire department and the Planning Board certify in writing that a water main less than eight (8) inches in diameter will furnish adequate water service for the road to be accepted and for any future extension of said road.
3. All underground utility mains shall be installed before the gravel surface is placed; and, if possible utility service lines to individual lots shall be installed before gravel surface is placed.
4. Backfill materials for all underground utilities shall be compacted to ninety-five (95) percent of optimum density under paved areas and to ninety (90) percent of optimum density under non-paved areas.

Sec. 16-3-4. Additional Standards

(a) **Right-of-Way.** The Planning Board with the advice of the Town Engineer may require rights-of-way wider than those set forth in the **Road Classification Standards Table**, in order to satisfy the purposes of this Ordinance.

(b) **Reserved**

(c) **Sewers .** Upon the advice of the Town Engineer, the Town Council may require an applicant to construct storm or sanitary sewers at a greater depth or of larger diameter than is required to serve the area being subdivided, when said greater depth or larger diameter is deemed necessary to provide proper service for adjacent areas.

Sec. 16-3-5. Waivers. Where the Planning Board finds that undue hardship, practical difficulties or restriction upon imaginative and otherwise desirable design may result from strict compliance with this Ordinance, it may waive one or more of the requirements of this Ordinance, in favor of a proposed alternative upon a showing that, as compared with strict compliance, such alternative (1) will not create more hazardous traffic conditions or less sanitary sewage disposal conditions than strict compliance, (2) will provide more varied and imaginative subdivision layout and design, (3) will secure substantially the standards of road design and construction required by this Chapter and the Zoning Ordinance, and (4) will not have the effect of nullifying the intent and objectives of the Comprehensive Plan or this Ordinance; provided that in granting such waiver the Planning Board may impose such conditions as they deem necessary to secure the foregoing objectives.

Sec. 16-3-6. Legal Provisions

(a) **Appeals.** All appeals from decisions of the Planning Board under this Ordinance and the Zoning Ordinance shall be taken within thirty (30) days following the date of any such

decision in accordance with the provisions of Rule 80B of the Maine Rules of Civil Procedure. This procedure shall apply whether or not the appeal involves issues requiring an interpretation of the Zoning Ordinance.

- (b) Applicability of Road Requirements.** The provisions of this Ordinance shall serve as a guide to, but shall not be binding upon, any state, county or municipal body or authority, which may lay out, alter, widen or improve any public way in accordance with the applicable statutes. This Ordinance shall not apply to any roads within the Town for which road profiles had been approved by the Town Engineer prior to March 13, 1968, which were under actual construction as of March 12, 1968 and which had been completed not later than October 14, 1968.
- (c) Amendments to the Subdivision Ordinance.** This Ordinance may be amended by the Town Council following the procedure outlined in Sec. 19-4-9 of the Zoning Ordinance.
- (d) Historical Interpretation.** This Ordinance replaces the Subdivision Ordinance as amended through 12-10-2003. Most of the prior ordinance provisions have not been substantively changed and have been brought forward into this Ordinance. When that is the case, the interpretation by the Town of the provision in the prior ordinance is carried forward to this Ordinance.

Appendix A

Minor Subdivision Submission Requirements

A. General submission parameters.

An application for a Minor Subdivision shall consist of fourteen (14) sets of plans drawn to a scale of no larger than forty (40) feet to the inch and supporting materials. The size of plan sheets submitted to the Planning Board shall be no larger than twenty-four (24) x thirty-six (36) inches, but may be smaller with the permission of the Planning Board. A digital copy of the complete application shall also be made available upon request.

B. List of Submission items.

The application for approval of a Minor Subdivision shall include all the following information. Information that must be shown on a plan is in **bold type**.

1. Right, Title or Interest. Evidence of right, title or interest in the site of the proposed subdivision.
2. Name of Subdivision/Applicant. **Proposed name of the subdivision, name and address of record owner and applicant, names of adjoining property owners, date of submission, north point, and graphic map scale.**
3. Survey. **A standard boundary survey of the site, giving complete descriptive data by bearings and distances, made and certified by a licensed land surveyor; a copy of the deed for the property to be developed, as well as copies of any easements, restrictions or covenants; a plan showing the number of the lot, dimensions of area and building envelope of each proposed lot; existing easements; building lines pertaining to the proposed subdivision and to the adjacent properties; location map, showing the relative location of the proposed project in relation to surrounding neighborhoods or areas of Town; sufficient data to determine readily the location, bearing and length of every lot line, and boundary line and to reproduce such lines upon the ground.** Where practical these should be tied to reference points previously established
4. Water Pollution evaluation.
 - a. Topography. **Contour lines at intervals of two (2) feet or at such intervals as the Planning Board may require, based on United States Geological Survey datum, referenced to mean sea level;**
 - b. Surface drainage. **Surface drainage patterns including drainage channels and watershed areas;** the slope of the land and its effect on effluents; the availability and condition of streams used for disposal of effluents; an evaluation of applicable state and local health and water resource rules and regulations.
 - c. Soils. A soils report identifying **the soils boundaries and names in the proposed development with the soils information superimposed upon the plot plan in**

accordance with the USDA Soil Conservation Service National Cooperative Soil Classification;

- d. Air. Description of any air emissions not normally included in residential construction and use activities.
5. Potable Water. Confirmation of a clean and adequate supply of water to serve the subdivision; **the location and size of any existing and proposed water mains on the property and adjacent water lines that will provide water supply for the property to be subdivided, as well as details showing connections to water systems; nearest hydrant; Where public water is not to be provided, an alternative means of a clean and adequate water supply shall be shown.**
6. Erosion. A soil erosion and sediment control plan prepared and certified by a professional geologist or professional engineer.
7. Traffic. **Locations, widths and names of existing, filed or proposed roads, cross-sections of the proposed grading for roadways, sidewalks, etc. including width, type of pavement, elevations and grades, preliminary designs of any bridges or culverts which may be required, designed to comply with the Road Design and Construction Standards, Sec. 16-3-2;** a traffic study evaluating the capacity of adjacent roads to safely accommodate the anticipated traffic generated by the proposed subdivision, including an assessment of the likelihood of cut-through traffic, efforts to provide for road connectivity, and applicability of the Maine Department of Transportation regulations.
8. Sewage Disposal. **All on site public or shared sewage facilities;** a completed HHE 200 form or other subsurface wastewater design for every lot not served by public sewer; **all designs, specifications and details for a clustered private or public sewer system.**
9. Solid Waste Disposal. Demonstration of adequate capacity for disposal of construction and solid waste to be generated by the subdivision.
10. Aesthetic, cultural and natural information. **Location of scenic, unique natural, farmland, parkland, historic, and significant wildlife habitat areas located on or adjacent to the proposed subdivision,** as well as supporting documentation.
11. Local regulations. **The boundaries and designations of zoning districts; applicable space standard and setback provisions, and evaluation of the proposed subdivision's compliance with applicable provisions such as Open Space Zoning (Sec. 19-7-2).**
12. Financial and Technical Capability. Statement of Technical and Financial Capability, including a list of the applicant's development consultants, a description of all prior development projects, and a letter of firm financial commitment from a bank or other source of financing. In the case where the applicant asserts that public disclosure of

confidential financial information may prove detrimental to the applicant or the project, the applicant may substitute a recommendation from the Town Manager that the applicant has adequate financial capability to complete the project.

13. Surface Waters. **Location of any portion of the subdivision in the Shoreland Zone; identification of the normal high water line;** assessment of how water quality will be impacted by anticipated discharge from the subdivision.
14. Ground Water. An assessment of how the proposed subdivision will impact groundwater resources.
15. Floodplain. **Location of any portion of the subdivision in the floodplain;** assessment of how construction in the floodplain will comply with the Town of Cape Elizabeth Construction Code, Chapter 6, Floodplain Ordinance.
16. Wetlands. **The boundaries of all wetlands in accordance with the Zoning Ordinance;** an assessment of how any alterations of wetlands will comply with The Town of Cape Elizabeth Zoning Ordinance, Chapter 19 wetland regulations, Sec. 19-6-9.
17. Stormwater/Phosphorus. **A surface drainage plan or stormwater management plan, with profiles and cross sections drawn by a professional engineer, registered in the State of Maine, showing preliminary design of all facilities and conveyances necessary to meet the stormwater management standards as set forth in this ordinance.** Where the subdivision includes or abuts Great Pond, an assessment of phosphorus loading amounts and impacts on Great Pond.
18. Liquidation Harvesting. **Identification of any portion of the subdivision where timber has been harvested in violation of Title 12, section 8869, subsection 14.**
19. Landscaping. **An inventory of existing vegetation to be preserved;** methods of preserving vegetation to be used during construction; **a landscaping plan including planting locations, plant types, quantities and size and time of planting; fencing location, type and material and size.**
20. Open Space. **Designation on the plan of land to be permanently protected as open space; calculation of open space provided to meet the Open Space Impact Fee (Sec. 16-3-1(t)); location of easements;** fee interest or easement deeds of open space to be conveyed to the Town or otherwise conserved;
21. Utilities. Evidence of the capacity to provide electrical and telephone facilities.
22. Phasing. **A phasing plan showing the boundaries and name of each phase.**
23. Related information. Any other data as determined by the Planning Board to ascertain compliance with this Ordinance.

Appendix B
Major Subdivision Submission Requirements
Preliminary Review

A. General submission parameters

An application for preliminary review of a Major Subdivision shall consist of fourteen (14) sets of plans drawn to a scale of no larger than forty (40) feet to the inch and supporting materials. The size of the plan sheets submitted to the Planning Board shall be no larger than twenty-four (24) x thirty-six (36) inches. A digital copy of the complete application shall also be made available upon request.

B. List of submission items

The application for preliminary approval of a major subdivision shall include all the following information. Information that must be shown on a plan is in **bold type**.

1. Right, Title or Interest. Evidence of right, title or interest in the site of the proposed subdivision.
2. Name of Subdivision/Applicant. **Proposed subdivision name; name and address of record owner and applicant; names of adjoining property owners; date of plan submission, north point and graphic map scale.**
3. Survey. **A standard boundary survey of the site giving complete descriptive data by bearings and distances, made and certified by a licensed land surveyor; a copy of the deed for the property to be developed, as well as copies of any easements, restrictions or covenants; a plan showing the number of the lot, conceptual dimensions of area and building envelope of each proposed lot sufficient to demonstrate minimum compliance with zoning requirements; existing easements; building lines pertaining to the proposed subdivision and to the adjacent properties; location map, showing the relative location of the proposed project in relation to surrounding neighborhoods or areas of Town; sufficient data to determine readily the location, bearing and length of every lot line and boundary line and to reproduce such lines upon the ground.**
4. Water Pollution Evaluation.
 - a. Topography. **Contour lines at intervals of two (2) feet or at such intervals as the Planning Board may require, based on United States Geological Survey datum and referred to mean sea level;**
 - b. Surface drainage. **Surface drainage patterns including drainage channels and watershed areas;** the slope of the land and its effect on effluents; the availability and condition of streams used for disposal of effluents; an evaluation of applicable state and local health and water resource rules and regulations.

- c. **Soils. A soils report identifying the soils boundaries and names in the proposed development with the soils information superimposed upon the plot plan in accordance with the USDA Soil Conservation Service National Cooperative Soil Classification.**
 - d. **Air.** Description of any air emissions not normally included in residential construction and use activities.
5. Potable Water. Confirmation of a clean and adequate supply of water to serve the subdivision; **the location and size of any existing or proposed water mains on the property and adjacent water lines that will provide water supply for the property to be subdivided, as well as proposed connections to water systems; nearest hydrant; where public water is not to be provided, an alternative means of a clean and adequate supply shall be shown.**
 6. Erosion. A soil erosion and sediment control plan shall be prepared and certified by a professional geologist or professional engineer.
 7. Traffic. **Location, widths and names of existing, filed and proposed roads;** a traffic study evaluating the capacity of adjacent roads to safely accommodate the anticipated traffic generated by the proposed subdivision, including an assessment of the likelihood of cut-through traffic, efforts to provide for road connectivity, and applicability of the Maine Department of Transportation Regulations.
 8. Sewage Disposal. **All on site public or shared sewage facilities;** a completed HHE 200 form or other subsurface wastewater design for every lot not served by public sewer.
 9. Solid Waste Disposal. Demonstration of adequate capacity for disposal of construction and solid waste to be generated by the subdivision.
 10. Aesthetic, cultural and natural information. **Location of scenic, unique natural, farmland, parkland, historic and significant wildlife habitat areas located on or adjacent to the proposed subdivision,** as well as supporting documentation.
 11. Local regulations. **The boundaries and designations of zoning districts; applicable space standard and setback provisions of the Zoning Ordinance, and evaluation of the proposed subdivision's compliance with applicable provisions such as Open Space Zoning (Sec. 19-7-2).**
 12. Financial and Technical Capability. Statement of Technical and Financial Capability, including a list of the applicant's development consultants, a description of all prior development projects, and a letter of firm financial commitment from a bank or other source of financing. In the case where the applicant asserts that public disclosure of confidential financial information may prove detrimental to the applicant or the project, the applicant may substitute a recommendation from the Town Manager that the applicant has adequate financial capability to complete the project.

13. Surface Waters. **Location of any portion of the subdivision in the Shoreland Zoning; identification of the normal high water line;** assessment of how water quality will be impacted by anticipated discharge from the subdivision.
14. Ground Water. As assessment of how the proposed subdivision will impact groundwater resources.
15. Floodplain. **Location of any portion of the subdivision in the floodplain;** assessment of how construction in the floodplain will comply with the Town of Cape Elizabeth Construction Code, Chapter 6, Floodplain Ordinance.
16. Wetlands. **The boundaries of all wetlands in accordance with the Zoning Ordinance;** an assessment of how any alterations of wetlands will comply with the Town of Cape Elizabeth Zoning Ordinance, Chapter 19, Sec. 19-6-9.
17. Stormwater/Phosphorus. A conceptual surface drainage plan or stormwater management plan, showing preliminary design of all facilities and conveyances necessary to meet the stormwater management standards as set forth in this Ordinance. Where the subdivision includes or abuts Great Pond, an assessment of phosphorus loading amounts and impacts on Great Pond.
18. Liquidation Harvesting. **Identification of any portion of the subdivision where timber has been harvested in violation of Title 12, section 8869, subsection 14.**
19. Landscaping. **An inventory of existing vegetation to be preserved; methods of preserving vegetation to be used during construction; a conceptual landscaping plan.**
20. Open Space. **Designation on the plan of the land to be permanently protected as open space; calculation of the open space provided to meet the Open Space Impact Fee (Sec. 16-3-1(t)); location of easements; fee interest or easement deeds of open space to be conveyed to the Town or otherwise conserved.**
21. Utilities. Evidence of the capacity to provide electrical and telephone facilities.
22. Phasing. A concept phasing plan, if the project will be phased.
23. Related Information. Any other data as determined by the Planning Board to ascertain compliance with this Ordinance.
24. Community Impact Analysis. The Planning Board may require the applicant to conduct a community impact analysis which will consist of the following demographic features.
 - a. Demographic Description. The analysis must identify the demographic market the project intends to serve, including:
 - (1) type of family;

- (2) average family size;
- (3) number and ages of children; and
- (4) anticipated time period to fill all units or lots.

Associated data, such as anticipated income levels, type of employment, and projected housing costs may also be presented to support projections associated with the above demographic description.

b. Community Impact Analysis. Utilizing the above demographic data, the applicant shall conduct analyses of the following:

- (1) Estimated impact of traffic systems, including the impact of projects trips on flow characteristics and the impact of traffic on the immediate, existing road structures;
- (2) Estimated impact on the school system;
- (3) Estimated impact on public safety providers;
- (4) Estimated impact on the public works department, including solid waste disposal;
- (5) Estimated impact on existing storm water management systems including flow and water quality;
- (6) Estimated impact on the recreation resources and provision of methods to meet proposed needs;
- (7) Estimated impact on wildlife habitat areas;
- (8) Impact on the stated goals and objectives of the Comprehensive Plan; and
- (9) Any other study deemed appropriate by the Planning Board.

Once these analyses have been completed, the applicant shall present this information and impact assessments to the Planning Board for its review and comment.

Final Review

- A. General submission parameters. Same as for Preliminary Review.
- B. List of submission items
 - 1. Preliminary Approval. All information required to be shown on the preliminary plans, with all amendments required by the Planning Board and other reviewing agencies and those suggested by the Planning Board and adopted by the applicant, and further augmented as follows:
 - 2. Survey. **Final plan showing the number of the lot, final calculations of lot area, property line dimensions and building envelope for each proposed lot.**
 - 3. Potable Water. **The preliminary plan approved by the Planning Board for water supply supplemented to include final design, details and specifications of installation and connection to existing water mains.**

4. Traffic. **The preliminary plan approved by the Planning Board for road access and traffic supplemented to include final design, details and specifications of proposed roads, driveways as needed, and connections to existing roads.**
5. Sewage Disposal. **The preliminary plan approved by the Planning Board for public or private cluster sewage system supplemented to include final design, details, and specifications of proposed sanitary waste infrastructure and connections to public sewer lines.**
6. Local regulations. **The preliminary plan approved by the Planning Board updated to reflect any changes to how the project complies with local regulations.**
7. Financial Capability. Performance guarantee estimate with detail of unit cost and quantity for the subdivision, segmented into phases if the proposed subdivision will be phased; draft performance guarantee document including issuing agent.
8. Stormwater/Erosion. **The preliminary plan approved by the Planning Board for stormwater management and erosion control supplemented to include final design, details, and specifications of the proposed stormwater infrastructure and any connections to existing stormwater facilities.**
9. Landscaping. **The preliminary plan approved by the Planning Board for landscaping supplemented to include final design, details and specifications including but not limited to a detailed planting plan showing vegetation to be preserved, preservation plan, new planting locations, planting types, quantities and size at time of planting, fencing location, type, size and materials.**
10. Open Space. The preliminary plan approved by the Planning Board for open space preservation supplemented by draft written conservation restrictions, easement deeds, survey descriptions, and any other documentation.
11. State and Federal permits. Written evidence of the issuance of all permits, licenses and approvals required for the subdivision from any federal, state or other local agency.
12. Conditional Municipal Approval. Written evidence of (i) the offer and conditional municipal approval by the Town Council of all roads, sewer lines, drainage easements, proposed public open space, recreation land, and other such common areas and facilities proposed to be dedicated to the Town; or (ii) satisfactory agreements or other documents showing the manner in which private roads, sewer lines and systems, drainage ways, open space, recreation land, and other such common areas and facilities are to be maintained. Written agreements of a dedication to a third party other than the Town must also be submitted and deemed satisfactory by the Planning Board.
13. Phasing Plan. **If the subdivision will be constructed in phases, the phasing plan shall show the entire subdivision and every part of the subdivision shall be assigned to a phase. The plan shall also identify the sequence of construction of phases and show how utilities, emergency vehicle access, turnaround space and any other element of the development that will be impacted by phasing will be accommodated for each phase.**

13. Recording Plat. A Subdivision Plat suitable for recording which includes a prominent notation that there shall be no sale of lots, nor issuance of building permits, nor site work commenced until the required performance guarantee has been approved in accordance with Sec. 16-2-6(c) of this Ordinance.

APPENDIX C Road Tree List

Introduction

The selection of tree species to plant along roadsides, sidewalks and parking lots, including in islands and esplanades, is governed by the Town's commitment to maintaining a sustainable forest canopy. Sustainability requires managing for diversity at the genus level, and to the extent possible, selecting tree species from genera that are considered less susceptible to exotic tree pathogens. The Town's goal is to work toward a forest canopy in which no more than 5% of trees are from the same genus.

Prohibited Species

At the present time, trees species from the following genera are not approved for planting: Acer (Maples), Betula (Birches), Fraxinus (Ashes), Quercus (Oaks), Populus (Aspens), and Tsuga (Hemlocks).

Priority Species

The following tree species are from monotypic genera (ie. each genus has only one species), and are thus considered highly resistant to exotic tree pests. These trees may not be appropriate for many locations, but they should receive priority consideration when site characteristics are appropriate. These tree species are recommended for planting to meet the road tree requirements, subject to final approval by the Tree Warden based on site characteristics. The list includes the scientific and common tree name, whether the tree is native to Maine, expected height at maturity, and comments when applicable. All trees must be planted with a minimum caliper of 2 inches.

Scientific Comments	Common	Native	Height	
Cercidiphyllum japonicum	Katsuratree	N	60'	
Eucommia ulmoides	Hardy Rubber Tree	N		
Ginkgo biloba	Maidenhair Tree	N	60'	Male trees only
Gymnocladus dioicus	Kentucky Coffeetree	N		
Maackia amurensis	Amur Maackia	N	40'	
Maclura pomifera	Osage Orange	N		
Ptelea trifoliata	Hoptree	N	20'	

Acceptable Species

The tree species listed below are acceptable for planting to meet the road tree requirements, subject to final approval by the Tree Warden based on site characteristics. The list includes the scientific and common tree name, whether the tree is native to Maine, expected height at

maturity, and comments when applicable. All trees must be planted with a minimum caliper of 2 inches.

Scientific	Common	Native	Height	Comments
<i>Aesculus hippocastanum</i>	Horsechestnut	N	70'	
<i>Aesculus x carnea</i>	Red Horsechestnut	N	40'	
<i>Carpinus betulus</i>	American Hornbeam	Y	30'	
<i>Carpinus caroliniana</i>	European Hornbeam	N	40'	
<i>Carya ovata</i>	Shagbark Hickory	Y	80'	
<i>Cladrastus kentuckea</i>	Yellowwood	N	60'	
<i>Corylus columnna</i>	Turkish Filbert	N	50'	
<i>Gleditsia triancanthos</i>	Honey Locust	N	40	Var. <i>inermis</i>
<i>Juglans nigra</i>	Black Walnut	N	70'	
<i>Koelreuteria paniculata</i>	Panicled Goldenraintree	N	30'	
<i>Liriodendron tulipifera</i>	Tuliptree	N	70'	
<i>Liquidambar styraciflua</i> pods	Sweetgum	N	60'	Spiny seed
<i>Magnolia</i> spp.	Magnolia	N	Various	
<i>Nyssa sylvatica</i>	Tupelo	Y	60'	
Ornamental spp.	Pears, Crabapples, Dogwoods, Cherries, tree form of Hydrangea & Hibiscus, etc.	Y/N	Various	As approved by tree Warden
<i>Ostrya virginiana</i>	Eastern Hophornbeam	Y	30'	
<i>Oxydendrum arboreum</i>	Sourwood	N	30'	
<i>Platanus x acerfolia</i>	London Plane	N	75'	
<i>Platanus occidentalis</i>	American Sycamore	Y	75'	
<i>Sorbus alnifolia</i>	Korean Mountain Ash	N	35'	

Stewartia pseudocamelia	Japanese Stewartia	N	30'	
Syringa reticulata	Japanese Tree Lilac	N	30'	
Tilia americana	American Basswood	Y	70'	Cultivars only
Tilia cordata	Littleleaf Linden	N	60'	
Tilia tomentosa	Silver Linden	N	60'	
Ulmus hybrids	Accolade, Triumph	N	50'	
Ulmus parvifolia	Chinese Elm	N	50'	
Zelkova serrata	Zelkova	N	50'	
Other species	E.g., Conifer spp.	Y/N	Various	As approved by Tree Warden

Cultivars and Hybrids

Cultivars and hybrids of the tree species listed above, unless specifically identified above, require approval of the Tree Warden.

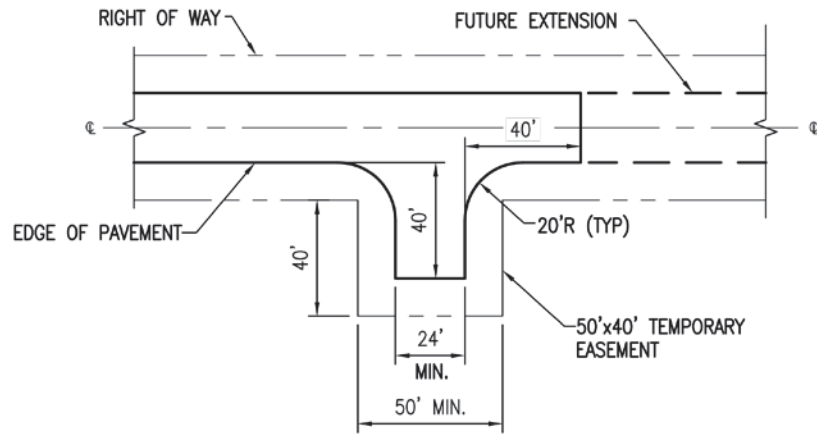
Esplanade and Islands

The key to planting sustainable trees in esplanades and islands is to ensure there is sufficient soil volume available to support the expected size of maturity for the tree species selected. Accordingly, any plan to plant trees species from the lists above in an esplanade or island must be accompanied by an analysis of available soil volume, and reference to a soil volume table or other guide showing the soil volume available is sufficient to support the tree selected.

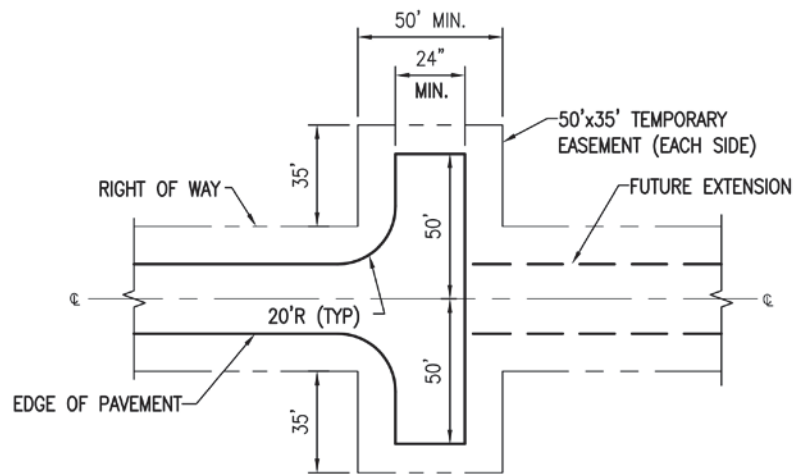
Site and Tree Characteristics

Tree species vary in their environmental needs and response to site characteristics. Just because a tree species is listed above doesn't mean it is the right tree for a particular location. Site characteristics such as moisture, presence of roadside or aerial salts, soil pH, and sun exposure must all be considered in selecting the right tree for the right location. Tree characteristics such as expected height and crown spread at maturity, fruit dropping, and presence of thorns, must also be considered for particular sites. Tree Warden approval is required to help ensure that site and tree characteristics are appropriate for a desired planting location.

Appendix D
Turnaround Designs
Page 1 of 2



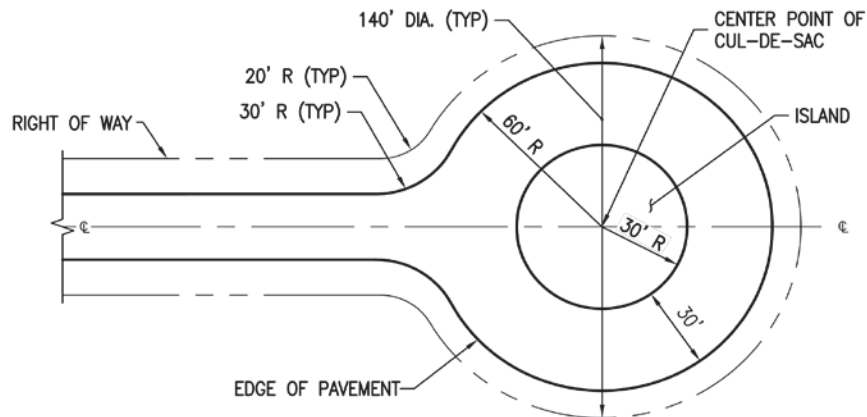
ALTERNATE #1



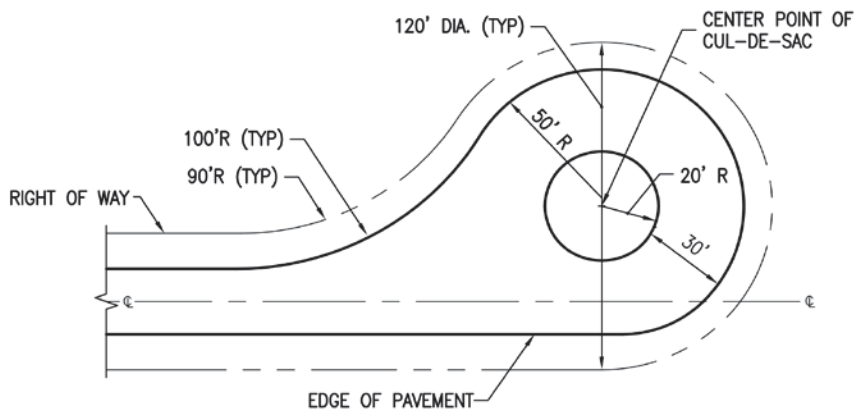
ALTERNATE #2

MINIMUM DIMENSIONS
TURN-AROUNDS
 NOT TO SCALE

Appendix D
Turnaround Designs,
Page 2 of 2

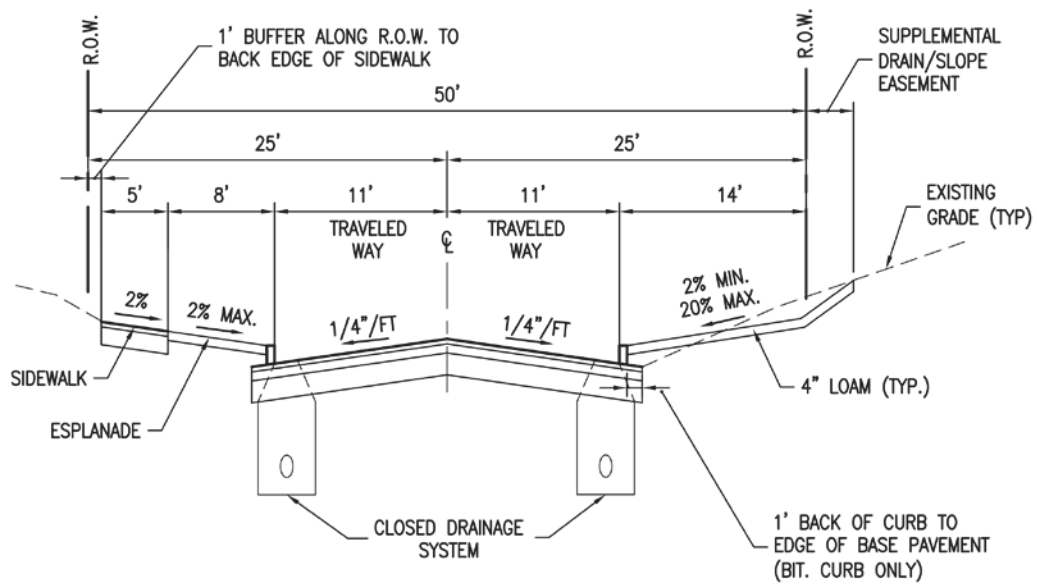


MINIMUM DIMENSIONS
CUL-DE-SAC WITH ISLAND
 NOT TO SCALE



MINIMUM DIMENSIONS
CUL-DE-SAC WITH ISLAND
 NOT TO SCALE

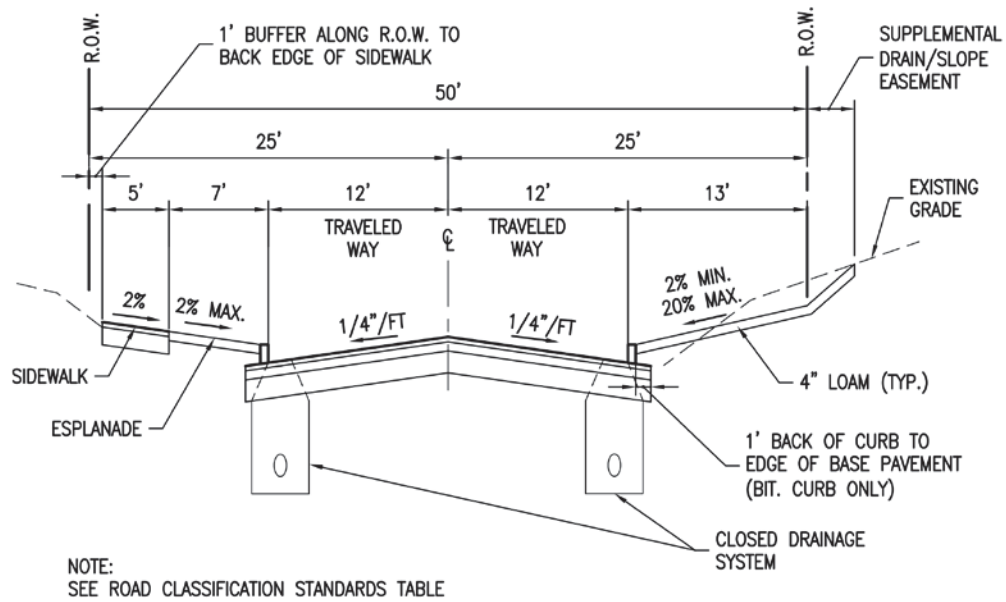
Appendix E **Road Cross Sections** **Local** **Road**



NOTE:
SEE ROAD CLASSIFICATION STANDARDS TABLE

LOCAL ROAD
NOT TO SCALE

Appendix E **Road Cross Sections** **Feeder** **Road**

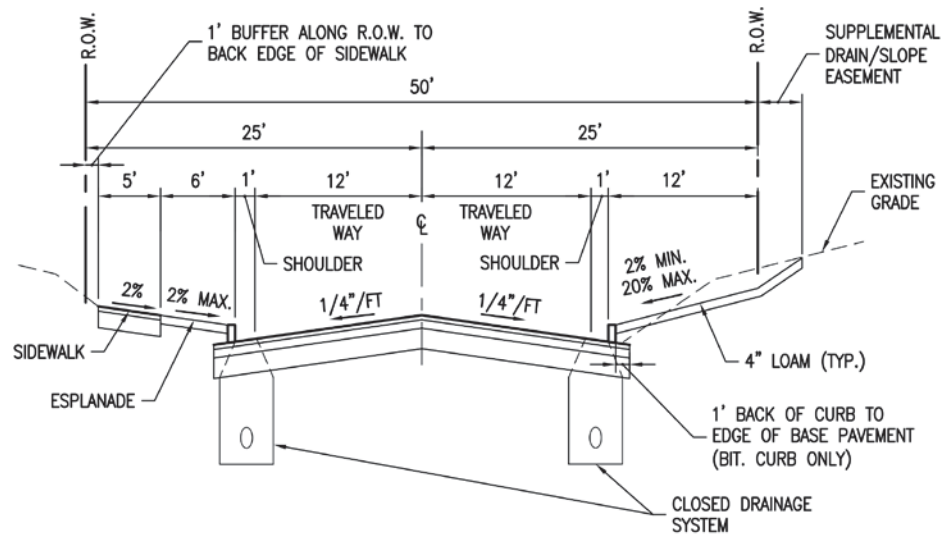


FEEDER ROAD
NOT TO SCALE

Appendix E

Road Cross Sections

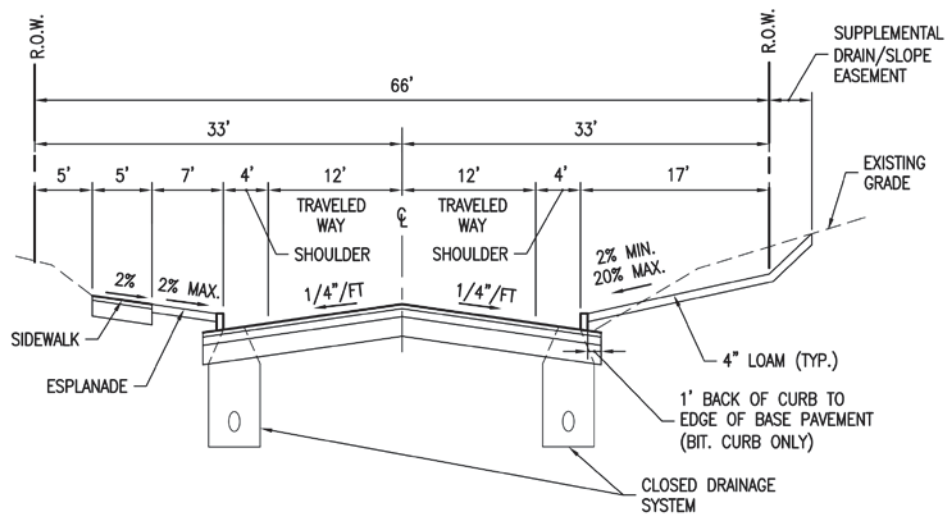
Collector Road



NOTE:
SEE ROAD CLASSIFICATION STANDARDS TABLE

COLLECTOR ROAD
NOT TO SCALE

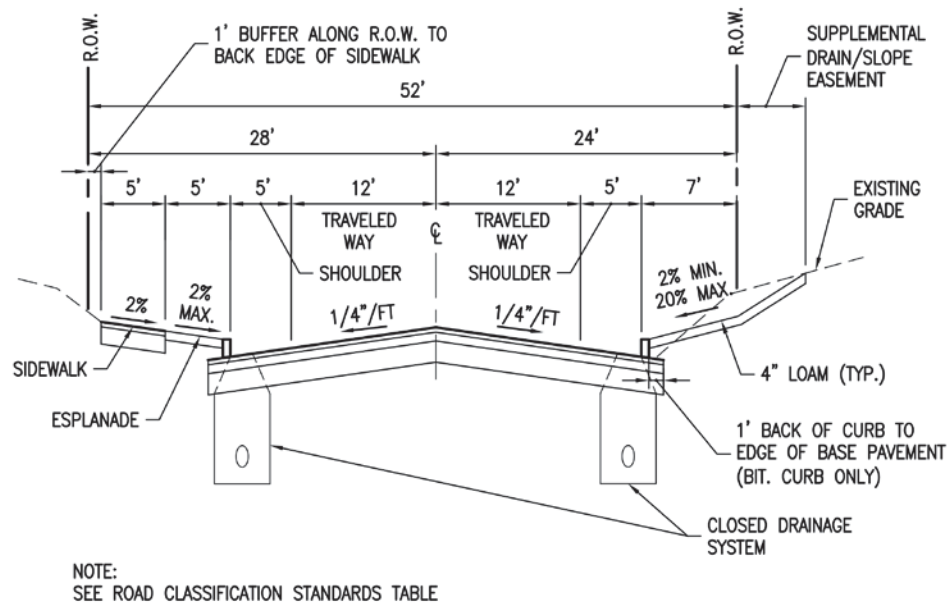
Appendix E Road Cross Sections Rural Connector



NOTE:
SEE ROAD CLASSIFICATION STANDARDS TABLE

RURAL CONNECTOR ROAD
NOT TO SCALE

Appendix E Road Cross Sections Arterial Road



ARTERIAL ROAD
NOT TO SCALE

CHAPTER 17
TOWN WAYS
(With amendments effective through 10/10/2012)

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Article I. Definitions

Sec. 17-1-1. Definitions.

(a) The words "public way" shall mean the entire width between the right-of-way boundaries of every public way, or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of traffic, except for

private roads and private ways. [Amended Eff. 1/07/09]

(b) The words "adequate sight distance" shall mean continuous and clear sight distance that meets the minimum requirements of Sec. 17-2-4(b) of this ordinance. [Amended Eff. 10/10/2012]

(c) "Permittee" shall mean a person who has obtained a permit as required by this ordinance.

Article II. Entrances to Public Roads.

[Adopted eff. 12/2/63 under R. R. 1954, C. 90-A, Sec. 3, (R.S. 1964, T. 30, Sec. 2151.

Sec. 17-2-1. Entrance Permit Required. No owner of property abutting upon any public way within the Town shall construct, cause or permit to be constructed, altered or relocated, any driveway, entrance, or approach or other improvement within the right-of-way of such road or extending from such road onto his property except in accordance with an entrance permit issued upon his application to the Director of Public Works and except for the bona fide purpose of securing access to his/her property and not for the purpose of parking or servicing vehicles within such right-of-way. Decisions of the Director of Public Works are appealable to the Zoning Board of Appeals. A permit fee established by the Town Council shall be paid for each permit. [Amended Eff. 1/11/1995, 01/07/2009 and 10/10/12]

Sec. 17-2-2. Town Held Harmless. The applicant shall hold harmless the Town of Cape Elizabeth and its duly authorized agents and employees against any action for personal injury or property damage sustained by reason of the exercise of an Entrance Permit.

Sec. 17-2-3. Application. Application shall be made by filing with the Director of Public Works together with the permit fee . The applicant shall furnish a copy of plans or sketches showing the proposed entrance locations, width and arrangement; distance between entrances; setback of building, gasoline pumps, etc., in relation to the center line of the traveled way; length, size and location of existing pipes, culverts, catch basins or manholes, curbing, curb and gutter, and/or sidewalks, the proposed location of new pipes, culverts, catch basins or manholes, curbing, etc and all other information needed to demonstrate compliance with the requirements in Sec. 17-2-4.. [Amended Eff. 1/07/2009 and 10/10/2012]

Sec. 17-2-4. Conditions of Permit. The location, design and construction of any entrance permitted shall be in accordance with the following requirements:

(a) **Access Management.** The applicant shall demonstrate that the entrance is needed and that no other reasonable alternative exists. For lots with frontage on more than one road, access to a local classification road is preferable to access onto a higher classification road. New entrances shall be located as far as possible from road intersections. [Amended Eff. 10/10/2012]

(b) **Sight Distance.** All entrances shall be so located that vehicles approaching or using the entrance will be able to obtain adequate sight distance that meets the minimum requirements of 16-3-2 (a) (1) Road Classifications Standards Table. Measurements to determine sight distance shall be made in the proposed entrance at a point ten feet (10') from the edge of pavement with the height of eye three and one-half feet (3.5') above the pavement. The sight distance computed from this point measuring along the roadway to a point where an approaching object with a height of four and one-quarter feet (4.25') is first seen. [Amended Eff. 10/10/2012]

(c) **Geometry.** Driveway and Private Way entrance grades shall be as provided in Sec. 16-3- 2 (a) 10 of the Subdivision Ordinance. The entrance shall intersect the traveled way at a horizontal angle as close as possible to 90 degrees, but in no case shall the horizontal angle be less than 75 degrees. [Amended Eff. 10/10/2012]

(d) **Number.** Not more than two entrances (or exits) shall be allowed any parcel of property the frontage of which is less than two hundred (200) feet. Additional entrances (or exits) for parcels of property having a frontage in excess of two hundred (200) feet shall be permitted only after showing of actual convenience and necessity. When frontage is fifty (50) feet or less, only one combined entrance and exit is permitted, the width of which shall not exceed thirty (30) feet.

(e) **Sidewalk and Curbs.** When sidewalk, curbing or curb and gutter is to be removed, it shall be replaced at the owner's expense at the break points of the entrance. All curbing at the side of entrance shall be tapered to meet finish driveway grade. [Amended Eff. 10/10/2012]

(f) **Drainage.** Drainage in road side ditches shall not be altered or impeded and suitable, approved drainage structures shall be provided at all entrances if required by the Public Works Director. Surfacing drainage shall be provided so that all surface water on the areas adjacent to the road shall be carried away from the road. Culverts or other provisions shall be made underneath the entrance or filled areas adjacent to the road adequate to carry the water in the road side ditches, if required by physical conditions as determined by the Public Works Director. [Amended Eff. 10/10/2012]

(g) **Paving.** The first ten (10) feet of the entrance extending from a Town Way shall be paved in accordance with the paving requirement for local roads in Sec. 16-3-2(b) 4 of the Subdivision Ordinance or other hardscape may be installed with the approval of the Public Works Director . (Added eff. 12/10/2003 and 10/10/2012)

Sec. 17-2-5. Heavily-Used Entrances. Application for entrances to drive-in theaters, shopping centers, ball parks or other large public gathering places may be granted only after approval by the Planning Board based upon the applicable standards under Site Plan Review, Sec 19-9. [Amended Eff. 1/11/1995 and 12/10/2003]

Article III. Excavation and Utility Installation

Sec. 17-3-1. Street Opening Permit Required.

No person or utility shall make any excavation in any public road way without first obtaining a street opening permit from the Public Works Director or his/her designee. All such excavations are governed by 23 M.R.S.A., Sec. 3352 et seq. and this Ordinance.

(a) **Excavation Site** Prior to any excavation, applicants shall pre-mark the proposed area of excavation in white paint, in accordance with the applicable State of Maine and Dig-Safe requirements. Limits of pre-marked sites shall be within a reasonable area for purposes of the excavation. Excavators may identify pre-marked site, though it is not required by the “Dig Safe” legislation. Identification shall be done using company or utility initials, in letters no larger than six (6) inches in height. Identification shall be placed in the area to be excavated so that the identification will be eliminated after the job is completed. The Town of Cape Elizabeth is member of “Dig Safe”, Inc. and requires that “Dig Safe, Inc.” be contacted for all excavations on any public road way within the Town of Cape Elizabeth. [Amended Eff. 1/07/2009]

(b) **Application** A Street Opening Permit shall be issued only after a written application on a form provided by the Town of Cape Elizabeth is submitted to the Public Works Director or his/her designated agent. The completed application shall state applicant's name, address, 24 hour emergency phone number and the purpose of the excavation. Applicants shall provide a “Dig-Safe” confirmation number on the application that is applicable to the proposed excavation site. The completed application shall also provide the name of location to be excavated, the beginning date of the proposed work, the completion date, the name of property owner for whom work is being done. The application shall be accompanied by a valid certificate of insurance, as outlined in Sec. 17-3-9, unless one is already on file with the Department of Public Works. [Amended Eff. 1/07/2009]

(c) **Permit** Upon receipt of completed street and sidewalk opening applications, an opening permit will be issued. A fee established by the Town Council shall be paid for each permit or renewal thereof. Street opening permits shall only be issued from April 1 to November 30, unless an emergency or special circumstance exist. An explanation shall be given to the Public Works Director explaining the special situation or emergency prior to the issuance of a permit during the months of December 1 through March 31. Any oral explanation shall be followed up by a written explanation within two (2) working days.

(d) **Work Zone Signage** All excavations within any public way shall be posted and identified with the appropriate work zone signage and/or devices that conform to the latest edition of the Manual of Uniform Traffic Control Devices (MUTCD). Traffic control in the vicinity of all excavations affecting vehicular, pedestrian and bicycle traffic shall be subject to final review and approval of the Director of Public Works, or his designee. [Added Eff. 1/07/2009]

Sec. 17-3-2. Excavation Excavation work must be started no later than thirty (30) working days from the date of issuance of the Street Opening Permit. After the expiration of the thirty (30) day period, such street opening permit shall become null and void. Notification shall be made to the Public Works Department on the actual day the work will begin. No work shall be done under the permit on Saturdays, Sundays or Holidays, unless approved by the Public Works Director. During all street excavations, one-way traffic shall be maintained for emergency vehicles. Temporary exceptions may be made only by the Fire Chief and/or the Director of Public Works only when another means of access is available. [Amended Eff. 1/07/2009]

Sec. 17-3-3. Protection of Public Property. In the course of any excavation, individuals and/or utilities shall not remove any trees or shrubs which exist in the street area without first obtaining the consent of the Tree Warden and/or Director of Public Works. [Amended Eff. 1/07/2009]

Sec. 17-3-4. Pavement Breaking in Streets. All excavations on paved street surfaces shall be precut in a neat straight line with pavement breakers or saws. Cutouts of the trench lines must be normal or parallel to the trench line. Pavement edges shall be trimmed to a vertical face and neatly aligned with the center line of the trench. When three (3) or more street openings sequence fifteen (15) feet or less, center to center, between each adjacent opening, the individual and/or utility shall be charged for one (1) opening measured from the first to the last.

Sec. 17-3-5. Pavement Breaking in Sidewalks. All parts of Section 17-3-4 shall also apply to sidewalks in all cases except concrete sidewalks. Concrete sidewalks shall be saw cut. Use of pavement breakers will not be allowed. On concrete sidewalks, all cuts shall be made from the nearest joint or score line on one side of the excavation to the nearest joint or score line on the other side of the excavation.

Sec. 17-3-6. Backfilling. Fine material (free of lumps and stones no larger than four (4) inches shall be thoroughly compacted around and under the substructure to the upper level of the substructure. Backfill material shall be placed and compacted in lifts of eight (8) to twelve (12) inches and thoroughly compacted by mechanical compactors approved by the Director of Public Works. Within eighteen (18) inches of the sub grade of the pavement, backfill shall meet MDOT specification Type B and be left three (3) inches below the surface. Within twenty-four (24) hours after the trench has been backfilled three (3) inches of cold bituminous concrete shall be placed over the gravel and compacted, or permanent repairs completed per Section 17-3-8. [Amended Eff. 1/11/1995 and 01/07/2009]

Sec. 17-3-7. Inspections. The Director of Public Works or his designee shall make such inspections as are necessary in the enforcement of this ordinance.

Sec. 17-3-8. Restoration of Surface in Public Ways. Permanent resurfacing of excavations shall be made by the Town of Cape Elizabeth. The Town, at its option, may allow the individual or utility to permanently resurface that portion of the street surface damaged by the excavation, in which event, permanent resurfacing shall be done in a manner and under the specifications of the Town of Cape Elizabeth's Subdivision Ordinance for pavement thickness. If such permanent repairs are made to the satisfactory completion of the Director of Public Works, or his/her designee, all charges for resurfacing will be canceled.

The Director of Public Works, or his/her designee may require any trench to be cold-planned and/or resurfaced due to settlement, defects in materials and workmanship related such resurfacing within three (3) years of the original excavation, at the expense of the permittee. [Amended Eff. 1/11/1995 and 01/07/2009]

Sec. 17-3-9. Proof of Insurance. Applicants for opening permits shall supply to the Department of Public Works a certificate of insurance listing the Town of Cape Elizabeth as an additionally named insured - \$400,000 minimum. Coverage shall be for not less than the following amounts:

a. General liability including comprehensive form, premises/operations, underground explosion and collapse hazard, products/completed operations, contractual, independent contractors, broad form property damage and personal injury.

1. \$1,000,000 Bodily Injury and Property Damage Each Occurrence
2. \$2,000,000 Bodily Injury and Property Damage Aggregate
3. \$2,000,000 Personal Injury Aggregate

b. Automobile liability including any auto, hired autos and non-owned autos - \$1,000,000 bodily injury and property damage combined.

c. Workers' Compensation and Employer's Liability

1. \$500,000 each accident
2. \$500,000 Disease - Policy limit
3. \$500,000 Disease - Each employee [Amended Eff. 01/07/2009]

Sec. 17-3-10. Excavations in Reconstructed or Repaved Roads. After a public road has been reconstructed or repaved, no permit shall be granted to open such road for a period of five (5) years unless an emergency condition exists or unless the necessity for making such installation could not have been reasonably foreseen at the time of the reconstruction or repaving. This section shall be void unless the Town shall have given sixty (60) days notice by certified mail of the impending work to the owners of property abutting the road and to all public utilities serving the road. [Amended Eff. 01/07/2009]

Sec. 17-3-11. Penalty. Any person, firm or corporation who shall violate any provision of this Article III shall upon conviction be fined for the use of the Town in a sum not less

than \$500.00 and not more than \$1,000.00. Each day of continued violation shall constitute a new and separate offense. [Amended Eff. 1/11/1995 and 01/07/2009]

Article IV. Construction of Streets.

[Adopted eff. 11/12/76 under R.S. 1964, T. 30, Sec. 2151.]

Sec. 17-4-1. Compliance with Subdivision Requirements. Any way hereafter constructed within the limits of the Town, including any way serving more than one residential unit or serving two or more lots of land to which title is held in different ownership, shall be designed and constructed so as to satisfy the requirements imposed upon streets within subdivisions and shall be submitted for acceptance by the Town unless the Planning Board, after considerations of future traffic and the provision of municipal services over such street, its location with respect to the comprehensive plan and the adequacy of construction proposed, approves the construction of such street to lesser standards and with reasonable requirements as may be necessary to assure adequate access by municipal emergency vehicles, maximum utility in relation to objectives of the comprehensive plan, and continuing maintenance of such street. [Amended Eff. 01/07/2009]

Article V. Regulation of Heavy Loads.

Sec. 17-5-1. Heavy Load Limits. The Town Manager may, upon the recommendation of the Director of Public Works, and after seven (7) days notice published once in a newspaper of general circulation in the community, post registered gross vehicle weight limits on any town public road. [Amended Eff. 01/07/2009]

Sec. 17-5-2. Penalty. Any person, firm or corporation who shall violate a posted weight limit enacted under Sec. 17-5-1 shall, upon conviction, be fined, for the use of the Town, a sum not less than \$100.00 nor more than \$250.00 for each 1,000 pounds of registered gross vehicle weight over a posted weight limit. [Revised 11-11-1988 and 01/07/2009]

CHAPTER 13

TRAFFIC REGULATIONS

(Adopted effective March 10, 2004 and with amendments effective through July 13, 2016)

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Article I. In General.

Sec. 13-1-1. Definitions.

- a. The words "motor vehicle" means every vehicle that is self-propelled but does not include electric personal assistive mobility devices motorized wheelchairs or vehicles operated on rails.
- b. The word "park" means the standing of a vehicle, whether occupied or not, other than temporarily for the purpose of and while actually engaged in loading or unloading.
- c. The word "standing" means any stopping of a vehicle, whether occupied or not.
- d. The words "street, way or road" means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of traffic.
- e. The word "roadway" means that portion of a street, way or road, designated or ordinarily used for vehicular traffic.
- f. The word "person" means every natural person, firm, co-partnership, association or corporation.
- g. The words "all-terrain vehicle" means a motor driven, off-road, recreational vehicle capable of cross-country travel on land, snow, ice, marsh, swampland or other natural terrain. It includes, but is not limited to, a multi-track, multi-wheel or low pressure tire vehicle; a motorcycle or related two-wheel, three-wheel or belt driven vehicle; an amphibious machine; or other means of transportation deriving motion power from a source other than muscle or wind. For purposes of this ordinance, "all-terrain vehicle" does not include a snowmobile; an airmobile; a construction or logging vehicle used in performance of its common functions; a farm vehicle used for farming purposes; a vehicle used exclusively for emergency, military, law enforcement or fire control purposes.
- h. The term "school complex" means the portion of Cape Elizabeth that includes (i) Cape Elizabeth High School, (ii) Cape Elizabeth Middle School, (iii) Pond Cove Elementary School, (iv) the Donald Richards Community Pool, (v) the roadways, except Jordan Way, extending from Scott Dyer Road and Ocean House Road leading to and around the schools, and (vi) the sidewalks, athletic fields, tennis courts, basketball courts, playgrounds, parking lots and other improved areas accessed from the roadways described in (v). The "school complex" does not include the Cape Elizabeth Community Center.
- i. The term "impound" means to tow a motor vehicle for storage on the premises of the towing company.

j. The term “immobilize” means to render a motor vehicle inoperable by affixing a device, commonly referred to as a boot.

13-1-2. Signs Required. No provision of this Ordinance for which signs are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section does not state that signs are required, such section shall be effective without signs being erected to give notice thereof.

Sec. 13-1-3. Unauthorized Signs, Signals or Markings. No person shall place, maintain, or display upon or in view of any highway any unauthorized sign, signal, marking or device, which purports to be or is an imitation of or resembles an official traffic control device or sign or signal, or which attempts to direct the movement of traffic or which hides from view or interferes with the effectiveness of any official traffic control device or any sign or signal, and no person shall place or maintain any traffic sign or signal bearing thereon any commercial advertising. This shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for official signs.

Sec. 13-1-4. Penalty. Any person who violates any provision of this Chapter 13, with the exception of the parking provisions of Articles II, VI or VII, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding one hundred dollars (\$100.00) to be recovered for the use of the Town for each such violation. The registered owner of a motor vehicle that is in violation of the parking provisions of Articles II, VI or VII of this Chapter shall be guilty of an infraction and shall be punished by a fine in an amount to be established by order of the town council as provided in Section 13-2-6 (a).

Article II. Parking Regulations.

Sec. 13-2-1. Prohibited Purposes. No person shall stand or park a vehicle upon any street, way or road for the principal purpose of:

- a. Displaying it for sale;
- b. Washing, greasing or repairing such vehicle except for repairs necessitated by an emergency; or
- c. Advertising.

Sec. 13-2-2. Prohibited Locations. No person shall stand or park a vehicle in any of the following places except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or other authorized person, or traffic control device:

- a. On a sidewalk;
- b. In front of a public or private driveway;
- c. Within an intersection;
- d. Within 10 feet of a fire hydrant;
- e. On a crosswalk;
- f. Within 20 feet of the near corner of the curbs at an intersection;
- g. Within 30 feet upon the approach to any flashing beacon, stop sign, or traffic control signal located at the side of a roadway;
- h. Along or within any bikeway within a business zone or in any specially designated safety zone reserved by order of the Town Council for a specific purpose, including but not limited to, foot paths, jogging trails, and ways created for recreational use;
- i. Within 20 feet of the driveway entrance to any fire station or on the side of a street opposite the entrance to any fire station;
- j. Alongside or opposite any street excavation or obstruction when such stopping, standing or parking would obstruct traffic;
- k. On the roadway side of any vehicle stopped or parked at the edge or curb of a street, or double parked, so-called;
- l. On the left side of any street, way or road so that it is facing oncoming traffic;
- m. At the terminus of extensions of T-type turnarounds and at the end of any dead-end street;
- n. Upon any bridge or other elevated structure upon a highway; or
- o. At any place designated from time to time by Order adopted by the Town Council and which regulations shall be effective from and after the erection of signs giving notice thereof and until revoked by further Order of the Town Council.

Sec. 13-2-3. No Parking at Any Time. There shall be no parking at any time:

- a. On the northerly side of Scott Dyer Road from Ocean House Road to Dearborn Drive;
- b. On the southerly side of Scott Dyer Road from the westerly entrance to the school buildings to its terminus at Ocean House Road; however, parking may be allowed in signed areas during any school construction project with the placement of signs authorized by the Chief of Police and the Fire Chief;
- c. On the easterly side of Shore Road, for a distance of 1600 feet southerly from its intersection with Lawson Road;
- d. On either side of paved way on Shore Road northerly from Route 77 to the northerly property line of 1226 Shore Road;
- e. On either side of Kettle Cove Road northerly from the Kettle Cove parking area to a point 150 feet northerly of the Kettle Cove Road/Fessenden Road intersection;
- f. on either side of Fessenden Road from its intersection with Kettle Cove Road northeasterly 600 feet toward Two Lights Road;

- g. On the easterly side of Ocean House Road between the driveway entrances on the northerly and southerly sides of the Town Hall;
- h. On either side of Two Lights Road easterly from its intersection with Dyer Lane, so-called, excepting within the Lobster Shack parking area;
- i. On either side of Two Lights Road between a point 500 feet easterly of the intersection of Two Lights Road and Tower Drive and a point some 600 feet easterly of the intersection of Beacon Lane (so-called) and Two Lights Road at the crest of the rise in Two Lights Road;
- j. On the southerly or non-beach side of Cottage Lane from Shore Road Surf Road;
- k. In a fire lane designated by the Fire Chief and the Police Chief and approved by the Town Manager;
- l. On either side of Woodland Road beginning at Mitchell Road and extending 390 feet in an easterly direction;
- m. On either side of Shore Road from the Chapel Road entrance of Fort Williams Park to Dyer Pond Road;
- n. On the southwesterly driveway connecting the Town Hall lot with Shore Road;
- o. On the westerly side of Preble Street, beginning at the intersection of Shore Road and extending 100' in a northerly direction; or
- p. On the southerly side of Gull Crest Drive. (The right hand side of Gull Crest Drive from Spurwink Ave until parking area)
- q. On the southeasterly side of Surf Road beginning at Shore Road and extending to Garden Circle and on either side of Surf Road 60 feet northerly of Keyes Lane to the terminus of Surf Road at Garden Circle.
- r. On the northerly side of Cottage Lane from Maiden Cove lane to Garden Circle.

Sec. 13-2-4. Limited Parking. Limited parking shall be as follows:

- a. During the months of May through November, no motor vehicle shall be parked on Crescent Beach, except that commercial fishermen may, in the pursuit of their calling, park there for the reasonably necessary purposes of loading and unloading.
- b. After sunset, each day until sunrise, no vehicle shall be parked on either side of Sea View Avenue from its intersection with Glen Avenue northeasterly to its terminus.
- c. There is no parking on any public road where emergency no parking signs have been placed after authorization of such sign placement by the Chief of Police with the approval of the Town Manager.
- d. From 9:00 a.m. to 6:00 p.m., from May 1 through October 1, no vehicle shall be parked on either side of Kettle Cove Road.

- e. The parking spaces and areas available for parking at the Town Center Fire Station and the Cape Elizabeth Police Station may be used only in connection with business or activities in those buildings. The parking spaces and areas available for parking at the Thomas Memorial Library, during Library business hours or activities in the Library building, may be used only in connection with business or activities in the Library building. The town manager may also authorize the placement of signs at spaces at the Town Center Fire Station indicating that spaces are to be used only for emergency public safety purposes, and signs at the Cape Elizabeth Police Station indicating that spaces are to be used only for authorized vehicles
- f. The parking area at Plaisted Park may be used only in connection with activities at Plaisted Park. The town council may authorize the collection of parking fees at Plaisted Park in conjunction with an approved special event at Fort Williams Park.
- g. There shall be resident parking only on Maiden Cove Lane, Garden Circle, and Garden Lane. For purposes of this section only, “resident” is defined as persons occupying homes on Maiden Cove Lane, Garden Circle and Garden Lane.
- h. A box truck, cargo van or tractor trailer may be parked overnight on any public road for not more than one night each year. Any such parking shall not be in violation of any other section of these parking regulations.
- i. An equipment trailer, boat trailer or other hauling trailer may not be parked overnight on any public road for more than four consecutive days or for eight days in any calendar year. Any trailer parked on any public road at any time shall have a wooden block or similar device in place under the trailer tongue to avoid pavement damage.

Sec. 13-2-5. Snow Removal. No vehicle shall be parked at any time on any street, way or road within the Town between the hours of 1:00 am and 5:00 am from December 1 to April 1. In the event of inclement weather or a public safety emergency, the Chief of Police or his/her designee, may institute a parking ban upon any street, way, or road.

Sec. 13-2-6. Penalty.

- a. A motor vehicle in violation of any provision of this Article II (Parking Regulations), the parking provisions of Article VI, (Fort Williams Park Regulations) or the parking provisions of Article VII (School Property Regulations) may be issued a ticket by a law enforcement officer. In addition, a motor vehicle in violation of any parking provision of Article VI (Fort Williams Park Regulations) may be issued a ticket by a municipal employee authorized to do so by the Chief of Police. The dollar amount of the fine to be paid in conjunction with a ticket issued for a parking violation shall be set by order of the

town council. If payment of a ticket is not received at the Public Safety Building within 30 days after the date of the issuance of the ticket, the fine shall double.

b. A registered owner of a motor vehicle that has been issued a ticket under this Ordinance for a parking violation may request that the issuance of the ticket be rescinded by appealing the issuance of the ticket. An appeal shall be made by delivering to the Cape Elizabeth Police Department, within seven business days of the issuance of the ticket, a written appeal on a form to be provided by the Police Department. Delivery of the appeal shall be accomplished by hand delivery to the Police Department or by deposit in the United States mail, postage prepaid, properly addressed to the Chief of Police and post marked within seven business days of the date of issuance of the ticket. The Chief of Police or his designee shall render a written decision granting or denying the appeal within ten business days of the submission of the appeal. Written notice of the decision shall be sent by regular mail to the registered owner of the motor vehicle. The failure of the Chief of Police or his designee to timely render a decision granting or denying the appeal shall be deemed a denial of the appeal.

c. If a motor vehicle has received two tickets in violation of parking provisions of this Ordinance , both of which tickets were issued after December 31, 2002 and which remain unpaid for more than thirty (30) days, and neither of which tickets is currently under appeal as permitted under paragraph b. of this Section, the Chief of Police may release the name of the registered owner of the vehicle to one or more local newspapers and / or the Town webmaster, for publication of notice that the motor vehicle may be immobilized and / or impounded if the vehicle is found to be in further violation of this Article II while the two tickets remain unpaid.

d. If a motor vehicle has two tickets in violation of parking provisions of this Ordinance , both of which tickets were issued after December 31, 2002 and which remain unpaid for more than thirty (30) days, and neither of which tickets is currently under appeal as permitted under paragraph b. of this Section, and the vehicle is found to be in further violation of this Ordinance, the motor vehicle may be immobilized or impounded. If the motor vehicle is immobilized or impounded, a reasonable attempt shall be made by telephone to contact the registered owner in order to make the owner aware of the immobilization or impoundment.

e. If a motor vehicle has been immobilized and remains at such location for twenty four hours the vehicle may be impounded.

f. Before an immobilized or impounded motor vehicle may be released from the immobilization or impoundment, all outstanding tickets must be paid, along with a \$50.00 “boot” disengagement fee, if applicable, and any applicable towing fee and storage fee. The registered owner shall have the right to appeal the ticket issued when the motor vehicle was immobilized or impounded. If the registered owner is successful in appealing the ticket, the owner shall not be entitled to either reimbursement of fees paid or waiver of fees otherwise due under this paragraph.

g. This Section shall not be construed to mean that a motor vehicle must be immobilized before it may be impounded.

Article III, Miscellaneous Traffic Regulations.

Sec. 13-3-1. Obstruction in Streets. Any vehicle of any kind or description parked upon a street, way or road at a place, in a manner, or for a length of time prohibited by an ordinance of the Town is hereby declared to be an obstruction in such street, way or road and a menace to the safe and proper regulation of traffic, and may be removed by the following procedure:

a. Authority to Remove. Any such vehicle may be removed by, or under the direction of, or at the request of the Chief of Police, or any police officer of the Town, to a garage or storage place within the limits of the Town, or outside the Town if none within are available, and impounded therein. Such police officer may use such force as may be necessary to enter such vehicle and cause the same to be placed in a condition to be moved, and may employ any reputable person, engaged in the business of towing or storing vehicles, for such purposes.

Notwithstanding any language herein contained, the removal and storage of a vehicle pursuant to this Ordinance, and the payment of the charges specified herein, shall in no way relieve or prevent prosecution for the violation of any provision of the Ordinance.

b. Notice to Owner. The Police Department shall make every effort to notify as promptly as possible the owner of any such vehicle of its removal from the streets, ways, or roads, and as soon as possible a written notice that such vehicle has been impounded shall be sent to the Chief of Police to the owner at his last known address as shown by the records of the Secretary of State. If the owner is unknown, the Chief of Police shall cause to be published, in any newspaper printed in the City of Portland, notice of such impounding, giving the registration number, the motor number, and the name, type and year of said vehicle.

c. Release of Vehicle. Before the owner of such vehicle, or his representative, may remove it from the possession of the person towing or storing it, he shall:

1. Furnish satisfactory evidence of his identity and of his ownership of said vehicle to the Chief of Police and to the person having possession of said vehicle;

2. Pay to the person having possession of said vehicle reasonable charges for the towing and storing of said vehicle; and

3. Sign a receipt for said vehicle.

d. Charges. The Chief of Police shall establish a schedule of charges for towing

and storage, subject to approval of the Town Council, and only those persons agreeing to such schedule shall be called to remove and store vehicles.

13-3-2 Emerging from Driveways. The driver of a vehicle emerging from a private driveway, automobile service station or building shall stop such vehicle immediately prior to driving across a sidewalk, or if none, upon entering the roadway, and shall yield the right-of-way to all vehicles approaching on said roadway.

Sec. 13-3-3. Following Traffic Directions. No person shall refuse, fail or neglect to follow the directions of a constable or police officer directing traffic on a street, way or road.

Sec. 13-3-4. Required Obedience. Except when otherwise directed by a police officer, or other authorized person, the driver of any vehicle and every pedestrian shall obey the instructions under the provisions of this Ordinance or State law, and every such person shall obey each and every provision of this Ordinance.

Sec. 13-3-5. Driving on Sidewalks Prohibited. No person shall operate any motor vehicle along, nor shall any motor vehicle in any way occupy or obstruct, any town sidewalk except for municipal vehicles and agents of the municipal government in conjunction with maintenance activities.

Sec. 13-3-6. Prima Facie Evidence of Operation. No person shall allow, permit or suffer any vehicle registered in his name to stand or park in any street, way or road in violation of any provisions of this Ordinance. The fact that a vehicle is unlawfully parked shall be prima facie evidence of the unlawful parking of such vehicle by the person whose name such vehicle is registered.

Sec. 13-3-7. True Name to be Given. It shall be unlawful for any person, when given a notice by any police officer or other authorized person, to appear for an offense against any provision of this Ordinance, to give other than his true name and true place of residence or address, upon the request of such police officer or other authorized person.

Sec. 13-3-8. All-Terrain Vehicles. No person shall operate an all-terrain vehicle within the Town of Cape Elizabeth upon public land, including park lands, owned or leased to the Town of Cape Elizabeth. This provision shall supplement and shall not in any manner limit the restrictions upon the use of all-terrain vehicles upon private property, or over public or private ways, as provided by 12 M.R.S.A., Sec. 7851, (1983) as may be amended. It shall also not prohibit the use of all terrain vehicles by the municipal government in conjunction with maintenance and/or public safety.

Sec. 13-3-9. Beach Access Restrictions. No person shall operate a motor vehicle on Crescent Beach except for the express purpose of launching a watercraft, for commercial fishing activities, for the commercial harvesting or rockweed or seaweed, or for public safety or authorized beach maintenance purposes.

Article IV. Littering Town Ways.

Sec. 13-4-1. Failing to Secure Litter. No person shall operate or cause to be operated upon any public way in Cape Elizabeth a vehicle carrying or hauling any without securing such material so as to prevent any portion of the same from falling upon the ground.

Sec. 13-4-2. Person Littering. No person shall purposely, accidentally or by reason of an accident drop or throw from his hand or a vehicle any material upon or beside any public way, without forthwith making all reasonable efforts to clear such way of the same.

Article V. Parades and Processions.

Sec. 13-5-1. Permits Required for Parades, Road Races, Processions, and Assemblages. No person, corporation, entity, or organization may hold, sponsor, or organize any parade, footrace, walk, or any competition of any kind, or any mass assemblage of any kind upon any public way, or in or upon any town owned parks, fields or lands without first obtaining approval by written permit from the chief officers of the Police and Fire Departments and the Director of Public Works, when applicable. Such permit may require further approval, depending on the event, from the Town Manager and/or Town Council; such permit shall be issued upon such conditions as the appropriate authority may prescribe. This section shall not apply to any school or municipally sponsored events, funeral processions, and military forces. Concerns of health, safety, and the general welfare will be the sole basis for determining the approval of said permit and any conditions attached thereto.

Article VI. Fort Williams Park Regulations.

Sec. 13-6-1. Traffic and Parking. The following regulations shall apply at all times to traffic circulation and parking within Fort Williams Park:

- a. No person shall stand or park a motor vehicle within Fort Williams Park except in a designated parking lot or marked parking space unless directed to a temporary parking area by an agent of the town. The town manager is authorized to designate and sign certain spaces as reserved for Portland Head Light volunteers and/or for municipal employees or lessees of the town.
- b. The sole access to and egress from Fort Williams Park for vehicles shall be through the gate at Shore Road opposite Plaisted Park except as provided for in Sec 13-6-1c.;
- c. All gated roads shall be closed to access by motor vehicles, except for travel by municipal vehicles and equipment and/or in connection with a special event when the gated areas are so signed by an authorized agent of the town. .

Sec. 13-6-2. Speed Limit. No vehicle shall travel at speeds in excess of fifteen (15) miles per hour within Fort Williams Park or through any of its entrances or exits.

Article VII. School Property Regulations.

Sec. 13-7-1. Speed Limits Within the School Complex. The maximum speed limit for all motor vehicles on all roadways within the school complex shall be 15 miles per hour.

Sec. 13-7-2. One-Way Traffic. Traffic flow shall be one-way as posted along the driveway extending from in front of the front door of Cape Elizabeth High School to the U-turn northerly of the community track and back to the high school access road. The Police Chief and Fire Chief are authorized to place additional one-way signs as may be advisable during any school construction project. These provisions shall not apply to Town snowplowing vehicles during snowplowing operations nor to mowers during mowing operations.

Sec. 13-7-3. Parking Restrictions. Within the school complex no motor vehicles may be parked:

- a. On any area that is grassed including ballfields, esplanades and lawns; or
- b. Along any driveways or access roads unless signs or pavement markings have been placed specifically permitting parking. Any such signs or pavement markings shall be authorized by the Chief of Police and the Fire Chief.

Sec. 13-7-4. Vehicle Travel Restriction. Within the school complex, registered motor vehicles except for those used for maintenance and public safety purposes are restricted to the roadways and parking lots. Vehicles are prohibited from utilizing Jordan Way for access to and egress from the school complex except for emergency vehicles or except in accordance with a traffic plan approved in writing by the town manager for the purpose of relieving traffic entering the school complex. Snowmobiles on the school complex shall be restricted to those areas immediately adjacent to the Spurwink Marsh. Unregistered motor vehicles are prohibited on the school complex.

Chapter 19

Zoning Ordinance

Town of Cape Elizabeth, Maine

Effective September 13, 2017

List of Adopted Ordinance Updates and Amendments 2000 –

SUBJECT	DATE EFFECTIVE
Agricultural Easement	September 13, 2017
Technical Amendments - Zoning Ordinance	November 5, 2016
Village Green Zoning Amendment	March 9, 2016
Special Event Ordinance Provisions and Related Zoning Overlay Map	December 4, 2015
Land Use Amendments	November 14, 2015
Subdivision Ordinance	November 14, 2015
Definition of Normal High Water Mark	August 14, 2014
Building Permit Issuance Notification	September 12, 2013
Day Camp	July 10, 2013
Short Term Rental Amendment	December 14, 2012
Agricultural Amendment	June 10, 2010
BA District - Neighborhood scale commercial areas and BA Zoning Map change	July 8, 2009
Shoreland Zoning Amendments	May 11, 2009
Bed & Breakfast	March 9, 2009
Residential Windmills	October 8, 2008
Wind Energy Systems	August 14, 2008
Accommodate Eldercare Facilities	May 9, 2007
Bisected Lots	March 15, 2006
BB District Zoning and Zoning Map Amendment	February 12, 2005
Golf course Zoning Amendment & Definitions RA and RB Districts	February 12, 2003
Off Street Parking	May 12, 2002
Nonconformance Outside of Shoreland and Resource Protection Districts	June 4, 2001
Establishing a Practical Difficulty Standard For Certain Variance Requests	August 10, 2000
Tower & Antenna Performance Standards and Tower Overlay District	April 15, 2000

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Zoning Map

CHAPTER 19

ZONING ORDINANCE

ARTICLE I. SCOPE, PURPOSE AND DEFINITIONS

SEC. 19-1-1. SCOPE

This Ordinance shall be known as the “Zoning Ordinance of the Town of Cape Elizabeth, Maine”, and may be referred to by said designation.

No building or structure shall be erected, structurally altered, enlarged, repaired, moved, rebuilt, or used, and no land shall be used, except in conformity with the provisions of this Ordinance.

SEC. 19-1-2. PURPOSE

The purpose of this Ordinance is to promote the health, safety and general welfare of the residents of Cape Elizabeth; to encourage the most appropriate use of land throughout the Town; to promote traffic safety; to provide safety from fire and other hazards; to provide adequate light and air; to prevent overcrowding of real estate; to promote a wholesome home environment; to prevent housing development in unsanitary areas; to provide an adequate street system; to promote the coordinated development of unbuilt areas; to encourage the formation of community units; to provide an allotment of land area in new development sufficient for all the requirements of community life; to conserve natural and cultural resources; to provide for adequate public services; and to enhance the value of property within the Town. The foregoing purposes shall be implemented by establishment of the zoning districts adopted hereby and herein and by compliance with all of the other provisions of this Ordinance. This Ordinance is intended to carry out and be consistent with the Town’s Comprehensive Plan.

SEC. 19-1-3. 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 and successor sections.

Abattoir: A place used or intended for the slaughtering of poultry or livestock.

Accessory Building or Structure: A detached, subordinate building, the use of which is clearly incidental and related to that of the principal building or use of the land and which is located on the same lot as the principal building or use. Any accessory building or structure that has plumbing shall not be used for overnight accommodation. For residential uses, accessory buildings and structures shall include, but not be limited to, the following:

1. garage
2. gazebo
3. greenhouse
4. home workshop, as defined below
5. recreational facilities for the use of occupants of the residence, such as a swimming pool or a tennis court, and related structures
6. Agricultural or aquacultural buildings or other structures (Effective June 10, 2010)
7. wharf, dock, landing, or boathouse
(Effective November 5, 2016)

Accessory Dwelling Unit: A single subordinate dwelling unit accessory to and wholly contained within a principal building or structure and/or attached garage in which a single-family dwelling unit is the principal use.

Accessory Use: A use that is incidental and subordinate to the principal use. The principal use shall not become subordinate to accessory uses, when aggregated.

Adult Business: An establishment consisting of, including, or having the characteristics of selling, renting, leasing, exhibiting, displaying or otherwise dealing in materials or devices of any kind which appeal to prurient interest and/or which depict or describe specified sexual activities and anatomical areas as described and reviewed in the case of *SJD, Inc. v. City of Houston*, 837 F. 2d1268 (5th cir. 1988).

Affordable Housing: Lots/units which may be purchased for occupancy by buyers with low and moderate incomes as established by the State Planning Office or the Greater Portland Council of Governments.

Agriculture: The employment of land for the primary purpose of raising, harvesting, and selling crops, or feeding (including grazing), breeding, managing, selling or producing livestock, poultry, fur-bearing animals or honeybees, or by dairying and the sale of dairy products, by any other horticultural, floricultural, or viticultural use, by animal husbandry, or by any combination thereof. It also includes the employment of the land for the primary purpose of stabling or training equines including, but not limited to, providing riding lessons, training clinics and schooling shows. Agriculture does not include forest management or timber harvesting activities and may be conducted by non-profit entities. (Effective June 10, 2010)

Agriculture related use: A use that is incidental and subordinate to the primary use of agriculture, that complements the primary agricultural use and which will help sustain the primary use of agriculture on the property. (Effective June 10, 2010)

Alternative Tower Structure: Mounting structures, such as, but not limited to, clock towers, bell steeples, utility and light poles, and water towers, that conceal the presence of antennas or towers and which are used primarily for purposes other than to support an antenna. (Effective April 15, 2000)

Amateur Wireless Telecommunication facility: An amateur (ham) radio station licensed by the Federal Communications Commission, including equipment such as but not limited to a tower or alternative tower structure supporting a single, radiating antenna platform and other equipment, which are not marketed to the general public. (Effective April 15, 2000)

Antenna: Any structure or device used for the purpose of collecting or radiating electromagnetic waves; including, but not limited to, directional antennas, such as panels, microwave dishes, and satellite dishes, and omni-directional antennas, such as whip antennas, which are located on the exterior of, or outside of, any building, or structure. A single, radiating antenna platform, which includes one or more antennas, shall be regulated as a single antenna. (Effective April 15, 2000)

Aquaculture: The growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species.

Athletic Facility: A private or public facility including but not limited to stadiums, playing fields for organized sports involving teams with coaches, uniforms, and an established schedule, and gymnasiums that hosts sports events which accommodate spectators, but not including private facilities accessory to a permitted residential or commercial use.

Banking, Professional and Business Office: Offices for lawyers, engineers, architects, landscape architects, land use planners, accountants, building contractors, doctors, dentists, or other professionals similar to those listed above and banking, security and commodity brokerage, real estate sales, travel agency, employment counseling, insurances sales, advertising, mailing and stenographic services, and other services of a similar nature.

Basal Area: A measure of the volume or density of a forest stand. It is the area of a cross-section of a tree stem at four and a half (4 ½) feet above ground level and inclusive of bark.

Bed and Breakfast: A use that must be operated in conjunction with the use of a dwelling as a primary residence and that (1) provides up to nine (9) furnished bedrooms for rent to guests for 1 or more nights and having a total length of stay not to exceed 14 consecutive days, (2) is operated by the family or person residing permanently in the home; and (3) may serve 1 or more meals to guests only. (Effective March 9, 2009)

Board: The Zoning Board of Appeals constituted under Sec. 19-5-1, Appointment and Composition of this Ordinance.

Boat Launching Facility: A facility designed primarily for the launching and landing of watercraft, which may include an access ramp, docking area and parking spaces for vehicles and trailers.

Building: Any structure having a roof supported by columns or walls, and including sheds and all attached structures such as porches, decks, balconies, carports and similar structures for which a building permit is required.

Building Footprint: The area of a building measured from the exterior surface of the exterior walls at grade level, exclusive of cantilevered portions of buildings and temporary structures. Where a building is elevated above grade level, the building footprint is the area the building would cover if it were located at ground level.

Campground: Any area or tract of land to accommodate two (2) or more persons in temporary living quarters including, but not limited to, tents, recreational camping vehicles or other shelters.

Canopy: The more or less continuous cover formed by tree crowns in a wooded area.

Canopy Tree: A tree of a species identified in Appendix C of the Subdivision Ordinance. (Effective October 15, 2009)

Cluster Development: A residential subdivision that conforms to the standards of Sec. 19-7-2, Open Space Zoning.

Coastal Dunes: Sand deposits within a marine beach system above normal high tide, including but not limited to beach berms, frontal dune ridges, back dune areas and other sand areas deposited by wave or wind action. Coastal dunes may extend into wetland areas.

Colocation: The location of more than one antenna on a Tower of Alternative Tower Structure. (Effective April 15, 2000)

Commercial Wireless Telecommunication Services: Cellular, personal communications services (PCS), specialized mobilized radio (SMR), enhanced specialized mobilized radio (ESMR), paging and similar services that are marketed to the general public. (Effective April 15, 2000)

Conditional Use: The use of any building or land in a manner which is subject to express conditions and limitations as to such use and which is expressly made subject to approval by the Zoning Board of Appeals.

Congregate Housing: Housing that is designed to provide housing and congregate housing services primarily for elderly households. Such a facility shall provide meals and a supportive services program including housekeeping and chore assistance and case management.

Continuing Care Retirement Community: A residential care facility that provides a combination of congregate housing, residential care, and/or long-term care as defined herein.

Cottage Industry Manufacturing: The manufacture and retail sale on the premises of artifacts, works of art, ceramics, handmade pottery, hand-blown glass, furniture, woodworking, woven or textile goods, and articles of a similar nature. The retail sales area shall occupy a minimum of 25% of the area devoted to cottage industry manufacturing. (Effective July 8, 2009)

Council: The Town Council of the Town of Cape Elizabeth, Maine.

Cross-sectional area: The cross-sectional area of a stream or tributary stream channel is determined by multiplying the stream or tributary stream channel width by the average stream or tributary stream channel depth. The stream or tributary stream channel width is a straight line distance from the normal high-water line on one side of the channel to the normal high-water line on the opposite side of the channel. The average stream or tributary stream channel depth is the average of the vertical distances from a straight line between the normal high-water lines of the stream or tributary stream channel to the bottom of the channel. (Effective October 15, 2009)

Day Camp: A program of care and instruction for no more than twelve (12) children, age sixteen (16) or younger, at the operator's residence, and may also include the operator's yard and off-site field trips. The program shall be limited to no more than six (6) hours a day and limited to school vacation periods, and further limited to no more than four (4) weeks per summer and no more than six (6) weeks in a calendar year. (Effective July 10, 2013)

Day Care Facility: A facility which provides a regular program of care and protection during any part of the day for either (i) three (3) or more adults or seven (7) or more children under the age of sixteen (16) in the operator's residence or (ii) any number of children or adults in a building other than the operator's residence.

DBH: The diameter of a standing tree measured 4.5 feet from ground level. (Effective October 15, 2009)

Deck: An open platform.

Densely Developed Area: An area developed with at least six (6) principal buildings within two hundred fifty (250) feet of the center of the subject structure or building.

Developed Residential Street: A local street providing vehicular access for five (5) or more existing dwelling units, considered as of the time immediately prior to the proposed construction of a through road creating a short-cut via such local street. (Effective June 23, 2006)

Disruption of Shoreline Integrity: The alteration of the physical shape, properties, or condition of a shoreline at any location. A shoreline where shoreline integrity has been

disrupted is recognized by compacted, scarified and/or rutted soil, an abnormal channel or shoreline cross-section, and in the case of flowing waters, a profile and character altered from natural conditions. (Effective October 15, 2009)

Dock: Any structure, whether permanent or temporary, which acts as a landing place for watercraft. This includes any combination of piers, docks, and floats.

Draining: As used in the context of resource protection districts, the lowering of the water table below its natural level.

Dredging: Removing materials from below the Wetland Upland Edge.

Dwelling: A building containing one (1) or more dwelling units and used for human habitation.

Dwelling Unit: A room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one (1) family at a time, and containing cooking, sleeping, and toilet facilities. An area configured for food preparation may be considered cooking facilities even if appliances are not present. The term shall include mobile homes and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rented. Recreational vehicles are not residential dwelling units. (Effective October 15, 2009)

Earthwork: One or more commercial operations involved in preparing or moving earth for use in construction, including foundations, buildings, roads, utilities and landscaping (Effective February 12, 2005)

Earthwork Contractor: A business that primarily and regularly conducts Earthwork and performs one or more of the following activities in the course of and related to conducting its Earthwork:

1. Processing, storing and stock piling minerals, wood, compost and other similar materials for resale (processing may include screening, crushing, chipping, recycling or blending multiple products);
2. Storing prefabricated materials associated with construction;
3. Parking, maintaining and fueling construction vehicles and equipment (fuel storage shall be for the exclusive use of the business and not for resale);
4. Loading, unloading and transporting product used in conducting Earthwork;
5. Transporting and storing snow; and
6. Administrative activities. (Effective February 12, 2005)

Earthwork Contractor's Yard: The portion of a lot used by an Earthwork Contractor for conducting its business activities outside or within structures erected in accordance with Town Ordinances. An Earthwork Contractor shall be deemed to use any portion of a lot upon which the Earthwork Contractor conducts any of the activities enumerated in items number 1 through 6 of the above definition of Earthwork contractor, other than transporting materials across designated driveways. (Effective February 12, 2005)

Education and scientific research: Activities that provide instruction and/or involve investigation in the natural, physical, or social sciences and that require a natural environment. (Effective November 13, 1999)

Eldercare Facility: A facility defined herein as a congregate housing, long-term care or residential care facility, or a continuing care retirement community. All attached or detached housing projects that do not fall within this definition shall be classified and treated as multiplex housing or single-family housing under this Ordinance and the Subdivision Ordinance.

Essential Services: Utility facilities including gas, electrical, communication, steam, fuel, water or sewage transmission, collection, or distribution systems.

Excavating: As used in the context of resource protection districts, the removal of earth materials below the existing ground surface.

Expansion of a Structure: An increase in the floor area or volume of a structure, including all extensions such as, but not limited to, attached structures such as decks, garages, porches and greenhouses.

Expansion of Use: The addition of weeks or months to a use's operating season, additional hours of operation, or the use of more floor area, ground area, or volume devoted to a particular use.

FAA: The Federal Aviation Administration. (Effective April 15, 2000)

FCC: The Federal Communications Commission. (Effective April 15, 2000)

Farm Market: A farm market that is operated for the purpose of selling raw or shelf-stable products produced from agricultural products grown on land within Cape Elizabeth. A maximum of fifty percent (50%) of the total display area devoted to retail sales may be dedicated to related market products, which shall not preclude the display of products outside of the building. For the purpose of calculating the area devoted to retail sales of related market products, the amount of outside display area included in the calculation of total retail display area shall not exceed the amount of retail display area inside the building. This shall not restrict the total area devoted to outside display area, which must also be immediately contiguous to the farm market building. The fifty percent (50%) maximum shall be averaged annually. (Effective June 10, 2010)

Filling: Placing of any material which raises, either temporarily or permanently, the ground elevation of an area.

Fish Market: A fish market that is operated primarily for the retail sale of raw aquacultural products, most of which are caught or gathered by Cape Elizabeth residents. A maximum of fifty percent (50%) of the total building floor area devoted to retail sales at all fish markets, including those defined as a home business, may be dedicated to related market products, whether such related market products are stored or displayed inside or outside of the building.

Floor Area of a Structure: The sum of the contiguous horizontal areas of the floor(s) of a structure enclosed by exterior walls, including unfinished areas within the exterior walls, and attached garages, and excluding basement space, porches and decks. Area calculation for compliance with the Shoreland Performance Overlay District shall include porches and decks. Floor area shall be calculated by measurement of the outside dimensions of the exterior walls. (Effective August 11, 1999)

Forest Management Activities: Timber cruising and other forest resource evaluation activities, pesticide or fertilizer application, management planning activities, timber stand improvement, pruning, regeneration of forest stands, and other similar or associated activities, exclusive of timber harvesting and the construction, creation or maintenance of roads. (Effective October 15, 2009)

Forest Stand: A contiguous group of trees sufficiently uniform in age class distribution, composition, and structure, and growing on a site of sufficiently uniform quality, to be a distinguishable unit. (Effective October 15, 2009)

Foundation: The supporting substructure of a building or other structure, excluding wooden sills and post supports, including basements, slabs, frost walls, or other base consisting of concrete, block, brick or similar material. (Effective October 15, 2009)

Functionally water-dependent uses: Those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and that can not be located away from these waters. The uses include, but are not limited to commercial and recreational fishing and boating facilities, excluding recreational boat storage buildings, finfish and shellfish processing, fish storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aids, basins and channels, retaining walls, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water that can not reasonably be located or operated at an inland site, and uses that primarily provide general public access to coastal or inland waters. (Effective October 15, 2009)

Golf Course: A tract of land laid out for at least nine holes for playing the game of golf and improved with tees, greens, fairways and hazards. A miniature golf facility is not a golf course. (Effective February 12, 2003)

Golf Course Related Activities: Uses such as a tennis court, swimming pool, parking lot, driving range, clubhouse, restaurant, or meeting hall and maintenance buildings (any of which may be rented out for events) which is located on a lot under common ownership with a lot where a golf course is located in the Town of Cape Elizabeth. (Effective February 12, 2003, Revised effective December 10, 2003)

Governmental Telecommunication Facility: A tower and wireless telecommunication services owned by local, state or federal government. (Effective April 15, 2000)

Ground cover: Small plants, fallen leaves, needles and twigs, and the partially decayed organic matter of the forest floor. (Effective October 15, 2009)

Growing Season: As used in this Ordinance, the period from April 1 to November 1.

Harvest area: The area where timber harvesting and related activities, including the cutting of trees, skidding, yarding, and associated road construction take place. The area affected by a harvest encompasses the area within the outer boundaries of these activities, excepting unharvested areas greater than 10 acres within the area affected by a harvest. (Effective October 15, 2009)

Highest Astronomical Tide: The elevation of the highest predicted astronomical tide, referenced to Mean Lower Low Water (MLLW) at Portland Head Light tide prediction station. This prediction is based on an adjustment from the Portland tidal station. The highest astronomical tide is based on the most recent National Tidal Datum Epoch (NTDE) as determined from time to time by the National Ocean Service, an office within the U.S. Department of Commerce, National Oceanic and Atmospheric Administration. (Effective September 11, 2014)

Height, Building: The vertical distance from the average original grade to the top of the highest roof beams of a flat roof, or to the mean level of the highest gable or slope of a hip roof. When a building faces on more than one (1) street, the height shall be measured from the average of the original grades at the center of the face of the building fronting on each street. Where the original grade steeply slopes to the extent that the building face along the road frontage will be located below the elevation of the road and within fifty (50) feet of the edge of the road right-of-way, the building height shall be measured from the average finished grade that allows the building first floor elevation facing the street to be constructed up to two (2') feet above the road elevation. Architecturally appropriate building tops, such as but not limited to spires and clock towers, which are not occupied, shall not be included in the measurement of the height of the building. (Effective December 10, 2003)

Height, Tower: The distance measured from average original grade to the highest point on the tower or other structure, even if said highest point is an antenna. (Effective April 15, 2000)

Home Business: A business or professional use that is more intensive than a home occupation and which is conducted within or from a dwelling unit by an occupant of the

dwelling unit. The use may also be conducted within an accessory structure which existed as of April 1, 1998. The business or professional use shall be accessory to the primary residential use. A home business shall comply with all of the following criteria: (Effective August 11, 1999)

1. Not more than one (1) person who is not a resident of the dwelling unit shall be involved or employed on the premises in the business or professional use;
2. The nature of the business or professional use shall not increase vehicular traffic on the street by more than two percent (2%) of the current average annual daily traffic (AADT) or 10 trips a day, whichever is larger; (Effective December 10, 2003)
3. The business or professional use shall not produce any odors, fumes, dust, glare, noise, or electrical interference in excess of that produced by normal residential use;
4. Any external alteration of the building or site, including the provision of parking in accordance with Sec. 19-7-8, Off-Street Parking, shall not detract from the residential character of the neighborhood;
5. The square footage occupied by the business or professional use shall occupy an area no greater than twenty percent (20%) of the floor area of the structure (as defined above) of the dwelling unit; (Effective August 11, 1999)
6. All signs shall comply with the Sign Ordinance; and
7. There shall be no outdoor storage of equipment or materials.

Home Day Care: A facility which provides a regular program of care and protection in the operator's residence for up to six (6) children under the age of sixteen (16) or up to two (2) adults for any part of the day.

Home Occupations: A business or professional use that is conducted within a dwelling unit by an occupant of the dwelling unit. The use may also be conducted within an accessory structure which existed as of April 1, 1998. The business or professional use shall be accessory and incidental to the primary residential use. A home occupation shall comply with all of the following criteria: (Effective August 11, 1999)

1. No one who is not a resident of the dwelling unit shall be involved or employed in the business or professional use;
2. The nature of the business or professional use shall not require clients, or service or delivery vehicles, to regularly visit the premises;
3. The business or professional use shall not produce any odors, fumes, dust, glare, noise, or electrical interference in excess of that produced by normal residential use;

4. There shall be no external alteration of the building or site that changes its residential character including the creation of a separate “business” entrance;
5. The square footage occupied by the business or professional use shall occupy an area no greater than twenty percent (20%) of the floor area of the structure (as defined above) of the dwelling unit; (Effective August 11, 1999)
6. All signs shall comply with the Sign Ordinance; and
7. There shall be no outdoor storage of equipment or materials.

Homestay: A use that is accessory and incidental to the primary use of a dwelling as a residence and that (1) provides one or two furnished bedrooms for rent to guests for 1 or more nights; (2) is operated by the family or person residing permanently in the home; (3) may serve 1 or more meals to guests only, and (4) provides all parking on-site. A maximum of one homestay is allowed per multifamily building. (Effective March 9, 2009)

Home Workshop or Workroom: A workshop, located within a principal building or within an accessory building, which is used primarily by the occupants of the dwelling unit for personal use and not a commercial use. (Effective August 11, 1999)

Hotel: A building used primarily for occupancy of individuals who are lodged with or without meals, having ten (10) or more guest rooms, and intended to be rented principally to transients on a short-term basis.

Hydric Soils: Soils as defined in U.S. Soil Conservation Service publication entitled Hydric Soils of Southern Maine, Revised 12/3/86, as further revised, a copy of which is available for review in the Town Office. (Formerly used names in parentheses.) These soils shall include, but not be limited to the following:

1. Very poorly drained organic soils, including Chocorua, Ossipee, Rifle, Sebago, Togus, Vassalboro and Waskish
2. Very poorly drained mineral soils, including Biddeford, Burnham, Gouldsboro (Tidal Marsh), Halsey, Medomak (Saco), Peacham (Whitman), Searsport (Scarboro), Washburn, and Whately
3. Poorly drained mineral soils, including Atherton, Aurelie, Brayton (Ridgebury), Charles (Limerick), Easton, Fredon, Lyme, Monarda, Moosilauke (Walpole), Naskeag, Naumberg (Au Gres), Roundabout, Rumney, Scantic, and Swanton.

Impervious Area: The total area of a parcel that consists of buildings and associated constructed facilities or areas, such as asphalt or concrete, and areas such as gravel roads and unpaved parking areas that will be compacted through design or use to reduce their permeability. Common impervious areas include, but are not limited to rooftops,

walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and macadam or other surfaces which similarly impede the natural infiltration of storm water. A natural or man-made waterbody is not considered an impervious area, but is treated as an immediate runoff surface in curve number calculations. (Effective November 5, 2016)

Increase in nonconformity of a structure: Any change in a structure or property which causes further deviation from the dimensional standard(s) creating the nonconformity such as, but not limited to, reduction in water body, tributary stream or wetland setback distance, increase in lot coverage, or increase in height or a structure. Property changes or structure expansions which either meet the dimensional standard or which cause no further increase in the linear extent of the nonconformance of the existing structure shall not be considered to increase the nonconformity. For example, there is no increase in nonconformity of the setback requirement for water bodies, wetlands, or tributary streams if the expansion extends no further into the required setback area than does any portion of the existing nonconforming structure. Hence, a structure may be expanded laterally provided that the expansion extends no closer to the water body or wetland than the closest portion of the existing structure from that water body or wetland. Included in this allowance are expansions which in-fill irregularly shaped structures. (Effective December 10, 2003)

Individual Private Campsite: An area of land, not associated with a campground, but which is developed for repeated camping by only one (1) group not exceed ten (10) individuals and which involves site improvements which may include, but are not limited to, gravel pads, parking areas, fire places, or tent platforms.

Informal Recreation: Activities for the enjoyment of open space for all ages and interests, including but not limited to walking, picnicking, bird watching, kite flying, cross country skiing, sledding, dog walking, Frisbee throwing, jogging, as well as quiet reflection and enjoyment of the scenery, trees, shrubs, flowers, and nature trails. Informal recreation does not include active team sports or motorized vehicles such as but not limited to snowmobiles, but may include programs related to the history of the district. (Effective November 13, 1999)

Institutional Use: A nonprofit, religious, or public use, such as a use by a church, library, public or private school, or hospital, or a government-owned or operated building, structure, or land used for public purpose, but not including essential services as herein defined.

Junk Yard: A lot or part thereof, exposed to the elements, which is used for the storage or sale of:

1. Second-hand products or materials, such as automobile parts, building supplies, bottles, and papers
2. Automobiles, trucks, or other motor vehicles, two (2) or more of which have remained for a period of six (6) consecutive months either unregistered or without state inspection certificates affixed thereto.

Land Management Road: A route or track consisting of a bed of exposed mineral soil, gravel, or other surfacing materials constructed for, or created by, the passage of motorized vehicles and used primarily for timber harvesting and related activities, including associated log yards, but not including skid trails or skid roads. (Effective October 15, 2009)

Light Manufacturing: Manufacturing involving the assembly or fabrication of products made from previously processed materials.

Local Plumbing Inspector: The Code Enforcement Officer or other person designated by the Town to oversee the installation of plumbing and on-site sewage disposal systems.

Long-Term Care Facility: Housing that provides a program of assisted living services to deal with the activities and instrumental activities of daily living and nursing homes.

Lot: A parcel of land with ascertainable boundaries described in a recorded deed or shown on an approved subdivision plan and meeting zoning requirements at the time it was created.

Lot Area: Total area within the property lines of a lot excluding any part thereof lying within the boundaries of any public or private existing or proposed street right-of-way.

Lot Coverage: The percentage of the total area of the lot that is covered by impervious areas or surfaces.

Lot Width: The horizontal distance between the side lines of a lot measured at right angles to its depth along a straight line parallel to the front lot line. Minimum lot width shall be measured through that part of the principal building where the lot is narrowest. In no case, however, shall the width of the lot in the area from the front property line to the principal building be less than the Minimum Lot Width. (Effective August 11, 1999)

Low Income: Family income which is between fifty percent (50%) and eighty percent (80%) of median family income for the Portland Metropolitan Statistical Area as established by the State Planning Office or the Greater Portland Council of Governments.

Mandatory Buffer: The Resource Protection 1-Critical Wetland Buffer Overlay District where it is adjacent to RP1 Wetlands which have been rated moderate or high value for wildlife by the Maine Department of Inland Fisheries and Wildlife. (Effective August 11, 1999)

Manufactured Housing:

1. Those units constructed after June 15, 1976, commonly called “newer mobile homes”, which the manufacturer certifies are constructed in compliance with the United States Department of Housing and Urban Development standards, meaning structures, transportable in one (1) or more sections, which, in the traveling mode, are fourteen (14) body feet or more in width and are seven hundred fifty (750) or more square feet, and which are built on a permanent

chassis and designed to be used as dwellings, with or without permanent foundations, when connected to the required utilities, including the plumbing, heating, air conditioning and electrical systems contained therein; except that the term shall include any structure which meets all the requirements of this paragraph except the size requirements, and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the United States Department of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, United States Code, Title 42, Section 5401, et seq.; and,

2. Those units commonly called “modular homes”, which the manufacturer certifies are constructed in compliance with the State’s Manufactured Housing Act and regulations, meaning structures, transportable in one (1) or more sections which are not constructed on a permanent chassis and are designed to be used as dwellings on foundations when connected to required utilities, including the plumbing, heating, air conditioning and electrical systems contained therein.

Manufactured Housing on Individual Lots: To qualify as manufactured housing that can be placed on individual lots that are not part of a manufactured housing park, a manufactured housing unit shall have the following characteristics:

1. It shall have a double pitched roof, with a minimum pitch of 3/12 covered with asphalt or fiberglass composition shingles or other roofing shingles made of other materials, but specifically excluding corrugated metal roofing material;
2. The exterior walls shall have the appearance of traditional residential site-built walls;
3. The house shall be anchored on a permanent full frost free wall foundation; and
4. Any hitch or tow bar together with axels and wheels shall be removed.

Manufactured Housing Unit: Structures, transportable in one (1) or more sections, constructed in a manufacturing facility, transported to a building site and which are designed to be used as dwellings when connected to the required utilities, including plumbing, heating, air conditioning and electrical systems contained therein.

Manufactured Housing Park: A parcel of land under unified ownership designed and/or used to accommodate three (3) or more manufactured housing units.

Manufactured Housing Park Lot: The area of land on which an individual home is situated within a manufactured housing park and which is reserved for use by the occupants of that home.

Marina: A business establishment having frontage on navigable water and, as its principal use, providing for hire offshore moorings or docking facilities for boats, and which may also provide accessory services such as boat and related sales, boat repair and construction, indoor and outdoor storage of boats and marine equipment, bait and tackle shops and marine fuel service facilities. (Effective October 15, 2009)

Marine Structure: Any non-habitable structure, whether permanent or temporary, build on or over a water body, including but not limited to piers, docks, wharves, breakwaters, culverts, jetties, groins, bridges, soil erosion retaining walls, bait sheds, and processing facilities.

MDOT: The Maine Department of Transportation or its authorized representative or agent.

Mineral exploration: Hand sampling, test boring, or other methods of determining the nature or extent of mineral resources which create minimal disturbance to the land and which include reasonable measures to restore the land to its original condition. (Effective October 15, 2009)

Miniature Golf: A tract of land laid out for playing miniature golf where all holes are separated by barriers and the only clubs used on the course are putters. (Effective February 12, 2003)

Mixed Use Building: A building that includes both nonresidential and residential uses.

Moderate Income: Family income which is between eighty percent (80%) and one hundred twenty percent (120%) of median family income for the Portland Metropolitan Statistical Area as established by the State Planning Office or the Greater Portland Council of Governments. (Effective November 5, 2016)

Motel: A building or group of attached or detached buildings containing guest rooms or dwelling units, most of which have separate outside entrances and adjacent parking spaces and are intended to be rented principally to transients on a short-term basis.

Multifamily: A building containing 2 or more dwelling units (excepting accessory dwelling units), or a mixed use building containing 1 or more dwelling units. (Effective February 12, 2005)

Multiplex Housing: Multiplex housing is housing containing two (2) or more attached dwelling units. (Effective November 14, 2015)

Multipurpose Playing Field: The field located in Fort Williams Park as approved on September 9, 1996, by the Town Council, without expansion.

No Other Feasible Alternative: In the case of a variance request, there is no other place on the lot, taking into consideration the physical constraints of the property, or no other location on the structure that the proposed construction could go without the need for a variance or without causing the owner to create other compliance problems on the lot

because of the Zoning Ordinance, deed restrictions or conditions imposed by a lease or contract. (Effective August 10, 2000)

Municipal use: Facilities which are owned or operated and/or activities conducted by the Town of Cape Elizabeth for the benefit of the Town's residents, including, but not limited to municipal office buildings, public schools, public works garages and facilities, public safety buildings, parks and playgrounds, solid waste disposal systems, sewerage facilities, special events and utility infrastructure. For this definition, utility infrastructure shall include but not be limited to wind energy systems. (Effective July 14, 2008)

Nature trail: A track made by passage or manmade efforts through a natural area. (Effective November 13, 1999)

Net Residential Area: The net area of a parcel of land that constitutes "buildable land" that can be used in determining the maximum allowable density of a site. The net residential area shall be determined by subtracting the following from the gross area of the site:

1. The portion of the site used for outside parking, streets, and site access. This portion shall be deemed to be (i) fifteen percent (15%) of the gross area or (ii) at the option of the applicant, the actual area devoted to streets, parking lots, and access drives. In computing the area of streets or ways, the full width of the right-of-way shall be included.
2. Any isolated portion of the site that is cut off from the main portion of the site by a road, existing land uses, or major stream or similar physical feature such that it creates a major barrier to the common use or development of the site.
3. Any portion of the site located within a floodway or coastal high hazard area as shown on the Flood Insurance Rate Maps or Floodway Map.
4. Any portion of the site that is regularly inundated by water, including ponds, streams oceans, and intertidal areas.
5. Any portion of the site that is unsuitable for development in its natural state because of topography, drainage, or subsoil conditions. This shall include the following:
 - a. land located within the RP1 – Critical Wetland District
 - b. any area of one (1) or more contiguous acres with sustained slopes of twenty-five percent (25%) or more
 - c. any area of exposed bedrock
6. Any portion of the site located within utility easements or rights-of-way. Any interpretation of the portion of a site that may be included in calculating the net residential area shall be made by the Planning Board.

Nonconforming Building: A nonconforming building or structure is one that does not meet the space and/or bulk standards of the district in which it is located. It is allowed solely because it was in lawful existence as of the effective date of this ordinance or as of the effective date of any subsequent amendment which rendered the building nonconforming.

Nonconforming Lot: A nonconforming lot is a single lot which as of the effective date of this Ordinance or as of the effective date of any subsequent amendment does not meet the minimum lot area, net lot area per dwelling unit, minimum street frontage, or other similar lot requirements of the district in which it is located. It is allowed solely because it was in lawful existence as of the effective date of this ordinance or as of the effective date of a subsequent amendment which rendered the lot nonconforming.

Nonconforming Use: A nonconforming use is a use of premises that is not a permitted or conditional use in the district in which it is located, but which is allowed to remain solely because it was in lawful existence as of the effective date of this ordinance or as of the effective date of any subsequent amendment which rendered the use nonconforming.

Normal High Water Line: Adjacent to inland waters, the normal high water line shall be that line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous with rivers and great ponds that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river or great pond during the period of normal high-water are considered part of the river or great pond. Adjacent to tidal waters, the normal high water line shall be the topographic line located at the Highest Astronomical Tide, plus three (3) vertical feet upland. (Effective September 11, 2014).

Not Open to Customers: The establishment's doors shall be locked and all customers shall have left the building by the time the business must be closed. (Effective July 8, 2009)

Nursing home: A facility in which nursing care and medical services are prescribed by or performed under the general direction of persons licensed by the State of Maine and is designed to provide full-time convalescent or chronic care to individuals who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves. For the purposes of this Ordinance, "nursing home" shall include only those facilities that have been certified by the State of Maine as meeting all licensing and operation regulations for skilled care facilities as promulgated by the Department of Human Services pursuant to the provisions of Maine law.

Ordinance: The Zoning Ordinance.

Outdoor: In the open air, including activities located on patios, decks, porches, and screened porches. (Effective July 8, 2009)

Park: A publicly owned facility providing active or passive recreational activities and/or facilities.

Park Maintenance Area: That area within the Fort Williams Park District that extends between the Park Maintenance Building, the Heavy Equipment Building, Building #326, and the long storage garage behind Building #326.

Parking Lot: A lot or part thereof used for or designed for the parking of three (3) or more vehicles in conjunction with a use other than a single family home. The parking lot includes the parking spaces, aisles, and accessways.

Passive Recreation: Leisure activities, including but not limited to walking, picnicking, and hiking that are of an informal nature, do not take place at prescribed sites or fields, and usually do not require extensive equipment. Passive recreation does not involve active team sports or the use of motorized vehicles.

Personal Services Shop: A site where personal services are delivered, including but not limited to a barber or beauty salon, tailor shop, shoe repair shop, dressmaking, tanning salon, dry cleaner, Laundromat, recreational facility, a studio for dance, art, music, and photography, radio and television sales and repair shops and services of a similar nature.

Piggery: A building or portion thereof, or an enclosure, used or designed for the keeping of more than five (5) pigs more than six (6) months old.

Pond: Any inland body of water which in its natural state has a surface area of one thousand (1,000) square feet or more, and any body of water artificially formed or increased which has a surface area of one thousand (1,000) square feet or more.

Porch: A roofed open area which may be screened that is attached to or part of a building.

Practical Difficulty: An occasion where the strict application of the ordinance to a property precludes the ability of the property owner to pursue a use permitted in the zoning district in which the property is located and results in significant economic injury to the property owner. (Effective August 10, 2000)

Predominantly: When used to modify a natural feature or resource such as soils or vegetation, it shall mean that more than fifty percent (50%) of the feature on a site consists of a particular type or category of the feature, i.e. hydric/non-hydric or wetland vegetation/non-wetland vegetation.

Principal Building: Any building containing the primary or main use of the lot on which it is located.

Private Accessway: A privately owned and maintained access road to a single lot that does not meet minimum street frontage requirements of this Ordinance.

Recreational Camping Vehicle: A motor vehicle or an attachment to a motor vehicle designed to be towed, and designed for temporary sleeping or living quarters for one or

more persons, including but not limited to a pickup camper, travel trailer, tent trailer, camp trailer, or motor home. In order to be considered as a recreational camping vehicle and not a structure, the vehicle must remain with its tires on the ground, and must be registered with the State Division of Motor Vehicles.

Recreational Facility: A facility designed, equipped and used for indoor athletics, physical fitness training, health education, and/or community recreation activities. Ancillary uses may include child care for users on the premises, vending machines, physical fitness counseling, and education.

Related Market Products: Products for retail sale customarily related to and sold with agricultural products at retail farm markets or aquacultural products at fish markets, including but not limited to the following:

1. Prepared or processed food products
2. Packaged nonalcoholic beverages
3. Handicrafts
4. Christmas wreaths, Christmas trees and garlands

Residential Care Facility: Housing that provides residents with a program of assisted living services to deal with the activities and instrumental activities of daily living.

Residual basal area: The average of the basal area of trees remaining on a harvested site. (Effective October 15, 2009)

Restaurant: An establishment where food and drink are prepared, served, and sold to customers for consumption primarily on the premises. The sale of alcohol shall account for less than 50% of total annual sales. (Effective July 8, 2009)

River: A free-flowing body of water including its associated flood plain wetlands from the point at which the river provides drainage for a watershed of twenty-five (25) square miles to its mouth.

Road: See definition of street.

Rooming or Boarding Home: A house or other residential structure that is maintained wholly or partially for the purpose of boarding, for compensation, more than two (2) residents in not more than nine (9) rooms and that does not provide a supportive services program (see definition of supportive services program).

Salt Marsh: Areas of coastal wetland (most often along coastal bays) that support salt tolerant species, and where the soil is irregularly inundated by tidal waters at average high tide during the growing season. (Effective October 15, 2009)

Setback: The shortest distance from a building (or other point of measurement) to the nearest lot line, side line of a street right-of-way, or normal high water line. Where

unknown, the width of a privately owned right-of-way shall be presumed to be twenty-five (25) feet. (Effective October 15, 2009)

Setback Front: An open area extending the entire width of a lot from sideline to sideline and extending in depth at a right angle from the street right-of-way to such depth as specified. Such area shall be unoccupied and unobstructed by a building from the ground upward. A lot having frontage on more than one (1) street shall be required to meet the minimum front setback on each street.

Shore Frontage: The length of a lot bordering on a water body or wetland measured along the normal high water line or wetland upland edge. (Effective October 15, 2009)

Short-Cut: A through road that creates a shorter distance for vehicular travel between any two points on arterial, collector, rural connector or feeder streets. The distance along short-cut shall be measured along the centerline of the traveled way incorporating such short-cut, from the centerline of the nearest intersection with an arterial, collector, rural connector, or feeder street on one side of the short-cut to the centerline of the next nearest intersection with an arterial, collector, rural connector or feeder street on the other side of the short-cut. This short-cut distance shall be compared to the distance measured along the centerline of the shortest existing traveled way between such same two points by any other route. (Effective June 23, 2006)

Short Term Rental: The use of a dwelling offered for rent for transient occupancy by tenants for a tenancy of less than 30 days, excluding motels, hotels and bed and breakfasts. (Effective December 14, 2012)

Short Term Rental Guest: A visitor of a Short Term Rental tenant who will not be sleeping overnight on the property, provided persons on the property after 11:00 PM local time shall be deemed tenants and not Short term Rental Guests for the purposes of this Ordinance. (Effective December 14, 2012)

Significant Economic Injury: Placing the applicant for a variance at a disadvantage in the neighborhood by applying Zoning Ordinance standards, which would prevent the applicant from having a structure or accessory structure comparable in size, location and number to those of other lot owners in the immediate neighborhood, but in no case fewer than 10 of the nearest property owners. (Effective August 10, 2000)

Skid Road or Skid Trail: A route repeatedly used by forwarding machinery or animal to haul or drag forest products from the stump to the yard or landing, the construction of which requires minimal excavation. (Effective October 15, 2009)

Slash: The residue, e.g., treetops and branches, left on the ground after a timber harvest. (Effective October 15, 2009)

Southern Section of Fort Williams Park: That area within the Fort Williams Park District beginning at the southeasterly corner of the Portland Head Light Parking Lot and then extending along the southerly edge of the parking lot to the main access road and then

along the southerly edge of the main access road to Humphrey Road and along the southerly edge of Humphrey Road to the rear of Building #326 and then following a line westerly from the rear of said building to Shore Road, then southerly along the Shore Road boundary of Fort Williams Park to the Fort Williams Park southern boundary line, then easterly along the Fort Williams Park southern boundary line, to the high water mark of the Atlantic Ocean, then northerly along the high water mark to the southeasterly corner of the Portland Head Light parking lot as shown on the Southern Section of Fort Williams Park map.

Special event facility: A building or portion of a building, outdoor areas, and related parking which is made available for consideration individuals or groups to accommodate private functions including but not limited to banquets, weddings, anniversaries and other similar events. Such use may include (1) kitchen facilities for the preparation or catering of food, (2) the sale and/or serving of alcoholic beverages for on-premises consumption, only during scheduled events and not open to the general public and (3) entertainment. A special event facility may be operated in conjunction with other uses. Overnight accommodations may be operated on a site that is also a special event facility, and are subject to all applicable provisions of the Zoning Ordinance. (Effective December 4, 2015)

Standard Boundary Survey: A map of a quantity of real estate prepared by a professional land surveyor registered in the State of Maine and based on (1) adequate research to support a professional opinion of boundary location, (2) field work including an inspection of the real estate and (3) the preparation of a plan, drawn to scale and including property boundary lines, easements and rights-of-way and existing structures, suitable for recording. (Effective February 8, 2013)

Stream: A free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5-minute series topographic map, or if not available, a 15-minute series topographic map, to the point where the body of water becomes a river or flows to another water body or wetland within the shoreland area. (Effective October 15, 2009)

Street: A public or private way or road, other than a private accessway as herein defined, having a defined travel way with a paved, gravel, or exposed mineral soil surface that is used on a regular basis to provide vehicular access. (NOTE: Streets are classified as arterials, collectors, rural connectors, feeders, or local streets in Appendix B.)

Street Frontage: The distance as measured along the shared boundary of the lot and the right of way of: (1) an abutting public street, (2) a street shown on an approved subdivision plan for which the Town holds a valid Performance Guarantee, (3) a private road that was in existence as of June 4, 1997, and that meets the requirements of Sec. 19-7-9.A, Existing Private Road Standards, (4) a private road that meets the requirements of Sec. 19-7-9.B, New Private Road Standards, or (5) a Private Accessway that was approved by the Planning Board under Sec. 19-7-9.C. (Effective December 10, 2003)

Structure: Anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location

on or in the ground, exclusive of fences, stone walls, retaining walls, and roof over hangs not exceeding two (2) feet from the vertical face of the structure siding. The term includes structures temporarily or permanently located, such as decks and satellite dishes. (Effective November 5, 2016)

Structural Alteration: Any change involving the addition, removal or replacement of supporting members of a building, such as posts, columns, plates, joist, girders, or foundation walls.

Supportive Service Program: A program of services for the elderly that provides, at a minimum: a central dining facility and meals program; a central recreation/activities room and program; housekeeping services; regular transportation service; and personal care assistance.

Tenant: An occupant of land or premises who occupies, uses, and enjoys real property for a fixed time, usually through a lease arrangement with the property owner or with the owner's consent. When applied to a Short Term Rental, anyone sleeping overnight shall be considered a tenant. (Effective December 14, 2012)

Through Road: A road with more than one point of ingress or egress from or to the larger network of roads. A through road does not include a road approved by the Planning Board with continuously maintained physical barriers to prevent motorized vehicular traffic other than (i) emergency vehicles or public works vehicles while providing service, or (ii) through traffic during a temporary emergency traffic diversion by order of public safety authorities. (Effective June 23, 2006)

Timber Harvesting: The cutting and removal of trees exceeding fifty (50) cords of timber in any calendar year from the growing site, except in the Shoreland Performance Overlay Zone. Timber harvesting does not include the construction or creation of roads nor the clearing of land for approved construction, nor the harvesting of Christmas trees. (Effective June 10, 2010)

Tower: Any structure, whether free-standing or in association with a building or other permanent structure, that is designed, constructed or used primarily for the purposes of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, and similar structures. (Effective April 15, 2000)

Town: The Town of Cape Elizabeth, Maine.

Tributary Stream: Means a channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil, parent material or bedrock; and which is connected hydrologically with other water bodies. "Tributary stream" does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by human activity. This

definition does not include the term “stream” as defined elsewhere in this Ordinance, and only applies to that portion of the tributary stream located within the shoreland zone of the receiving water body or wetland. (Effective October 15, 2009)

Trip: A single or one-direction vehicle movement with either the origin or the destination (exiting or entering) inside a study site. For trip generation purposes, the total number of trips for a land use over a given period of time is the total of all trips entering plus all trips exiting a site during a designated time period. (Effective December 10, 2003)

Undesirable Change in the Character of the Neighborhood: The result of a variance where the structure is larger or closer to the road or property lines than the average of the nearest ten principle structures, or in the case of a variance request for an accessory structure, the nearest ten accessory structures. (Effective August 10, 2000)

Variance: A variance is a relaxation of the terms of this Zoning Ordinance. A variance may be authorized by the Zoning Board of Appeals only for deviations in height, area, and size of structures, or setbacks and open spaces. Establishment or expansion of a use otherwise prohibited or a reduction in the required lot area and street frontage shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or in an adjoining zoning district.

Vegetation: All live trees, shrubs, ground cover, and other plants including without limitation, trees both over and under 4 inches in diameter, measured at 4 ½ feet above ground level (DBH). Woody vegetation includes live trees, or woody, non-herbaceous shrubs. (Effective October 15, 2009)

Village Green Development: The development or redevelopment of a lot or lots located in the Town Center District which includes a village green designed to meet the standards of Sec. 19-6-4(D)(3)(g)(4) (Town Center Design Standards, Village Green). (Effective March 9, 2016)

Village Retail Shop: Retail shops including but not limited to locations for the sale of appliances, antiques, apparel, auto parts, baked goods, books, building supplies, farm and fish markets, flowers and plants, furniture, groceries, hardware, jewelry, lawn and garden supplies, liquor, office supplies, pharmaceuticals, toys, works of art, and articles of a similar nature.

Volume of a Structure: The contiguous volume of all floor area portions of a structure enclosed by roof and fixed exterior walls as measured from the outside faces of these walls and roof.

Water Body: Any great pond, river, stream or tidal area.

Wetlands: Land where saturation with water is the dominant factor determining the nature of soil development and the types of plants and animal communities living in the soil and on its surface. For the purpose of this Ordinance, different categories of wetlands are identified in Sec. 19-6-9, Resource Protection Districts.

Wetland Buffer: A designated area bordering wetlands required to be left in their natural state in order to protect wetlands from adjacent land uses.

Wetland Upland Edge: The boundary between (1) land with predominantly wetland or aquatic vegetation and land with predominantly terrestrial vegetation; or (2) soil that is predominantly hydric and soil that is predominantly non-hydric; or (3) in the case of wetlands without aquatic vegetation or hydric soils, land that is saturated with water to the surface or covered with shallow water and land wetland vegetation and wetland soils, the highest boundary shall be used. In places where the upland edge cannot be accurately determined (e.g., due to ledges or erosion), said upland edge shall be estimated from the nearest locations where wetland vegetation or wetland soils occurs.

Wetland Vegetation: Those species that are typically adapted for life in saturated or seasonally saturated soil condition. For the purpose of this ordinance, species identified as Obligate (always found in wetlands under natural conditions with a frequency greater than 99% but may persist in non-wetlands if planted or if a wetland has been transformed into non-wetland) or Facultative Wetland (usually found in wetlands with a frequency of 67% to 99% but occasionally found in non-wetland areas) in the U.S. Fish and Wildlife Service publication entitled Wetland Plants of the State of Maine 1986, as revised, shall be considered to be wetland vegetation. A copy of the publication is available for review in the Town Office.

Wind Energy System: A structure or structures that may include a wind turbine, a tower, footings, electrical infrastructure, and associated equipment and structures intended to produce electrical power primarily for on-site consumption, or consumption by the Town of Cape Elizabeth on an adjacent lot when more than one lot is held in common ownership. (Effective October 8, 2008)

Wind-firm: The ability of a forest stand to withstand strong winds and resist wind-throw, wind rocking, and major breakage. (Effective October 15, 2009)

Zoning Map: The map showing the locations of the various districts and overlay zones as adopted by the Town Council, and certified by the Town Clerk as being the “official” record of the boundary locations.

ARTICLE II. ESTABLISHMENT OF DISTRICTS

SEC. 19-2-1. ZONING DISTRICTS

It is the intent of this Ordinance to promote land use conformities, except that nonconforming conditions legally in existence before the effective date of this Ordinance and its amendments shall be allowed to continue subject to applicable requirements.

For the purpose of this Ordinance the Town is hereby divided into districts as follows:

Residence A District (RA)
 Residence B District (RB)
 Residence C District (RC)
 Town Center District (TC)
 Business District A (BA)
 Business District B (BB)
 Business District C (BC)
 Fort Williams Park District (FWP)
 Resource Protection Districts
 Resource Protection 1 – Critical Wetlands District (RP1-CW)
 Resource Protection 2 – Wetland Protection District (RP2-WP)
 Resource Protection 3 – Floodplain District (RP3-F)

In addition, the following overlay districts are created:

Resource Protection 1 – Critical Wetland Buffer Overlay District (RP1-CW Buffer Overlay)
 Shoreland Performance Overlay District
 Great Pond Watershed Overlay District

SEC. 19-2-2. ZONING MAP

The zoning districts are defined as shown on the official copy of the “Zoning Map of Cape Elizabeth, Maine” as it may be amended from time to time. The Zoning Map shall be certified by the attested signature of the Town Clerk and shall be drawn at a scale of not less than one inch equals two thousand feet (1” = 2000’) and kept on file by the Town Clerk. District boundaries shall be clearly delineated and a legend indicating the symbols for each district shall be placed on the map. The Zoning Map is hereby made a part of this Ordinance.

SEC. 19-2-3. CERTIFIED COPY OF ORDINANCE

A certified copy of this Ordinance shall be filed with the Town Clerk and shall be accessible to any member of the public. Copies shall be made available to the public at reasonable cost at the expense of the person making the request. Notice of availability of this Ordinance shall be posted in the Town Hall.

SEC. 19-2-4. LOCATION OF DISTRICT BOUNDARIES

The boundaries of the above districts are as shown on the Zoning Map. Where the Zoning Map shows zoning district boundary lines as following public or private streets or ways, the center lines of such streets or ways shall be the boundary lines. Where district boundary lines are shown approximately on the location of existing property or lot lines and the exact location of the boundaries of the district is not indicated by means of figures, distances or

otherwise described, the property or lot lines shall be the district boundary lines. Where the district boundary lines are shown upon the map outside of street lines and approximately parallel thereto, they shall be considered to be parallel to such street lines. Figures on the map between the district boundary lines and the nearest street lines indicate measurement between the same at right angles to the street lines unless otherwise specified. In cases in which the location of boundaries is not defined by detailed description at the time of enactment, such locations shall be determined by the distances in feet, when given upon the map, or when distances are not given, by the scale of the map.

Where uncertainty exists as to the location of any zoning district boundary, the property owner so affected may request, in writing, that the Code Enforcement Officer make a formal, written determination. The Code Enforcement Officer shall make a written determination within five (5) working days of receiving a request. If the property owner does not agree with the Code Enforcement Officer's determination, the property owner may appeal this decision to the Zoning Board of Appeals as an administrative appeal in accordance with Sec. 19-5-2, Powers and Duties.

SEC. 19-2-5. LOCATION OF RESOURCE PROTECTION DISTRICT BOUNDARIES

Where uncertainty exists as to the location of a resource protection district boundary, the following procedures shall be used to reach an official determination of the location:

- A. Upon written request by a property owner, Town board or a municipal staff person, the Code Enforcement Officer shall determine, in writing, the existence of wetland areas and the location of resource protection and buffer district boundaries based on the Zoning Map, this Ordinance, documents cited in this Ordinance and similar materials, and a site visit. If a requesting property owner believes that an initial determination by the Code Enforcement Officer is in error or if a reasonable doubt exists regarding the existence, classification, or location of wetlands, the property owner may submit information on soils and/or vegetation and request a meeting with the Code Enforcement Officer to reconsider the determination. If the property owner does not concur with the reconsidered determination, the Code Enforcement Officer shall refer the issue to the Planning Board for its review and determination, to be made with the advice of the Conservation Commission.
- B. If an applicant disputes the determination of wetlands, the boundaries of resource protection districts or buffer districts by the Code Enforcement Officer, or if the Code Enforcement Officer concludes that the location of the boundary is in doubt, the applicant shall submit the following information to the Planning Board, unless otherwise waived by the Planning Board:
 1. A site plan map showing the proposed use, structure or activity including a map at a scale of one inch equals fifty feet (1"= 50'), including any boundaries of Resource Protection 1 – Critical Wetland Districts, Resource Protection 2 –

Wetland Protection Districts, Resource Protection 3 – Floodplain District scaled from the Zoning Map, as well as the outer limits of Resource Protection 1 – Critical Wetland Buffer Overlays, if established;

2. A topographic map showing the location and slopes for all grades within the site, by not greater than 1-foot contours;
 3. A high intensity soils map as described in Sec. 19-8-3.A.2.c.6, Resource Protection Permit Procedures, showing the Wetland Upland Edge for the site as defined by wetland soils;
 4. A description of the vegetative cover of the site, including dominant species and the location of the Wetland Upland Edge for the site as defined by wetland vegetation;
 5. A description, supported by necessary documentation, explaining why the site is not within a Resource Protection 1-Critical Wetland District, Resource Protection 2 – Wetland Protection District, Resource Protection 3 – Floodplain District or Resource Protection 1 – Critical Wetland Buffer Overlay as defined herein; and
 6. Additional information deemed necessary by the Planning Board.
- C. In determining the existence and boundaries of particular wetland areas, district boundaries and buffer areas, the Code Enforcement Officer, the Town Planner or the Planning Board may request the Conservation Commission to inspect the site and submit its recommendations in writing.
- D. In evaluating wetland or floodplain boundaries, the Code Enforcement Officer, the Planning Board or the Conservation Commission may consult with expert persons or agencies.
- E. in determining wetland boundaries, the Code Enforcement Officer or Planning Board may exclude areas beyond the point where the wetland area is less than one hundred (100) feet in width for a distance of more than one hundred (100) feet.
- F. In all cases, the burden of proof shall be on the applicant to show that the site in question is not within a Resource Protection 1 – Critical Wetland District, Resource Protection 2 – Wetland Protection District, Resource Protection 3 – Floodplain District or designated Resource Protection 1 – Critical Wetland Buffer Overlay.

SEC. 19-2-6. LOTS IN TWO OR MORE DISTRICTS

Where a district boundary line as established in this Ordinance and as shown on the Zoning Map divides a lot which existed at the time of enactment of this Ordinance, the use and

other requirements applying to the less restricted portion of such lot under this Ordinance may be extended thirty (30) feet beyond the district boundary line into the lot in the more restricted district. This section does not apply to Resource Protection 1 – Critical Wetland Districts, Resource Protection 2 – Wetland Protection District, Resource Protection 3 – Floodplain Districts, Shoreland Overlay District, and Great Pond Watershed Overlay District. (Effective August 11, 1999)

ARTICLE III. ADMINISTRATION AND ENFORCEMENT

SEC. 19-3-1. CODE ENFORCEMENT OFFICER

The Code Enforcement Officer of the Town shall interpret and enforce the provisions of this Ordinance and shall require compliance with its requirements and restrictions. The Code Enforcement Officer shall adopt procedures to facilitate the handling of all matters and questions arising hereunder within the scope of the Code Enforcement Officer's authority and duties. Any decision of the Code Enforcement Officer denying a permit shall be in writing, a copy of which shall be given to the applicant. Appeals from decisions of the Code Enforcement Officer shall be to the Zoning Board of Appeals in accordance with the provisions of Sec. 19-5-2.A. Administrative Appeals.

SEC. 19-3-2. APPROVALS AND PERMITS REQUIRED

Activities involving the use of land, the construction, structural alteration, repair, enlargement or relocation of a building or structure, or the demolition of a building or structure may require approvals and/or permits under the requirements of this Ordinance. No activity subject to an approval and/or permit shall commence until after the issuance of all required approvals and permits. A person who is issued a permit pursuant to this Ordinance within the Shoreland Performance Overlay District or any Resource Protection District shall have a copy of the permit on site while the work authorized by the permit is performed. (Effective October 15, 2009). The following activities require approvals or permits:

A. Conditional Use Permit

No use of land, buildings, or structures identified as a conditional use in the district in which it is located shall commence until after the issuance of a Conditional Use Permit by the Zoning Board of Appeals in accordance with the provisions of Sec. 19-5-5, Conditional Use Permits. Where a conditional use shall also require Planning Board review, the Planning Board shall be substituted for the Zoning Board of Appeals in issuing a Conditional Use Permit in accordance with the provisions of Sec. 19-5-5, Conditional Use Permits. Such conditional use review shall be conducted concurrently with any other review required by the Planning Board. (Effective August 11, 1999)

B. Site Plan Approval

No activity which requires Site Plan Review under Sec. 19-9-2, Applicability, shall commence until after site plan approval has been obtained from the Planning Board in accordance with the provisions of Article IX, Site Plan Review. (Effective June 10, 201)

C. Building Permit

No construction, structural alteration, enlargement, or relocation of a building or structure shall commence until after the issuance of a Building Permit by the Code Enforcement Officer in accordance with Sec. 19-3-3, Building Permits.

No installation of an amateur or governmental wireless telecommunication facility antenna which extends 15' feet or more from the roof of a structure shall occur until after the issuance of a Building Permit by the Code Enforcement Officer in accordance with Sec. 19-3-3. No installation of a commercial wireless telecommunication antenna on an alternative tower structure shall occur until after the issuance of a Building Permit by the Code Enforcement Officer in accordance with Sec. 19-3-3, except that the Code Enforcement Officer may refer the antenna installation application to the Planning Board for review under Sec. 19-9, Site Plan Review and Sec. 19-8-12, Tower and Antenna Performance Standards, if the antenna concealment is not complete. (Effective April 15, 2000)

No installation of a wind energy system shall occur until after the issuance of a Building Permit by the Code Enforcement Officer in accordance with Sec. 19-3-3 and a determination by the Code Enforcement Office that the performance standards in Sec. 19-8-13. Wind Energy Systems, have been met. (Effective October 8, 2008)

D. Certificate of Occupancy

None of the following activities shall occur and no building, structure, or portion thereof for which a building permit was issued shall be occupied until after the issuance of a Certificate of Occupancy by the Code Enforcement Officer in accordance with Sec. 19-3-4, Certificate of Occupancy:

1. an increase in the number of dwelling units in a structure
2. the establishment of a home occupation or home business
3. a change in the use of a nonconforming use
4. occupancy and use of vacant land except for the raising of crops, or change in the use of land, except in the raising of crops
5. any change in the use of a building from one category of use as set forth in Article VI to another category of use

6. any activity for which site plan approval is required by the Planning Board

E. Demolition Permit

No demolition of a building or structure or major portion thereof, shall commence until after the issuance of a Demolition Permit by the Code Enforcement Officer. A permit for the demolition of a locally historic structure within the Town Center District or a historic resource identified in Sec. 19-8-6, Archaeological and Historic Resources, shall not be issued until forty-five (45) days after notice has been provided to the Town Manager, Code Enforcement Officer, and Maine Historic Preservation Commission and published in a newspaper of general circulation within Cape Elizabeth. When only a portion of a structure will be demolished, plans depicting the areas to be demolished and any replacement new construction must be submitted to the Code Enforcement Officer before the 45-day waiting period commences. (Effective August 11, 1999)

F. Resource Protection Permit

No activity listed in Sec. 19-6-9, Resource Protection Districts, as being permitted only upon the issuance of a Resource Protection Permit shall commence until after the issuance of said permit by the Planning Board in accordance with Sec. 19-8-3, Resource Protection Performance Standards.

G. Reserved

H. Earth Materials Permit

No removal of thirty (30) or more cubic yards of earth materials, including rock, sand, gravel, topsoil, and similar materials within any twelve (12) month period shall commence until after the issuance of an Earth Materials Permit by the Planning Board in accordance with Sec. 19-8-5, Earth Materials Removal Standards.

I. Home Day Care Permit

No home day care shall commence or expand its operation until after the issuance of a Home Day Care Permit by the Code Enforcement Officer in accordance with Sec. 19-8-8, Home Day Care and Day Care Facility Standards.

J. Construction on an Existing Private Road

No building permit shall be issued for construction on a residential lot that uses an existing private road to provide access to and street frontage for the lot until the Code Enforcement Officer determines that the road provides adequate all-season emergency access and legally binding maintenance arrangements are established in accordance with Sec. 19-7-9.A., Existing Private Road Standards.

K. Construction Utilizing a Private Accessway

No lot shall be created as a developable parcel that does not have the required street frontage for the district in which it is located unless the Planning Board has approved the creation of a private accessway serving the lot in accordance with Sec. 19-7-9.C., Private Accessways.

SEC. 19-3-3. BUILDING PERMITS

A. Permit Required

No building, structure, or part thereof shall be constructed, structurally altered, enlarged, or moved until a Building Permit for such action has been issued by the Code Enforcement Officer. The contractor, builder, and developer, as well as the property owner shall be responsible for any and all permits. Site plan approval, in accordance with the provisions of Article IX. Site Plan Review, may be required prior to the issuance of a Building Permit for certain types of uses including commercial and multiplex residential construction.

B. Compliance with this Ordinance

No Building Permit shall be issued until the proposed construction or alteration complies with the provisions of this Ordinance or with a decision rendered by the Zoning Board of Appeals and with any approvals of the Planning Board.

C. Applications for Permits

All applications for Building Permits shall be submitted in writing to the Code Enforcement Office on forms provided for the purpose. The application shall be accompanied by the following information:

1. A site plan drawn to an indicated scale and showing the location and dimensions of all buildings to be erected, the sewage disposal system, driveways and turnarounds, and abutting lot and street lines. The site plan shall accurately represent the relationship between any proposed building or structure or addition to an existing building and all property lines to demonstrate compliance with the setback requirements of this Ordinance. The applicant shall provide a Standard Boundary Survey if any of the following apply:
 - a. The Code Enforcement Officer concludes that there is doubt as to the location of a property line on the ground;
 - b. The Code Enforcement Officer cannot confirm that all setback requirements are met from the information provided; or

- c. The building permit is requested for a building, building addition or structure valued at over \$10,000 and located less than five feet (5') from the minimum setback distance.

The Code Enforcement Office shall have the discretion to require a standard boundary survey quality plan of only the property line(s) within the area of the proposed construction instead of a standard boundary survey of the entire property boundary. (Effective February 8, 2013)

- 3. Approval by the Local Plumbing Inspector of any private sewage disposal system proposal for the building, together with the plans for the approved system.
- 4. Information required to determine compliance with the terms and conditions for building and development in flood hazard areas as set forth under Chapter 6, Article VI, Floodplain Management Ordinance if the building is located within a flood hazard area.
- 5. All applications shall be signed by an owner or individual who can show evidence of right, title, or interest in the property or by an agent of the owner with authorization from the owner to apply for a permit hereunder, certifying that the information in the application is complete and correct. (Effective October 15, 2009)
- 6. Such other information as the Code Enforcement Officer may require to determine compliance with this Ordinance or the Building Code.

D. Action on Applications

- 1. Within seven (7) working days of the filing of an application for a Building Permit involving a single family residence of fifteen (15) working days for permits involving other uses, the Code Enforcement Officer shall approve, deny, or refer such application to the appropriate body. The decision of the Code Enforcement Officer shall be in writing citing the provisions of the Ordinance that apply and communicated directly to the applicant. One copy of the decision shall be filed in the Code Enforcement Officer's office. If the proposed activity requires site plan review in accordance with Article IX, Site Plan Review, the Code Enforcement Officer shall refer the applicant to the Town Planner. If a Conditional Use permit is required, the Code Enforcement Officer shall refer the applicant to the Zoning Board of Appeals and provide a copy of the decision to the Board.
- 2. A public notice shall be mailed upon issuance of any building permit that includes any of the following items. A public notice shall not be required if the building permit is for construction pursuant to a Planning Board or Zoning Board of Appeals approval.

- a. Any expansion of a structure or new structure located within ten (10) feet of the minimum setback; and
- b. Any expansion of a structure or new structure within 125' of the normal high water line;

E. Plumbing Permit Required

No Building Permit shall be issued for any structure or use involving the construction, installation, or alteration of plumbing facilities unless a valid plumbing permit has been secured by the applicant.

F. Revision of Proposed Work

A new or revised building permit is required if any substantial changes are made in the size, use, or construction of the structure of building after issuance of the permit.

G. Building Permit Expiration

A Building Permit secured under the provisions of this Ordinance shall become invalid if the authorized work is not commenced within six months after issuance of the permit, or if the authorized work is suspended or abandoned for a period of six months after the time of commencing the work. If the work is not completed within eighteen (18) months after the date on which the permit is granted and the Code Enforcement Officer determines that completion is not being diligently pursued, then the Code Enforcement Officer may deem the Building Permit expired. (Effective August 11, 1999)

H. Required Records

Applications for permits with their accompanying plans and building permits shall be maintained as a permanent record by the Code Enforcement Officer.

SEC. 19-3-4. CERTIFICATE OF OCCUPANCY

None of the following activities shall occur and no building, structure, or portion thereof for which a building permit was issued shall be occupied until after the issuance of a Certificate of Occupancy by the Code Enforcement Officer.

- 1. An increase in the number of dwelling units in a structure.
- 2. The establishment of a home occupation or home business.
- 3. A change in the use of a nonconforming use.

4. Occupancy and use of vacant land except for the raising of crops, or change in the use of land, except in the raising of crops.
5. Any change in the use of a building from one category of use as set forth in Article VI to another category of use.
6. Any activity for which site plan approval is required by the Planning Board.

A Certificate of Occupancy shall not be issued if the Code Enforcement Officer finds that the project is not in compliance with this Ordinance or with any applicable approvals or permits.

In case of use and occupancy of any building or part thereof, during a period of construction or alteration, the Code Enforcement Office may issue a temporary certificate for periods not exceeding six (6) months. A temporary certificate may be issued for a project that received site plan approval only if a financial guarantee meeting the requirements of Sec. 16-2-4(c)(7)(A) of the Subdivision Ordinance is in place for all uncompleted site improvements, including landscaping.

SEC. 19-3-5. FEES

The Town Council shall establish fees for all permits. A copy of the fee schedule shall be available from the Code Enforcement Officer.

If any work requiring a permit is commenced without first obtaining such permit, and if all requirements for the issuance of such permit can be met, the Code Enforcement Officer may issue such permit upon the filing of a late application accompanied by the required late fee for the same. (Effective December 10, 2003)

If work is commenced because of an emergency and an application for a permit is filed within two (2) business days of the commencement of said work, the Code Enforcement Officer may waive the late fee.

SEC. 19-3-6. VIOLATIONS

A. Notice

If, upon investigation, the Code Enforcement Officer determines that activities are or have occurred that are in violation of this Ordinance or any permits or approvals granted for a project, the Code Enforcement Officer shall give written notice to the owner and/or occupant of the premises. The notice shall specify the nature of the violation, actions necessary to abate the violation, and the time frame within which these actions shall occur. In addition, the notice shall advise the party of the right to appeal the Code Enforcement

Officer's decision and/or to seek a variance from the Zoning Board of Appeals, if appropriate.

B. Enforcement Action

If, after such notice and demand, the violation has not been abated within the time provided, the Code Enforcement Officer and/or the Town Council shall institute appropriate action in the name of the Town to prevent, correct, restrain, or abate the violation(s) of this Ordinance.

C. Penalties

Any owner or occupant of, or any person or entity having control or the use of, or any person or entity engaged in the construction, alteration or repair of or receiving a permit for, any building or land of part thereof, found to violate any of the provisions of this Ordinance, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punishable as provided in 30-A, M.R.S.A. §4452, except as otherwise provided by State law. Each day such violation is permitted to exist after written notification thereof by the Code Enforcement Officer shall constitute a separate offense.

In the event of a wetland violation, the Town shall have the power to order complete restoration of the wetland area involved or creation of new wetlands, by the person or agent responsible for the violation. If such responsible person or agent does not complete such restoration or creation within the time specified in the order, the Town shall have the authority to restore the affected wetlands to the prior condition wherever possible and the person or agent responsible for the original violation shall be held liable to the Town for the costs associated with wetland restoration or creation, including the fees of consultants retained by the Town to design or oversee the corrective actions.

D. Shoreland Zoning Enforcement Reporting

Within the Shoreland Performance Overlay District and the Resource Protection Districts, the Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, renovation actions, renovation of permits, appeals, court actions, violations investigated, violations found, and fees collected. On a biennial basis, a summary of this record shall be submitted to the Director of Land and Water Quality within the Department of Environmental Protection. (Effective October 15, 2009)

ARTICLE IV. NONCONFORMANCE

SEC. 19-4-1. INTENT

It is the intent of this Ordinance to promote land use conformities, except that nonconforming conditions that were created by the adoption of this Ordinance shall be

allowed to continue, subject to the requirements of this Article. Except as otherwise provided, a non-conforming condition shall not be permitted to become more non-conforming. (Effective October 15, 2009)

SEC. 19-4-2. GENERAL PROVISIONS

A. Transfer of Ownership

Nonconforming structures, lots, and uses may be transferred, and the new owner may continue the nonconforming use or continue to use the nonconforming structure or lot, subject to the provisions of this Ordinance.

B. Repair and Maintenance

This Ordinance allows the normal upkeep and maintenance of nonconforming uses and structures including repairs or renovations that do not involve expansion of the nonconforming use or structure. Such other changes in a nonconforming use or structure as may be required by federal, state, or local building and safety codes are allowed so long as such changes comply with all other provisions of Article IV. Nonconformance. (Effective October 15, 2009)

C. Reduction in Lot Size

Except as expressly provided in this Article or for a taking by eminent domain or a conveyance in lieu thereof, no lot shall be reduced in size by conveyance of a portion thereof unless (1) the remaining land meets the minimum lot size required for the zoning district in which that land is located, and (2) the land to be conveyed either meets the minimum lot size requirement or will be conveyed to the owner of abutting property, the Town, or to a conservation organization in conjunction with covenants or similar restrictions that prohibit its development.

SEC. 19-4-3. NONCONFORMANCE WITH ALL ZONING DISTRICTS EXCEPT THE SHORELAND AND RESOURCE PROTECTION DISTRICTS (Effective November 5, 2016)

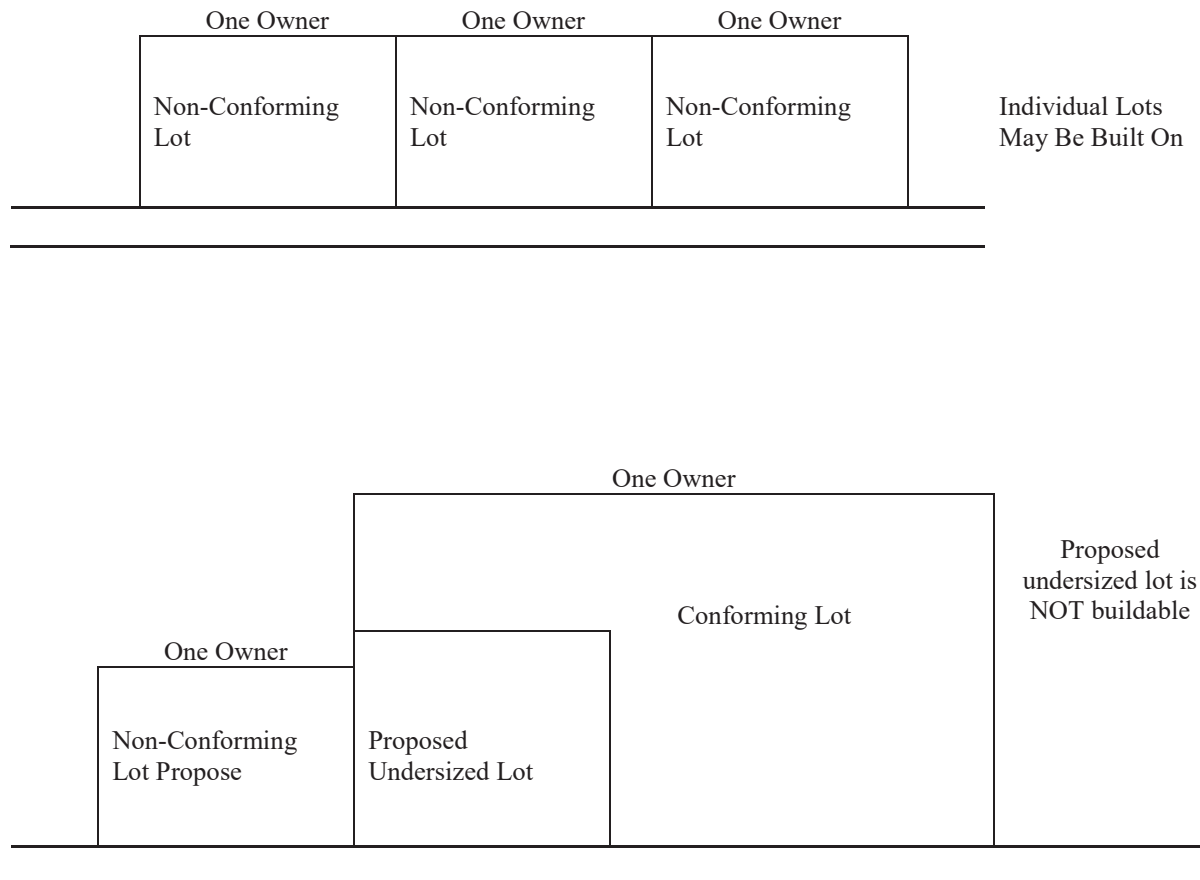
The following provisions shall govern the use and modification of nonconforming lots, structures, and uses in all areas of the Town that do not comply with Zoning District requirements, except for the Shoreland Performance Overlay District or a Resource Protection District. Nonconformities within the Shoreland Performance Overlay District shall be governed by the provisions of Sec. 19-4-4. Nonconformance Within the Shoreland Protection Overlay District, and nonconformities in the Resource Protection Districts (RP1-CW, RP1-CW Buffer Overlay, RP2-WP and RP3-F) shall be governed by the provisions of Sec. 19-4-5, Nonconformance Within the Resource Protection Districts. (Effective November 5, 2016)

A. Nonconforming Lots

The following provisions shall govern the development of lots that are nonconforming because they do not meet the minimum lot area, net lot area per dwelling unit, minimum street frontage, or similar requirement of the district within which they are located. Lots that do not meet the minimum street frontage requirement shall also comply with Sec. 19-7-9, Private Access Provisions, before a building permit can be issued. (Effective November 14, 2015)

1. Vacant Nonconforming Lots

- a. Buildability. Vacant nonconforming lots may be built upon in conformance with the provisions of the district in which they are located even though the lots do not meet the minimum lot area, net lot area per dwelling unit, street frontage, or similar requirements as long as the requirements of the chart below are met. (Effective August 11, 1999 and revised effective July 4, 2001)



- b. Space and Bulk Standards. The Code Enforcement Officer may issue a building permit and related permits and approvals for a principal structure and related accessory buildings and structures that do not comply with the setbacks and other Space and Bulk Standards that would otherwise be required in the district in which it is located as long as the following standards are met: (Effective August 11, 1999)

	RA District	RC District	TC District
Front setback for principal structure			
-- local roads	25'	As required by Sec. 19-6-3.E	As required by Sec. 19-6-4.D
-- other roads	As required by Sec. 19-6-1.E	As required by Sec. 19-6-3.E	As required by Sec. 19-6-4.D
Side setback	25'	10'	As required by Sec. 19-6-4.D
Rear setback	20'	15'	As required by Sec. 19-6-4.D
Minimum lot area	10,000 sq.ft.	10,000 sq. ft.	As required by Sec. 19-6-4.D
-- with public sewerage			
-- with on-site sewage disposal	20,000. sq.ft. *	20,000 sq.ft. *	
Maximum building coverage			
-- with public sewerage	25%	25%	N/A
-- with on-site sewage disposal	20%	20%	N/A




* Or otherwise meet the requirements of Chapter 15, Sewer Ordinance, the State Subsurface Wastewater Disposal Rules and have received a waiver of the state minimum lot size requirement pursuant to 12 M.S.R.A. Section 4807-B. The issuance of a minimum lot size waiver by the Department of Human Services in connection with a lot created prior to January 1, 1970, shall be deemed valid. Provided however, in no event shall a building permit issue for a lot which contains less than 10,000 sq. ft. (Effective July 4, 2001)

- c. Variance. If a principal structure cannot be sited on a lot in conformance with these setback requirements, the owner may seek a variance from the setback requirements from the Zoning Board of Appeals (see Sec. 19-5-2.B, Variances).




2. Developed Nonconforming Lots

- a. Single Lots. A single nonconforming lot that is improved with a principal building or structure may continue to be used. Any existing principal or accessory building or structure may be modified, enlarged, or relocated or a new building or structure constructed even though it does not conform to the setback requirements of the district in which it is located provided that such

modification, construction, or relocation conforms to the standards, except minimum lot size, set forth in Sec. 19-4-3.A.I.a. above. (Effective July 4, 2001)

One Owner	One Owner	One Owner
Nonconforming Lot	Nonconforming Lot	Nonconforming Lot
		





Lots may be conveyed; Buildings may be enlarged per limitations on Nonconformance chart

		One Owner	Conforming Lot
One Owner	One Owner	Proposed Undersized Lot	
Nonconforming Lot	Nonconforming Lot		
			

Proposed undersized lot not buildable

- b. Contiguous Developed Lots: Two or more contiguous, developed nonconforming lots or parcels in common ownership as of June 4, 1997, may be conveyed separately or together, even if all or some of the lots do not meet the dimensional requirements of this Ordinance, if a principal use or structure exists on each lot, provided that the nonconforming lots comply with the State Subsurface Wastewater Disposal Rules and the Town Sewage Ordinance. (Effective July 4, 2001)

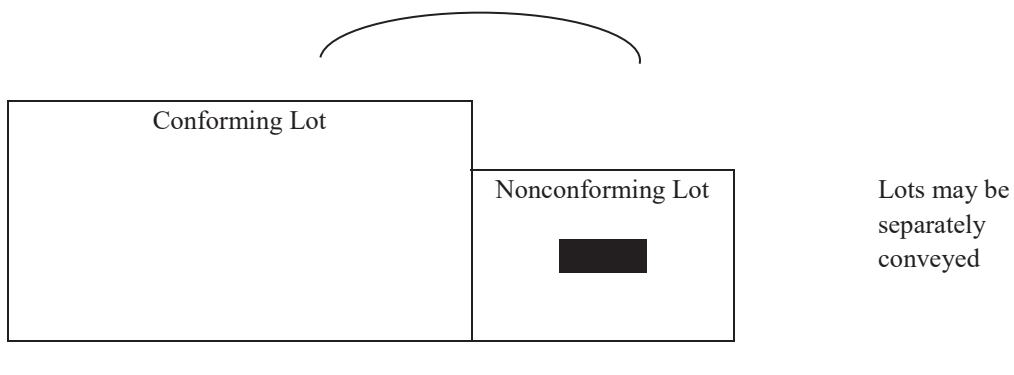
Common Ownership of Lots

		
Nonconforming Lot	Nonconforming Lot	Nonconforming Lot
		

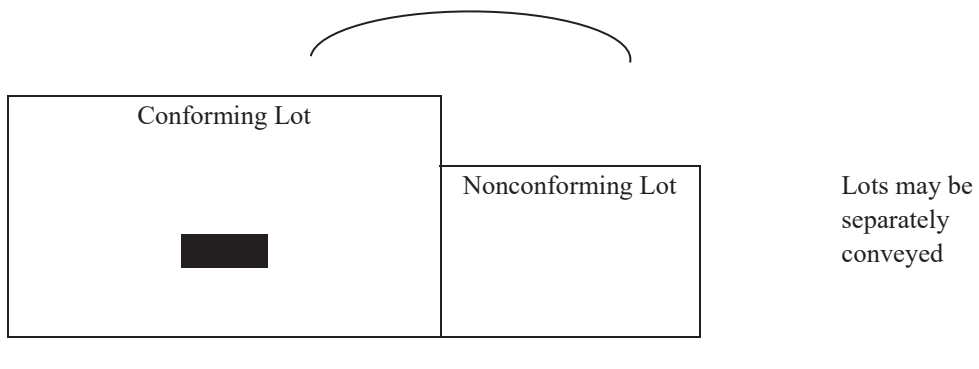
Lots may be separately conveyed

Partially Developed Contiguous Lots: If a vacant conforming lot abuts a developed nonconforming lot held in the same ownership, the two lots may be separated and owned independently. If a vacant nonconforming lot abuts a developed conforming lot in the same ownership, the two lots may be separated and owned independently. If a developed nonconforming lot abuts an undeveloped nonconforming lot held in the same ownership, the lots may be separated and owned independently. (Effective July 4, 2001)

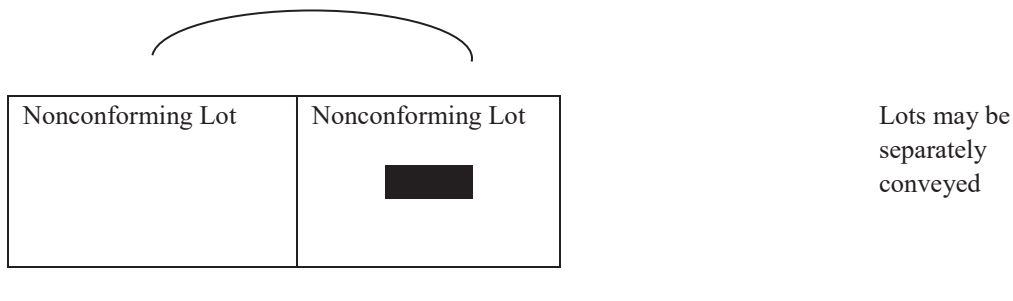
Common Ownership



Common Ownership



Common Ownership



B. Nonconforming Buildings and Structures

1. Continuation

Any lawfully constructed building or structure which is made nonconforming by reason of the enactment of this Ordinance, or any amendment thereto may be continued, even though such building or structure does not conform with the provisions of this Ordinance or any amendment thereto. Ordinary maintenance and repair may be done on such nonconforming structure, and such structural alterations may be made which are necessary to maintain the building or structure in good condition.

2. Relocation

A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Zoning Board of Appeals, and provided that if the use is not connected to the public sewerage system, the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the Subsurface Wastewater Disposal Rules, or that a new system can be installed in compliance with the law and said rules. In no case shall a structure be relocated so as to increase its nonconformity.

In determining whether the building relocation meets the setback to the greatest practical extent, the Zoning Board of Appeals shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system (if any) and other on-site soils suitable for septic systems, the impact on views, and the type and amount of vegetation to be removed to accomplish the relocation.

3. Reconstruction or Replacement

Any nonconforming structure which is located closer than the required setback from the property line and which is, or is proposed to be, removed, or damaged or destroyed may be reconstructed or replaced provided that a permit is obtained within one (1) year of the date of said damage, destruction, or removal, and the building or structure will be located within the original building footprint, will not increase the number of square feet of floor area, and will not create or expand any nonconformities. Reconstruction of a nonconforming structure not in compliance with these limitations may be permitted provided that such reconstruction is in compliance with the setback requirement to the greatest practical extent as determined by the Zoning Board of Appeals in accordance with the purposes of this Ordinance. In no case shall a structure be reconstructed or replaced so as to increase its nonconformity.

In determining whether the building reconstruction or replacement meets the setback to the greatest practical extent, the Zoning Board of Appeals shall consider the physical condition and type of foundation present, if any, in addition to the criteria in Sec. 19-4-3.B.2., Relocation.

4. Enlargement

Any nonconforming structure which is located closer than the required setback from the property line may be enlarged as long as the area being enlarged meets the setback requirements, and will not create or expand any nonconformities. Enlargement of a nonconforming structure not in compliance with these limitations may be permitted provided that such enlargement is in compliance with the setback requirement to the greatest practical extent as determined by the Zoning Board of Appeals in accordance with the purposes of this Ordinance. In no case shall a structure be enlarged so as to increase its nonconformity.

In determining whether the building reconstruction or replacement meets the setback to the greatest practical extent, the Zoning Board of Appeals shall consider the physical condition and type of foundation present, if any, in addition to the criteria in Sec. 19-4-3.B.2., Relocation. (Effective November 5, 2016)

C. Nonconforming Uses

1. Continuation

Any lawful use of any building, structure or land, which is made nonconforming by reason of the enactment of this Ordinance, or any amendment thereto, may be continued even though such use does not conform with the provisions of this Ordinance or any amendment thereto.

2. Change of Nonconforming Use

A lawful nonconforming use shall not be changed to any use other than a use permitted in the district in which the use is located, or to a less objectionable and less detrimental nonconforming use as determined by the Zoning Board of Appeals according to the following standards:

- a. The proposed use shall not increase the hours of operation;
- b. The proposed use shall not create hazardous or increased traffic conditions;
- c. The proposed use shall not create unsanitary conditions by reason of sewage disposal, emissions to the air, or other aspects of its design or operation; and
- d. The proposed use shall not adversely affect the value of adjacent properties.

3. Enlargement

A nonconforming use of a building or structure shall not be extended, nor shall a nonconforming use of part of a building or structure be extended to other parts of the building or structure, unless in the opinion of the Zoning Board of Appeals: (i) those parts were manifestly arranged or designed for such use prior to the enactment of this Ordinance or any amendment making such use nonconforming, (ii) such extension of a nonconforming use is solely for the purpose of bringing the use into compliance with health, safety, or access codes, or to correct a condition that may not technically be in violation but which is determined by the Zoning Board of Appeals to constitute a health, safety, or access problem, or (iii) the change expands the total floor area devoted to the nonconforming use by less than 25% over the lifetime of the structure and the Zoning Board of Appeals finds that the increase meets the Conditional Use Standards of Sec. 19-5-5.D. Standards for Conditional Use Approval. The expansion shall be limited to the minimum necessary to accomplish that purpose. Applications for enlargement of a nonconforming use shall be handled in accordance with the procedures of Sec. 19-5-5, Conditional Use Permits.

4. Extension of Nonconforming Use of Land

A lawful nonconforming use existing on premises outside of a building or structure shall not be extended to or allowed to occupy any other part or parts of such premises.

5. Abandonment

The lawful nonconforming use of any building, structure, lot of land, or portions thereof which has been abandoned, shall have been terminated and shall not

thereafter be resumed. A lawful nonconforming use shall be deemed abandoned if any one of the following events occurs:

- a. the lawful nonconforming use has been changed to a conforming use;
- b. the lawful nonconforming use has been discontinued for a period of twelve (12) consecutive months;
- c. the lawful nonconforming use is changed to a prohibited use in violation of this Ordinance; or
- d. the lawful nonconforming use has been lawfully changed to another nonconforming use in compliance with this Ordinance.

SEC. 19-4-4. NONCONFORMANCE WITHIN THE SHORELAND PERFORMANCE OVERLAY DISTRICT

The following provisions shall govern nonconformance with provisions of the Shoreland Performance Overlay District. Nonconforming conditions in existence before the effective date of this district, or amendments thereto, shall be allowed to continue, subject to the requirements set forth in this section. (Effective November 5, 2016)

A. Nonconforming Lots

1. Single Vacant, Nonconforming Lots

A nonconforming lot of record as of the effective date of this overlay district or amendment thereto may be build upon, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this overlay district except lot area, lot width and shore frontage can be met. Variances relating to setback or other requirements not involving lot area, lot width or shore frontage may be obtained from the Zoning Board of Appeals. (Effective October 15, 2009)

2. Contiguous Build Lots

If (i) two or more contiguous lots or parcels are in common ownership at the time of adoption of this overlay district, (ii) all or part of the lots do not meet the dimensional requirements of this overlay district, and (iii) a principal use or structure exists on each lot, then the nonconforming lots may be conveyed separately provided that said conveyance complies with the State Minimum Lot Size Law (12 M.R.S.A. sections 4807-A through 4807-D, the State of Maine

Subsurface Wastewater Disposal Rules, and Chapter 15, Sewer Ordinance.
(Effective October 15, 2009)

If two or more principal uses or structures exist on a single lot of record on the effective date of this overlay district, each may be sold as a separate lot provided that the above referenced law and rules and ordinance are complied with. When such lots are divided, each lot thus created must conform as nearly as possible to the dimensional requirements of this overlay district. (Effective October 15, 2009)

3. Contiguous Lots – Vacant or Partially Built

If (i) two or more contiguous lots or parcels are in common ownership at the time of amendment of this overlay district, (ii) any of these lots do not individually meet the dimensional requirement of this overlay district or subsequent amendments, and (iii) one or more of the lots is vacant or contains no principal structure, then the nonconforming lots may be conveyed separately as long as said conveyances comply with the State Minimum Lot Size Law, State Subsurface Wastewater Disposal Rule, and Chapter 15, Sewer Ordinance.

B. Nonconforming Buildings and Structures

1. A nonconforming structure may be added to or expanded after obtaining a permit from the Code Enforcement Officer, provided that such addition or expansion does not increase the nonconformity of the structure, and is in accordance with subparagraphs (a) and (b) below. (Effective October 15, 2009)
 - a. After January 1, 1989, if any portion of a structure does not meet the required setback from the normal high-water line of a water body or tributary stream or the upland edge of a wetland, that portion of the structure shall not be expanded in floor area or volume by more than 30% during the lifetime of the structure. If a replacement structure conforms with the requirements of Sec. 19-4-4.B.(3), Reconstruction or Replacement, and is less than the required setback from a water body, tributary stream or wetland, the replacement structure may not be expanded if the original structure existing on January 1, 1989 had been expanded by 30% in floor area and volume since that date. Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Zoning Board of Appeals, utilizing the criteria specified in Sec. 19-4-4.B.2, Relocation. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with this subsection a, and the foundation does not cause the structure to be elevated by more than three (3) additional feet, as measured from the uphill side of the structure

(from original ground level to the bottom of the first floor sill), it shall not be considered to be an expansion of the structure. (Effective October 15, 2009)

- b. Non structure, which fails to meet the required setback from the normal high-waterline of a water body, tributary stream, or the upland edge of a wetland, shall be expanded toward the water body, tributary stream, or wetland. (Effective October 15, 2009)

2. Relocation

A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of the relocation conforms to all setback requirements to the greatest practical extent as determined by the Zoning Board of Appeals, and, provided that, if the use is not connected to the public sewerage system, the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State Law, the State Subsurface Wastewater Disposal Rules, and Chapter 15, Article II, Private Sewage Disposal Ordinance, or that a new system can be installed in compliance with the law and said rules. In no case shall a structure be relocated so as to increase its nonconformity.

In determining whether a relocation meets the setback to the greatest practical extent, the Zoning Board of Appeals shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system (if any) and other on-site soils suitable for septic systems, the impact on views, and the type and amount of vegetation to be removed to accomplish the relocation. When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Zoning Board of Appeals shall require replanting of native vegetation to compensate for the destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

- a. Trees removed in order to relocate a structure must be replanted with at least one native tree, three (3) feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed. Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the setback area. The vegetation and/or

ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.

- b. Where feasible, when a structure is relocated on a parcel, the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof. (Effective October 15, 2009)

3. Reconstruction or Replacement

Any nonconforming structure which fails to meet the required setback from a water body, tributary stream, or wetland and which is damaged or destroyed regardless of the cause, by more than 50% of the market value of the structure before such damage, destruction, or removal may be reconstructed or replaced provided that a building permit is obtained within one (1) year of the date of said damage or destruction. The reconstruction or replacement shall be in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Zoning Board of Appeals in accordance with the purposes of this district. The Zoning Board of Appeals may request guidance from the Conservation Commission prior to its decision. In no case shall a structure be reconstructed or replaced so as to increase its nonconformity. If the reconstructed or replacement structure is located in an area that is less than the required setback, it shall not be any larger than the original structure, except as allowed pursuant to Sec. 19-4-4.B.(1) above, as determined by the non-conforming floor area and volume of the reconstructed or replaced structure at its new location. If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Sec. 19-4-4.B(2) above. (Effective October 15, 2009)

Any nonconforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed by 50% or less of the market value or damaged or destroyed by 50% or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place if a building permit is obtained from the Code Enforcement Officer within one year of such damage, destruction or removal. (Effective October 15, 2009)

In determining whether the building reconstruction or replacement meets the setback to the greatest practical extent, the Zoning Board of Appeals shall consider, in addition to the criteria in Sec. 19-4-4.B.2, Relocation, the physical condition and type of foundation, if any. (Effective October 15, 2009)

4. Change of Use of a Nonconforming Structure

The use of a nonconforming structure may not be changed to another use unless the Planning Board, after receiving written application for a change of use in the Shoreland Performance Overlay District, determines that the proposed new use will have no greater adverse impact on the water body, tributary stream or wetland, or on the subject or adjacent properties and resources, than the existing use. In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, flood plain management and archeological and historic resources. The Planning Board may request guidance from the Conservation Commission prior to making its decision. (Effective October 15, 2009)

5. Nonconforming Accessory Structures

On a nonconforming lot of record on which only a residential structure exists, and it is not possible to place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the code enforcement officer may issue a permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment.

Such accessory structure shall not exceed eighty (80) square feet in area nor eight (8) feet in height, and shall be located as far from the shoreline or tributary stream as practical and shall meet all other applicable standards, including lot coverage and vegetation clearing limitations. In no case shall the structure be located closer to the shoreline or tributary stream than the principal structure. (Effective October 15, 2009)

C. Nonconforming Uses

1. Expansion

Expansions of nonconforming uses are prohibited, except that nonconforming residential uses may be expanded within existing residential structures or within expansions of such structures as permitted in Sec. 19-4-4-.B.1, Expansion, after obtaining a permit from the Zoning Board of Appeals.

2. Resumption Prohibited

If a nonconforming use is discontinued for a period of more than one year, or is superseded by a conforming use, the lot, building, or structure may not again be devoted to a nonconforming use. This provision shall not apply to the resumption of a use of a residential structure provided that the structure has

been used or maintained for residential purposes during the preceding five (5) year period.

3. Change of Use

An existing nonconforming use may be changed to another nonconforming use provided that the proposed use has no greater adverse impact on the subject property and the adjacent properties and resources than the former use, as determined by the Planning Board. The determination of no greater impact shall be made according to criteria listed in Sec. 19-4-4.B.4, Change of Use a Nonconforming Structure.

SEC. 19-4-5. NONCONFORMANCE WITHIN THE RESOURCE PROTECTION DISTRICTS

A use, structure or activity that was lawful before May 9, 1990, and made nonconforming by the Resource Protection provisions or any amendment thereto, may be continued subject to the provisions of this section. Determinations of building status shall be regulated by the Town Assessor's property card as of April 1, 1990. No building footprint expansion of a nonconforming structure shall be allowed if any variance is required under the Zoning Ordinance. An expansion shall include any increase in floor area or volume of a structure or the construction or expansion of a porch or deck. For the purposes of this section, the sum of the horizontal area shall constitute the floor area of a deck or porch.

A. Nonconforming Building Structures

A nonconforming structure may be altered, added to or expanded only if the following standards are met, but these standards do not restrict the conversion of basement or cellar space, as defined by the Building Code, into finished area, provided such conversion is consistent with the Floodplain Management Ordinance. No exterior structural alteration or addition to any nonconforming structure over the life of the structure shall expand beyond the limitations set forth below:

1. Resource Protection 1 – Critical Wetland District

In case of any structure located in the Resource Protection 1 – Critical Wetland District, no expansion shall be permitted which expands: (i) the structure's floor area or volume by more than twenty-five percent (25%) of its size at the time it became a nonconforming structure, or (ii) the existing building footprint.

2. Resource Protection 1 – Critical Wetland Buffer Overlay and Resource Protection 2 – Wetland Protection District

In the case of any structure located in a Resource Protection 1 – Critical Wetland Buffer Overlay and within one hundred (100) feet of the Resource Protection 1 –

Critical Wetland upland edge or in a Resource Protection 2 – Wetland Protection District, no expansion shall be permitted which expands the structure's floor area or volume by more than twenty-five percent (25%) of its size at the time it became a nonconforming structure. An expansion of the existing building footprint may be permitted to accommodate up to a twenty-five percent (25%) expansion of floor area or volume, provided that all of the requirements of this section are met. A building footprint shall not be expanded to be closer than the shortest nonconforming setback distance from the wetland upland edge (see figure A). In no event shall any expansion be within twenty-five (25) feet of the wetland upland edge (see Figure B). Sketches A and B illustrate the requirements of this section.

3. Resource Protection 1 – Critical Wetland Buffer Overlay greater than one hundred (100) feet from the Resource Protection 1 – Critical Wetland Upland Edge

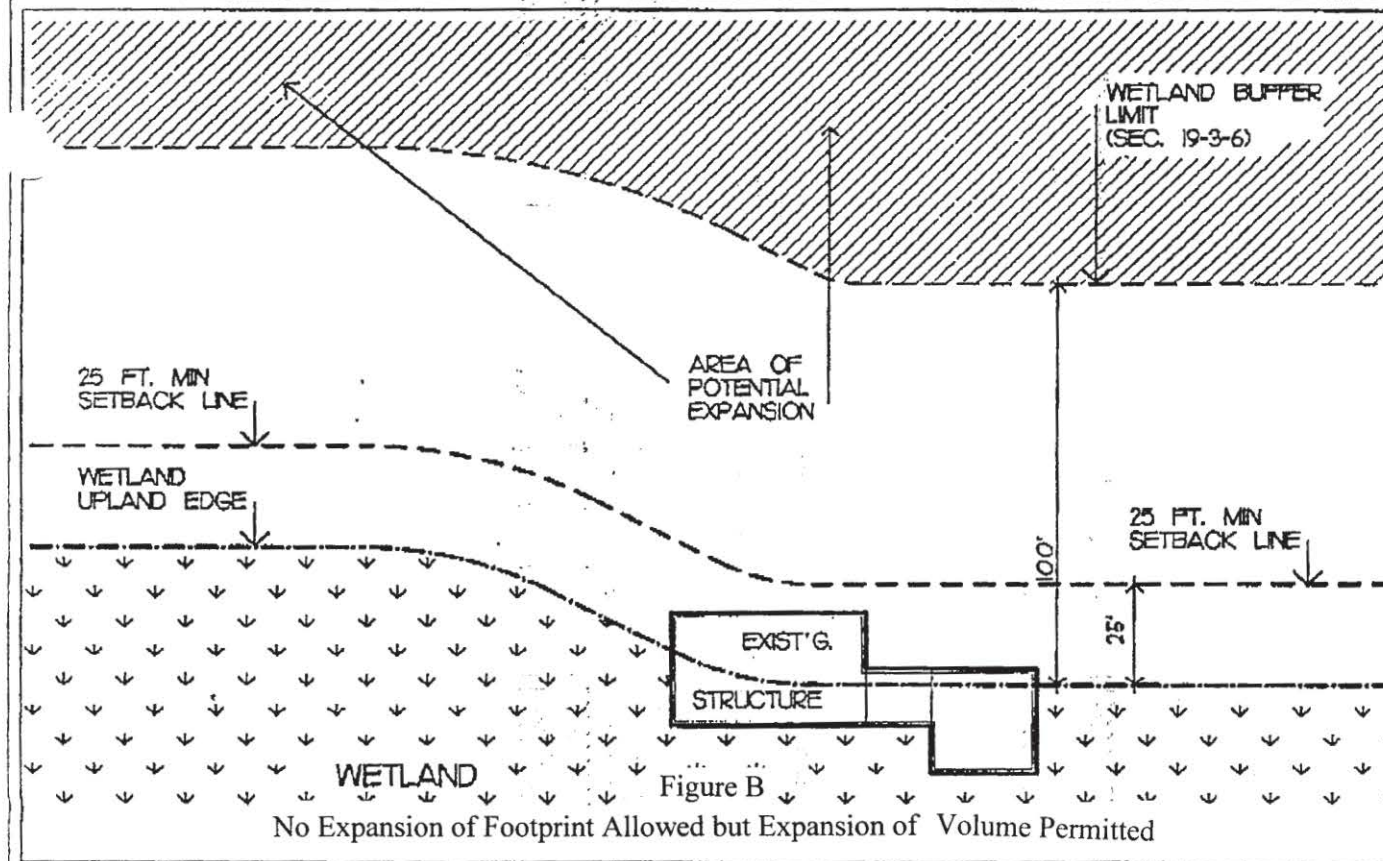
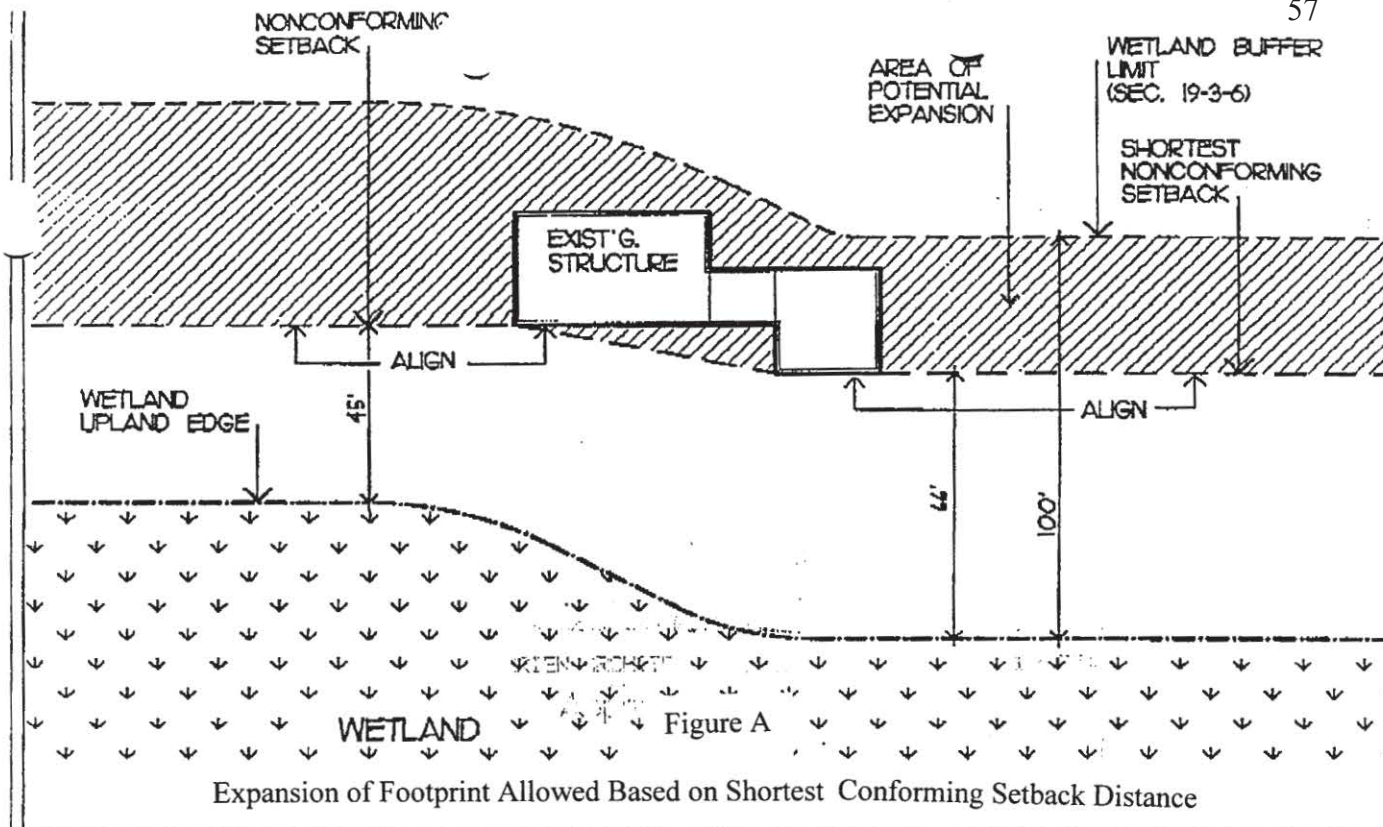
In the case of an existing main building which is located in the Resource Protection 1 – Critical Wetland Buffer Overlay and more than one hundred (100) feet from the Resource Protection 1 – Critical Wetland upland edge, the main building may be expanded a distance of not more than fifty (50) feet from the building footprint existing at the time it became a nonconforming structure, provided that all of the requirements of this section are met. No expansion shall be permitted which expand the floor area or volume by more than twenty-five percent (25%) of its size at the time the structure became nonconforming. However, a single story building that (a) is connected to public sewer and (b) is not a single family home, may increase its volume of floor area by no more than eighty percent (80%) of its pre-expansion volume or floor area, so long as there is no expansion of the building footprint as it existed as of March 16, 2007. No part of the expansion may be constructed within one hundred (100) feet of the Resource Protection 1 – Critical Wetland upland edge. (Effective May 9, 2007)

In the case of structures other than the main building, no expansion shall be permitted which expands the structure's floor area or volume by more than twenty-five percent (25%) of its size at the time it became a nonconforming structure. An expansion of the existing building footprint may be permitted to accommodate up to a twenty-five percent (25%) expansion of the floor area or volume, provided that all of the requirements of this section are met. No part of the expansion may be constructed within one hundred (100) feet of the Resource Protection 1 – Critical Wetland upland edge. (Effective August 11, 1999)

4. Deck in the Resource Protection 1 – Critical Wetland Buffer Overlay and Resource Protection 2 – Wetland Protection District

Expansion of construction of a deck or patio shall be calculated and included as a footprint expansion. No deck or patio shall be permitted which is located closer than the shortest existing nonconforming setback distance or a distance of

one hundred (100) feet, whichever is less, from the wetland upland edge. In no case shall a deck be constructed which is within twenty-five (25) feet of the wetland edge. Decks allowed under this section shall require a building permit.



5. Variance

If an expansion of an existing main building is proposed which exceeds the above restrictions and is not located in the Resource Protection 1 – Critical Wetland, the Zoning Board of Appeals may grant a variance for the proposed expansion in accordance with the procedures and standards in Sec. 19-5-2.B, Variances. No variance shall be granted to expand the existing building footprint and the floor area or volume expansion shall not exceed forty percent (40%) of the main building size at the time it became a nonconforming structure.

B. Nonconforming Uses

If a nonconforming use is discontinued for twelve (12) consecutive months, no resumption shall be allowed unless it is expressly permitted under Sec. 19-6-9.B, Permitted Uses, or Sec. 19-6-9.C, Uses Permitted with a Resource Protection Permit. Agricultural uses shall be exempt from this subsection.

C. Replacement Structures

If any nonconforming structure or use is destroyed or substantially damaged by fire, explosion or other act of nature, it may be rebuilt provided the building permit is obtained within one year of the destruction. Any expansion of a replacement structure shall comply with the standards of Sec. 19-4-5.A, Expansion of Nonconforming Structures, and Sec. 19-4-5.B, Nonconforming Uses.

D. Septic Systems

Requests for expansion or replacement of septic systems located within established Resource Protection 1 – Critical Wetland Buffer Overlays shall be reviewed by the Code Enforcement Officer and approved only if in conformance with the State Plumbing Code.

E. Exemption

Notwithstanding any provisions of this Ordinance to the contrary, a principal building or structure (and any building addition or accessory buildings) may be erected upon a lot which is part of a subdivision approved by the Planning Board after December 22, 1976, provided that:

1. Such construction and use either will not occur within a Resource Protection 1 – Critical Wetland District excluding any Resource Protection 1 – Critical Wetland Buffer Overlays or which has a valid Resource Protection Permit that was issued by the Planning Board applying the provisions in effect prior to May 10, 1990; and
2. Such construction has a valid building permit in place as of May 10, 2000.
(Effective August 11, 1999)

ARTICLE V. ZONING BOARD OF APPEALS

SEC. 19-5-1. APPOINTMENT AND COMPOSITION

There is hereby established the Zoning Board of Appeals. The Board shall consist of seven (7) members, appointed by the Town Council to serve without compensation for staggered three (3) year terms expiring on January 1 or until their successors have been duly appointed. The Board shall elect a Chair and a Secretary from its own membership, both to be elected for one (1) year. The Board shall make such rules as it deems necessary to carry out the provisions of this Ordinance and govern the conduct of its public hearings.

SEC. 19-5-2. POWERS AND DUTIES

The Board shall have the following exclusive powers and duties to be exercised only upon written appeal by a party aggrieved by a decision of the Code Enforcement Officer or other municipal official or board:

A. Administrative Appeals

To determine whether the decision of the Code Enforcement Officer is in conformity with the provisions of this Ordinance, to modify such decision to conform with such provisions, and to interpret the meaning of the Ordinance in all cases of uncertainty. The Board shall hear the administrative appeals on a do novo basis. The Board shall base its decision on the materials presented to or used by the Code Enforcement Officer (if any), as well as any new evidence or testimony presented at the hearing before the Board. The Board shall resolve appeals by deciding the matters afresh, undertaking its own independent analysis of evidence and the law and reaching its own decision. (Effective November 5, 2016)

B. Variances (Effective August 10, 2000)

1. All Districts except the Shoreland Performance Overlay District

To grant variances from the terms of this Ordinance provided that (i) there is no substantial departure from the intent of the Ordinance, and (ii) a literal enforcement of the Ordinance would cause a practical difficulty as defined by 30-A-A.M.R.S.A. Sec. 4353, 4-C. Variance from dimensional standards, and when the following conditions exist:

- a. The need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood;
- b. The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties; In determining whether a variance would have an unreasonable detrimental effect on the use or market value of abutting properties, the Zoning Board shall consider

if the variance would have the effect of blocking an established view, posing a fire safety hazard, casting a shadow on an adjoining lot, reducing the appraise value of an adjoining property by 10% or more of eliminating the privacy of an adjoining property without an effort to mitigate the lost privacy;

- c. The practical difficulty is not the result of action taken by the applicant or a prior owner;
- d. No other feasible alternative to a variance is available to the petitioner;
- e. The granting of a variance will not unreasonably adversely affect the natural environment; and
- f. The property is not located in whole or in part within shoreland areas as described in Title 38, Section 435.

Notwithstanding the definition of “dimensional standards” in 30 M.R.S.A. Sec. 4353, 4-C, no variance shall be granted:

- a. to permit a use or structure otherwise prohibited,
- b. to reduce the required lot area or street frontage, or
- c. to either reduce a setback to less than 10’ or the shortest nonconforming setback distance created by the existing building.

The Zoning Board of Appeals may grant a variance for the purpose of making that property accessible to an applicant with a disability who is living on the property without a finding that a strict application of the ordinance to the applicant and the applicant’s property would cause practical difficulty. The Board shall restrict any variance granted for the purpose of making that property accessible to an applicant with a disability who is living on the property, solely to the installation of equipment or the construction of structures necessary for access to or egress from the property by the applicant with the disability. The Board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the applicant with the disability lives on the property.

2. Shoreland Performance Overlay District (Effective August 10, 2000)

To grant variances from the terms of this Ordinance provided that (i) there is no substantial departure from the intent of the Ordinance, and (ii) a literal enforcement of the Ordinance would cause undue hardship as defined by 30-A M.R.S.A. §4353, Zoning Adjustment. The term “undue hardship” as used in this section means:

- a. The land in question cannot yield a reasonable return unless a variance is granted;
- b. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
- c. The granting of a variance will not alter the essential character of the locality; and
- d. The hardship is not the result of action taken by the applicant or a prior owner.

Notwithstanding the definition of “dimensional standards” in 30 M.R.S.A. §4353, 4-C, no variance shall be granted:

- a. to permit a use or structure otherwise prohibited,
- b. or to reduce the required lot area or street frontage, or
- c. to either reduce a setback to less than 10’ or the shortest nonconforming setback distance created by the existing building.

The Zoning Board of Appeals may grant a variance for the purpose of making that dwelling accessible to an applicant with a disability who is living in the dwelling without a finding that a strict application of the ordinance to the applicant and the applicant’s property would cause undue hardship. The Board shall restrict any variance granted for the purpose of making that dwelling accessible to an applicant with a disability who is living in the dwelling, solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the applicant with the disability. The Board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the applicant with the disability lives on the property. (Effective October 15, 2009)

C. Conditional Use Permits

To consider requests for the issuance of permits for any of the conditional uses of land or buildings permitted in the various districts, in accordance with the procedures and standards of Sec. 19-5-5, Conditional Use Permits.

D. Setback Reductions

To consider requests for reduction of the setback requirements in accordance with the procedures and standards of Sec. 19-7-10, Reduction in Setbacks.

E. Sewer Appeals

To consider written appeals by a party aggrieved by a decision of any public official or agent of the Town under Chapter 15, Sewer Ordinance, to consider and act upon requests for special permits under Sec. 15-1-8(c) of the Sewage Ordinance, and to interpret any provision of Chapter 15 in cases of uncertainty.

SEC. 19-5-3. PROCEDURES

Any person aggrieved by a decision of the Code Enforcement Officer or other municipal official, where applicable, may appeal such decision to the Board within thirty (30) days following the date of such decision by filing a notice of appeal with the Code Enforcement Officer. Notices of appeal and applications for permits for conditional uses of land or buildings shall be filed with the Code Enforcement Officer upon forms approved by the Board setting forth the grounds for the appeal or application, accompanied by a fee in an amount prescribed by the Town Council and such other information as the Board may require.

A. Establishment and Notice of Meeting Date

Upon receipt of any notice of administrative, variance, or sewer appeal, application for conditional use, or application for a setback reduction, the Code Enforcement Officer shall forthwith notify the Chair of the Board, who shall establish the date of the meeting at which the application will be considered based upon the submission deadlines for the regular meetings of the Board. The Code Enforcement Officer shall give notice of such public hearing in accordance with Sec. 16-2-1(b) of the Subdivision Ordinance, except that a legal notice shall be published once in a newspaper. (Effective November 14, 2015)

B. Notification to the Department of Environmental Protection

A copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the Zoning Board of Appeals. Any comments received from the Commissioner prior to the action by the Zoning Board of Appeals shall be made part of the record and shall be taken into consideration by the Zoning Board of Appeals.

C. Conduct of Hearing

The code Enforcement Officer, unless excused, shall attend all hearings on appeals and applications and shall present to the Board all plans, photographs or other factual materials which are relevant to the proceeding. The Board shall keep minutes of its proceedings, including a record of the final disposition of all matters together with the reasons therefore. The Director of Public Works, unless excused, shall attend meetings at which sewer appeals are discussed.

D. Decision Procedures

A written notice of the Board's decision on each appeal or application, with the reasons therefore, shall be issued to the appellant or applicant and to the Code Enforcement Officer within thirty (30) days following the date of the hearing thereon. The Board may grant a variance only with an affirmative vote of four (4) members of the Board. The Board shall state the reasons and basis for its decision, including a statement of facts found and conclusions reached by the Board. Any decision requiring action by the Code Enforcement Officer, or when applicable by the Director of Public Works, shall expressly direct such action. The Board shall cause written notice of its decision to be provided to the applicant within seven (7) days of the Board's decision. The appellant or applicant and any property owner with standing may seek judicial review of the decision by the Board in accordance with the Laws of the State of Maine. (Effective October 15, 2009)

E. Renewed Proceedings

After a decision has been made by the Board, a new appeal or application of similar import shall not be considered by the Board until one (1) year has elapsed following the date of such decision. The Board may consider a new appeal or application within this one-year period if it determines that owing to a mistake of law or misunderstanding of fact an injustice was done, or that a change has taken place in some essential aspect of the case sufficient to warrant reconsideration. Any such new appeal or application shall be processed as a new request subject to the procedures set out above.

SEC. 19-5-4. VARIANCES

A. Criteria for Approval

The Board may grant a variance from the provisions of this Ordinance only if it finds that literal enforcement of the Ordinance will cause a practical difficulty as defined in Sec. 19-5-2.B, Powers and Duties. (Effective August 10, 2000)

B. Conditions

The Board may impose such conditions to a variance as it deems necessary. The applicant shall comply with all conditions imposed.

C. Notification to the Department of Environmental Protection

A copy of each variance granted by the Board from the provisions of Sec. 19-6-9, Resource Protection Districts, or from the provisions of Sec. 19-6-11, Shoreland Performance Overlay District, shall be submitted by the Code Enforcement Officer to the Department of Environmental Protection within seven (7) days of the decision. (Effective October 15, 2009)

D. Recording of Variances

No rights shall accrue to the recipient of any variance unless the applicant records a certificate of variance in conformity with 30-A M.R.S.A. § 4353, Zoning Adjustment in the Cumberland County Registry of deeds within ninety (90) days of final approval of the variance and provides a copy of the recorded certificate to the Code Enforcement Officer within ten (10) days of the recording.

E. Expiration of Variance

Notwithstanding the recording of a certificate of variance, the applicant's legal rights set forth in a variance shall expire if the construction or alteration involved is not substantially completed within one (1) year from the date on which the Zoning Board of Appeals voted to grant the variances. The Board may grant one (1) extension for up to one (1) additional year upon written request of the applicant. This variance expiration provision shall be effective for all variances approved after January 1, 1989.

SEC. 19-5-5. CONDITIONAL USE PERMITS

The purpose of this section is to establish the procedures and standards to enable the Town to review applications for conditional use permits.

A. Conditional Use Approval Required

A building, structure, or parcel of land may be used for a conditional use if:

1. The use is specifically listed as a conditional use in the district, and
2. Conditional use approval is granted by the Zoning Board of Appeals.

B. Administrative Procedures

1. Prior to submitting a formal application for conditional use approval, the applicant should meet with the Code Enforcement Officer to informally discuss the proposed application and the review process. The purpose of this informational meeting is to allow the applicant to understand the process and clarify any questions before submitting a formal application.
2. An application for conditional use approval shall be made to the Code Enforcement Officer on forms provided for that purpose.
3. The application form shall be accompanied by the supporting materials set forth in Sec. 19-5-5.C, Application Requirements, and an application fee.
4. The application shall be processed in accordance with the procedures set forth in Sec. 19-5-3, Procedures.

C. Application Requirements

The applicant's submissions shall include the following:

1. A completed and signed application form
2. The appropriate fee
3. The location of the proposed use, including Assessor's tax map and lot number, and a location map
4. A description of the exact nature of the proposed use, including but not limited to the type of use, square footage involved, hours of operation, types and amount of any pollutants to be generated, and types and amount of traffic expected to be generated
5. A scale drawing, including existing and proposed buildings, important natural features, driveways, parking areas, pedestrian ways, streets and other rights-of-way, and location of signs and outdoor lighting
6. Information demonstrating that the application complies with the standards of approval of Sec. 19-5-5.C, Standards for Conditional Use Approval

This information must be provided or a waiver sought before the application will be considered by the Board. The Board may waive any of these submission requirements at its initial consideration of the application upon written request of the applicant. In waiving any submission requirement, the Board shall find that such waived information is not needed to determine conformance with the standards of approval due to the scale or nature of the proposed activity.

The Board may also request, at the initial consideration of the application, that additional information be provided to determine compliance with the standards of approval. The applicant shall have the burden of providing the information upon which the Board will base its findings and decision.

D. Standards for Conditional Use Approval

The Board shall, after review of required materials, authorize issuance of a conditional use permit, upon a showing that:

1. Any conditions prescribed for such conditional use will be satisfied;
2. The proposed use will not create hazardous traffic conditions when added to existing and foreseeable traffic in its vicinity;

3. The proposed use will not create unsanitary conditions by reason of sewage disposal, emissions to the air, or other aspects of its design or operation;
4. The proposed use will not adversely affect the value of adjacent properties;
5. The proposed site plan and layout are compatible with adjacent property uses and with the Comprehensive Plan; and
6. The design and external appearance of any proposed building will constitute an attractive and compatible addition to its neighborhood, although it need not have a similar design, appearance or architecture.

Upon a finding by the Board that all of these standards have been met, the Board shall authorize the issuance of a permit for such conditional use, but may impose such conditions upon the use as it deems necessary in order to assure that the foregoing objectives will be attained.

E. Conditions of Approval

The Board may attach conditions to its approval of a conditional use. These conditions may include, but are not limited to, such requirements as:

1. off-site street improvements
2. access restrictions
3. hours of use
4. buffering and screening
5. utility improvements
6. performance guarantees

F. Duration of a Conditional Use Approval

1. Provided all conditions and standards of approval are met, a conditional use shall be a continuing grant of permission for as long as the property is used for such purposes. The conditional use shall expire if the owner:
 - a. physically alters the property and/or structure so it can no longer be used for the conditional use, or
 - b. ceases to use the property for the approved conditional use for one (1) year or more, or
 - c. fails to initiate the operation or conduct of the conditional use within one (1) year of the date of the Board's vote to grant said approval.

2. A conditional use may be expanded in area or function only with the granting of a new conditional use approval by the Board.

G. Scope of Approval

All permits or approvals shall include, as an express condition, a written statement to the effect that the permit or approval is granted subject to all elements of the final plans and specifications submitted by the applicant and to all representations, oral or written, made by or on behalf of the applicant in support of the application.

ARTICLE VI. DISTRICT REGULATIONS

SEC. 19-6-1. RESIDENCE A DISTRICT (RA)

A. Purpose

The Residence A District includes lands that are outside of the built-up areas of Cape Elizabeth, lands to which public sewer lines are not expected to be extended in the near future, and large tracts suitable for farming, woodland production, and wildlife habitat. The purpose of this district is to allow residential development that is compatible with the character, scenic value, and traditional uses of rural lands and that does not impose an undue burden on the provision of municipal services.

B. Permitted Uses

1. The following uses are permitted in the Residence A District:
 - a. Any use permitted in Resource Protection 1 – Critical Wetlands District, or in Resource Protection 2 – Wetland Protection District, or in Resource Protection 3 – Floodplain District, as shown on Table 19-6-9.
 - b. Agriculture, provided that no animal or fowl shall be raised for commercial purposes or any lot containing less than one hundred thousand (100,000) square feet.
 - c. Keeping of livestock, such as a horse, cow, pig, goat, sheep, or similar animal provided that such activity occurs only on a lot containing at least one hundred thousand (100,000) square feet.
 - d. Removal of topsoil, subject to the provisions of Sec. 19-8-5, Earth Materials Removal Standards.
 - e. Timber harvesting.
2. The following residential uses:
 - a. Single family dwelling.
 - b. Manufactured housing on an individual lot.

- c. Multiplex housing.
 - d. Eldercare facility, subject to the provisions of Sec. 19-7-6, Eldercare Facility Standards.
3. The following nonresidential uses:
- a. Home day care.
 - b. Farm and fish market, with a maximum floor area of two thousand (2,000) square feet for retail sales of products.
 - c. Boat repair facility, subject to the provisions of Sec. 19-8-9, Boat Repair Facility Standards.
 - d. Golf Course and Golf Course Related Activities (Effective February 12, 2003)
 - e. Wind energy system (Effective October 8, 2008)
 - f. Bed and Breakfast, where the operator of the Bed and Breakfast owns the structure and maintains it as his/her primary residence. (Effective March 9, 2009)
 - g. Short Term Rental. (Effective December 14, 2012)
 - h. Day Camp. (Effective July 10, 2013)
4. The following accessory uses:
- a. Accessory building, structure or use.
 - b. Outside athletic facility accessory to permitted use.
 - c. Home occupation.
 - d. Homestay. (Effective March 9, 2009)
 - e. Amateur or governmental wireless telecommunication facility antenna. (Effective April 15, 2000)
 - f. Amateur or governmental wireless telecommunication facility tower (Effective April 15, 2000)
 - g. Commercial wireless telecommunication service antenna which is attached to an alternative tower structure in a manner which conceals the presence of an antenna. (Effective April 15, 2000)
 - h. Agriculture related use. (Effective June 10, 2010)

C. Conditional Uses

The following uses may be permitted only upon approval by the Zoning Board as a conditional use, in accordance with Sec. 19-5-5, Conditional Use Permits:

1. The Following resource-related uses:
 - a. Extraction of sand, gravel, rock and similar earth materials, except topsoil (see permitted uses), subject to the provisions of Sec. 19-8-5, Earth Materials Removal Standards.
2. The following nonresidential uses:
 - a. Cemetery

- b. Day care facility
- c. Fraternal or social institution
- d. Institution of an educational, religious, or philanthropic nature, including school, hospital, church, municipal use, or similar facility
- e. Playground or park

3. The following accessory uses:

- a. Home business
- b. Accessory dwelling unit

D. Prohibited Uses

All uses not specifically allowed as permitted uses or conditional uses are prohibited within this district.

E. Standards

1. Performance standards

- a. The standards of performance of Articles VII and VIII shall be observed.
- b. Standards relating to permitted and conditional uses in the Residence A District include:

- Sec. 19-7-5 Creation of an Accessory Dwelling Unit
- Sec. 19-7-6 Eldercare Facility Standards
- Sec. 19-8-5 Earth Materials Removal Standards
- Sec. 19-8-7 Great Pond Watershed Performance Standards
- Sec. 19-8-8 Home Day Care and Day Care Facility Standards
- Sec. 19-8-9 Boat Repair Facility Standards
- Sec. 19-8-14 Short Term Rental Standards (Effective December 14, 2012)

2. The following Space and Bulk Standards shall apply:

MINIMUM LOT AREA	
(1) Boat repair facility for commercial purposes	200,000 sq. ft. (4.6 acres)
(2) Multiplex housing	10 acres
(3) Eldercare facilities	10 acres
(4) Golf Course (Effective February 12, 2003)	150 acres (Effective February 12, 2003)
(5) Wind energy systems (Effective October 8, 2008)	20,000 sq. ft.

(6) Other uses	80,000 sq. ft.
MAXIMUM NUMBER OF DWELLING UNITS PER AREA	
(1) Multiplex housing	1 unit per 66,000 sq. ft. of net residential area
(2) In subdivisions	1 unit per 80,000 sq. ft. of net residential area
(3) In subdivisions that conform to Sec. 19-7-2, Open Space Zoning	1 unit per 66,000 sq. ft. of net residential area
(4) In eldercare facilities	1 unit per 6,000 sq. ft. or 1 bed per 3,500 sq. ft. of net residential area, whichever is less
(5) Other housing	1 unit per 80,000 sq. ft. of gross lot area
MAXIMUM NUMBER OF BED AND BREAKFAST ROOMS (Effective March 9, 2009)	
Bed and Breakfast Guest Room (Effective March 9, 2009)	1 room per 20,000 sq. ft. of gross lot area
MINIMUM STREET FRONTAGE	
(1) Bed and Breakfast	125 ft. on Shore Road or Route 77
(2) All uses	125 ft.
MINIMUM SETBACKS	
(1) All uses unless otherwise specified	
a. Side yards setback	30 ft. The side yard setback may be reduced in accordance with Sec. 19-4-3.A.2, Developed Nonconforming Lots. (Effective August 11, 1999)
b. Rear yard setback	30 ft. The rear yard setback may be reduced in accordance with Sec. 19-4-3.A.2, Developed Nonconforming Lots. (Effective August 11, 1999)

c. Front yard setback	The front yard setbacks set forth below may be reduced, only on roads which are not classified arterial, to the average setback of the two principal structures fronting on the same road in closest proximity to the site of the proposed structure, but any structure must be at least 20 feet from the right-of-way.
-- Arterial street	50 ft.
-- Collector, rural connector, and feeder streets	40 ft.
-- Local and private streets	30 ft.
(2) Eldercare facilities (Effective November 14, 2015)	
a. From property line	75 ft.
(3) Accessory structures with floor area not greater than 100 square feet and a height not greater than 8-1/2 feet from average grade	
a. Side yard setback	10 ft.
b. Rear yard setback	5 ft.
(4) Reserved (Effective June 10, 2010)	
(5) Antennas extending from 15' to 25' measured from the highest point of the alternative tower structure	
a. Property line setback	125% of the distance from the ground to the top of the antenna (Effective April 15, 2000)
(6) Towers which are freestanding, and towers which are attached or braced against a structure and exceed 15' in height measured from the highest point of the roof of the structure	
a. Property line setback	125% of the distance from the ground to the top of the antenna (Effective April 15, 2000)

b. Front yard setback	125% of the distance from the ground to the top of the antenna or the distance from the street right of way to the front of the existing structure plus 5', whichever is more (Effective April 15, 2000)
(7) Open Space Zoning Subdivisions (See Sec. 19-7-2)	
a. Side yard setback	20 ft.
b. Rear yard setback	20 ft.
c. Front yard setback	20 ft.
(8) Deck with a height of less than ten (10) feet above average grade	
a. Side yard setback	15 ft.
b. Rear yard setback	15 ft.
(9) Accessory building having less than one hundred fifty (150) square feet of floor area	
a. Side yard setback	15 ft.
b. Rear yard setback	15 ft.
(10) Outdoor recreational facilities such as swimming pools, tennis courts, and basketball courts that are accessory to a single family residential use	
a. Side yard setback	15 ft.
b. Rear yard setback	15 ft. (Effective December 10, 2003)
(11) Wind energy system	110% of the distance from the ground to the center of the turbine (Effective October 8, 2008)
(12) Antenna attached to a structure	25' measured from the highest point of the roof of the structure (Effective April 15, 2000)

(13) Freestanding amateur or governmental wireless telecommunication tower	50' measured from average original grade (Effective April 15, 2000)
MAXIMUM WIND ENERGY SYSTEM HEIGHT (Effective October 8, 2008)	
(1) All uses to center of turbine	100'
MINIMUM LOT WIDTH (Effective August 11, 1999)	
(1) All uses	40 ft.
MAXIMUM BUILDING FOOTPRINT	
(1) All uses	None, except nonconforming lots shall comply with the building footprint standards contained in Sec. 19-4-3, Nonconformity Outside of Shoreland and Resource Protection Areas.
MAXIMUM BUILDING HEIGHT	
(1) All uses	35 ft.

F. Site Plan Review

The following uses and activities shall be subject to site plan review by the Planning Board, according to the terms of Article IX, Site Plan Review, prior to issuance of any building permit, plumbing permit, or other permit:

1. Multiplex housing and eldercare facilities. As part of Site Plan Review for multiplex housing, Sec. 19-7-2 (E), Multiplex Housing Standards, shall also apply. (Effective November 14, 2015)
2. Nonresidential uses listed in Sec. 19-6-1.B.3, except home day cares, wind energy systems, short term rentals and day camps which shall not require site plan review (Effective December 4, 2015), (Effective November 5, 2016)
3. Nonresidential uses listed Sec. 19-6-1.C.2.
4. Any other use or activity listed in Sec. 19-9-2. Applicability, as requiring site plan review.

SEC. 19-6-2. RESIDENCE B DISTRICT (RB)

A. Purpose

The Residence B District is differentiated from the Residence A District in that subdivisions and multiplex housing in Residence B are required to be laid out according to the principles of open space zoning, as described in Sec. 19-7-2, Open Space Zoning. The Residence B District includes lands outside of the build-up parts of Town where the Comprehensive Plan indicates growth can and should be accommodated as a result of soils suitable for individual or common septic systems or the extension of public sewer lines. The purpose of this district is to allow a significant portion of the Town's anticipated residential growth to occur in these areas, in a manner that preserves the character of rural lands, promotes healthy neighborhoods, offers flexibility in design, and minimizes the costs of municipal services. (Effective November 14, 2015)

B. Permitted Use

The following uses are permitted in the Residence B District:

1. The following resource-related uses:
 - a. Any use permitted in Resource Protection 1 – Critical Wetlands District, or in Resource Protection 2 - Wetland Protection District, or in Resource Protection 3 – Floodplain District, as shown on Table 19-6-9.
 - b. Agriculture provided that no animal or fowl shall be raised for commercial purposes on any lot containing less than one hundred thousand (100,000) square feet.
 - c. Keeping of livestock, such as a horse, cow, pig, goat, sheep, or similar animal, provided that such activity occurs only on a lot containing at least one hundred thousand (100,000) square feet.
 - d. Removal of topsoil, subject to the provisions of Sec. 19-8-5.
 - e. Earth Materials Removal Standards.
 - f. Timber harvesting.
2. The following residential uses:
 - a. Single family dwelling
 - b. Manufactured housing on an individual lot
 - c. Multiplex housing
 - d. Eldercare facility, subject to the provisions of Sec. 19-7-6, Eldercare Facility Standards.
3. The following nonresidential uses:
 - a. Home day care

- b. Farm and fish market, with a maximum floor area of two thousand (2,000) square feet for retail sales of products
 - c. Golf Course Related Activities, excluding restaurants, clubhouses and meeting halls (Effective February 12, 2003)
 - d. Wind energy system (Effective October 8, 2008)
 - e. Short Term Rental (Effective December 14, 2012)
 - f. Day Camp (Effective July 10, 2013)
4. The following accessory uses:
- a. Accessory building, structure or use
 - b. Outside athletic facility accessory to permitted use
 - c. Home occupation
 - d. The renting of not more than two (2) rooms within a single family dwelling provided that there is no physical alteration of the building and no change in the external appearance of the structure.
 - e. Amateur or governmental wireless telecommunication facility antenna (Effective April 15, 2000)
 - f. Amateur or governmental wireless telecommunication facility tower (Effective April 15, 2000)
 - g. Commercial wireless telecommunication service antenna which is attached to an alternative tower structure in a manner which conceals the presence of an antenna. (Effective April 15, 2000)
 - h. Agriculture related use (Effective June 10, 2010)

C. Conditional Uses

The following uses may be permitted only upon approval by the Zoning Board as a conditional use, in accordance with Sec. 19-5-5, Conditional Use Permits:

- 1. The following resource-related uses:
 - a. Extraction of sand, gravel, rock and similar earth materials, except topsoil (see permitted uses), subject to the provisions of Sec. 19-8-5, Earth Materials Removal Standards.
- 2. The following nonresidential uses:
 - a. Cemetery
 - b. Day care facility
 - c. Fraternal or social institution
 - d. Institution of an educational, religious, or philanthropic nature, including school, hospital, church, municipal use, or similar facility
 - e. Playground or park
- 3. The following accessory uses:

- a. Home business
- b. Accessory dwelling unit

D. Prohibited uses

All uses not specifically allowed as permitted uses or conditional uses are prohibited within this district.

E. Standards

1. Performance standards

- a. The standards of performance of Articles VII and VIII shall be observed.
- b. Standards relating to permitted and conditional uses in the Residence B District include:

Sec. 19-7-5 Creation of an Accessory Dwelling Unit

Sec. 19-7-6 Eldercare Facility Standards

Sec. 19-8-5 Earth Materials Removal Standards

Sec. 19-8-8 Home Day Care and Day Care Facility Standards

Sec. 19-8-14 Short Term Rental Standards (Effective December 14, 2012)

2. The following Space and Bulk Standards shall apply:

- a. Lots that are part of residential development approved by the Planning Board after June 4, 1997, shall comply with the terms of Sec. 19-7-2, Open Space Zoning, except that residential development for which completed applications have been submitted to the Planning Board prior to June 4, 1997, shall be subject to the regulations in effect at the time of their submission. (Effective November 14, 2015)
- b. For all other lots, the following Space and Bulk Standards shall apply:

MINIMUM LOT AREA	
(1) Eldercare facilities	5 acres
(2) Wind energy systems	20,000 sq. ft. (Effective October 8, 2008)
(3) Other uses	80,000 sq. ft.
MAXIMUM NUMBER OF DWELLING UNITS PER AREA	
(1) In eldercare facilities	1 unit per 3,500 sq. ft. or 1 bed per 2,500 sq. ft. of net residential area, whichever is less

(2) Other uses	1 unit per 80,000 sq.ft. of gross lot area
MINIMUM STREET FRONTAGE	
(1) All uses	125 ft.
MINIMUM SETBACKS	
(1) All uses unless otherwise specified	
a. Side yard setback	30 ft. The side yard setback may be reduced in accordance with Sec. 19-4-3.A.2, Developed Nonconforming Lots. (Effective August 11, 1999)
b. Rear yard setback	30 ft. The rear yard setback may be reduced in accordance with Sec. 19-4-3.A.2, Developed Nonconforming Lots. (Effective August 11, 1999)
c. Front yard setback	The front yard setbacks set forth below may be reduced, only on roads which are not classified arterial, to the average setback of the two principal structures fronting on the same road in closest proximity to the site of the proposed structure, but any structure must be at least 20 feet from the right-of-way.
- Arterial street	50 ft.
- Collector, rural connector, and feeder streets	40 ft.
- Local and private street	30 ft.
d. Limit on parking within the front yard	A nonresidential use shall not locate its required off-street parking within the front yard setback.
(2) Eldercare facilities (Effective November 14, 2015)	
a. From property line	75 ft.

(3) Accessory structures with floor area not greater than 100 square feet and a height not greater than 8-1/2 feet from average grade	
a. Rear yard setback	5 ft.
(4) Reserved (Effective June 10, 2010)	
(5) Antennas extending from 15' to 25' measured from the highest point of the alternative tower structure	
a. Property line setback	125% of the distance from the ground to the top of the antenna (Effective April 15, 2000)
(6) Towers which are freestanding, and towers which are attached or braced against a structure and exceed 15' in height measured from the highest point of the roof of the structure	
a. Property line setback	125% of the distance from the ground to the top of the antenna (Effective April 15, 2000)
b. Front yard setback	125% of the distance from the ground to the top of the antenna or the distance from the street right of way to the front of the existing structure plus 5', whichever is more (Effective April 15, 2000)
(7) Deck with a height of less than ten (10) feet above average grade	
a. Side yard setback	15 ft.
b. Rear yard setback	15 ft.
(8) Accessory building having less than one hundred fifty (150) square feet of floor area	
a. Side yard setback	15 ft.
b. Rear yard setback	15 ft.

(9) Outdoor recreational facilities such as swimming pools, tennis courts, and basketball courts that are accessory to a single family residential use	
a. Side yard setback	15 ft.
b. Rear yard setback	15 ft. (Effective December 10, 2003)
(10) Wind energy system	110% of the distance from the ground to the center of the turbine (Effective October 8, 2009)
MAXIMUM TELECOMMUNICATION HEIGHT	
(1) Antenna attached to a structure	25' measured from the highest point of the roof of the structure (Effective April 15, 2000)
(2) Amateur or governmental tower attached or braced against a structure	25' measured from the highest point of the roof of the structure (Effective April 15, 2000)
(3) Freestanding amateur or governmental wireless telecommunication tower	50' measured from average original grade (Effective April 15, 2000)
MAXIMUM WIND ENERGY SYSTEM HEIGHT (Effective October 8, 2008)	
(1) All uses to center of turbine	100'
MINIMUM LOT WIDTH (Effective August 11, 1999)	
(1) All uses	40 ft.
MAXIMUM BUILDING FOOTPRINT	
(1) All uses	None, except non-conforming lots shall comply with the building footprint standards contained in Sec. 19-4-3
MAXIMUM BUILDING HEIGHT	
(1) All uses	35 ft.

F. Site Plan Review

The following uses and activities shall be subject to site plan review by the Planning Board, according to the terms of Article IX, Site Plan Review, prior to issuance of any building permit, plumbing permit, or other permit:

1. Multiplex housing and eldercare facilities. As part of Site Plan Review for multiplex housing Sec. 19-7-2 (E), Multiplex Housing Standards, shall also apply. (Effective November 14, 2015)
2. Nonresidential uses listed in Sec. 19-6-2.B.3, except home day cares, wind energy systems, short term rentals and day camps, which shall not require site plan review (Effective November 5, 2016)
3. Nonresidential uses listed in Sec. 19-6-2.C.2
4. Any other use or activity listed in Sec. 19-9-2, as requiring site plan review.

SEC. 19-6-3. RESIDENCE C DISTRICT (RC)

A. Purpose

The Residence C District includes lands that are within the built-up areas of Cape Elizabeth, are sewerred or can be easily served by public sewer, are identified in the Comprehensive Plan as part of the Town's growth areas, are not presently in agricultural or woodland uses, and are not considered to be valuable, large-scale open space with valued scenery or wildlife habitat. The purpose of the district is to provide for areas of compact development that can foster cohesive neighborhoods that are close to community services.

B. Permitted Uses

The following uses are permitted in the Residence C District:

1. The following resource-related uses:
 - a. Any use listed in Resource Protection 1 – Critical Wetlands District, or in Resource Protection 2 – Wetland Protection District, or in Resource Protection 3 – Floodplain District, as shown on Table 19-6-9
 - b. Agriculture, provided that no animal or fowl shall be raised for commercial purposes on any lot containing less than one hundred thousand (100,000) square feet
 - c. Keeping of livestock, such as a horse, cow, pig, goat, sheep, or similar animal, provided that such activity occurs only on a lot containing at least one hundred thousand (100,000) square feet
 - d. Removal of topsoil, subject to the provisions of Sec. 19-8-5, Earth Materials Removal Standards
 - e. Timber harvesting

2. The following residential uses:
 - a. Single family dwelling
 - b. Manufactured housing on an individual lot
 - c. Manufactured housing park, subject to the provisions of Sec. 19-7-7, Manufactured Housing Parks
 - d. Multiplex housing
 - e. Eldercare facility, subject to the provisions of Sec. 19-7-6, Eldercare Facility Standards
 - f. Rooming or boarding home
3. The following nonresidential uses:
 - a. Home day care
 - b. Farm and fish market, with a maximum floor area of two thousand (2,000) square feet for retail sales of products
 - c. Boat repair facility, subject to the provisions of Sec. 19-8-9, Boat Repair Facility Standards
 - d. Wind energy system (Effective October 8, 2008)
 - e. Bed and Breakfast, where the operator of the Bed and Breakfast owns the structure and maintains it as his/her primary residence (Effective March 9, 2009)
 - f. Short Term Rental (Effective December 14, 2012)
 - g. Day Camp (Effective July 10, 2013)

C. Conditional Uses

The following uses may be permitted only upon approval by the Zoning Board as a conditional use, in accordance with Sec. 19-5-5, Conditional Use Permits:

1. The following resource-related uses:
 - a. Extraction of sand, gravel, rock and similar earth materials, except topsoil (see permitted uses), subject to the provisions of Sec. 10-8-5, Earth Materials Removal Standards
2. The following nonresidential uses:
 - a. Cemetery
 - b. Day care facility
 - c. Fraternal or social institution
 - d. Institution of an educational, religious, or philanthropic nature, including school, hospital, church, municipal use, or similar facility
 - e. Playground or park

3. The following accessory uses:

- a. Home business
- b. Accessory dwelling unit

D. Prohibited Uses

All uses not specifically allowed as permitted uses or conditional uses are prohibited within this district.

E. Standards

1. Performance Standards

- a. The standards of performance of Articles VII and VIII shall be observed.
- b. Standards relating to permitted and conditional uses in the Residence C District include:

- Sec. 19-7-5 Creation of an Accessory Dwelling Unit
- Sec. 19-7-6 Eldercare Facility Standards
- Sec. 19-7-7 Manufactured Housing Parks
- Sec. 19-8-5 Earth Materials Removal Standards
- Sec. 19-8-8 Home Day Care and Day Care Facility Standards
- Sec. 19-8-9 Boat Repair Facility Standards
- Sec. 19-8-14 Short Term Rental Standards (Effective December 14, 2012)

2. The following Space and Bulk Standards shall apply:

MINIMUM LOT AREA	
(1) Boat repair facility for commercial purposes	200,000 sq. ft. (4.6 acres)
(2) Multiplex housing	5 acres
(3) Eldercare facilities	5 acres
(4) Wind energy systems	20,000 sq. ft. (Effective October 8, 2008)
(5) Others	20,000 sq. ft.
MAXIMUM NUMBER OF DWELLING UNITS PER AREA	
(1) Multiplex housing	1 unit per 15,000 sq. ft. of net residential area

(2) In subdivisions	1 unit per 20,000 sq. ft. of net residential area
(3) In subdivisions that conform to Sec. 19-7-2. Open Space Zoning	1 unit per 15,000 sq. ft. of net residential area
(4) A single family home on a lot that is not part of a subdivision	1 unit per 20,000 sq. ft. of gross lot area
(5) In eldercare facilities	1 unit per 2,500 sq. ft. or 1 bed per 2,100 sq. ft. of net residential area (Effective May 9, 2007)
(6) Rooming or boarding home	1 bed per 5,000 sq. ft. of gross lot area
(7) Other housing	1 unit per 20,000 sq. ft. of gross lot area
MAXIMUM NUMBER OF BED AND BREAKFAST ROOMS	
Bed and Breakfast Guest Room	1 room per 5,000 sq. ft. of gross lot area
MINIMUM STREET FRONTAGE	
(1) Bed and Breakfast	100 ft. on Shore Road or Route 77
(2) All uses	100 ft.
MINIMUM SETBACKS	
(1) All uses unless otherwise specified	
a. Side yard setback	20 ft. The side yard setback may be reduced in accordance with Sec. 19-4-3.A.2, Developed Nonconforming Lots. (Effective August 11, 1999)
b. Rear yard setback	20 ft. The rear yard setback may be reduced in accordance with Sec. 19-4-3.A.2, Developed Nonconforming Lots. (Effective August 11, 1999)

c. Front yard setback	The front yard setbacks set forth below may be reduced, only on roads which are not classified arterial, to the average setback of the two principal structures fronting on the same road in closest proximity to the site of the proposed structure, but any structure must be at least 20 feet from the right-of-way.
-- Arterial Street	40 ft.
-- Collector and rural connector streets	40 ft.
-- Feeder street	30 ft.
-- Local and private streets	20 ft.
(2) Eldercare facilities (Effective November 14, 2015)	
a. From property line	75 ft.
(3) Accessory structures with floor area not greater than 100 square feet and a height not greater than 8-1/2 feet from average grade	
a. Side yard setback	10 ft.
b. Rear yard setback	5 ft.
(4) Reserved (Effective June 10, 2010)	
(5) Antennas extending from 15' to 25' measured from the highest point of the alternative tower structure	
a. Property line setback	125% of the distance from the ground to the top of the antenna (Effective April 15, 2000)
(6) Towers which are freestanding, and towers which are attached or braced against a structure and exceed 15' in height measured from the highest point of the roof of the structure	
a. Property line setback	125% of the distance from the ground to the top of the antenna (Effective April 15, 2000)

b. Front yard setback	125% of the distance from the ground to the top of the antenna or the distance from the street right of way to the front of the existing structure plus 5', whichever is more (Effective April 15, 2000)
(7) Open Space Zoning Subdivisions (See Sec. 19-7-2)	
a. Side yard setback	15 ft.
b. Rear yard setback	15 ft.
c. Front yard setback	20 ft.
(8) Deck with a height of less than ten (10) feet above average grade	
a. Side yard setback	10 ft.
b. Rear yard setback	10 ft.
(9) Accessory building having less than one hundred fifty (150) square feet of floor area	
a. Side yard setback	10 ft.
b. Rear yard setback	10 ft.
(10) Outdoor recreational facilities such as swimming pools, tennis courts, and basketball courts that are accessory to a single family residential use	
a. Side yard setback	10 ft.
b. Rear yard setback	10 ft. (Effective December 10, 2003)
(11) Wind energy system	110% of the distance from the ground to the center of the turbine (Effective October 8, 2008)
MAXIMUM TELECOMMUNICATION HEIGHT	
(1) Antenna attached to a structure	25' measured from the highest point of the roof of the structure (Effective April 15, 2000)

(2) Amateur governmental tower attached or braced against a structure	25' measured from the highest point of the roof of the structure (Effective April 15, 2000)
MAXIMUM WIND ENERGY SYSTEM HEIGHT (Effective October 8, 2008)	
(1) All uses to center of turbine	100'
MINIMUM LOT WIDTH (Effective August 11, 1999)	
(1) All uses	40 ft.
MINIMUM BUILDING FOOTPRINT	
(1) All uses	None, except nonconforming lots shall comply with the building coverage standards contained in Sec. 19-4-3
MAXIMUM BUILDING HEIGHT	
(1) All uses	35 ft.

F. Site Plan Review

The following uses and activities shall be subject to site plan review by the Planning Board, according to the terms of Article IX, Site Plan Review, prior to issuance of any building permit, plumbing permit or other permit:

1. Multiplex housing, eldercare facilities, and boarding care facilities. As part of Site Plan Review for multiplex housing, Sec. 19-7-2 (E), Multiplex Housing Standards shall also apply. (Effective November 14, 2015)
2. Nonresidential uses listed in Sec. 19-6-3/B/3, except home day cares, wind energy systems, short term rentals and day camps, which shall not require site plan review (Effective November 5, 2016)
3. Nonresidential uses listed in Sec. 19-6-3.C.2
4. Any other use or activity listed in Sec. 19-9-2, Applicability, as requiring site plan review.

SEC. 19-6-4. TOWN CENTER DISTRICT (TC)

A. Purpose

The purpose of this district is to encourage an identifiable Town Center that includes a village feeling, mixed retail and residential uses to serve residents, an environment inviting to pedestrians, a common meeting place, visual cohesiveness and enrichment and linkages to the Town's open space and nearby school campus. The Town Center district boundaries reflect the prevalence of public buildings and commercial uses and the historic compactness of development. The Town Center District requirements are tailored to the unique characteristics of the Cape Elizabeth Town Center.

In the center of the Town Center District, there exists a unique compactness of development exemplified by smaller lot sizes and existing structures with compatible space and bulk massing and requirements of the Town Center District shall apply in the core subdistrict, except where standards specific to the Town Center Core Subdistrict are established.

B. Permitted Uses

The following uses are permitted in the Town Center District:

1. The following resource-related uses:
 - a. Farming use, except that outdoor storage of chemicals and commercial animal husbandry are not permitted.
2. The following residential uses:
 - a. Single family dwelling
 - b. Bed and breakfast
 - c. Multifamily dwelling unit. (Effective May 12, 2010)
 - d. Congregate housing, subject to the provisions of Sec. 19-7-6, Eldercare Facility Standards
 - e. Rooming or boarding home
3. The following nonresidential uses:
 - a. Banking, professional, and business office
 - b. Personal service
 - c. Village retail shop
 - d. Veterinarian office not including the boarding of animals but allowing pre-surgical and/or postsurgical care
 - e. Medical clinic
 - f. Restaurant including delicatessen, ice cream parlor, and sit down restaurant with a maximum of seventy-five (75) seats.

- g. Gas station with not more than two (2) fueling islands with each island having not more than four (4) “fueling points” from no more than two (2) gas dispensers. A car wash is allowed only if accessory to a service station and if each car wash bay’s ingress and egress are not visible from a street.
 - h. Repair garage
 - i. Institutional use including, but not limited to, church, government use, and school use
 - j. Day care facility
 - k. Cottage industry manufacturing
 - l. Wind energy system (Effective October 8, 2008)
 - m. Short term rental (Effective December 14, 2012)
4. The following accessory uses:
- a. Accessory building, structure or use
 - b. Outside storage accessory to an allowed use provided that the area used for storage shall not exceed the floor area of the principal use and that, except for display area, the outside storage is screened from public view and abutting properties.
 - c. A drive-through for a bank or car wash, provided that it is accessory to the principal use and located immediately adjacent to the structure of the principal use.
 - d. Home occupation
 - e. Home business
 - f. The renting of not more than two (2) rooms within a single family dwelling provided that there is no physical alteration of the building and no change in external appearance of the structure.
 - g. Amateur or governmental wireless telecommunication facility antenna (Effective April 15, 2000)
 - h. Amateur or governmental wireless telecommunication facility tower (Effective April 15, 2000)
 - i. Commercial wireless telecommunication service antenna which is attached to an alternative tower structure in a manner which conceals the presence of an antenna. (Effective April 15, 2000)
 - j. Day Camp (Effective July 10, 2013)

C. Prohibited Uses

All uses not specifically allowed as permitted uses are prohibited within this district. Adult businesses, as herein defined, are prohibited within the Town center District. Drive-through services, except those associated with a bank or car wash that are specifically permitted as accessory uses, are prohibited within the Town Center District.

D. Standards

1. Performance Standards

- a. The standards of performance of Articles VII and VIII shall be observed.
- b. Standards relating to permitted uses in the Town Center District include:
 - i. Sec. 19-7-6 Eldercare Facility Standards
 - ii. Sec. 19-8-14 Short Term Rental Standards
(Effective December 14, 2012)
- c. No project shall create an adverse impact on butting property values. Each project shall be compatible with the existing uses and purposes of the district.
- d. Each lot with frontage on an arterial street shall not be allowed more than one (1) driveway onto the arterial street, unless the driveway is shared with an abutting property, in which case two (2) driveways are allowed. Lots with at least two hundred (200) feet of road frontage shall be allowed two (2) driveways.
- e. No communication tower in excess of ten (10) feet in height or exposed satellite dish in excess of two (2) feet in diameter shall be allowed which is exposed to public view, except for exclusive municipal and school uses. Satellite dishes and the base of communication towers that are installed at ground level shall be screened from public view.
- f. No parking for uses other than school uses shall be allowed in the front yard setback.
- g. Structures existing as of June 7, 1995, which do not conform to the maximum footprint or the maximum lot coverage requirement may increase the building footprint by up to twenty-five percent (25%), to a maximum footprint expansion of five thousand (5,000) square feet, as long as the development will be in compliance with all other dimensional requirements of Sec. 19-6-4.D.2, Space and Bulk Standards, subject to Site Plan review by the Planning Board.
- h. A multifamily dwelling unit shall be accessory to a nonresidential use and located in a building where more than fifty percent (50%) of the floor area of the structure is occupied by nonresidential uses. For multi0story buildings, more than fifty percent (50%) of the structure may be allocated for multifamily dwelling units as long as the first floor is nonresidential.
(Effective May 12, 2010)

2. The following Space and Bulk Standards shall apply:

MINIMUM LOT AREA	
(1a) Single family dwelling unit	80,000 sq. ft.
(1b) Single family dwelling unit in the Town Center Core Subdistrict	10,000 sq. ft.
(2) Multifamily dwelling unit	7,500 sq. ft.
(3) Wind energy systems	20,000 sq. ft. (Effective October 8, 2008)
(4) Other uses	None
MAXIMUM NUMBER OF DWELLING UNITS PER AREA	
(1) Multifamily housing in a mixed use building	1 unit per 3,000 sq. ft. of gross lot area (Effective May 12, 2010)
(2) Rooming or boarding home	1 bed per 5,000 sq. ft. of gross lot area
MINIMUM STREET FRONTAGE	
(1) School and municipal uses	None
(2) All other uses	50 ft.
MAXIMUM LOT COVERAGE (INCLUDES ALL BUILDINGS, PARKING, AND DRIVEWAY AREAS)	
(1) School Uses	40% (Effective August 11, 1999)
(2) Municipal uses	None
(3) All other uses	70%
MINIMUM SETBACKS	
(1) School uses	
a. Side yard setback	50 ft. The side yard setback shall be increased to 100 ft. where it abuts a residential district
b. Rear yard setback	50 ft. The rear yard setback shall be increased to 100 ft. where it abuts a residential district

c. Front yard setback	75 ft.
(2) Municipal uses	
a. Side yard setback	15 ft. The side yard setback shall be increased to 50 ft. where it abuts a residential district.
b. Rear yard setback	15 ft. The side yard setback shall be increased to 50 ft. where it abuts a residential district.
c. Front yard setback	
Building with up to 5,000 sq. ft. of floor area	Minimum of 25 ft. - Maximum of 35 ft.
Building with more than 5,000 sq. ft. of floor area	50 ft.
(3) Antennas extending from 15' to 25' measured from the highest point of the alternative tower structure	
a. Property line setback	125% of the distance from the ground to the top of the antenna (Effective April 15, 2000)
(4) Towers which are freestanding, and towers which are attached or braced against a structure and exceed 15' in height measured from the highest point of the roof of the structure	
a. Property line setback	125% of the distance from the ground to the top of the antenna (Effective April 15, 2000)
b. Front yard setback	125% of the distance from the ground to the top of the antenna or the distance from the street right of way to the front of the existing structure plus 5', whichever is more (Effective April 15, 2000)
(5) Village Green Development	

a. Side yard setback	15 ft. The side yard setback for new construction shall be increased to 50 ft. where it abuts a residential district.
b. Rear yard setback	15 ft. The side yard setback for new construction shall be increased to 50 ft. where it abuts a residential district.
c. Front yard setback	25 ft. The front yard setback for parking shall be 35 ft. (Effective march 9, 2016)
(6) All other uses	
a. Side yard setback	15 ft. The side yard setback for new construction shall be increased to 50 ft. where it abuts a residential district
b. Rear yard setback	15 ft. The rear yard setback for new construction shall be increased to 50 ft. where it abuts a residential district
c. Front yard setback	Minimum 25 ft. Maximum 35 ft.
(7) Deck with a height of less than ten (10) feet above average grade	
a. Side yard setback	10 ft.
b. Rear yard setback	10 ft.
(8) Accessory building having less than one hundred fifty (150) square feet of floor area	
a. Side yard setback	10 ft.
b. Rear yard setback	10 ft.
(9) Outdoor recreational facilities such as swimming pools, tennis courts, and basketball courts that are accessory to a single family residential use	

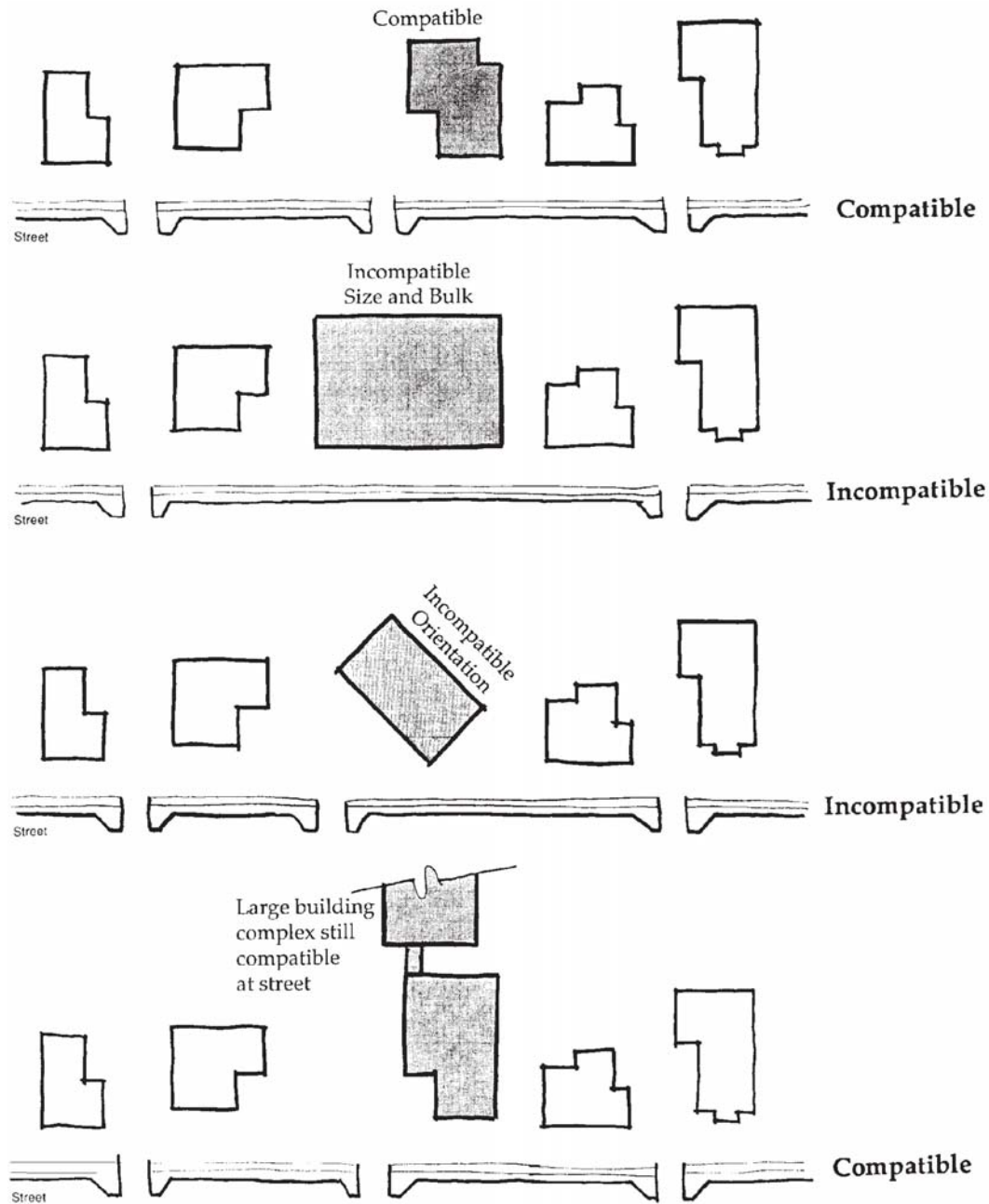
a. Side yard setback	10 ft.
b. Rear yard setback	10 ft. (Effective December 10, 2003)
(10) Wind energy system	110% of the distance from the ground to the center of the turbine (Effective October 8, 2008)
MAXIMUM TELECOMMUNICATION HEIGHT	
(1) Antenna attached to a structure	25' measured from the highest point of the roof of the structure (Effective April 15, 2000)
(2) Amateur or governmental tower attached or braced against a structure	25' measured from the highest point of the roof of the structure (Effective April 15, 2000)
(3) Freestanding amateur or governmental wireless telecommunication tower	50' measured from average original grade (Effective April 15, 2000)
MAXIMUM WIND ENERGY SYSTEM HEIGHT (Effective October 8, 2008)	
(1) All uses to center of turbine	100'
MINIMUM SETBACK OF PARKING (INCLUDING PARKING AISLES FROM PROPERTY LINE)	
(1) All uses	
a. Front	80 ft.
b. Side	35 ft.
c. Rear	35 ft.
(2) Municipal and other uses	
a. Front, side, and rear	5 ft. Parking setback may be reduced to 0 ft. for a shared parking lot at the common property line (Effective December 10, 2003)
MAXIMUM BUILDING HEIGHT	
(1) All uses	35 ft.

MAXIMUM BUILDING FOOTPRINT	
(1) All uses other than school or municipal uses	5,000 sq. ft. This limitation shall not prohibit the connection of separate structures by a covered or enclosed walkway.
MAXIMUM BUILDING DIMENSION	
(1) All uses other than school or municipal uses	100 ft.

3. Design Requirement

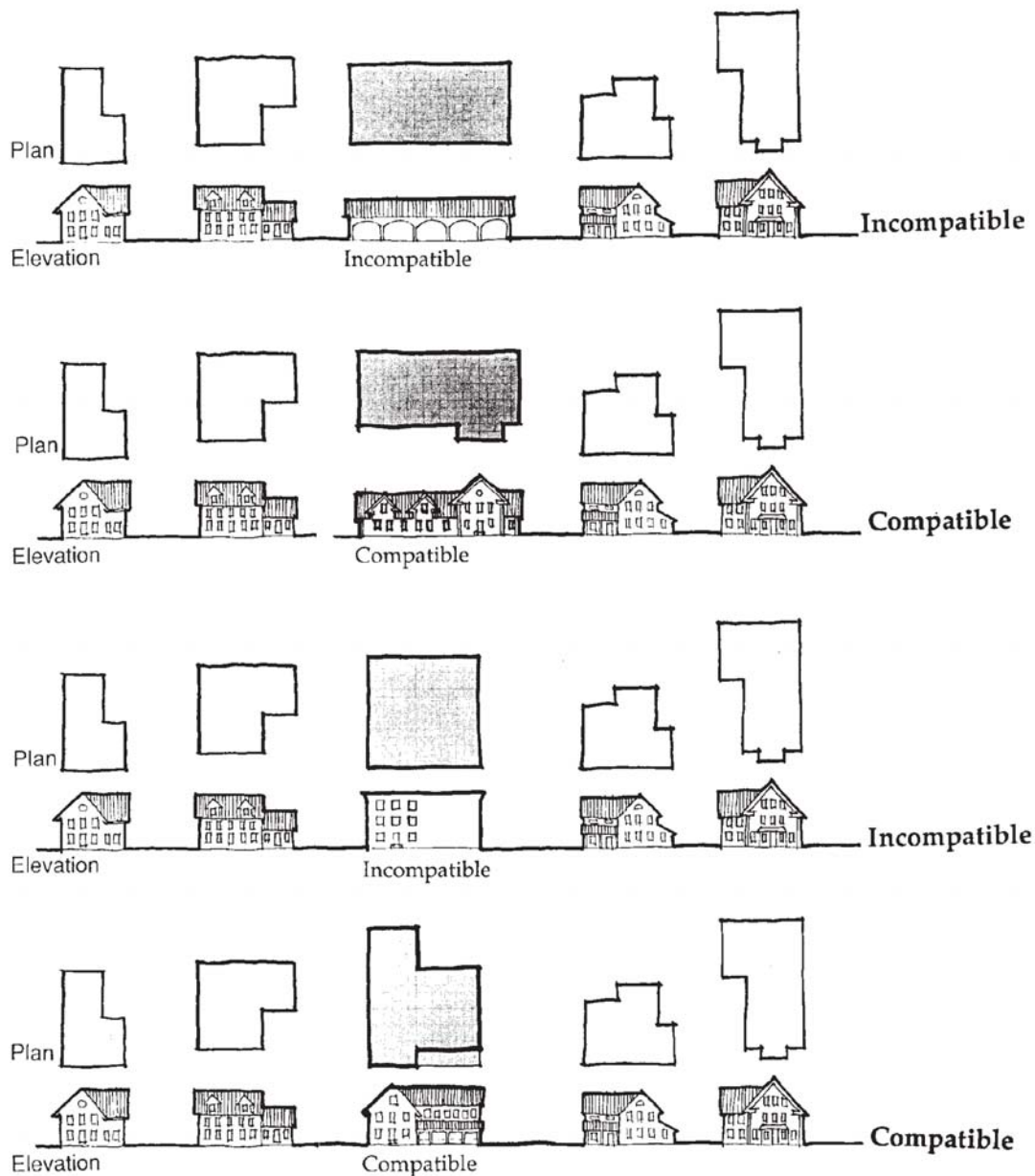
The following requirements shall be applicable to all development which requires site plan review by the Planning board, any new construction or addition, and any exterior alteration to a locally historic structure designated in the Town Center Plan. These standards shall be used to determine if a development is compatible with the Town Center District. The intent is not that all buildings should look the same, but rather to encourage a mix of compatible styles, sizes, and characteristics.

- a. Footprint. The building footprint of new construction shall be compatible with the Town Center District. The visual impact of a building is influenced by the placement of other buildings on the lot, the irregular and varied surface of buildings due to architectural features, and the spaces between those buildings along the street. The existing buildings and open spaces between the buildings create a rhythm with which new construction should be compatible. Determination of compatibility shall be based on the overall building footprint square footage, the dimensions of each footprint side, placement of the building footprint on the lot, and the rhythm of buildings and spaces along the street edge.

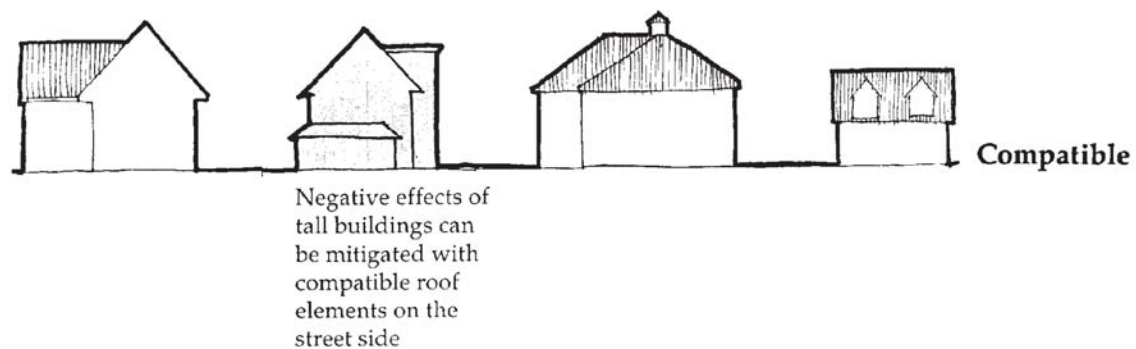
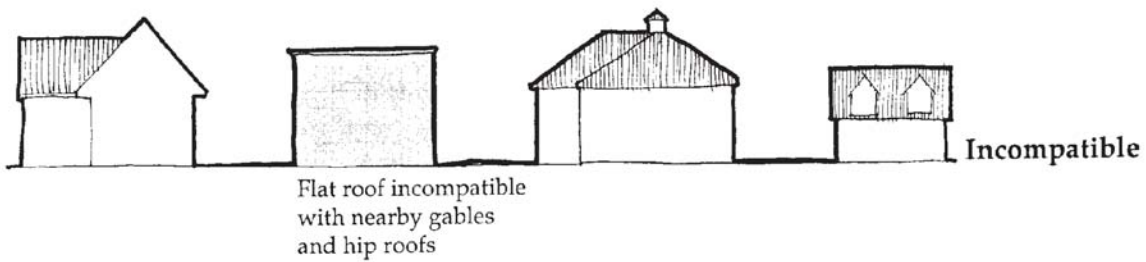
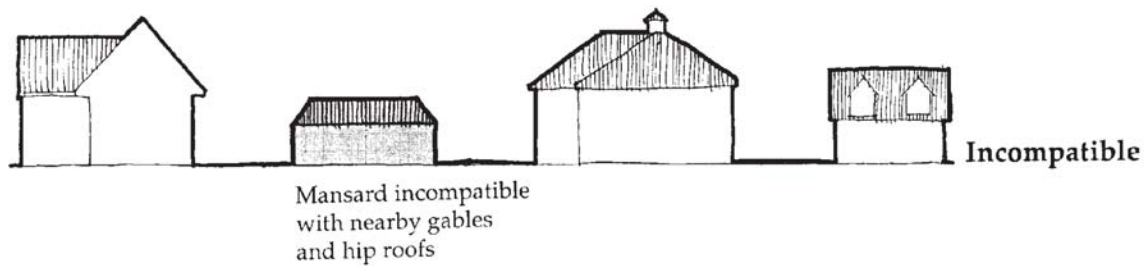
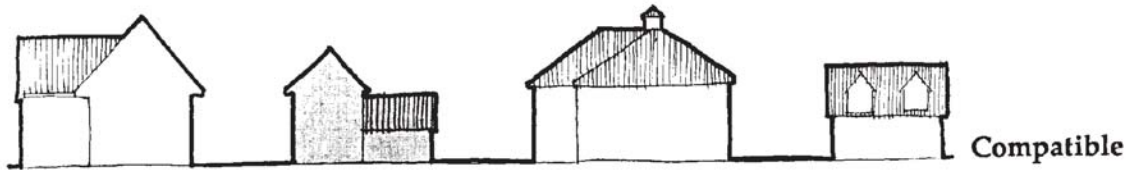


- b. Scale. Scale is the apparent size of a structure in relation to its surroundings, including other buildings, open space, and people. Scale gives a building “presence,” making the building seem large or small, awkward or graceful, overpowering or unimportant. The perception of a structure is influenced by its size, but more importantly how the overall size is distributed throughout the building. New construction shall be compatible in scale with other structures in the district. Determination of compatibility shall be based on the maximum dimension of the structure, the degree of articulation on building surfaces, the magnitude of unbroken faces of a structure, the

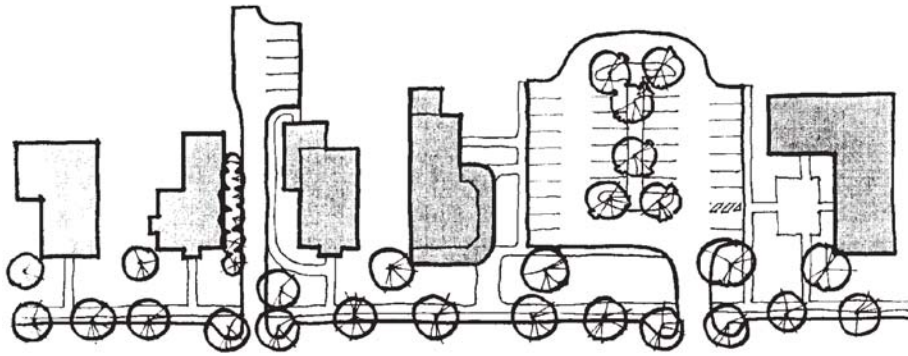
impact of the building mass upon view sheds, and the integration of mechanical equipment within the structure.



- c. Height and Roof Pitch. The height of a building and the type of roof design significantly influence the scale of a structure and can detract from the streetscape. New roof construction shall conform to the predominant heights of roofs of nearby buildings in the Town Center District and to the design of the structure. Roofs shall generally be of a gable or other sloping roof design with a minimum pitch of 7:12 or as matches the existing roof pitch. Flat roofs are discouraged.

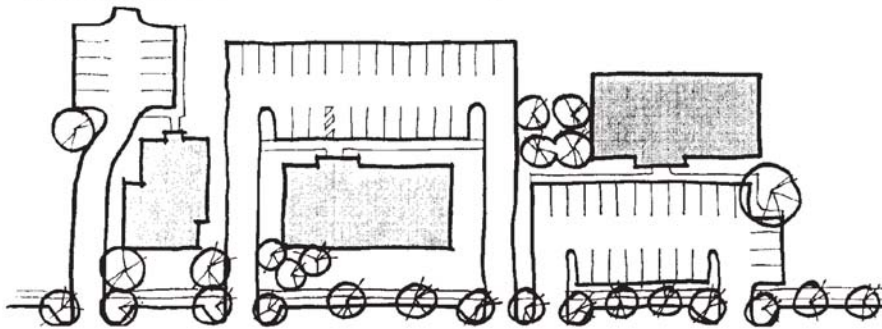


- d. Building and Parking Orientation. The first impression of a building is from the side which faces the street. The front façade of the structure shall face the street. The structure shall be designed with a primary orientation to the street, although the primary entrance may be located on other than the front façade. The front façade shall include a distinctive entrance. A sidewalk shall be constructed parallel to the front façade. The side yard visible to the public should be designed to present a pleasing appearance to the pedestrian.



Compatible

Front and front/side entries are compatible with village character. Small parking areas (2-7 cars) work well behind a building. Larger parking areas (8-40 cars) work better to the side of a building.

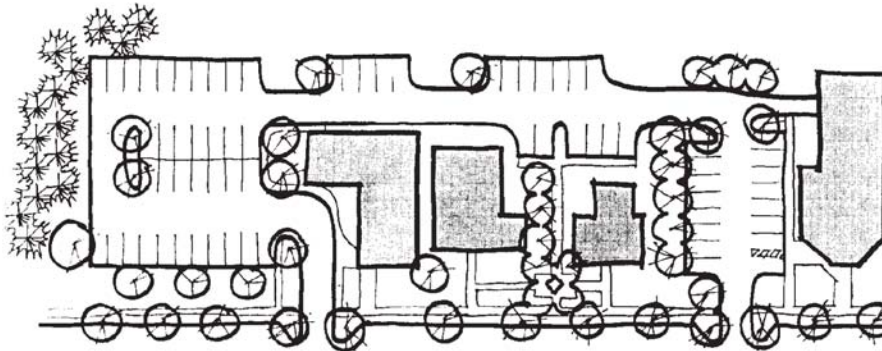


Incompatible

Rear entries incompatible with village character.

No public entry from sidewalk.

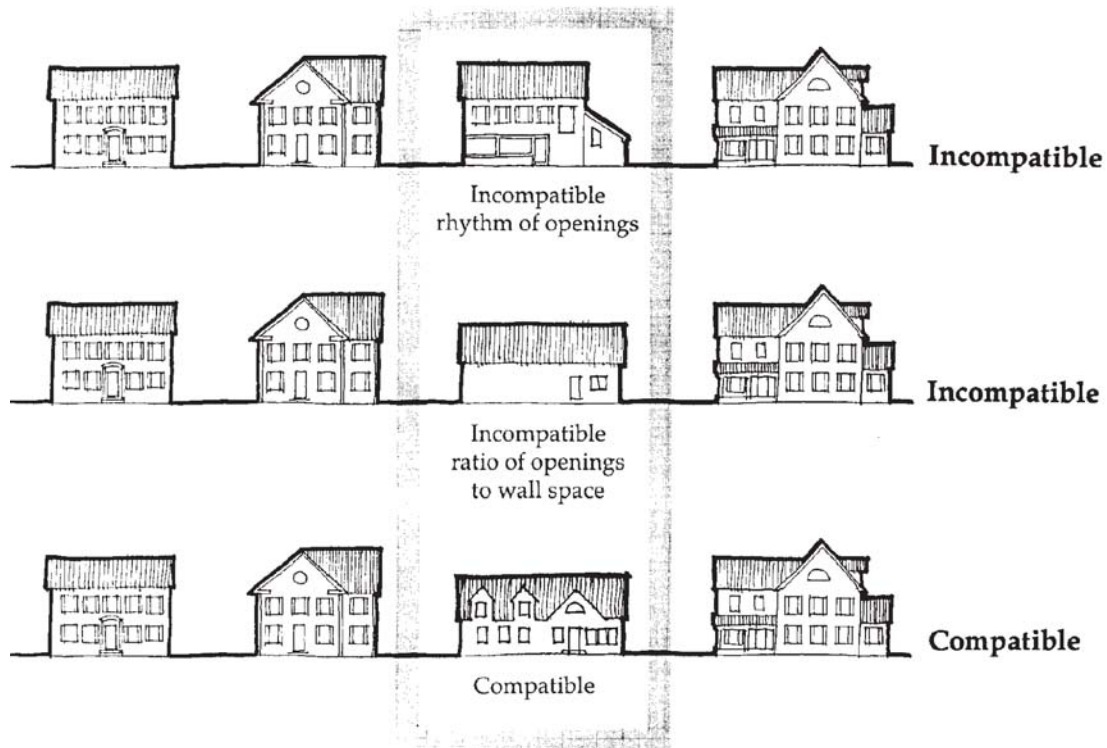
Parking in front setback not permitted and not compatible with village character.



Compatible

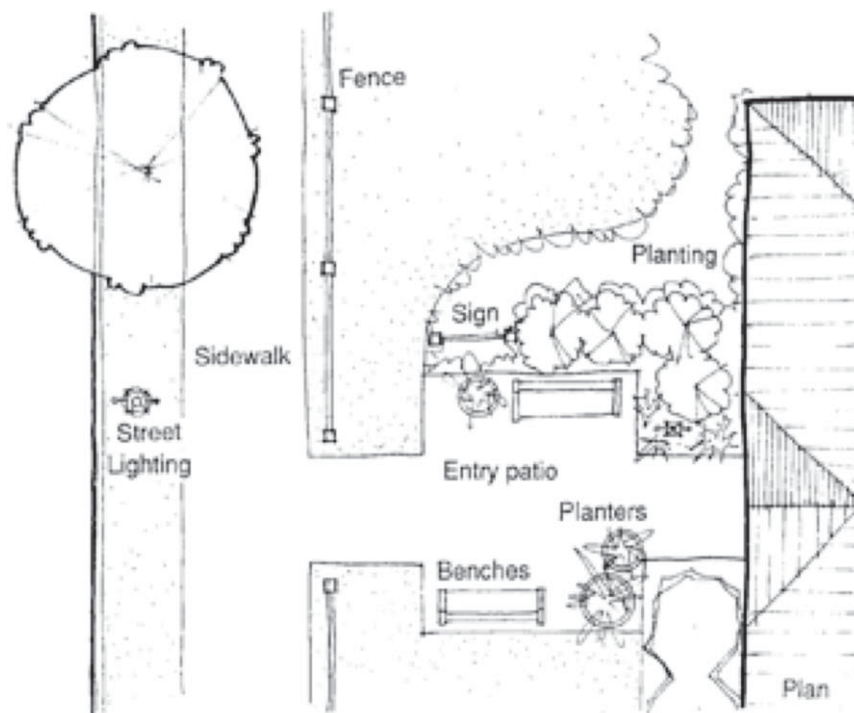
Shared parking and shared driveways are encouraged. Cross connection with rear parking is encouraged if walkway and building layout orients people to street side front entries.

- c. Openings. The relationship between doors and windows to exterior wall space of a building creates a rhythm or pattern. The pattern of window or door openings of a structure shall be compatible with the rhythm of openings in nearby structures. Doors and windows shall be consistent with the style of the building. Development in existing structures shall maintain the original rhythm and size of openings. The first floor front façade shall be constructed with an equal proportion of openings to wall space.

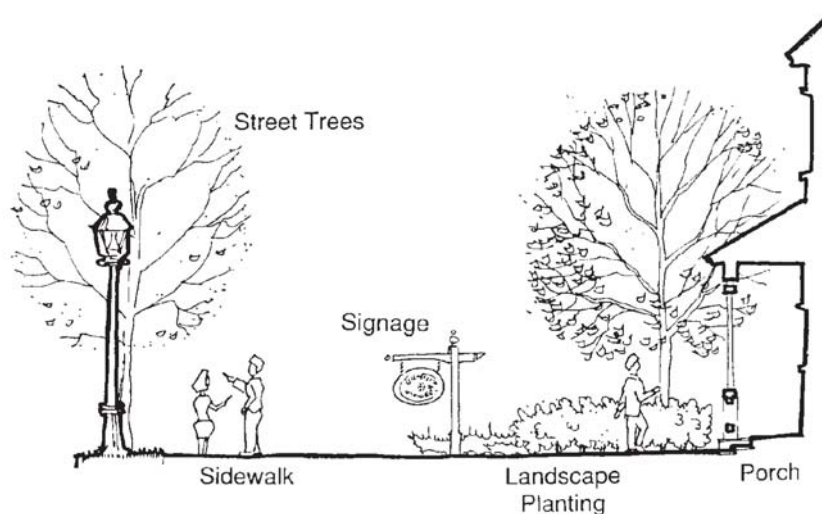
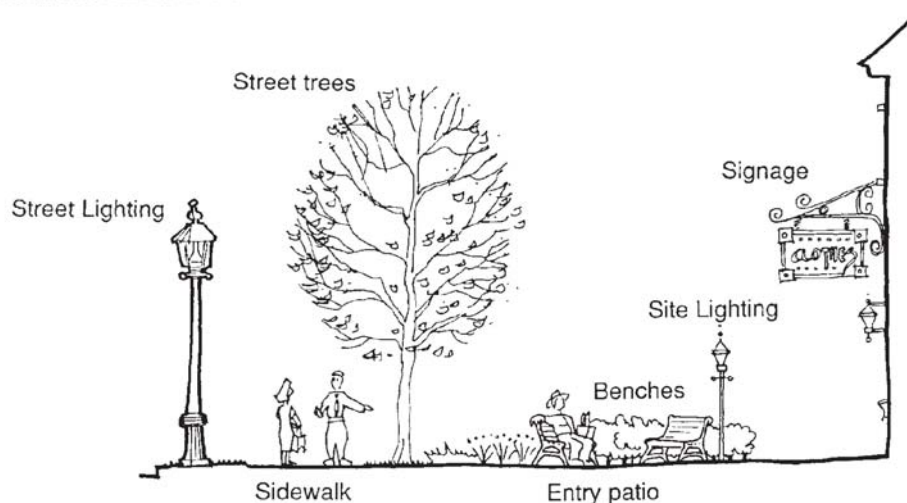


- f. Exterior Materials. Façade materials give a structure character. Exterior materials shall be compatible with nearby buildings and with the design of the structure. No structure addition shall consist of architectural materials inferior in quality, appearance, or detail to any other exterior of the same building. The use of wood shingles, wood clapboards, copper, and brick is permitted and the use of concrete block, sheet metal, vinyl, or aluminum siding is discouraged.
- g. Landscaping and Site Development
 1. Front setback. The land in the front yard setback is a transitional space between the public domain of the road right-of-way and the private structure and is a determining factor in the character and ambiance of the Town Center. This area shall be designated and landscaped to be pedestrian-friendly in scale, access, lighting, and security. A sidewalk and other pedestrian pathways, such as to the building and to parking areas, shall be located between the road and the structure. The side of the structure facing the front yard setback shall be designed with a distinctive entrance for pedestrians. Multifamily dwellings shall be designated with the main entrance facing the front yard. Design elements of single family homes such as front steps and a front porch shall be incorporated whenever practicable. The front setback shall be carefully landscaped with attention to details evident to pedestrians and shall include street trees. The development of front courtyard gardens

is strongly encouraged. Multifamily dwellings shall include at least one (1) street tree per unit in the front yard landscape plan.

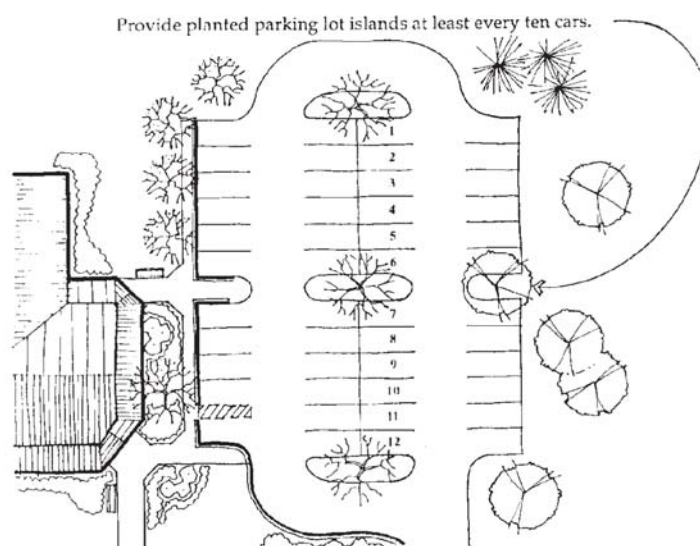
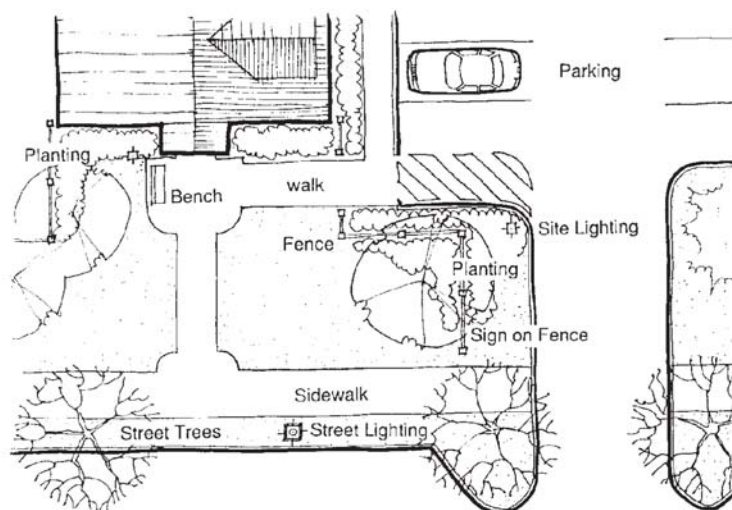


Front Setback Character Illustrations

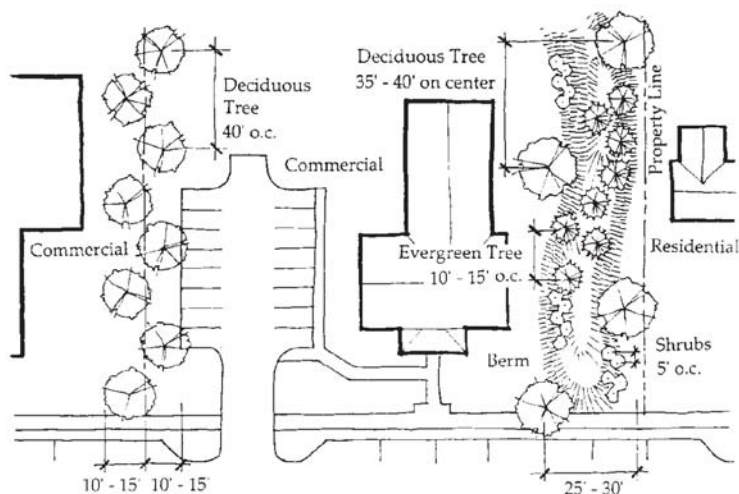


2. Parking lot. While adequate and convenient parking is necessary in the Town Center District, an expanse of gravel or asphalt parking can appear barren and hostile for pedestrians. Landscaping around and within parking lots perceptually softens the hard surface of parking areas. Parking lots shall be designed and landscaped to be compatible with the pedestrian-friendly purpose of the Town Center District. A minimum five (5) foot wide landscaped esplanade shall be required around parking lots. A landscaped area shall be required in the front yard setback between the road and the parking lot and shall include plantings of a size sufficient to obscure the view of parked cars and parking lots from the sidewalk and transitioning to lesser height. At least one landscaped island shall be included for each row of at least ten (10) parking spaces and shall be located within the interior of the parking lot. The landscaped island(s) shall be of sufficient

size to accommodate and be planted with at least one (1) road tree.
(Effective August 11, 1999.)

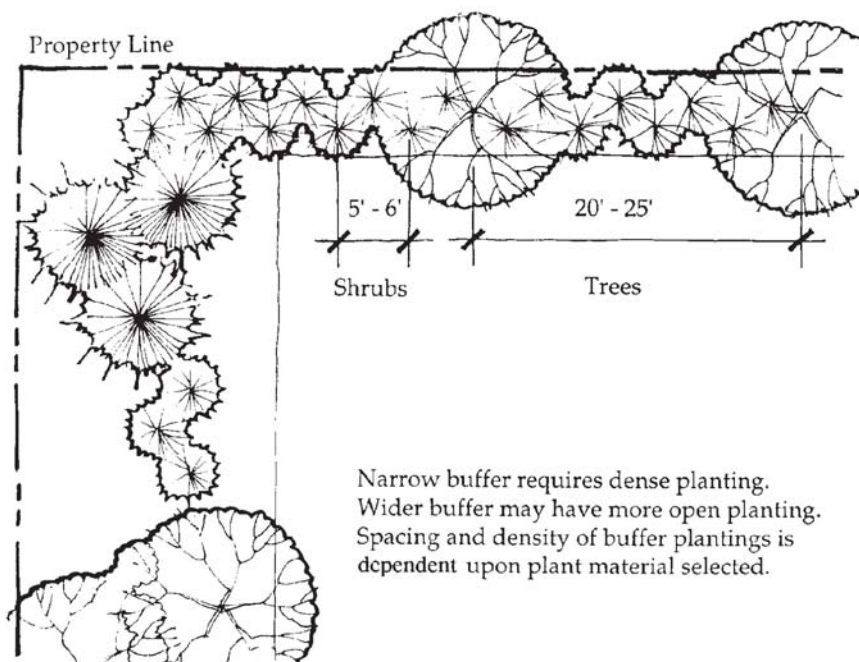


3. Buffering. Buffering serves to soften narrow yards, screen parking areas, and create a sense of enclosure by transforming a street into an outdoor room. Within the Town Center, landscaping between properties can mitigate conflicts between land uses, densities, and building styles and scale. Side and rear yard buffering defines the edge of a property and can also identify the edge of the Town Center. Each lot shall provide a landscaped side and rear yard buffer. The depth and density of the buffer shall be determined by the type of use proposed, its compatibility with adjacent uses and with the Town Center.



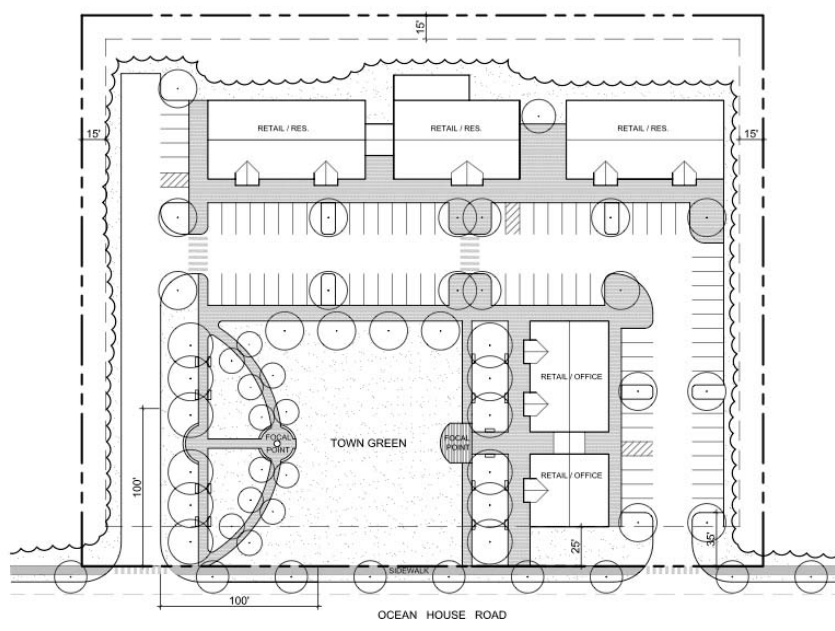
Adjacent compatible uses require narrower buffers that define the edge.

Non-compatible adjacent uses require wider buffers and earth berms or wood fences for a physical separation. Denser massing of deciduous and evergreen planting provides for seasonal variation and buffer continuity.



4. Village green. This section shall apply when a village green is included in a Site Plan Review application. One purpose of the Town Center District is to encourage a common meeting place. A village green is a prominent and highly visible park-like area where the public may gather, relax and contemplate both casually and as part of organized outdoor public events. A village green created in compliance with this section must have at least one hundred (100) continuous feet of road frontage on Ocean House Road, a depth measured perpendicular from Ocean House Road of at least one

hundred (100) feet with a minimum width of one hundred (100) feet, and a minimum size of at least twenty-thousand (20,000) square feet. A village green shall be designed as a park, green or square, permanently preserved as groomed open space with legal public access, and offered in fee to the Town of Cape Elizabeth. A village green shall be developed with a defined edge framed with elements such as landscaping, roads, pedestrian walkways and distinctive buildings. A village green shall have a distinctive center and/or focal point. Pedestrian walkways shall be constructed that guide movement through and around a village green and connect a village green to the Town Center sidewalk network, adjacent buildings and properties. The Center sidewalk network, adjacent buildings and properties. The requirements of subsection Sec. 19-6-4 (D)(3)(d) Building and Parking Orientation, and Sec. 19-6-4(D)(3)(g)(2), Parking Lot, shall be applied in a manner that complements a village green. (Effective March 9, 2016)



SCALE: 1"=50'

E. Site Plan Review

The following uses and activities shall be subject to site plan review by the Planning Board, according to the terms of Article IX, Site Plan Review, prior to the issuance of any building permit, plumbing permit, or other permit:

1. Construction involving any permitted use other than farming and a single family dwelling, except that construction of or conversion to a single family dwelling in the Town Center Core Subdistrict shall be subject to site plan review by the Planning Board.
2. Conversion of an existing building or structure or portion thereof from a less intensive category of use to a more intensive category use according to the following scale of uses with Category 1 being the least intensive and Category 10 being the most intensive:
 - Use Category 1. Multifamily dwellings and bed and breakfasts
 - Use Category 2. Banking, professional, and business offices
 - Use Category 3. Personal services and village retail shops
 - Use Category 4. Veterinarian offices and medical clinics
 - Use Category 5. Restaurants, including a delicatessen, ice cream parlor, and a sit down restaurant
 - Use Category 6. Gas station and repair garages
 - Use Category 7. Institutional uses, including but not limited to churches, governmental, and school uses
 - Use Category 8. Day care facilities
 - Use Category 9. Congregate housing
 - Use Category 10. Cottage industry manufacturing
3. Conversion of an existing building or structure or portion thereof within the same category or to a less intensive category of use on the above scale of use categories unless:
 - a. The current use category received site plan approval,
 - b. There will be no exterior alterations other than signage, and
 - c. No multifamily dwelling units, rooming house, or bed and breakfast will be created.
4. Any other use or activity listed in Sec. 19-9-2, Applicability, as requiring site plan review.

SEC. 19-6-5. BUSINESS DISTRICT A (BA)

A. Purpose

The Business A District is comprised of neighborhood business districts in which the business uses are geared to the needs of nearby residents rather than a large scale, regional destination center. The district requirements seek to promote (i) business vitality, (ii) pedestrian connectivity between the business district and the adjacent residential areas, (iii) a mix of commercial and housing uses, (iv) high quality design that is pedestrian friendly, compatible with, and protects the integrity of the adjacent

residential neighborhood, and (v) an efficient use of the land within the district for business uses. The Business A district regulations recognize that the BA District in the Shore Road area and the BA District in the Ocean House Road area are individually distinctive and may require different treatments, which are specified herein. (Effective July 8, 2009)

B. Permitted Use

The following uses are permitted in the Business District A:

1. The following resource-related uses:
 - a. Any use permitted in Resource Protection 1 – Critical Wetlands District, or in Resource Protection 2 – Wetland Protection District, or in Resource Protection 3 – Floodplain District, as shown on Table 19-6-9.
 - b. Agriculture (in the Ocean House Road business A District only), except that outdoor storage of chemicals and commercial animal husbandry are not permitted. (Effective June 10, 2010)
2. The following residential uses:
 - a. Single family detached dwelling existing as of April 1, 2008 (Effective July 8, 2009)
 - b. Multifamily dwelling units (Effective July 8, 2009)
 - c. Congregate housing, subject to the provisions of Sec. 19-7-6. Eldercare Facility Standards (Effective July 8, 2009)
 - d. Rooming or boarding home
3. The following nonresidential uses:
 - a. Banking, professional, and business office
 - b. Personal Service
 - c. Village retail shop
 - d. Veterinarian office not including the boarding of animals but allowing pre-surgical and/or postsurgical care (Effective July 8, 2009)
 - e. Medical clinic (Effective July 8, 2009)
 - f. Restaurant including delicatessen, ice cream parlor, and sit down restaurant (Effective July 8, 2009)
 - g. Gas station (Effective July 8, 2009)
 - h. Repair garage (Effective July 8, 2009)
 - i. Institutional use including, but not limited to, church, government use, and school use (Effective July 8, 2009)
 - j. Day Care facility (Effective July 8, 2009)
 - k. Cottage industry manufacturing (Effective July 8, 2009)
 - l. Bed and Breakfast (Effective July 8, 2009)

- m. Boat repair Facility (in the Ocean House Road Business A District only), subject to the provisions of Sec. 19-8-9, Boat Repair Facility Standards (Effective July 8, 2009)
 - n. Wind energy system (Effective October 8, 2008)
 - o. Short Term Rental (Effective December 14, 2012)
4. The following accessory uses:
- a. Accessory building, structure or use
 - b. Outside storage accessory to an allowed use provided that the area used for storage shall not exceed the floor area of the principal use and that, except for display area, the outside storage is screened from public view and abutting properties (Effective July 8, 2009)
 - c. Home occupation
 - d. Home business
 - e. Homestay (Effective July 8, 2009)
 - f. Amateur or governmental wireless telecommunication facility antenna (Effective April 15, 2000)
 - g. Amateur or governmental wireless telecommunication facility tower (Effective April 15, 2000)
 - h. Commercial wireless telecommunication service antenna which is attached to an alternative tower structure in a manner which conceals the presence of an antenna (Effective April 15, 2000)
 - i. Accessory dwelling unit (Effective July 8, 2009)
 - j. Metal working where the work is to be conducted indoors in an area not to exceed 300 sq. ft. with no outside storage of equipment or materials (Effective July 8, 2009)
 - k. Day Camp (Effective July 10, 2013)

C. Prohibited Uses

All uses not specifically allowed as permitted uses are prohibited within this district. Drive through services are prohibited within the business A District. (Effective July 8, 2009)

D. Standards

- 1. Performance Standards
 - a. The standards of performance of Articles VII and VIII shall be observed.
 - b. Standards relating to permitted and conditional uses in the Business A District include:
 - Sec. 19-7-5 Creation of an Accessory Dwelling Unit
 - Sec. 19-7-6 Eldercare Facility Standards
 - Sec. 19-7-7 Earth Materials Removal Standards
 - Sec. 19-8-8 Home Day Care and Day Care Facility Standards
 - Sec. 19-8-9 Boat Repair Facility Standards
 - Sec. 19-8-14 Short Term Rental Standards (Effective December 14, 2012)

- c. Each lot with frontage on an arterial street shall not be allowed more than one (1) driveway onto the arterial street, unless the driveway is shared with an abutting property, in which case two (2) driveways are allowed. Lots with at least two hundred (200) feet of road frontage shall be allowed two (2) driveways. (Effective July 8, 2009)
- d. No communication tower in excess of ten (10) feet in height or exposed satellite dish in excess of two (2) feet in diameter that is exposed to public view shall be allowed, except for exclusive municipal uses. Satellite dishes that are installed at ground level and the base of communication towers shall be screened from public view. (Effective July 8, 2009)
- e. No parking, except for municipal uses, shall be allowed in the front yard setback. (Effective July 8, 2009)
- f. Structures existing as of April 1, 2008, that do not conform to the maximum footprint or the maximum lot coverage requirement, may increase the building footprint by up to twenty-five percent (25%), to a maximum footprint expansion of one thousand (1,000) square feet, as long as the development will be in compliance with all other dimensional requirements of Sec. 19-6-5.D.2, Space and bulk Standards, subject to Site Plan review by the Planning Board. (Effective July 8, 2009)
- g. Restaurant, including delicatessen, ice cream parlor, and sit down restaurant, size shall be limited to no more than 100 seats. (Effective August 14, 2014)
- h. Gas station size shall be limited to no more than 4 fuel dispensers. (Effective July 8, 2009)
- i. Repair garage size shall be limited to no more than 2 bays. (Effective July 8, 2009)
- j. As of July 8, 2009 any establishment in this district shall comply with the following hours of operation:
 - 1. Within 100' of a residential district. Establishments where a building or parking is located within 100' of a residential district shall not be open to customers between the hours of 10:00 p.m. to 6:00 a.m. If such establishment holds a liquor license, no seating, service, or other organized gathering shall be allowed outdoors after 6:00 p.m. and no alcohol shall be served outdoors at any time.
 - 2. Greater than 100' of a residential district. Establishments where all buildings open to customers and parking are located greater than

100' from a residential district shall not be open to customers between the hours of 10:00 p.m. to 6:00 a.m. Notwithstanding the above closing time, and establishment may remain open to customers as late as 11:00 p.m. for up to three evenings per calendar year if the owner provides at least seven days prior notice to the Code Enforcement Officer of the date of the late night event. (Effective July 8, 2009)

- k. Any activity that requires Planning Board review and is within the Shore Road Business A District shall be required to construct or improve a sidewalk along the frontage of Shore road in accordance with subsection E, Design Requirements. Any activity that requires Planning Board review and is located in the Ocean House Road Business A District shall be required to provide pedestrian pathway connections to adjacent business properties and residential neighborhoods. (Effective July 8, 2009)
- l. Multifamily dwelling units shall be accessory to a nonresidential use and located in a building more than fifty percent (50%) of the floor area of the structure is occupied by nonresidential uses. For multi-story buildings, more than fifty percent (50%) of the structure may be allocated for multifamily dwelling units as long as the first floor is nonresidential. (Effective July 8, 2009)
- m. Any conversion of ownership type, such as but not limited to conversion from rental to condominium, shall include adherence to any Planning Board approvals previously granted on the property. (Effective July 8, 2009)
- n. Notwithstanding any of the foregoing, any lot within the Shore Road Business A District that shares one or more boundary lines totaling in excess of 225' with any lot in the Residence C District in the Town of Cape Elizabeth is only eligible for the following uses:
 - a site where the following “personal services” are delivered; barber or beauty salon, tailor shop, shoe repair shop, dressmaking shop, a studio for dance, art, music or photography;
 - village retail shop selling antiques, apparel, baked goods, books, flowers and plants, furniture, jewelry, toys, works of art, and articles of a similar nature;
 - professional and business office;
 - day care facility;
 - cottage industry manufacturing;
 - bed and breakfast.

A “boundary line” for purposes of this subsection means each and every separate line delineating the edge of a lot, regardless if each separate line abuts the same neighboring lot. (Effective July 8, 2009)

2. The following Space and bulk Standards shall apply:

MINIMUM LOT AREA	
(1) Single family dwelling unit	
i. adjacent to the RA District	80,000 sq. ft.
ii. Adjacent to the RC District	20,000 sq. ft. (Effective July 8, 2009)
(2) Multifamily dwelling unit	15,000 sq. ft.
(3) Wind energy systems	20,000 sq. ft. (Effective October 8, 2008)
(4) Other uses	None
MAXIMUM NUMBER OF DWELLING UNITS PER AREA	
(1) Multifamily housing in a mixed use building or multiplex housing	1 unit per 7,500 sq. ft. of net residential area (Effective July 8, 2009)
(2) Rooming or boarding home	1 bed per 5,000 sq. ft. of gross lot area
MINIMUM STREET FRONTAGE	
(1) All uses	None
MINIMUM SETBACKS	
(1) All uses unless otherwise specified	
a. Side yard setback	5 ft.; 20 ft. if the lot line abuts a Residence District (Effective July 8, 2009)
b. Rear yard setback	5 ft. 20 ft. if the lot line abuts a Residence District (Effective July 8, 2009)

c. Front yard setback	Minimum 10 ft. Maximum 25 ft. (Effective July 8, 2009)
(2) Accessory structures with floor area not greater than 100 square feet and a height not greater than 8 1/2 feet from average grade	
a. Side yard setback	5 ft. (Effective July 8, 2009)
b. Rear yard setback	5 ft. (Effective July 8, 2009)
(3) Antennas extending from 15' to 25' measured from the highest point of the alternative tower structure	
a. Property line setback	125% of the distance from the ground to the top of the antenna (Effective April 15, 2000)
(4) Towers which are freestanding, and towers which are attached or braced against a structure and exceed 15' in height measured from the highest point of the roof of the structure	
a. Front yard setback	125% of the distance from the ground to the top of the antenna or the front of the existing structure plus 5', whichever is more (Effective April 15, 2000)
(5) Deck with a height of less than ten (10) feet above average grade	5 ft.
a. Side yard setback	20 ft. if the lot line abuts a Residence District (Effective July 8, 2009)
b. Rear yard setback	20 ft. if the lot line abuts a Residence District (Effective July 8, 2009)
(6) Accessory building having less than one hundred fifty (150) square feet of floor area	5 ft.

a. Side yard setback	20 ft. if the lot line abuts a Residence District (Effective July 8, 2009)
b. Rear yard setback	20 ft. if the lot line abuts a Residence District (Effective July 8, 2009)
(7) Outdoor recreational facilities such as swimming pools, tennis courts, and basketball courts that are accessory to a single family a residential use	5 ft.
a. Side yard setback	20 ft. if the lot line abuts a Residence District (Effective July 8, 2009)
b. Rear yard setback	20 ft. if the lot line abuts a Residence District (Effective July 8, 2009)
(8) Wind energy system	12.5 ft. (Effective December 10, 2003) 110% of the distance from the ground to center turbine (Effective October 8, 2008)
MAXIMUM TELECOMMUNICATION HEIGHT	
(1) Antenna attached to a structure	25' measured from the highest point of the roof of the structure (Effective April 15, 2000)
(2) Amateur or governmental tower attached or braced against a structure	25' measured from the highest point of the roof of the structure (Effective April 15, 2000)
(3) Freestanding amateur or governmental wireless telecommunication tower	50' measured from average original grade (Effective April 15, 2000)

MAXIMUM WIND ENERGY SYSTEM HEIGHT (Effective October 8, 2008)	
(1) All uses to center of turbine	100'
MINIMUM SETBACK OF NON-SHARED PARKING INCLUDING PARKING AISLES FROM PROPERTY LINE (Effective July 8, 2009)	
(1) All uses	
a. Front, side and rear	5 ft. (Effective July 8, 2009)
MAXIMUM BUILDING FOOTPRINT	
(1) All uses	4,000 sq. ft. This limitation shall not prohibit the connection of separate structures by a covered or enclosed walkway. (Effective July 8, 2009)
MAXIMUM BUILDING HEIGHT	
(1) All uses	35 ft.
MAXIMUM BUILDING DIMENSION (Effective July 8, 2009)	
(1) All uses	75 ft.

E. Design Requirements (Effective July 8, 2009)

The following requirements shall be applicable to all development that requires site plan review by the Planning Board or any new Construction or addition in the Business A District. These standards shall be used to determine if a development is compatible with the purpose of the Business A District. The intent is not that all buildings should look the same, but rather to encourage a mix of compatible styles, sizes, and characteristics.

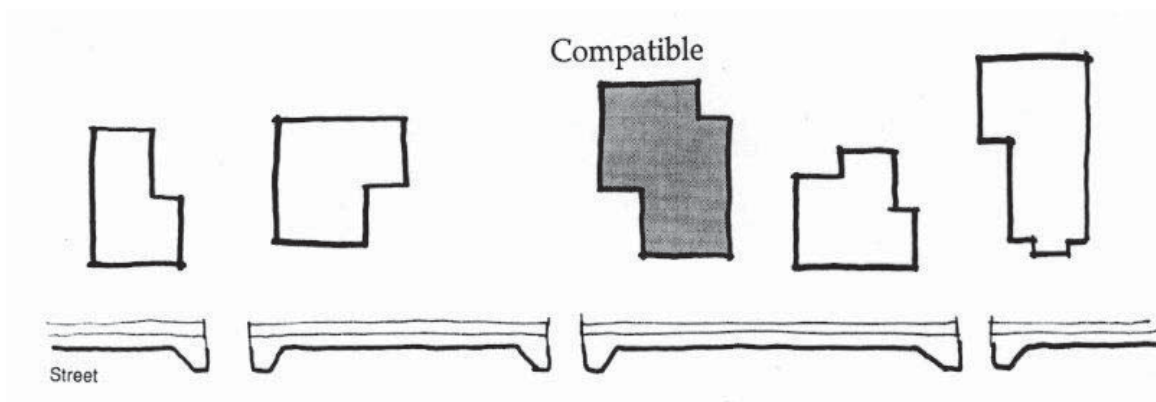
The design requirements recognize that the character of the BA District in the Shore Road area and the character of the BA District in the Ocean House Road area are individually distinctive. The design illustrations, therefore, are designated as applying to both or only one of the BA Districts.

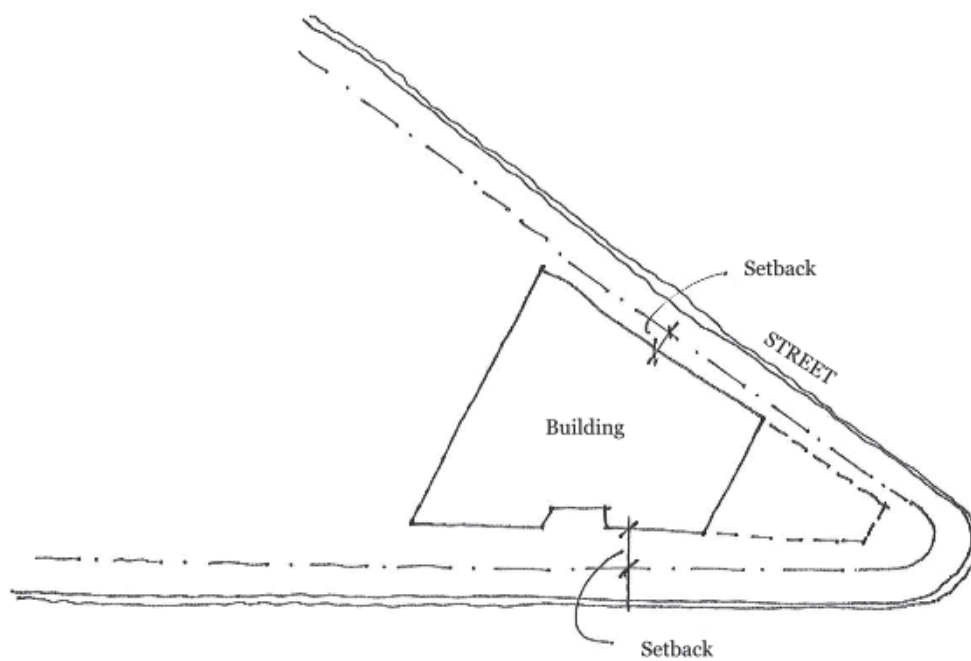
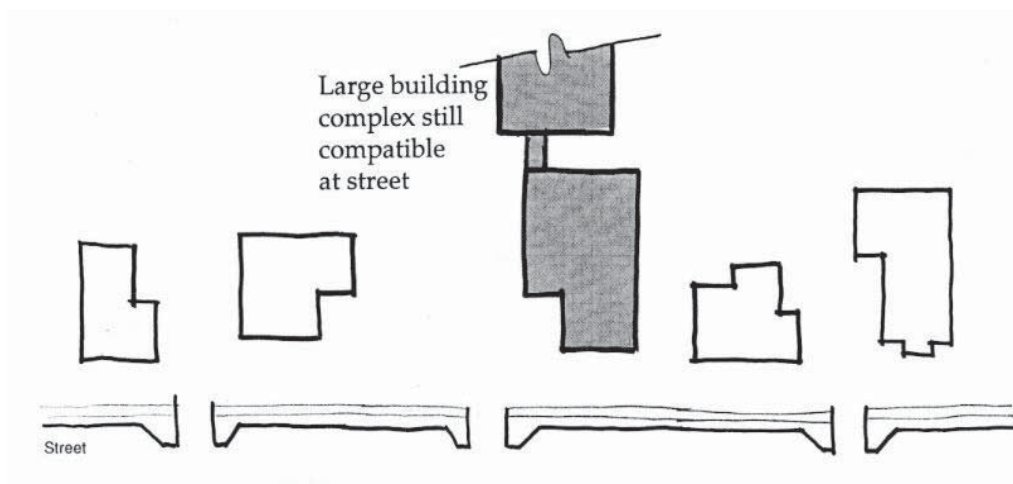
The Shore Road Business A District is a compact neighborhood commercial area where buildings hug the street line, sidewalks are common and setbacks are minimal. The building architecture is predominantly multi-story with retail, transparent storefronts and architectural details.

The Ocean House Road Business A District, while also a neighborhood commercial area, has a more relaxed beach/seaside retail character. Buildings are set back further from the road and from each other. Less formal pedestrian paths that meander in their distance from the road add to the more casual feel. Buildings are predominantly single story, although second stories that appear tucked under the eaves of the roof are present.

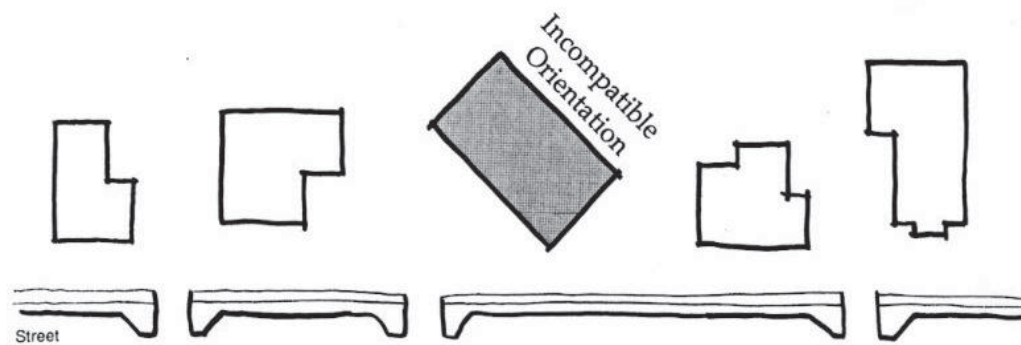
- a. Footprint. The building footprint of new construction shall be compatible with the business A District. The visual impact of a building is influenced by the placement of other buildings on the lot, the irregular and varied surface of buildings due to architectural features, and the spaces between those buildings along the street. The existing buildings and open spaces between the buildings create a rhythm with which new construction should be compatible. Determination of compatibility shall be based on the overall building footprint square footage, the dimensions of each footprint side, placement of the building footprint on the lot, and the rhythm of buildings and spaces along the street edge.

Compatible: Shore Road, Ocean House Road

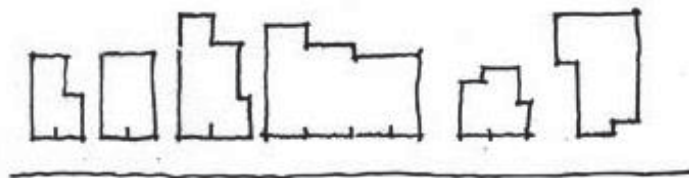




Incompatible: Shore Road, Ocean House Road

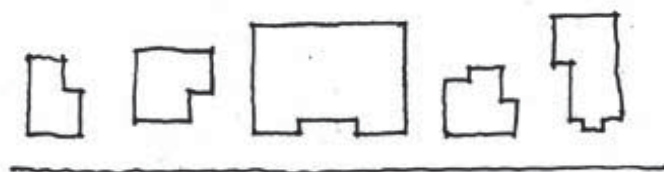


Compatible: Shore Road

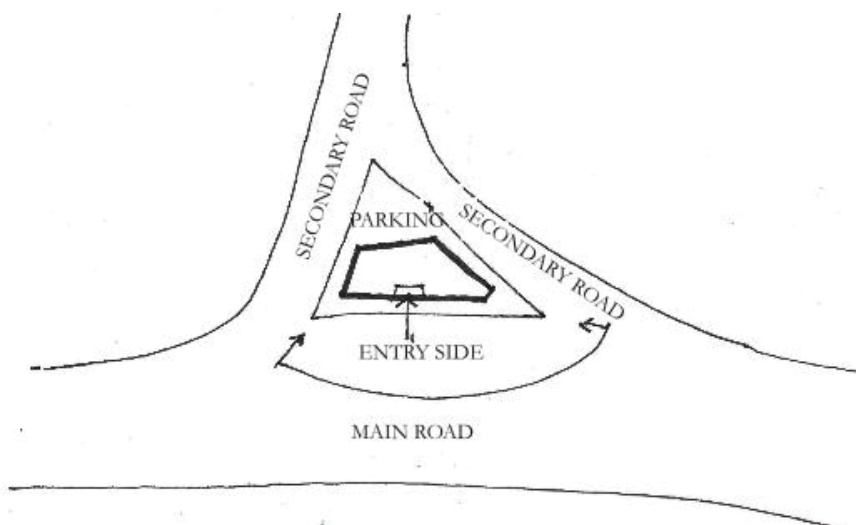


Modulate façade at street level with bays. Storefronts to be compatible with other storefronts

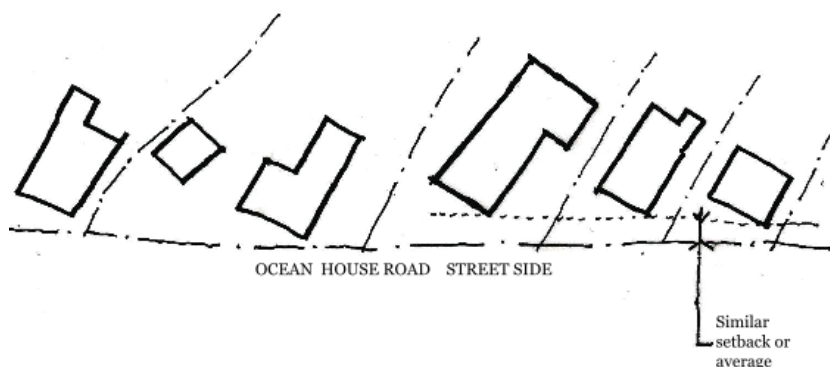
Compatible: Ocean House Road



Modulate form by breaking buildings into smaller sections along the façade



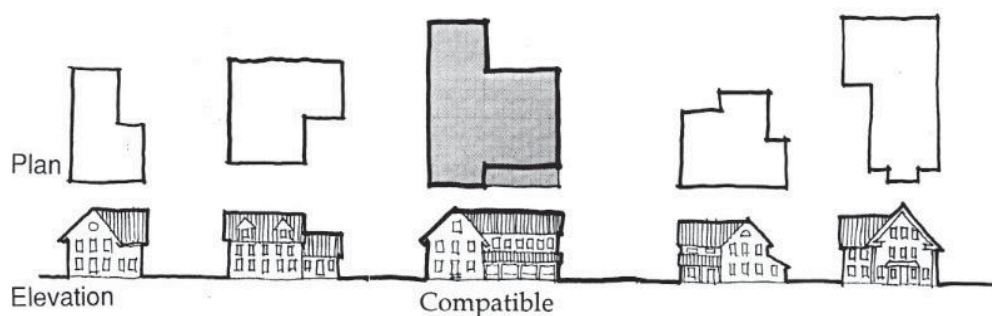
Establish a street façade with a building even on an irregularly shaped lot



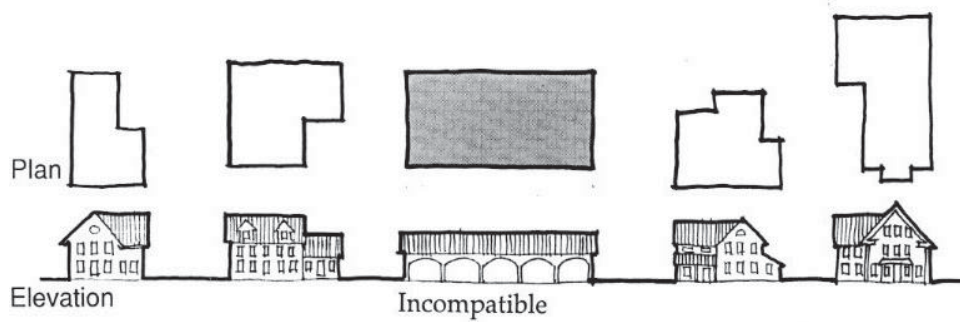
Angle building placement to the street in a continuation of a common pattern

- b. Scale. Scale is the apparent size of a structure in relation to its surroundings, including other buildings, open space, and people. Scale gives a building “presence”, making the building seem large or small, awkward or graceful, overpowering or unimportant. The perception of a structure is influenced by its size, but more importantly how the overall size is distributed throughout the building. New construction shall be compatible in scale with other structures in the district. A well-articulated building that is larger in square footage than adjacent residential buildings may be compatible in scale. Determination of compatibility shall be based on the maximum dimension of the structure, the degree of articulation on building surfaces, the magnitude of unbroken faces of a structure, the impact of the building mass upon view sheds, and the integration of mechanical equipment within the structure.

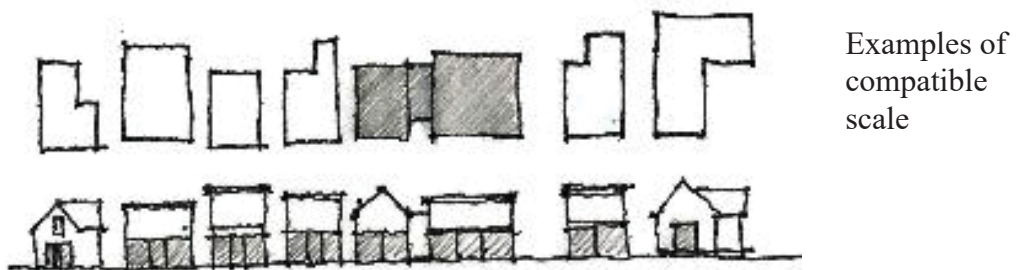
Compatible: Shore Road, Ocean House Road



Incompatible: Shore Road, Ocean House Road



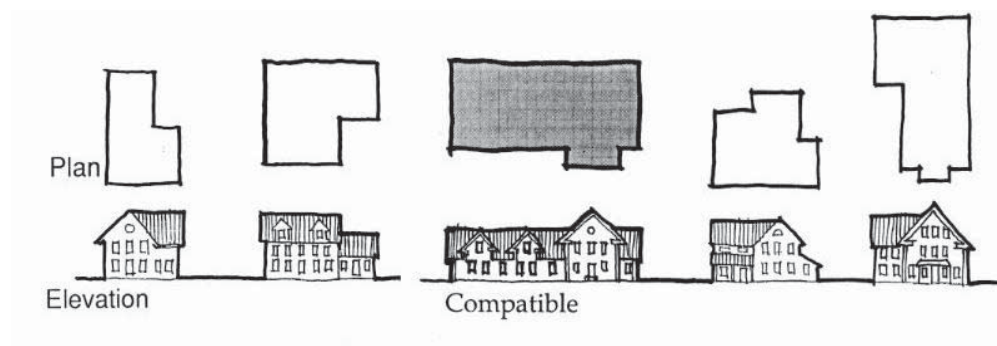
Compatible: Shore Road



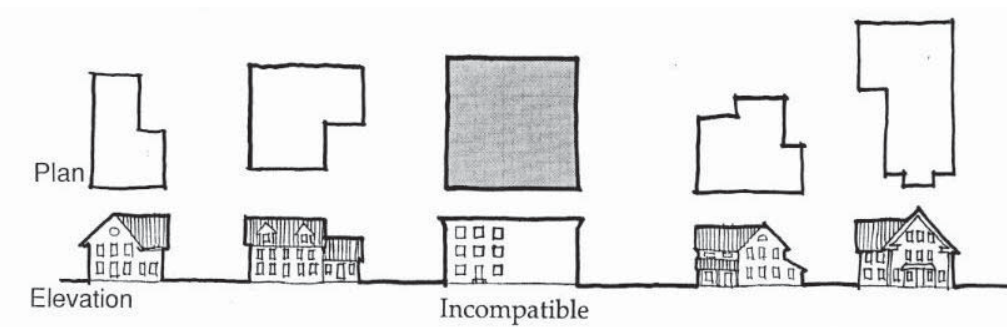
Incompatible: Shore Road



Compatible: Ocean House Road



Incompatible: Ocean House Road



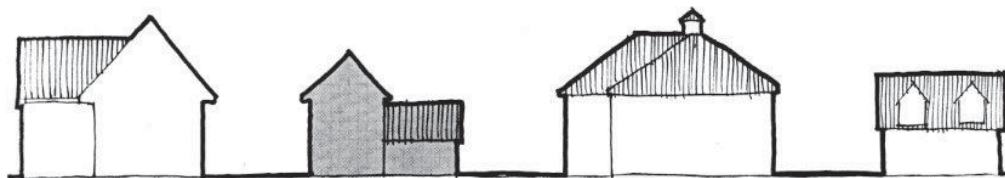
- c. Height and Roof Pitch. The height of a building and the type of roof design significantly influence the scale of a structure and can detract from the streetscape. New roof construction shall conform to the predominant heights of roofs of nearby buildings in the Business A District and to the design of the structure. Roofs shall generally be of a gable or other sloping roof design. In the Shore Road Business A District, roofs may be flat as long as total height of the roof does not exceed 30' and the roof edge is articulated with substantial architectural elements. Sloped roofs in the Shore Road Business A District shall have a minimum pitch of 7:12 or as matches the existing roof pitch. In the Ocean House Road Business A District, roofs shall have a minimum pitch of 4:12 or as matches the existing roof pitch.

Compatible: Shore Road

Flat roofs may be compatible with a modulated and/or articulated roof edge

Incompatible: Shore Road

Incompatible height and roof pitch

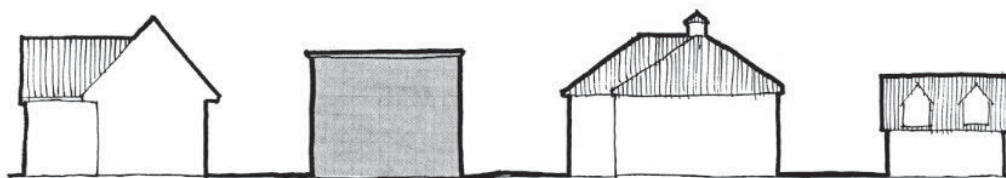
Compatible: Ocean House Road

Negative effects of tall buildings can be mitigated with compatible roof elements on the street side

Incompatible: Ocean House Road



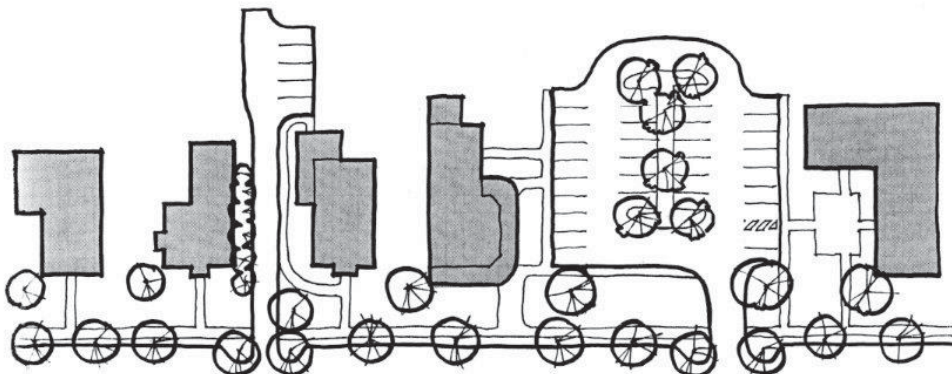
Mansard incompatible
with nearby gables
and hip roofs



Flat roof incompatible
with nearby gables
and hip roofs

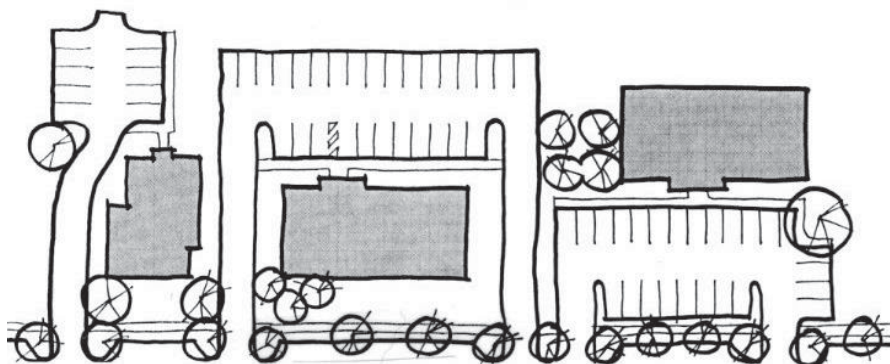
- d. **Building and Parking Orientation.** The first impression of a building is from the side which faces the street. The front façade of the structure shall face the street. The structure shall be designed with a primary orientation to the street, although the primary entrance may be located on other than the front façade. The front façade shall include a distinctive entrance. A sidewalk shall be constructed parallel to the front façade of lots located on Shore Road in the Shore Road Business A District. For lots located in the Ocean House Road Business A District, pedestrian pathways shall be provided to adjacent businesses and residential neighborhoods. The side yard visible to the public should be designed to present a pleasing appearance to the pedestrian.

Compatible: Shore Road, Ocean House Road



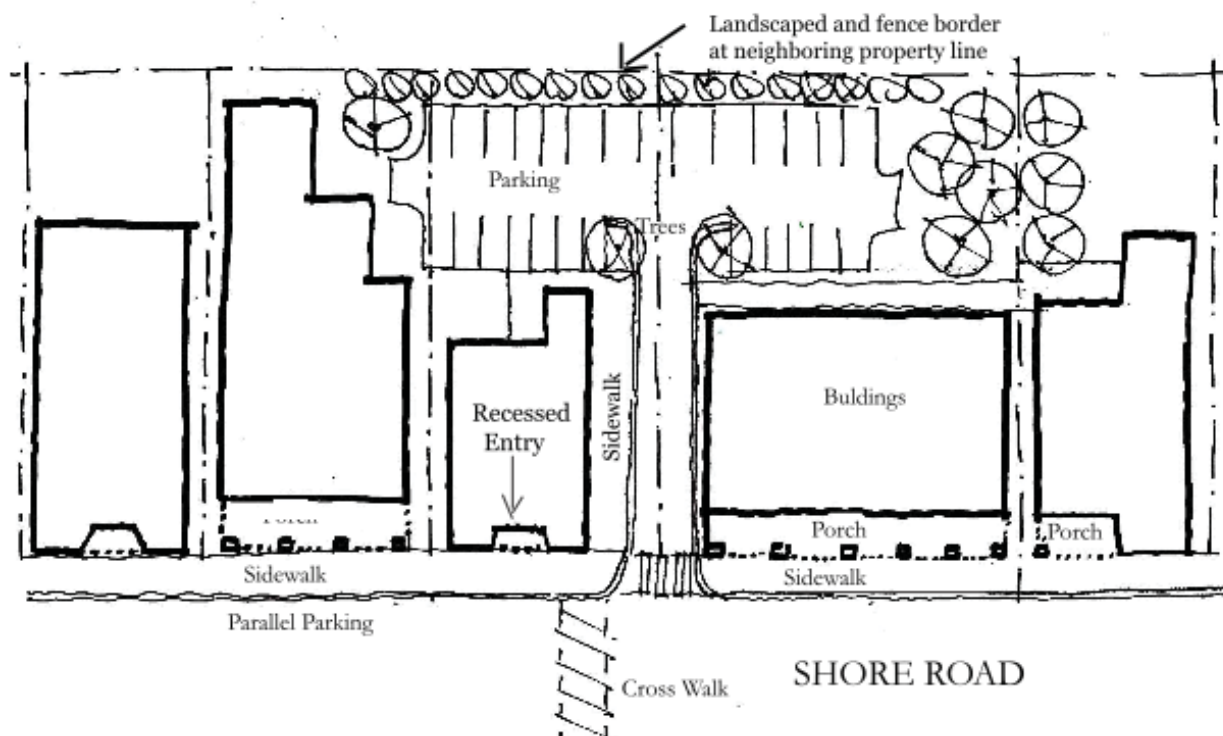
Note front
entries facing
street with
parking located
to side or rear
of lot and
further from
the street than
the building

Incompatible: Shore Road, Ocean House Road

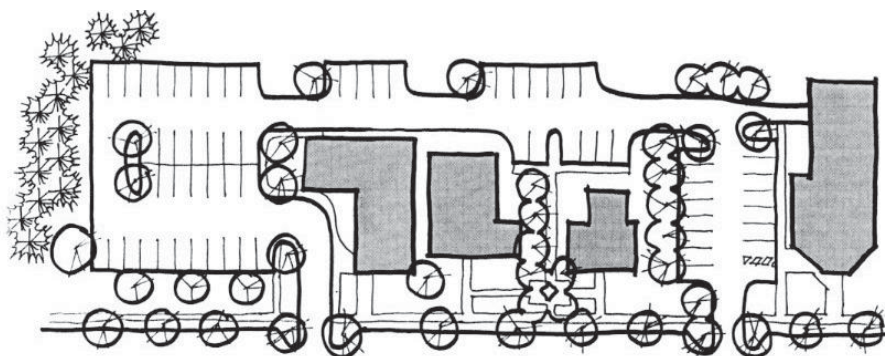


Note incompatible rear entry only, lack of walkway connecting building to sidewalk, and parking located in front setback.

Compatible: Shore Road



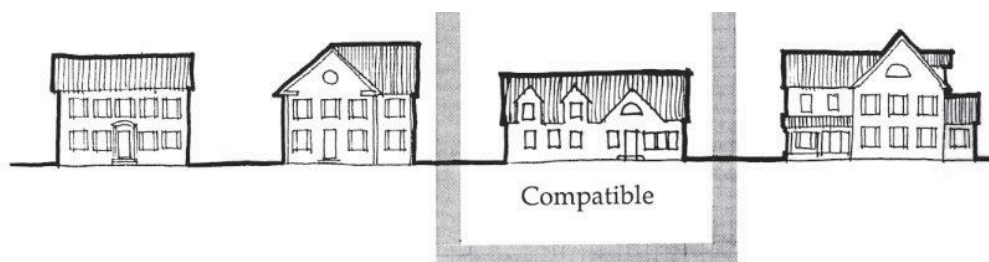
Compatible: Ocean House Road



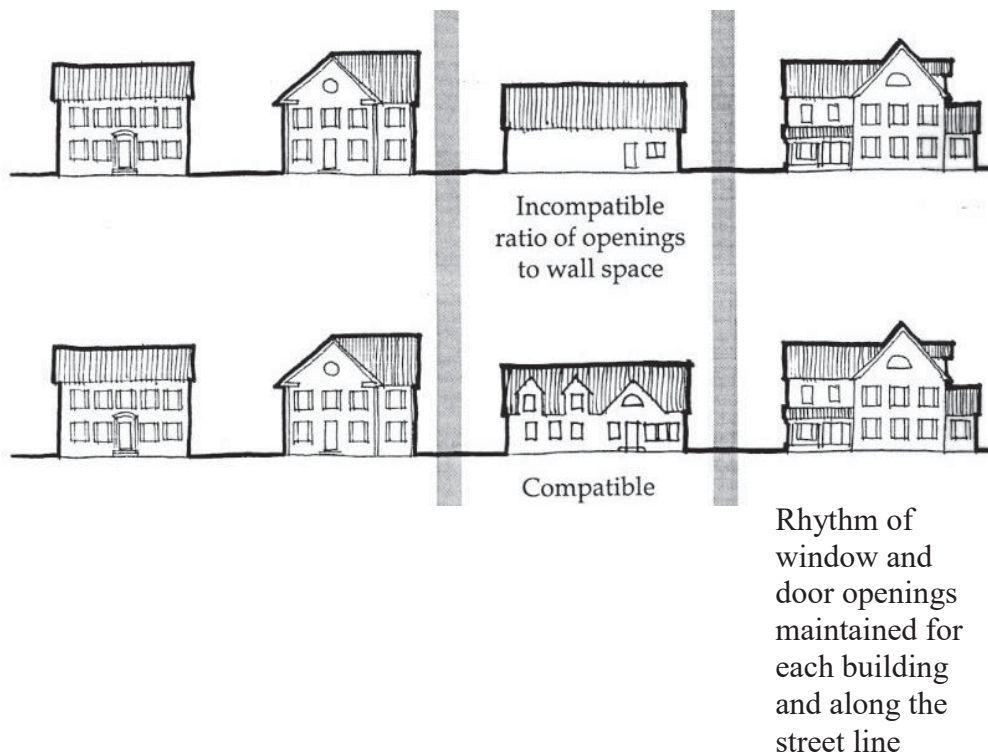
Shared parking and shared driveways are encouraged. Cross connection with rear parking is encouraged if walkway and building layout orients people to street side front entries.

- e. Openings. The relationship between doors and windows to exterior wall space of a building creates a rhythm or pattern. The pattern of window or door openings of a structure shall be compatible with the rhythm of openings in nearby structures. Doors and windows shall be consistent with the style of the building. Development in existing structures shall maintain the original rhythm and size of openings. The first floor front façade shall be constructed with an equal proportion of openings to wall space.

Compatible: Shore Road, Ocean House Road



Incompatible: Shore Road, Ocean House Road



Compatible: Shore Road

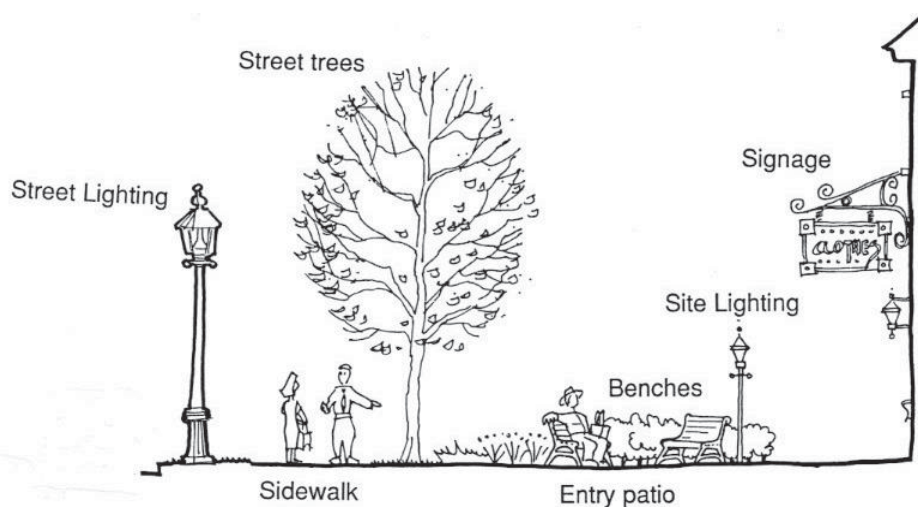


- f. Exterior Materials. Façade materials give a structure character. Exterior materials shall be compatible with nearby buildings and with the design of the structure. No structure addition shall consist of architectural materials inferior in quality, appearance, or detail to any other exterior of the same building. The use of wood shingles, wood clapboards, copper, and brick is permitted. The use of concrete block, sheet metal, vinyl, or aluminum siding is discouraged, except for the use of concrete clapboards or siding, such as hardiplank, that mirrors the appearance of natural materials.
- g. Landscaping and Site Development. Front setback. The land in the front yard setback is a transitional space between the public domain of the road

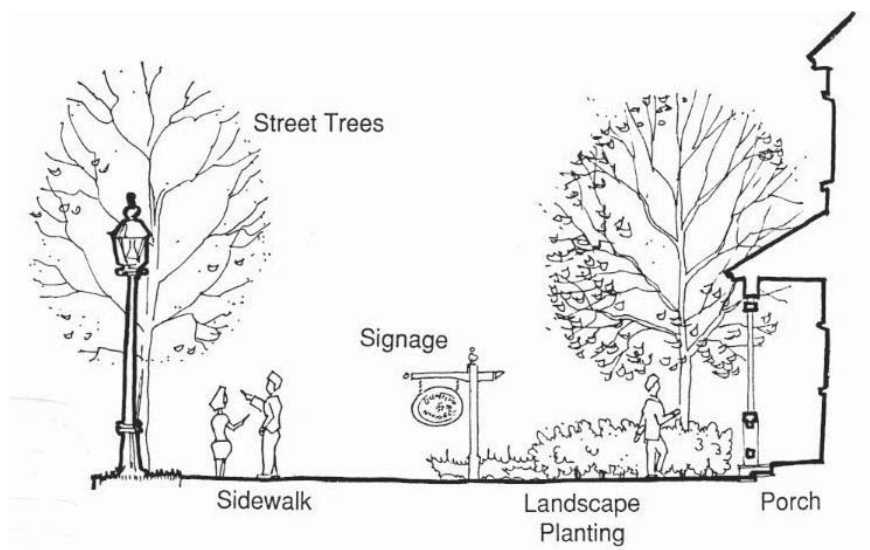
right-of-way and the private structure and is a determining factor in the character and ambiance of a neighborhood business district. This area shall be designated and landscaped to be pedestrian-friendly in scale, access, lighting, and security. A sidewalk and other pedestrian pathways, such as to the building and to parking areas, shall be located between the road and the structure. The side of the structure facing the front yard setback shall be designed with a distinctive entrance for pedestrians. Multifamily dwellings shall be designated with the main entrance facing the front yard. The front setback shall be carefully landscaped with attention to details evident to pedestrians and shall include street trees. The development of front courtyard gardens is strongly encouraged. Multifamily dwellings shall include at least one (1) street tree per unit in the landscape plan.

1. Front setback. The land in the front yard setback is a transitional space between the public domain of the road right-of-way and the private structure and is a determining factor in the character and ambiance of a neighborhood business district. This area shall be designated and landscaped to be pedestrian-friendly in scale, access, lighting, and security. A sidewalk and other pedestrian pathways, such as to the building and parking areas, shall be located between the road and the structure. The side of the structure facing the front yard setback shall be designed with a distinctive entrance for pedestrians. Multifamily dwellings shall be designated with the main entrance facing the front yard. The front setback shall be carefully landscaped with attention to details evident to pedestrians and shall include street trees. The development of front courtyard gardens is strongly encouraged. Multifamily dwellings shall include at least one (1) street tree per unit in the landscape plan.

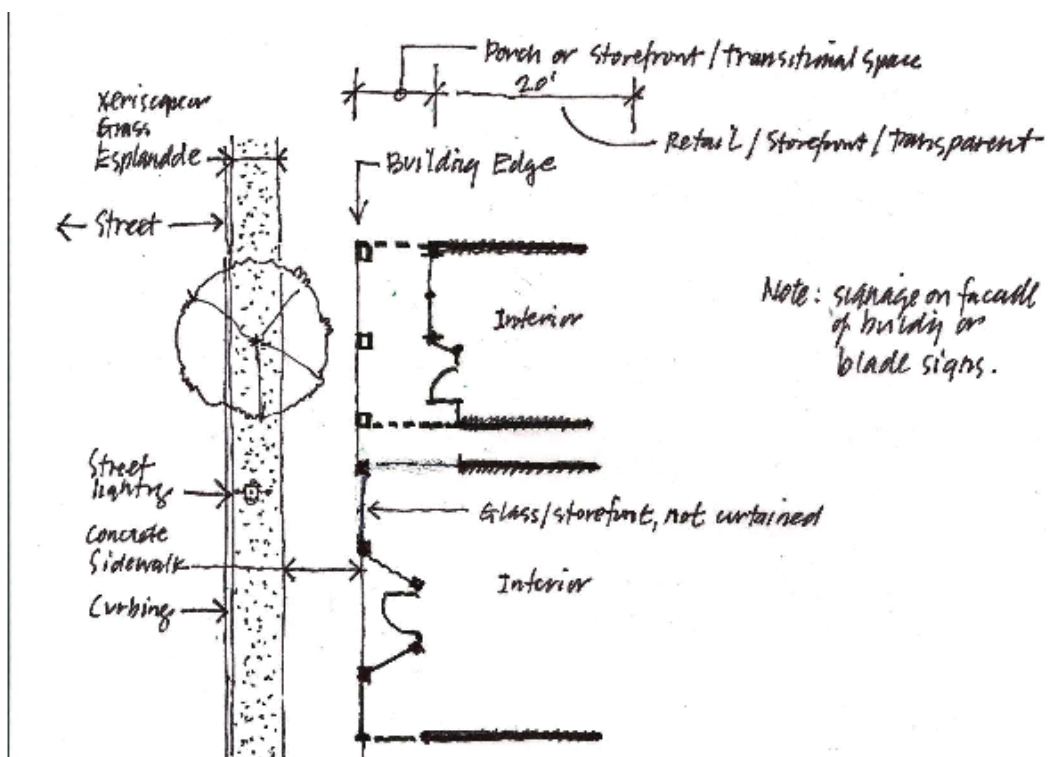
Shore Road, Ocean House Road Examples

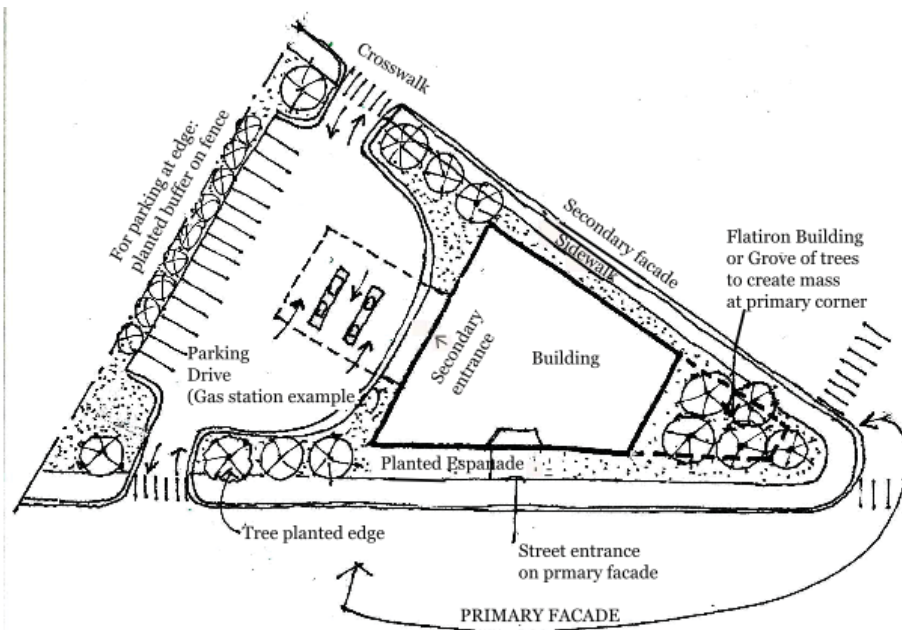


Note progression from street to esplanade to sidewalk to front yard setback to building. The front setback should be designed as a pedestrian-oriented transition space into the building.



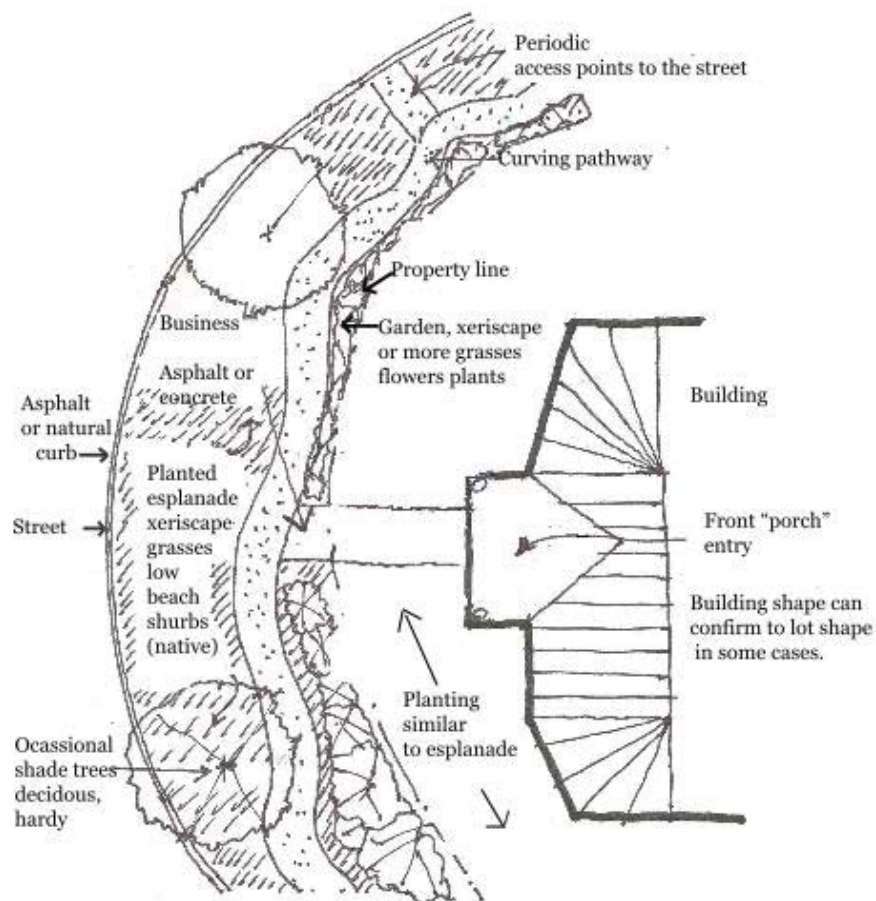
Share Road Examples





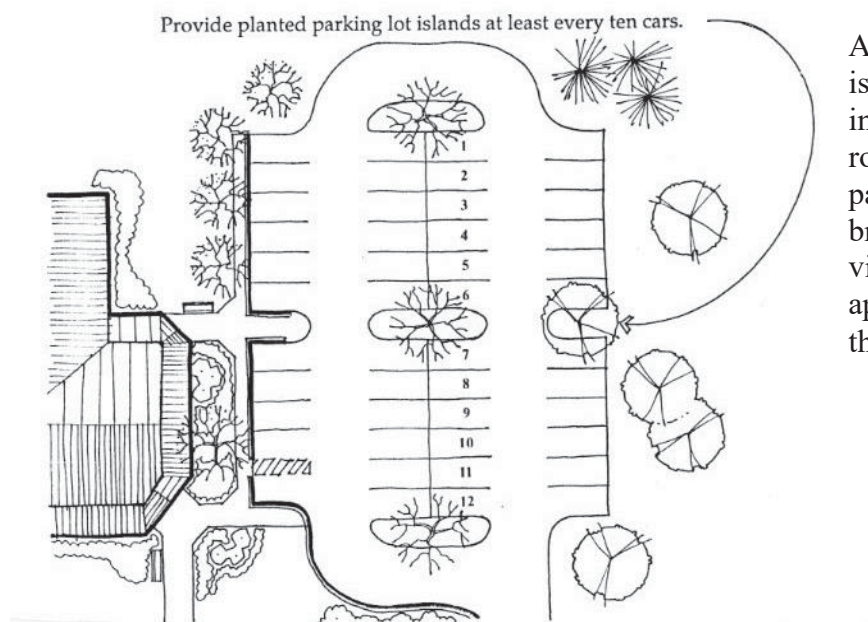
A flatiron building has the sides of the building parallel with the street frontage where the road intersects at a less than 90° angle.

Ocean House Road Examples



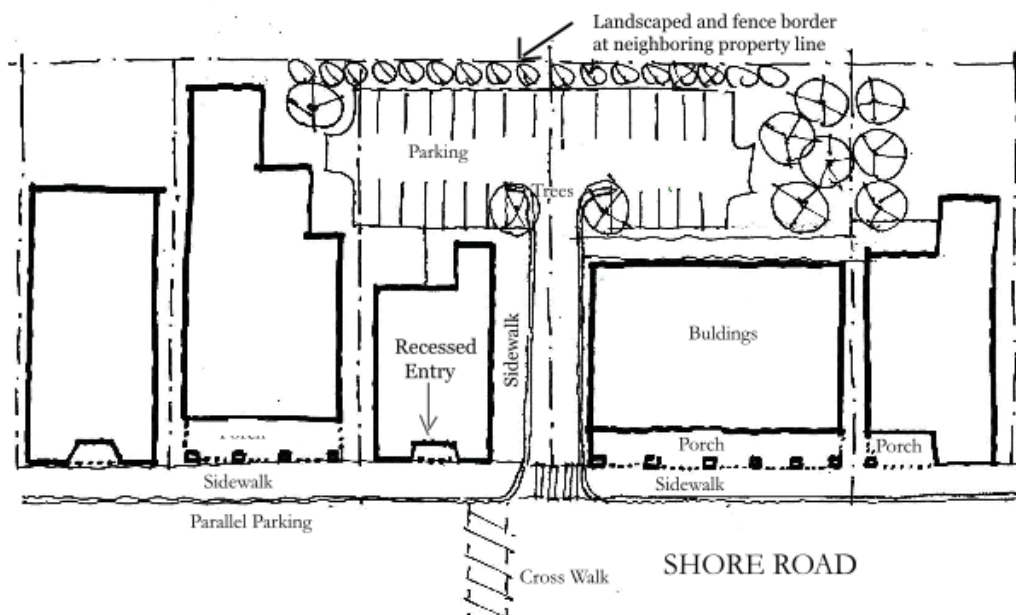
2. **Parking lot.** While adequate and convenient parking is necessary in the Business A District, an expanse of gravel or asphalt parking can appear barren and hostile for pedestrians. Landscaping around and within parking lots perceptually softens the hard surface of parking areas. Parking lots shall be designed and landscaped to be compatible with a neighborhood business district character. A minimum five (5) foot wide landscaped esplanade shall be required around parking lots. A landscaped area shall be required in the front yard setback between the road and the parking lot and shall include plantings of a size sufficient to obscure the view of parked cars and parking lots from the sidewalk and transitioning to a lesser height. At least one landscaped island shall be included for each row of at least ten (10) parking spaces and shall be located within the interior of the parking lot. The landscaped island(s) shall be of sufficient size to accommodate and be planted with at least one (1) road tree.

Shore Road, Ocean House Road Example

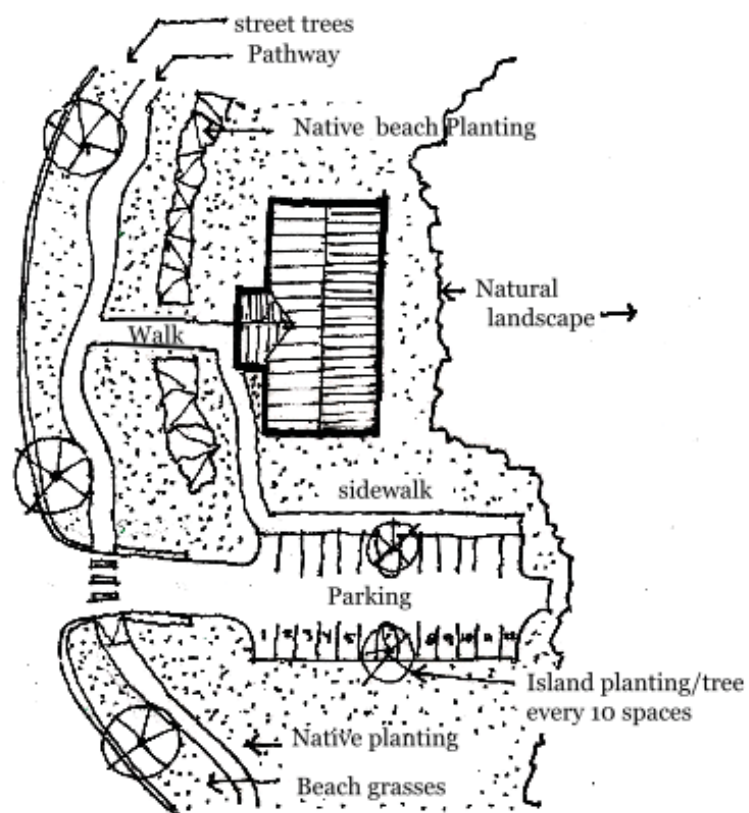


A landscaped island shall be included for each row of at least 10 parking spaces to break up the visual appearance of the parking lot.

Shore Road Example



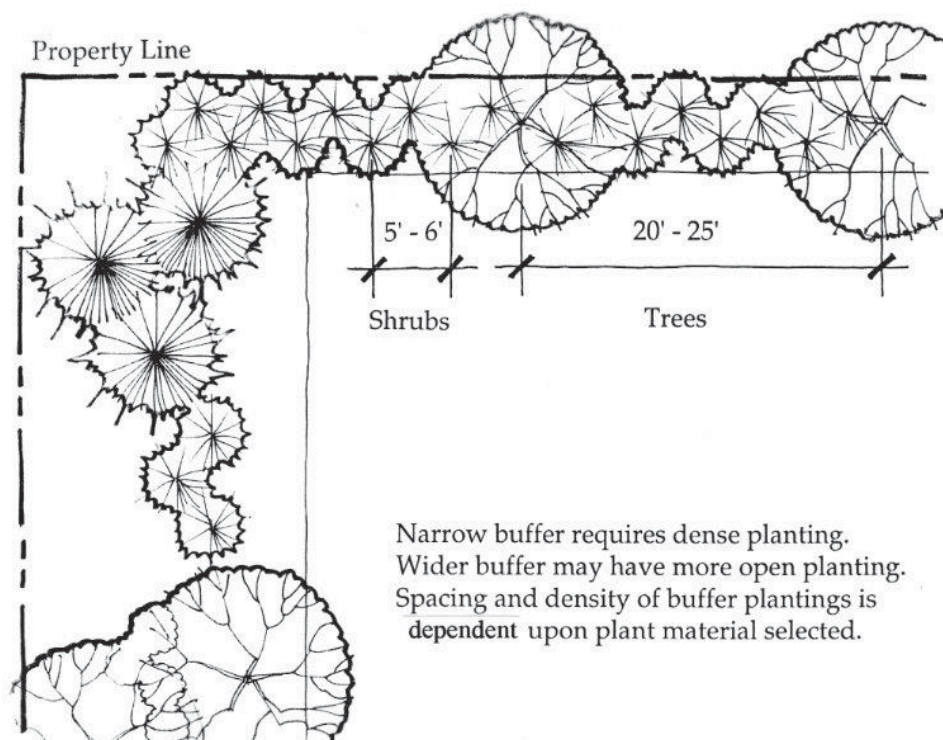
Ocean House Road Example

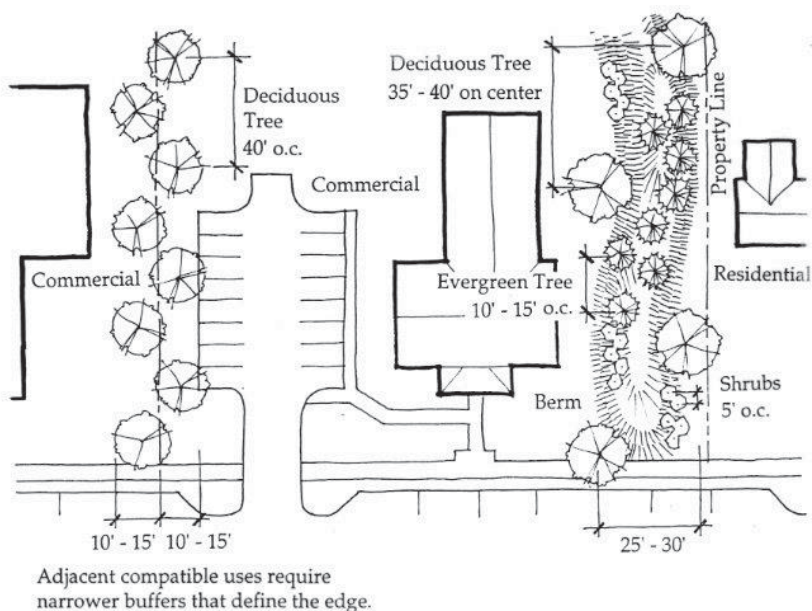


3. **Buffering.** Buffering serves to soften narrow yards, screen parking areas, and create a sense of enclosure by transforming a street into an outdoor room. Within the Business A District, landscaping between properties can mitigate conflicts between land uses, densities, and building styles and scale. Side and rear yard buffering defines the edge of a property and can also identify the edge of the neighborhood business district. Each lot shall provide a landscaped side and rear yard buffer where it abuts a residential district. The depth and density of the buffer shall be determined by the type of use proposed, its compatibility with adjacent uses and with the Business A District.

Non-compatible adjacent uses require wider buffers and wood fences in the Shore Road Business A District. In the Ocean House Road Business A District, non-compatible adjacent uses require wider buffers and earth berms. Earth berms should not be more than 2' high and planted with beach grasses and native plants. The use of wood chips shall be minimized to that which is needed to maintain the health of plants and shall not take the place of plantings, which shall be used to cover the surface of a berm.

Shore Road, Ocean House Road Example





F. Site Plan Review (Effective July 8, 2009)

The following uses and activities shall be subject to site plan review by the Planning Board, according to the terms of Article IX, Site Plan Review, prior to issuance of any building permit, plumbing permit, or other special permit.

1. Construction involving any permitted use other than farming and a single family dwelling.
2. Conversion of an existing building or structure or portion thereof from a less intensive category of use to a more intensive category of use according to the following scale of uses with Category 1 being the least intensive and Category 9 being the most intensive:

Use Category 1. Multifamily dwellings and bed and breakfasts

Use Category 2. Banking, professional, and business offices, and day care facilities

Use Category 3. Personal services and village retail shops

Use Category 4. Veterinarian offices and medical clinics

Use Category 5. Restaurants, including a delicatessen, ice cream parlor, and a sit down restaurant

Use Category 6. Gas station and repair garages

Use Category 7. Institutional uses, including but not limited to churches, governmental, and school uses

Use Category 8. Congregate housing

Use Category 9. Cottage industry manufacturing

3. Conversion of an existing building or structure or portion thereof within the same category or to a less intensive category of use on the above scale of use categories unless:
 - a. The current use category received site plan approval,
 - b. There will be no exterior alterations other than signage, and
 - c. No multifamily dwelling units, rooming house or metal working area will be created.
4. Any other use or activity listed in Sec. 19-9-2, Applicability, as requiring site plan review. (Effective July 8, 2009)

SEC. 19-6-6 BUSINESS DISTRICT B (BB)

A. Purpose

The purpose of the Business District B is to recognize locations where moderate intensity, non-retail commercial uses have developed in close proximity to residential areas. (Effective February 12, 2005)

B. Permitted Uses

1. The following uses are permitted in the Business District B:
 - a. Any use permitted in Resource Protection 1 – Critical Wetlands District, or in Resource Protection 2 – Wetland Protection District, or in Resource Protection 3– Floodplain District, as shown on Table 19-6-9.
 - b. Agriculture
 - c. Keeping of livestock, such as a horse, cow, pig, goat, sheep, or similar animal provided that such activity occurs only on a lot containing at least one hundred thousand (100,000) square feet.
 - d. Removal of topsoil, subject to the provisions of Sec. 19-8-5, Earth Materials Removal Standards.
 - e. Timber harvesting.
 - f. Horticulture, including nurseries, greenhouses, and commercial sale of items produced in nurseries and greenhouses; accessory retail sales shall be permitted.
2. The following residential uses:
 - a. Single family detached dwelling existing as of December 8, 1993.
 - b. Eldercare facility, subject to the provisions of Sec. 19-7-6, eldercare Facility Standards.
3. The following nonresidential uses:

- a. Fish and farm market (Effective June 10, 2010)
- b. Athletic or recreational facility, riding stable, or corral
- c. Earthwork contractor's yard (Effective February 12, 2005)
- d. Wind energy system (Effective October 8, 2008)
- e. Day camp (Effective July 10, 2013)

4. The following accessory uses:

- a. Home occupation
- b. Home business
- c. The renting of not more than two (2) rooms within a single family dwelling provided that there is no physical alteration of the building and no change in the external appearance of the structure.
- d. Amateur or governmental wireless telecommunication facility antenna (Effective April 15, 2000)
- e. Amateur or governmental wireless telecommunication facility tower (Effective April 15, 2000)
- f. Commercial wireless telecommunication service antenna which is attached to an alternative tower structure in a manner which conceals the presence of an antenna (Effective April 15, 2000)
- g. Agriculture related use (Effective June 10, 2010)

C. Conditional Uses

The following uses may be permitted only upon approval by the Zoning Board as a conditional use, in accordance with Sec. 19-5-5, Applicability:

1. The following nonresidential uses:

- a. Hotel or motel
- b. Restaurant

D. Prohibited Uses

All uses not specifically allowed as permitted uses or conditional uses are prohibited within this district.

E. Standards

1. Performance Standards

- a. The standards of performance of Articles VII and VIII shall be observed.
- b. Standards relating to permitted and conditional uses in the Business B District include: Sec. 19-7-6 Eldercare Facility Standards.

2. The following Space and Bulk Standards shall apply:

MINIMUM LOT AREA	
(1) Nonresidential uses, containing no dwelling unit other than an accessory residence for a caretaker or attendant	None, provided that if the lot is not sewerred and requires the installation of sanitary plumbing, it shall conform to the regulations of the State Subsurface Wastewater Disposal rules concerning waste disposal
(2) Eldercare facilities	5 acres
(3) Single Family dwelling unit	80,000 sq. ft.
(4) Earthwork Contractor	20 acres (Effective February 12, 2005)
(5) Wind energy systems	20,000 sq. ft. (Effective October 8, 2008)
MAXIMUM NO. OF DWELLING UNITS PER AREA	
(1) In Eldercare facilities	1 unit per 3,500 sq. ft. or 1 bed per 2,500 sq. ft. of net residential area, whichever is less
MINIMUM STREET FRONTAGE	
(1) Earthwork Contractor	100' (Effective February 12, 2005)
(2) All other uses	None (Effective August 11, 1999)
MINIMUM SETBACKS	
(1) All uses unless otherwise specified	
a. Side yard setback	25 ft. 50 ft. if the lot abuts a Residence District
b. Rear yard setback	25 ft. 50 ft. if the lot abuts a Residence District

c. Front yard setback	The front yard setbacks set forth below may be reduced, only on roads which are not classified arterial, to the average setback of the two principal structures fronting on the same road in closest proximity to the site of the proposed structure, but any structure must be at least 20 feet from the right-of-way
-- Buildings with footprints of up to 2,000 sq. ft.	50 ft.
-- Buildings with footprints of more than 2,000 sq. ft.	50 ft. (Effective January 13, 2005)
-- Parking spaces and parking aisles	35 ft.
(2) Nonresidential use abutting a Residence District	A buffer shall be established in accordance with the provisions of Sec. 19-8-1.A Buffering of Nonresidential Uses
(3) Eldercare facilities	50 ft. from property line
(4) Accessory structures with floor area not greater than 100 square feet and a height not greater than 8-1/2 feet from average grade	
a. Side yard setback	10 ft.
b. Rear yard setback	5 ft.
(5) Antennas extending from 15' to 25' measured from the highest point of the alternative tower structure	
a. Property line setback	125% of the distance from the ground to the top of the antenna (Effective April 15, 2000)
(6) Towers which are freestanding, and towers which are attached or braced against a structure and exceed 15' in height measured from the highest point of the roof of the structure	
a. Property line setback	125% of the distance from the ground to the top of the antenna (Effective April 15, 2000)

b. Front yard setback	125% of the distance from the ground to the top of the antenna or the distance from the street right of way to the front of the existing structure plus 5', whichever is more (Effective April 15, 2000)
(7) Deck with a height of less than ten (10) feet above average grade	
a. Side yard setback	12.5 ft.
b. Rear yard setback	12.5 ft.
(8) Accessory building having less than one hundred fifty (150) square feet of floor area	
a. Side yard setback	12.5 ft.
b. Rear yard setback	12.5 ft.
(9) Outdoor recreational facilities such as swimming pools, tennis courts, and basketball courts that are accessory to a single family residential use	
a. Side yard setback	12.5 ft.
b. Rear yard setback	12.5 ft. (Effective December 10, 20013)
(10) Earthwork Contractor's Yard	
a. Road setback	40'
b. Setback from all other property lines	70' (Effective February 12, 2005)
(11) Wind energy system	110% of the distance from the ground to the center of the turbine (Effective October 8, 2008)
MAXIMUM TELECOMMUNICATION HEIGHT	
(1) Antenna attached to a structure	25' measured from the highest point of the roof of the structure (Effective April 15, 2000)

(2) Amateur or governmental tower attached or braced against a structure	25' measured from the highest point of the roof of the structure (Effective April 15, 2000)
(3) Freestanding amateur or governmental wireless telecommunication tower	50' measured from average original grade (Effective April 15, 2000)
MAXIMUM WIND ENERGY SYSTEM HEIGHT (Effective October 8, 2008)	
(1) All uses to center of turbine	100'
MAXIMUM BUILDING FOOTPRINT	
(1) All uses	None (Effective August 11, 1999)
MAXIMUM BUILDING HEIGHT	
(1) All uses	35 ft.

F. Site Plan Review

The following uses and activities shall be subject to site plan review by the Planning Board, according to the terms of Article IX. Site Plan Review, prior to issuance of any building permit, plumbing permit, or other permit:

1. Nonresidential uses listed in Sec. 19-6-6.C.1
2. Eldercare facilities
3. Earthwork contractor's Yard
4. Any other use or activity listed in Sec. 19-9-2, Applicability, as requiring site plan review.

SEC. 19-6-7. BUSINESS DISTRICT C (BC)

A. Purpose

The purpose of the Business District C is to provide a flexible mechanism for locating nonpolluting, job-creating enterprises within the Town. It is intended that this mechanism will allow for the location of proposed enterprises on sites that have the capacity to support them, and that are tailored to their needs in a manner that promotes the public welfare.

B. Permitted Uses

The following uses are permitted in the Business District C:

1. The following nonresidential uses:
 - a. Business or professional office
 - b. Government office
 - c. Research laboratory
 - d. Light manufacturing

C. Prohibited Uses

All uses not specifically allowed as permitted uses are prohibited within this district.

D. Standards

1. Standards

The standards of performance of Articles VII and VIII shall be observed.

2. Space and Bulk Standards

The Space and Bulk Standards of Business District B shall apply in Business District C, except that a site proposed to be zoned as Business District C shall contain a minimum of five (5) acres (gross).

E. Procedure

1. An application to zone a lot or lots as Business District C shall be submitted to the Planning Board. It shall include all information required for a change of zone, as set forth in Article X, Amendment/Interpretive Provisions, of this Ordinance.
2. Within sixty (60) days of receipt of a completed application for the rezoning of a lot or lots as Business District C, the Planning Board shall forward to the Town Council a copy of the application along with written discussion of issues which it believes may relate to the request. This discussion of issues shall not constitute findings, conclusions, or recommendations concerning the request, but rather is intended to serve as background for the Town Council. The written discussion of issues shall be prepared by the Planning Board following at least one (1) meeting with the applicant.
3. The Town council, upon review of the application and the Planning Board's discussion of issues, shall make a written, preliminary finding as to the likelihood of the success of the application. This conditional municipal approval may be accompanied by suggestions or conditions that would make the application more acceptable to the Town. The preliminary finding shall not be

construed as either an approval or a denial of the application, but rather is intended to give guidance to the applicant.

4. Following the preliminary finding of the Town Council, the applicant at his or her discretion may request in writing that the Planning Board proceed with a full review of the application. This request, in addition to any alteration of the original rezoning application, shall be accompanied by an application for site plan approval containing all the information required by Article IX, Site Plan Review, of this Ordinance.
5. In its review of the proposed rezoning and accompanying site plan, the Planning Board shall follow the procedure set forth for a change of zone in Article X of this Ordinance. After reviewing the site plan, including any additional information reasonably requested, the Planning Board shall grant approval of the site plan if it finds that the application, with any reasonable conditions the Planning Board deems necessary, will conform with the criteria for approval in Sec. 19-6-7.F, Criteria for Approval.
6. Upon taking action on the site plan, the Planning Board shall forward to the Town Council a written report containing the action taken along with a recommendation concerning the rezoning of the subject lot or lots to a Business District C.
7. The application will become effective only upon the approval by the Town Council of an amendment to the Zoning Map designating the subject lot or lots as Business District C.

F. Criteria for Approval

The Planning Board shall grant approval of the site plan and transmit to the Town Council a favorable recommendation on the application for a change of zone to Business District C if it finds that the proposal, with any reasonable conditions it deems necessary, will conform upon completion of construction with the terms of Site Plan Review as set forth in Article IX and the following criteria:

1. The use will not create any smoke, dust, odor, or other unhealthy or offensive airborne discharge detectable at the lot line;
2. The use will not create any offensive noise or vibration;
3. The use will not include any outdoor storage of equipment or material;
4. The use will not involve the handling, storage, or disposal of hazardous waste material in a manner that would threaten public health through contamination of surface or groundwater;

5. The use will not create unsafe traffic conditions or excessive traffic that would either adversely affect neighborhood character or unduly burden the ability of the Town to maintain the roads;
6. The proposed use will not adversely affect the value of adjacent properties. In reaching a decision on this criterion, the Planning Board may require an independent appraisal by a licensed appraiser hired by the Town at the expense of the applicant;
7. The design and external appearance of any proposed building will constitute an attractive and compatible addition to its neighborhood; and
8. The use will comply with all wetland provisions of this Ordinance.

SEC. 19-6-8. FORT WILLIAMS PARK DISTRICT (FWP)

A. Purpose

The Fort Williams Park District (FWP) consists of the ninety-six (96) acre municipally owned tract known as Fort Williams Park and Portland Head Light. Fort Williams is a unique community resource which has irreplaceable scenic, natural, and historical qualities. The purpose of the FWP District is to assure that this resource is dedicated primarily to park, recreational and cultural uses which preserve, enhance, and are fully compatible with its unique qualities and are within the financial resources of the Town. The district is intended to carry out the policies of the Town as expressed in The Master Plan of Fort Williams Park dated November 1990, as it may be amended by the Town Council from time to time.

B. Permitted Uses

The following uses are permitted in the Fort Williams Park District:

1. Any use shown on the adopted Master Plan of Fort Williams Park (October, 2003) as such plan may be amended from time to time by the Town Council in accordance with Sec. 19-6-8. D, Master Plan Amendments. (Effective December 10, 2003)
2. Special events or other nonpermanent uses approved by the Town Council upon recommendation of the Fort Williams Advisory Commission.
3. Buildings, structures, or uses accessory to a use shown on the adopted Master Plan as approved by the Town Council upon recommendation of the Fort Williams Advisory Commission.

4. Occupancy of the existing historic buildings for uses determined by the Town Council, upon recommendation of the Fort Williams Advisory Commission, to be compatible with the park, recreational and cultural character of the District. (Effective December 10, 2003)
5. Wind energy system. (Effective October 8, 2008)

C. Prohibited Uses

All uses not specifically allowed as permitted uses are prohibited within this district.

D. Master Plan Amendments

The Town Council may amend the Master Plan of Fort Williams Park in accordance with the following procedures and standards:

1. Procedures

Prior to considering any amendment to the Master Plan, the Town Council shall refer the proposed amendment to both the Planning Board and Fort Williams Advisory Commission for their recommendation on the proposed amendment.

The Planning Board and Fort Williams Advisory Commission shall be given a minimum of forty-five (45) days to review the proposed amendment. Prior to making its recommendation, the Planning Board may hold a public hearing on the proposed amendment. The recommendations of the Planning Board and the Fort Williams Advisory Commission shall be based upon the Comprehensive Plan, the Town's general policy for the use of Fort Williams Park, and the standards set forth in Sec. 19-6-8.D.2, Standards.

Prior to considering the proposed amendment, the Town Council shall hold a public hearing on the proposal and shall give notice of the hearing as provided for in Sec. 19-10-3, Amendments. Any recommendation from the Planning Board or the Fort Williams Advisory Commission shall be considered at the public hearing. Following the public hearing, the Town Council shall determine whether to adopt such amendment.

2. Standards

The Town Council shall adopt an amendment to the Master Plan of Fort Williams Park only if it finds:

- a. That such proposal is for a park, recreational or cultural use consistent with the long term plans of the Town for the use of Fort Williams Park;

- b. That the proposed building or use will not interfere with or detract from park, recreational or cultural uses then existing or anticipated during the period of such use;
- c. That such proposed use will be sensitive to and not unduly impact the adjacent residentially zoned properties; and
- d. That such proposed use will be consistent with the active recreational use of Ship Cove and with the passive recreational use of the remaining shoreline within Fort Williams Park.

E. Standards

1. Performance Standards

- a. The standards of performance of Articles VII and VIII shall be observed.
- b. All use of land, including development and construction activities, within the FWP District shall be carried out in such manner as to preserve existing scenic features with particular attention to the preservation of the views identified in the Assessment of the Visual Resources of Cape Elizabeth, Maine.

2. The following Space and Bulk Standards shall apply:

MINIMUM SETBACKS	
(1) All uses	
a. Front and side yard setbacks	<p>All new buildings, structures, athletic facilities, drives, and parking areas shall be sited in the approximate location shown on the Master Plan, but in no case shall they be located within 100 feet of the front and side property lines.</p> <p>Existing buildings, structures, athletic facilities, drives, and parking areas located within 100 feet of the front and side property lines as of June 4, 1997, may be improved, expanded or modified provided that such changes do not reduce the setback beyond the existing conditions.</p>

(2) Amateur antennas extending from 15' to 25' measured from the highest point of the alternative tower structure	
a. Property line setback	125% of the distance from the ground to the top of the antenna (Effective April 15, 2000)
(3) Towers which are freestanding, and towers which are attached or braced against a structure and exceed 15' in height measured from the highest point of the roof of the structure	
a. Property line setback	125% of the distance from the ground to the top of the antenna (Effective April 15, 2000)
(4) Wind energy system	110% of the distance from the ground to the center of the turbine (Effective October 8, 2008)
MAXIMUM TELECOMMUNICATION HEIGHT	
(1) Antenna attached to a structure	25' measured from the highest point of the alternative tower structure (Effective April 15, 2000)
(2) Amateur or governmental tower attached or braced against a structure	25' measured from the highest point of the roof of the structure (Effective April 15, 2000)
(3) Freestanding amateur or governmental wireless telecommunication tower	50' measured from average original grade (Effective April 15, 2000)
MAXIMUM WIND ENERGY SYSTEM HEIGHT (Effective October 8, 2008)	
(1) All uses to center of turbine	100'
MAXIMUM BUILDING HEIGHT	
(1) All uses	35 ft.

F. Site Plan Review

The following uses and activities shall be subject to site plan review by the Planning Board, according to the terms of Article IX, Site Plan Review, prior to issuance of any building permit, plumbing permit, or other permit.

1. Nonresidential uses involving the construction or expansion of a building or structure.
2. Any other use or activity listed in Sec. 19-9-2, Applicability, as requiring site plan review.

SEC. 19-6-9. RESOURCE PROTECTION DISTRICTS

(RP1-CW, RP1-CW Buffer Overlay, RP2-WP, and RP3-F)

A. Purpose

The wetlands and floodplains of the Town are fragile natural resources which provide wildlife habitat, pollution control, storage and passage of flood waters, aquifer recharge, erosion control, education, scientific study, recreation, and open space. Nationally, considerable wetland acreage has been lost or impaired by drainage, dredging, filling, excavating, building, pollution, and other activities inconsistent with the natural uses of such areas. Therefore, it is the policy of the Town to ensure that wetlands and floodplains are protected from detrimental impacts and that wetland and floodplain alteration activities do not threaten public safety, welfare or cause nuisances, or negatively alter natural wetland ecology. To protect these natural resources, four (4) Resource Protection Districts are designated based upon their natural resource value and vulnerability:

1. Resource Protection 1 – Critical Wetland District (RP1-CW)

Areas that deserve the highest protection from filling, draining and other adverse activities due to their particular environmental or hydrological importance, sensitivity to alterations or special characteristics are designated Resource Protection 1 – Critical Wetland District (RP1-CW). Any area that, upon field verification, is determined to have one (1) or more of the following characteristics shall be included in the RP1-CW District:

- a. is at least one (1) acre in size and the substrate is predominantly hydric soils categorized as very poorly drained organic or mineral soils as defined (see Sec. 19-1-3, hydric soil definition);

- b. is at least one (1) acre in size and contains, at least periodically, predominantly “Obligate” wetland vegetation, as defined in Sec. 19-1-3, Definitions – Wetland Vegetation; or
- c. is a coastal dune, as defined herein.

The Town has prepared a zoning map showing the RP1-CW District based upon the best available information at a townwide scale. The actual boundaries of this district, however, shall be determined by field verification in accordance with Sec. 19-2-5, Location of Resource Protection District Boundaries.

2. Resource Protection 1 – Critical Wetland Buffer Overlay District (RP1-CW Buffer Overlay)

Areas that require regulation due to their proximity to Resource Protection 1 – Critical Wetland Districts, and function to protect wetland values including but not limited to wildlife habitat, pollution abatement, and erosion control are designated Resource Protection 1 – Critical Wetland Buffer Overlay District (RP1-CW Buffer Overlay). The RP1-CW Buffer Overlay District is an overlay zone and is located adjacent to Resource Protection 1 – Critical Wetland Districts. The RP1-CW Buffer Overlay District shall extend upland from the wetland upland edge of any critical wetland as determined by the following criteria:

- a. a two hundred fifty (250) foot buffer will be required if the critical wetland meets one (1) of the following criteria:
 - 1. The wetland is rated as moderate or high value for waterfowl or wading bird habitat, including nesting and feeding areas by the Maine Department of Inland Fisheries and Wildlife and are depicted on a Geographic Information System (GIS) data layer maintained by either MDIF&F or the Department of environmental Protection as of 2/31/08. For the purposes of this paragraph, “wetlands associated with great ponds and rivers” shall mean areas characterized by non-forested wetland vegetation and hydric soils that are contiguous with a great pond or river, and have a surface elevation at or below the water level of the great pond or river during the period of normal high water. “Wetlands associated with great ponds or rivers” are considered to be part of that great pond or river. (Effective October 15, 2009)
 - 2. The wetland is a marine and/or estuarine marsh; or
 - 3. The Resource Protection 1 – Critical Wetland District as defined is not well separated from adjacent areas by topography or other natural features.

- b. Notwithstanding any provision of this section to the contrary, a one hundred (100) foot buffer will be required if the wetland area meets one (1) of the following criteria and the critical wetland is not rated as having moderate or high value for wildlife by the Maine Department of Inland Fisheries and Wildlife:

1. The Resource Protection 1 – Critical Wetland District is distinctly separated from the area of the proposed development by topography such that the development area, in its natural state, drains away from the wetland. An existing road or driveway shall not be considered a topographical divide if the road drains toward the wetland.
2. The Resource Protection 1 – Critical Wetland District is within two hundred fifty (250) feet of densely developed areas. For the purposes of this section, an area shall be considered densely developed if at least six (6) principal buildings are located within two hundred fifty (250) feet of the center of any proposed structure.
3. The Resource Protection 1 – Critical Wetland District is two (2) acres or less in size.
4. The Resource Protection 1 – Critical Wetland District is a coastal sand dune as measured from the point where sand and dune grasses are replaced by upland soils and vegetation.
5. The Resource Protection 1 – Critical Wetland District is located in or adjacent to a property located in the Business A District which is served by public water and public sewer.

- c. The RP1-CW Buffer Overlay District may be reduced to one hundred (100) feet from the edge of the wetland to allow placement of a permanent or temporary tool shed where the footprint of the tool shed does not exceed eighty (80) square feet and the tool shed will be used for storage. Tool sheds allowed under this provision shall require a building permit.

3. Resource Protection 2 – Wetland Protection District (RP2-WP)

Areas that require regulation due to the sensitivity to development or to their general wetland qualities are designated Resource Protection 2 – Wetland Protection District (RP2-WP). Any area that, upon field verification, is determined to have one (1) or more of the following characteristics shall be included in the RP2-WP District:

- a. An area where the substrate is predominantly hydric soils categorized as poorly drained mineral soils (see Sec. 19-1-3 for hydric soil definition) and

that, at least periodically, supports wetland vegetation listed as “Facultative Wetland” as defined in Section 19-1-3, Definitions – Wetland Vegetation.

- b. An area less than one (1) acre in size where the substrate is predominantly hydric soils categorized as very poorly drained organic or mineral soils as defined (see Sec. 19-1-3 for hydric soil definition); or
- c. An area where the substrate is saturated with water to the surface or submerged for at least twenty (20) consecutive days during the growing season each year.

The Town has prepared a zoning map showing the RP2-WP District based upon the best available information at a town wide scale. The actual boundaries of this district, however, shall be determined by field verification in accordance with Sec. 19-2-5, Location of Resource Protection District Boundaries.

- 4. Resource Protection 3 – Floodplain District (RP3-F) Areas that require regulation due to their sensitivity to development that would adversely affect water quality, productive habitat, biological ecosystems or natural values are designated Resource Protection 3 – Floodplain (RP3-F). Any area that, upon field verification, is determined to have one (1) or more of the following characteristics shall be included in the RP3-F District:

- a. Floodplains along rivers and floodplains along artificially formed great ponds along rivers defined by the 100-year floodplain as shown on the Federal Emergency Management Agency’s (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent floodplain soils. This district shall also include 100-year floodplains adjacent to tidal waters as shown on FEMA’s Flood Insurance Rate Maps or Flood Hazard Boundary Maps. Floodplains that include two (2) or more principal structures per one thousand (1,000) linear feet of shoreline are not included. (Effective October 15, 2009).
- b. Areas of two (2) or more contiguous acres with sustained slopes of twenty percent (20%) or greater.
- c. Land areas along rivers subject to severe bank erosion, undercutting, or river bed movement and lands adjacent to tidal waters which are subject to severe erosion or mass movement, such as steep coastal bluffs.

The Town has prepared a zoning map showing the RP3-F District based upon the best available information at a town wide scale. The actual boundaries of this district, however, shall be determined by field verification in accordance with Sec. 19-2-5, Location of Resource Protection District Boundaries.

B. Permitted Uses

Any use shown on Table 19-6-9 as a permitted use in each district shall be permitted in the RP1-CW, RP1-CW Buffer Overlay, RP2-WP, or RP3-F district respectively.

C. Uses Permitted with a Resource Protection Permit

Any use shown on Table 19-6-9 as a permitted use with a resource protection permit in the RP1-CW, RP1-CW Buffer Overlay, RP2-WP, or RP3-F District shall be permitted in that district but only upon the issuance of a resource protection permit in accordance with the provisions of Sec. 19-8-3, Resource Protection Performance Standards.

D. Prohibited Uses

Uses shown as prohibited uses on Table 19-6-9 and any other use not specifically listed as a permitted use or a use permitted with a resource protection permit shall be prohibited in the RP1-CW, RP1-CW Buffer Overlay, RP2-WP, and RP3-F Districts.

TABLE 19-6-9 USES PERMITTED, ALLOWED WITH A RESOURCE PROTECTION PERMIT, AND PROHIBITED IN THE RESOURCE PROTECTION DISTRICTS.

All use of land, buildings, and structures within the Resource Protection Districts shall be in accordance with the following:

- a. **“Permitted”** indicates uses that are permitted by right subject to Sec.19-8-3 Resource Protection Performance Standards.
- b. **“RPP”** indicates uses that are permitted, provided that a resource protection permit is issued in accordance with Sec. 19-8-3, Resource Protection Performance Standards.
- c. **“No”** indicates uses that are prohibited.

No use, structure, or activity shall be permitted that is not in compliance with Sec. 19-8-3, Resource Protection Performance Standards.

Uses allowed with a resource protection permit may include incidental activities that otherwise would be prohibited, provided that such incidental activities are expressly included in the permit application. A permitted use that includes within it an incidental prohibited activity shall be allowed only if a resource protection permit is issued in accordance with Sec. 19-8-3, Resource Protection Performance Standards.

Use, Activity, Structure	RP1-CW and RP1- CW Buffer Overlay	RP2-WP	RP3-F
1. Expansion of nonconforming structure subject to the provisions of Sec. 19-4-5, Nonconformance within the Resource Protection Districts	Permitted	Permitted	Permitted
1.a. Expansion or change of a nonconforming use where the activity is permitted in an abutting district and is located in an existing building or paved area.	RPP	RPP	RPP
2. Forest management activities	Permitted	Permitted	Permitted
3. Timber harvesting	Permitted	Permitted	Permitted
4. Conservation of soil, water, vegetation, fish, shellfish, and wildlife	Permitted	Permitted	Permitted
5. Wilderness area, wildlife preservation and refuges	Permitted	Permitted	Permitted
6. Education and scientific research and nature trails	Permitted	Permitted	Permitted
7. Shellfishing and trapping	Permitted	Permitted	Permitted
8. Non-intensive recreational activity including but not limited to hunting where permitted, bird-watching, duck blinds, hiking, horseback riding, swimming and trapping, provided there is no alteration of the wetland and no operation of any motorized recreational vehicles	Permitted	Permitted	Permitted
9. Maintenance of existing golf course, waterholes, municipal skating ponds, and existing agricultural ponds. (Effective June 10, 2010)	Permitted	Permitted	Permitted
10. Maintenance of stormwater detention basins by the Town, or by a homeowners' association as approved by the Planning Board as part of an approved subdivision or site plan	Permitted	Permitted	Permitted
11. Grooming of existing residential lawns and landscaping, including the installation of fences in existing lawns	Permitted	Permitted	Permitted
12. Fire prevention activities	Permitted	Permitted	Permitted
13. Aquaculture (Effective October 15, 2009)	RPP	RPP	RPP
14. Replacement of septic disposal system	Permitted	Permitted	Permitted

15. Service drop to allowed use	Permitted	Permitted	Permitted
16. Individual campsite	Permitted	Permitted	Permitted
17. Home occupation and home business	Permitted	Permitted	Permitted
18. Fences, wildlife management shelters, observation decks and shelters	RPP	Permitted	RPP
19. Minor recreational structure	RPP	Permitted	RPP
20. Catwalks and footbridges	RPP	RPP	RPP
21. Public utilities/essential utility services	RPP	RPP	RPP
22. Existing road reconstruction	RPP	RPP	RPP
23. Official vegetated playing fields and related accessory structures, including parking facilities, located more than one hundred (100) feet from the RP1 wetland upland edge	RPP	RPP	RPP
24. Damming	RPP	RPP	No
25. Dredging	No	RPP	RPP
26. Grading	No	RPP	RPP
27. New street construction	No	RPP	RPP
28. Agriculture (existing uses exempted (Effective June 10, 2010)	RPP	RPP	RPP
29. Piers, docks and boathouses	No	RPP	RPP
30. Marina	No	RPP	RPP
31. Filling	No	RPP	No
32. Draining	No	RPP	No
33. Excavating	No	RPP	No
34. Mining or drilling	No	RPP	No
35. One and two family dwellings and accessory buildings and structures	No	RPP	No
36. Multiplex Housing or Multifamily dwelling unit (Effective November 14, 2015)	No	RPP	No
37. Parking facility	No	No	RPP
38. Commercial structure	No	No	No
39. Industrial structure	No	No	No
40. Governmental/institutional	No	No	No

41. Conversion to year-round	No	No	No
42. Private septic disposal system	No	No	No
43. Campground	No	No	No
44. Polluting	No	No	No

E. Standards

1. Performance Standards

- a. The general standards of Articles VII and VIII shall be observed.
- b. All uses of land and buildings within the RP1-CW, RP1-CW Buffer Overlay, RP2-WP, and RP3-F Districts shall be subject to the applicable provisions of Sec. 19-8-3, Resource Protection Performance Standards.

2. Space and Bulk Standards

Within a Resource Protection District, the Space and Bulk Standards of the most restrictive abutting district shall apply except that lots within one hundred (100) feet of the Residence C District shall use the Space and bulk Standards of the Residence C District.

3. Other Standards

All permitted structures shall be constructed to allow the unobstructed flow of waters and preserve the natural contour of the wetland except as authorized by resource protection permits.

F. Concurrent Site Plan Review

Uses or activities listed in Sec. 19-9-2.A, Activities Requiring Site Plan Review, as requiring site plan review that also requires a resource protection permit shall be reviewed concurrently by the Planning Board.

SEC. 19-6-10. TOWN FARM DISTRICT (TF) (Effective November 13, 1999)

A. Purpose

The Town Farm District includes the area west of Spurwink Avenue formerly known as the “Poor Farm” and an area extending from Spurwink Ave 100’ to the east. The Town Farm District is intended to preserve the upland portion of the Town Farm. The historic

boundaries of the Town Poor Farm also include the Spurwink Marsh, extending to Sawyer Rd.

The land is undeveloped open space comprised of rolling fields, treed ridge lines, and the Spurwink River and Spurwink Marsh. The purpose of this district is to recognize and protect the special nature of the Town Farm as an area representing historic, cultural, scenic, natural, and open space qualities which should continue. The Town Farm embodies rural character and is integral and essential to the Town and the Greenbelt. The scenic significance of the Town Farm is discussed in more detail in a town report entitled an Assessment of the Visual Resources of Cape Elizabeth, Maine, dated February 1989. The Town Farm District is created to preserve these features for the benefit of the public.

B. Permitted Uses

The following uses are permitted in the Town Farm District:

1. The following resource-related uses:
 - a. Agriculture
 - b. Vegetation Management
 1. Mowing
 2. Tree maintenance
 3. Brush clearing
 4. Other vegetation management activities necessary to maintain and enhance views and scenic quality.
2. Reserved
3. The following nonresidential uses:
 - a. Informal Recreation
 - b. Education and scientific research
 - c. Nature trails, catwalks and footbridges
 - d. Snowmobile touring

C. Conditional Uses

The following uses may be permitted only upon approval by the Zoning Board as a conditional use, in accordance with Sec. 19-5-5, Conditional Use Permits:

1. Reserved
2. The following nonresidential uses:
 - a. Public utilities/essential utility services, except telecommunication towers
Activities permitted under the terms of the Portland Water District lease, to

be located only on the land leased to the Portland Water District for as long as such lease remains in effect.

D. Prohibited Uses

All uses not specifically allowed as permitted or conditional are prohibited within this district. In addition, the following uses are expressly prohibited:

1. Parking
2. Organized sports involving teams with coaches, uniforms or established schedules
3. Athletic playing fields
4. New structures
5. Telecommunication towers
6. Public bathrooms or rest facilities

E. Standards

1. Performance standards

The standards of performance of Articles VII, General Standards, and VIII, Performance Standards, shall be observed.

2. Reserved

F. Site Plan Review

The following uses and activities shall be subject to site plan review by the Planning Board, according to the terms of Article IX, Site Plan Review, prior to issuance of any building permit, plumbing permit, or other permit:

1. Public utilities/essential utility services
2. Any construction allowed under the Portland Water District Lease
3. Any other use or activity listed in Sec. 19-9-2, Applicability, as requiring site plan review.

SEC. 19-6-11. SHORELAND PERFORMANCE OVERLAY DISTRICT

A. Purpose

In order to maintain safe and healthful conditions; to prevent and control water pollution; to protect spawning grounds of fish, aquatic life, bird and other wildlife habitat; to protect archaeological and historic resources; to protect freshwater and coastal wetlands; to control building sites, placement of structures and land uses; to conserve shore cover; to protect visual, as well as actual, points of access to inland and coastal waters; to conserve natural

beauty and open space; and to anticipate and respond to the impact of development in Shoreland areas, all land use activities within the Shoreland Performance Overlay District shall conform to the applicable land use standards in Sec. 19-8-2, Shoreland Performance Standards. This district is established in accordance with the provisions of 38 M.R.S.A. §435 et seq.

The Shoreland Performance Overlay District applies to all land within two hundred fifty (250) feet, horizontal distance, of the:

- normal high-water line of any great pond and the Spurwink River
- normal high-water line of tidal waters; (Effective September 11, 2014)
- upland edge of a freshwater wetland

and all land areas within seventy-five (75) feet, horizontal distance, of the normal high-water line of a stream. This district also applies to any structure built on, over or abutting a dock, wharf or pier, or other structure extending below the normal high-water line of a water body or within a wetland. (Effective October 15, 2009). The Town has prepared a zoning map showing the Shoreland Performance Overlay District based on the best available information at a town wide scale. The actual boundaries of this district, however, shall be determined by the physical features present on the site that are included in the Shoreland Performance Overlay District as defined above. (Effective September 11, 2014)

B. Permitted Uses

The Shoreland Performance Overlay District is an overlay zone. As such, any use that is permitted in the underlying zoning district is permitted in the Shoreland Performance Overlay District, except as specifically provided in Sec. 19-6-11.D, Prohibited Uses. Any permitted use shall comply with the standards of Sec. 19-8-2, Shoreland Performance Standards.

C. Conditional Uses

Any use that is allowed as a conditional use in the underlying zoning district is a conditional use in the Shoreland Performance Overlay District, except as specifically provided in Sec. 19-6-11.D., Prohibited Uses. A conditional use may be permitted only upon approval of the Zoning Board as a conditional use in accordance with Sec. 19-5-5, Applicability, of this Ordinance, provided further that the standards of Sec. 19-8-2, Shoreland Performance Standards, are met.

D. Prohibited Uses

All uses not specifically allowed as permitted uses or conditional uses in the underlying zoning district are prohibited in the Shoreland Performance Overlay District. In addition, the following commercial and industrial uses are expressly prohibited within the Shoreland Performance Overlay District adjacent to Great Pond and the streams which flow to great Pond:

1. Auto washing facility

2. Auto or other land vehicle service and/or repair operation, including body shop
3. Chemical and bacteriological laboratory
4. Storage of chemicals, including herbicides, pesticides or fertilizers other than amounts normally associated with individual households or farms
5. Commercial painting, wood preserving and furniture stripping
6. Dry cleaning establishment
7. Electronic circuit assembly
8. Laundromat, unless connected to a sanitary sewer
9. Metal plating, finishing or polishing
10. Petroleum or petroleum product storage and/or sale, except storage on the same property as use occurs and except for storage and sales associated with marinas
11. Photographic processing
12. Printing

E. Standards

1. Performance Standards

- a. The general standards of Articles VII and VIII shall be observed.
- b. All uses of land and buildings within the Shoreland Performance Overlay District shall conform to the applicable provisions of Sec. 19-8-2, Shoreland Performance Standards.

2. Space and Bulk Standards

In addition to the Space and Bulk Standards of the underlying district, all use of land within the Shoreland Performance Overlay District shall comply with the standards set forth in this subsection. In the event of a conflict between the standards of this overlay district and those of the underlying district, the more restrictive standards shall apply:

MINIMUM LOT AREA (Unless the requirements of the underlying district require a larger lot)	
(1) Residential per dwelling unit adjacent to tidal areas	30,000 sq. ft.
(2) Residential per dwelling unit adjacent to non-tidal areas	40,000 sq. ft.
(3) Governmental, Institutional, Commercial or Industrial per principal structure adjacent to tidal areas	40,000 sq. ft.
(4) Governmental, Institutional, Commercial or Industrial per principal structure adjacent to non-tidal areas	60,000 sq. ft.

(5) Public and Private Recreational Facilities in tidal and non-tidal areas	40,000 sq. ft.
<p align="center">MINIMUM SHORE FRONTAGE</p> <p>Note: Shore Frontage shall be measured along the normal high water line. In addition to the shore frontage requirements below, all conforming shoreland lots shall also have a minimum distance of 100 feet measured in a straight line between the intersections of the lot lines with the shoreline at the normal high water line.</p>	
(1) Residential per dwelling unit adjacent to tidal areas	150 ft.
(2) Residential per dwelling unit adjacent to non-tidal areas	200 ft.
(3) Governmental, Institutional, Commercial or Industrial per principal structure adjacent to tidal areas	200 ft.
(4) Governmental, Institutional, Commercial or Industrial per principal structure adjacent to non-tidal areas	300 ft.
(5) Public and Private Recreational Facilities in tidal and non-tidal areas	200 ft.
<p align="center">MINIMUM SHORELINE SETBACKS</p> <p>Note: The water body or wetland setback provision shall not apply to structures which require direct access to the water as an operational necessity, such as piers, docks, and retaining walls, nor to other functionally water-dependent uses. All setbacks shall be measured in horizontal distance. (Effective October 15, 2009)</p>	
(1) Normal high water line of Great Pond	<p align="center">250 ft.</p> <p>for all new principal and accessory structures not including structures operationally necessitated by functionally water-dependent uses (Effective October 15, 2009)</p>
(2) Wetland upland edge of the RP1-CW District	<p align="center">100 ft.</p> <p>for all new principal and accessory structures, not including structures operationally necessitated by functionally water dependent uses (Effective October 15, 2009)</p>

(3) Normal high water line of other water bodies and tributary streams	75 ft. for all new principal and accessory structures, not including structures operationally necessitated by functionally water-dependent uses (Effective October 15, 2009)
<p style="text-align: center;">MAXIMUM BUILDING HEIGHT</p> <p>Note: This provision shall not apply to structures such as transmission towers, windmills, antennas, and similar structures having no floor area.</p>	
(1) Principal and accessory structures and expansions of existing structures	35 ft.
<p style="text-align: center;">MAXIMUM COVERAGE</p>	
(1) All uses	The total footprint area of all structures, parking lots and other impervious surfaces, within the shoreland district shall not exceed twenty percent (20%) of the lot, or the portion thereof, located within the district, including land area previously developed. (Effective October 15, 2009)

- a. Land below the normal high water line of a water body or wetland upland edge and land beneath roads serving more than two (2) lots shall not be included toward calculating minimum lot area.
- b. Lots located on opposite sides of a public or private road shall each be considered a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971.
- c. The minimum width of any portion of any lot within one hundred (100) feet, horizontal distance, of the normal high water line of a water body or wetland upland edge shall be no less than the shore frontage requirement for a lot with the proposed use.
- d. If more than one (1) residential dwelling unit principal governmental, institutional, commercial or industrial structure, or use, or combination thereof, is constructed or established on a single parcel, all dimensional requirements shall be met for each additional dwelling unit or principal structure, except for clustered developments under Sec. 19-7-2, Open Space Zoning, where dimensional requirements are waived provided that the

overall dimensional requirement, including but not limited to frontage and lot area per dwelling unit, are met. (Effective October 15, 2009)

- e. Setbacks shall be measured from the closest point of the structure (e.g. eaves, deck, patio, etc.) to the normal high water line. For principal structures, water and wetland setbacks shall be measured from the top of a coastal bluff that has been identified on Coastal Bluff maps as being “highly unstable” or “unstable” by the Maine Geological Survey pursuant to its “Classification of Coastal Bluffs” and published on the most recent Coastal Bluff map. If the applicant and the permitting official(s) are in disagreement as to the specific location of a “highly unstable” or “unstable” bluff, or where the top of the bluff is located, the applicant may at his or her expense, employ a Maine Registered Professional Engineer, a Maine Certified Soil Scientist, a Maine State Geologist, or other qualified individual to make a determination. If agreement is still not reached, the applicant may appeal the matter to the Zoning Board of Appeals. (Effective October 15, 2009)
- f. Notwithstanding the requirements stated above, stairways or similar structures may be allowed to provide shoreline access in areas of steep slopes or unstable soils, with a permit from the Code Enforcement Officer provided that the structure is limited to a maximum of four (4) feet in width; that the structure does not extend below or over the normal high water line of a water body or wetland upland edge (unless permitted by the Maine Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A. §480-C); and that the applicant demonstrates that no reasonable alternative exists on the property.

F. Site Plan Review

Any use that requires site plan review in the underlying zoning district shall require site plan review in the Shoreland Performance Overlay District.

SEC. 19-6-12. GREAT POND WATERSHED OVERLAY DISTRICT

A. Purpose

The Great Pond Watershed Overlay District is created to protect and improve the water quality of Great Pond by limiting the runoff of nutrients such as phosphorous.

The Great Pond Watershed Overlay District applies to all land within the watershed of Great Pond being all of the land area that drains to Great Pond as depicted on the Great Pond Watershed Map.

B. Permitted Uses

The Great Pond Watershed Overlay District is an overlay zone. As such, any use that is permitted in the underlying zoning district is permitted in the Great Pond Watershed Overlay District. Any permitted use shall comply with the standards of Sec. 19-8-7, Great Pond Watershed Performance Standards.

C. Conditional Uses

Any use that is allowed as a conditional use in the underlying zoning district is a conditional use in the Great Pond Watershed Overlay District. A conditional use may be permitted only upon approval of the Zoning Board as a conditional use in accordance with Sec. 19-5-5, Applicability, of this Ordinance, provided further that the standards of Sec. 19-8-7, Great Pond Watershed Performance Standards, are met.

D. Prohibited Uses

All uses not specifically allowed as permitted uses or conditional uses in the underlying zoning district are prohibited in the Great Pond Watershed Overlay District.

E. Standards**1. Performance Standards**

- a. The general standards of Articles VII and VIII shall be observed.
- b. All uses of land and buildings within the Great Pond Watershed Overlay District shall conform to the applicable provisions of Sec. 19-8-7, Great Pond Watershed Performance Standards.

2. Space and Bulk Standards

All uses shall conform to the Space and Bulk Standards of the underlying district and the standards of Sec. 19-8-7, Great Pond Watershed Performance Standards.

F. Site Plan Review

Any use that requires site plan review in the underlying zoning district shall require site plan review in the Great Pond Watershed Overlay District.

SEC. 19-6-13. TOWER OVERLAY DISTRICT (Effective April 15, 2000)**A. Purpose**

The purpose of this district is to respond to the communication policies embodied in the 1996 Federal Telecommunications Act by establishing predictable and balanced regulations, within the confines of permissible local regulation, for the siting and screening of towers and antennas in order to accommodate the growth of telecommunications within the Town while protecting the public against any adverse impacts on the Town's public health, safety and welfare.

B. Permitted Uses

The Tower Overlay District is an overlay zone. As such, any use that is permitted in the underlying zoning district is permitted in the Tower Overlay District. In addition, notwithstanding the underlying zone, the following uses are also permitted:

Towers providing commercial, amateur and governmental wireless telecommunication services.

Antennas providing commercial, amateur, and governmental wireless telecommunication services.

C. Conditional Uses

Any use that is allowed as a conditional use in the underlying zoning district is a conditional use in the Tower Overlay District.

D. Prohibited Uses

All uses not specifically allowed as permitted uses or conditional uses in the underlying zone or in the Tower Overlay District are prohibited in the Tower Overlay District.

E. Standards

1. Performance Standards
 - a. The general standards of Articles VII and VIII shall be observed.
 - b. All uses of land and buildings within the Tower Overlay District shall conform to the applicable provisions of Sec. 19-8-12, Tower and Antenna Performance Standards.
2. Space and Bulk Standards

In addition to the Space and bulk Standards of the underlying district, all use of land within the Tower Overlay District or any other district shall comply with the standards set forth in this subsection. In the event of a conflict between the

standards of this overlay district and those of the underlying district, the more restrictive standards shall apply:

MAXIMUM HEIGHT	
Towers, including antennas and any other attachments	180 ft.
MINIMUM SETBACK	
Property Line Setback	125% of tower height

F. Site Plan Review

The following uses and activities shall be subject to site plan review by the Planning Board, according to the terms of Article IX, Site Plan Review, prior to the issuance of any building permit, plumbing permit, or other permit.

1. Commercial wireless telecommunication services towers.
2. Amateur or governmental wireless telecommunication facility towers in excess of 50' feet in height.

SEC. 19-6-14. SPECIAL EVENT FACILITY OVERLAY DISTRICT (Effective December 4, 2015)

A. Purpose

The purpose of this district is to allow small scale, hospitality venues on large properties in the residential zoning districts (RA, RB, RC) where there is a buffer from abutting neighbors. Cape Elizabeth has historically been an attractive destination for visitors. Landowners have made their property available seasonally for private special events both to share the picturesque beauty of the Cape Elizabeth coast and to generate revenue. When relatively isolated, these events are consistent with the town's residential character, but must also be managed to protect the public health, safety and welfare of town residents and event guests and staff.

B. Permitted Uses

The Special Event Facility Overlay District is an overlay zone that may be applied over the Residence A, Residence B, and Residence C base zoning districts. As such, any use that is permitted in the underlying zoning district is permitted in the Special Event Overlay District. In addition, notwithstanding the underlying zone, the following use is also permitted:

Special Event Facility

C. Conditional Uses

Any use that is allowed as a conditional use in the underlying zoning district is a conditional use in the Special Event Facility Overlay District.

D. Prohibited Uses

All uses not specifically allowed as permitted uses or conditional uses in the underlying zone or in the Special Event Facility Overlay District are prohibited in the Special Event Facility District.

E. Standards

1. Performance Standards

- a. The general standards of Articles VII and VIII shall be observed
- b. All uses of land and buildings within the Special Event Facilities Overlay District shall conform to the applicable provisions of Sec. 19-8-15, Special Event Facility Standards.

2. Space and Bulk Standards

In addition to the Space and Bulk Standards of the underlying district, all use of land within the Special Event Facility Overlay District or any other district shall comply with the standards set forth in this subsection. In the event of a conflict between the standards of this overlay district and those of the underlying district, the more restrictive standards shall apply:

MINIMUM LOT AREA	
(1) Special event facility	<p>15 acres all of which must be included in a Special Event Facility Overlay District. To comply with the special event facility minimum lot area, the total area of</p> <p>(i) the lot where the special event facility is located, and</p> <p>(ii) any other lot held in common ownership and sharing any portion of a lot line boundary with the special event facility lot may be counted toward the minimum lot area.</p>

F. Site Plan Review

The following uses and activities shall be subject to site plan review by the planning Board, according to the terms of Article IX, Site Plan Review, prior to the issuance of any building permit, plumbing permit or other permit.

1. Special event facility

ARTICLE VII. GENERAL STANDARDS

SEC. 19-7-1. PURPOSE

The purpose of this Article is to incorporate into the Zoning Ordinance tools that will better enable the Town to implement its policies, as expressed in the Comprehensive Plan, to preserve open space and rural character and to provide opportunities for affordable housing. These tools are designed to achieve these goals while respecting the rights of property owners.

SEC. 19-7-2. OPEN SPACE ZONING

A. Applicability

1. Residence B District

The provisions of this section shall be mandatory for residential subdivisions and multiplex housing in the Residence B District. (Effective November 14, 2015)

2. Other Districts

In the Residence A District and Residence C District, the provisions of this section shall be optional. In such districts, notwithstanding other provisions of this Ordinance, the Planning Board in reviewing and approving proposed residential development may modify provisions relating to space and bulk, including but not limited to setbacks, to permit innovative approaches to housing and environmental design in accordance with the standards of this section. Such modifications of Space and Bulk Standards shall not be constructed as granting variances to relieve hardship. (Effective November 14, 2015)

B. General Standards

1. Developments proposed under the terms of this section shall meet all requirements of this section, unless otherwise noted.

2. The uses of the land shall not differ from the uses allowed in the district in which the development is located.
3. Each lot or building must be an element of an overall plan for site development. When the development consists of the creation of lots, the plan shall establish a building envelope for each lot that identifies the area within which the buildings will be located. When the development involves the construction of multiple buildings on one (1) or more lots, the plan shall show the location of each building.
4. Notwithstanding subsection 3 above, when the development of a parcel shall be divided into phases, the Planning Board may allow future phases to be designed at a concept level. Concept level plans shall provide sufficient detail to demonstrate that the Subdivision Ordinance Standards and the Open Space Zoning Standards will be met when final design is completed and submitted to the Planning Board. Concept level plans, at a minimum, shall include: vehicular access, location of significant wetlands and/or other prominent natural features, a general layout of lots or buildings and an adequate amount of open space. No phase of a development shall be constructed until a final plan for such phase demonstrating full compliance with the Subdivision Ordinance and the Open Space Zoning Standards has been approved by the Planning Board and complies with all other requirements of the Subdivision Ordinance. (Effective December 8, 2004)

C. Dimensional Standards

The average size of the individual lots shall be smaller than that required in the district in which the cluster development is located and the balance of the required area shall be reserved as open space. The lots and open space shall conform to the following Space and bulk Standards:

1. Density

The overall density of the residential development shall not exceed the density requirements of the district in which it is located as shown in the chart below. In the event that a residential development is located in more than one zoning district, the overall density of the development shall not exceed the combination of the density requirements of the districts in which the development is located. For example, if a subdivision has 660,000 square feet of net residential area in the RA District and 150,000 square feet in the RC District (with public sewage) then the overall density shall not exceed 20 units. (Effective November 14, 2015)

District	Maximum Density of Residential Development	
	Single Family	Multiplex
RA	1 unit per 66,000 sq. ft. of net residential area	1 unit per 66,000 sq. ft. of net residential area
RB	1 unit per 60,000 sq. ft. of net residential area with on-site sewage disposal	1 unit per 60,000 sq. ft. of net residential area with on-site sewage disposal
	1 unit per 20,000 sq. ft. of net residential area with public sewage	1 unit per 20,000 sq. ft. of net residential area with public sewage
RC	1 unit per 15,000 sq. ft. of net residential area	1 unit per 15,000 sq. ft. of net residential area

(Effective November 14, 2015)

When calculating density, a multiplex unit with not more than one (1) bedroom and not more than seven hundred fifty (750) square feet of gross area shall be counted as 0.5 unit. A multiplex unit with not more than two (2) bedrooms and not more than one thousand two hundred (1,200) square feet of gross area shall be counted as 0.66 unit. A multiplex unit with three (3) or more bedrooms or more than one thousand two hundred (1,200) square feet of gross area shall be counted at 1.0 unit. (Effective November 14, 2015)

2. Minimum Lot Size

Each lot within the subdivision shall contain at least the following area:

District	Minimum Lot Size	
	With On-site Sewage disposal	With Public Sewage
RA	30,000 sq. ft. of net residential area	30,000 sq. ft. of net residential area
RB	20,000 sq. ft. of net residential area	10,000 sq. ft. of net residential area
RC	NA	7,500 sq. ft. of net residential area

3. Average Lot Size

Lots and/or dwelling units shall be laid out so that the average lot size is not more than sixty percent (60%) of the maximum density set forth in Sec. 19-7-2.C.1 above in the RA and RC Districts and not more than fifty percent (50%) of the maximum density in the RP District.

4. Open Space

At least forty percent (40%) of the gross acreage shall remain as open space outside of the lots and not otherwise assigned to individual dwelling units. In the RB District, where the development will be served by public sewer, at least forty-five percent (45%) of the gross acreage shall remain as open space outside of the lots and not otherwise assigned to individual dwelling units. At least one third of this required open space shall be land that is usable as determined by applying the criteria of the net residential area definition. [For example, if a parcel consists of one hundred twenty (12) acres, at least forty-eight (48) acres shall be kept as open space. Of these forty-eight (48) acres, at least sixteen (16) acres shall be usable applying the criteria of the net residential area definition.] (Effective November 14, 2015)

5. Road Frontage The minimum road frontage of each lot shall be fifty (50) feet. However, no individual lot or dwelling unit shall have its required frontage on a public road existing as of June 4, 1997.

6. Building Envelope/Location

If the development consists of buildings on individual lots, the applicant shall establish and show on the subdivision plat a building envelope for each lot, within which the building shall be located. The bounds of the building envelope shall be at least twenty (20) feet from the right-of-way of the road serving the lot, and at least five (5) feet from any side or rear lot line.

If the development consists of multiple buildings on one (1) or more lots, the plat shall show the proposed location of each building. Buildings shall be located so that the distance between any two (2) buildings is at least equal to the height of the taller building.

7. Other Setbacks

Neither shore frontage nor setbacks from the normal high water marks of water bodies shall be reduced below the minimum otherwise required in this Ordinance.

The structures within a block shall maintain a uniform relationship to the street. A uniform relationship shall mean front setbacks that are within a range of ten (10) feet. The Planning Board may waive this requirement based on the physical characteristics of the site or the design concept for the development.

D. Open Space Design Standards (Effective November 14, 2015)

In addition to other standards of this Ordinance and of the Town's Subdivision Ordinance, the following design standards shall apply.

1. Land to be preserved as open space

The land within the residential development to be preserved as open space shall be designed in accordance with the following standards.

a. Contiguous land.

To the greatest extent possible, open space shall be conserved in large, contiguous blocks. Narrow strips of open space (for example, extended strips of open space of less than fifty (50) feet in width) shall not be included in the open space design unless they provide public access connectors (i.e. greenbelt trail) to nearby public open space (which includes lands and/or greenbelt trails), wildlife corridors or links to neighborhoods that would benefit from use of the open space to be preserved.

b. Connectivity.

Where public open space is located in close proximity to the residential development, open space shall be laid out to concentrate land to be preserved adjacent to or near existing public open space. Access for lots/units in the development shall be provided to land to be preserved as open space. Greenbelt trail connections to existing public open space and land to be preserved shall also be provided where appropriate.

c. Preservation priorities.

Consistent with the standards set forth above, the land within the residential development to be preserved as open space shall be determined using the following priorities, in the order that they appear. To the extent priorities that are higher on this list are met by the proposed open space provisions in a residential development, the landowner shall have satisfied the requirements of this subsection even if the proposed open space design does not preserve lower priorities.

i. Wetlands/environmentally sensitive areas/wildlife habitat. In a manner that preserves environmentally sensitive areas, such as wetlands, steep slopes (as included in the computation of net residential area), flood plains, and wildlife habitat rated by the Maine Department of Inland Fisheries and Wildlife as high value.

ii. Agriculture. In a manner that preserves active agricultural fields for agricultural use. The agricultural land to be preserved as open space must meet the requirements of "farmland" as that term is defined in the

Farm and Open Space Tax Law, 36 M.R.S.A. Sections 1101-1121, Farmland Tax Law, but does not need to be registered under this state program. The agricultural land to be preserved under this subsection shall be deemed to meet the requirements of “farmland” if it is part of a parcel or parcels that meet the farmland definition referenced above, even though the agricultural land to be preserved does not independently meet all the criteria in the definition. (Effective September 13, 2017)

- iii. Greenbelt and Recreation area. In a manner that preserves and promotes connectivity of the Cape Elizabeth greenbelt townwide.
- iv. Scenic character. In a manner that preserves visual resources identified in An Assessment of the Visual Resources of Cape Elizabeth, Maine (February 19, 1989), a copy of which is on file with the Town Clerk.

2. Permanent Open Space Preservation

The land in the residential development to be preserved as open space shall be permanently preserved and shall meet the following standards.

- a. Permanent legal protection. Deeds or any other documents necessary to permanently protect the land within the residential development to be preserved as open space shall be prepared and recorded. Documentation that reflects how the applicant intends to ensure legally that the land within the residential development to be preserved as open space will be protected shall be submitted to the Planning Board as part of the application review. In particular, the documentation shall specify the ownership structure of the open space. For example, land within the residential development to be preserved as open space (or an easement interest therein) may be dedicated or deeded to the Town of Cape Elizabeth, the land may be deeded to a residential development homeowners’ association, the land may be deeded to a third party conservation organization, or the land may be retained by the applicant. The documentation shall specify, at a minimum, restricted activities and vegetation preservation. Access to the open space must be made available to the homeowners of the residential development and is strongly encouraged to be made available to the public, and such access may be limited consistent with the open space priorities.
- b. Restricted activities. Activities on the open space shall be restricted to preserve the open space from future development. No principal residential, commercial or other buildings shall be constructed on the preserved open space. Structures related to the preservation priorities in Sec. 19-7-2 (D) (2) may be allowed. For example, open space preserved as a (i) wetlands/environmentally sensitive areas/wildlife habitat priority may include viewing platforms, nature observation shelters, or boardwalk and bridge structures; (ii) agriculture priority may include a barn or shed

structure; (iii) greenbelt and recreation area may include boardwalk and bridge structures; and (iv) scenic character areas may include an overlook.

Existing vegetation shall be preserved, but vegetation management related to the preservation priorities may be allowed. For example, open space preserved as a (i) wetlands/environmentally sensitive areas/wildlife habitat priority may include limited clearing and vegetation trimming to install and maintain greenbelt trails; (ii) agriculture priority may include tilling of fields and animal grazing; (iii) greenbelt and recreation area may include construction and maintenance of athletic fields; and (iv) scenic character areas may include vegetation removal and management to create and maintain public views.

- c. Maintenance. If the land in the residential development to be preserved as open space is not deeded to the Town of Cape Elizabeth, documentation shall be submitted identifying the party responsible for maintaining the open space and describing the methods to be employed to maintain the open space.

3. Vehicular Access, Street Layout, and Construction

In addition to the standards of the Town's Subdivision Ordinance, vehicular access within a cluster subdivision shall meet the following additional standards:

- a. All vehicular access to buildings and lots shall be from a street within the development and not from an existing public road.
- b. All streets, roads, access drives, and parking areas shall be designed to harmonize with the topographic and natural features of the site. The road network shall provide for vehicular and pedestrian safety, all-season emergency access, snow storage, delivery and collection services, and potential connections to abutting land.

4. Other Design Elements

The applicant shall address the following issues in the plans prepared under the terms of this section:

- a. The screening and buffering of above-ground utility structures, such as transformer boxes, meters, and pumping stations;
- b. The location of private outdoor space for each dwelling unit;

- c. Private storage space for each dwelling unit, if needed, in order to store such items as lawnmowers, recreational vehicles, lawn furniture, and the like;
- d. Owner and visitor parking;
- e. A landscape plan prepared by a landscape architect or other qualified design professional, which preserves the natural landscape and which adds new landscape materials where needed to buffer, or mitigate, the impacts of new development; and
- f. Pedestrian circulation within the development and, as appropriate, to abutting developments and pedestrian systems.

E. Multiplex Housing Standards (Effective November 14, 2015)

Multiplex housing in the RA, RB and RC Districts must comply with the following provisions.

1. Open Space

At least forty-five percent (45%) of the gross acreage shall remain as open space outside of the building footprint(s), parking areas and other developed areas (excluding open space improvements), and any areas assigned to individual dwelling units. At least one third of this required open space shall be land that is usable as determined by applying the criteria of the net residential area definition.

2. Building Size

The maximum building footprint shall not exceed 7,500 sq. ft. The maximum height shall be limited to thirty-five (35) feet.

3. Public Water and Sewer

The multiplex housing must be served by public water and public sewerage. Where the most reasonable public sewer connection will require public sewer construction of more than one-quarter (1/4) mile from the existing public sewer to the development property line, or where the development density is less than 20 multiplex units, the development may increase the base density by fifteen percent (15%), provided that the total density bonuses available under Sec. 19-7-2 (E) shall not exceed thirty percent (30%) when aggregated.

4. Site Design Standards

- a. Open Space. Open space shall be designed in accordance with Sec. 19-7-2(D), Open Space Design Standards.
- b. Building location. The building, parking areas and related development structures shall be located on the portion of the site most suited to development. The first impression of a building is from the side that faces the street. When the building is located within one-hundred feet (100') of a public right-of-way, the front of the building shall be oriented toward the public right-of-way. Vehicular and pedestrian connections to the public right-of-way shall be incorporated into the site design.
- c. Landscaping. Areas of significant existing vegetation that shall be preserved shall be shown on the site plan. The plan shall include a preservation plan for that landscaping during construction. Where suitable existing vegetation is not present or will not be preserved and where any part of the building is located within one hundred feet (100') of a public right-of-way, the area between the building and the public right-of-way shall be landscaped. The landscape plan shall create a transition from the public right-of-way to the building and serve to enhance the perspective of the building.

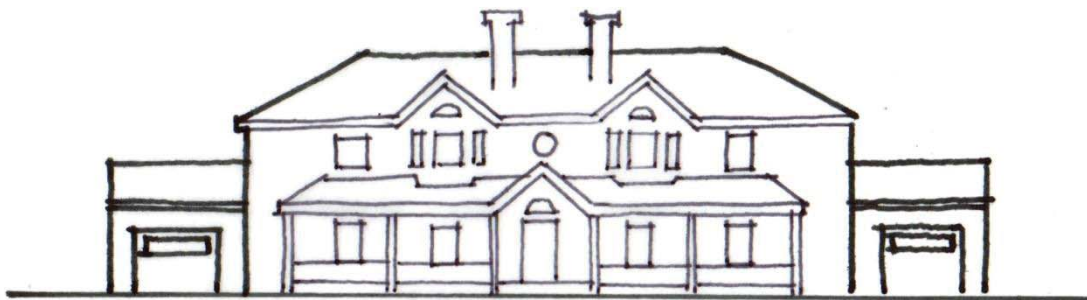
General site landscaping shall include transition areas from the building to parking areas and include a buffer between the developed portions of the site and abutting properties.

- d. Parking Areas. Parking shall be provided in accordance with Sec. 19-7-8, Off-Street Parking. Parking lots shall be landscaped to soften the perception of an expanse of hard surface. Landscaped islands may be required in parking lots exceeding 20 spaces.

5. Architectural Standards

The multiplex building(s) must be designed to be compatible with the character of Cape Elizabeth, which ranges from compact neighborhoods to undeveloped open space and from agricultural fields to limited commercial areas. Compatibility shall be determined using the following standards.

- a. Massing. The perception of a building is influenced by its size, but more importantly by how the overall size is distributed throughout the building. Determination of compatibility shall be based on the degree of articulation on building surfaces, the magnitude of unbroken faces of a structure, the impact of the building mass upon view sheds and the integration of mechanical equipment within the structure.



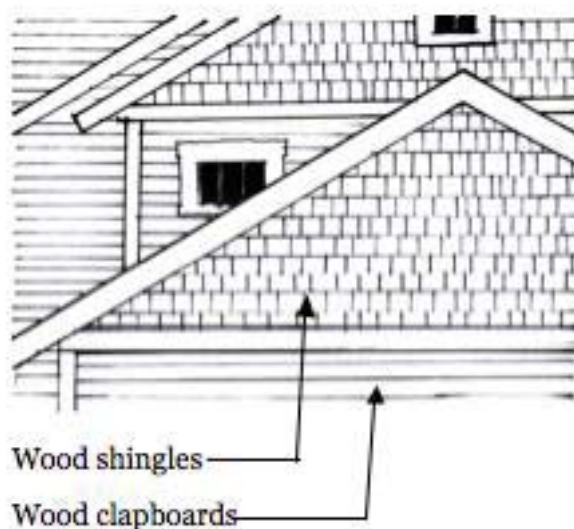
- b. Roof. The height of a building and the type of roof design significantly influence the scale of a building. Roofs shall generally be of a gable or other sloping roof design. Roofs shall have a minimum pitch of 7:12. Roof lines shall be integrated into the façade and structure of the building and use of any kind of a parapet to simulate a roof line shall be prohibited.

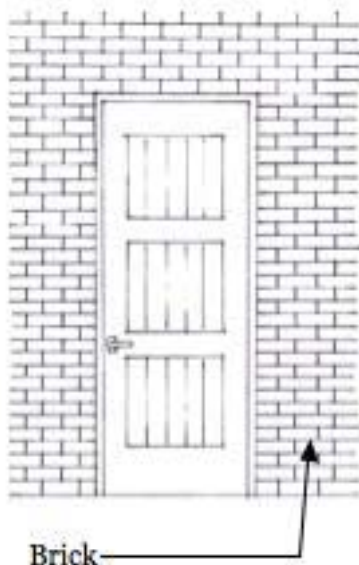


- c. Entrance and windows. The relationship between doors and windows to exterior wall space of a building creates a rhythm or pattern. Doors and windows shall be consistent with the style of the building. The building shall have a distinctive front entrance. The front entrance shall be prominently located and articulated on the façade of the building. Individual outside entrances may be permitted. Windows shall be generously incorporated into the design, both in number and size.



- d. Exterior Siding Materials. Color boards, which include a representation of the building color palette, and exterior material samples shall be provided by the applicant. Façade materials give a structure character. Exterior materials shall be compatible with the design of the structure. Exterior materials shall be of high quality and durable. The use of wood shingles, wood clapboards, brick and stone is permitted. The Board may approve high quality manufactured materials, for example concrete clapboards or siding, such as hardiplank, that mirrors the appearance of natural materials, however no other use of concrete block, sheet metal or aluminium siding is permitted.





6. Density Bonus for additional Public Benefit

In order to create an incentive for property owners to incorporate additional community goals into private development, density bonuses may be incorporated into multiplex housing development. When any combination of the density bonuses in paragraph b. below are included in a development, the dimensional standards in paragraph a. below shall apply to the development, notwithstanding the dimensional standards of the zoning district. In addition, the total density bonuses available under Sec. 19-7-2 (E) shall not exceed thirty percent (30%) when aggregated.

- a. Dimensional standards. When a multiplex development will include a density bonus, the following dimensional standards shall replace dimensional standards that otherwise would be applicable.

Maximum building footprint 10,000 sq. ft.

- b. Density Bonus. The total density bonus allowed under the provisions in Sec. 19-7-2 (E), shall not exceed thirty percent (30%) of the base density determined for each zoning district. The base density for subdivisions and multiplex housing in the RB District is determined in Sec. 19-7-2 (C)(1). Any combination of the following density bonuses may be proposed.
 - i. Agricultural land. When agricultural land is permanently preserved in compliance with Sec. 19-7-2 (D), Open Space Design Standards, a density bonus of one (1) unit per thirty-thousand (30,000) square feet of agricultural land preserved may be applied to the development. The agricultural land to be preserved as open space may be located on the development parcel or anywhere in the Town and must meet the requirements of “farmland” as that

term is defined in the Farm and Open Space Tax Law, 36 M.R.S.A. Sections 1101-1121, but does not need to be registered under this state program. The agricultural land to be deemed to meet the requirements of “farmland” if it is part of a parcel or parcels that meet the farmland definition referenced above, even though the agricultural land to be preserved does not independently meet all the criteria in the definition. (Effective September 13, 2017)

- ii. Open Space. When more than forty-five percent (45%) of the gross acreage of the development parcel shall remain as open space outside of the building footprint(s), parking areas and other developed areas (excluding open space improvements), and any areas assigned to individual dwelling units, a density bonus of one (1) unit per forty-thousand (40,000) square feet of preserved open space above forty-five percent (45%) may be applied to the development. The open space must be permanently preserved in compliance with Sec. 19-7-2 (d), Open Space Design Standards, be located on the development parcel and include reasonable public access.
- iii. Affordable Housing. When affordable housing is provided in excess of the minimum required in compliance with the Sec. 19-7-4, Mandatory Affordable Housing Provisions, the density bonus shall be subject to the dimensional standards in subsection 6, Public Benefit Density Bonuses. (Effective November 14, 2015)

SEC. 19-7-3 TRANSFER OF DEVELOPMENT RIGHTS

A. Applicability

The Planning Board may approve residential developments in the Residence A District that exceed the density standards of Sec. 19-6-1. E, Standards, due to the transfer of development rights, provided that the development conforms to all of the following criteria:

1. The development is consistent with the comprehensive plan;
2. The development conforms to the requirements set forth in Sec. 19-7-3.B, Standards;
3. The parcel proposed for development is not designated as a TDR sending zone on the Transfer of Development Rights map. (Effective November 14, 2015)
4. Development rights equal to the increase in density will be transferred from a lot or lots within the Transfer Zone through conservation easements on land meeting the requirements of Sec. 19-7-3. D, Easement Reservation, that have been approved by the Planning Board.
5. The proposed development will be a clustered development in accordance with Sec. 19-7-2, Open Space Zoning.

B. Standards

The Planning Board may approve residential developments utilizing transferred development rights that conform with the following requirements provided that the applicant has transferred the appropriate number of development rights to support the increased density from land located within a transfer zone in accordance with Sec. 19-7-3.D., Easement Reservation.

MINIMUM RECEIVING LOT AREA	5 acres
MAXIMUM DENSITY OF A RESIDENTIAL DEVELOPMENT UTILIZING TRANSFER OF DEVELOPMENT RIGHTS	
(1) Developments in the RA District connected to the public sewage system	1 lot/unit per 20,000 sq. ft. of net residential area
(2) Developments in the RA District served by on-site sewage disposal when the development rights are transferred from an abutting parcel	1 lot/unit per 40,000 sq. ft. of net residential area
(3) Developments in the RA District served by on-site sewage disposal when the development rights are transferred from a parcel in the same ownership as the development parcel	1 lot/unit per 40,000 sq. ft. of net residential area
(4) Developments in the RA District served by on-site sewage disposal when the development rights are transferred from a parcel located within two thousand feet of the perimeter of the development parcel	1 lot/unit per 50,000 sq. ft. of net residential area
(5) Developments in the RA District served by on-site sewage disposal when the development rights are transferred from a parcel located more than two thousand feet from the perimeter of the development parcel	1 lot/unit per 60,000 sq. ft. of net residential area

(Effective November 14, 2015)

C. TDR Sending Zone

Development rights may be transferred from any parcel designated as a TDR sending zone on the official Transfer of Development Rights map. The Transfer of Development Rights (TDR) Map shall be part of the ordinance. The Map shall designate parcels or tracts of land within the RA District that are appropriate for conservation by reason of one or more of the following attributes:

1. The land is used for agricultural purposes.
 2. The land is identified as having greenbelt and/or recreation area value in the most recent town Greenbelt Plan.
 3. The land is identified as having significant wildlife habitat value.
 4. The land has significant scenic, cultural and/or unique properties identified by the Town Council using a public process.
- (Effective November 14, 2015)

D. Easement Reservation

The Planning Board may approve a development that exceeds the base density only if the applicant provides a conservation easement(s) on land located within a TDR sending zone as depicted on the Transfer of Development Rights (TDR) map. For each unit in the proposed development in excess of that allowed by the base RA density, a conservation easement shall be provided on at least sixty-four thousand (64,000) square feet of net residential area within a designated TDR sending zone, except as provided in subsection F. Agricultural Transfer of Development Bonus. The conservation easement(s) shall be perpetual subject to the terms of Sec. 19-7-3.E, Easement Provisions. (Effective November 14, 2015)

E. Easement Provisions

The form and conditions of each easement shall be determined by the Planning Board, and approved by the Town Council. The easement shall be recorded in the Cumberland County Registry of Deeds within ninety (90) days of the vote of approval of the development by the Planning Board and a copy provided to the Town Planner.

F. Agricultural Transfer of Development Bonus

Land that has been designated a TDR sending area because it is used for agricultural purposes may transfer up to 33% more development rights than the density allowed on the agricultural land. For each 1.34 development right transferred, a conservation easement shall be provided on at least sixty-four thousand (64,000) square feet of net residential area within a designated TDR sending zone. The conservation easement(s) shall be perpetual subject to the terms of Sec. 19-7-3.E, Easement Provisions. (Effective November 14, 2015)

SEC. 19-7-4. MANDATORY AFFORDABLE HOUSING PROVISIONS

A. Purpose

The Town finds that an adequate supply of affordable housing for persons of low and moderate income is desirable for the public health, safety and welfare in that it promotes a community rich in economic, social and cultural diversity. It is therefore a public purpose and an objective of the Comprehensive Plan to make available and integrate in the Town an adequate supply of housing for persons of all economic segments of the community.

B. Applicability

The mandatory affordable housing provisions shall apply to all major subdivisions as defined in Sec. 16-1-4, located in the Residence A, Residence B, and Residence C Districts.

All major subdivisions, as defined in Sec. 16-1-4 of the Subdivision Ordinance, shall set aside at least ten percent (10%) of the lots/units in the project as affordable housing for moderate income buyers or five percent (5%) of the lots/units in the project as affordable housing for low income buyers. For projects where a number of lots/units in excess of the mandatory required lots/units are set aside as affordable housing, the applicant shall be eligible for a density bonus of one (1) additional lot/unit for each moderate income affordable lot/unit and two (2) additional lots/units for each low income affordable lot/unit in excess of the mandatory requirement. Non-bonus lots shall meet all requirements of the subdivision regulations. The following minimum lot sizes may be approved for the additional bonus lots/units which may be affordable or market rate:

Zoning District	Minimum Lot Size
Residence A	30,000 sq. ft./lot
Residence B	20,000 sq. ft./lot connected to public sewerage 50,000 sq. ft./lot with on-site sewage disposal
Residence C	8,000 sq. ft./lot Must be served by public sewer

The reduced minimum lot size shall apply only to the creation of bonus lots in new subdivisions.

C. Standards

1. Affordable housing lots/units shall be sold to qualified low and moderate income buyers as defined in Sec. 19-1-3, Definitions, and any additional criteria adopted by the Town Council. Preference shall be given first to Town residents and then to employees of the Town. A determination of preference shall only

be needed where the number of qualified and interested buyers exceeds the number of available units. Buyers shall indicate interest in purchase by contacting the seller. When the number of units available exceeds the number of qualified and interested buyers, the owner shall advertise in the Cape Courier and in a newspaper of general circulation that affordable housing is available for sale. All affordable housing units shall be owner-occupied. (Effective December 10, 2003)

2. Affordable housing lots/units shall be geographically dispersed throughout the development where feasible.
3. The dwellings on affordable housing lots/units shall be compatible with the design of the dwellings on the remainder of the development in terms of appearance, materials, finished quality and level of finish, including finished second floors, and providing a reasonably comparable number of finished bedrooms and baths to the market rate dwellings in the development. Any dwelling sited on a lot shall be located to allow the construction of a garage on the lot without requiring a setback variance.
4. The applicant shall submit for Town Council review and acceptance an agreement which preserves the long-term affordability of the lots/units to low and moderate income households. The agreement shall be either a second mortgage, deed restriction or a combination of the two. The applicant may use an agreement provided by the Town or may present a comparable instrument for review. Agreements must include but not be limited to:
 - a. a proven method to preserve long-term (99 years) affordability to low and moderate income buyers;
 - b. a formula for accruing limited equity to the buyer which includes any physical improvements to the property;
 - c. the option to return housing to market rates only if there are no qualified buyers within one hundred eighty (180) days of the property being on the market; (Effective December 10, 2003)
 - d. an option to the Town to purchase the affordable lots/units if no qualified buyers apply at the “affordable” price;
 - e. the enforceability of the mechanism;
 - f. the amount of administrative costs to the Town; and
 - g. the supervision of the agreement.
5. The mandatory affordable housing provisions shall run with the land.

6. Affordable housing lots/units shall be constructed and completed at least concurrently with the remainder of the project. In developments where the applicant or its agents, or its successors or assigns shall construct at least fifty percent (50%) of the units, the approved affordable housing units shall be constructed in proportion to the market rate units. Proportionality shall be determined by dividing the total number of units in the development by the total number of affordable units. No building permit shall be issued for a market rate unit in excess of the proportion of affordable housing units for which a certificate of occupancy has been issued.

For example, in a development of 50 units (total) with 5 affordable units, the proportional number of total units to affordable units is 10 total units to 1 affordable unit. If one building permit is issued for an affordable unit, then up to 9 building permits for market rate units can be issued. No additional market rate unit building permit can be issued until the first affordable unit is built and a certificate of occupancy for that unit is issued. An additional 9 market rate unit building permits can then be issued before the second affordable unit has been issued a certificate of occupancy.

When calculating proportionality, any fractional sum shall be rounded down to the nearest whole building unit. For example, in a development of 50 units with 3 affordable units, the proportional number of units to affordable units would be 16 units to 1 affordable unit. (Effective December 10, 2003)

D. Modifications and Fees

1. For projects with less than ten (10) lots/units, the applicant may propose to pay a fee in lieu of creating affordable housing. In-lieu fees shall be equal to the difference between the average fair market value of the housing developed, as determined by the Planning Board based upon the submission by the applicant of an appraisal or equivalent information, and the maximum cost of moderate income affordable housing as defined in Sec. 19-1-3, Definitions. The fee shall be proportional to the number of lots/units in the development.
2. Where the Planning Board finds that undue hardship or environmental conditions do not make the inclusion of affordable housing feasible, the Planning Board may modify the affordable housing provisions in favor of a proposed alternative upon a showing that it will not have the effect of nullifying the intent and objectives of the Comprehensive Plan or the provisions of this section; provided, however, that in granting a modification the Planning Board may impose such conditions as it deems necessary to secure the foregoing objectives, including but not limited to the imposition of in-lieu fees as calculated in Sec. 19-7-4.D.1, Modifications and Fees, and the creation of affordable housing elsewhere in the Town.

The reduced lot sizes for affordable housing are only applicable in a new subdivision. This provision does not allow otherwise unbuildable lots to be developed to meet Sec. 19-7-4, Mandatory Affordable Housing Provisions.

3. In-lieu fees shall be deposited in a municipal account dedicated to providing affordable housing.

For projects in which the developer will only be selling un-built lots, the in-lieu of fee shall be based upon the difference between the proposed selling price of the lots and forty percent (40%) of the cost of a housing unit affordable for a low income buyer as defined in Sec. 19-1-3, Definitions.

SEC. 19-7-5. CREATION OF ACCESSORY DWELLING UNIT

A. Purpose

The purpose of this provision shall be to permit the creation of a single, subordinate dwelling unit within and incidental to an existing single family dwelling. The creation of a subordinate accessory dwelling unit within a new single family dwelling shall also be permitted. An accessory dwelling unit is intended to be a separate suite of rooms within a home where the unit is occupied by one or two people who have a close, personal relationship with the residents of the main dwelling. Accessory dwelling units shall only be created where the single family character of the principal building is maintained.

B. Requirements

The following requirements shall be in addition to other requirements of the Zoning Ordinance. No accessory dwelling unit is permitted where a variance is also required. The Zoning Board of Appeals may permit the creation of an accessory dwelling unit, subject to the applicant's compliance with the provisions of Section 19-5-5, Conditional Use Permits, and the provisions below:

1. A lot must have a minimum of twelve thousand (12,000) square feet to be eligible for the addition of an accessory dwelling unit to an existing single family home. The applicant shall have the burden to establish the lot area by a survey signed and sealed by a registered Maine surveyor. The applicant shall also demonstrate compliance with the Town Sewage Ordinance.
2. An accessory dwelling unit may only be created in a single family, detached dwelling which has a total existing floor area of the structure, excluding garages, of one thousand five hundred (1,500) square feet or more prior to the addition of the accessory dwelling unit.
3. The accessory dwelling unit shall occupy no more than twenty-five percent (25%) of the resulting floor area of the structure, as defined herein, excluding garages. In no event, however, shall the floor area of the accessory unit be less

than a minimum of three hundred (300) square feet or exceed a maximum of six hundred (600) square feet. An interior connecting doorway between the single family dwelling and the accessory dwelling unit shall be provided. The interior connecting doorway shall not permit the informal extension or expansion of the allowable dimensions of the accessory dwelling unit.

4. Any addition to the floor area of the single family detached dwelling to create the accessory dwelling unit shall not exceed fifteen percent (15%) of the floor area of the structure of the single family dwelling prior to conversion.
5. One parking space shall be provided for the accessory dwelling unit in addition to the parking for the single family detached dwelling. The parking space must be located a minimum of five (5) feet from the side and rear property lines. The parking areas for the lot shall be arranged and landscaped to be compatible with adjacent structures.
6. Any exterior alteration shall preserve the single family appearance, architectural style, and character of the original structure and shall be in harmony with the design of the original structure and the general appearance of the neighborhood. Any exterior alteration shall preserve the formal, front entrance of the original structure, in order to maintain the single family appearance and architectural style of the structure; although a secondary entrance which serves the accessory dwelling unit may be permitted. Any secondary entrance shall not detract from the main entrance and shall not be located on the face of the building where the main entrance is located.
7. No accessory dwelling unit shall be approved for any structure that includes a home occupation or home business, nor shall a home occupation or home business be permitted in a structure that includes an accessory dwelling unit.
8. The single family dwelling and the accessory dwelling unit installed therein shall be held in the same ownership. No rights shall accrue to the recipient of the conditional use permit under this section unless the recipient records an attested copy of the conditional use permit in the Cumberland County Registry of Deeds within ninety (90) days of final approval of the conditional use permit. A conditional use permit shall become null and void if not recorded within ninety (90) days of final approval.

SEC. 19-7-6. ELDERCARE FACILITY STANDARDS

In addition to the other requirements of this Ordinance, any project that meets the definition of an eldercare facility as contained in Sec. 19-1-3, Definitions, shall comply with the following additional requirements:

A. Required Open Spaces

At least fifty percent (50%) of the site's gross acreage shall be devoted to unpaved, non-vehicular open space. A majority of the required open space shall consist of land that is usable for passive recreation purposes.

B. Buffering

Adequate landscaping and screening shall be provided to minimize or eliminate the visual, noise, lighting and other impacts of a development on surrounding properties. Landscaping may include such types as tree plantings, hedges, fencing, walling and combinations thereof. Existing significant vegetation shall be preserved whenever possible. A landscaping plan prepared by a landscape architect or other qualified design professional shall be submitted with the project's site plan. Adequate screening from adjacent properties shall be required along the boundaries of the projected site or in other appropriate locations. Screening locations and details shall be included as part of the project's site plan.

C. Elderly Household Occupancy Guarantee

Any facility falling under the definition of eldercare facility shall be restricted to occupancy by elderly households. This requirement shall be an express condition of approval of an application for an eldercare facility and shall be included in every resident's written agreement by which residents occupy the units in the facility.

D. Community Impact Statement

All applications for an eldercare facility shall include an analysis identifying the impacts that the proposed development is expected to have on community facilities and services. This shall include an analysis of the increased service demands that will be placed on each municipal department, the ability of each department to service the increased demand, and any actions necessary to address deficiencies in services. The statement shall demonstrate that the demands upon facilities and services created by a proposed project will be adequately met or that the applicant will take actions to assure that the needs will be met. The community impact statement shall be submitted with the initial application material submission.

E. Market and Feasibility Study

The Planning Board may require the applicant to submit an independent market and project feasibility study to demonstrate the economic viability of the proposed development, the information from which the Planning Board may use to impose additional restrictions or conditions on a proposed development. Unless extended by mutual agreement, the market and project feasibility study shall be submitted within one (1) month of the date that the Planning Board first requests its submission.

F. Conversion of Eldercare Facilities

Any eldercare facility that is converted to any other use shall meet the density standards of the Ordinances in place at the time of conversion for the proposed new use and shall also be subject to site plan review and approval by the Planning Board.

G. Reserved Units

The Planning Board may require that a congregate housing or nursing home facility give a priority to Town residents or immediate family members thereof on any waiting list for entrance to the proposed facility.

H. Elevator

Where an elevator is required by the Building Code, the elevator shall be of sufficient size to accommodate the Town Emergency Rescue stretcher, as determined by the Fire Chief. (Effective August 11, 1999)

SEC. 19-7-7. MANUFACTURED HOUSING PARKS

A. Purpose

The purpose of this section is to accommodate additional housing types in appropriate areas of the Town, while protecting the value and integrity of established residential neighborhoods and ensuring a balanced and orderly pattern of residential development.

B. Compliance with Laws, Ordinances or Regulations

Except as stipulated below, manufactured housing parks shall meet all the requirements for a residential subdivision and shall conform to all applicable local and State laws, ordinances or regulations. Where the provisions of this section conflict with specific provisions of the Subdivision Ordinance or other sections of the Zoning Ordinance, the provisions of this section shall prevail.

C. Lot Area and Lot Width Requirements

1. Lots served by individual subsurface wastewater disposal systems:

Minimum Lot Area: 20,000 square feet
Minimum Lot Width: 100 feet

2. Lots served by a central subsurface wastewater disposal system approved by the Maine Department of Human Services:

Minimum Lot Area: 12,000 square feet
Minimum Lot Width: 75 feet

The density for lots served by central subsurface wastewater disposal systems shall be determined in accordance with the Net Residential Acreage formula contained in this Ordinance, except that the overall density of such a manufactured housing park shall be no more than one home for every twenty thousand (20,000) square feet.

3. Lots served by public sewer:

Minimum Lot Area: 6,500 square feet
Minimum Lot Width: 60 feet

4. All individual or central subsurface wastewater disposal systems serving manufactured housing park lots shall meet the requirements of the State Plumbing Code and the ordinances and regulations of the Town.
5. Lots located within any area covered by Sec. 19-6-11, Shoreland Performance Overlay District, shall meet the lot area, lot width and shore frontage requirements of the shoreland zoning provisions.
6. The overall area of the manufactured housing park shall equal at least the sum of:
 - a. The combined area of all manufactured housing lots including the density requirements for lots served by a central subsurface wastewater disposal system;
 - b. The area required for street rights-of-way;
 - c. The area required for buffer strips; and
 - d. The area within the shoreland setback.

D. Unit Setback Requirements

1. The following lot setbacks shall apply to all manufactured homes and accessory buildings:
 - a. Front Setback: 20 feet
 - b. Side Setback: 20 feet
 - c. Rear Setback: 10 feet
2. All manufactured housing units and any accessory structures within such development shall be set back from any existing arterial or feeder street as those terms are defined in the Town's Ordinances and regulations, in accordance with the setback provisions for the underlying zone.

E. Open Space dedication

1. For lots served by public sewer and public water, the Planning Board may require that a portion of the lot be reserved as open space as provided for in Sec. 16-3-1 (q), General Standards of Subdivision Design.

F. Buffering

1. A fifty (50) foot wide buffer strip shall be provided along all property boundaries that:
 - a. Abut developed residential land that has a gross density (dwelling units per acre) of less than half of that proposed in the manufactured housing park; or
 - b. Abut undeveloped residential land that is zoned at a net residential density of less than half of that proposed in the manufactured housing park.

Further, no structures, streets, or utilities shall be placed in the buffer strip, except that utilities may cross a buffer strip to provide services to the park.

2. Within the first twenty-five (25) feet of the buffer, as measured from the exterior boundary of the park, landscaping or visual screening shall be provided to minimize or eliminate the visual, noise, lighting and other impacts of the development on surrounding properties. Landscaping may include such types as tree plantings, hedges, fencing, walling and combinations thereof. Existing significant vegetation shall be preserved whenever possible. A landscaping plan shall be submitted with the project's subdivision plan, which shall include screening locations and details.
3. The setbacks of the individual manufactured housing park lots may be incorporated into the buffer strip to achieve the required fifty (50) feet of buffering.

G. Street Standards

1. Streets that the applicant proposes to be dedicated as public streets and to be offered to the Town for acceptance shall meet the minimum design standards contained in Article III of the Subdivision Ordinance.
2. Streets that the applicant proposes to remain private streets shall be designed by a Professional Engineer, registered in the State of Maine, and shall be built in accordance with accepted engineering standards and the requirements described below. Where the street standards duly promulgated by the state Manufactured Housing Board conflict with the standards described below, the Manufactured Housing Board's standards shall apply.
3. The internal street system of a manufactured housing park shall intersect with a public street, and such intersections shall meet all of the intersection requirements of the Town.
4. Single entrance dead-end streets shall meet the requirements of Sec. 16-3-2(a)(9) of the subdivision Ordinance.
5. Manufactured housing park lots shall have vehicular access only to the interior street created for the manufactured housing park.
6. Rights-of-Way and Pavement Widths:
 - a. Privately owned streets within a manufactured housing park shall have a minimum right-of-way of twenty-three (23) feet. The minimum paved surface width of a private street shall be twenty (20) feet for a two-way private street and fourteen (14) feet for a one-way private street. On-street parking shall be prohibited along 14-foot one-way streets and 20-foot two-way streets.
 - b. Parking lanes shall be a minimum of eight (8) feet in width, if provided.
 - c. Cul-de sac turnarounds shall have a minimum radius of sixty (60) feet at the outer edge of the pavement, exclusive of any parking areas.
7. Private streets within a manufactured housing park shall be maintained and kept clear on a year-round basis by the park's owner or management staff.

H. Parking Requirements

1. There shall be provided and maintained at least two (2) off-street parking spaces for each manufactured housing park lot. Each parking space shall have minimum dimensions of at least nine (9) feet by eighteen and a half (18 ½) feet.

2. In addition to occupant parking, off-street guest and service parking shall be provided and maintained within the boundaries of a manufactured housing park at a ratio of one (1) space for each four (4) manufactured housing park lots.

I. Sidewalks/Walkways

Sidewalks may be required by the Planning Board, if it deems them necessary for pedestrian safety purposes.

J. Storage

At least five hundred (500) cubic feet of enclosed tenant storage facilities shall be conveniently provided near or on each manufactured housing park lot for the storage of materials and equipment.

K. Trash Containers

Central trash storage containers shall be provided to adequately store all trash and waste produced by a manufactured housing park.

L. Screening

All trash storage containers, bottled gas tanks, storage sheds, or other similar items or accessory structures shall be located and suitably screened by planting or fencing so as not to be clearly visible from the street or abutting properties.

M. Groundwater

1. For mobile home parks not served by a public sewer or public water system, the application shall include an assessment of the impacts of the manufactured housing park development on groundwater quality. The person developing a manufactured housing park has the burden of proving that the development will not pollute a public water supply or aquifer. The assessment shall be prepared by a Certified Geologist or Registered Professional Engineer and shall demonstrate that the proposed manufactured housing park shall include at least the following information:
 - a. A map showing the basic soil types
 - b. The depth to the water table at representative points throughout the manufactured housing park
 - c. Drainage conditions throughout the manufactured housing park
 - d. Data on the existing groundwater quality, either from test wells in the manufactured housing park or from existing wells on neighboring properties

- e. An analysis and evaluation of the effect of the manufactured housing park on groundwater resources. The evaluation shall, at a minimum, include a projection of post-development nitrate nitrogen concentrations at any wells within the manufactured housing park, at the park's boundaries and at a distance of one thousand (1,000) feet from potential contamination sources, whichever is a shorter distance
 - f. A map showing the location of any subsurface wastewater disposal systems and drinking water wells within the manufactured housing park and within two hundred (200) feet of the manufactured housing park boundaries
2. The standards for the groundwater assessment studies, described in Sec. 19-7-7.M.1, Groundwater, are as follows:
 - a. No manufactured housing park shall increase any contaminant concentration in the groundwater to more than one half of the Primary Drinking Water Standards. No manufactured housing park shall increase any contaminant concentration in the groundwater to more than the Secondary Drinking Water Standards.
 - b. If groundwater contains contaminants in excess of the primary or secondary standards, and the manufactured housing park is to be served by on-site groundwater supplies, the applicant shall demonstrate how water quality will be improved or treated.

N. Manufactured Housing Park Lots, Ownership and Use

1. The manufactured housing park lots shall be shown on the subdivision plan for a proposed manufactured housing park.
2. The subdivision plan for a manufactured housing park shall contain a note indicating that Town services shall not be provided on private streets within the manufactured housing park. Individual leases for lots shall disclose that Town services shall not be provided on private streets within the manufactured housing park.
3. The land within a manufactured housing park shall remain in a unified ownership. No individual interests in the manufactured housing park lots may be created or conveyed, except that individual manufactured housing pads may be leased to the owners or occupants of the manufactured housing placed thereon.
4. Manufactured housing park lots are allowed only in manufactured housing parks approved by the Planning Board in compliance with this section, and shall not be considered lots for any other purpose under this Zoning Ordinance.

5. No dwelling unit other than a manufactured housing unit shall be located within a manufactured housing park.
6. All rules and regulations pertaining to the operation of a manufactured housing park within Cape Elizabeth shall be reviewed and approved by the Town Attorney and Town Planner prior to final subdivision approval, and shall thereafter be made available by the park's management staff to the Planning Board and Town Planner on an annual basis.

SEC. 19-7-8. OFF-STREET PARKING (Effective May 12, 2002)

A. Applicability

Off-street parking shall be provided for all new construction, expansions, and changes of use in accordance with the requirements and standards found in this section.

B. Minimum Requirements for Off-Street Parking

Off-street parking shall be considered an accessory use when required or provided to serve any legal use located in any zone except as set forth in the following sections. An off-street parking space shall be a minimum of nine (9) feet wide by eighteen (18) feet long may be open or covered. The Planning Board may allow up to twenty percent (20%) of the parking requirement to be met with "compact car" spaces that are a minimum of eight (8) feet wide by sixteen (16) feet long provided that such spaces shall be clearly marked as "compact car parking". Each parking space must be sited to allow access and exit without obstruction. Handicapped parking shall be provided in compliance with the Americans with Disabilities Act and applicable State requirements. In order to determine compliance with this section, the owner or applicant shall submit a plan showing the physical layout of all required off-street parking areas. Any change in the evidence or conditions upon which the plan is approved shall nullify such approval.


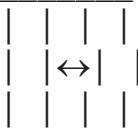
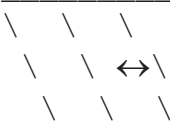
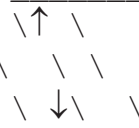
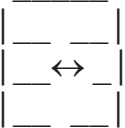
1. Parking shall be provided on the lot occupied by the use for which the parking is required, or on an adjacent lot owned or controlled by such use. In addition, uses located within the Town Center, BA or BB District may provide all or part of the required off-street parking through any of the following:
 - a. Private off-street parking located on another lot that is located within one mile of the subject lot and that is controlled by long-term written lease or ownership by the applicant.
 - b. Off-street parking shared with other uses (consistent with paragraph 2 below) located within one mile of the subject lot, provided that the Planning Board finds that there is adequate parking capacity to meet the parking requirements of all uses sharing the parking due to variation in the time of

parking demand and that the shared parking is available to the applicant through a written lease or other enforceable agreement.

Where parking is proposed elsewhere on an existing parking lot which has received Site Plan approval, the Planning Board shall approve or deny the off site parking after considering the adequacy of the parking and traffic impacts. Where parking is proposed elsewhere on an existing parking lot which has not received Site Plan approval, the Planning Board shall approve or deny the off site parking after reviewing the lot for compliance with the following Site Plan Standards in Sec. 19-9-5 (B) Traffic Access and Parking, (M) Exterior Lighting, and (N) Landscaping and Buffering.

2. Where multiple use of a lot occurs or where the use involves more than one activity (i.e. an ice cream shop that includes a gift shop), off-street parking shall be provided for each use in accordance with this section. Where the applicant can demonstrate and document non-conflicting periods of use, shared use of parking spaces may be permitted by the Planning Board.
3. Travel and queuing aisles associated with off-street parking, drive-in facilities and motor vehicle fuel pumps shall be provided and shall not interfere with the use of or be part of the required off-street parking.

Parking stalls and aisle layout shall conform to the following standards.

Parking Angle	Stall Width	Skew Width	Stall Depth	Aisle Width
				
90°	9'-0"		18'-0"	24'-0" two way
60°	8'-6"	10'-6"	18'-0"	16'-0" one way only
45°	8'-6"	12'-9"	17'-6"	12'-0" one way only
30°	8'-6"	17'-0"	17'-0"	12'-0" one way only

4. The following minimum number of spaces, rounded up to the nearest whole number, shall be provided and maintained for each use on a lot, including each use within all buildings. The Planning Board may reduce by up to thirty percent (30%) the required parking for the reuse of a building existing as of June 4, 1997. In granting such a reduction, the Planning Board must find that:
 - a. the reduction will not create or aggravate parking problems in the neighborhood, and
 - b. the required number of spaces cannot be reasonably accommodated on the lot.

The maximum number of employees scheduled during peak demand/shift shall be used in calculating the number of required parking spaces when employee is referenced in the list below:

The floor area of the structure as defined in Sec. 19-1-3 shall be used in calculating the number of required parking spaces, unless otherwise noted.

a. Residential

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|---|--|
| 1. Single Family Dwellings | 2 spaces per dwelling unit including manufactured housing |
| 2. Two-Family Dwellings | 2 spaces per dwelling unit |
| 3. Multiplex housing or multifamily dwellings | 1.5 spaces per dwelling unit with one bedroom, 1.75 spaces for unit with two bedrooms, and 2 spaces per unit with three or more bedrooms |
| 4. Home Businesses | 2 spaces in addition to required parking for residence (this requirement may be reduced by the Zoning Board of Appeals) |
| 5. Eldercare Facilities | 1.25 spaces per unit or 1 space per 4 beds plus 1 space per employee |

b. Institutional

- | | |
|---|---|
| 1. Municipal Uses | 1.25 spaces per employee plus 1 space per 150 sq. ft. of public assembly and meeting area |
| 2. Places of Public Assembly, such as:
theaters, cinemas, auditorium,
stadiums, sports arenas, churches
and synagogues, gymnasiums | 1 space per 4 seats plus 1 space per 2 employees |
| 3. Schools: | |
| Grades K-8 | 1 space per classroom plus 1 space for each employee plus parking in accordance with the places of public assembly for the largest assembly space |

Secondary	8 spaces per classroom plus parking in accordance with the places of public assembly for the largest assembly space
Post Secondary	1 space for each 2 students plus 1 space for each employee plus parking in accordance with the places of public assembly for the largest assembly space
Nursery Schools and Day Care Facilities	1 space per employee plus a safe off-street area for vehicle pickup and drop-off of students/children

Schools not listed above: 1 space per each 2 students at capacity plus 1 space for each employee plus parking in accordance with the places of public assembly for the largest assembly space.

c. Commercial

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| 1. Retail sales | 3 spaces per use or 3 spaces per 1,000 sq. ft. (or 1 space per 333 sq. ft. or portions thereof) plus 1 space per employee, whichever is greater |
| 2. Gas and/or Service
Station, Auto Repair Garage | .25 space per fuel pump plus 1 space per employee plus 4 spaces per service bay |

(For gas stations involving other uses [e.g., gas pumps with convenience stores], the minimum number of required parking spaces shall be the total of the requirements for each use, plus the standards listed above).

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| 3. Banks | 4 spaces per use or 3 spaces per 1,000 sq. ft. (or 1 space per 333 sq. ft. or portions thereof), whichever is greater) |
| 4. Personal Services and Business
Services | 3 spaces per use or 4 spaces per 1,000 sq. ft. (or 1 space per 250 sq. ft. or portions thereof) whichever is greater) |

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|--|--|
| 5. Business and Professional Offices (non-medical) | 3 spaces per use or 4 spaces per 1,000 sq. ft. (or 1 space per 250 sq. ft. or portions thereof), whichever is greater) |
| 6. Professional Office (medical) | 5 spaces per 1,000 sq. ft. (or 1 space per 200 sq. ft. or portions thereof) |
| 7. Restaurants/Eating Places | 1 space per patrons at capacity plus 1 space per employee |

(Measurement of standing and seating capacity shall be based upon the latest adopted edition of the BOCA National Building Code and NFPA 101, whichever is more stringent.)

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| 8. Motels, Hotels, Inns | 1 space per guest room plus 1 space per employee plus 4 spaces per 1,000 sq. ft. (or 1 space per 250 sq. ft. or portions thereof) of public assembly area |
| 9. Bed and Breakfasts and Homestays
(Effective March 9, 2009) | 2 spaces plus 1 space per guest room |
| 10. Veterinary Clinics | 4 spaces/doctor plus 1 space/other employee |
| 11. Farm and Fish Markets | 3 spaces per use or 3 spaces per 1,000 sq. ft. (or 1 space per 333 sq. ft. or portions thereof).
(Effective June 10, 2010) |
| 12. Short Term Rental | 1 space per 2 tenants, with a minimum of 2 spaces
(Effective December 14, 2012) |
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- | | |
|-----------------|--|
| d. Industrial | 1 space per employee |
| e. Golf Courses | 4 spaces per hole plus parking for any assembly, restaurant, or retail space in accordance with the appropriate requirements |

f. Other Uses

As determined by the Planning Board based upon the ITE Parking Generation Manual or data of actual parking demand of similar uses

C. Off-Street Parking Design Standards

The following design standards shall apply to all new and expanded off-street parking areas:

1. Parking areas for uses other than single and two-family dwellings shall be designed so that vehicles will not back out into a street.
2. Parking areas shall not inhibit emergency vehicle access to any building or structure.
3. Parking areas shall be separated from the front of all buildings by a landscaped area at least five (5) feet wide where parking is allowed in the yard area.
4. Wheel stops/curbs shall be placed where needed to prevent encroachment into walkways, landscaped areas, circulation aisles, streets and structures.
5. Parking spaces and travel aisles shall be clearly delineated in parking lots.
6. All parking areas shall be designed to adequately control drainage. In furtherance of this standard, drainage calculations used shall reflect a paved condition and all parking areas shall be constructed with base material which can withstand normally expected vehicle loading and winter maintenance.
7. If parking spaces are provided for self-parking by employees or visitors or both, accessible spaces meeting ADA requirements shall be provided in each parking area in conformance with the following:

Total Parking in Lot	Required Minimum Number of Accessible Spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4

101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2 percent of total
1001 and over	20 plus 1 for each 100 over 1000

8. Parking facilities within the Town Center District shall comply with the standards of Sec. 19-6-4.D.3.g., Landscaping and Site Development.

SEC. 19-7-9. PRIVATE ACCESS PROVISIONS

A. Existing Private Road Standards

A private road that existed as of June 4, 1997, and is shown on the Town Street Map may be used to provide access to and street frontage for a residential lot upon certification by the Code Enforcement Officer that:

1. based upon the recommendation of the Fire Chief, that the road provides adequate all-season emergency access for the existing and proposed use, and
2. legally binding arrangements exist to provide for the long term maintenance of the road.

If the Code Enforcement Officer determines that the existing private road does not provide adequate all-season emergency access, the applicant may submit a report to the Code Enforcement Officer prepared by a registered professional engineer setting forth improvements that are proposed to be made to the road to improve emergency access. The Code Enforcement Officer shall review the report with the advice of the Fire chief and Town Engineer and determine if adequate emergency access will be provided if the proposed improvements are made. If the Code Enforcement Officer determines that the improvements will provide adequate access, the applicant shall be responsible for making the proposed improvements and providing the Code Enforcement Officer with a written certification from the professional engineer verifying that the improvements were constructed as designed. No building permit shall be issued until the road improvements are completed, the engineer's certification is provided to the Code Enforcement Officer, and legally binding arrangements for long-term maintenance are in place.

B. New Private Road Standards

A private road may be created to provide access to and street frontage for one (1) or more residential lots provided that:

1. the design and construction of the road has been approved by the Planning Board using the procedures for the review of a subdivision application as being in compliance with the standards for a local road as set forth in Chapter 16, Subdivision Regulations, except that the Planning Board may waive the requirement for sidewalks and permit a gravel travel surface instead of asphalt paving, and
2. a legally binding agreement approved by the Planning Board exists that provides for the long-term maintenance of the road.

C. Private Accessways

The Space and Bulk Standards of Article VI, District Regulations, establish minimum street frontage requirements for lots to be developable. Recognizing that the natural character of the landscape and prior development patterns make compliance with the minimum street frontage requirement difficult or impossible in some situations, this section allows the Planning Board to approve the development of an individual lot lacking the required street frontage if adequate access is provided to the lot, the development is carried out in a manner that minimizes the impact on adjacent properties, and is consistent with sound neighborhood development. The Planning Board may approve the creation and/or development of one (1) lot lacking the required minimum street frontage for the district in which it is located if the Planning Board finds that it conforms with the standards set forth in Sec. 19-7-9.D.4., Private Accessway Standards. The Planning Board may approve the creation of only one (1) such lot from each lot in existence as of June 4, 1997.

D. Private Accessway Procedures

1. Pre-application Conference

Applicants for approval of a lot served by a private accessway are required to schedule a pre-application conference with the Town Planner. The purpose of this meeting is to familiarize the applicant with the review procedures and submission requirements, review the private accessway standards and familiarize the Planner with the nature of the proposal. No decisions relative to the application may be made at this meeting. The Town Planner may ask representatives of other departments and agencies to participate in the conference.

2. Application Procedure

The owner shall submit a formal application for review and approval of a lot on a private accessway to the Planning Board. The application shall consist of:

- a. a fully executed and signed copy of the application for private accessway review (provided by the Town)
- b. Fourteen (14) copies of a plan and supporting documentation as described in Sec. 19-7-9.D.3., Submission Requirements
- c. a review fee as established by the Town
- d. a review escrow fee as established in Sec. 19-9-4.B., Application Review Procedures.

Upon receipt of an application, the application shall be processed and reviewed in accordance with the procedures established in Sec. 19-9-4, Review Procedures.

3. Submission Requirements

The applicant for a lot on a private accessway shall provide fourteen (14) copies of written materials plus fourteen (14) sets of the plan, maps, or drawings containing the information listed below. The plan, maps, or drawings shall be at a scale sufficient to allow review of the items listed under Subsection 4, Private Accessway Standards, but in no case shall be more than fifty (50) feet to the inch.

- a. A completed application form showing:
 - 1. the record owner's name, address, and phone number and applicant's name, address and phone number if different
 - 2. the assessing tax map and lot number of the parcel or parcels
 - 3. documentation to demonstrate right, title or interest
- b. A map showing the general location of the site
- c. A plan showing the private accessway prepared by a registered land surveyor. The plan shall be drawn in permanent ink or permanent transparency material and shall be sealed by the surveyor preparing the plan. The plan shall be labeled "Plan of a Private Accessway" and shall provide an approval block for signatures of a legal majority of the Planning Board, the date of approval, and the words, "Private

Accessway, Approved by the Town of Cape Elizabeth Planning Board.” The plan shall also contain the following note: “The Town of Cape Elizabeth shall not be responsible for the maintenance, repair, plowing, or similar services for the private accessway shown on this plan.” The plan shall show information sufficient to establish on the ground the exact location, direction, width, and length of the private accessway and related right-of-way and the following:

1. boundaries of all contiguous property under the control of the owner or applicant regardless of whether all or part is affected by the application,
2. location and size of any existing and proposed sewer and water mains, culverts and drains, on-site sewage disposal systems, wells, and power and telephone lines and poles within the right-of-way of the proposed private access and the location, names, and present widths of existing streets and rights-of-way within or adjacent to the proposed private access,
3. location of intersecting roads or driveways within fifty (50) feet of the private access,
4. the location of open drainage courses, floodplains, wetland boundaries, stands of trees, major trees, and other important natural features, with a description of such features to be retained,
5. the direction of existing surface water drainage in the vicinity of the proposed private access and the location of proposed surface water drainage with provisions for drainage handling, including culverts when necessary,
6. location and dimensions of any existing easements and copies of existing covenants or deed restrictions,
7. the location of the nearest fire hydrant, dry hydrant or other water supply for fire protection and a description of any existing fire protection systems,
8. the location of all proposed utilities, including fire protection systems,
9. a building envelope defining the area of the lot within which building may occur.

- d. A maintenance agreement which shall run with the land establishing the responsibilities for the long-term maintenance of the private accessway.

4. Private Accessway Standards

The Planning Board shall find that the proposed lot and related accessway conform to the following standards:

- a. The lot approved under this provision shall be improved with only one (1) dwelling unit and related accessory buildings and uses.
- b. The lot shall be served by a private accessway meeting the following requirements:
 - 1. The access way shall be located within a dedicated right-of-way having a minimum width of thirty (30) feet.
 - 2. The accessway shall be improved with gravel or paved drive meeting the following standards:
 - a. The sub-base shall be constructed with gravel meeting MDOT Spec. 703.06 Type D with a depth of at least fifteen (15) inches, and having a width of at least eighteen (18) feet.
 - b. The travel way shall be constructed with a minimum of three (3) inches of crushed gravel having a width of at least fourteen (14) feet. The remaining width of the gravel base may be loamed and seeded.
 - c. Within ten (10) feet of the edge of the street paving, the accessway shall be paved with at least two (2) inches of asphalt paving. The maximum grade within the first fifty (50) feet of the edge of street paving shall be five percent (5%). Pavement radius at the intersection with the street shall be twenty (20) feet. (Effective December 10, 2003)
 - d. Gutter drainage along the street shall not be allowed to sheet across the face of the intersection and provisions shall be made to keep drainage from the access from running into the public street.
 - e. A turnaround shall be provided meeting the requirements of the Fire Chief.

3. The accessway shall be located so that sight distance conforms to the requirements of the Subdivision Ordinance.
4. A private accessway may serve only one (1) lot.
5. The Planning Board may reduce the requirements of subsection b. (1), (2) and (3) above to a lesser standard where there is an existing private access or to promote better neighborhood development, but in no case shall standards be reduced so that access for any municipal emergency vehicle is prohibited. (Effective August 11, 1999.)
- c. Adequate disposal of sewage shall be provided as evidenced by connection to the public sewerage system or the submission of a completed HHE-200 form or subsequent form.
- d. That a building envelope be depicted wherein the house and accessory buildings will be located on the lot demonstrating conformance with the setback requirements of the district in which it is located and any natural constraints and that the house site will be buffered from abutting residential properties.

5. Post Approval Procedures

a. Inspection:

The applicant shall be responsible for demonstrating that the construction of the private access way meets the standards of this section. The private accessway shall be inspected under the direction of a registered professional engineer. Prior to the issuance of any building permits for the lot served by a private accessway, (1) the engineer shall certify to the Code Enforcement Officer that the private accessway has been constructed in accordance with this section or (2) a performance guarantee shall be posted in compliance with the provisions of Sec. 16-2-6.C. of the Subdivision Ordinance.

b. Recording of the Approved Plan:

The original plan(s) and maintenance agreement shall be recorded in the Cumberland County Registry of Deeds within ninety (90) days of approval by the Planning Board and prior to the issuance of building permits on any lots served by the private access. If the plan and agreement are not recorded within this period, the approval of the Planning Board shall be void.

c. Amendments:

Any construction of the private accessway that is inconsistent with the approved private accessway plan shall require an amendment to the plan. De minimus changes may be approved by the Town Planner. All other changes must be approved by the Planning Board.

SEC. 19-7-10. AFTER THE FACT REDUCTIONS

Notwithstanding the provisions of Article VI Districts, setback requirements may be reduced in accordance with the provisions of this section.

The Code Enforcement Officer may issue a certificate reducing the required setback to validate the sites of mis-located single family, residential structures, and related accessory structures which are not otherwise legally sited and which were in existence on April 1, 1997, provided that:

1. The use of the property is and will remain as a single family dwelling,
2. The reduction will not be more than ten (10) feet, and
3. The encroachment is the result of the inadvertent misplacement of a structure.

If a reduction is approved, the Code Enforcement Officer shall provide the applicant with a signed instrument in recordable form indicating the setback reduction granted under the terms of this section. The applicant shall be responsible for the recording of this instrument in the Cumberland County Registry of Deeds. If the reduction is not approved, the Code Enforcement Officer shall advise the applicant of the right to seek an appeal through the Zoning Board of Appeals. (Effective December 10, 2003)

SEC. 19-7-11. MULTIPLE PRINCIPAL BUILDINGS ON A LOT

If more than one (1) principal building is located on a lot, the lot size and location of each building shall be such that a separate lot conforming to the provisions of this Ordinance could be created for each building. The potential creation of a separate lot shall be demonstrated by submitting a plan to the Code Enforcement Officer showing how the land could be divided to create conforming lots.

SEC. 19-7-12. CORNER CLEARANCES

On a corner lot in any district, no fence, wall, hedge, or other planting more than three and a half (3 ½) feet in height shall be erected, placed or maintained within the three-sided area

formed by the intersecting street lines and a line joining them at points which lie twenty (20) feet distant from the point of intersection, measured along said street lines.

SEC. 19-7-13. SINGLE FAMILY DWELLING BISECTED LOTS

No new single family dwelling lot shall be created which is bisected by a public or private road unless the lot area on at least one (1) side of the road meets the minimum lot size requirement for the district in which it is located. If any segment of the bisected single family dwelling lot does not meet the minimum lot size requirement, the various segments shall be retained in single ownership and shall be treated as one lot for the purposes of this Ordinance. (Effective March 15, 2006)

SEC. 19-7-14. TEMPORARY ACTIVITIES AND EVENTS

Temporary uses of a community or nonprofit nature such as festivals, fairs, carnivals, and similar events may be permitted in any district by vote of the Town Council, notwithstanding the provisions of this Ordinance. Such temporary use shall not be contrary to the objectives of this Ordinance. A vote by the Council allowing such temporary use shall not be deemed a change in the zoning and shall apply to the specific event or activity only for its stated duration.

SEC. 19-7-15. TEMPORARY STRUCTURES

The use of a temporary construction trailer on a site that has an active building permit may be permitted by the Code Enforcement Officer. The use of a temporary marketing and/or sales trailer may be permitted on a lot in an approved subdivision, in which case the construction, marketing and sales uses shall be combined in one trailer. A marketing and/or sales trailer which is not necessary to and located in an approved subdivision under construction shall not be permitted unless it has received Site Plan Approval or is part of a building which has received Site Plan Approval. A building permit shall be required for the temporary structure and shall require that the structure be removed in one year, which may be extended once by the Code Enforcement Officer for an additional year. (Effective August 11, 1999)

SEC. 19-7-16. CREATION OF A SHORT-CUT VIA DEVELOPED RESIDENTIAL STREET

No new short-cut may be created, if the measurement of the distance along such short-cut includes a developed residential street.

Notwithstanding the waiver provision of Sec. 16-3-5 or otherwise, the foregoing limitation on the creation of short-cuts via developed residential streets shall not be waived by the Planning Board in connection with any subdivision approval.

Notwithstanding 1 M.R.S.A. Sec. 302, this provision shall apply to any pending proceeding proposing the creation of a short-cut via developed residential street, unless all approvals

and building permits for the project have been obtained prior to the filing of the petition for enactment of this Ordinance with the Town Clerk. (Effective June 23, 2006)

ARTICLE VIII. PERFORMANCE STANDARDS

The following standards of performance shall apply to the uses and areas of the community as listed in the specific standard. Any use of land, buildings, or structures to which these standards apply shall be in conformance with the requirements.

SEC. 19-8-1. RESERVED

SEC. 19-8-2. SHORELAND PERFORMANCE STANDARDS

All activities in the Shoreland Performance Overlay District shall comply with the following performance standards as applicable, except where the requirements of the underlying district are more restrictive, in which case the more restrictive standards shall apply:

A. Piers, Docks, Wharves, Bridges Over Ten (10) Feet in Length and Other Marine Structures Extending Over or Below the Normal High Water Line of Water Body or Within a Wetland (Effective October 15, 2009)

All piers, docks, wharves and other structures listed above shall require site plan approval by the Planning Board and compliance with the performance standards below. The Planning Board may require the submission of an environmental impact assessment on natural areas and may require mitigation measures such as changes in the design and construction of the marine structure and in the magnitude, duration, and location, of activities on the marine structure. Structures are considered temporary when they will remain in or over the water for less than seven (7) months in any period of twelve (12) consecutive months and considered permanent when they will remain in or over the water for seven (7) months or more in any period of twelve (12) consecutive months. (Effective October 15, 2009). The performance standards are as follows:

1. Access from shore shall be developed on soils appropriate for such use, and constructed so as to control erosion. (Effective October 15, 2009)
2. The location of the marine structure shall not unreasonably interfere with existing developed or natural beach areas. (Effective October 15, 2009)
3. The facility shall be located so as to minimize adverse effects on fisheries. (Effective October 15, 2009)
4. The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with the surrounding character and uses of the area. A temporary pier, dock or wharf in non-tidal waters shall not be wider than six feet for non-commercial uses. (Effective October 15, 2009)

5. No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high water line of a water body or within a wetland unless the structure requires direct access to the water body or wetland as an operational necessity. (Effective October 15, 2009)
6. New permanent piers and docks on non-tidal waters shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act. (Effective October 15, 2009)
7. No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high water line of a water body or within a wetland shall be converted to residential dwelling units in the district.
8. Structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high water line of a water body or within a wetland shall not exceed twenty (20) feet in height above the pier, wharf, dock or other structure.
9. All such structures shall be considered permanent unless constructed for removal from the water and remaining in the water for less than seven (7) months in any period of twelve (12) consecutive months.

B. Individual Private Campsites

Individual private campsites not associated with campgrounds are allowed provided the following conditions are met: (Effective October 15, 2009)

1. One campsite per lot existing on the effective date of this district, or thirty thousand (30,000) square feet of lot area within the shoreland district, whichever is less, may be permitted.
2. Campsite placement on any lot, including the area intended for a tent platform, shall be set back one hundred (100) feet from the normal high water line of Great Pond, and seventy-five (75) feet from the normal high water line of other water bodies, tributary stream, or the wetland upland edge.
3. Recreational camping vehicles shall not be allowed.
4. The clearing of vegetation for the siting of a tent or similar shelter in a Resource Protection 1-Critical Wetland District, if a Resource Protection

Permit is issued by the Planning Board, shall be limited to one thousand (1,000) square feet per site.

5. When a tent or similar shelter is placed on-site for more than one hundred and twenty (120) days per year, all requirements for residential structures shall be met, including the installation of a subsurface sewage disposal system in compliance with the State of Maine Subsurface Wastewater Disposal Rules unless served by public sewage facilities. (Effective October 15, 2009)

C. Parking Areas

1. Parking areas shall meet the shoreline and tributary stream setback requirements for structures. The setback requirement for parking areas serving public boat launching facilities may be reduced to no less than fifty (50) feet from the shoreline or tributary stream if the Zoning Board of Appeals finds that no other reasonable alternative exists further from the shoreline or tributary stream. (Effective October 15, 2009)
2. Parking areas shall be adequately sized for the proposed use and shall be designed to prevent stormwater runoff from flowing directly into a water body, tributary stream or wetland and where feasible, to retain all runoff on-site. (Effective October 15, 2009)
3. In determining the appropriate size of parking facilities, the following shall apply:

Typical parking space: Nine (9) feet wide and Eighteen (18) feet long.
 Boat trailer parking space: Nine (9) feet wide and forty (40) feet long.
 Internal travel aisles: Twenty-four (24) feet wide.

D. Roads and Driveways

The following standards shall apply to the construction of roads and/or driveways and drainage systems, culverts, and other related features.

1. New roads and driveways shall be setback at least two hundred fifty (250) feet from the normal high water line of Great Pond and one hundred (100) feet from the wetland upland edge of the Resource Protection 1 District and seventy-five (75) feet from the normal high water line of other water bodies and tributary streams, unless no reasonable alternative exists as determined by the Planning Board. If no other reasonable alternative exists, the Planning Board may reduce the road and/or driveway setback requirement to no less than fifty (50) feet upon a clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. Such techniques may include, but are

not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the water body, tributary stream, or wetland. On slopes of greater than twenty percent (20%), the road and/or driveway setback shall be increased by ten (10) feet for each five percent (5%) increase in slope above twenty percent (20%). (Effective October 15, 2009)

This section does not apply to approaches to water crossings or to roads or driveways that provide access to permitted structures, and facilities located nearer to the shoreline or tributary stream due to an operational necessity, excluding temporary docks for recreational uses. Roads and driveways providing access to permitted structures within the setback area shall comply fully with the requirements of this section except for that portion of the road or driveway necessary for direct access to the structure. (Effective October 15, 2009)

2. An existing public road may be expanded within the legal road right-of-way regardless of its setback from a water body, tributary stream or wetland. (Effective October 15, 2009)
3. New roads and driveways are prohibited in a Resource Protection 1 Critical Wetland District except to provide access to permitted uses within the district. New driveways may be approved by the Planning Board upon a finding that no reasonable alternative route or location is available outside the district, in which case the driveway shall be set back as far as practicable from the normal high water line of a water body, tributary stream, or upland edge of a wetland and shall have a maximum width of sixteen (16) feet.
4. Road and driveway banks shall be no steeper than a slope of two (2) horizontal to one (1) vertical and shall be graded and stabilized in accordance with the provisions contained in Sec. 19-8-2.L, Erosion and Sedimentation Control. (Effective October 15, 2009)
5. Road and driveway grades shall be no greater than ten percent (10%) except for segments of less than two hundred (200) feet. (Effective October 15, 2009)
6. In order to prevent road and driveway surface drainage from directly entering water bodies, tributary streams or wetlands, roads and driveways shall be designed, constructed, and maintained to empty onto an unscarified buffer strip at least fifty (50) feet plus two (2) times the average slope in width between the outflow point of the ditch or culvert and the normal high water line of a water body, tributary stream, or wetland upland edge. Surface drainage which is directed to an unscarified buffer strip shall be diffused or spread out to promote infiltration of the runoff and to minimize

channelized flow of the drainage through the buffer strip. (Effective October 15, 2009)

7. Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow gains sufficient volume or head to erode the road, driveway or ditch. To accomplish this, the following shall apply: (Effective October 15, 2009)

- a. Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road or driveway at intervals no greater than indicated in the following table: (Effective October 15, 2009)

Grade (Percent)	Spacing (feet)
0-2	250
3-5	200
6-10	100
11-15	80
16-20	60
21+	40

- b. Drainage dips may be used in place of ditch relief culverts only where the grade is ten percent (10%) or less. (Effective October 15, 2009)
 - c. On sections having slopes greater than ten percent (10%), ditch relief culverts shall be placed at approximately a thirty (30) degree angle down slope from a line perpendicular to the center line of the road or driveway. (Effective October 15, 2009)
 - d. Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning. Inlet and outlet ends shall be stabilized with appropriate materials.
8. Ditches, culverts, bridges, dips, water turnouts and other stormwater runoff control installations associated with roads and driveway shall be maintained on a regular basis to assure effective functioning. (Effective October 15, 2009)

E. Stormwater Runoff

1. All new construction and development shall be designed to minimize stormwater runoff from the site in excess of the natural predevelopment conditions. Where possible, existing natural runoff control features such as berms, swales, terraces and wooded areas shall be retained in order to reduce runoff and encourage infiltration of stormwater.
2. Stormwater runoff control systems shall be maintained as necessary to ensure proper functioning.

F. Sewage Disposal Standards

All subsurface sewage disposal systems shall be installed in compliance with the State of Maine Subsurface Wastewater Disposal rules Chapter 15, Article II, Private Sewage Disposal Ordinance and the following: a) clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions, shall not extend closer than seventy-five (75) feet, horizontal distance, from the normal high water line of a water body or the upland edge of a wetland and b) a holding tank is not allowed for a first-time residential use in the shoreland zone. (Effective October 15, 2009)

G. Essential Services

1. Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors. (Effective October 15, 2009)
2. The installation of essential services, other than road-side distribution lines, is not allowed in a Resource Protection or Stream Protection District, except to provide services to a permitted use within said district, or except where the applicant demonstrates that no reasonable alternative exists. Where allowed, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts. (Effective October 15, 2009)
3. Damaged or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit. (Effective October 15, 2009)

H. Mineral Exploration and Extraction

Mineral exploration to determine the nature or extent of mineral resources shall be accomplished by hand sampling, test boring or other methods which create minimal disturbance of less than one hundred (100) square feet of ground surface. A permit from the Planning Board shall be required for mineral exploration which exceeds the above limitations. All excavations, including test pits and holes, shall be immediately capped, filled or secured by other equally effective measures, so as to restore disturbed areas and to protect the public health and safety. Mineral extraction may be permitted in accordance with Sec. 19-8-5, Earth Materials Removal Standards, and the following conditions:

1. A reclamation plan shall be filed with, and approved, by the Planning Board before a permit is granted. (Effective October 15, 2009)

2. No part of any extraction operation, including drainage and runoff control features, shall be permitted within one hundred (100) feet of the normal high water line of Great Pond or the wetland upland edge in the Resource Protection 1 District, nor within seventy-five (75) feet of the normal high water line of any other water body tributary stream or the upland edge of a wetland. Extraction operations shall not be permitted within fifty (50) feet of any property line without written permission of the owner of such adjacent property. (Effective October 15, 2009)
3. Within twelve (12) months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than one hundred (100) cubic yards of materials are removed in any consecutive twelve (12) month period, ground levels and grades shall be established in accordance with the following: (Effective October 15, 2009)
 - a. All debris, stumps, and similar material shall be removed for disposal in an approved location, or shall be buried on-site. Only materials generated on-site may be buried or covered on-site.
 - b. The final graded slope shall be no steeper than a three to one (3:1) slope.
 - c. Topsoil or loam shall be retained to cover all disturbed areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.

I. Agriculture

1. All spreading of manure shall be accomplished in conformance with the Manure Utilization Guidelines published by the Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7M.R.S.A. sections 4201-4209). (Effective October 15, 2009)
2. There shall be no new tilling of soil within one hundred (100) feet, horizontal distance, of the normal high water line of Great Pond or the wetland upland edge in the Resource Protection 1 District; within seventy-five (75) feet, horizontal distance, from other water bodies and coastal wetlands; nor within twenty-five (25) feet, horizontal distance, of tributary streams and freshwater wetlands. Operations in existence on the effective date of this ordinance and not in conformance with this provision may be maintained. (Effective October 15, 2009)
3. Where soil is tilled in a Resource Protection 1 – Critical Wetland District, tilled in excess of forty thousand (40,000) square feet in surface area in the shoreland zone, such tillage shall be carried out in conformance with the

provisions of a Conservation Plan. The plan shall be filed with the Code Enforcement Officer. Nonconformance with the provisions of such Conservation Plan shall be considered to be a violation of this ordinance. (Effective October 15, 2009)

4. Manure shall not be stored or stockpiled within one hundred (100) feet, horizontal distance, of Great Pond, or within seventy-five (75) feet, horizontal distance, of other water bodies, tributary streams, or wetlands. All manure storage areas within the shoreland district must be constructed or modified such that the facility produces no discharge of effluent or contaminated stormwater. (Effective October 15, 2009)
5. Newly established livestock grazing areas shall not be permitted within one hundred (100) feet, horizontal distance, of the normal high water line of Great Pond; within seventy-five (75) feet, horizontal distance, of other water bodies, nor within twenty-five (25) feet, horizontal distance, of tributary streams and freshwater wetlands. Livestock grazing associated with ongoing farm activities, and which are not in conformance with the above setback provisions may continue, provided that such grazing is conducted in accordance with a Conservation Plan. (Effective October 15, 2009)

J. Timber Harvesting

Timber harvesting within the Shoreland Zoning Overlay District shall be carried out in conformance with the following:

1. Adjacent to Great Pond
 - a. Within the strip of land extending seventy-five (75) feet inland from the high water line of Great Pond, there shall be no timber harvesting, except to remove safety hazards.
 - b. At a distance greater than seventy-five (75) feet from the normal high water line of Great Pond, harvesting of no more than forty percent (40%) of the total volume on each acre of trees 4.5 inches DBH or greater on any lot in any ten (10) year period is permitted. Volume may be considered to be equivalent to basal area. In no case, however, shall the average residual basal area of trees over 4 ½ inches in diameter at 4 ½ feet above ground level be reduced to less than 30 square feet per acre. There shall be no clear-cut openings. A well distributed stand of trees which is wind firm and other vegetation, including existing ground cover, shall be maintained. (Effective October 15, 2009)

2. Adjacent to the Spurwink River and the Atlantic Ocean, and Streams
Subject to Shoreland Zoning

- a. Within seventy-five (75) feet of the normal high water line of the Spurwink River, the Atlantic Ocean, and streams subject to shoreland zoning, there shall be no timber harvesting, except to remove safety hazards. (Effective October 15, 2009)
- b. At a distance greater than seventy-five (75) feet from the normal high water line of the Spurwink River, the Atlantic Ocean, and streams subject to shoreland zoning, harvesting of no more than forty percent (40%) of the total volume on each acre of trees 4.5 inches BDH or greater on any lot in any ten (10) year period is permitted. Clear-cut openings shall be permitted, provided that harvesting activities shall not create single clear-cut openings greater than seven thousand five hundred (7,500) square feet in the forest canopy. When clear-cut openings exceed five thousand (5,000) square feet, they shall be at least one hundred (100) feet apart. Clear-cut openings shall be included in the calculation of total volume removal. Volume may be considered to be equivalent to basal area. (Effective October 15, 2009)

3. Additional Timber Harvesting Standards

All timber harvesting shall conform to the following standards:

- a. Shoreline integrity and sedimentation. Persons conducting timber harvesting and related activities must take reasonable measures to avoid the disruption off-shoreline integrity, the occurrence of sedimentation of water, and the disturbance of water body and tributary stream banks, water body and tributary stream channels, shorelines, and soil lying within water bodies, tributary streams and wetlands. If, despite such precautions, the disruption of shoreline integrity, sedimentation of water, or the disturbance of water body and tributary stream banks, water body and tributary stream channels, shorelines, and soil lying within water bodies, tributary streams and wetlands occurs, such conditions must be corrected.
- b. Slash treatment. Timber harvesting and related activities shall be conducted such that slash or debris is not left below the normal high water line of any water body or tributary stream, or the upland edge of a wetland.
 - 1. Slash actively used to protect soil from disturbance by equipment or to stabilize exposed soil, may be left in place, provided that no part thereof extends more than 4 feet above the ground.

2. Adjacent to great ponds, rivers and wetlands:
 - (i) No accumulation of slash shall be left within 50 feet of the normal high water line or upland edge of a wetland or river;
 - (ii) No accumulation of slash shall be left within 75 feet of the normal high water line of Great Pond;
 - (iii) Between 50 feet and 250 feet of the normal high water line or upland edge of a wetland or river, all slash larger than 3 inches in diameter must be disposed of in such a manner that no part thereof extends more than 4 feet above the ground.
 - (iv) Between 75 feet and 250 feet of the normal high water line of Great Pond, all slash larger than 3 inches in diameter must be disposed of in such a manner that no part thereof extends more than 4 feet above the ground.
- c. Skid trails, yards, and equipment operation. This requirement applies to the construction, maintenance, and use of skid trails and yards in shoreland areas.
 1. Equipment used in timber harvesting and related activities shall not use river, stream or tributary stream channels as travel routes except when surface waters are frozen and snow covered, and the activity will not result in any ground disturbance.
 2. Skid trails and yards must be designed and constructed to prevent sediment and concentrated water runoff from entering a water body, tributary stream, or wetland. Upon termination of their use, skid trails and yards must be stabilized.
 3. Setbacks:
 - (i) Equipment must be operated to avoid the exposure of mineral soil within 25 feet, horizontal distance, of any water body, tributary stream, or wetland. On slopes of 10 percent or greater, the setback for equipment operation must be increased by 20 feet, horizontal distance, plus an additional 10 feet, horizontal distance, for each 5 percent increase in slope above 10 percent. Where slopes fall away from the resource, no increase in the 25-foot setback is required.
 - (ii) Where such setbacks are impracticable, appropriate techniques shall be used to avoid sedimentation of the water body, tributary stream or wetland. Such techniques may include the

installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed to avoid sedimentation of the water body, tributary stream, or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

- d. **Land Management Roads.** Land management roads, including approaches to crossings of water bodies, tributary stream channels, and freshwater wetlands, ditches and other related structures, must be designed, constructed, and maintained to prevent sediment and concentrated water runoff from directly entering the water body, tributary stream or wetland. Surface water on or adjacent to water crossing approaches must be diverted through vegetative filter strips to avoid sedimentation of the watercourse or wetland. Because roadside ditches may not extend to the resource being crossed, vegetative filter strips must be established in accordance with the setback requirements in Subsection c(3). above.
 1. Land management roads and associated ditches, excavation, and fill must be set back at least:
 - a. 100 feet, horizontal distance, from the normal high water line of a great pond, river or freshwater or coastal wetland;
 - b. 50 feet, horizontal distance, from the normal high water line of streams; and
 - c. 25 feet, horizontal distance, from the normal high water line of tributary streams.
 2. The minimum 100 foot setback specified in Subsection c.3 above may be reduced to no less than 50 feet and the 50 foot setback specified in Subsection c.3 above may be reduced to no less than 25 feet, horizontal distance, if, prior to construction, the landowner or the landowner's designated agent obtains a variance from the Zoning Board of Appeals, and includes in its variance application evidence that no reasonable alternative exists, and the appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed to avoid sedimentation of the water body, tributary stream or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

3. On slopes of 10 percent or greater, the land management road setback must be increased by at least 20 feet plus an additional 10 feet for each 5 percent increase in slope above 10 percent.
4. New land management roads are not allowed within the shoreland area along Significant River Segments as identified in 38 M.R.S.A. section 437, nor in a Resource Protection District, unless, prior to construction, the landowner or the landowner's designated agent makes a clear demonstration to the Planning Board's satisfaction that no reasonable alternative route exists outside the shoreland zone, and that the new road must be set back as far as practicable from the normal high water line and screened from the river by existing vegetation.
5. Ditches, culverts, bridges, dips, water turnouts and other water control installations associated with roads must be maintained on a regular basis to assure effective functioning. Drainage structures shall deliver a dispersed flow of water into an unscarified filter strip no less than the width indicated in the setback requirements above. Where such a filter strip is impracticable, appropriate techniques shall be used to avoid sedimentation of the water body, tributary stream, or wetland. Such techniques may include the installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed to avoid sedimentation of the water body, tributary stream, or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.
6. Road closeout and discontinuance. Maintenance of the water control installations required above must continue until use of the road is discontinued and the road is put to bed by effective installation of water bars or other adequate road drainage structures at appropriate intervals, constructed to avoid surface water flowing over or under the water bar, and extending a sufficient distance beyond the traveled way so that water does not reenter the road surface.
7. Upgrading existing roads. Extension or enlargement of presently existing roads must conform to the provisions for land management roads. Any nonconforming existing road may continue to exist and to be maintained, as long as the nonconforming conditions are not made more nonconforming.
8. Exception. Extension or enlargement of presently existing roads need not conform to the setback requirements above if, prior to

extension of enlargement, the landowner or the landowner's designated agent demonstrates to the Code Enforcement Officer's satisfaction that no reasonable alternative exists and that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. Such techniques may include, but are not limited to, the installation of settling basins and/or the effective use of additional ditch relief culverts and turnouts placed to avoid sedimentation of the water body, tributary stream, or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

9. Additional measures. In addition to the foregoing minimum requirements, persons undertaking construction and maintenance of roads and river, stream and tributary stream crossings must take reasonable measures to avoid sedimentation of surface waters.
- e. Crossings of water bodies. Crossings of rivers, streams, and tributary streams must allow for fish passage at all times of the year, must not impound water, and must allow for the maintenance of normal flows.
1. Determination of flow. Provided they are properly applied and used for the circumstances for which they are designed, methods including but not limited to the following are acceptable as a means of calculating the 10 year and 25 year frequency water flows and thereby determining water crossing sizes as required above: The United States Geological Survey (USGS) Methods; specifically: Hodgkins, G. 1999, Estimating the Magnitude of Peak Flows for Streams in Maine for Selected Recurrence Intervals. U.S. Geological Survey. Water Resources Investigations Report 99-4008. 45 pp.
 2. Upgrading existing water crossings. Extension or enlargement of presently existing water crossings must conform to the above provisions. Any nonconforming existing water crossing may continue to exist and be maintained, as long as the nonconforming conditions are not made more nonconforming; however, any maintenance or repair work done below the normal high water line must conform to the provisions of the Shoreland Performance Overlay District.
 3. Other Agency Permits. Any timber harvesting and related activities involving the design, construction, and maintenance of crossings on water bodies other than a river, stream or tributary stream may require a permit from the Land Use Regulation

Commission, the Department of Environmental Protection, or the U.S. Army Corps of Engineers.

4. Any timber harvesting and related activities involving the design, construction, and maintenance of crossings of freshwater wetlands identified by the Department of Inland Fisheries and Wildlife as essential wildlife habitat require prior consultation with the Department of Inland Fisheries and Wildlife.
5. Notice to Bureau of Forestry. Written notice of all water crossing construction maintenance, alteration and replacement activities in shoreland areas must be given by the property owner to the Bureau prior to the commencement of such activities. Such notice must contain all information required by the Bureau, including:
 - (i) a map showing the location of all proposed permanent crossings;
 - (ii) the GPS location of all proposed permanent crossings;
 - (iii) for any temporary or permanent crossing that requires a permit from state or federal agencies, a copy of the approved permit or permits; and
 - (iv) a statement signed by the responsible party that all temporary and permanent crossings will be constructed, maintained, and closed out in accordance with the requirements of this Section.
6. Water crossing standards. All crossings of rivers require a bridge or culvert sized according to the requirements below. Subject to other provisions above, skid trail crossings of streams and tributary streams when channels of such streams and tributary streams are frozen and snow-covered or are composed of a hard surface, which will not be eroded or otherwise damaged, are not required to use permanent or temporary structures. Streams and tributary streams may be crossed using temporary structures that are not bridges or culverts provided:
 - (i) concentrated water runoff does not enter the stream or tributary stream;
 - (ii) sedimentation of surface waters is reasonably avoided;
 - (iii) there is no substantial disturbance of the bank, or stream or tributary stream channel;

- (iv) fish passage is not impeded; and
 - (v) water flow is not unreasonably impeded.
7. Bridge and Culvert Sizing. For crossings of river, stream and tributary stream channels with a bridge or culvert, the following requirements apply:
- (i) Bridges and culverts must be installed and maintained to provide an opening sufficient in size and structure to accommodate 10-year frequency water flows or with a cross sectional area at least equal to 2 ½ times the cross-sectional area of the river, stream, or tributary stream channel.
 - (ii) Temporary bridge and culvert sizes may be smaller than provided in Subsection (i) above if techniques are effectively employed such that in the event of culvert or bridge failure, the natural course of water flow is maintained and sedimentation of the water body or tributary stream is avoided. Such crossing structures must be at least as wide as the channel and placed above the normal high water line. Techniques may include, but are not limited to, the effective use of any, a combination of, or all of the following:
 - 1. use of temporary skidder bridges;
 - 2. removing culverts prior to the onset of frozen ground conditions;
 - 3. using water bars in conjunction with culverts;
 - 4. using road dips in conjunction with culverts.
 - (iii) Culverts utilized in river, stream and tributary stream crossings must:
 - 1. be installed at or below river, stream or tributary stream bed elevation;
 - 2. be seated on firm ground;
 - 3. have soil compacted at least halfway up the side of the culvert;
 - 4. be covered by soil to a minimum depth of 1 foot or according to the culvert manufacturer's specifications, whichever is greater; and
 - 5. have a headwall at the inlet end which is adequately stabilized by riprap or other suitable means to reasonably avoid erosion of material around the culvert.

- (iv) River, stream and tributary stream crossings allowed under the Shoreland Performance Overlay District standards, but located in flood hazard areas (i.e. A zones) as identified on a community's Flood Insurance Rate Maps (FIRM) or Flood Hazard Boundary Maps (FHBM), must be designed and constructed under the stricter standards contained in that community's National Flood Insurance Program (NFIP). For example, a water crossing may be required to pass a 100- year flood event.
8. Skid trail closeout. Upon completion of timber harvesting and related activities, or upon the expiration of a Forest Operations Notification, whichever is earlier, the following requirements apply:
- (i) Bridges and culverts installed for river, stream and tributary stream crossings by skid trails must either be removed and areas of exposed soil stabilized, or upgraded to comply with the closeout standards for land management roads below.
 - (ii) Water crossing structures that are not bridges or culverts must either be removed immediately following timber harvesting and related activities, or, if frozen into the river, stream or tributary stream bed or bank, as soon as practical after snowmelt.
 - (iii) River, stream and tributary stream channels, banks and approaches to crossings of water bodies and tributary streams must be immediately stabilized on completion of harvest, or if the ground is frozen and/or snow-covered, as soon as practical after snowmelt. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.
9. Land management road closeout. Maintenance of the water control features must continue until use of the road is discontinued and the road is put to bed by taking the following actions:
- (i) Effective installation of water bars or other adequate road drainage structures at appropriate intervals, constructed to reasonably avoid surface water flowing over or under the water bar, and extending sufficient distance beyond the traveled way so that water does not reenter the road surface.

- (ii) Water crossing structures must be appropriately sized or dismantled and removed in a manner that reasonably avoids sedimentation of the water body or tributary stream.
- (iii) Any bridge or water crossing culvert in roads to be discontinued shall satisfy one of the following requirements:
 - 1. it shall be designed to provide an opening sufficient in size and structure to accommodate 25-year frequency water flows;
 - 2. it shall be designed to provide an opening with a cross-sectional area at least 3 ½ times the cross-sectional area of the river, stream or tributary stream channel; or
 - 3. it shall be dismantled and removed in a fashion to reasonably avoid sedimentation of the river, stream or tributary stream. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.
- f. Slope Table. Filter strips, skid trail setbacks, and land management road setbacks must be maintained as specified above, but in no case shall be less than shown in the following table:
Average slope of land between exposed width of strip between exposed mineral soil and the shoreline (percent) mineral soil and shoreline

(feet along surface of the ground)

0	25
10	45
20	65
30	85
40	105
50	125
60	145
70	165

(Effective October 15, 2009)

K. Clearing or Removal of Vegetation for Activities Other than Timber Harvesting (Effective October 15, 2009)

- 1. The Resource Protection 1 Critical Wetland District abutting Great Pond, there shall be no cutting of vegetation except to remove safety hazards or that which is necessary for uses expressly authorized in that district.
(Effective October 15, 2009)

2. A buffer strip shall be required except to allow for the development of permitted uses, or for those portions of public recreational facilities adjacent to public swimming areas where cleared areas are limited to the minimum area necessary. Within a strip of land extending one hundred (100) feet, horizontal distance, inland from the wetland upland edge in the Resource Protection 1 District, and seventy-five (75) feet, horizontal distance, from any other water body or tributary stream, a buffer strip of vegetation shall be preserved as follows: (Effective October 15, 2009)
 - a. There shall be no cleared opening greater than two hundred fifty (250) square feet in the forest canopy (or other existing woody vegetation) if a forested canopy is not present as measured from the outer limits of the tree crown. However, a footpath not to exceed six (6) feet in width as measured between tree trunks is permitted provided that a cleared line of sight to the water through the buffer strip is not created. (Effective October 15, 2009)
 - b. Selective cutting of trees within the buffer strip is permitted provided that a well distributed stand of trees and other natural vegetation is maintained. For the purposes of this section, a “well-distributed stand of trees” adjacent to a stream flowing to Great Pond shall be defined as maintaining a rating score of twenty-four (24) or more in any twenty-five (25) foot by fifty (50) foot rectangular (1250 square feet) area as determined by the following rating system. (Effective October 15, 2009)

Diameter of Tree at 4 ½ feet Points Above Ground Level (inches)

2 < 4 inches	1
> 4 < 8 inches	2
8 < 12 inches	4
12 inches or greater	8

Adjacent to other water bodies, tributary streams, and wetlands, a “well-distributed stand of trees and other vegetation” is defined as maintaining a minimum rating score of sixteen (16) per twenty-five (25) foot by fifty (50) foot rectangular area. (Effective October 15, 2009)

The following shall govern in applying this point system:

- (i) The 25 foot by 50 foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;

- (ii) Each successive plot must be adjacent to, but not overlap a previous plot;
- (iii) Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this Ordinance;
- (iv) Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by this Ordinance;
- (v) Where conditions permit, no more than 50% of the points on any 25 foot by 50-foot rectangular area may consist of trees greater than 12 inches in diameter. For the purposes of the point system, "other natural vegetation" is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least five (5) saplings less than two (2) inches in diameter at four and one half (4 ½) feet above ground level for each 25 foot by 50 foot rectangle area. If five saplings do not exist, no woody stems less than two (2) inches in diameter can be removed until 5 saplings have been recruited into the plot. (Effective October 15, 2009)

Notwithstanding the above provision, no more than forty percent (40%) of the total volume of trees four (4) inches or more in diameter, measured at four and a half (4 ½) feet above ground level may be removed in any ten (10) year period.

- c. In order to protect water quality and wildlife habitat, existing vegetation under three (3) feet in height and other ground cover, including leaf litter and the forest duff layer shall not be cut, covered, or removed, except to provide for a footpath or other permitted uses as described in paragraphs 1 and 2a above. (Effective October 15, 2009)
 - d. Pruning of tree branches on the bottom one-third (1/3) of the tree is permitted.
 - e. In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe, or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree species unless existing new tree growth is present.
3. At distances greater than seventy-five (75) feet, horizontal distance, from the normal high water line of any water body other than Great Pond or tributary stream, there shall be permitted on any lot, in any ten (10) year period, selective cutting of not more than forty percent (40%) of the volume of trees four (4) inches or more in diameter, measured four and a half (4 ½)

feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the forty percent (40%) calculation. For the purposes of these standards, volume may be considered to be equivalent to basal area. (Effective October 15, 2009)

In no event shall cleared openings for any purpose, including but not limited to, principal and accessory structures, driveways and sewage disposal areas, exceed in the aggregate, twenty-five percent (25%) of the lot area within the shoreland zone or ten thousand (10,000) square feet, whichever is greater, including land previously cleared. (Effective October 15, 2009)

4. Legally existing cleared openings in existence on the effective date of this district may be maintained, but shall not be enlarged, except as permitted by this district. (Effective October 15, 2009)
5. Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of Section K. (Effective October 15, 2009)

L. Erosion and Sedimentation Control

1. All activities which involve filling, grading, excavation or other similar activities which result in un-stabilized soil conditions and which require a permit shall require a written soil erosion and sedimentation control plan. The plan shall be submitted to the permitting authority for approval and shall include, where applicable, provisions for:
 - a. Mulching and re-vegetation of disturbed soil.
 - b. Temporary runoff control features such as hay bales, silt fencing or diversion ditches.
 - c. Permanent stabilization structures such as retaining walls or riprap.
2. In order to create the least potential for erosion, development shall be designed to fit with the topography and soils of the site. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.
3. Erosion and sedimentation measures shall apply to all aspects of the proposed project involving land disturbance, and shall be in operation during all stages of the activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.
4. Any exposed ground area shall be temporarily or permanently stabilized within one (1) week from the time it was actively worked, by use of riprap,

sod, seed, and mulch, or other effective measures. In all cases, permanent stabilization shall occur within nine (9) months of the initial date of exposure. In addition:

- a. Where mulch is used, it shall be applied at a rate of least one (1) bale per five hundred (500) square feet and shall be maintained until a catch of vegetation is established.
 - b. Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
 - c. Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.
5. Natural and man-made ways and drainage outlets shall be protected from erosion from water flowing through them. Drainage ways shall be designed and constructed in order to carry water from a twenty-five (25) year storm or greater, and shall be stabilized with vegetation or lined with riprap.

M. Soils

All land uses shall be located on soils in or upon which the proposed uses or structures can be established and maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, improper drainage, and water pollution, whether during or after construction. Proposed uses requiring subsurface waste disposal, commercial or industrial development and other similar intensive land uses shall require a soils report based on an on-site investigation and be prepared by qualified professionals. Certified persons may include Maine State Certified Soils Scientists, Maine Registered Professional Engineers, Maine State Certified Geologists and other persons who have training and experience in the recognition and evaluation of soil properties. The report shall be based upon the analysis of the characteristics of the soil and surrounding land and water areas, maximum ground water elevation, presence of ledge, drainage conditions, and other pertinent data which the evaluator deems appropriate. The soils report shall include recommendations for a proposed use to counteract soil limitations where they exist. (Effective October 15, 2009)

N. Water Quality Protection

No activity shall impair designated uses or the water classification of the water body, tributary stream or wetland. (Effective October 15, 2009)

O. Archaeological Sites

1. Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on, or eligible to be listed on the National Register of Historic Places, as determined by the permitting

authority shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least twenty (20) days prior to action being taken by the permitting authority. The permitting authority shall consider comments received from the Commission prior to rendering a decision on the application.

2. A permit is not required for an archaeological excavation as long as the excavation is conducted by an archaeologist listed on the State Historic Preservation Officer's level 1 or level 2 approved list, and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures. (Effective October 15, 2009)

SEC. 19-8-3. RESOURCE PROTECTION PERFORMANCE STANDARDS

All activities in the Resource Protection Districts shall comply with the following performance standards as applicable:

A. Resource Protection Permit Procedures

1. Review
 - a. Any activity, use or structure listed in Sec. 19-6-9, Resource Protection Districts, in a Resource Protection 1 Critical Wetland, Resource Protection 2 Wetland Protection, Resource Protection 3 Floodplain, or Resource Protection 1 Critical Wetland Buffer Overlay District listed as permitted with a Resource Protection Permit shall be permitted only if a Resource Protection Permit is obtained in accordance with this section.
 - b. The Planning Board shall review the submitted application and accompanying materials. The Planning Board may require additional material that, considering the probable cost and effects of the proposed alteration, it deems necessary for a full consideration of the proposal and its effects, including more detailed plans.
 - c. The Planning Board in its review of an application may require a "peer review" by a professional engineer, a botanist or other relevant expert. The cost of all such reviews, including the cost of review by the Town Engineer, shall be taken from the application's Review Escrow Account. If a Review Escrow Account has not been established pursuant to the provisions of other ordinances governing an aspect of the applicant's proposed activity, the Planning Board shall be authorized to require an applicant for a Resource Protection permit to establish a Review Escrow Account under the terms of Sec. 16-2-1.c. of the Subdivision Ordinance. Any funds not disbursed from the Review Escrow Account shall be promptly returned to the applicant

upon final disposition of his or her application. (Effective November 14, 2015)

- d. The Planning Board shall process the application in accordance with the procedures established for site plan review in Sec. 19-9-4, Review Procedures.
- e. Prior to considering the application, the Planning Board shall refer it to the Conservation Commission for its review and recommendation.
- f. Within thirty-five (35) days following the public hearing if one is held or sixty (60) days following the application being determined to be complete if no hearing is held, or such longer period as may be mutually agreeable to the Planning Board and the applicant, the Planning Board shall render its decision to approve, to approve with conditions or to disapprove in writing, specifying the reasons thereof. Notwithstanding other provisions of this ordinance, the applicant, or any property owner entitled to notice of the public hearing, who is aggrieved by a decision of the Planning Board under this ordinance, may appeal to the Superior Court as provided by the Maine Rules of Civil Procedure.
- g. For projects reviewed under the Subdivision Regulations or the Site Plan Review Provisions, the Planning Board shall conduct a concurrent review of any past or proposed wetlands alterations within the subdivision, applying the procedures and standards of this Ordinance. Alterations to be reviewed shall include proposed public improvements and all anticipated wetlands alterations within any of the proposed individual lots or common areas.
- h. Permits shall be valid for one (1) year from the date of issue. An applicant may request an extension of the permit for an additional period of up to one (1) year. The request must be submitted prior to the expiration of the permit.

2. Submission Requirements

- a. The owner of lands in a Resource Protection District shall apply for the Resource Protection Permit by submitting to the Town Planner or the Code Enforcement Officer fifteen (15) copies of the plans for the proposed location or activity.
- b. Upon receipt of all such materials and upon payment by the applicant of fees established by the Town Council, the Town Planner shall submit the proposal to the Planning Board; the Town Planner shall also submit one (1) copy of all materials to the Chair of the Conservation

Commission for its consideration and any recommendations which it deems advisable. The Conservation Commission may request that the applicant attend a meeting of the Commission to discuss the application.

- c. Unless the Planning Board waives one or more of the following requirements, applications for a Resource Protection Permit shall include the information listed below. For Resource Protection Permit applications in the Resource Protection 3 Floodplain District, the submission requirements in Sec. 6-6-3 of the Floodplain Management Ordinance shall be substituted for the list below, except that item 4. below shall also be submitted. The application shall include:
 - 1. a detailed site plan for the proposed activity including a map at a scale of one (1) inch equals one hundred (100) feet showing the location, width, depth, and length of all existing and proposed structures, roads, wells, sewage treatment facilities, drainage facilities, and utility installations within three hundred (300) feet of the mapped wetland;
 - 2. a topographic map showing the location and slope for all grades existing and as proposed upon the completion of the wetland alteration. Wetland areas should be mapped at no greater than one (1) foot contours, and non-wetland areas at no more than two (2) foot contours;
 - 3. a written description of the entire parcel of land owned by the applicant and the location of the wetland on the parcel;
 - 4. property locations and names of all abutting property owners;
 - 5. a written description of the vegetative cover of the site including dominant species, and a map indicating existing wetland vegetation as defined herein and the Wetland Upland Edge as defined by wetland vegetation. This map and accompanying materials shall be prepared by a qualified botanist or wetland specialist;
 - 6. a written description of the site's underlying soils and a high intensity soils map with all mapping units being no greater than one quarter (1/4) acre, indicating the boundaries of soil types, the location of hydric soils as defined herein and the Wetland Upland Edge as defined by hydric soils. This requirement shall apply notwithstanding that fill material has been placed on the site, and shall apply regardless of the depth to the underlying soils. Where fill has been placed (prior to 5/9/90) on hydric soils and then

developed by construction of a principal structure on the filled land, the area of filled wetland to a maximum distance of fifty (50) feet from the principal building footprint shall be identified as filled land. This map and accompanying materials shall be prepared by a soil scientist certified by the State of Maine;

7. in cases where there are no hydric soils or wetland vegetation, a map indicating the Wetland Upland Edge based on site-specific hydrology;
8. the location and flow direction of all existing watercourses, ponds, or standing water present for two (2) or more months each year;
9. a stormwater runoff plan prepared by a professional engineer showing pre- and post-development runoff patterns for both twenty-five (25) and one hundred (100) year storm events, a contour map of the wetland's watershed and proposed stormwater management measures including sewers, drainage ditches, conduits, catch basins, culverts and impoundment areas;
10. delineation of the building envelope within which the proposed activities will occur;
11. the exact sites and specifications for all proposed draining, filling, grading, dredging, and vegetation removal including the amount and procedures;
12. the purpose of the project and an explanation of why the proposed activity cannot be located at other sites, and if applicable, an explanation of how the proposed activity is dependent on wetlands or water-related resources;
13. any mitigation measures taken to offset wetland losses;
14. the Town Planner may require the submission of additional information, such as study of flood erosion, other hazards at the site, and the effect of any protective measures that might be taken to reduce such hazards, and other information deemed necessary to evaluate the proposed use in terms of the goals and standards of the wetlands provisions of this Ordinance.

B. Resource Protection Permit Standards

The Planning Board shall grant a Resource Protection Permit for uses, structures and activities within Resource Protection Districts if it makes a positive finding based upon the

information presented that the alteration as proposed, or with specified conditions of approval:

1. will not materially obstruct the flow of surface or subsurface waters across or from the alteration area;
2. will not impound surface waters or reduce the absorptive capacity of the alteration area so as to cause or increase the flooding of adjacent properties;
3. will not increase the flow of surface waters across, or the discharge of surface waters from, the alteration area so as to threaten injury to the alteration area or to upstream and/or downstream lands by flooding, draining, erosion, sedimentation or otherwise;
4. will not result in significant damage to spawning grounds or habitat for aquatic life, birds or other wildlife;
5. will not pose problems related to the support of structures;
6. will not be detrimental to aquifer recharge or the quantity or quality of groundwater;
7. will not disturb coastal dunes or contiguous back dune areas;
8. will maintain or improve ecological and aesthetic values;
9. will maintain an adequate buffer area between the wetland and adjacent land uses;
10. will be accomplished in conformance with the erosion prevention provisions of Environmental Quality Handbook Erosion and Sediment Control, published by the Maine Soil and Water Conservation Commission dated March, 1986, or subsequent revisions thereof;
11. will be accomplished without discharging wastewater from buildings or from other construction into Wastewater Treatment Facilities in violation of Section 15-1-4 of the Sewage Ordinance; and
12. will, in the case of Resource Protection Permits in the Resource Protection Floodplain District, also comply with Section 6-6-6 of the Floodplain Management Ordinance.

In evaluating the proposed activity, the Planning Board may consult with expert persons or agencies.

C. Resource Protection Permit Conditions

The Planning Board may attach such conditions to the granting of a Resource Protection Permit as it deems necessary to carry out the purposes of the ordinance. Such conditions may include but shall not be limited to:

1. establishment of a buffer between Resource Protection 2 Wetland Protection Districts and adjacent uses, structures and activities;
2. increases beyond two hundred fifty (250) feet in the required buffer for Resource Protection 1 Critical Wetland Districts;
3. limitation on the total portion of any lot or the portion of the wetland on the lot that may be graded, filled, or otherwise modified. This limitation may be linked to an overall protection policy for the particular wetland.
4. requirements that structures be elevated on piles or otherwise protected against natural hazards;
5. modification of subsurface waste disposal systems and water supply facilities;
6. imposition of operational controls and deed restrictions concerning future use and subdivision of land such as flood warnings, preservation of undeveloped areas in open space use, and limitation of vegetation removal;
7. dedication of easements to protect wetlands;
8. erosion control measures;
9. setbacks for structures, fill deposit of spoil and other activities from the wetlands;
10. modifications in project design to ensure continued water supply to the wetland and circulation of waters;
11. replanting of wetland vegetation.

The Planning Board may require that the applicant furnish to the Town, before the issuance of a permit, a performance guarantee in accordance with Section 16-2-4c.7.A. of the Subdivision Ordinance. The amount and the conditions shall be consistent with the purposes of this Ordinance and shall secure the proper performance of the alteration work. The amount shall be based upon the estimated cost of completing or correcting any work necessary to satisfy the conditions of the permit and the criteria of this Ordinance plus the estimated costs of preventing or correcting any damage to the subject or other property which the Planning Board considers probable or of sufficient gravity to justify the expected

expense of such guarantee. Further, as an additional remedy, and not in lieu of such performance guarantee, the Planning Board or Code Enforcement Officer may pursue the remedies hereafter set forth in Sec. 19-8-3.D.

Further, the Code Enforcement Officer may suspend or revoke a permit if he/she finds that the applicant has not complied with the conditions or limitations set forth in the permit, or has exceeded the scope of the work set forth in the application.

D. Wetlands Restoration and Creation

1. The Planning Board, as a condition of a Resource Protection Permit or the Code Enforcement Office, as a remedy for a violation of this Ordinance, may require that the applicant, or violator, engage in the restoration or creation of wetlands in order to offset, in whole or in part, the losses resulting from an applicant's or violator's actions. In determining whether such a requirement will be imposed, the Planning Board or the Code Enforcement Officer shall consider factors including the following:
 - a. The type, size, and location of the wetland altered, and the effect it may have upon the remaining system or watershed of which the wetland is a part;
 - b. The reversible or irreversible nature of the wetland's impairment or loss;
 - c. The degree to which the applicant has demonstrated a good faith effort to incorporate measures to minimize or avoid any negative impact upon wetlands.
2. As part of this process, the applicant or violator may be required to develop a wetlands restoration or creation plan for review and approval by the Planning Board, with advice from the Conservation Commission. This plan should contain the following elements: the location of the proposed wetlands restoration or creation site; ownership, size, type, and complete ecological assessment of the restored or new wetland area; topographic survey data, including slope percentage and final grade elevations; plane view and cross-sectional scaled drawing; and other technical information in sufficient detail as required to explain, illustrate and provide for:
 - a. soils and substrate conditions
 - b. erosion and sediment control needed for the short and long-term survival of the new or restored wetland area
 - c. planting plants specifying plant species types, quantities, locations, size, and method(s) of planting

- d. water quality and hydro cycle conditions necessary to ensure the long-term viability of the restored or new wetland area
 - e. a three (3) year monitoring and replacement plan establishing responsibility for the permanent establishment of the wetland system
 - f. a demonstration of fiscal capacity and technical competence to successfully execute the overall project
3. The applicant or violator shall ordinarily be required to undertake restoration or creation efforts on or adjacent to the site where permanent losses have been sustained or where restoration of a former wetland is possible. Replication of the impacted wetland will be the preferred alternative for restoration or creation efforts. Where the applicant is able to demonstrate to the satisfaction of the Planning Board, with advice from the Conservation Commission, that a wetland of a different type or location is strongly justified, or that replication is not feasible due to technical constraints, the Planning Board may approve an alternative proposal that meets the intent of this Ordinance.
 4. In evaluating the proposed wetland restoration or creation proposal and implementation, the Planning Board or the Code Enforcement Officer may consult with expert persons or agencies.

E. Additional Standards for Construction of Roads and Public Utilities

The Planning Board may permit the construction of public utilities and the reconstruction of existing roads within Resource Protection 1 Critical Wetland Districts or associated buffers and the construction of public utilities and new roads or the reconstruction of existing roads within Resource Protection 2 Wetland Protection Districts and Resource Protection 3 Floodplain Districts, which may include associated construction activities that are otherwise not permitted under Sec. 19-6-9, Resource Protection Districts. In addition to meeting the Resource Protection Permit standards above, the proposed construction or reconstruction shall meet one of the following standards:

1. The road or structure shall be sited within the designated Resource Protection 1 Critical Wetland Buffer Overlay as far as possible from the established Wetland Upland Edge; or, if siting within the actual wetland area is unavoidable, as close to the Wetland Upland Edge as possible.
2. The road or structure shall be sited in such a way that the least amount of wetland area is disturbed.

In determining whether subsection 1. or subsection 2. should be applied to a proposed development, the Planning Board shall select the siting standard that will minimize the negative ecological impact on the wetland area.

The placement of public utilities in the Resource Protection 1 Critical Wetland District shall also be subject to the following standards:

1. Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.
2. The installation of essential services is not permitted except to provide services to a permitted use within the Resource Protection 1 Critical Wetland District, or except where the applicant demonstrates that no reasonable alternative exists. Where permitted, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts.

F. Timber Harvesting Standards

1. Notification and Plan

a. Notification

The owner of the land to be harvested shall give the Code Enforcement Officer written notice at least five (5) working days prior to the start of any timber harvesting activities.

b. Forest Management and Timber Harvesting Plan

Prior to timber harvesting that involves more than fifty (50) cords in any five (5) year period, a Forest Management and Timber Harvesting Plan prepared by a professional forester licensed in the State of Maine in accordance with 36 M.R.S.A. § 573 (3-A) shall be submitted to the Code Enforcement Officer. In addition to the minimum requirements, the Forest Management and Timber Harvesting Plan shall include a map of the area to be harvested drawn to scale with a tie-in to an accepted town road, north arrow, property lines, name of the property owner, names of the abutting property owners, and the location of the Wetland Upland Edge as defined in this Ordinance based on the forester's best assessment.

2. Wetland Buffer Overlay Surrounding Great Pond

- a. Within the Resource Protection 1 Critical Wetland Buffer Overlay surrounding Great Pond, there shall be no timber harvesting within the strip

of land extending seventy-five (75) feet inland from the Wetland Upland Edge surrounding Great Pond except to remove safety hazards.

- b. At a distance of greater than seventy-five (75) feet from the Wetland Upland Edge surrounding Great Pond, selective cutting of no more than forty percent (40%) of the basal area on any lot within a ten (10) year period shall be permitted in the Resource Protection 1 Critical Wetland Buffer Overlay. There shall be no clear-cut openings and a well distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.

3. Other Resource Protection 1 Critical Wetlands

- a. Within seventy-five (75) feet of any Wetland Upland Edge in the RP1 CW District other than the Wetland Upland Edge surrounding Great Pond, selective cutting of no more than forty percent (40%) of the basal area on any lot within a ten (10) year period shall be permitted in the Resource Protection 1 Critical Wetland Buffer Overlay. There shall be no clear-cut openings and a well distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.
- b. At a distance of greater than seventy-five (75) feet from any Wetland Upland Edge in the RP1 CW District other than the Wetland Upland Edge surrounding Great Pond, selective cutting of no more than forty percent (40%) of the basal area on any lot within a ten (10) year period shall be permitted in the Resource Protection 1 Critical Wetland Buffer Overlay. In addition, clear-cut openings not to exceed ten thousand (10,000) square feet in the forest canopy shall be permitted. Where clear-cut openings exceed five thousand (5,000) square feet, they shall be at least one hundred (100) feet apart.

4. Resource Protection 2 – Wetland Protection District

Within the Resource Protection 2 Wetland Protection District, selective cutting of no more than forty percent (40%) of the basal area on any lot within a ten (10) year period shall be permitted. There shall be no clear-cut openings and a well distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.

5. Additional Timber Harvesting Standards (Effective October 15, 2009)

- a. Slash treatment. Timber harvesting and related activities shall be conducted such that slash or debris is not left below the upland edge of a wetland.

1. Slash actively used to protect soil from disturbance by equipment or to stabilize exposed soil, may be left in place, provided that no part thereof extends more than 4 feet above the ground.
 2. No accumulation of slash shall be left within 50 feet of the wetland upland edge.
 3. Between 50 feet and 250 feet of the wetland upland edge, all slash larger than 3 inches in diameter must be disposed of in such a manner that no part thereof extends more than 4 feet above the ground.
 4. Between 75 feet and 250 feet of the normal high water line of Great Pond, all slash larger than 3 inches in diameter must be disposed of in such a manner that no part thereof extends more than 4 feet above the ground.
- b. Skid trails, yards, and equipment operation. This requirement applies to the construction maintenance, and use of skid trails and yards in wetland areas.
1. Equipment used in timber harvesting and related activities shall not use river, stream or tributary stream channels as travel routes except when surface waters are frozen and snow covered, and the activity will not result in any ground disturbance.
 2. Skid trails and yards must be designed and constructed to prevent sediment and concentrated water runoff from entering a water body, tributary stream, or wetland. Upon termination of their use, skid trails and yards must be stabilized.
 3. Setbacks.
 - (i) Equipment must be operated to avoid the exposure of mineral soils within 25 feet, horizontal distance, of any water body, tributary stream, or wetland. On slopes of 10 percent or greater, the setback for equipment operation must be increased by 20 feet, horizontal distance, plus an additional 10 feet, horizontal distance, for each 5 percent increase in slope above 10 percent. Where slopes fall away from the resource, no increase in the 25-foot setback is required.
 - (ii) Where such setbacks are impracticable, appropriate techniques shall be used to avoid sedimentation of the wetland. Such techniques may include the installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed to avoid sedimentation of the wetland.

- c. Land Management Roads. Land management roads must be designed, constructed, and maintained to prevent sediment and concentrated water runoff from directly entering the wetland. Surface water on or adjacent to water crossing approaches must be diverted through vegetative filter strips to avoid sedimentation of the wetland. Because roadside ditches may not extend to the resource being crossed, vegetative filter strips must be established in accordance with the setback requirements in Subsection c.3. above.
 - 1. Land management roads and associated ditches, excavation, and fill must be set back at least 100 feet, horizontal distance, from the upland wetland edge;
 - 2. The minimum 100-foot setback specified in Subsection c.3. above may be reduced to no less than 50 feet and the 50-foot setback specified in Subsection c.3. above may be reduced to no less than 25 feet, horizontal distance, if, prior to construction, the landowner or the landowner's designated agent obtains a variance from the Zoning Board of Appeals, and includes in its variance application evidence that no reasonable alternative exists, and that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed to avoid sedimentation of the wetland.
 - 3. On slopes of 10 percent or greater, the land management road setback must be increased by at least 20 feet plus an additional 10 feet for each 5 percent increase in slope above 10 percent.
 - 4. New land management roads are not allowed within the shoreland area along Significant River Segments as identified in 38 M.R.S.A. section 437, nor in a Resource Protection District, unless, prior to construction, the landowner or the landowner's designated agent makes a clear demonstration to the Planning Board's satisfaction that no reasonable alternative route exists outside the wetland, and that the new road must be set back as far as practicable from the wetland upland edge and screened from the river by existing vegetation.
 - 5. Ditches, culverts, bridges, dips, water turnouts and other water control installations associated with roads must be maintained on a regular basis to assure effective functioning. Drainage structures shall deliver a dispersed flow of water into an unscarified filter strip no less than the width indicated in the setback requirements above. Where such a filter strip is impracticable, appropriate techniques shall be used to avoid

sedimentation of the water body, tributary stream, or wetland. Such techniques may include the installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed to avoid sedimentation of the wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

6. Road closeout and discontinuance. Maintenance of the water control installations required above must continue until use of the road is discontinued and the road is put to bed by effective installation of water bars or other adequate road drainage structures at appropriate intervals, constructed to avoid surface water flowing over or under the water bar, and extending a sufficient distance beyond the traveled way so that water does not reenter the road surface.
 7. Upgrading existing roads. Extension or enlargement of presently existing roads must conform to the provisions for land management roads. Any nonconforming existing road may continue to exist and to be maintained as long as the nonconforming conditions are not made more nonconforming.
 8. Exception. Extension or enlargement of presently existing roads need not conform to the setback requirements above if, prior to extension or enlargement, the landowner or the landowner's designated agent demonstrates to the Code Enforcement Officer's satisfaction that no reasonable alternative exists and that appropriate techniques will be used to prevent sedimentation of the wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed to avoid sedimentation of the wetland.
 9. Additional measures. In addition to the foregoing minimum requirements, persons undertaking construction and maintenance of roads and river, stream and tributary stream crossings must take reasonable measures to avoid sedimentation of the wetland.
- d. Slope Table. Filter strips, skid trail setbacks, and land management road setbacks must be maintained as specified above, but in no case shall be less than shown in the following table.

Average slope of land between exposed width of strip between exposed mineral soil and the shoreline (percent) mineral soil and shoreline (feet along surface of the ground)	
0	25
10	45
20	65
30	85
40	105
50	125
60	145
70	165

(Effective October 15, 2009)

G. Agriculture Standards

1. New Agricultural Activities

- a. There shall be no new agricultural activities in a Resource Protection 1 Critical Wetland District or within seventy-five (75) feet, horizontal distance, of the Wetland Upland Edge.
- b. New agricultural activities shall be permitted within a Resource Protection 1 Critical Wetland District's buffer area at distances greater than seventy-five (75) feet, horizontal distance, of the Wetland Upland Edge.

2. All Agricultural Activities

Where soil is tilled in a Resource Protection 1 Critical Wetland District, such tillage shall be carried out in compliance with the provisions of a Conservation Plan which meets the standards of the State Soil and Water Conservation Commission, and is approved by the Cumberland County Soil and Water Conservation District. The plan shall be filed with the Code Enforcement Officer. Noncompliance with the provisions of such Conservation Plan shall be considered to be a violation of this Ordinance.

Agricultural activities that exist in a Resource Protection 1 Critical Wetland District (including buffers) on or before the effective date of the wetlands provisions of this ordinance are a permitted use.

H. Exempted Water Bodies

The general maintenance and use of stormwater detention basins approved by the Planning Board as part of an approved site plan or subdivision, existing golf course water holes, and municipal skating ponds shall be exempt from the requirements for Resource Protection Permits.

A Resource Protection Permit shall not be required for ponds used primarily for agriculture or fire protection purposes, such as but not limited to irrigation, on active farms as of May 9, 1990. Ponds on inactive farmland or where the agricultural or fire protection use of the pond has been discontinued as of May 9, 1990, shall not be exempt under this provision.

General maintenance and use shall include trimming of vegetation, removal of snow and debris, repair of culverts, retaining walls and other drainage infrastructure, landscaping and similar activities as determined by the Code Enforcement Officer. Activities that change the size of a pond are not exempted.

SEC. 19-8-4. RESERVED

SEC. 19-8-5. EARTH MATERIALS REMOVAL STANDARDS

All removal of earth materials, including rock, sand, gravel, topsoil, and similar materials shall comply with the following performance standards as applicable:

A. Applicability

The removal of thirty (30) or more cubic yards of rock, sand, gravel, topsoil, and/or similar earth materials from a lot or parcel within any twelve (12) month period shall be permitted only after the issuance of an Earth Materials Permit, except removal in conjunction with an exempted activity.

This requirement shall apply to both existing and proposed extraction activities. Any use or operation of an extraction site shall be carried out in accordance with the provisions of this section and with any terms and conditions set forth in the Earth Materials Permit.

Removal of earth materials in conjunction with the following activities shall be exempt from the requirement for an Earth Materials Permit:

1. Construction of approved public or private ways;
2. Construction for which a building permit has been issued;
3. Normal maintenance or landscaping of a residential property;
4. The normal conduct of a farming business including the movement of topsoil between different parcels under the common control of the farm or its individual owners.

B. Earth Materials Permit

The Planning Board shall review an application for an Earth Materials Permit and shall issue a permit only if it finds that the operation of the removal activities will comply with the standards of this section.

C. Permit Procedures (Amended, Effective February 14, 2002)

The owner of the lot or parcel on which the removal activities are proposed to occur shall make a written application for a permit to the Planning Board in accordance with the following procedures.

1. The Planning Board shall process an application for earth material removal activities in accordance with the procedures established for site plan review in Sec. 19-9-4, Review Procedures.
2. The Planning Board shall review the submitted application and accompanying materials. The Planning Board may require additional material that, considering the probable cost and effects of the proposed activity, it deems necessary for a full consideration of the proposal and its effects, including more detailed plans.
3. The Planning Board in its review of an application may require a “peer review” by a professional engineer or other relevant expert. The cost of all such review, including the cost of review by the Town Engineer, shall be taken from the application’s Review Escrow Account. If a Review Escrow Account has not been established pursuant to the provisions of other ordinances governing an aspect of the applicant’s proposed activity, the Planning Board shall be authorized to require an applicant for an earth materials permit to establish a Review Escrow Account under the terms of Sec. 16-2-1c. of the Subdivision Ordinance. Any funds not disbursed from the Review Escrow Account shall be promptly returned to the applicant upon final disposition of his or her application. (Effective November 14, 2015)
4. Within thirty-five (35) days following the public hearing, or such longer period as may be mutually agreeable to the Planning Board and the applicant, the Planning Board shall render its decision to approve, to approve with conditions or to disapprove in writing, specifying the reasons therefore. Notwithstanding other provisions of this Ordinance, the applicant, or any property owner entitled to notice of the public hearing, who is aggrieved by a decision of the Planning Board under this ordinance, may appeal to the Superior Court as provided by the Maine Rules of Civil Procedure.
5. The Planning Board may require the applicant furnish to the Town, before the issuance of a permit, a performance guarantee in accordance with Section 16-2-6.c. of the Subdivision Ordinance. The amount and the

conditions shall be consistent with the purposes of this Ordinance and shall secure the proper performance of the alteration work. The amount shall be based upon the estimated cost of completing or correcting any work necessary to satisfy the conditions of the permit and the criteria of this Ordinance plus the estimated costs of preventing or correcting any damage to the subject or other property which the Planning Board considers probable or of sufficient gravity to justify the expected expense of such guarantee. (Effective November 14, 2015)

6. The Earth Materials Permit must be utilized through conducting activities provided for in the permit on the permitted site within one (1) year from the date of Planning Board approval. If work has not commenced on the site within one year, the permit holder or their designee may request an extension for up to one (1) year for cause shown. Once a permit is activated through activity on the site, the permit shall remain in place without expiration. The Code Enforcement officer shall suspend any permit for failure to comply with conditions placed upon the Earth Materials Permit, failure to post any necessary performance guarantees, noncompliance with any other permitting process or to address any other issues of earth materials removal effecting the public health, safety and welfare.

D. Standards

All extraction operations and sites within the Town shall be conducted and maintained in accordance with, and the Planning Board shall impose, such conditions upon any permit issued under this Section as the Planning Board deems necessary or desirable to assure compliance with the following requirements:

1. No part of any extraction operation shall be permitted within one hundred (100) feet of any property or street line, and natural vegetation shall be left and maintained on the undisturbed land.
2. No standing water shall be permitted in any extraction site during or after extraction operations, except that during active extraction operations standing water may be permitted under strict conditions with respect to fencing, safe levels of coliform bacteria count and treatment to prevent breeding of insects so as to assure the public health and safety.
3. No slopes steeper than three (3) feet horizontal to one (1) foot vertical shall be permitted at any extraction site during or after extraction operations, except that during any period of active operations steeper slopes shall be permitted as long as, in locations where the excavation will be more than fifteen (15) feet in depth with a slope steeper than 2:1, a fence at least three (3) feet high is erected to limit access to such locations.

4. Before commencing removal of any earth materials, the owner or operator of the extraction site shall present evidence to the Planning Board of adequate insurance against liability arising from the proposed extraction operations, and such insurance shall be maintained throughout the period of operation.
5. The hours of operation at any extraction site shall be limited as the Planning Board deems advisable.
6. Loaded vehicles shall be suitably covered to prevent dust and contents from spilling or blowing from the load. All trucking routes and methods shall be subject to approval by the Chief of Police.
7. All access roads leading from the extraction site to public ways shall be treated with stone, calcium or other suitable materials to reduce dust and mud.
8. No equipment debris, junk or other materials shall be permitted at an extraction site except those directly relating to active extraction operations, and any temporary shelters or buildings erected for such operations and equipment used in connection therewith shall be removed within thirty (30) days following completion of active extraction operations.
9. For the removal of rock, sand, gravel, and similar earth materials, any topsoil and subsoil suitable for purposes of re-vegetation shall, to the extent required for restoration, be stripped from the location of extraction operations and stockpiled for use in restoring the location after extraction operations have ceased. Following the completion of extraction operations at any extraction site or at any one or more locations within any extraction site, ground levels and grades shall be established in accordance with the approved plans filed with the Planning Board; all debris, stumps, boulders and similar materials shall be removed and disposed of in an approved location or, in the case of inorganic material, buried and covered with a minimum of two (2) feet of soil. Retained topsoil and subsoil shall be re-spread over the disturbed area with any additional loam required to create a minimum seed bed depth of six (6) inches, and the soil shall then be limed, fertilized and seeded with a grass or legume mixture which meets the minimum standards of the Technical Guide adopted by the Cumberland County Soil and Water Conservation District. The foregoing restoration measures shall be completed within such period as may be determined by the Planning Board, not exceeding eight (8) months following completion of extraction operations. The planted area shall be protected from erosion during the establishment period using good conservation practices.
10. The applicant's proposal shall adequately control erosion and stormwater runoff, and upon completion of active extraction operations, the land shall

be left so that natural storm drainage and water courses leave the location at the original natural drainage points and in a manner such that the amount of drainage at any point is not increased.

11. The applicant shall preserve any areas containing artifacts of possible archaeological significance, and shall promptly notify the Maine Historic Preservation Commission in writing of such artifacts.
12. In the case of topsoil removal, the applicant shall also assure that:
 - a. The proposed removal operation will stockpile the upper six (6) inches of topsoil and redistribute the same to a depth of six (6) inches throughout the site. This restoration shall be assured by high intensity soils surveys, and sieve analysis before and after the removal operation.
 - b. Where the proposed topsoil removal operation will have a duration greater than one (1) year, the applicant shall initially present to the Planning Board annual phasing plans. No permit shall be granted for a subsequent phase until the removal site for all prior phases has been restored and re-vegetated in accordance with the conditions of the original permit.
13. For operations involving blasting, the owner shall maintain records of the blasting operation, provide for supervision of the blasting activity by a person qualified, experienced and regularly engaged in such work, and provide the Town with prior notice of the drilling and blasting activity as required by the Planning Board.

SEC. 19-8-6. ARCHAEOLOGICAL AND HISTORIC RESOURCES

A. Archaeological Resources

The following provisions are intended to prevent the disturbance of sites with potential or identified archaeological significance until their importance is documented.

1. Identified Sites

No activity which disturbs the ground such as trenching, grading, or excavating shall be commenced and no municipal permit or approval shall be issued within any of the following archaeological resource potential areas until the Maine Historic Preservation Commission has been notified of the nature of the proposed activity in writing by the owner of the property, a copy of the notice is provided to the Code Enforcement Officer, and a reconnaissance level archaeological survey is conducted, unless the Maine Historic Preservation Commission notifies the owner in writing that

such a survey will not be needed. The survey requirement will be deemed satisfied if the Maine Historic Preservation Commission has not carried out a survey or responded to the owner in writing within six (6) months or if the owner of the property has a reconnaissance level survey completed by a competent professional and provides a copy of the survey to the Maine Historic Preservation Commission and the Code Enforcement Officer.

The archaeological resource potential areas as identified in the Comprehensive Plan are:

- Within two hundred fifty (250) feet of Alewife Brook
- Within two hundred fifty (250) feet of Great Pond
- Within two hundred fifty (250) feet of the high water line at Hannaford Cove
- Richmond Island including the breakwater
- Within two hundred fifty (250) feet of the Spurwink River downstream of the Route 77 bridge
- Within two hundred fifty (250) feet of the upland edge of the Spurwink Marsh

2. Other Areas

If an artifact is uncovered during ground-disturbing activities in other areas not identified above as archaeological resource potential areas, the activities shall be halted and not recommenced until the Maine Historic Preservation Commission has been notified in writing of the find by the owner of the property, a copy of the notice provided to the Code Enforcement Officer, and a written response received from the Commission. If no response is received within forty-five (45) days from the date notification was provided to the Commission, the Code Enforcement Officer shall authorize commencement of the activity.

B. Historic Resources

The following provisions are intended to establish a waiting period prior to the demolition of an historically significant building or structure to allow for alternatives to be explored.

1. Identified Resources

No permit for the demolition, in whole or in part, of a historical building or structure listed in Appendix C shall be issued until forty-five (45) days after notice has been provided to the Town Manager, Code Enforcement Officer, and Maine Historic Preservation Commission and has been published in a newspaper of general circulation within Cape Elizabeth. Upon the completion of the forty-five (45) day notice period, the Code Enforcement Officer shall issue the demolition permit subject to the normal review and standards unless:

- a. the applicant has withdrawn the request, or
- b. a court of law has issued an injunction barring the issuance of the permit.

The forty-five (45) day notice period shall not apply to the demolition of accessory buildings or structures other than barns that are part of the “historic character” of the site, the removal of additions that are not part of the “historic character” of the building, or the demolition of the remains of a building resulting from a fire or destruction by a natural disaster.

SEC. 19-8-7. GREAT POND WATERSHED PERFORMANCE STANDARDS

In addition to the other requirements of this ordinance, all land within the watershed of Great Pond shall conform to the following standards. These standards shall apply to all new construction activities, including paving and the modification of existing uses:

1. Within five hundred (500) feet of the high water mark of Great Pond, no more than thirty percent (30%) of the total lot area may be stripped at any given time. Within other areas of the watershed, no more than fifty percent (50%) of the total lot area may be stripped of existing vegetation at any given time. The balance of the lot cannot be stripped of existing vegetation until the Code Enforcement Officer verifies in writing that the area previously stripped has been permanently stabilized by use of sod, seed, landscape vegetation, or similar ground covers or riprap.
2. Not more than thirty-five percent (35%) of the total area of a lot may be covered by impervious surfaces, including buildings, structures, and paved or graveled surfaces.
3. Any area of disturbed ground resulting from construction or similar activities shall be temporarily or permanently stabilized by use of riprap, seed, mulch, and other similar ground cover within one (1) week from the time it was last actively worked.
4. Vegetated buffer strips at least twenty-five (25) feet wide shall be maintained adjacent to waterways, drainage ditches, manmade ponds, and swales. Waterways, ditches, pond edges, and swales must be re-vegetated prior to September 15 of the year in which the new construction is conducted. Owners are encouraged to maintain these buffer strips in a naturally vegetated state.
5. Silt fencing and hay bale barriers per the Cumberland County Soil and Water Conservation District Standards shall be used during all phases of construction projects including single family homes to control erosion on the site.
6. New construction projects that require Site Plan Review may be required, if deemed necessary by the Planning Board with the guidance of the Town

Engineer, to construct nutrient loading control devices such as sedimentation ponds, wet ponds, swales, flow slips, or similar devices in accordance with Phosphorus Control in Lake Watersheds: A Technical Guide for Evaluating New Developments.

In addition, best management practices as set forth in Stormwater Management for Maine: Best Management Practices shall be used for all current and future agricultural land within the watershed.

As part of the process for obtaining a building permit, the owner of a parcel within the watershed shall complete a Watershed Information Form (WIF) which provides the following details: 1. percentage of existing vegetation to be cleared; 2. percentage of impervious surface to be created; 3. description of erosion control measures; and 4. the development's approximate distance from the Great Pond shoreline.

SEC. 19-8-8. HOME DAY CARE AND DAY CARE FACILITY STANDARDS

In addition to all other requirements of this ordinance, home day care and day care facilities shall be subject to the following provisions:

A. Approval of Home Day Care

A home day care shall be allowed in any zoning district in which it is a permitted use only if it has received a home day care permit in accordance with the provisions of this section.

The owner of the property where the home day care will be located shall apply to the Code Enforcement Officer for a permit using forms provided by the Town. Upon receipt of a permit application, the Code Enforcement Officer shall notify, in writing, the abutters of the subject parcel of the pending application. The notice shall advise the abutters that the permit will be issued if the application conforms to the standards of Sec. 19-5-5, Conditional Use Permits, and that the abutter can provide written information as to the conformance of the request with these standards within thirty (30) days of mailing of the notice. If the Code Enforcement Officer finds that the application conforms to the standards and no information to the contrary is received during the thirty (30) day period, the permit shall be issued.

1. If the Code Enforcement Officer receives information that the application may not conform to the standards, the Code Enforcement Officer shall:
 - a. notify the applicant of the information
 - b. refer the application to the Zoning Board of Appeals for consideration; and
 - c. notify the parties providing the information of the referral.

2. The Zoning Board of Appeals shall consider the application for a home day care permit in accordance with the procedures for hearing conditional use applications as set forth in Sec. 19-5-5, Conditional Use Permits. The Zoning Board of Appeals shall direct the Code Enforcement Officer to issue the permit if it finds that:
 - a. the application conforms to the requirements of Sec. 19-8-8.C, Requirements for Home Day Care and Day Care Facilities, and
 - b. the application conforms to the conditional use standards of Sec. 19-5-5, Conditional Use Permits.

Any home day care receiving a permit from the Code Enforcement Officer shall not be subject to site plan review.

B. Approval of Day Care Facilities

A day care facility shall be allowed in any zoning district in which it is a conditional use only if it has:

1. received a conditional use permit in accordance with Sec. 19-5-5, Conditional Use Permits, and
2. received site plan approval in accordance with Article IX. Site Plan Review.

C. Requirements for Home Day Care and Day Care Facilities

All home day care and day care facilities shall conform to the following requirements:

1. The facility shall not operate before the hours of 7:00 a.m. or after the hours of 7:00 p.m.
2. A fenced outdoor play area shall be provided with a minimum of 75 square feet per child.
3. No outside play shall be allowed before 9:00 a.m. on Saturdays, Sundays, or holidays.
4. Adequate lighting shall be provided at the vehicle drop-off and pickup area.

SEC. 19-8-9. BOAT REPAIR FACILITY STANDARDS

In addition to the other requirements of this ordinance, a commercial boat repair facility shall comply with the following additional standards:

1. No more than four (4) persons shall be engaged on a continuous basis in boat construction or repair;
2. Front, side and rear setbacks of one hundred fifty (150) feet shall be maintained from any public roads or from any abutting properties;
3. The visibility of the facility shall be minimized from abutting properties and from any public roads;
4. The facility shall not have a commercial appearance;
5. No outside storage of boats or materials shall be visible from the public road;
6. The hours of operation shall be limited to between the hours of 8:00 a.m. and 6:00 p.m.;
7. No boat shall be built or repaired at such facility to be transported over public roads which will endanger the safety of the public or require the moving of utility lines.

SEC. 19-8-10. AGRICULTURAL STANDARDS

In addition to the other requirements of this ordinance, an agricultural use or the keeping of livestock shall comply with the following additional standards:

1. Commercial piggeries and abattoirs are prohibited in all districts;
2. A poultry house or range containing more than twenty-five (25) birds shall be located at least one hundred fifty (150) feet from any property line;
3. A temporary sawmill shall be located at least three hundred (300) feet from any property line.

SEC. 19-8-11. USE OF RECREATIONAL CAMPING VEHICLE OR OTHER TEMPORARY RESIDENTIAL UNIT

The use of a travel trailer, motor home, or other recreational camping vehicle as a temporary or permanent dwelling is prohibited in all districts. A travel trailer, motor home, or other recreational camping vehicle may be used on an occasional basis for temporary occupancy by its owner. For the purpose of this section, occasional basis shall mean occupancy on not more than three (3) nights in any thirty (30) day period. Unoccupied travel trailers, motor homes, or recreational camping vehicles may be parked or stored on a lot in any district provided the lot is owned by the owner of the unit.

SEC. 19-8-12. TOWER AND ANTENNA PERFORMANCE STANDARDS

(Effective April 15, 2000)

In addition to the other requirements of this ordinance, all land within the Tower Overlay District shall conform to the following standards. These standards shall apply to the erection of a tower and the installation of an antenna on a tower or an alternative tower structure in any structure.

1. Procedure

- a. **Applicability.** The erection of: (i) a tower providing commercial wireless telecommunication services or (ii) a tower in excess of 50' in height serving as an amateur or governmental wireless telecommunication facility shall be permitted with Site Plan Approval from the Planning Board in accordance with Sec. 19-9, Site Plan Review and the standards of Sec. 19-8-12.2. below. The installation of a commercial wireless telecommunication service antenna on a tower or an alternative tower structure shall be permitted with issuance of a building permit by the Code Enforcement Officer in accordance with Sec. 19-3-3, Building Permits and the standards of Sec. 19-8-12.2. below. The installation of a second amateur wireless telecommunication facility antenna or additional governmental wireless telecommunication facility antennas shall be permitted with issuance of a building permit by the code Enforcement Officer in accordance with Sec. 19-3-3, Building Permits and the standards of Sec. 19-8-12.2. below.
- b. **Submission Requirements.** In addition to the Submission requirements of Sec. 19-9, Site Plan Review, or Sec. 19-3-3, Building Permits, as applicable, the applicant shall be required to submit all information necessary to demonstrate compliance with the Performance Standards in Sec. 19-8-2.2, below. The applicant shall also provide a map showing existing telecommunication coverage and anticipated cover age with the installation of the proposed telecommunications. (Effective November 5, 2016)

2. Performance Standards

Where the following standards shall be applied during Site Plan Review, the “Town” shall be the Planning Board. Where the following standards shall be applied for the installation of an antenna on a tower or an alternative tower structure, the “Town” shall be the Code Enforcement Officer.

- a. Co-location. The applicant, owner and all other tower users shall allow other commercial wireless telecommunication service providers using functionally compatible technology to co-locate antennas, equipment and facilities on a tower and site, unless satisfactory evidence is presented and the Town concurs that technical constraints prohibit co-location. Commercial wireless telecommunication service providers shall provide a mechanism for the construction and maintenance of co-located antennas and infrastructure and shall provide for reasonable sharing of cost in accordance with industry standards. To ensure co-location, the Town may require co-location on a tower in order to prevent the need for commercial wireless telecommunication service providers to build new towers, may deny an application for a tower because of inadequate provisions and/or arrangements for co-location and may require an existing tower to be extended in height to the maximum height allowed in that district (provided that a structural analysis indicates that such extension is structurally feasible and safe and the tower height does not exceed the maximum limit in Sec. 19-6-13, Tower Overlay District in order to provide for co-location.
- b. Color. Towers and antennas shall be designed to blend into the surrounding environment through the use of color and camouflaging architectural treatment, except in instances where the color is dictated by the federal or state authorities.
- c. Buffers. Unless existing vegetation provides a buffer strip, a vegetated buffer shall be provided along all property lines along roadways or visible to existing abutting or nearby buildings (within a ¼ mile radius) to be landscaped as follows:
 1. with 6’-8’ evergreen shrubs planted in an alternate pattern, 5’ on center and within 15’ of the site boundary;
 2. with at least one row of deciduous trees, no less than 2 ½ - 3” caliper measured 3’ above grade, and spaced not more than 20’ apart and within 25’ of the site boundary;
 3. with at least one row of evergreen trees at least 4’ – 5’ in height when planted, and spaced not more than 15’ apart within 40’ of the site boundary; and

4. in lieu of the foregoing, the Town may determine that the existing vegetation must be supplemented to meet an equivalent buffering standard or may accept alternative means of achieving the desired goal of minimizing the visual impact. To assist in making that determination, the Town may require the applicant to provide an analysis by a qualified professional of the visual impact of the tower base.
- d. Lighting. Towers shall not be artificially lighted, unless required by the FAA or other Federal or State authority, and shall not display strobe lights. If lighting is required, the Town may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding properties and views. When incorporated into the approved design of the tower, light fixtures used to illuminate ball fields, parking lots, and similar areas may be attached to the tower.
 - e. Structural. To ensure the structural integrity of towers, the owner shall ensure that the construction of a new tower or any alteration of a tower, including the addition of antennas or other attachment, is designed, constructed, and maintained in conformance with applicable Federal, State, and Local building, electrical and safety codes and designed and installed in accordance with the current standards of the Electronic Industries Association (EIA) Structural Standards for Steel Antenna Towers and Antenna Supporting Structures.
 - f. Security. A security fence or wall not less than 8' in height from the finished grade shall be provided around the tower. Access to the tower shall be through a locked gate. Amateur wireless telecommunication facilities that are located adjacent to the owner's primary residence shall not be required to meet this standard.
 - g. Advertising. No advertising or signage is permitted on towers or antennas providing commercial wireless telecommunications services.
 - h. Non-interference. The applicant and owner shall include either a preliminary or a certified statement that the construction of the tower, including reception and transmission functions, will not interfere with the radio, television, or telecommunication service enjoyed by the community. In the event only a preliminary statement is submitted with the application, a final certified statement of non-interference shall be provided by a professional engineer and approved by the Town prior to issuance of a building permit. The statement shall be prepared by an engineer licensed to practice in the State.
 - i. Abandonment. All abandoned or unused towers and associated facilities shall be removed within 12 months of the cessation of operations at the site

unless a time extension is approved by the Town. A copy of the relevant portions of a signed lease which requires the applicant to remove the tower and associated facilities upon cessation of operations at the site shall be submitted at the time of application. In the event that a tower is not removed within 12 months of the cessation of operations at a site, the tower and associated facilities may be removed by the Town and the costs of removal assessed against the property.

- j. Performance Guarantee. No building permit may be issued until the applicant has provided a performance guarantee to the town in accordance with Sec. 16-2-6 (c), Subdivision Ordinance. (Effective November 14, 2-15)

SEC. 19-8-13. WIND ENERGY SYSTEM PERFORMANCE STANDARDS

(Effective October 8, 2008)

Prior to the issuance of a Building Permit for a Wind Energy System, the Code Enforcement Officer shall determine that the following standards have been met. The Code Enforcement Officer shall require that such other information needed to determine compliance with the standards below be included in the Building Permit application.

1. Number. No more than 1 wind energy system shall be permitted per lot and shall only generate energy for use for a main building and/or accessory buildings located on the same lot. This standard is not intended to prohibit the transfer of excess energy to the grid.
2. Tower. A wind energy system shall be mounted on a monopole or guyed wire tower. The setback for guy wires shall be equivalent to the setback for a principal structure.
3. Blade Clearance. The minimum distance between the ground and any protruding blades shall be 20 feet as measured at the lowest point of the arc of the blades.
4. Access. The tower shall be designed and installed such that public access via step bolts or a ladder is prevented for a minimum of 12 feet above the ground.
5. Appendages. No appendages shall be attached to the wind energy system tower that is not incidental to its primary use.
6. Signs. The wind energy system shall not display any permanent or temporary signs, writing, symbols, logos, or any graphic representation, except that warning signs and manufacturers signs no to exceed 1 sq. feet. per manufacturer may be permitted.
7. Lighting. No wind energy system shall be lighted.

8. Wiring. Wiring shall be installed underground and shall be approved by the Code Enforcement Officer for compliance with the electrical code.
9. Removal. Any wind energy system which is deemed unsafe by the Code Enforcement Officer, is not working or is not used for a period of one year shall be removed by the property owner.
10. Noise. Wind energy systems shall not exceed 55 dB(a) at the property line.
11. Color. The wind energy system shall have a non-reflective, neutral color surface.

SEC. 19-8-14. SHORT TERM RENTAL STANDARDS

(Effective December 14, 2012)

A. Purpose

Cape Elizabeth residents prize the peace and quiet of their residential neighborhoods. Some property owners have capitalized on the desirability of their neighborhood by renting out their property, especially during the summer months and holidays. Neighborhood residents are concerned that short term rentals take on the character of a business operating in a residential neighborhood. The purpose of this section is to balance the desire of property owners to rent their properties to short term tenants and the desire of residents to preserve the peaceful quiet and enjoyment of their residential neighborhoods.

B. Applicability

A Short Term Rental is permitted only after the issuance of a Short Term Rental permit. Notwithstanding the preceding sentence, a permit is not required for a Short Term Rental which, with any prior Short Term Rental of the property, does not exceed in the aggregate fourteen (14) days in any calendar year. For the purpose of determining whether a permit is required, each rental of the property shall be deemed for a period of not less than seven (7) days regardless if the actual number of days the property is occupied is less than seven (7) days. Further, not more than one Short Term Rental agreement shall be entered for any given property for any consecutive seven-day period.

C. Review Procedure

1. The Code Enforcement Officer shall have the authority to issue a Short Term Rental permit.
2. The Code Enforcement Officer shall provide a Short Term Rental application to be completed by the applicant and submitted to the Code Enforcement Officer accompanied by the Short Term Rental permit fee as established by the Town Council. The form shall include a non-exclusive checklist of code requirements that the property owner shall demonstrate compliance with.

3. The code Enforcement Officer shall determine if the form has been properly completed before any permit is issued.
4. The first time that a Short Term Rental permit is submitted for a property, no permit shall be issued until the Code Enforcement Officer has inspected the proposed Short Term Rental property for compliance with the Short Term Rental Standards and compliance with building code requirements. Thereafter, renewal of a Short Term Rental permit shall require inspection by the Code enforcement Officer of the Short Term Rental property no less than once every five years. When the Code Enforcement Officer does not conduct an annual inspection, the Short Term Rental owner shall certify that there have been no material changes since the last inspection by the Code Enforcement Officer. Any third party inspection information submitted with the completed form shall have been conducted within the twelve months prior to the permit being issued.
5. The Code Enforcement Officer shall review the permit application for compliance with the Short Term Rental Standards.
6. If the Code Enforcement Officer determines that the proposed Short Term Rental application complies with the Short Term Rental Standards, a Short Term Rental permit shall be issued. A permit shall be valid for one (1) year from date of issuance. The permit may be subject to suspension by the Code Enforcement Officer if the Short Term Rental property becomes non-compliant with the Short Term Rental Standards, and may be revoked as provided in 19-8-14.(F).

D. Submission Requirements

The Short Term Rental permit application shall include the following information:

1. Location. The street address and map/lot number of the Short Term Rental property. If the property is not located on a public road, the form shall include directions to the property from a public road.
2. Contact Person/Owner Responsibility. The name of the owner of the Short Term Rental property and contact information, including address and telephone number. In addition, if someone other than the owner is acting as the local contact person, contact information for that person shall also be provided. If there will be different contact persons for different time periods during the year, the form shall include the applicable contact person for each time period. Regardless of who enters the Short Term Rental agreement, or who may be designated as the owner's contact person, the property owner shall be responsible for compliance with the Short Term Rental Ordinance provisions.

3. Availability. The registration form shall include when, during the calendar year, the Short Term Rental will be available for rental. If this changes, the owner shall notify the Code Enforcement Officer.
4. All information needed to demonstrate compliance with the standards listed in Subsection E below.

E. Standards

The Code Enforcement Officer shall issue a Short Term Rental permit upon the applicant satisfying the above requirements if the following standards are met:

1. Code compliance. An applicant's property, without limitation, comply with the following building code sections of the International Residential Code ("IRC") and the International Building Code ("IBC"):

- a. IRC Section R 314, Smoke Alarms;
- b. IRC Section R 315, Carbon Monoxide Alarms;
- c. IBC Section 906, Portable Fire Extinguishers. The building shall be considered to be an R-1 Occupancy (Boarding House) for the purpose of determining the type and location of portable fire extinguishers;
- d. IBC Section 1006.2. 1006.3 and 1006.4. Means of Egress Illumination.

The applicant shall provide floor plans of the dwelling unit that shows the location of the alarms, fire extinguisher(s) and emergency lighting.

2. Building evacuation plan. A building evacuation plan shall be prominently posted in the Short Term Rental property during the rental period.
3. Sanitary waste disposal. The applicant shall submit information demonstrating that adequate sanitary waste disposal is available in compliance with the Town of Cape Elizabeth Subsurface Wastewater Disposal Ordinance, as determined by the Code Enforcement Officer, or that the property is served by public sewer.

The information shall include the total number of bedrooms included in the property, any additional sleeping space, and the total number of tenants that the property accommodates. The total number of tenants used to determine adequacy of sanitary waste disposal shall not be less than the total number of tenants that the property is advertised to accommodate. For the purpose of evaluating the adequacy of a subsurface disposal system, every two tenants shall be equivalent to one bedroom.

4. Parking. The applicant shall include a depiction of how parking will be provided on the same lot, and/or include a written agreement for off-site parking at a specified location, to comply with the Off-Street Parking Standards, Sec. 19-7-8. Garage parking spaces not allowed for tenant use shall not be used to

meet the Short Term Rental parking requirement. No bus shall be parked at the Short Term Rental property during any rental period.

5. Rental Agreement Addendum. The Short Term Rental permit application shall be submitted with an addendum to be attached to Short Term Rental agreement between owner and tenant that shall be provided to all tenants. The Town shall not be responsible for enforcement of the rental agreement of addendum. The rental agreement addendum shall include the following:
 - a. Contact person;
 - b. Emergency responder contact information;
 - c. Building evacuation plan;
 - d. Maximum number of tenants and guests;
 - e. Parking arrangements, including a prohibition of tenants and guests parking in a manner that impedes access by emergency vehicles to the property or any other dwelling in the neighborhood;
 - f. Maximum number of tenants and guests allowed at the property;
 - g. Good neighbor guidelines;
 - h. Copy of the Miscellaneous Offenses Ordinance.
6. Limit on rental intensity. If a Short Term Rental property is operated on a lot of 30,000 sq. ft. or less in size and property owner is not either living on an abutting lot or in a separate dwelling in the same lot, the Short Term Rental permit shall not allow more than two tenants per bedroom, shall not allow use of non-bedroom areas for sleeping, and shall not allow occupancy by more than eight tenants at any time. The number of short term Rental guests shall be limited to eight at any time. On site parking shall be limited to four parking spaces.

F. SUSPENSION AND REVOCATION OF PERMIT

In addition to the provisions of Sec. 19-3-6. Violations, a permit for a Short Term Rental may be suspended or revoked if the Code Enforcement Officer determines that one or more substantiated complaints regarding Short Term Rentals of a property have been made in a three-year period.

1. Complaint. Any individual or town official may file and/or initiate a complaint against a Short Term Rental permit holder. If the Police Department or the Code Enforcement Officer receives a complaint, they shall visit the property. The Police Department shall generate a report of the facts its officers have observed upon a visit, and statements made to them regarding the Short Term Rental. The Police Department shall then forward the report to the Code Enforcement Officer.

When the Code Enforcement Officer receives a report from the Police Department, or the Code Enforcement Officer has responded to a complaint or independently investigated, the Code Enforcement Officer shall inspect the property and shall collect information related to the complaint, including notifying the property owner and requesting information regarding the complaint. Within five days of receiving a Police Report or complaint, the code Enforcement Officer shall determine if the complaint is substantiated. A complaint is substantiated when the Code Enforcement Officer concludes that one or more violations of the Short Term Rental provisions occurred.

2. First Substantiated Complaint. Once the Code Enforcement Officer has made a finding of a substantiated complaint, the Code Enforcement Officer shall notify the property owner in writing. The notification shall require the property owner to meet with the Code Enforcement Officer within five (5) business days from the date of the written notification, or such other time as is agreed upon by the Code Enforcement Officer, to identify ways in which the violation(s) will be corrected. The owner will agree to take all necessary measures to correct the violation(s), which measures shall be memorialized in a written agreement at the conclusion of the meeting and shall be fully implemented within one (1) week of said meeting unless another date is agreed to by the Code Enforcement Officer. Failure of the property owner to enter into such an agreement at the conclusion of the meeting will be deemed a second violation of the Short Term Rental provisions. In addition, the Code Enforcement Officer may suspend the short Term Rental permit for a term not to exceed thirty days.
3. Second Substantiated Complaint. Once the Code Enforcement Office has made a finding of two (2) substantiated complaints, the Code Enforcement Officer shall notify the property owner in writing that the Short Term Rental permit shall be suspended for a period of not less than thirty days, nor more than one hundred twenty days.

The notification shall require the property owner to meet with the Code Enforcement Officer within five (5) business days from the date of the written notification, or such other time as is agreed upon by the Code Enforcement Officer, to identify ways in which the violation(s) will be corrected. The owner will agree to take all necessary measures to correct the violation(s), which measures shall be memorialized in a written agreement at the conclusion of the meeting and shall be fully implemented within one (1) week of said meeting unless another date is agreed to by the Code Enforcement Officer. Failure of the property owner to enter into such an agreement at the conclusion of the meeting will be deemed a violation of the Short Term Rental provisions.

4. Third Substantiated Complaint. Once the Code Enforcement Officer has made a finding of three substantiated complaints, the Code Enforcement Officer shall notify the property owner in writing that the Short Term Rental permit has been revoked for one calendar year.

5. Appeal. An appeal to the zoning Board of Appeals as an Administrative Appeal may be taken by any person aggrieved by a determination of the code Enforcement Officer pursuant to Section 19-5-2.(A).
6. Effective Date. The Short Term Rental provisions of the ordinance shall be fully effective as to all contracts for short Term Rentals executed on or after 30 days from date of enactment, and shall further apply to all contracts in effect on such date to the extent the application of these provisions would not result in a substantial impairment of such existing contracts.

SEC. 19-8-15. SPECIAL EVENT FACILITY STANDARDS

(Effective December 4, 2015)

This section establishes review standards for the development and operation of a special event facility. These provisions are necessary to reduce impact on surrounding properties and to protect town residents and event guests and staff. A special event facility shall conform to the following standards.

1. Procedure
 - a. Applicability. Special event facilities, as defined in this ordinance, are subject to Site Plan Review, Sec. 19-9, and the Special Event Facility Standards of subsection 2., below.
 - b. Review. A special event facility shall be reviewed in accordance with the Site Plan review procedures, Sec. 19-9-4.B, except that Site Plan approval shall be valid for three (3) years from the date of the Planning Board vote and expire if the applicant does not apply for a new approval prior to the expiration date.
 - c. Submission requirements. In addition to the Submission requirements of Sec. 19-9, Site Plan Review, the applicant shall be required to submit all information that the Planning Board deems necessary to demonstrate compliance with the Performance Standards in Sec. 19-8-15.2., below. Information to be submitted shall include, but not limited to:
 - i. The maximum number of events to be held in a calendar year;
 - ii. The maximum number of attendees to be allowed at an event;
 - iii. Whether the special event facility will be operated seasonally, in which case the beginning and end dates of the season, or if the facility will operate year-round;

- iv. The area(s) designated for temporary structures or features including but not limited to tents, sanitary waste facilities, performance stands and food preparation and service;
- v. A description of the types of events that will be held at the special event facility;
- vi. For previously approved special event facilities seeking a renewal approval, a record of the events that have been held, including the date, duration and number of attendees, and any complaints that have been received by the applicant or on file with the Police Department.

2. Performance Standards

A special event facility must comply with the Site Plan Approval Standards, Sec. 19-9-5, and the standards below.

1. Event scope. All events shall not exceed the following maximum limits and may be further limited when needed to reconcile site constraints with Site Plan Review standards.
 - i. A special event shall not exceed 275 attendees in size, including guests and staff supporting the event.
 - ii. No more than 12 events shall be held in a calendar year.
 - iii. No amplification of music for the event shall commence earlier than 9:00 a.m. nor extend later than 10:00 p.m.
 - iv. No event shall exceed eight (8) hours in duration, excluding set-up and break-down, in a calendar day.
2. Seasonal facilities. The Planning Board may find that temporary structures and facilities are adequate to comply with the Site Plan standards when the special event facility will only operate seasonally and the seasonal needs are met. In particular, methods of providing parking and sanitary waste disposal on a seasonal basis may be appropriate for the duration of the special event season.
3. Building Code Compliance. Where any portion of a special event facility is located within a structure, the structure shall be in compliance with applicable building codes.
4. Additional requirements. The Planning Board may apply reasonable restrictions on the operation of a special event facility related to the lot on

which the special event facility is located or to mitigate the impact of the special event facility on the abutting neighborhood(s).

ARTICLE IX. SITE PLAN REVIEW

SEC. 19-9-1. PURPOSE

The site plan review provisions set forth in this section are intended to protect the public health and safety, promote the general welfare of the community, preserve the environment, and minimize improvements that must be paid for by the Town's taxpayers by assuring that nonresidential, multiplex residential, eldercare, and similar facilities are designed and developed in a manner which assures that adequate provisions are made for: traffic safety and access; emergency access; water supply; sewage disposal; management of storm water, erosion, and sedimentation; protection of the groundwater; protection of the environment; minimizing the adverse impact on adjacent properties; and fitting the project harmoniously into the fabric of the community.

SEC. 19-9-2. APPLICABILITY

A. Activities Requiring Site Plan Review

The owner of a parcel of land shall obtain site plan approval prior to undertaking any alteration or improvement of the site including grubbing or grading, obtaining a building or plumbing permit for the activities, or commencing any of the following activities on the parcel:

1. The construction of any nonresidential building or building addition.
2. Any nonresidential expansion or change in use except that changes of use within the Town Center District shall be governed by the provisions of Sec. 19-6-4.E, Site Plan Review and uses within the business A District shall be governed by the provisions of Sec. 19-6-5.F. Site Plan Review. (Effective June 10, 2010)
3. Multiplex housing and eldercare facilities.
4. Any other activity or use requiring Planning Board review in the Zoning Ordinance.
5. New construction involving more than ten thousand (10,000) square feet of impervious surface, paving, clearing, or vegetative alteration, or any combination thereof. (The Planning Board shall review the proposal for control of storm water runoff under the terms of Chapter 25 Storm Water Ordinance.) (Effective November 5, 2016)

B. Activities Not Requiring Site Plan Review

The following activities shall **not** require site plan approval (certain of these activities may, however, require the owner to obtain a building permit, plumbing permit, or other State and local approvals):

1. The construction, alteration or enlargement of a single family or two-family dwelling unit, including accessory buildings and structures, except as required in the Town Center Core Subdistrict. (Effective June 10, 2010)
2. The placement of manufactured housing or mobile home on individual lots.
3. Agricultural buildings as follows: (Effective June 10, 2010)
 - a. Any temporary agricultural building, where temporary shall mean that the structure remains in place no more than 3 months in any 12-month period.
 - b. If sales shall be conducted from the building, the structure must be a temporary structure and sales shall not be conducted from the building for more than 3 months in any 12-month period.
 - c. Any barn, greenhouse, or storage shed with a building footprint that does not exceed 2,000 sq. ft. in size.
 - d. Any structure that shall provide housing, other than a single family home, shall require Site Plan Review under Sec. 19-2-2.(A).(4), above.
 - e. Any structure which does not comply with subparagraphs a., b., and c. above shall require Site Plan Review.
4. Temporary structures such as construction trailers or equipment storage sheds.

SEC. 19-9-3. REVIEW AND APPROVAL AUTHORITY

The Planning Board is authorized to review and act on all site plans for development requiring site plan review as defined above. In each instance where the Planning Board is required to review the site plan for a proposed use, it shall approve, deny, or conditionally approve the application based on its compliance with the standards in Sec. 19-9-5, Approval Standards, which action shall be binding upon the applicant. Where a proposed use is subject to approval of the Zoning Board of Appeals, such approval shall be obtained before the Planning Board considers the site plan for the proposed use.

SEC. 19-9-4. REVIEW PROCEDURES

The Planning Board shall use the following procedures in reviewing applications for site plan review.

A. Workshop

Prior to submitting a formal application, the applicant shall schedule a pre-application workshop with the Planning Board. The pre-application workshop shall be informal and informational in nature. There shall be no fee for a pre-application review, and such review shall not cause the plan to be a pending application. No decision on the substance of the plan shall be made at the pre-application workshop. The applicant is encouraged to meet informally with the Town Planner prior to the workshop.

1. Purpose

The purposes of the pre-application workshop are to:

- a. Allow the Planning Board to understand the nature of the proposed use and the issues involved in the proposal
- b. Allow the applicant to understand the development review process and required submissions
- c. Identify issues that need to be addressed in future submissions.

2. Information Required

There are no formal submission requirements for a pre-application workshop. However, the applicant should be prepared to discuss the following with the Planning Board:

- a. The proposed site, including its location, size, and general characteristics
- b. The natural characteristics of the site that may limit its use and development
- c. The nature of the proposed use and potential development, including a conceptual site plan
- d. Any issues or questions about existing municipal regulations and their applicability to the project
- e. Any requests for waivers from the submission requirements.

3. Planning Board Workshop

The Planning Board workshop shall be informational and shall not result in any formal action. The Planning Board shall identify and issues or constraints which need to be addressed in the formal site plan application.

B. Application Review Procedures

1. Completeness. After an application has been submitted with the requisite fees, including establishment of a Review Escrow Account under the terms of Sec. 16-2-1(c.) of the Subdivision Ordinance, and after any required Zoning Board of Appeals approval has been obtained, the Town Planner shall accept and date an application for Planning Board review. In consultation with the Planning Board Chair or Vice Chair, the Town Planner shall review the site plan application and accompanying materials to determine whether the application is complete or incomplete. If, in consultation with the Planning Board Chair or vice Chair, the application is preliminarily determined to be incomplete, the Town Planner shall notify the applicant in writing and shall list in the written determination the materials that must be submitted in order to make the application complete. If the applicant fails to submit a complete application within four (4) months of the written determination of incompleteness, the application shall be deemed withdrawn. When the Town Planner makes the preliminary determination that an application is complete, the application shall be scheduled for consideration at the next available Planning Board meeting. The Planning Board may require other information in addition to that required in Sec. 19-9-4.C, Submission Requirements. The Planning Board may also request an evaluation of specific aspects of the site plan from the Conservation Committee, the Town Engineer, or others. In the event that the Planning Board requires additional information or evaluation, it may deem the application incomplete.

No action taken by the Town Planner, either alone or in consultation with the Planning Board chair or vice Chair, with respect to reviewing a site plan application, shall result in an application being deemed pending for the purposes of 1 M.R.S.A. §302. The Town Planner, either alone or in consultation with the Planning Board Chair or Vice Chair, shall have no authority to review the substance of a site plan application to determine whether it complies with the site plan review criteria. (Effective November 5, 2016)

2. Public Hearing. Upon certification by the Planning Board that an application is complete, the Planning Board, at its discretion, may hold a public hearing. If the Planning Board determines to hold a public hearing, it shall hold the hearing within thirty-five (35) days of the date that the application is deemed complete and shall provide public notice in accordance with Sec. 16-2-1.(b). of the Subdivision Ordinance. (Effective November 5, 2016)

The Planning Board shall conduct the hearing to assure full, but not repetitive, public participation. The applicant shall be prepared to respond fully to questions from the Planning Board or issues raised by the public that the Planning Board deems significant. The Planning Board may, upon its own motion, extend the hearing once for a period not exceeding thirty (30) days and to a date that shall be announced. (Effective November 5, 2016)

3. Planning Board Decision. The Planning Board shall vote to approve, approve with conditions, or disapprove the Site Plan upon the conclusion of review of the development's compliance with Sec. 19-9-5, Approval Standards. The Planning Board decision shall include written findings of fact and shall be provided to the applicant within seven (7) days of the Planning Board vote. (Effective November 5, 2016)
4. Performance Guarantee/Post Approval. The Planning Board, at its discretion, may require that a performance guarantee be established with the Town for the cost of site improvements. Each performance guarantee shall comply with Sec. 16-2-6.(c). of the Subdivision Ordinance. An inspection fee shall be paid in accordance with Sec. 16-2-6.(d). When a project includes a performance guarantee, the applicant shall schedule a pre-construction meeting in accordance with Sec. 16-2-7.(a). of the Subdivision Ordinance. Upon completion of construction, record drawings shall be submitted to the Town in accordance with Sec. 16-2-7.(f). if any infrastructure has been installed in the public right-of-way or easement conveyed to the Town. (Effective November 5, 2016)
5. Approval Expiration. Site plan approval shall be valid for a period of one (1) year from the date of the Planning Board vote. Prior to the expiration of the site plan approval, the applicant may request an extension of up to one year from the Planning Board for cause shown. Site plan approval shall remain valid if a building permit has been issued for the project prior to the expiration date. Expiration of the building permit prior to completion of the project shall render the site plan approval null and void. Failure to comply with conditions placed upon site plan approval, to post any necessary performance guarantees, to comply with any other permitting processes or to address any other issues of site development, except pending litigation challenging the site plan approval, shall render the approval null and void unless an extension is granted by the Planning Board for good cause. (Effective November 5, 2016)

C. Submission Requirements

1. General Submission parameters.

The applicant shall submit thirteen (13) copies of building and site plans and supporting information drawn to a scale of not less than one inch equals fifty feet (1"=50'). The size of plan sheets submitted to the Planning Board shall be no larger than twenty-four (24) by thirty-six (36) inches, but a smaller size may be used with the permission of the Planning Board. A digital copy of the

complete application shall also be made available upon request. (Effective November 5, 2016)

2. List of Submission items.

The application for approval of a Site Plan shall include all the following information, unless waived by the Planning Board as described below. Information that must be shown on a plan is in bold type. Submission information shall be shown on the number of plans needed to depict the information in a readable format and each plan shall be individually labeled with a title generally based on the information depicted on the plan, with one plan titled "Site Plan" (Effective November 5, 2016)

- a. Right, Title or Interest. Evidence of right, title, and interest in the site of the proposed project. (Effective November 5, 2016)
- b. Written description. Written description of the proposed project including proposed uses quantified by square footage, number of seats, number of units or beds or number of students, and how development has been placed on the portions of the site most suited for development; application form; identification of the zoning district in which the property is located and the location of any zoning district boundary that bisects or abuts the property. (Effective November 5, 2016)
- c. Name of Project/Applicant. Proposed name of the project; name and address of record owner and applicant, names of adjoining property owners; date of submission; north point; graphic map scale. (Effective November 5, 2016)
- d. Survey. A standard boundary survey of the site, giving complete descriptive data by bearings and distances, made and certified by a licensed land surveyor in the State of Maine; a copy of the deed for the property to be developed, as well as copies of any easements, restrictions or covenants; location map, showing the relative location of the proposed project in relation to surrounding neighborhoods or areas of Town. (Effective November 5, 2016)
- e. Existing Conditions. All significant existing physical features on the site including streams, watercourses, watershed areas, existing woodlands and existing trees at least eight (8) inches in diameter as measured four and one-half (4 ½) feet above grade, and other significant vegetation; soil boundaries and names in wetland locations and where subsurface wastewater disposal systems are proposed; when applicable, any portion of the property located in the floodplain, within two hundred and fifty (250) feet of the Normal High Water Line, or in a Resource Protection 1, Resource Protection 1 Buffer or Resource Protection 2 District. (Effective November 5, 2016)

- f. Topography. Contour lines, existing and proposed, at intervals of two (2) feet or at such intervals as the Planning Board may require, based on United States Geological Survey datum, referenced to mean sea level. (Effective November 5, 2016)
- g. Buildings. Location of all existing and proposed buildings and structures with the distance from the nearest property lines labeled; size in square feet of existing and proposed building footprints and total size of building; elevations of each vertical side of a new building with dimensions, location of doors and windows, exterior materials and roof pitch labeled; elevations of each side of an existing building proposed to be altered with dimensions, location of doors and windows, exterior materials and roof pitch labeled; floor plans; building footprints located on adjacent properties within fifty (50) feet of the project property line. (Effective November 5, 2016)
- h. Traffic Access and Parking. Location and width of the nearest public road, and if the project will have access to a private road or driveway, the location and width of the private road or driveway; location of existing and proposed driveways, parking areas and other circulation improvements; site distances for all access points onto public roads; location of parking, loading and unloading areas, which shall include dimensions, traffic patterns, access aisles, parking space dimensions and curb radii; calculation of parking required in conformance with Sec. 19-7-8, Off Street Parking; existing and proposed pedestrian facilities including the location, dimension and surface treatment of sidewalks and paths, and description of high-demand pedestrian destinations within $\frac{1}{4}$ mile of the development; improvements shall include design details, cross sections and dimensions as needed. Estimated number of trips to be generated based on the latest edition of the Trip Generation Manual of the Institute of Traffic Engineers or equivalent quality information; For developments which generate one hundred (100) or more peak hour trips based on the latest edition of the Trip Generation Manual of the Institute of Traffic Engineers, a traffic study shall be submitted measuring current traffic, estimating traffic generated by the new development and assessing impacts on adjacent roadways and nearby intersections. Where the development may have a substantial traffic impact, the traffic study shall also include recommended mitigation; information on proposed, funded road improvements and town evaluation of road improvements. (Effective November 5, 2016)
- i. Storm water. Calculation of existing and proposed impervious surface; a storm water management plan, with flow arrows, profiles, cross sections, and invert elevations prepared, showing existing and design of all facilities and conveyances, LID (Low Impact Development) methods, and identification and location of known existing deficiencies that result in storm water surcharge or flooding; location of proposed drainage easements; narrative description of how storm water will be managed; description of any Low Impact Development (LID) methods incorporated

into the plan; note on plan for maintenance of private storm water infrastructure; storm water maintenance plan that lists infrastructure that needs to be maintained, inspection frequency and maintenance requirements. Where the property is located within the Great Pond Watershed, a description of how the Great Pond Watershed Overlay District provisions will be met. (Effective November 5, 2016)

When the project increases impervious surface by an area of ten thousand (10,000) sq. ft. or more, the storm water management plan must be prepared, signed and stamped by a professional engineer licensed in the State of Maine, pre- and post development calculations for the 2 and 25 year storm must be provided, and time of concentration path segments shown. (Effective November 5, 2016)

When a project increases impervious surface by one (1) acre or more, information shall be submitted as described in Sec. 25-1-4.(b). Storm Water Ordinance. (Effective November 5, 2016)

Summary Chart of Stormwater Submission Requirements and Review Standards (supplements ordinance provisions)		
Submission: All projects must calculate area of existing and proposed impervious surface and submit a stormwater management plan, including LID elements, identification of existing deficiencies, location of easements, note requiring maintenance of private infrastructure, and items related to the Great Pond Watershed Overlay District.		
Review Standard: All projects must manage stormwater on and off-site without damage to streets, adjacent properties, downstream properties, soils and vegetation and private stormwater infrastructure must be maintained		
Pre/post Impervious Surface	Submission Information Highlights	Review Standard Highlights
Decrease to increase of less than 10,000 sq. ft.	<ul style="list-style-type: none"> •Professional Engineer not required •Pre/post calculations not required 	<ul style="list-style-type: none"> •LID method is used
Increase of 10,000 sq. ft. to less than 43,560 sq. ft.	<ul style="list-style-type: none"> •Stormwater plan must be prepared by a Professional Engineer •Pre/post calculations required •Time of concentration path segments must be shown 	<ul style="list-style-type: none"> •LID method is used to treat first 1/2 inch of stormwater from new impervious surface
Increase of 43,560 sq. ft. or more	See Chapter 25, Stormwater Ordinance	See Chapter 25, Stormwater Ordinance

(Effective November 5, 2016)

- j. **Erosion Control.** An erosion control plan including details of erosion control methods used; written erosion control plan with notes. (Effective November 5, 2016)
- k. **Utilities.**
 - i. **Water.** Ability to serve letter from the Portland Water District; location and size of any existing and proposed water mains on the property, as well as details showing proposed connections to water systems; where public water is not to be provided, and alternative means of a clean and adequate water supply shall be shown, with supporting written documentation; nearest hydrant. (Effective November 5, 2016)
 - ii. **Sewage Disposal.** When the project will be served by public sewage, and ability to serve letter from the Town of Cape Elizabeth Sewer Superintendent; all existing and proposed public or shared sewage facilities and connections to the public sewage system; when not served by public sewer, evidence to demonstrate suitability of soils for subsurface wastewater disposal; the location of the subsurface wastewater system; all designs, specifications and details for a clustered, private or public sewage system. (Effective November 5, 2016)
 - iii. **Other utilities.** Ability to serve letter from Central Maine Power; location of existing and proposed above and below ground electrical lines, other utility conduits and location of gas storage tanks and fuel lines. (Effective November 5, 2016)
 - iv. **Solid/Other Waste Disposal.** Description of how solid waste will be stored and removed from the site; location and details of solid waste and recycling storage containers and screening; identification of chemicals, chemical wastes, hazardous, special or radioactive materials to be handled and/or stored onsite. (Effective November 5, 2016)
- l. **Landscaping.** Location and description of existing vegetation to be preserved; methods of preserving vegetation to be used during construction/landscaping and buffering plan showing what will be planted, indicating botanical and common names of plants and trees, fencing location, type, material and size. (Effective November 5, 2016)
- m. **Lighting.** Location and type of lighting to be installed; lighting fixture details indicating type of standards wattage and mounting height; a photometric study showing the footcandle lighting level at the property line when new lights shall be installed. (Effective November 5, 2016)
- n. **Signs.** Location, dimensions, materials, and details of signs. (Effective November 5, 2016)

- o. Noise. Statement of the typical activities, structures and equipment proposed on the site that will generate exterior noise, and then identify the unique activities, structures and equipment that are not generally occurring on abutting or neighborhood properties; for the unique noises, provide the decibel (dBA) level at the property line (decibel level source information may e provided from equipment specifications, standard noise tables or other sources); characterize the unique noise as recurring, intermittent, or constant; the time of day the unique noise will occur. (Effective November 5, 2016)
 - p. Exterior storage. Location of outside storage or display areas; screening. (Effective November 5, 2016)
 - q. Financial and Technical Capability. Demonstration of technical and financial capability to complete the project. If the applicant concludes that public disclosure of confidential financial information may be detrimental to the success of the project, the applicant may disclose such financial information to the Town Manager, who shall explore with due diligence, the applicant's financial capability to complete the project as proposed in a timely fashion and make a recommendation to the Planning Board. (Effective November 5, 2016)
3. Waiver of Submission items.

Where the Planning Board finds that the submission of any information listed in Sec. 10-4.C. Submission Requirements, is not required in the interest of public health, safety, and general welfare, the Planning Board may waive such requirements. Without limitation, the following circumstances may support a waiver of certain submission requirements. (Effective November 5, 2016)

- a. Existing conditions. When no change to existing site conditions for that submission item is proposed, the Planning Board may designate a submission item as not applicable. (Effective November 5, 2016)
- b. Substitution. Alternative information has been submitted more suited to the scope of the project. (Effective November 5, 2016)
- c. Small project. The limited nature of the project allows the Planning Board to apply the Approval Standards and safeguard public health, safety and general welfare without submission of additional information. (Effective November 5, 2016)

SEC. 19-9-5. APPROVAL STANDARDS

The following criteria shall be used by the Planning Board in reviewing applications for site plan review and shall serve as minimum requirements for approval of the application. The application shall be approved unless the Planning Board determines that the applicant

has failed to meet one or more of these standards. In each instance, the burden of proof shall be on the applicant to produce evidence sufficient to warrant a finding that all applicable criteria have been met.

1. Utilization of the Site

The plan for the development will reflect the natural capabilities of the site to support development. Buildings, lots, and support facilities will be clustered in those portions of the site that have the most suitable conditions for development. Environmentally sensitive areas such as wetlands, steep slopes, flood plains, and unique natural features will also be maintained and preserved to the maximum extent feasible. Natural drainage areas will also be preserved to the maximum extent feasible.

2. Traffic Access and Parking

a. Adequacy of Road System

Vehicular access to the site will be on roads which have adequate capacity to accommodate the additional traffic generated by the development. For developments which generate one hundred (100) or more peak hour trips based on the latest edition of the Trip Generation Manual of the Institute of Transportation Engineers, intersections on major access routes to the site within one (1) mile of any entrance road which are functioning at a Level of Service C or better prior to the development will function at a minimum at Level of Service C after development. If any such intersection is functioning at a Level of Service D or lower prior to the development, the project will not reduce the current level of service. A development not meeting this requirement may be approved if the applicant demonstrates that:

- i. Public improvement. A public agency has committed funds to construct the improvements necessary to bring the level of access to this standard.
- ii. Private improvement. The applicant will assume financial responsibility for the improvements necessary to bring the level of service to this standard and will assure the completion of the improvements with a financial guarantee acceptable to the municipality, or
- iii. Status quo. Town policy does not support the construction improvements. (Effective November 5, 2016)

b. Access into the Site

Vehicular access to and from the development shall be safe and convenient.

- i. Safety. All entrance and exit driveways are located to afford maximum safety to traffic, provide for safe and convenient ingress and egress to and

from the site and to minimize conflict with the flow of traffic. (Effective November 5, 2016)

- ii. Sight distance. Any exit driveway or driveway lane is so designated in profile and grading and so located as to provide the maximum possible sight distance measured in each direction. The sight distance available shall be consistent with the standards of the Subdivision Ordinance. (Effective November 5, 2016)
- iii. Corner. Where a site occupies a corner of two (2) intersecting roads, no driveway entrance or exit is located within fifty (50) feet of the point of tangency of the existing or proposed curb radius of that site. (Effective November 5, 2016)
- iv. Side property line. No part of any driveway shall be located within a minimum of ten (10) feet of a side property line. However, the Planning Board may permit a driveway serving two (2) or more adjacent sites to be located on or within ten (10) feet of a side property line dividing the adjacent sites. (Effective November 5, 2016)
- v. Angle. Driveways intersect the road at an angle as near ninety degrees (90°) as site conditions will permit. (Effective November 5, 2016)
- vi. Construction. Road, driveway, and parking lot construction comply with the construction and design standards in Sec. 16-3-2 of the Subdivision Ordinance. (Effective November 5, 2016)

c. Internal Vehicular Circulation

The layout of the site shall provide for the safe movement of passenger, service, and emergency vehicles through the site.

- i. Deliveries. Nonresidential projects that will be served by delivery vehicles will provide a clear route for such vehicles with appropriate geometric design to allow turning and backing for a minimum of vehicles. (Effective November 5, 2016)
- ii. Emergency vehicles. Clear routes of access shall be provided and maintained for emergency vehicles to and around buildings and shall be posted with appropriate signage (fire lane – no parking). (Effective November 5, 2016)
- iii. Circulation. The layout and design of parking areas shall provide for safe and convenient circulation of vehicles throughout the lot. (Effective November 5, 2016)
- iv. Topography. All roadways shall be designed to harmonize with the topographic and natural features of the site. The road network shall provide

for vehicular, pedestrian, and cyclist safety, all season emergency access, snow storage, and delivery and collection services. (Effective November 5, 2016)

d. Parking Layout and Design

Off-street parking shall conform to Sec. 19-7-8, Off Street Parking and the following standards:

- i. Street. Parking areas with more than two (2) parking spaces shall be arranged so that vehicles do not need to back into the street. (Effective November 5, 2016)
- ii. Property lines. All parking spaces, access drives, and impervious surfaces shall be located at least five (5) feet from any side or rear lot line, except where standards for buffer yards require a greater distance. No parking spaces or asphalt type surface shall be located within five (5) feet of the front property line. Parking lots on adjoining lots may be connected by accessways not exceeding twenty-four (24) feet in width. (Effective November 5, 2016)
- iii. Flow. In lots utilizing diagonal parking, the direction of proper traffic flow shall be indicated by signs, pavement markings or other permanent indication. (Effective November 5, 2016)
- iv. Stacked spaces. Parking areas for nonresidential uses shall be designed to permit each motor vehicle to proceed to and from the parking space provided for it without requiring the moving of any other motor vehicles. “Stacked” parking may be permitted for resident parking in conjunction with residential uses if both spaces in the stack are assigned to the occupants of the same dwelling unit. (Effective November 5, 2016)
- v. Bumpers. The “overhang” of parked vehicles shall be restricted when it might restrict traffic flow on adjacent through roads, restrict pedestrian or bicycle movement on adjacent walkways, or damage landscape materials. (Effective November 5, 2016)

3. Pedestrian Circulation

The site plan shall provide for a system of pedestrian ways within the development appropriate to the type and scale of development. This system shall connect the major building entrances/exits with parking areas and with existing or planned sidewalks in the vicinity of the project. The pedestrian network may be located either in the street right-of-way or outside of the right-of-way in open space or recreation areas. The system shall be designed to link the project with residential, recreational and commercial facilities, schools, bus stops, and sidewalks in the neighborhood.

4. Storm Water Management

Storm water is managed on and off-site without damage to streets, adjacent properties, downstream properties, soils and vegetation. To the extent practical, the plan will retain storm water on the site using the natural features of the site, except that in the Town Center District, storm water management shall be consistent with the Town Center Storm Water Management Plan, updated September 2015 or most recent revision. A Low Impact Development (LID) method is incorporated into the storm water management plan. The plan includes a note requiring a post-construction maintenance plan for private storm water infrastructure and a maintenance plan has been submitted.

When the project increases impervious surface by ten thousand (10,000) sq. ft. in area but less than 1 acre (43,560), the storm water management plan has been prepared, signed and stamped by a professional engineer licensed in the State of Maine. Post-development peak flows do not substantially exceed pre-development flows for the 2 and 25-year storm. LID measures have been used to treat a calculated volume (referred to as Calculated Treatment Volume, (or CTV) such that it is not less than one-half (1/2) inches multiplied by the net proposed new impervious surface area. The CTV may be achieved by treating one-half (1/2) inches multiplied by the new onsite impervious surface areas, or an equal existing on-site untreated impervious surface area, or of an equivalent combination thereof of previously or proposed untreated area. When the project increases impervious surface by one (1) acre or more, storm water shall be reviewed for compliance with Sec. 25-1-4.c. Storm Water Ordinance. (Effective November 5, 2016)

5. Erosion Control

All building, site, and roadway designs and layouts will harmonize with existing topography and conserve desirable natural surroundings to the fullest extent possible. Filling, excavation and earth moving activity will be kept to a minimum. Parking lots on sloped sites will be terraced to avoid undue cut and fill, and/or the need for retaining walls. Natural vegetation will be preserved and protected wherever possible.

During construction, soil erosion and sedimentation of watercourses and water bodies will be minimized by an active program meeting the requirements of the Maine Erosion and Sediment Control Best Management Practices (BMP's) as prepared by the Bureau of Land and Water Quality of the Maine Department of Environmental Protection, March 2003 or most recent edition. (Effective November 5, 2016)

6. Utilities

- a. Water Supply. The development will be provided with a system of water supply that is adequate in quantity and quality to the proposed use. An adequate supply of water for fire protection purposes is provided. Connection to a public water

supply for drinking water and fire protection is encouraged. (Effective November 5, 2016)

- b. Sewage Disposal. The development will be provided with a method of disposing of sewage which is in compliance with Chapter 15, Sewer Ordinance. (Effective November 5, 2016)
 - i. Public Sewage System. All sanitary sewage from new or expanded uses shall be discharged into a public sewage collection and treatment system when such facilities are currently available or can reasonably be made available at the lot line and have adequate capacity to handle the projected waste generation. (Effective November 5, 2016)
 - ii. Private Sewage System. If the public system cannot serve or be extended to serve a new or expanded use, the sewage shall be disposed of by an on-site sewage disposal system meeting the requirements of the State Wastewater Disposal Rules and Chapter 15, Article II, Private Sewage Disposal Ordinance. (Effective November 5, 2016)
 - iii. Common ownership. When two or more lots or buildings in different ownership share the use of a common subsurface disposal system, the system shall be owned and maintained in common by an owners' association and shall conform to the provision of Chapter 15, Article III, Management of Cluster Disposal Systems. Covenants in the deeds for each lot shall require mandatory membership in the association and provide for adequate funding of the association to assure proper maintenance of the system. (Effective November 5, 2016)
- c. Other utilities. The development will be provided with electrical service adequate to meet the anticipated use of the project. New utility lines and facilities shall be screened from view to the extent feasible. If the service in the street or on adjoining lots is underground, the new service shall be placed underground. Except for propane tanks, no flammable or explosive liquids or solids shall be stored in bulk above ground unless they are located at least seventy-five (75) feet from any lot line, or forty (40) feet in the case of underground storage. Propane tanks less than 500 gallons in size shall be set back a minimum of ten (10) feet from the property line and tanks of 500 gallons or more in size shall be set back twenty-five (25) feet from the property line. All materials shall be stored in a manner and location that is in compliance with appropriate rules and regulations of the Maine Department of Public Safety and other appropriate federal, state, and local regulations. (Effective November 5, 2016)
- d. Solid Waste. The proposed development will provide for adequate storage and disposal of solid wastes. (Effective November 5, 2016)

- i. Screening. Any solid waste stored on the property prior to removal to an authorized facility shall be secured and screened from public view. (Effective November 5, 2016)
- ii. Liquid/semi-solid waste. All storage facilities for fuel, chemicals, chemical or industrial wastes, and biodegradable raw materials, shall meet the standards of the State Department of Environmental Protection and the State Fire Marshall's Office. (Effective November 5, 2016)
- iii. Hazardous Materials. The handling, storage, and use of all materials identified by the standards of a federal or state agency as hazardous, special or radioactive shall be done in accordance with the standards of these agencies. Any waste produced which is classified as a hazardous, special or radioactive waste by either federal or state standards shall be disposed of at a licensed disposal facility appropriate for the type of waste and done in accordance with applicable state and federal regulations. (Effective November 5, 2016)

7. Shoreland Relationship

The development will not adversely affect the water quality or shoreline of any adjacent water body. The development plan will provide for access to abutting navigable water bodies for the use of the occupants of the development if appropriate.

The development will not adversely affect the water quality or shoreline of any adjacent water body. The development plan will provide for access to abutting navigable water bodies for the use of the occupants of the development if appropriate. (Effective November 5, 2016)

8. Landscaping and Buffering

- a. Preservation. The landscape will be preserved in its natural state insofar as practical by minimizing tree removal, disturbance and compaction of soil, and by retaining existing vegetation insofar as practical during construction. Extensive grading and filling will be avoided as far as possible. Areas of vegetation to be retained shall be designated on a preservation plan. Within the drip line of trees to be preserved, activity and disturbance shall be prohibited and a physical barrier shall be provided to separate these areas from the construction area. (Effective November 5, 2016)
- b. Landscaping Plan. The development plan will provide for landscaping that defines street edges, mitigates the expanse of parking areas, enhances the appearance of the development and reduces the impact of the development on abutting properties. Landscaping materials shall be chosen for their ability to thrive at the planting site, provide screening, create visual interest and promote diversity of the community forest. (Effective November 5, 2016)

- c. Screening. The development shall provide for screening of service and storage areas. (Effective November 5, 2016)

9. Exterior Lighting

1. Safety. The proposed development shall provide for adequate exterior lighting to provide for the safe use of the development in nighttime hours, if such use is contemplated, without excessive illumination. Lighting may be used which serves security, safety and operational needs but which does not directly or indirectly produce deleterious effects on abutting properties or which would impair the vision of a vehicle operator on adjacent roadways. (Effective November 5, 2016)
2. Maximum level. Direct or indirect illumination shall not exceed 0.5 foot-candles at the lot line. Lighting fixtures shall be shielded or hooded so that the lighting elements are not exposed to normal view by motorists, pedestrians, or from adjacent dwellings and so that they do not unnecessarily light the night sky. All exterior lighting, except security lighting, shall be turned off between 11 p.m. and 6 a.m. unless located on the site of a commercial or industrial use which is open for business during that period. (Effective November 5, 2016)

10. Signs

Signs shall meet the standards of the Sign Ordinance. Sign materials and lighting shall be of high quality and compatible with the character of the development. (Effective November 5, 2016)

11. Noise

The maximum permissible A-weighted decibel level of a continuous, regular or frequent or intermittent source of sound produced by unique activities, structures or equipment on the site shall be limited by the time period and by the abutting land use as listed below. Sound levels shall apply at least four (4) feet above ground at the property boundary of the source. Existing background sounds are excluded from the decibel measurement and noise generated by construction of the site is exempt. (Effective November 5, 2016)

Sound Pressure Level Limits Using the A-weighted decibel level (dBA)

<u>Abutting Use</u>	<u>7 a.m. - 10 p.m. –</u>	
	<u>10 p.m.</u>	<u>7 a.m.</u>
Residential	55	45
Residential located in a commercial- Industrial district	65	55

Public, semipublic and institutional	60	55
Vacant or rural	60	55
Commercial	65	55
Industrial	70	60
(Effective November 5, 2016)		

12. Storage of Materials

- a. Outside Storage. Exposed nonresidential storage areas, exposed machinery, and areas used for the storage or collection of discarded automobiles, auto parts, metals or other articles of salvage or refuse shall have sufficient setbacks and screening (such as a stockade fence or a dense evergreen hedge) to minimize their impact on abutting residential uses and users of public streets. (Effective November 5, 2016)
- b. Receptacles. All dumpsters or similar large collection receptacles for trash or other wastes shall be located on level surfaces which are paved or graveled. Dumpsters or receptacles shall be screened by fencing or landscaping. (Effective November 5, 2016)
- c. Secure from minors. All sites potentially hazardous to children shall require physical screening sufficient to deter small children from entering the premises. This screening shall be maintained in good conditions. (Effective November 5, 2016)

13. Technical and Financial Capacity

The applicant has demonstrated the financial and technical capacity to carry out the project in a timely fashion in accordance with this ordinance and the approved plan. (Effective November 5, 2016)

SEC. 19-9-6. AMENDMENTS

Any alteration to a site which is inconsistent with the approved site plan shall require an amendment to the site plan. Planning Board approval must be obtained prior to the alteration.

A. De minimus Change

The intent of this section is to process minor deviations from the approved plan that typically arises as a project moves from conception to completion of construction. De minimus changes shall not include (1) a change to a public or private right-of-way or easement, (2) a decrease in proposed buffering or landscaping, (3) any issue involving a condition placed on the site plan approval, or (4) any change in a building footprint greater than five (5) feet in any direction. Side plan changes which do not receive de minimus approval shall be submitted to the Planning Board under Sec.19-9-6.B. (Effective November 5, 2016)

1. Review. The applicant shall meet with the Town Planner and provide a written description of the proposed amendments and all applicable plans impacted by the amendments. The Town Planner shall review the submission with the applicant and consult with appropriate town staff. The Town Planner will make a preliminary determination that the proposed changes do comply with the approval standards, do not comply with the approval standards, or that the nature of the amendments merit review by the Planning Board. (Effective November 5, 2016)
2. Decision. The Town Planner shall forward the De Minimus Change application and a recommendation to the Planning Board Chair. Notwithstanding Sec. 19-9-4.B.1., the Planning Board Chair shall make the final determination to approve a de minimus change or to forward the site plan amendment to the Planning Board for review. (Effective November 5, 2016)

B. Amendment

Any change to a plan approved by the Planning Board must be submitted to the Planning Board for review and approval; unless the amendment is a de Minimus Change. The Planning Board shall review the amendments in accordance with the Review Procedures, Sec. 19-9-4. Submission requirements may be limited to the information related to the proposed amendments. Any Planning Board Decision to approve amendments to a previously approved Site Plan shall incorporate the original Site Plan Approval, except as specifically amended. (Effective November 5, 2016)

SEC. 19-9-7. APEALS OF PLANNING BOARD ACTIONS

Appeal of an action taken by the Planning Board regarding site plan review shall be to the Superior Court in accordance with the Maine Rules of Civil Procedure, Rule 80B.

ARTICLE X. AMENDMENT/INTERPRETIVE PROVISIONS

SEC. 19-10-1. CONFLICT WITH OTHER PROVISIONS

Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of the Ordinance or any other ordinance, regulation or statute, administered by the Town the more restrictive and specific provision shall control. (Effective October 15, 2009)

SEC. 19-10-2. 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 of the Ordinance.

SEC. 19-10-3. AMENDMENTS

This ordinance may be amended and its regulations, boundaries, and district classifications changed by the Town Council, provided that the following criteria are met:

A. Procedure

1. Amendments to the text or the zoning map shall be consistent with the Comprehensive Plan, and shall be consistent with the purpose of this Ordinance as stated in Sec. 19-1-2, Purpose.
2. Amendments may be initiated by the Planning Board, the Town Council, any landowner, persons having a written agreement to purchase the property, or by a petition by registered voters of the Town in accordance with Article VIII. Sec. 2. of the Town Charter.
3. All requests for amendment to the text of the Zoning Ordinance, or for changes in district boundary lines, or other proposals to change the zoning map, initiated by other than the Planning Board or the Town Council shall be accompanied by a zone change fee.
4. The Town Council shall initially review all requests for zoning amendments. If the Council determines that the request is legally faulty, that it conflicts with State law, or that it is clearly contradictory to established Town policy, the Council may deny the request without further action. Otherwise, the Council shall initiate the formal review process.
5. Prior to the consideration of any proposed amendment or change by the Town Council, it shall be submitted to the Planning Board for its recommendations. The Planning Board shall hold a public hearing on the proposed amendment. Notice of the public hearing shall be published in a newspaper of general circulation within the Town at least seven (7) days prior to the date of the hearing. The Town Council shall not consider any amendment or change until it has received the Planning Board's recommendation or not less than sixty (60) days has elapsed since the Council referred the item to the Planning Board.
6. Changes in zoning boundaries shall be depicted on the Zoning Map within thirty (30) days after the amendment has been approved by the Town Council. In addition, changes made to the Shoreland Overlay District map boundaries shall be made within thirty (30) days after the amendment has been approved by the

Commissioner of the Department of Environmental Protection. (Effective October 15, 2009)

B. Change of Zone

All proposals for a change of zone shall include:

1. a map showing existing and proposed district boundaries
2. the exact location of the request
3. the name and address of the property owner and applicant
4. a statement describing fully the existing and proposed land uses
5. the existing and proposed zone classifications
6. a site plan drawn in compliance with the provisions of Sec. 19-9-4.C, Site Plan Review Submission Requirements
7. material establishing the developer's financial and technical capability to complete the proposed development

The Planning Board shall review all proposed site plans accompanying zone change proposals in accordance with Article IX. Site Plan Review and, after a public hearing, shall make its recommendations to the Town Council regarding the land use implications of the proposal. To recommend the zone change, the Planning Board must find that the proposal will be compatible with the surrounding neighborhood and have no adverse effect on the value of adjacent properties. If the site plan and change of zone are approved by the Town Council, development shall occur in conformity with the approved site plan. No change or alteration in the approved site plan shall be made without amending the plan in accordance with Sec. 19-9-6, Amendments. If an applicant fails to begin substantial construction in accordance with the approved site plan within one (1) year from the effective date of the rezoning, the Planning Board may recommend rezoning to the original zoning classification by the Town Council.

No request for change of zone shall be considered within one year from the date of Town Council denial of a similar request.

C. Amendments involving Resource Protection of Shoreland Performance Overlay Districts

In the case of amendments to Section 19-4-4. Nonconformance within the Shoreland Performance Overlay District, Section 19-6-9, Resource Protection Districts; Section 19-6-11, Shoreland Performance Overlay Districts; Sec. 19-8-2, Shoreland Performance Standards; or Sec. 19-8-3, Resource Protection Performance Standards that fall within the regulations of the Mandatory Shoreland zoning Act, 38 M.R.S.A. Section 435 et. seq., the

change shall become effective and/or shall be depicted on the Zoning Map only after approval by the Commissioner of the Department of environmental Protection. A certified copy of the amendment, attested and signed by the Municipal Clerk, shall be forwarded to the Commissioner for approval. If the Commissioner fails to act to approve or disapprove the amendment within forty-five (45) days of receipt of the amendment, then the amendment shall be automatically approved. Any application for a permit submitted within the forty-five (45) day period shall be governed by the ordinance amendment, if the amendment is approved by the Commissioner. (Effective October 15, 2009).

End of Ordinance. Note: The ordinance also contains several appendices relating to soil types, road classifications, historic properties and a map demonstrating setbacks.

ZONING ORDINANCE

APPENDIX B

ARTERIAL STREETS	COLLECTOR STREETS	RURAL CONNECTOR STREETS	FEEDER STREETS	LOCAL STREETS
Route 77	Mitchell Road	Charles E. Jordan Road	Broad Cove Road	All other public roads
	Scott Dyer Road	Fowler Road (south of Bowery Beach Road)	Cottage Farms Road	
	Shore Road	Old Ocean House Road	Eastman Road	
		Sawyer Road	Fessenden Rd.	
		Spurwink Avenue	Fowler Road (Ocean House Road to Bowery Beach Road)	
		Two Lights Road (Wheeler Road to Beacon Lane)	Hill Way	
		Wells Road	Oakhurst Road	
			Preble Street	
			Woodland Road	

APPENDIX C

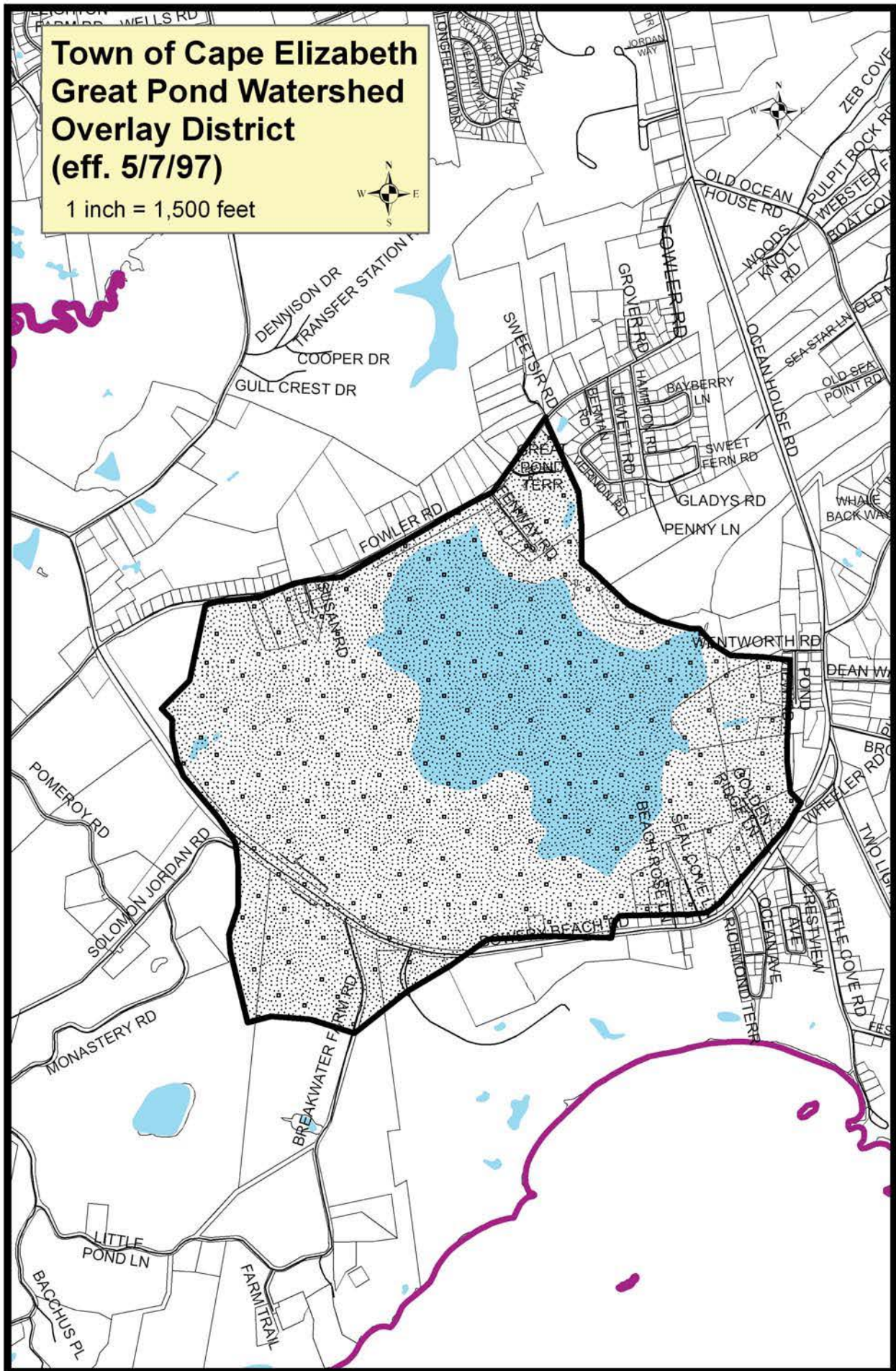
Historic Resources

The following buildings and structures are identified as historic resources and are subject to the provisions of Sec. 19-8-6, Archaeological and Historic Resources

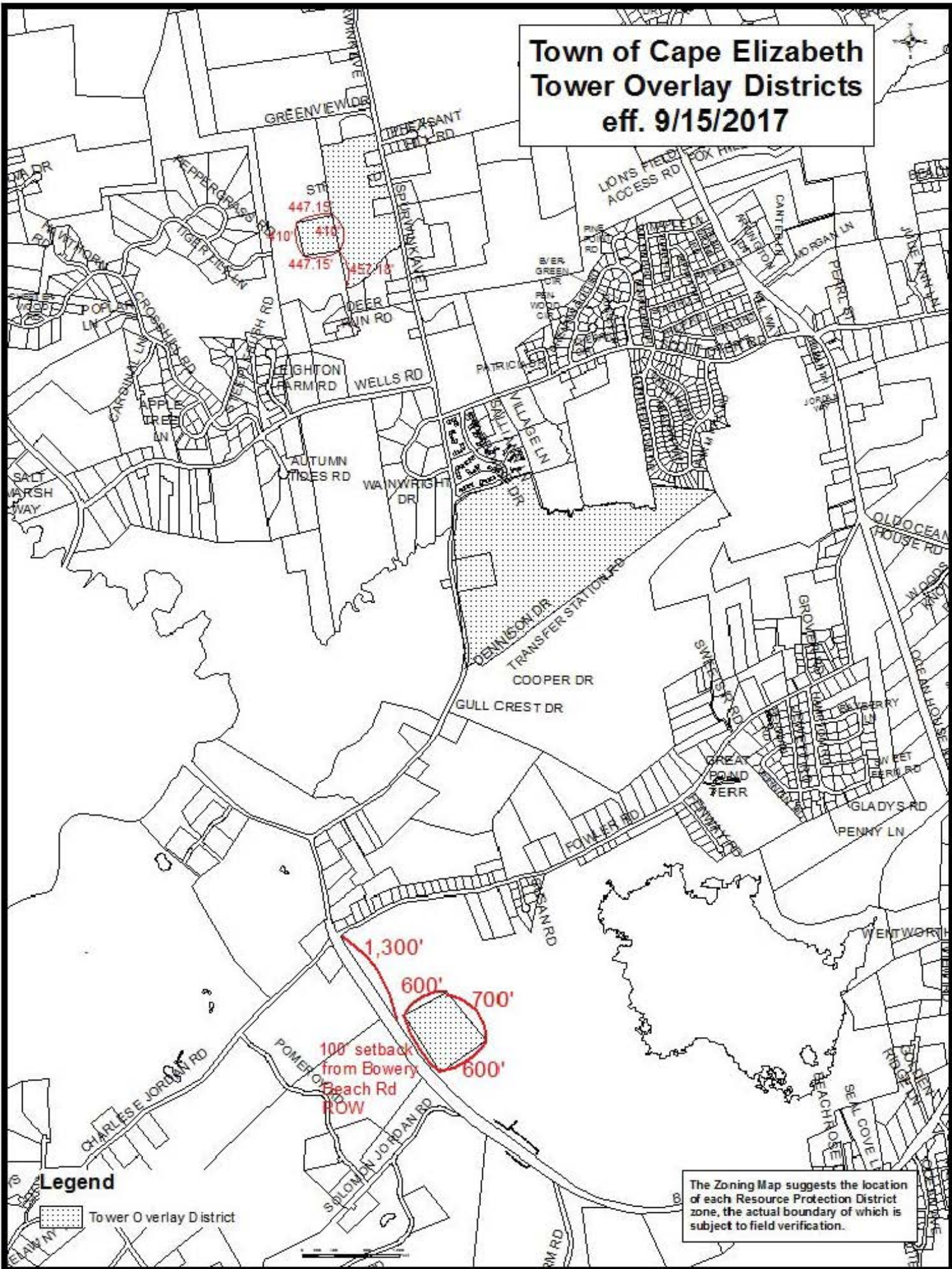
Map/Lot	Structure	Street Address
R03-59	N. Dyer (Superintendent's House)	Two Lights State Park
R03-59	World War II Bunker	Two Lights State Park
R03-59	World War II Observation Tower	Two Lights State Park
R06-8	Spurwink Meeting House	533 Spurwink Avenue
U11-17	Town Hall	320 Ocean House Road
U21-12	Thomas Memorial Library	6 Scott Dyer Road
U21-12	Middle School	Scott Dyer Road
U21-2	Community Center	343 Ocean House Road
U48-1	Goddard Mansion	Fort Williams
U48-1	Field Officers Quarters	Fort Williams
U48-1	Bachelor Officers Quarters	Fort Williams
U48-1	Militia Storehouse	Fort Williams
U48-1	Gun Shed	Fort Williams
U48-1	Portland Head Light	Fort Williams

**Town of Cape Elizabeth
Great Pond Watershed
Overlay District
(eff. 5/7/97)**

1 inch = 1,500 feet

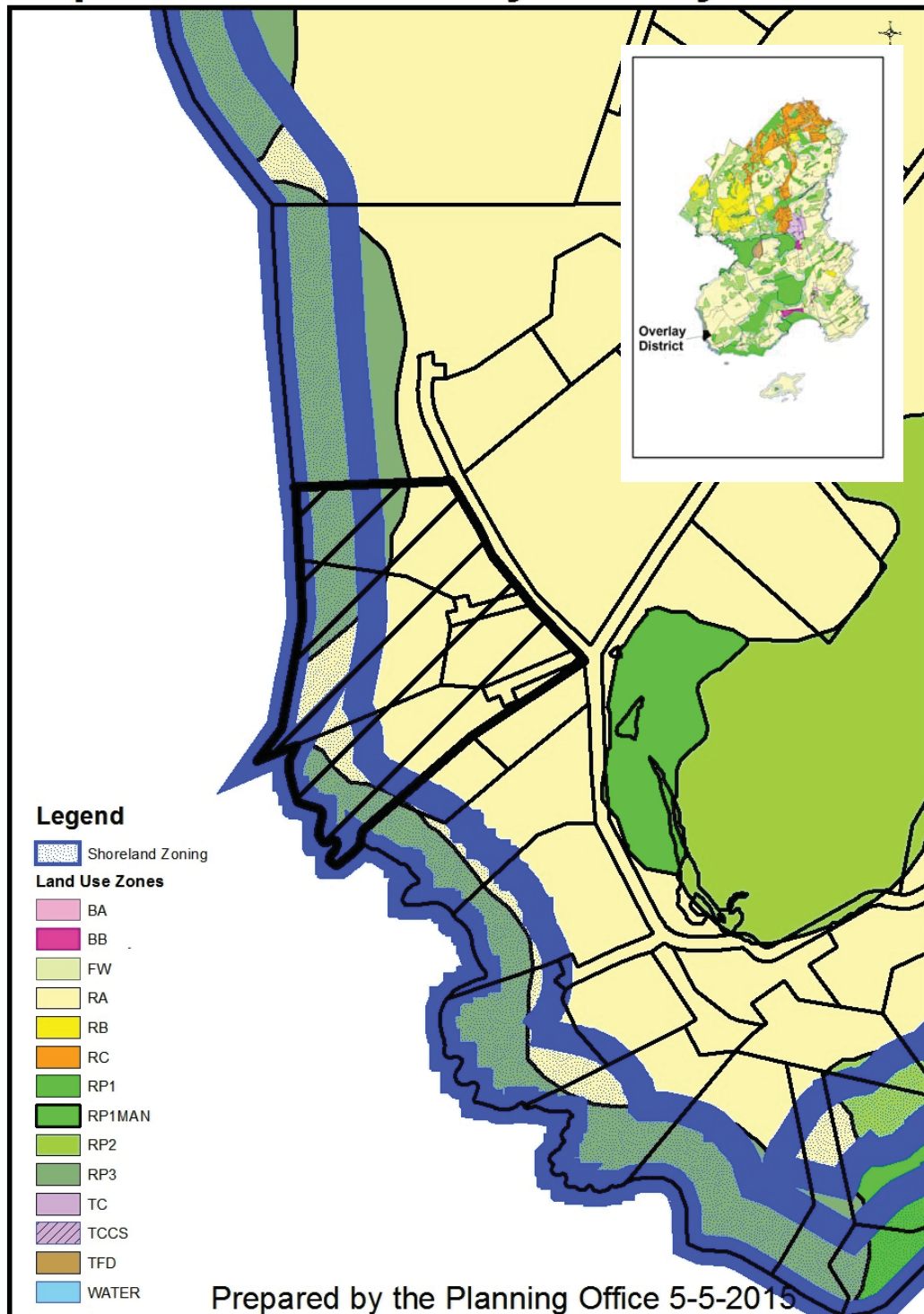


Town of Cape Elizabeth Tower Overlay Districts eff. 9/15/2017



1
2
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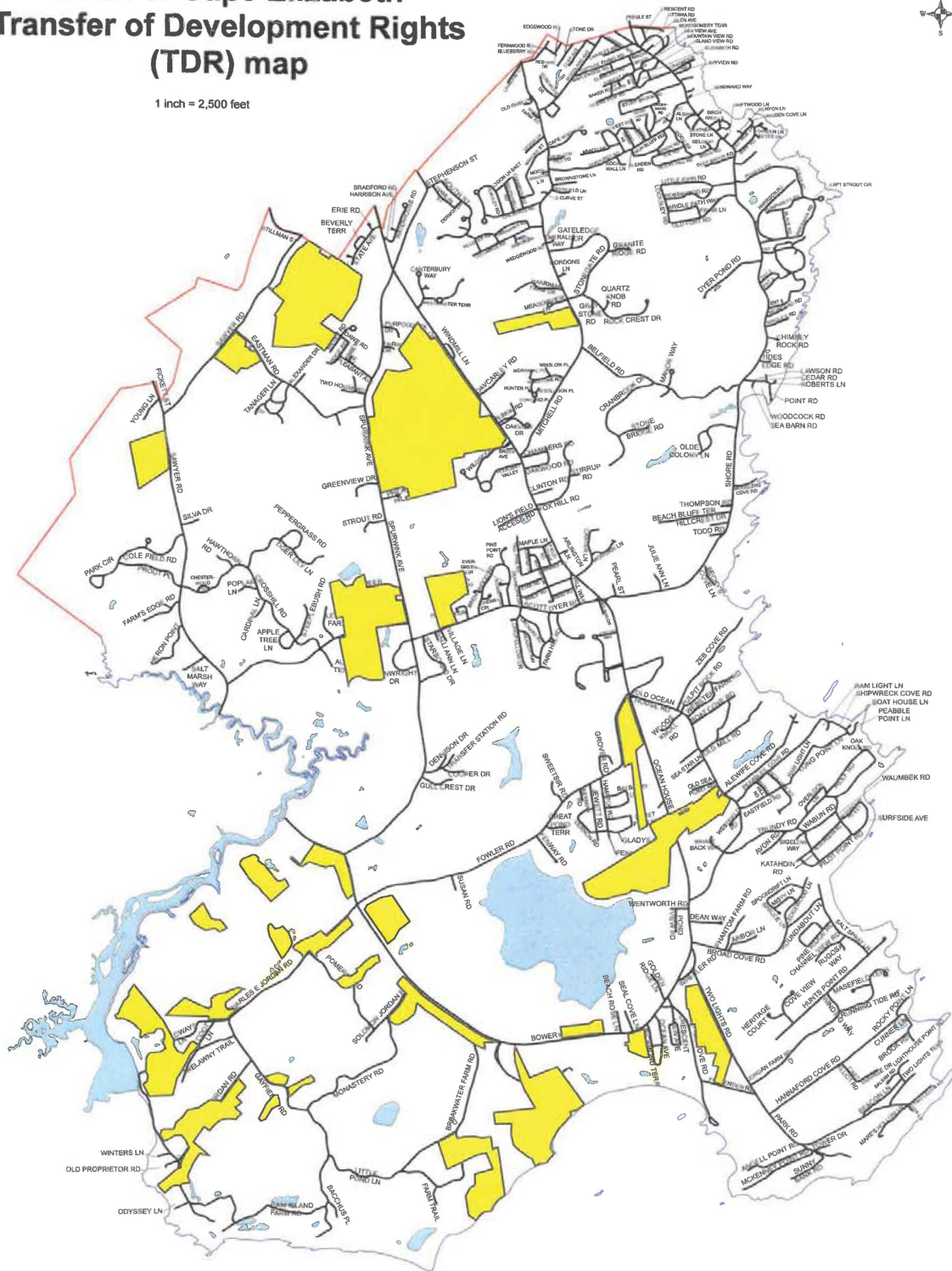
Special Event Facility Overlay District
Zoning Map Amendment
in the area of Old Proprietor Rd, Winters Ln, and Lower River
Rd
(Lots R8-1-1, R8-1-2, R8-1-3, R8-1-4)



7

Town of Cape Elizabeth Transfer of Development Rights (TDR) map

1 inch = 2,500 feet



Legend

 TDR Sending Areas



Town of Cape Elizabeth Official Zoning Map as of October 15, 2009

1 inch = 2,500 feet

SOUTH
PORTLAND

Legend

Shoreland Zoning

Land Use Zones

- BA
- BB
- FW
- RA
- RB
- RC
- RP1
- RP1MAN
- RP2
- RP3
- TC
- TCCS
- TFD
- WATER

