

2018

Town of Falmouth Maine Ordinances

Falmouth, Me.

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PART II CODE OF ORDINANCES

CH. II-1 GENERAL PROVISIONS

Sec. 1-1. How Code designated and cited.

The ordinances embraced in the following chapters and sections shall constitute and be designated the "Code of Ordinances, Town of Falmouth, Maine," and may be so cited. Such Code may also be cited as the "Falmouth Code."

State law reference— Codification authority, 30-A M.R.S.A. § 3004.

Sec. 1-2. Definitions and rules of construction.

It is the legislative intent of the town council, in adopting this Code, that all provisions and sections of this Code be liberally construed to protect and preserve the peace, health, safety and welfare of the inhabitants of the town. In the construction of this Code and any amendment thereto, the following rules shall be observed, unless otherwise defined in this Code or ordinance and unless the context clearly indicates otherwise:

Charter. The word "Charter" shall mean the Council-Manager Charter of Town of Falmouth, Maine, as set out in [Part I](#) of this volume, and shall include any amendment to such Charter.

Code. The term "Code" shall mean the Code of Ordinances, Town of Falmouth, Maine, as designated in [Sec. 1-1](#).

County. The term "county" shall mean the County of Cumberland in the State of Maine.

Gender. A word importing one (1) gender shall extend and be applied to the other gender and to firms, partnerships and corporations as well.

Inhabitant. The word "inhabitant" means a person having an established residence in the town.

Joint authority. Words giving authority to three (3) or more persons authorize a majority to act, when the ordinance does not otherwise determine.

Municipal officers. The term "municipal officers" means the members of the town council.

Number. A word importing the singular number only may extend and be applied to several persons and things as well as to one (1) person and thing.

Oath. The word "oath" includes an affirmation, when affirmation is allowed. Affirmation is allowed when a person required to be sworn is conscientiously scrupulous of taking an oath.

Officer, department, board, commission, etc. Whenever any officer, department, board, commission or other city agency is referred to by title only, such reference shall be construed as if followed by the words "of the Town of Falmouth, Maine." Whenever, by the provisions of this Code, any officer, department, board, commission or other agency of the city is assigned any duty or empowered to perform any act or duty, reference to such officer, department, board, commission or other agency shall mean and include any authorized representative.

Person. The word "person" is used in any ordinance, and in any amendment hereafter enacted, shall include: any individual, firm, partnership, corporation, company, association, club, joint venture, estate, trust, or any group or combination acting as a unit and the individuals constituting such group or unit, unless the intention to give a more limited meaning is disclosed by the context.

Preceding, following. The word "preceding" or "following," used with reference to a section, means the section next preceding or following that in which it is used when not otherwise expressed.

Shall. The word "shall" is mandatory.

State. The term "state" shall be construed to mean the State of Maine.

Street. The word "street" shall be understood as including highways, ways, avenues, courts, lanes, alleys, parks, squares, places, sidewalks, crosswalks and bridges.

Technical words. Words and phrases shall be construed according to the common meaning of the language. Technical words and phrases and such as have a peculiar meaning, shall convey such technical or peculiar meaning.

Tense. Words used in the present or past tense include the future as well as the present and past.

Town. The "town" shall mean the Town of Falmouth, Maine.

Town council. The term "town council" or "council" shall mean the Town Council of the Town of Falmouth, Maine.

Written, in writing. The words "written" or "in writing" may include printing.

(Code 1966, Ch. 201, § 1, Art. II, § 121)

Sec. 1-3. Certain ordinances not affected by Code.

Nothing in this Code or the ordinance adopting this Code shall affect any ordinance when not inconsistent with this Code:

1. Any ordinance or order promising or guaranteeing the payment of money for the town, or authorizing the issuance of any bonds of the town or any evidence of the town's indebtedness, or any contract or obligation assumed by the town;
2. Any ordinance or order granting any right or franchise;
3. Any ordinance or order dedicating, naming, establishing, locating, relocating, opening, paving, widening, vacating, etc., any street or public way in the town;
4. Any ordinance or order establishing or prescribing grades in the town;
5. Any ordinance or order providing for local improvements and assessing taxes therefor;
6. Any ordinance or order dedicating or accepting any plat or subdivision in the town;
7. Any ordinance or order prescribing specific parking restrictions, no-parking zones, specific speed zones, parking meter zones and specific stop or yield intersections or other traffic ordinances pertaining to specific streets;

8. Any ordinance or order pertaining to mobile homes and mobile home parks, zoning, land use, flood prevention and protection, site plans, land subdivisions and rezoning;
9. Any ordinance or order levying a fee which is not included in the Code and is on file in the town clerk's office;
10. Any other ordinance, or part thereof, which is not of a general and permanent nature;
11. The ordinance regarding the cable television system;
12. Any ordinance regarding general assistance or welfare;

and all such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this Code. Such ordinances are on file in the town clerk's office.

Sec. 1-4. Code does not affect prior offenses, rights, etc.

- a. Nothing in this Code or the ordinance adopting this Code shall affect any offense or act committed or done, or any penalty or forfeiture incurred, or any contract or right established or accruing before the effective date of this Code.
- b. The adoption of this Code shall not be interpreted as authorizing or permitting any use or the continuance of any use of a structure or premises in violation of any ordinance of the town in effect on the date of adoption of this Code.

Sec. 1-5. Revival of ordinances.

The repeal of any prior ordinance of the town by any subsequent ordinance shall not operate to revive the provisions of any ordinance which may have been repealed by such prior ordinance, unless such revival shall be expressly provided. Ordinances repealed remain in force for the trial and punishment of all past violations of them, and for the recovery of penalties and forfeitures already incurred, and for the preservation of all rights and remedies existing by them and so far as they apply to any office, trust, proceeding, right, contract or event already affected by them.

(Code 1966, Ch. 101, § 5, Ch. 201, § 1, Art. II, § 118)

Sec. 1-6. References to chapters or sections.

All references to chapters or sections are to the chapters and sections of this Code unless otherwise specified.

Sec. 1-7. History notes.

The history notes appearing in parentheses after sections in this Code are not intended to have any legal effect but are merely intended to indicate the source of matter contained in the section.

Sec. 1-8. References and editor's notes.

The references and editor's notes appearing throughout the Code are not intended to have any legal effect, but are merely intended to assist the user of the Code.

Sec. 1-9. Amendments to Code; effect of new ordinances; amendatory language.

- a. All ordinances passed subsequent to this Code of Ordinances which amend, repeal or in any way affect this Code of Ordinances, may be numbered in accordance with the numbering system of this Code and printed for inclusion therein. When subsequent ordinances repeal any chapter, section or subsection or any portion thereof, such repealed portions may be excluded from the Code by omission from reprinted pages. The subsequent ordinances as numbered or printed, or omitted in the case of repeal, shall be prima facie evidence of such subsequent ordinances until such time that this Code and subsequent ordinances numbered or omitted are readopted as a new code of ordinances by the town council.
- b. Amendments to any of the provisions of this Code shall be made by amending such provisions by specific reference to the section number of this Code in the following language: "That section _____ of the Code of Ordinances, Town of Falmouth, Maine, is hereby amended to read as follows:...." The new provisions shall then be set out in full as desired.
- c. If a new section not heretofore existing in the Code is to be added, the following language shall be used: "That the Code of Ordinances, Town of Falmouth, Maine (or Falmouth Code), is hereby amended by adding a section, to be numbered _____, which said section reads as follows:...." The new section shall then be set out in full as desired.
- d. All sections, articles, chapters or provisions desired to be repealed must be specifically repealed by section, article or chapter number, as the case may be.

Sec. 1-10. Supplementation of Code.

- a. By contract or by town personnel, supplements to this Code shall be prepared and printed whenever authorized or directed by the town council. A supplement to the Code shall include all substantive permanent and general parts of ordinances adopted during the period covered by the supplement and all changes made thereby in the Code. The pages of a supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement.
- b. In preparing a supplement to this Code, all portions of the Code which have been repealed shall be excluded from the Code by the omission thereof from reprinted pages.
- c. When preparing a supplement to this Code, the codifier (meaning the person, agency or organization authorized to prepare the supplement) may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:
 1. Organize the ordinance material into appropriate subdivisions;
 2. Provide appropriate catchlines, headings and titles for sections and other subdivisions of the Code printed in the supplement, and make changes in such catchlines, headings and titles;
 3. Assign appropriate numbers to sections and other subdivisions to be inserted in the Code and, where necessary to accommodate new material, change existing section or other subdivision numbers;
 4. Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections _____ to _____" (inserting section numbers to indicate the sections of the Code which embody the substantive sections of the ordinance incorporated into the Code); and
 5. Make other nonsubstantive changes necessary to preserve the original meaning of ordinance sections inserted into the Code; but in no case shall the codifier make any change

in the meaning or effect of ordinance material included in the supplement or already embodied in the Code.

Sec. 1-10. Headings.

No provision of any ordinance shall be held invalid by reason of deficiency in any chapter, article or section heading, it being hereby expressly provided that such headings are not a part of any ordinance.

(Code 1966, Ch. 201, § 1, Art. II, § 108)

Sec. 1-12. Severability.

Should any provision or section of this Code or any rule or regulation adopted pursuant to this Code, be held unconstitutional or invalid, such holding shall not be construed as affecting the validity of any of the remaining provisions or sections, it being the intent of the town council that this Code and any ordinance, rule and regulation adopted pursuant hereto, shall stand, notwithstanding the invalidity of any provision or section thereof. The provisions of this section shall apply to the amendment of any section of this Code, whether or not the wording of this section is set forth in the amendatory ordinance.

(Code 1966, Ch. 101, § 7, Ch. 201, § 1, Art. II, § 122)

Sec. 1-13. Responsibility.

The prohibition of any act by any ordinance of the town or in any amendment thereof, shall include the causing, securing, aiding or abetting of another person to do the act.

(Code 1966, Ch. 201, § 1, Art. II, § 120)

Sec. 1-14. General penalty; continuing violations; consent agreements.

- a. Whenever in this Code or in any ordinance of the town any act is prohibited or is made or declared to be unlawful or an offense, or whenever in such Code or ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, where no specific penalty is provided therefore and except as otherwise provided by state law, the violation of any such provision of this Code or any ordinance shall be punished by a fine not to exceed the maximum amount as allowed by 30-A M.R.S.A. § 4452 for each offense. All fines shall be recovered to the use of the town on complaint or by other appropriate action before a court of competent jurisdiction.
- b. The imposition of a penalty for violation of any ordinance shall not excuse the violation, or permit it to continue. Such violation shall be remedied within a reasonable time, and each day that a violation is permitted to exist shall constitute a separate offense. The imposition of penalties for violation of any ordinance shall not preclude the town attorney from instituting an appropriate action or proceeding to prevent an unlawful erection, construction, reconstruction, alteration, repair, conversion, removal, maintenance or use, or to restrain, correct or abate a violation or to prevent the occupancy of a building, structure or premises or to prevent an illegal act, conduct, business or use in or about any premises.
- c. In determining what, if any, civil penalty to impose as part of a consent agreement entered into pursuant to section [19-118.1](#) of the zoning and site plan review ordinance, the town council may consider:

1. How long the violation has existed;
2. The circumstances surrounding the construction which violates the setback;
3. Whether a building permit was issued for the construction;
4. Whether the violation is the result of survey work conducted after the construction which resulted in a shift of the boundary line; and
5. Such other facts as the council deems relevant.

(Code 1966, Ch. 101, § 4, Ch. 201, § 1, Art. II, §§ 112, 113; Amd. of 11-24-2008)

Editor's note—

The Amd. of Nov. 24, 2008 changed the title of § 1-14 from general penalty; continuing violations to general penalty; continuing violations; consent agreements.

CH. II-2 ADMINISTRATION

FOOTNOTE(S):

--- (1) ---

Cross reference— Animals, Ch. II-3; elections, Ch. II-5; general assistance, Ch. II-6; licenses, permits and business regulations, Ch. II-8; nuisances, Ch. II-12; solid waste, Ch. II-13; taxation and finance, Ch. II-16; utilities, Ch. II-18.

ART. II-2-1. IN GENERAL

Sec. 2-1. Seal.

The design set forth below shall be the device of the town seal and the inscription shall be as follows:



FALMOUTH, MAINE, INCORPORATED IN 1718

(Code 1966, Ch. 201, § 1, Art. I, § 101)

Cross reference— Town clerk, § 2-297.

Sec. 2-2. Boundaries.

The boundaries of the town are defined as follows:

1. Original incorporation July 14, 1658, see Records of the Massachusetts Bay in New England, ed. by Shurtleff, v.4, pt.1, page 359;

2. Area described, see Acts and Resolves of Province of Mass. Bay, 1718, ch. 89;
3. Land set off to Cape Elizabeth, see Acts and Resolves, Mass. Bay, 1765, ch. 25;
4. Land set off to Portland, see Acts and Laws of Commonwealth of Mass., 1786, ch. 14
5. Land set off to Stroudwater, see Laws of Massachusetts, 1814, ch. 119;
6. Land set off to Westbrook, see Laws of Maine, 1825, ch. 297;
7. Part of Westbrook annexed, see Laws of Maine, 1828, ch. 519;
8. Part of Westbrook annexed, see Laws of Maine, 1831, ch. 165;
9. Part set off to Westbrook, see Laws of Maine, 1836, ch. 542;
10. Part set off to Westbrook, see Laws of Maine, 1836, ch. 140;
11. Part set off to Westbrook, see Laws of Maine, 1853, ch. 130.

(Code 1966, Ch. 201, § 1, Art. II, § 102)

Cross reference— Buildings and building regulations, Ch. II-4; elections, Ch. II-5; land subdivision, Ch. II-7; zoning and site plans and flood prevention and protection regulations, Ch. II-19.

Sec. 2-3. Notices for nuisances, signs, dangerous, unsafe, dilapidated buildings, etc.

Notice regarding dangerous structures, abating nuisances, removing signs or signposts, making sewer connections or any other act, the expense of which, if performed by the town, may be collected from the property owner in an action at law and shall be served by delivering the notice to the owner personally or by leaving the same at his residence, office, or place of business with some person of suitable age and discretion or by mailing the notice by registered mail to such owner at his last known address or if the owner is unknown, by posting the notice in some conspicuous place on the premises five (5) days prior to the date set therein for compliance. No person shall interfere with, obstruct, mutilate, conceal or tear down any official notice or placard posted by any town officer unless permission is given to remove the notice.

(Code 1966, Ch. 201, § 1, Art. II, § 110)

Cross reference— Boards, committees, commissions, § 2-40 et seq.; officers and employees, § 2-150 et seq.; departments, § 2-230 et seq.; animals, Ch. II-3; buildings and building regulations, Ch. II-4; building construction standards, § 4-70 et seq.; condominium conversions, § 4-100 et seq.; elections, Ch. II-5; general assistance, Ch. II-6; land subdivision, Ch. II-7; licenses, permits and business regulations, Ch. II-8; marine activities, structures and ways, Ch. II-9; miscellaneous offenses, Ch. II-10; mobile homes and mobile home parks, Ch. II-11; nuisances, Ch. II-12; solid waste, Ch. II-13; streets, sidewalks and other public places, Ch. II-14; streets, § 14-40 et seq.; swimming pools, Ch. II-15; taxation and finance, Ch. II-16; traffic and motor vehicles, Ch. II-17; utilities, Ch. II-18; sewer system, § 18-50 et seq.; sewer board of appeals, § 18-90; sewer connections, § 18-120 et seq.; sewer extensions, § 18-230 et seq.; zoning and site plans and flood prevention and protection regulations, Ch. II-19.

Secs. 2-4—2-24. Reserved.

ART. II-2-2. TOWN COUNCIL

Sec. 2-25. Compensation.

In accordance with the provisions of the Charter, section 205, each council member shall receive forty dollars (\$40.00) for attendance of each duly called meeting or workshop of the full council, not to exceed in the aggregate of one thousand dollars (\$1,000.00) per fiscal year in full for this service. Council members may choose to decline acceptance of this compensation at the beginning of each fiscal year.

(Code 1966, Ch. 202, § 1; Ord. of 5-28-97; Ord. of 7-26-99; Ord. of 3-21-2005)

Charter reference— Compensation to be set by ordinance, § 205.

Cross reference— Suits, § 2-152.

Sec. 2-26. Meetings.

The town council meetings shall start at 7:00 p.m. the fourth Monday of each month.

(Ord. of 8-22-2005)

Secs. 2-27—2-39. Reserved.

FOOTNOTE(S):

--- (2) ---

Charter reference— Town council, § 201 et seq.; rules of procedure; journal, § 212; nominations and elections, § 801 et seq.; summons before town council, § 1005.

Cross reference— Elections, Ch. II-5.

ART. II-2-3. BOARDS, COMMITTEES, COMMISSIONS

FOOTNOTE(S):

--- (3) ---

Charter reference— Board of education, § 401 et seq.; board of assessment review, §§ 602, 603; planning board, § 701; board of appeals, § 703.

Cross reference— Provisions for notices for nuisances, signs, dangerous, unsafe and dilapidated buildings, and any other action the expense of which may be collected from the property owner, § 2-3; sewer board of appeals, § 18-90 et seq.

DIV. II-2-3-1. GENERALLY

Sec. 2-40. Removal of member.

A member of a board or commission appointed by the town council for a definite term may be removed by the town council only for malfeasance, misfeasance or nonfeasance.

(Code 1966, Ch. 201, § 1, Art. II, § 126; Amd. of 12-13-2010)

Cross reference— Board of appeals, Sec. 2-60 et seq.; board of appeals for building codes, Sec. 4-71(3), Sec. 4-73(2); sewer board of appeals, Sec. 18-90 et seq.

Sec. 2-41. Vacancies on appointive boards.

Any vacancy during the unexpired term of any member appointed to any board or commission by the town council shall be filled by the town council for the remainder of the term.

(Code 1966, Ch. 201, § 1, Art. II, § 127; Amd. of 12-13-2010)

Sec. 2-42. Absences from meetings.

A member of a board or commission who fails to attend at least fifty (50) percent of all meetings during the preceding twelve-month period or who fails to attend four (4) consecutive regular meetings shall be deemed to have resigned from the board or commission. When a vacancy occurs under this section, the chair of the board or commission shall immediately advise the town clerk in writing.

(Ord. of 1-23-2006; Amd. of 12-13-2010)

Sec. 2-43. Terms reorganization of December 2008.

- a. *Board of appeals.* Notwithstanding anything in Sec. 2-43 of this Code to the contrary, the terms of all regular and alternate members of the board of appeals serving on the date of enactment of this section and all positions vacant on that date shall expire on December 31, 2008, provided that members serving on December 31, 2008, shall continue to serve until their successors are appointed and qualified. Beginning January 1, 2009, one (1) regular member shall be appointed for a one-year term; two (2) regular members shall be appointed for two-year terms; two (2) regular members shall be appointed for three-year terms; and two (2) alternate members shall be appointed for one-year terms. All appointments thereafter shall be for three-year terms. If as of the expiration of his or her term on December 31, 2008, a member of the board of appeals has served between eighteen (18) and twenty-four (24) months of his or her second term, such time shall not count as a term for the purposes of computing term limits, provided, however, that thereafter he or she is appointed to a one-year term. If any member has served less than eighteen (18) months of his or her current term as of December 31, 2008, the period served shall not be considered a "term" for purposes of computing term limits.
- b. *Long range planning advisory committee.* Notwithstanding anything in Sec. 2-70 of this Code to the contrary, the terms of all members of the comprehensive plan advisory committee serving on the date of enactment of this section and all positions vacant on that date shall expire on December 31, 2008, provided that members serving on December 31, 2008, shall continue to serve until their successors are appointed and qualified. Beginning January 1, 2009, two (2) members shall be appointed for one-year terms; two (2) members shall be appointed for two-year terms; and three (3) members shall be appointed for three-year terms. All appointments thereafter shall be for three-year terms.
- c. *Conservation commission.* Notwithstanding anything in Sec. 2-75 of this Code to the contrary, the terms of all members of the conservation commission serving on the date of enactment of this section and all positions vacant on that date shall expire on December 31, 2008, provided that members serving on December 31, 2008, shall continue to serve until their successors are appointed and qualified. Beginning January 1, 2009, two (2) members shall be appointed for one-year terms; two (2) members shall be appointed for two-year terms; and three (3) members shall be appointed for three-year terms. All appointments thereafter shall be for three-year terms.
- d. *Falmouth Harbor/Waterfront Committee.* Notwithstanding anything in Sec. 9-92 of this Code to the contrary, the terms of all members of the town harbor/waterfront committee serving on the date of enactment of this section and all positions vacant on that date shall expire on December 31, 2008, provided that members serving on December 31, 2008, shall continue to

- serve until their successors are appointed and qualified. Beginning January 1, 2009, two (2) members shall be appointed for a one-year term; two (2) members shall be appointed for two-year terms; and three (3) members shall be appointed for three-year terms. All appointments thereafter shall be for three-year terms.
- e. *Falmouth Trails Advisory Committee*. Notwithstanding anything in Sec. 2-136 of this Code to the contrary, the terms of all members of the Falmouth Trails Advisory Committee serving on the date of enactment of this section and all positions vacant on that date shall expire on December 31, 2008, provided that members serving on December 31, 2008, shall continue to serve until their successors are appointed and qualified. Beginning January 1, 2009, two (2) members shall be appointed for one-year terms; two (2) members shall be appointed for two-year terms; and three (3) members shall be appointed for three-year terms. All appointments thereafter shall be for three-year terms. If any member has served less than eighteen (18) months of his or her current term as of December 31, 2008, the period served shall not be considered a "term" for purposes of computing term limits.
 - f. *Parks and community programs advisory committee*. Notwithstanding anything in Sec. 2-85 of this Code to the contrary, the terms of all members of the parks and community programs advisory committee serving on the date of enactment of this section and all positions vacant on that date shall expire on December 31, 2008, provided that members serving on December 31, 2008, shall continue to serve until their successors are appointed and qualified. Beginning January 1, 2009, two (2) members shall be appointed for a one-year term; two (2) members shall be appointed for two-year terms; and three (3) members shall be appointed for three-year terms. All appointments thereafter shall be for three-year terms.
 - g. *Planning board*. Notwithstanding anything in Sec. 2-97 of this Code to the contrary, the terms of all regular and alternate members of the planning board serving on the date of enactment of this section and all positions vacant on that date shall expire on December 31, 2008, provided that members serving on December 31, 2008, shall continue to serve until their successors are appointed and qualified. Beginning January 1, 2009, one (1) regular member shall be appointed for a one-year term; two (2) regular members shall be appointed for two-year terms; two (2) regular members shall be appointed for three-year terms; and two (2) alternate members shall be appointed for one-year terms. All appointments thereafter shall be for three-year terms. If as of the expiration of his or her term on December 31, 2008, a member of the planning board has served between eighteen (18) and twenty-four (24) months of his or her second term, such time shall not count as a term for the purposes of computing term limits, provided, however, that thereafter he or she is appointed to a one-year term. If any regular member has served less than eighteen (18) months of his or her current term as of December 31, 2008, the period served shall not be considered a "term" for purposes of computing term limits.
 - h. *Shellfish conservation commission*. Notwithstanding anything in Sec. 9-54 of this Code to the contrary, the terms of all members of the shellfish conservation commission serving on the date of enactment of this section and all positions vacant on that date shall expire on December 31, 2008, provided that members serving on December 31, 2008, shall continue to serve until their successors are appointed and qualified. Beginning January 1, 2009, one (1) member shall be appointed for a one-year term; two (2) members shall be appointed for two-year terms; and two (2) members shall be appointed for three-year terms. All appointments thereafter shall be for three-year terms.
 - i. *Board of assessment review and sewer appeals*. Notwithstanding anything in Sec. 2-69 of this Code to the contrary, the terms of all members of the board of assessment review serving on the date of enactment of this section and all positions vacant on that date shall expire on December 31, 2008, provided that members serving on December 31, 2008, shall continue to serve until their successors are appointed and qualified. Beginning January 1, 2009, one (1) member shall be appointed for a one-year term; two (2) members shall be appointed for two-

year terms; and two (2) members shall be appointed for three-year terms. All appointments thereafter shall be for three-year terms. If as of the expiration of his or her term on December 31, 2008, a member of the board of assessment review has served between eighteen (18) and twenty-four (24) months of his or her second term, such time shall not count as a term for the purposes of computing term limits, provided, however, that thereafter he or she is appointed to a one-year term. If any regular member has served less than eighteen (18) months of his or her current term as of December 31, 2008, the period served shall not be considered a "term" for purposes of computing term limits.

- j. *Human services committee.* Notwithstanding anything in any order or section to the contrary, the terms of all members of the human services committee serving on the date of adoption of this section and all positions vacant on that date shall expire on December 31, 2008, provided that members serving on December 31, 2008, shall continue to serve until their successors are appointed and qualified. Beginning January 1, 2009, one (1) member shall be appointed for a one-year term; one (1) member shall be appointed for a two-year term; and one (1) member shall be appointed for a three-year term. All appointments thereafter shall be for three-year terms.
- k. *Open space implementation subcommittee.* Notwithstanding anything in any order or ordinance to the contrary, the terms of all members of the open space committee serving on the date of adoption of this section and all positions vacant on that date shall expire on December 31, 2008, provided that members serving on December 31, 2008, shall continue to serve until their successors are appointed and qualified. Beginning January 1, 2009, three (3) members shall be appointed for one-year terms; three (3) members shall be appointed for two-year terms; and three (3) members shall be appointed for three-year terms. All appointments thereafter shall be for three-year terms.
- l. *Ad hoc committees.* The terms of all members of ad hoc committees appointed by the town council, including but not limited to the community facilities planning committee, the green ribbon commission, and the workforce housing committee, serving on the date of adoption of this section and all positions vacant on that date shall expire on December 31, 2008, provided that members serving on December 31, 2008, shall continue to serve until their successors are appointed and qualified. Beginning January 1, 2009, all members of all of the ad hoc committees noted above shall be appointed for a term of up to one (1) year or less at the discretion of the town council. All appointments thereafter shall be made at the discretion of the town council and shall be for terms of up to one (1) year or less.
- m. *Expiration of terms.* Upon the expiration of their terms on December 31 of each year, all members serving on the boards, committees, and commissions for the town shall continue to serve until their successors are appointed and qualified.

(Amd. of 12-8-2008; Amd. of 3-23-2009; Amd. of 12-13-2010)

Secs. 2-44—2-59. Reserved.

DIV. II-2-3-2. BOARD OF APPEALS

Sec. 2-60. Establishment.

There shall be a board of appeals as authorized by the Charter, Sec. 703.

(Amd. of 12-13-2010)

Sec. 2-61. Membership.

The board of appeals shall consist of five (5) members and not more than two (2) alternate members. All members shall be residents of the town. Appointments to the board of appeals shall be made by the town council.

(Amd. of 12-13-2010)

Sec. 2-62. Terms.

The term of office for members and alternate members of the board of appeals is three (3) years provided that a member shall continue to serve until his successor has been appointed and qualified. No member shall be appointed for more than two (2) consecutive three-year terms. Appointment as an alternate member or appointment to an unexpired term of less than eighteen (18) months shall not be considered a term for the purposes of the limitation to two (2) consecutive three-year terms. When there is a permanent vacancy, the town council shall appoint a person to serve for the unexpired term.

(Amd. of 12-13-2010)

Sec. 2-63. Alternate members.

When a member of the board of appeals is unable to act because of a conflict of interest, physical incapacity, absence or any other reason satisfactory to the chairman, the chairman shall designate an alternate member to act in the member's stead. An alternate member may attend all meetings of the board of appeals and participate in its proceedings, but may vote only when he has been designated by the chairman to act for a member.

(Amd. of 12-13-2010)

Sec. 2-64. Officers.

The members of the board of appeals, including alternate members, shall annually elect a chairman and a secretary from among their members. An alternate member may not serve as chairman. The chairman shall call meetings of the board of appeals as required and shall preside at all meetings. The secretary shall provide for the keeping of the minutes of the proceedings of the board, which shall show the vote of each member upon each question.

(Amd. of 12-13-2010)

Sec. 2-65. Duties.

The board of appeals shall hear and decide administrative appeals from decisions of the code enforcement officer, variance applications and conditional use applications. The board shall undertake such other duties and responsibilities as may be assigned to it by the town council, by the ordinances of the town and by state statutes.

(Amd. of 12-13-2010)

Sec. 2-66. Appeals.

Appeals from decisions of the board of appeals shall be taken directly to the Maine Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure.

(Amd. of 12-13-2010)

Sec. 2-67. Conflict of interest.

Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member of the board of appeals from voting thereon shall be decided by a majority vote of the members, except the member who is being challenged.

(Amd. of 12-13-2010)

Sec. 2-68. Compensation.

Each member of the board of appeals shall receive forty dollars (\$40.00) for attendance of each duly called meeting of such board, not to exceed in the aggregate of one thousand dollars (\$1,000.00) per fiscal year in full for this service. Board members may choose to decline acceptance of this compensational [at] the beginning of each fiscal year.

(Amd. of 12-13-2010)

FOOTNOTE(S):

--- (4) ---

Charter reference— Board of appeals, § 703.

Cross reference— Procedure for removal of members of boards, committees, commissions, § 2-40; vacancies on appointive boards, § 2-41; building construction standards, § 4-70 et seq.; zoning and site plans and flood prevention and protection regulations, Ch. II-19.

State Law reference— Board of appeals, 30 M.R.S.A. 2411.

DIV. II-2-3-3. BOARD OF ASSESSMENT REVIEW

Sec. 2-69. Creation, power, duties.

There shall be a board of assessment review as provided in section 602 of the Charter. The board's duties shall be those as specified in section 603 of the Charter.

(Code 1966, Ch. 201, § 3, § 105; Amd. of 12-13-2010)

Charter reference— Board of assessment review, §§ 602, 603.

DIV. II-2-3-4. LONG-RANGE PLANNING ADVISORY COMMITTEE

Sec. 2-70. Creation and statement of purpose.

- a. The town council does hereby establish a long-range planning advisory committee.
- b. The purpose of the long-range planning advisory committee shall be to advise the council on the land use policies of the town.
- c. The members of the committee should possess a balance of backgrounds and perspectives. In addition, the council should appoint members from other town committees whose assignments either involve land use issues, or which otherwise overlap with this committee.

(Amd. of 5-27-2008(2-70.1); Amd. of 12-13-2010; Amd. of 9-24-2012)

Sec. 2-71. Appointment, terms, officers.

- a. The town council shall appoint a standing committee of seven town residents made up of one member of the town planning board and six citizens of the town. The town council shall appoint up to six additional residents to the standing committee on an ad hoc basis to assist with the development or update of the comprehensive plan.
- b. The initial standing committee shall consist of two members appointed for one year, two members appointed for two years and three members appointed for three years. Thereafter members shall be appointed for periods of three years.
- c. Ad hoc members assisting with the update of the comprehensive plan shall serve one three-year term or through completion of the project, whichever comes first.
- d. All committee members shall serve without pay.
- e. The committee shall annually choose one of its own members to serve as chair.
- f. Any member of the council may serve as the council liaison to the committee.
- g. The town council shall have the power to remove any member, standing or ad hoc, for cause, and shall also have the power to replace appointees who voluntarily leave the committee.

(Amd. of 5-27-2008(2-70.2); Amd. of 12-13-2010; Amd. of 9-24-2012; Ord. of 9-9-2013)

Sec. 2-72. Meetings; reports.

Meetings are to be called by the chair. It is the responsibility of the long-range planning advisory committee to report as needed to the town council. It is further the duty of the committee to prepare an annual report, periodic work plan and budget requests, as needed, to the town council for its review and approval.

(Amd. of 5-27-2008(2-71); Amd. of 12-13-2010)

Sec. 2-73. Powers and duties.

All projects undertaken by the committee shall obtain approval of the council prior to commencement. Committee work products are recommendations to the council. The committee's work shall be in accordance with the work plan approved by the council.

Assignments include, but are not limited to:

1. Analysis and development of recommended land use policies;
2. Development and updating of the comprehensive plan;
3. Development of specific recommended actions the town should take to implement the comprehensive plan;
4. Development of recommended land use ordinances and regulations and amendments; and
5. Any other projects as the council may choose to assign it.

(Amd. of 5-27-2008(2-72); Amd. of 12-13-2010)

Sec. 2-74. Reserved.

FOOTNOTE(S):

--- (5) ---

Editor's note— The Amd. of May 27, 2008 repealed the former Div. II-2-3-4, §§ 2-70—2-72 and enacted a new Div. II-2-3-4 as set out herein. The former Div. II-2-3-4 pertained to the comprehensive plan advisory committee and derived from Ord. of 1-27-89, Arts. I—V.

DIV. II-2-3-5. CONSERVATION COMMISSION

Sec. 2-75. Establishment.

There is hereby established a conservation commission consisting of seven (7) members serving without pay to be appointed by the town council pursuant to 30-A M.R.S.A. § 3261. The term of office is three (3) years.

(Code 1966, Ch. 201, § 13, § 101; Ord. of 4-28-2003; Amd. of 12-13-2010)

Sec. 2-76. Purpose and Duties.

1. Purpose

The Conservation Commission shall strive to protect the natural resources of Falmouth and improve the Town's ecological integrity and wildlife diversity. It shall increase public awareness of the intrinsic value of the Town's natural resources and shall work to study and conserve them.

2. Duties

Research and Recommendations

- a. The Conservation Commission shall conduct research and give advice as to the protection of the natural resources located within the Town, including fresh and coastal waters.
- b. The Commission shall prepare and keep an index of all sensitive natural resources on publicly or privately owned lands within the Town, including but not limited to open marshlands, swamps, and other wetlands for the purpose of assimilating and retaining information pertinent to the proper protection of such open areas.
- c. The Commission may recommend to the Town Council or any municipal body or board or body (private, politic or public) actions or a program to better protect, conserve, minimize impacts to, or increase the understanding of, natural resources.

Cooperation and Collaboration

- a. Internal: The Conservation Commission shall work cooperatively with Parks and Community Programs, Public Works, and the Land Management and Acquisition Committee in terms of its duties, powers, and functions.
- b. External: The Commission shall seek to coordinate its activities with existing state and municipal agencies, commissions, departments, and conservation bodies organized for similar purposes.

Education and Public Awareness

The Conservation Commission may advertise, prepare, print, and distribute books, maps, charts, plans, and pamphlets that in its judgment it deems necessary. The Conservation Commission may hold public awareness and education campaigns on Town-owned properties or in coordination with other Town entities.

Record Keeping

The Conservation Commission shall keep records of its meetings and activities and make an annual report to the Town.

Expenditures

The Conservation Commission shall prepare an annual budget and may employ such personnel as may be approved by the Town Manager.

(Code 1966, Ch. 201, §§ 13, 102; Amd. of 12-13-2010; Amd. of 03-09-2015)

Effective on: 3/9/2015

Secs. 2-77—2-80. Reserved.

DIV. II-2-3-6 RESERVED

FOOTNOTE(S):

--- (6) ---

Editor's note— Amd. of Dec. 13, 2010, deleted Div. II-2-3-6, §§ 2-81—2-84.2. The former Div. II-2-3-6 pertained to the cable television committee and derived from Ord. of 12-27-82, §§ I—VI; § VIII; Ord. of 9-25-89(2); Ord. of 10-22-90.

DIV. II-2-3-7. PARKS AND COMMUNITY PROGRAMS ADVISORY COMMITTEE

Sec. 2-85. Created; membership; terms.

There is hereby established a parks and community programs advisory committee consisting of seven members serving without pay, appointed by the town council for the three-year terms. This committee shall plan a town-wide parks and community program and shall advise and cooperate with the parks and community programs director so that a progressive community program may be initiated and maintained.

(Code 1966, Ch. 201 § 11, § 103; Ord. of 9-24-2007, § 4; Amd. of 12-13-2010; Amd. of 3-11-2013)

Secs. 2-86—2-94. Reserved.

FOOTNOTE(S):

--- (7) ---

Cross reference— Parks and community programs department, § 2-400 et seq.; streets, sidewalks and other public places, Ch. II-14; zoning and site plans and flood prevention and protection regulations, Ch. II-19.

DIV. II-2-3-8. PLANNING BOARD

Sec. 2-95. Establishment.

There shall be a planning board as authorized by Charter, section 701.

(Ord. of 7-22-85, § 12, § 101A; Amd. of 12-13-2010)

Sec. 2-96. Membership.

The planning board shall consist of five (5) members and two (2) alternate members. Appointments to the planning board shall be made by the town council.

(Ord. of 7-22-85, § 12, § 101B; Amd. of 12-13-2010)

Sec. 2-97. Terms.

The term of office of a member of the planning board is three (3) years, provided that a member shall continue to serve until his successor has been appointed and qualified and further provided that no member shall be appointed for more than two (2) consecutive three-year terms. The term of an alternate member shall not count for the purposes of the limitation to two (2) consecutive three-year terms. When there is a permanent vacancy, the town council shall appoint a person to serve for the unexpired term.

(Code 1966, Ch. 201, § 12, § 101; Ord. of 7-22-85, § 12, § 101C; Ord. of 9-26-88(3); Amd. of 12-13-2010)

Charter reference— Planning board membership, terms, § 701.

Sec. 2-98. Alternate members.

A member of the town council may not be a member or alternate member of the planning board. When a member is unable to act because of a conflict of interest, physical incapacity, absence or any other reason satisfactory to the chairman, the chairman shall designate an alternate member to act in his stead. An alternate member may attend all meetings of the planning board and participate in its proceedings, but may vote only when he has been designated by the chairman to act for a member.

(Code 1966, Ch. 201, § 12, § 101; Ord. of 7-22-85, § 12, § 101(D)—(F); Amd. of 12-13-2010)

Sec. 2-99. Officers.

The full planning board, including alternate members, shall annually elect a chairman and vice-chairman from its own membership. An alternate member may not serve as chairman or vice-chairman.

(Code 1966, Ch. 201, § 12, § 101; Ord. of 7-22-85, § 12, § 101(G); Amd. of 12-13-2010)

Sec. 2-100. Duties.

The planning board shall be responsible for the review of applications submitted to it under the subdivision ordinance and the zoning and site plan review ordinance in accordance with the terms of such ordinances and shall undertake such other duties and responsibilities as may be assigned to it by the town council, by the ordinances of the town and by state statutes.

(Code 1966, Ch. 201, § 12, § 101.1; Ord. of 7-22-85, § 12, § 101.1; Amd. of 12-13-2010)

Sec. 2-101. Rules of procedure.

The planning board shall have authority to adopt and amend rules of procedure governing the conduct of meetings and hearings and such other procedural matters as the planning board deems appropriate.

(Ord. of 7-22-85, § 12, § 101.2; Amd. of 12-13-2010)

Sec. 2-102. Compensation.

Each member of the planning board shall receive forty dollars (\$40.00) for attendance of each duly called meeting of (such) board, not to exceed in the aggregate of one thousand dollars (\$1,000.00) per fiscal year in full for this service. Board members may choose to decline acceptance of this compensation at the beginning of each fiscal year.

(Code 1966, Ch. 202, § 2; Ord. of 7-28-97; Ord. of 7-26-99; Ord. of 8-22-2005; Amd. of 12-13-2010)

Sec. 2-103. Appeals.

Unless otherwise provided by the ordinance in question, appeals from decisions of the planning board shall be taken directly to Maine Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure.

(Ord. of 7-22-85, § 12; Amd. of 12-13-2010)

Secs. 2-104—2-114. Reserved.

FOOTNOTE(S):

--- (8) ---

Charter reference— Planning board, § 701.

Cross reference— Department of community development, Sec. 2-245 et seq.; land subdivision, Ch. II-7; mobile homes and mobile home parks, Ch. II-11; streets, sidewalks and other public places, Ch. II-14; zoning and site plans and flood prevention and protection regulations, Ch. II-19.

DIV. II-2-3-9. RESERVED

Secs. 2-115—2-125. Reserved.

Editor's note—

Formerly Sec. 2-115— Sec. 2-119 pertained to the water front and harbor committee as derived from §§ I—IV and VII of an ordinance adopted Oct. 22, 1984. Sec. 2-115— Sec. 2-119 were deleted as superseded by an ordinance adopted Mar. 25, 2002. See Ch. II-9, Art. II-9-4, § 9-90 et seq. of this Code.

DIV. II-2-3-10. SCHOOL BOARD

Sec. 2-126. Compensation.

In accordance with the provisions of the Charter, section 205, each school board member shall receive twenty-five dollars (\$25.00) for attendance of each duly called meeting or workshop of the full school board, not to exceed in the aggregate of seven hundred dollars (\$700.00) per fiscal year in full for this service. School board members may choose to decline acceptance of this compensation at the beginning of each fiscal year.

(Ord. of 5-28-97; Ord. of 8-23-99; Amd. of 12-13-2010)

Editor's note—

An ordinance of May 28, 1997, did not specifically amend the Code; hence, inclusion of the substantive provisions of such ordinance as § 2-126 was at the discretion of the editor.

Secs. 2-127—2-135. Reserved.

DIV. II-2-3-11. LAND MANAGEMENT AND ACQUISITION COMMITTEE

Sec. 2-136. Creation and statement of purpose.

- a. The town council does hereby establish a land management and acquisition committee (LMAC).
- b. Land management and acquisition shall include acquisition planning and evaluation, managing the town's designated open space and conservation lands including all accessory uses, trails and facilities. Management and oversight shall be accomplished in ways that provide benefits to the community, including recreation, outdoor education, protection of water quality, providing high quality wildlife habitat, and forestry management in a manner consistent with current town ordinances and best professional land management practices.
- c. Nothing in Sec. 2-136— Sec. 2-139 shall be construed to conflict with or usurp any duties, powers, or functions of the parks and community programs department nor the powers and duties heretofore conferred upon the town tree warden.

(Ord. No. 117-2013, 5-15-2013)

Sec. 2-137. Appointment, terms, officers.

- a. The town council shall appoint a standing committee of five (5) members made up of five (5) citizens of the town to serve without pay for three (3) year terms. And further, the LMAC should include citizens with an interest and/or experience in land management, conservation and recreation, such interest and experience could include but not be limited to: members or former members of the conservation commission; the town land trust; trail and land maintenance volunteers; trail recreational use clubs or organizations; forestry management professionals; biologists; ecologists; and real estate professionals.

In addition, the town land trust executive director shall serve as ex-officio member.

- b. The parks and community programs director and/or designee(s) will provide staff support to the committee.
- c. The initial standing committee shall consist of one (1) member appointed for one (1) year, two (2) members appointed for two (2) years and two (2) members appointed for three (3) years. Thereafter members shall be appointed for periods of three (3) years.
- d. The committee shall annually choose one (1) of its own members to serve as chair.

- e. The town council, at its annual organizational meeting, shall appoint a council liaison to this committee

(Ord. No. 117-2013, 5-15-2013)

Sec. 2-138. Meetings, reports.

Meetings are to be called by the chair. It is the responsibility of land management committee to report as needed to the town council. It is further the duty of the committee to prepare an annual report, periodic work plan and budget requests, as needed, to the town council for its review and approval.

(Ord. No. 117-2013, 5-15-2013)

Sec. 2-139. Powers and duties.

LMAC shall advise on matters related to the management of the town's designated open space and conservation lands and further shall:

1. Develop procedures for how conservation land and associated facilities are created, acquired, managed and maintained in accordance with town ordinances.
2. Provide advisory assistance to the town council for matters pertaining to the acquisition and management of conservation lands, including but not limited to policy and ordinance development and land use.
3. Create management plans for each designated conservation property owned by the town.
4. Produce information and guidance for the public regarding trails, land, and public facilities in the town.
5. Recommend funding levels for the acquisition of new properties and for the management of existing properties.

(Ord. No. 117-2013, 5-15-2013)

Secs. 2-140—2-147. Reserved.

FOOTNOTE(S):

--- (9) ---

Editor's note— Ord. No. 117-2013, adopted May 15, 2013, repealed and replaced div. II-2-3-11, Sec. 2-136— Sec. 2-138, in its entirety. Former div. II-2-3-11 pertained to Falmouth trails advisory committee and was derived from Ord. of 5-24-2004; Ord. of 12-19-2006 and Amd. of 12-13-2010.

DIV. II-2-3-12. ECONOMIC IMPROVEMENT COMMITTEE

Sec. 2-148. Establishment and purpose.

There is hereby established a Falmouth Economic Improvement Committee (FEIC) consisting of up to seven (7) members serving without pay to be appointed by the town council pursuant to 30-A M.R.S.A. § 3261. The term of office is three (3) years.

Definition(s):

Economic development

means the retention and expansion of jobs in Falmouth in a manner consistent with these ordinances and current town ordinances.

Purpose/goals/charge:

The Falmouth Economic Improvement Committee (FEIC) shall:

1. Encourage and promote economic development within the town consistent with other ordinances and policies.
2. Undertake and support activities aimed at enhancing the economic well-being of the community by the promotion of a sustainable economy which will retain and create quality employment opportunities and a broadened tax base for the town and its' residents.
3. Provide advisory assistance to the town manager and town council for matters pertaining to economic development including but not limited to policy development, strategic planning, and land use.
4. Develop guidelines and recommendations in such areas related to economic development including but not limited to business retention, business attraction, workforce development, the development of infrastructure necessary to support economic growth, redevelopment, and business development.
5. Work with other public and private entities and staff to promote the economic well being of the community and perform such other functions as may be appropriate to achieve such goals.
6. Assist the town council with implementation of the 2015 Economic Development Strategy for the town and review this plan every three (3) years.
7. Participate in regional economic development efforts.

(Amd. of 4-26-2010; Amd. of 12-13-2010; Amd. of 09-16-2015; Amd. of 11-16-2016)

Effective on: 11/14/2016

Sec. 2-149. Membership: Appointment, term, quorum, committee action, makeup.

1. All appointments shall be three-year, staggered terms.
 2. A quorum consists of the majority of the number of members appointed by the council to serve at that time. (Example, if the committee has five members, a quorum requires three members to be present. If the committee includes six or seven members, a quorum of four members is required.) The minimum quorum to conduct business shall consist of three members.
 3. A minimum of three affirmative votes is required for any committee action.
 4. The make up of the committee shall strive to include at a minimum one (1) representative from each of the following groups:
 - Rt. 1 Business Rep from zone VC-1, VC-2 or BP
 - Rt. 100 Business Rep from zone VMU, WFCMPD or MUC
 - Falmouth Cumberland Community Chamber
 - Long-Range Planning Advisory Committee (LPAC)
 3. A minimum of four (4) members shall have a business background.
 4. The town council, at its annual organizational meeting, shall appoint a council liaison to this committee.
- (Amd. of 4-26-2010; Amd. of 12-13-2010; Amd. of 09-16-2015; Amd. of 11-14-2016)

DIV. II-2-3-13. RECYCLING AND ENERGY ADVISORY COMMITTEE

Sec. 2-149.1. Establishment.

There is hereby established a recycling and energy advisory committee (REAC).

(Amd. of 12-13-2010)

Sec. 2-149.2. Appointment, terms, officers.

1. The town council shall appoint a committee of seven (7) town residents to serve on the recycling and energy advisory committee. Members shall serve without pay.
2. Of these seven (7) initial members, two (2) members shall be appointed for one-year terms; two (2) members shall be appointed for two-year terms; and three (3) members shall be appointed for three-year terms, all commencing on January 1, 2011. All appointments thereafter shall be three-year terms. Members shall continue to serve until their successors have been appointed and qualified.
3. The committee shall annually choose one (1) of its own members to serve as chairperson and one (1) to serve as vice-chairperson.
4. The town council shall appoint a council liaison to this committee.

(Amd. of 12-13-2010)

Sec. 2-149.3. Meetings, reports.

1. Meetings are to be called by the committee chairperson.
2. The recycling and energy advisory committee shall report to the town council once annually and more frequently at the request of the council.
3. The recycling and energy advisory committee shall prepare and submit an annual proposed work plan for review, input and approval from the town council.

(Amd. of 12-13-2010)

Sec. 2-149.4. Powers and duties.

The town energy and recycling advisory committee advises the town council on matters relating to the town's solid waste recycling program, energy efficiency and other related matters deemed appropriate by the council. Duties shall include but not be limited to the following:

1. Endeavor to save local taxpayer dollars through increased energy-efficiency of municipal facilities and operations;
2. Prioritize the ad hoc Falmouth Green Ribbon Committee's 2010 recommendations that the council wants to pursue;
3. Educate Falmouth residents and businesses about energy-efficient, waste-reducing, clean energy opportunities and choices;
4. Enhance and promote the town's recycling program;

5. Promote the use of clean, renewable energy sources in Falmouth's public and private facilities through education and outreach;
6. Work with surrounding communities on potential regional energy efficiency and clean energy strategies;
7. Monitor new developments and options in the fields of energy and waste management as technologies evolve and change; educate the public and advise the council on same;
8. Research and report policies to accomplish the above goals and/or other related goals deemed appropriate by the town council.

(Amd. of 12-13-2010)

ART. II-2-4. OFFICERS AND EMPLOYEES

FOOTNOTE(S):

--- (10) ---

Charter reference— Town clerk, § 214; town manager, §§ 216—218, 301 et seq.; health officer § 305; department of education, § 401 et seq.; assessor, § 601; removal of officers and employees, § 1008.

Cross reference— Provisions for notices for nuisances, signs, dangerous, unsafe, dilapidated buildings, and any other action the expense of which may be collected from the property owner, § 2-3; departments, § 2-230 et seq.; shellfish conservation warden appointed, § 9-54.

State Law reference— Town officials, 30-A M.R.S.A. § 2601 et seq.

DIV. II-2-4-1. GENERALLY

Sec. 2-150. Bonds.

No officer or employee of the town may collect, claim custody of or distribute monies at any time, except officers and employees who are covered by a bond in such form and amount as the town council may determine. The town treasurer shall give a surety bond to the town in compliance with the requirements of 30-A M.R.S.A. § 5601 and the town tax collector shall give a surety bond to the town in compliance with the requirements of 46 M.R.S.A. § 755. All bonds required by this section shall be at the expense of the town.

(Code 1966, Ch. 201, § 1, Art. II, § 104; Ord. No. 3-25-91)

State law reference— Bonds, 30-A M.R.S.A. 5601; annual report, 30-A M.R.S.A. § 2801.

Sec. 2-151. Term of office.

All officials and employees of the town shall serve at the pleasure of the appointive power in each instance and may be removed at any time by the appointive power whose decision shall be final and there shall be no appeal thereof to any other office, body or court whatsoever, except as provided under Charter, section 218 and state law.

(Code 1966, Ch. 201, § 1, Art. II, § 126)

Cross reference— Departments, § 2-230 et seq.

State law reference— Appointment and term of officials, 30-A M.R.S.A. § 2601.

Sec. 2-152. Suits.

Every town officer having knowledge of any fact concerning any claim or suit for or against the town shall report such fact forthwith to the town attorney. It shall be the duty of every employee of the town to report at once to the police chief facts which may come to his notice concerning any accident for which the town may be liable. The heads of the several departments, agencies and offices of the town shall instruct all their employees to report such facts and information. No member of the town council shall act as attorney, agent or representative of any person or corporation in making, prosecuting or presenting before the town council or any town department, office or agency, any claim or demand against the town.

(Code 1966, Ch. 201, § 1, Art. II, § 125)

Cross reference— Departments, § 2-230 et seq.

State law reference— Tort claims, 14 M.R.S.A. § 8101 et seq.

Secs. 2-153—2-179. Reserved.

DIV. II-2-4-2. TOWN MANAGER

Sec. 2-180. Appointment.

There shall be an officer of the town who shall have the title of town manager, appointed by the town council, to serve during the pleasure of the town council.

(Code 1966, Ch. 201, § 2, § 101)

Sec. 2-181. Duties.

- a. The town manager shall perform such duties as are specified in Art. II-2-3 of the Charter, including complete executive direction of the administrative service of the town.
- b. The town manager shall be the tax collector and treasurer, provided that the town manager may appoint any town employee as the tax collector or the treasurer or both.

(Code 1966, Ch. 201, § 2, § 102; Ord. of 3-25-91)

Secs. 2-182—2-199. Reserved.

FOOTNOTE(S):

--- (11) ---

Charter reference— Town manager, §§ 216—218, 301 et seq.

State Law reference— Town manager, 30-A M.R.S.A. § 2631 et seq.

DIV. II-2-4-3. TREE WARDEN

Sec. 2-200. Duties of the tree warden.

The tree warden shall:

1. Be responsible for the care and control of all public shade trees upon and along all highways, streets and parks and shall enforce all laws relative to the preservation of the same;
2. Be responsible for initiating an adequate tree planting program for the town;
3. Be responsible for a town forest.

(Code 1966, Ch. 201, § 10, § 104)

Secs. 2-201—2-229. Reserved.

FOOTNOTE(S):

--- (12) ---

State Law reference— Tree warden, 30-A M.R.S.A. § 3282 et seq.

ART. II-2-5. DEPARTMENTS

FOOTNOTE(S):

--- (13) ---

Charter reference— Department of education, § 401 et seq.(Back)

Cross reference— Provisions for notices for nuisances, signs, dangerous, unsafe, dilapidated buildings, and any other action the expense of which may be collected from the property owner, § 2-3; officers and employees, § 2-150 et seq.; term of office, § 2-151; suits against town employees and officers, § 2-152; fees for impoundment of animals by the police department, § 3-1.

DIV. II-2-5-1. GENERALLY

Sec. 2-230. Administrative manual.

The town manager is hereby authorized to issue such administrative regulations, consistent with the town Charter and town ordinances, as he deems necessary to provide for the adequate functioning of all departments. All regulations so issued shall comprise the Administrative Manual, which shall be distributed to all members of the town council, all department heads, and to such others as the town manager may determine to be necessary or desirable, and shall be available in the office of the town clerk for public inspection.

(Code 1966, Ch. 201, § 1, Art. II, § 103)

Sec. 2-231. Administrative departments.

The administrative service of the town under the town manager shall be divided into the following departments:

1. Department of community development;
2. Department of financial administration;
3. Department of general government;
4. Emergency medical services department;
5. Fire department;
6. Community programs department;

7. Police department;
8. Public works and parks department;
9. Sewer department.

(Code 1966, Ch. 201, §§ 2, 11, § 103; Ord. of 9-24-2007, § 1)

Sec. 2-232. Department heads.

- a. The heads of departments shall perform all duties required of the office by the Charter, ordinance or other laws and shall perform such duties not in conflict therewith as may be assigned by the town manager. The department head shall be immediately responsible to the town manager for effective administration of the department. He shall submit reports of the activities of the department when requested by the town manager. He shall establish and maintain a system of records and reports in sufficient detail to furnish all information necessary for proper control of departmental activities and to form a basis for the reports required by the town manager.
- b. The department head shall have the power to delegate to members of the department or division coming under his direction such duties and responsibilities as advisable together with proportionate authority for their fulfillment, but in no case may they delegate their overall responsibility or any of their accountability.
- c. The department head shall have authority to appoint and remove, subject to the personnel regulations and the authority of the town manager all subordinates under them. The department head shall be responsible for the proper custody and maintenance of all town property and equipment used in the department.
- d. The department head shall serve for an indefinite term at the pleasure of the town manager.

(Code 1966, Ch. 201, § 2, § 105)

Secs. 2-233—2-244. Reserved.

DIV. II-2-5-2. DEPARTMENT OF COMMUNITY DEVELOPMENT

Sec. 2-245. Created.

There is hereby established a department of community development which shall be responsible for the administration of land use and building safety regulations. This department shall be divided into the divisions in this division.

Sec. 2-246. Division of planning—Establishment and functions.

There is hereby established the division of planning which shall, in conjunction with the planning board, administer the town's subdivision, site plan review, and shoreland zoning ordinances and which shall otherwise assist the planning board in carrying out its responsibilities under the law. The division of planning shall be responsible for all municipal planning functions and for assisting such planning committees as may be established by the town council and shall carry out such other functions as may be prescribed by statute, town Charter or ordinance.

Cross reference— Planning board, § 2-95 et seq.; land subdivision, Ch. II-7; zoning and site plans and flood prevention and protection regulations, Ch. II-19.

Sec. 2-247. Same—Planner.

There is hereby established the position of planner who shall be the head of the planning division. The planner shall be appointed by the town manager and, in addition to assuming responsibility for the duties described in Sec. 2-246, shall assume such other responsibilities as may be required by the town manager or town council or as may be imposed by law.

Sec. 2-248. Division of code administration—Establishment and functions.

There is hereby established the division of code administration which shall administer the town's zoning, flood hazard, shoreland zoning and buildings safety ordinances. The division of code administration shall be responsible for the coordination, clarification and assembly of facts in cases heard before the zoning board of appeals and shall carry out such other functions as may be prescribed by statute, town Charter or ordinance.

Cross reference— Buildings and building regulations, Ch. II-4; land subdivision, Ch. II-7; zoning and site plans and flood prevention and protection regulations, Ch. II-19.

Sec. 2-249. Same—Code enforcement officer.

There is hereby established the position of code enforcement officer who shall be the head of the division of code administration. The code enforcement officer shall be appointed by the town manager and in addition to assuming responsibility for the duties described in Sec. 2-248, shall assume such other responsibilities as may be required by the town manager or town council or as may be imposed by law.

Secs. 2-250—2-269. Reserved.

DIV. II-2-5-3. DEPARTMENT OF FINANCIAL ADMINISTRATION

Sec. 2-270. Created.

There is hereby established a department of financial administration which shall be responsible for the administration of all finance-related activities. This department shall be divided into the divisions in this division.

Sec. 2-271. Finance division—Establishment and functions.

There shall be a finance division which shall be responsible for the recording and management of all financial transactions, revenues and disbursements of the town. The finance division shall be responsible for carrying out such other functions as may be prescribed by statute, town Charter or ordinance.

Sec. 2-272. Same—Finance director.

The finance director shall be the head of the finance department. The finance director shall be appointed by the town manager, and in addition to assuming responsibility for the duties described in Sec. 2-271, shall assume such other responsibilities as may be required by the town manager or town council or as may be imposed by law.

Sec. 2-273. Assessment division—Establishment and functions.

There shall be an assessment division which shall be responsible for the fair and equitable assessment of real and personal property taxes. The assessment division shall carry out such other functions as may be prescribed by statute, town Charter or ordinance.

Sec. 2-274. Same—Assessor.

Pursuant to article VI, section 601 of the town Charter there is hereby established the position of assessor who shall be the head of the division of assessment. The assessor shall be appointed by the town council and shall assume responsibilities as required by the town manager or town council or as may be imposed by law.

Charter reference— Board of assessment review, § 602.

Secs. 2-275—2-294. Reserved.

FOOTNOTE(S):

--- (14) ---

Charter reference— Budget, § 501 et seq.; tax administration, § 601 et seq.

Cross reference— Taxation and finance, Ch. II-16.

State Law reference— Fiscal matters, 30-A M.R.S.A. § 5601 et seq.

DIV. II-2-5-4. DEPARTMENT OF GENERAL GOVERNMENT

Sec. 2-295. Created.

There is hereby established a department of general government which shall be responsible for the administration of all general government functions. This department shall be divided into the divisions in this division.

Sec. 2-296. Division of records and licensing—Establishment and functions.

There is hereby established the division of records and licensing which shall be responsible for the authenticating, safekeeping, filing and indexing of all proceedings of the town council and the issuing of all licenses and permits as provided by state law or town ordinance. The division of records and licensing shall carry out such other functions as may be prescribed by statute, town Charter or ordinance.

State law reference— Municipal records, 30-A M.R.S.A. § 2751 et seq.

Sec. 2-297. Same—Town clerk.

Pursuant to article II, section 214 of the Charter, there is hereby established the position of town clerk who shall be the head of the division of records and licensing. The town clerk shall be appointed by the town manager, and in addition to assuming responsibility for the duties described in Sec. 2-296, shall assume such other responsibilities as may be required by the town manager or town council or as may be imposed by law.

Cross reference— Seal of the town, § 2-1; elections, Ch. II-5.

State law reference— Town clerk, 30-A M.R.S.A. § 2651 et seq.

Sec. 2-298. Division of welfare—Establishment and functions.

There is hereby established the division of welfare which shall be responsible for administering the welfare programs of the town. The division of welfare shall be responsible for carrying out such other functions as may be prescribed by statute, town Charter or ordinance.

Cross reference— General assistance, Ch. II-6.

Sec. 2-299. Same—Welfare officer.

There is hereby established the position of welfare officer who shall be the head of the division of welfare. The welfare officer shall be appointed by the town manager, and in addition to assuming responsibility for the duties described in Sec. 2-298, shall assume such other responsibilities as may be required by the town manager or town council or may be imposed by law.

Sec. 2-300. Division of health—Establishment and functions.

There is hereby established the division of health which shall administer the town's health programs. The division of health shall carry out such other functions as may be prescribed by statute, town Charter or ordinance.

Cross reference— Food service establishments, § 8-150 et seq.; victualers, § [@@1318] et seq.; shellfishing, § 9-50 et seq.; nuisances, Ch. II-12; solid waste, Ch. II-13; swimming pools, Ch. II-15; utilities, Ch. II-18.

State law reference— Health and welfare, 30-A M.R.S.A. § 5725.

Sec. 2-301. Same—Health officer.

Pursuant to article III, section 305 of the town Charter there is hereby established the position of health officer who shall be the head of the division of health. The health officer shall be appointed by the town manager subject to approval of the town council. In addition to assuming responsibility for the duties described in Sec. 2-300, he shall assume such other responsibilities as may be required by the town manager or town council or as may be imposed by law.

Charter reference— Health officer, §§ 204.1, 305.

Cross reference— Swimming pools, Ch. II-15.

Secs. 2-302—2-329. Reserved.

DIV. II-2-5-5. EMERGENCY MEDICAL SERVICES DEPARTMENT

Sec. 2-330. Establishment and functions.

There is hereby established an emergency medical services department which shall be responsible for administering the town's emergency medical services. The emergency medical services department shall also be responsible for carrying out such other functions as may be prescribed by statute, town Charter or ordinance.

(Ord. of 10-23-89, § 1)

Sec. 2-331. Emergency medical services director.

There is hereby established the position of emergency medical services director who shall be the head of the emergency medical services department. The emergency medical services director shall be appointed by the town manager and shall be responsible to the town manager or his designee. In addition to assuming responsibility for the duties described in Sec. 2-330, the director shall assume such other responsibilities as may be required by the town manager or his designee, the town council, or as may be imposed by law.

(Ord. of 10-23-89, § 1)

Secs. 2-332—2-369. Reserved.

DIV. II-2-5-6. FIRE DEPARTMENT

Sec. 2-370. Establishment and functions.

There is hereby established a fire department which shall be responsible for the prevention and extinguishment of fires, the protection of life and property against fire and the removal of fire hazards. The fire department shall be responsible for carrying out such other functions as may be prescribed by statute, town Charter or ordinance.

Sec. 2-371. Fire chief.

There is hereby established the position of fire chief who shall be the head of the fire department. The fire chief shall be appointed by the town manager, and in addition to assuming responsibility for the duties described in Sec. 2-370, shall assume such other responsibilities as may be required by the town manager or town council or as may be imposed by law.

Cross reference— Buildings and building regulations, Ch. II-4; fire prevention code adopted, § 4-76.

Sec. 2-372. Mutual aid by fire department.

- a. The fire chief or his duly authorized representative upon request for aid from a duly authorized representative of a municipal or incorporated volunteer fire department of another municipality having a similar ordinance 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 as he shall deem feasible for the purpose of rendering aid in extinguishing a fire within such other municipality.
- b. During the course of rendering such aid to another municipality, the aiding municipality shall be responsible for damage to its own equipment, personal injury or property damage caused by the negligence of its personnel in the operation of its equipment and for any payments which it is required to make to any member of its fire department or to his widow or other dependents on account of injuries or death as required by the state worker's compensation act.
- c. The town manager is hereby authorized to execute for and on behalf of the town a mutual aid agreement in accordance with the provisions of this section with any other municipality having a similar ordinance.

(Code 1966, Ch. 310, §§ 1—3)

State law reference— Fire aid to other municipalities, 30-A M.R.S.A. § 3156.

Secs. 2-373—2-399. Reserved.

FOOTNOTE(S):

--- (15) ---

Cross reference— Fire prevention code adopted, § 4-76; fire suppression systems, § 4-121 et seq.

State Law reference— Municipal fire protection, 30 M.R.S.A. § 3771 et seq.

DIV. II-2-5-7. PARKS AND COMMUNITY PROGRAMS DEPARTMENT

Sec. 2-400. Created.

There is hereby established a community programs department which shall be responsible for the administration of all community service activities. This department shall be divided into the divisions in this division.

(Amd. of 3-11-2013)

Sec. 2-401. Parks and community programs director.

The community programs director shall be the head of the community programs department and shall be responsible for the administration of all of its divisions. The community programs director shall be appointed by the town manager, and in addition to assuming responsibility for the duties described in Sec. 2-401, shall assume such other responsibilities as may be required by the town manager or town council or as may be imposed by law.

(Amd. of 3-11-2013)

Sec. 2-402. Division of parks.

There is hereby established the division of parks which shall be responsible for the maintenance of public parks and recreation areas within the town. The division of parks shall carry out such other functions as may be prescribed by statute, town Charter or ordinance.

(Amd. of 3-11-2013)

Sec. 2-403. Division of recreation.

There is hereby established the division of recreation which shall administer all public recreation activities within the town. The division of recreation shall carry out such other functions as may be prescribed by statute, town Charter or ordinance.

(Amd. of 3-11-2013)

Sec. 2-404. Division of adult education.

There is hereby established the division of adult education which shall be responsible for the administration of all adult education programs within the town. The division of adult education shall carry out such other functions as may be prescribed by statute, town Charter or ordinance.

(Amd. of 3-11-2013)

Sec. 2-405. Land acquisition program.

- a. In order to maintain the rural character of the town and to provide enhanced opportunities for recreation for the citizens of the town, it shall be the policy of the town for the town council to seek to acquire land and interests in land appropriate for these purposes. The land and interests in land to be acquired shall include:
 1. Lands whose preservation would maintain or enhance the rural character of the town;
 2. Scenic lands that comprise major viewsheds or which are visually significant to those who pass on Falmouth roadways;
 3. Lands whose acquisition will promote and be consistent with the goals and provisions of the comprehensive plan, the open space plan, the resource conservation overlay district and other relevant land use policies adopted by the town council;
 4. Land that would provide opportunities for active and passive recreation areas and facilities throughout the town.

In acquiring lands under this policy the council shall give priority to parcels of land that are large enough to have a meaningful impact on the community either when standing alone or when taken in combination with other properties which have been or will be acquired on behalf of the public for conservation, preservation or recreational purposes.
- b. The acquisition of land or interests in land by the council may be financed by current appropriations, by the issuance of bonds or notes of the town in accordance with the town Charter, or by such other means as the council deems appropriate. To the extent that acquisitions are financed by the issuance of bonds or notes of the town, the council shall consider whether the annual debt service on such borrowings will be comparable to amounts that might otherwise be appropriated from current revenues so that the land acquisition program has, at worst, a modest impact on the level of property taxes in the town.
- c. The council shall be responsible for establishing priorities for the land and interests in land to be acquired and for approving the terms on which they are acquired. In carrying out its responsibilities under this section, the council may appoint an advisory committee of qualified and experienced citizens and may engage outside experts to conduct or assist in negotiations and other aspects of the land acquisition program.

(Amd. of 3-11-2013)

Secs. 2-406—2-429. Reserved.

FOOTNOTE(S):

--- (16) ---

Editor's note— An Amend. of March 11, 2013, deleted the former Div. II-2-5-7, §§ 2-400—2-405, and enacted a new Div. II-2-5-7 as set out herein. The former Div. II-2-5-7 pertained to the community programs department and derived from Ord. of 3-24-97; Ord. of 9-24-2007, § 2. For a complete derivation, see the Code Comparative Tables at the end of this volume.

Cross reference— Parks and community programs advisory committee, § 2-85 et seq.; streets, sidewalks and other public places, Ch. II-14.

State Law reference— Parks, trees, playgrounds, 30 M.R.S.A. § 3801 et seq.

DIV. II-2-5-8. POLICE DEPARTMENT

Sec. 2-430. Establishment and functions.

There is hereby established a police department which shall be responsible for administering all matters relating to police work, harbor control, animal control, emergency preparedness and sealing of weights and measures within the town. The police department shall carry out such other functions as may be prescribed by statute, town Charter or ordinance.

Sec. 2-431. Police chief.

There is hereby established the position of police chief who shall be the head of the police department. The police chief shall be appointed by the town manager, and in addition to assuming responsibility for the duties described in Sec. 2-430, shall assume such other responsibilities as may be required by the town manager or town council or as may be imposed by law.

Sec. 2-432. Harbormaster.

There is hereby established the position of harbormaster who shall be appointed by town manager and shall be responsible for the care and regulation of the harbor and port of Falmouth. The harbormaster shall carry out such other functions as may be prescribed by statute, town Charter or ordinance.

State law reference— Harbormasters, 38 M.R.S.A. § 1 et seq.

Sec. 2-433. Sealer of weights and measures.

There is hereby established the position of sealer of weights and measures. The sealer of weights and measures shall be appointed by the town manager and shall assume responsibility for those functions required by the town manager or town council or as may be imposed by law.

State law reference— Sealer of weights and measures, 10 M.R.S.A. § 2301 et seq.

Sec. 2-434. Animal control officer.

There is hereby established the position of animal control officer. The animal control officer shall be appointed by the town manager and shall assume responsibility for enforcing state and local laws regarding animals as well as those functions required by the town manager or town council or as may be imposed by law.

Sec. 2-435. Emergency preparedness officer.

There is hereby established the position of emergency preparedness officer. The emergency preparedness officer shall be appointed by the town manager, and shall assume responsibility for those functions required by the town manager or town council or as may be imposed by law.

Secs. 2-436—2-459. Reserved.

FOOTNOTE(S):

--- (17) ---

Cross reference— Animals, Ch. II-3; special amusement permits for alcoholic beverage establishments, § 8-60 et seq.; miscellaneous offenses, Ch. II-10; traffic and motor vehicles, Ch. II-17.

State Law reference— Law enforcement officers, 30-A M.R.S.A. § 2671 et seq.

DIV. II-2-5-9. PUBLIC WORKS DEPARTMENT

Sec. 2-460. Created.

There is hereby established a public works department which shall be responsible for the administration of the division of streets, division of solid waste disposal, and garage division. It shall carry out such other functions as may be prescribed by statute, town Charter or ordinance.

(Amd. of 3-11-2013)

Sec. 2-461. Public works director.

There is hereby established the position of public works director who shall be the head of the public works department and responsible for the administration of all of its divisions. The public works director shall be appointed by the town manager and in addition to assuming responsibility for the duties described in Sec. 2-460, shall assume such other responsibilities as may be required by the town manager or town council or as may be imposed by law.

(Amd. of 3-11-2013)

Sec. 2-462. Division of streets—Establishment and functions.

There is hereby established the division of streets which shall be responsible for the maintenance of all public streets, ways, drains, bridges, and trees controlled by the town. The division of streets shall carry out such other functions as may be prescribed by statute, town Charter or ordinance.

(Amd. of 3-11-2013)

Sec. 2-463. Division of solid waste disposal—Establishment and functions.

There is hereby established the division of solid waste disposal which shall be responsible for the operation of all transfer stations, landfills or other solid waste facilities. The division of solid waste disposal shall carry out such other functions as may be prescribed by statute, town Charter or ordinance.

(Amd. of 3-11-2013)

Sec. 2-464. Division of vehicle maintenance—Establishment and functions.

There is hereby established the garage division which shall maintain town vehicles and equipment. The garage division shall carry out such functions as may be prescribed by statute, town Charter or ordinance.

(Amd. of 3-11-2013)

Secs. 2-465—2-499. Reserved.

FOOTNOTE(S):

--- (18) ---

Editor's note— An Amend. of March 11, 2013, deleted the former Div. II-2-5-9, §§ 2-460—2-465, and enacted a new Div. II-2-5-9 as set out herein. The former Div. II-2-5-9 pertained to the public works and parks department and derived from Ord. of 9-24-2007, § 3.

Cross reference— Solid waste, Ch. II-13; streets, sidewalks and other public places, Ch. II-14; streets, § 14-40 et seq.

DIV. II-2-5-10. SEWER DEPARTMENT

Sec. 2-500. Establishment and functions.

There is hereby established a sewer department which shall be responsible for the operation and maintenance of the town's sewer treatment facilities and sewer lines. The sewer department shall carry out such other functions as may be prescribed by statute, town Charter or ordinance.

Sec. 2-501. Sewer superintendent.

There is hereby established the position of sewer superintendent who shall be the head of the sewer department. The sewer superintendent shall be appointed by the town manager, and in addition to assuming responsibility for the duties described in Sec. 2-500, shall assume such other responsibilities as may be required by the town manager or town council or as may be imposed by law.

FOOTNOTE(S):

--- (19) ---

Cross reference— Utilities, Ch. II-18; sewer system, § 18-50 et seq.

DIV. II-2-5-11. DEPARTMENT OF EMERGENCY MANAGEMENT

Sec. 2-502. Purpose.

It is the intent and purpose of this division to establish a Department of Emergency Management and Homeland Security in compliance and in conformity with the provisions of 37-B M.R.S.A. § 781 et. seq., to ensure the complete and efficient utilization of the town's facilities and resources to combat disaster as defined herein.

(Ord. of 4-28-2008)

Sec. 2-503. Definitions.

The following definitions shall apply in the interpretation of this article:

Civil emergency preparedness means the preparation for and the carrying out of all emergency functions, other than functions for which military forces are primarily responsible, to minimize and repair injury and damage resulting from disasters or catastrophes caused by enemy attacks, sabotage, riots or other hostile action, or by fire, flood, earthquake or other natural or manmade causes. These functions include, without limitation, firefighting, police, medical and health, emergency welfare, rescue, engineering, and communications services, evacuation of persons from stricken areas, allocation of critical materials in short supply, emergency transportation, other activities related to civilian protection and other activities necessary to the preparation for the carrying out of these functions.

Civil emergency preparedness forces means the employees, equipment and facilities of all town departments, boards, institutions and commissions; and in addition, it shall include all volunteer persons, equipment and facilities contributed by or obtained from volunteer persons or agencies.

Department means the department of emergency management as established by this division.

Director means the director of the town department of emergency management appointed as prescribed in this division.

Disaster means the occurrence or imminent threat of widespread or severe damage, injury or loss of life or property resulting from any natural or manmade causes including, but not limited to fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination requiring emergency action to avert danger or damage, epidemic, air contamination, critical material shortage, infestation, explosion or riot.

(Ord. of 4-28-2008)

Sec. 2-504. Organization.

- a. The town manager shall be responsible for the department's organization, administration and operation. The town manager may employ such permanent or temporary employees as he deems necessary and prescribe their duties.
- b. The town council shall review the existing operational organization to ascertain the department's ability to cope with its responsibilities and shall approve the town's emergency operation plan.

(Ord. of 4-28-2008)

Sec. 2-505. Appointment of director; duties and responsibilities.

The town manager shall appoint the director of the department, who shall coordinate the activities of all town departments, organizations, and agencies for civil emergency preparedness within the town and maintain a liaison with other civil preparedness agencies, public safety agencies, and have such additional duties as prescribed by the town manager.

(Ord. of 4-28-2008)

Sec. 2-506. Rules and regulations.

The director shall prepare, under the direction of the town manager or designee, such policies as may be deemed necessary or the administration and operational requirements of the department, which policies must be approved by the town council prior to becoming effective.

(Ord. of 4-28-2008)

Sec. 2-507. Emergency proclamation.

- a. The town council chairperson, in consultation with the town manager, shall have the power and authority to issue a proclamation that an emergency exists whenever a disaster or civil emergency exists or appears imminent. The proclamation may declare that an emergency exists in any or all sections of the town. If the town council chairperson is temporarily absent from the town or otherwise unavailable, the vice chairperson of the town council may issue the proclamation that an emergency exists. If neither the chairperson, or the vice-chairperson of the town council is available, then the following persons shall have the power and authority to issue a proclamation that an emergency exists, in the following order of succession; the town manager, the director; the chief of police, the fire chief. A copy of such proclamation shall be filed within twenty-four (24) hours in the office of the town clerk.
- b. Notwithstanding the above, when consultation with the chairperson of the town council would result in a substantial delay in an effective response in alleviating or preventing an emergency or disaster, the town manager is authorized to take whatever actions are necessary to prevent the loss of life and property in the town.
- c. The town manager and the director shall be responsible for submitting a full report to the town council of all actions taken as a result of the declared emergency as soon as the town council can be convened.

(Ord. of 4-28-2008)

Sec. 2-508. Termination of emergency.

- a. When the town council chairperson, in consultation with the town manager, is satisfied that a disaster or civil emergency no longer exists, he/she shall terminate the emergency proclamation by another proclamation affecting the sections of the town covered by the original proclamation, or any part thereof. If the town council chairperson is temporarily absent from the town or otherwise unavailable, the vice chairperson of the town council may issue the proclamation that a disaster or civil emergency no longer exists. If neither the chairperson, or the vice-chairperson of the town council is available, then the following persons shall have the power and authority to issue a proclamation that a disaster or civil emergency no longer exists, in the following order of succession; the town manager, the director; the chief of police, the fire chief. Said termination of emergency shall be filed in the office of the town clerk.
- b. No state of emergency may continue for longer than five (5) days unless renewed by the town council.

(Ord. of 4-28-2008)

Sec. 2-509. Manager's duties and emergency powers.

- a. During any period when an emergency or disaster exists or appears imminent, the town manager may promulgate such regulations as he/she deems necessary to protect life and property and to preserve critical resources within the purposes of this division. Such regulations may include, but are not limited to, the following:
 - 1. Regulations prohibiting or restricting the movement of vehicles in areas within or without of the town;
 - 2. Regulations facilitating or restricting the movement of persons within the town;
 - 3. Regulations pertaining to the movement of persons from hazardous areas within the town;

4. Such other regulations necessary to preserve public peace, health and safety.

Nothing in this section shall be construed to limit the authority or responsibility of any department to proceed under powers and authority granted to them by state statute, town ordinance or the charter of the town.

- b. The town manager or designee may order the evacuation of persons from hazardous areas within the town.
- c. The town manager shall be authorized to request aid or assistance from the state or any political subdivision of the state and shall render assistance to other political subdivisions under the provisions of 37-B M.R.S.A. § 781.
- d. The town manager may obtain vital supplies, equipment and other items found lacking and needed for the protection of health, life and property.
- e. The provisions of this section will terminate at the end of the declared emergency.

(Ord. of 4-28-2008)

Sec. 2-510. Emergency operations plans.

The director shall prepare an emergency operations plan for the town, which shall be submitted to the town council for approval.

It shall be the responsibility of all town departments and agencies to perform the functions assigned and to maintain their portions of the plan in a current state of readiness. The town plan shall be reviewed periodically by the town manager in conjunction with all town department heads and the director.

(Ord. of 4-28-2008)

Sec. 2-511. Immunity from liability.

All members of the civil emergency preparedness forces, while engaged in civil emergency preparedness activities, shall be immune from liability, as set forth in 37-B M.R.S.A. § 822.

(Ord. of 4-28-2008)

Sec. 2-512. Compensation for injuries.

All members of the civil emergency preparedness forces shall be deemed to be employees of the state when engaged in training or on duty and shall have all of the rights of state employees under the Workman's Compensation Act, as set forth in 37-B M.R.S.A. § 823.

(Ord. of 4-28-2008)

Sec. 2-513. Violation of regulations.

It shall be unlawful for any person to violate any provisions of this article or of the regulations or plans issued pursuant to the authority contained herein, or to obstruct, hinder or delay any member of the civil emergency preparedness organization as herein defined in the enforcement of the provisions of this division or any regulation or plan issued there under.

(Ord. of 4-28-2008)

Sec. 2-514. Penalty.

Any person, firm or corporation violating any provision of this article or any rule or regulation promulgated there under, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars (\$500.00) and the costs of the prosecution.

(Ord. of 4-28-2008)

CH. II-3 ANIMALS

Sec. 3-1. Definitions.

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

At large means off the premises of the owner and not under the control of any person whose personal presence and attention would reasonably control the conduct of the dog. Premises includes residences, including land and buildings, and motor vehicles belonging to the owner or keeper of the dog.

Dangerous dog means a dog that bites an individual not trespassing on the dog owner's or keeper's premises at the time of the bite or a dog that causes a reasonable and prudent person who is not on the dog owner's or keeper's premises and is acting in a reasonable and non-aggressive manner to fear imminent bodily harm by assaulting or threatening to assault that individual or that individual's domestic animal. "Dangerous dog" does not include a dog certified by the state and used for law enforcement use.

Keeper means a person in possession or control of a dog.

Licensed dog means a dog whose owner or keeper has presented to town officials evidence that the dog has been vaccinated against rabies and has paid the annual registration fee for the dog.

Nuisance dog means a dog which by loud, frequent and continual barking, howling, or other loud or unusual noises, unnecessarily annoys or disturbs any person at any time.

Owner means any person, firm, association or corporation owning, keeping or harboring a dog.

(Ord. of 9-22-2003)

Sec. 3-2. Licenses.

Each owner or keeper of a dog at the age of 6 months or over shall, on or before January 1, annually, or at such time as such dog becomes 6 months old, obtain a license from the town clerk's office in accordance with 7 M.R.S.A. Chapter 721.

(Ord. of 9-22-2003)

Sec. 3-3. Dangerous dogs.

If a dog is determined by the town to be a dangerous dog, the town, including, without limitation, the animal control officer, shall order the owner or keeper of the dog to muzzle, restrain or confine the dog to the owner's or keeper's premises, or have the dog confined at the owner's or keeper's expense pursuant to Sec. 3-5, and the town shall otherwise comply with 7 M.R.S.A. §3952.

(Ord. of 9-22-2003)

Sec. 3-4. Nuisance dogs.

No owner or keeper of any dog kept within the town shall allow such dog to become a nuisance dog under the definitions of this chapter. Upon written complaint signed by the person disturbed, any duly qualified law enforcement officials including, without limitation, the animal control officer, may investigate and may give written notice to the owner or keeper of such dog that such annoyance or disturbance must cease. If such annoyance or disturbance continues after a warning has been issued, the owner or keeper shall be guilty of a civil violation punishable by a fine of fifty dollars (\$50.00) for the first offense; and fifty dollars (\$50.00) for each subsequent offense. All fines so assessed and attorney's fees shall be recovered for use by the town.

No person shall be prosecuted under this chapter unless that person has had written warning from a duly qualified police officer or animal control officer in the town. The warning shall be made part of the complaint and shall include, but not be limited to, the date and time the warning was issued.

(Ord. of 9-22-2003; Ord. of 8-12-2013)

Sec. 3-5. Impoundment.

- a. The town may take unlicensed dogs, whether or not at large, and dogs found running at large, whether or not licensed, with or without complaint and place the dog 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 thirty (30) days.
- b. Where the ownership of any such dog is known or can be reasonably ascertained by the town, it 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 of any dog so impounded and not reclaimed within said period of thirty (30) days of notice of impoundment.
- c. Any owner or keeper may regain possession of a dog impounded pursuant to this section upon payment of the impoundment and boarding fees set forth herein. Any dog impounded under the provisions of this section and not reclaimed by the owner within said thirty (30) days shall be considered abandoned by the owner and shall become the property of the town animal shelter and may, after consultation with the Humane Society and/or the Animal Refuge League, be given to the Humane Society and/or Animal Refuge League or any person deemed to be responsible and a suitable owner, or as a last resort be humanely destroyed.

(Ord. of 9-22-2003)

Sec. 3-6. Fees and boarding charges.

Prior to the release of an impounded dog, the owner shall pay the following to the town clerk:

1. An impoundment fee of forty dollars (\$40.00) for each dog except upon the second impoundment of the same dog, the fee shall be eighty dollars (\$80.00) and upon the third and all subsequent impoundments of the same dog, the fee shall be one hundred fifty dollars (\$150.00).
2. An animal shelter boarding fee, and related reasonable expenses.

It shall be the duty of the town to keep or cause to be kept a detailed and complete record of the impoundment and disposition of all dogs coming into his/her custody.

(Ord. of 9-22-2003)

Cross reference— Police department, § 2-230 et seq.

FOOTNOTE(S):

--- (1) ---

Editor's note— An ordinance adopted Sept. 22, 2003, amended former Ch II-3, relative to animals, in its entirety and reenacted Ch II-3 to read as herein set out. The former provisions of Ch II-3 were derived from Code 1966, Ch. 316 and an ordinance of June 16, 1997.

Cross reference— Administration, Ch. II-2; provisions for notices for nuisances, signs, dangerous, unsafe, dilapidated buildings, and any other action the expense of which may be collected from the property owner, § 2-3; police department, § 2-430 et seq.; buildings and building regulations, Ch. II-4; nuisances, Ch. II-12; loud, offensive noises prohibited, § 12-1; solid waste, Ch. II-13; zoning and site plans and flood prevention and protection regulations, Ch. II-19.

State Law reference— Dogs, 7 M.R.S.A. § 3901 et seq.

CH. II-4 BUILDINGS AND BUILDING REGULATIONS

FOOTNOTE(S):

--- (1) ---

Cross reference— Boundaries of the town, § 2-2; provisions for notices for nuisances, signs, dangerous, unsafe, dilapidated buildings, and any other action the expense of which may be collected from the property owner, § 2-3; waterfront and harbor committee, § 2-115 et seq.; division of code administration establishment and functions, § 2-248; fire department, § 2-370 et seq.; animals, Ch. II-3; land subdivision, Ch. II-7; licenses, permits and business regulations, Ch. II-8; marine activities, structures and ways, Ch. II-9; mobile homes and mobile home parks, Ch. II-11; nuisances, Ch. II-12; loud, offensive noises prohibited, § 12-1; littering prohibited, § 12-2; solid waste, Ch. II-13; swimming pools, Ch. II-15; utilities, Ch. II-18; connection to sewer system required, § 18-120; certain discharges into the public sewer system prohibited, § 18-190 et seq.; extension of sewer system, § 18-230; zoning and site plans and flood prevention and protection regulations, Ch. II-19.

State Law reference— Regulation of construction and improvements, 30-A M.R.S.A. § 4101 et seq.

ART. II-4-1. IN GENERAL

Secs. 4-1—4-39. Reserved.

ART. II-4-2. ADMINISTRATION

Sec. 4-40. Permits required.

No person shall enter into, engage in or work at any activity regulated by this chapter without having obtained all permits required by this chapter and by other town ordinances and by federal and state statutes and regulations. The fee schedule for such permits shall be prescribed from time to time by order of the town council, unless otherwise specifically provided and is on file in the town clerk's office.

(Code 1966, Ch. 301, § 1.1; Ord. of 11-25-2002; Ord. of 7-1-2004)

Sec. 4-41. Inspection.

Any activity regulated by this chapter shall be subject to inspection by the appropriate town inspector, as set forth in this chapter, who shall exercise and perform the rights, powers and duties lawfully conferred or imposed under town ordinances, state statutes and regulations, as the same may from time to time be amended, and who, upon proper identification, shall have authority to enter any building, structure or premise at any reasonable hour.

(Code 1966, Ch. 301, § 1.2; Ord. of 11-25-2002; Ord. of 7-1-2004)

Sec. 4-42. Conflicting regulations.

When any provision of this chapter conflicts with a provision in any other town ordinance or any federal or state statute or regulation, the more restrictive provision shall control.

(Code 1966, Ch. 301, § 1.3; Ord. of 11-25-2002; Ord. of 7-1-2004)

Sec. 4-43. Appeals.

Appeals from decisions of any inspector acting pursuant to authority granted by this chapter shall be taken to the board of appeals in accordance with 30-A M.R.S.A. § 4103(5).

(Code 1966, Ch. 301, § 1.4; Ord. of 11-25-2002; Ord. of 7-1-2004)

Secs. 4-44—4-69. Reserved.

ART. II-4-3. BUILDING CONSTRUCTION STANDARDS

Sec. 4-70. Building code adopted.

There is hereby adopted and incorporated herein by reference, as if completely and specifically set forth in its entirety, for the purpose of prescribing regulations for the design, construction, alteration, installation, repair, addition, extension and demolition of all buildings and structures and their service equipment, the International Building Code, 2003 Edition, as published by the International Code Council Inc., and the International Residential Code for One- and Two-Family Dwellings 2003 Edition, as published by the International Code Council Inc., and the whole thereof, save and except such portions as are hereinafter deleted, modified or amended. The IBC Building Code together with the IRC One- and Two-Family Dwelling Code adopted herein shall be known as the Falmouth Building Code. The town clerk shall keep on file in the clerk's office three (3) copies of the Falmouth Building Code available for public use, inspection and examination.

(Code 1966, Ch. 301, § 2.1; Ord. of 11-25-2002; Ord. of 7-1-2004; Ord. of 3-27-2006)

Sec. 4-71. Amendments to building code.

The following amendments to the code adopted in Sec. 4-70 are hereby adopted.

1. All buildings of three (3) or more stories in height shall be protected at all floor levels by an automatic fire suppression system.
2. The town building inspector shall enforce the Falmouth Building Code.
3. All appeals under the Falmouth Building Code shall be to the zoning board of appeals of the town.
4. Penalties for violations of the building code shall be as provided in 30-A M.R.S.A. § 4452.

(Code 1966, Ch. 301, § 2.2; Ord. of 11-25-2002; Ord. of 7-1-2004)

Cross reference— Removal of members of boards, committees, commissions, § 2-40; vacancies on appointive boards, § 2-41.

Sec. 4-72. Electrical code adopted.

The following standards and specifications for electrical installation and all work in connection with the installation, alteration, repair or maintenance of or additions to electrical equipment of any nature whatsoever in the town shall comply with the 2008 Edition of the National Electrical Code, pamphlet #70, as published by the National Fire Protection Association. The town code enforcement officer shall keep on file in the code office three (3) copies of the National Electrical Code, pamphlet #70 available for public use, inspection and examination.

(Code 1966, Ch. 301, § 3.1; Ord. of 11-25-2002; Ord. of 7-1-2004; Amd. of 11-24-2008)

State law reference— Electrical installations, 30-A M.R.S.A. § 4151 et seq.; electricians, 32 M.R.S.A. § 1101 et seq.

Sec. 4-73. Amendment to electrical code.

The following amendments to the code adopted in Sec. 4-72 are hereby adopted:

1. The town electrical inspector shall enforce the National Electrical Code, pamphlet #70, with amendments as adopted by the state electricians examining board for all original installations and alterations or additions to existing electrical equipment.
2. All appeals under this electrical code shall be to the board of zoning appeals.
3. Penalties for violations of the electrical code shall be as provided in 30-A M.R.S.A. § 4452.

(Code 1966, Ch. 301, § 3.2; Ord. of 11-25-2002; Ord. of 7-1-2004; Amd. of 11-24-2008)

Cross reference— Removal of members of boards, committees, commissions, § 2-40; vacancies on appointive boards, § 2-41.

Sec. 4-74. Oil burner equipment code adopted.

The following standards and specifications for oil burner installation and all work in connection with the installation, repair or maintenance of oil burner equipment and fuel storage tanks to be used in connection therewith in the town shall comply with the 2001 Edition of the National Fire Protection Association, Standard No. 31. The town clerk shall keep on file in the clerk's office three (3) copies of the National Fire Protection Association Standard No. 31 available for public use, inspection and examination. The town electrical inspector shall enforce the National Fire Protection Association Standard No. 31.

(Code 1966, Ch. 301, §§ 4.1, 4.2; Ord. of 11-25-2002; Ord. of 7-1-2004)

Sec. 4-75. Plumbing code adopted.

The standards and specifications for plumbing installation and all work in connection with the installation, repair or maintenance of plumbing and equipment to be used in connection therewith in the town shall comply with the state plumbing code, adopted pursuant to 22 M.R.S.A. § 42. The town clerk shall keep on file in the town clerk's office three (3) copies of the state plumbing code for public use, inspection and examination. The plumbing inspector shall enforce the state plumbing code. Pursuant to 30-A M.R.S.A. § 4215, the penalty for violation of this section shall be as provided in 30-A M.R.S.A. § 4452.

(Code 1966, Ch. 301, §§ 5.1, 5.2; Ord. of 11-25-2002; Ord. of 7-1-2004)

Cross reference— Sewer system, § 18-50 et seq.; connection to sewer system required, § 18-120.

State law reference— Regulation and inspection of plumbing, 30-A M.R.S.A. § 4201 et seq.; plumbing inspector, 30-A M.R.S.A. § 4221; plumbers, 32 M.R.S.A. § 3301 et seq.

Sec. 4-76. Fire prevention code adopted.

There is hereby adopted and incorporated herein by reference, as if completed and specifically set forth in its entirety for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosion, the International Fire Code 2003 Edition, as published by the International Code Council, Inc., and the National Fire Protection Association Life Safety Code (NFPA 101), 2003 Edition, and the whole thereof, save and except such portions as are hereinafter deleted, modified or amended. The International Fire Code, and the National Fire Protection Association Life Safety Code (NFPA 101) shall together be known as the Fire Safety Code of the Town of Falmouth and the provisions thereof shall be controlling within the town. The town clerk shall keep on file in the clerk's office three (3) copies of the Fire Safety Code for public use, inspection and examination. The town fire inspector, who shall be the fire chief or the chief's designate, shall enforce the fire safety code of the town.

1. Penalties for violations of the fire safety code shall be as provided in 30-A M.R.S.A. § 4452.

(Code 1966, Ch. 301, §§ 6.1, 6.2; Ord. of 11-25-2002; Ord. of 7-1-2004; Ord. of 3-27-2006)

Cross reference— Fire department, § 2-370 et seq.; fire suppression systems, § 4-121 et. seq.

State law reference— Fire prevention and fire protection, 25 M.R.S.A. § 2351 et seq.; municipal fire protection, 30-A M.R.S.A. § 3151 et seq.

Sec. 4-77. Outdoor wood boiler code adopted.

a. Applicability.

1. This regulation applies to any person who operates, installs, or allows the installation of an outdoor wood boiler.
2. This regulation applies to outdoor wood boilers with a rated thermal input of less than 3 MMBtu/hr. Boilers with a rated thermal heat input of 3 MMBtu/hr or greater are subject to chapter 103 Fuel Burning Equipment Particulate Emission Standard of the state department of environmental protection's regulations.
3. In the event that any provision of this section conflicts with the provisions of DEP chapter 150 the more restrictive provision shall apply.

b. Definitions. The following terms, as used in this section, have the following meanings:

CEO. Code enforcement officer of the Town of Falmouth.

DEP Chapter 150. Chapter 150 of the rules of the state department of environmental protection "Control of Emissions from Outdoor Wood Boilers", as amended July 4, 2008.

Existing outdoor wood boiler. An outdoor wood boiler that was verified by the code enforcement officer (CEO) on or before June 30, 2007 as having been installed and operating in the Town of Falmouth.

New outdoor wood boiler. An outdoor wood boiler that is not installed and/or operational at the intended location of use as of the effective date of this section.

Outdoor wood boiler. As defined in chapter 150 of the rules of the state department of environmental protection "Control of Emissions from Outdoor Wood Boilers", as amended July 4, 2008.

c. *Requirements for the installation and operation of outdoor wood boilers.*

1. *Particulate matter emission standards for new outdoor wood boilers.* No person shall operate, install or allow the installation of a new outdoor wood boiler unless it has been certified under section 3(E) of chapter 150 to meet a particulate matter emission limit of 0.32 lbs/MMBtu heat output.

2. *Setback requirements for outdoor wood boilers.*

a. *Existing outdoor wood boilers.* No person shall install or allow the installation of any existing outdoor wood boiler unless the outdoor wood boiler is installed no closer than two hundred fifty (250) feet from the nearest property line or no closer than two hundred seventy (270) feet from the nearest dwelling that is not on the same property as the outdoor wood boiler.

b. *New outdoor wood boilers.* No person shall install or allow the installation of any new outdoor wood boiler unless the outdoor wood boiler is installed no closer than fifty (50) feet from the nearest property line or no closer than seventy (70) feet from the nearest dwelling that is not on the same property as the outdoor wood boiler.

c. *Setbacks from certain uses.* No person shall install or allow the installation of any outdoor wood boiler closer than five hundred (500) feet from the property line of a public or private school, daycare center or daycare home, health institution, or outdoor recreation facility, as those terms may be defined in the zoning and site plan review ordinance.

3. *Stack height requirements for outdoor wood boilers.*

a. *Existing outdoor wood boilers.*

1. No person shall install or allow the installation of any existing outdoor wood boiler unless the outdoor wood boiler:

- i. Has an attached stack with a minimum stack height of ten (10) feet above ground level; or
- ii. Has an attached stack extending two (2) feet higher than the peak of the roof of the structure being served by the outdoor wood boiler, if an abutting residence is located less than five hundred (500) feet from the outdoor wood boiler.

2. No person shall operate any existing outdoor wood boiler if an abutting residence is located less than five hundred (500) feet from the outdoor wood boiler, unless the outdoor wood boiler has an attached stack extending two (2)

feet higher than the peak of the roof of the structure being served by the outdoor wood boiler.

b. *New outdoor wood boilers.*

1. No person shall install or allow the installation of any new outdoor wood boiler unless the outdoor wood boiler:
 - i. Has an attached stack with a minimum stack height of ten (10) feet above ground level; or
 - ii. Has an attached stack extending two (2) feet higher than the peak of the roof of the structure being served by the outdoor wood boiler, if an abutting residence is located less than three hundred (300) feet from the outdoor wood boiler.
2. No person shall operate any new outdoor wood boiler if an abutting residence is located less than three hundred (300) feet from the outdoor wood boiler, unless the outdoor wood boiler has an attached stack extending two (2) feet higher than the peak of the roof of the structure being served by the outdoor wood boiler.

d. *Third-party sales.* Third-party sales, as described in DEP chapter 150, section 6 are prohibited, unless the outdoor wood boiler being sold or distributed either qualifies as an "existing outdoor wood boiler" as defined in this section, or has been certified under section 3(E) of chapter 150 to meet a particulate matter emission limit of 0.32 lbs/MMBtu heat output.

e. *Fuel requirements.* No person shall burn any item in an outdoor wood boiler other than those items listed in DEP chapter 150, section 4.B.

f. *Permit required.* No person shall operate, install, or allow the installation of an outdoor wood boiler without first obtaining a permit from the CEO. The CEO shall issue a permit for an outdoor wood fired boiler upon a determination that the proposed outdoor wood boiler complies with the requirements of DEP chapter 150 and the requirements of this section.

g. *Enforcement.* This section shall be enforced by the CEO.

(Ord. of 5-29-2007; Amd. of 11-24-2008)

Secs. 4-78—4-99. Reserved.

FOOTNOTE(S):

--- (2) ---

Cross reference— Provisions for notices for nuisances, signs, dangerous, unsafe, dilapidated buildings, and any other action the expense of which may be collected from the property owner, § 2-3; board of appeals, § 2-60 et seq.

State Law reference— Codes adopted by reference, 30-A M.R.S.A. § 3003.

ART. II-4-4. CONDOMINIUM CONVERSIONS

Sec. 4-100. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Common areas and facilities

shall be the same as defined in 33 M.R.S.A. § 561(3).

Condominium

shall mean the type of real property ownership defined by 33 M.R.S.A. §§ 560 through 587.

Multiple occupancy dwelling

shall mean any dwelling or part thereof containing two (2) or more dwelling units.

Unfair conversion practice

shall mean any act in violation of Sec. 4-105.

Sec. 4-101. Short title.

This article shall be known as the Town of Falmouth Regulation of Condominium Conversions Ordinance and may be referred to by short title as the Condominium Conversion Ordinance.

(Ord. of 10-26-81, § 15-1)

Sec. 4-102. Findings and purpose.

- a. The town council finds that:
 1. The rise in costs in the maintenance and upkeep of multiple occupancy dwellings has forced owners to seek alternatives to the rental form of ownership;
 2. At present there is a great interest in and a significant amount of conversions of multiple occupancy dwellings occupied by tenants to condominium units occupied by individual owners thereof;
 3. Escalating property values whereby high profits can be reaped by the sale of the property also make more attractive the trend towards conversion of these buildings to condominiums.
- b. In addition, the town council finds that:
 1. The cost of purchasing the unit, in many cases, is far greater than paying the monthly rental fee for the unit and so it is often extremely difficult for the present tenant to get his finances in order quickly enough to determine whether purchasing the unit is economically feasible;
 2. The situation can lead to the displacement or eviction of present tenants, many of them elderly, who have lived in the rental units for years with the intention of making their units their permanent residences and when they settled into the rental units, in many cases, no representation was made to them that the form of building ownership might change, thus requiring a radically different financial outlay than originally anticipated;
 3. The task of finding comparable rental housing elsewhere on short notice and moving into it has placed or will place a great burden on these tenants.
- c. Therefore, a need exists for an ordinance to afford these tenants some relief from the situation, which is detrimental to their welfare, without unnecessarily infringing on the property rights of the owner of multiple occupancy dwellings.

(Ord. of 10-26-81, § 15-2)

Sec. 4-103. Application.

Upon the effective date of the ordinance from which this article was derived, all evictions for condominium conversions, whether pending or future, shall be governed by the provisions of this article, and all notices required hereunder shall be given to tenants.

(Ord. of 10-26-81, § 15-5)

Sec. 4-104. Violations.

It is unlawful for any person to willfully violate any provision of this article or to knowingly make any false statements or affidavits as required under this article. In addition to any monetary penalty, either the town or the tenants affected by such violation may seek equitable relief in a court of competent jurisdiction.

(Ord. of 10-26-81, § 15-6)

Sec. 4-105. Unfair conversion practice.

- a. It shall be unlawful for any owner, landlord, agent or other person operating or managing a multiple occupancy dwelling to convert the premises to a condominium or to terminate a lease with a tenant or to make, alter, amend or modify any term or condition of any existing lease or arrangement of tenancy with a tenant for the purpose of converting the premises to a condominium, unless:
 1. The tenant has been notified in writing either hand-delivered or sent by certified mail, return receipt requested, of the owner's intention to convert to a condominium by a date specified therein, which notice shall be delivered one (1) year prior to the date of the scheduled conversion;
 2. The notice of intention to convert contains a statement informing the tenant then in possession of his exclusive right to purchase the unit at a specified price during the first four (4) months of the notice period. During the right-to-purchase period, the owner or his agent cannot show the unit to other prospective purchasers unless the tenant has in writing waived the right to purchase;
 3. The above statement contains a specific statement of the total amount of money due on or before settlement of the purchase contract, including any initial or special condominium fees due, and including a full explanation of any special purchase price reductions to be offered to the present tenants;
 4. The above statement indicates what recreational facilities, parking facilities, garage accommodations, and other common areas and facilities are to be included in the purchase price;
 5. The above statement contains information on the actual expenditures made on all repairs, maintenance, operation and upkeep of the subject property, including all taxes and utility payments, within the last three (3) years, set forth tabularly with the proposed budget of the condominium cumulatively broken down on a per unit basis;
 6. The above statement contains a description of any provisions made in the budget for reserves for capital expenditures, or, if no provision is made for reserves, a statement in capital letters to this effect which statement shall be conspicuously captioned to gain the reader's attention;
 7. The above statement contains a declaration by a professional engineer or architect, licensed in the state, as to the present condition of all structural components and major utility installations in the subject property, including the dates of construction, installation and

major repairs, and the expected useful life of each item, together with the estimated cost of replacing each of the same; and

8. The above statement shall contain an indication of all present violations of the Code and the date of the last code inspection by the town.
- b. Upon compliance with the provisions of this section the owner or developer shall record an affidavit in the Cumberland County Registry of Deeds identifying the property in question, the date of the scheduled conversion and indicating full compliance with the terms hereof.
- c. A tenant in possession at the time of delivery of the notice referred to above may not be required to vacate the premises prior to the expiration of the one-year notice period except for:
 1. Nonpayment of rent;
 2. Breach of covenant in the existing lease; or
 3. The tenant's having committed a nuisance or waste upon the property or having caused the premises to be in violation of the ordinances of the town or the laws of the state.
- d. Any tenant in possession at the time of delivery of the aforesaid notice, whose lease would ordinarily terminate during the one-year period is entitled to have the tenancy extended on the same terms and conditions until the expiration of the one-year period from the date of the notice.
- e. Any tenant in possession at the time of delivery of the notice may terminate his lease with the ninety (90) days' notice without penalty for termination.
- f. Tenants who take possession of a unit after the one-year notice provision is delivered pursuant to this section but before the date of actual conversion shall be notified in writing prior to the signing of the lease of the owner's intentions to convert to a condominium as of the specified date and given whatever information is requested by that tenant relative to the cost of purchasing that unit.
- g. No provision of this section can be waived or made subject to a contract between the parties depriving a tenant of the benefits of this section.
- h. It is the policy of the town that provisions in any contracts, leases or other undertakings which allow owners or their agents at their option to cancel or terminate the terms of such contracts, leases or other undertakings upon any future possibility of conversion to a condominium, upon less than one (1) year's notice as required by this section, shall be null and void as against public policy, except if the term of the lease shall be less than one (1) year between the date of original occupancy in the multiple occupancy dwelling and the date of conversion.

(Ord. of 10-26-81, § 15-4)

Secs. 4-106—4-110. Reserved.

FOOTNOTE(S):

--- (3) ---

Cross reference— Provisions for notices for nuisances, signs, dangerous, unsafe, dilapidated buildings, and any other action the expense of which may be collected from the property owner, § 2-3; licenses, permits and business regulations, Ch. II-8; zoning and site plans and flood prevention and protection regulations, Ch. II-19.

State Law reference— Unit ownership, 33 M.R.S.A. § 560; condominium conversion, 33 M.R.S.A. § 1604-101 et seq.

ART. II-4-5. FIRE SUPPRESSION SPRINKLER SYSTEMS

FOOTNOTE(S):

--- (4) ---

Cross reference— Fire department, § 2-370 et seq.; fire prevention code adopted, § 4-76.

DIV. II-4-5-1. GENERALLY

Secs. 4-111—4-120. Reserved.

DIV. II-4-5-2. SPRINKLER INSTALLATIONS

Sec. 4-121. Definitions.

[As used in this division, the following words and terms shall have the meaning ascribed thereto:]

Approved automatic sprinkler system: A fire suppression sprinkler system installed in accordance with NFPA 13 (1981), Standard for the Installation of Sprinkler Systems, or NFPA 13D (1984), Standard for the Installation of Sprinkler Systems in One and Two Family Dwellings and Mobile Homes, or in accordance with the written approval of the state fire marshal's office. The type of system to be installed shall be reviewed and approved by the fire chief or his designee.

Building: Any structure having a roof supported by columns or walls and intended for the shelter, storage, housing, use or enclosure of persons, animals or chattels, except single- and two-family dwellings of two (2) stories or less and any barn or stable used exclusively for agricultural purposes. The term "building" shall also include any garage, outbuilding or other accessory building used for any commercial or industrial purpose.

Fire chief: The chief of the Town of Falmouth Fire Department.

Multiplex building: A building designed or intended to be used, or used exclusively for residential occupancy by three (3) or more families living independently of one another and containing three (3) or more dwelling units, including apartment buildings and condominiums.

NFPA: National Fire Protection Association.

(Ord. of 2-25-91, § 3)

Sec. 4-122. Sprinkler systems required.

- a. *New buildings.* An approved automatic sprinkler system shall be installed in all areas of any new building which is:
 1. Three (3) or more stories or thirty-six (36) or more feet in height;
 2. One hundred thousand (100,000) cubic feet in volume or ten thousand (10,000) square feet in floor area;
 3. A multiplex dwelling; or
 4. A motel, hotel, boarding house, tourist house or similar structure or two (2) or more stories.
- b. *Building additions.* An approved automatic sprinkler system shall be installed:

1. In the addition to an existing building if the building and the addition, taken together, would, if new, require the installation of a sprinkler system; and
 2. In the addition to an existing building and in the existing building if the addition exceeds twenty-five (25) percent of the volume or area of the existing building and if the building and the addition, taken together, would, if new, require the installation of a sprinkler system.
- c. *Building renovations.* Any existing building which, if new, would require installation of an approved automatic sprinkler system shall install such a system if the building is renovated and if the cost of the renovation or renovations during any five-year period is equal to or greater than fifty (50) percent of the assessed value of the building, as determined by reference to the records of the town assessor, as of the date of issuance of the building permit for the first renovation.

(Ord. of 2-25-91, § 4)

Sec. 4-123. Minimum installation requirements.

All sprinkler systems installed under this division shall have the following:

1. A tamper switch alarm at the system shutoff;
2. An evacuation alarm for the building that will sound when the system is activated. The evacuation alarm shall be audible throughout the entire structure;
3. An outside water flow alarm;
4. Butterfly valves will not be allowed on any standard 13 system.

(Ord. of 2-25-91, § 5)

Sec. 4-124. Fire department connection.

Any building requiring the installation of a NFPA 13 system shall have a fire department connection. The location of the connection shall be approved by the fire chief and properly marked, "Fire Department Sprinkler Connection." The fire department connection shall be kept clear of obstructions such as bushes, grass and debris.

(Ord. of 2-25-91, § 6)

Sec. 4-125. Continuous protection.

Except as provided in Sec. 4-127, all sprinkler systems shall be in full working order to provide twenty-four-hour per day, year-round protection.

(Ord. of 2-25-91, § 7)

Sec. 4-126. Annual tests.

Any structure containing a sprinkler system shall be required to have a yearly test completed on the system by a qualified sprinkler technician. A written copy of the yearly test report shall be forwarded to the fire chief.

(Ord. of 2-25-91, § 8)

Sec. 4-127. Maintenance and repair.

- a. *Procedures.* When maintenance or repair of a sprinkler system requires temporary system shut-down, the following procedures shall be followed:
 1. Before any work is performed on the system, the fire chief shall be notified as to: Who will do the work; duration of system shut-down; and nature of work being done.
 2. The fire chief shall be notified when work is completed and the system is operational.
- b. *Extended shut-down.* Before shutting down a system for a period of more than ten (10) consecutive hours, approval of a fire chief or his designee shall be obtained. The fire chief or his designee may require as a condition of approval that a fire watch be posted in the affected area.
- c. *Plans.* Working plans must be submitted to the fire chief for approval before any equipment is installed.

(Ord. of 2-25-91, § 9)

Sec. 4-128. Separate zones required.

Any building having more than one (1) sprinkler riser shall have the risers separately zoned and wired to a local energy alarm panel to provide zone identification upon activation.

The energy alarm panel shall be located as near as possible to the main exist door. There shall also be a building map located at the energy alarm panel showing each zone of the building.

(Ord. of 2-25-91, § 10)

Sec. 4-129. Lock box required.

A lock box shall be provided outside the main entrance to any buildings regulated hereunder, containing a key to allow access to all fire department areas.

(Ord. of 2-25-91, § 11)

Sec. 4-130. Permits, plans and fees.

- a. A permit shall be obtained from the fire chief before the start of construction of a sprinkler system. A set of blueprints showing the entire sprinkler system and the rate of flow shall be provided when the permit is obtained. A fee of twenty-five dollars (\$25.00) shall be charged for the permit.
- b. A copy of the permit shall be forwarded to the code enforcement officer, and no certificate of occupancy shall be issued until the system has been properly installed, tested and approved by the fire chief or his designee.

(Ord. of 2-25-91, § 12)

Sec. 4-131. Violations and legal action.

When any violation of any provision of this division shall be found to exist, the town attorney, as designated by the municipal officers and upon notice from the fire chief or his designee, is hereby authorized and directed to institute any and all actions and proceedings either legal or equitable, that may be appropriate or necessary to enforce the provisions of this division in the name of the town.

(Ord. of 2-25-91, § 13)

Sec. 4-132. Fines.

Any person, firm or corporation being the owner or having control or use of any building or premises who violates any of the provisions of this division, shall be guilty of a civil offense and shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00) for each offense. Each day such violation is permitted to exist after notification shall constitute a separate offense.

(Ord. of 2-25-91, § 14)

FOOTNOTE(S):

--- (5) ---

Editor's note— An ordinance adopted Feb. 25, 1991, enacted provisions pertaining to fire suppression sprinkler systems. Such ordinance did not specify manner of codification; hence, §§ 3-14 have been designated by the editor as Div. II-4-5-2, §§ 4-121—4-132. Secs. 1 and 2 of the ordinance, short title, purpose and authority, have been omitted.

State Law reference— Fire protection, 30-A M.R.S.A. § 3001.

CH. II-4.5 DISCRIMINATION

ART. II-4.5-1. IN GENERAL

Secs. 4.5-1—4.5-20. Reserved.

ART. II-4.5-2. SEXUAL ORIENTATION

Sec. 4.5-21. Legislative findings and statement of policy.

The town council finds that:

The population of the Town of Falmouth is diverse and includes people of every sexual orientation (they are our family members, neighbors, friends, employees, taxpayers, landlords and tenants, lenders and borrowers), some of whom are at risk of being discriminated against in employment opportunities, housing, access to public accommodations, education, and the extension of financial credit;

Federal, state and town laws offer no clear prohibition of discrimination based on sexual orientation in employment, housing, access to public accommodations, education, and the extension of financial credit; and

Many individuals are reluctant to report acts of harassment or violence because of their sexual orientation because of a lack of legal protection against discrimination in employment, housing, access to public accommodations, education, and the extension of financial credit.

Therefore, to protect the public health, safety, and welfare, it is declared to be the policy of this town to prevent discriminatory practices that infringe on the basic human right to a life with dignity, so that corrective measures may, where possible, be promptly recommended and implemented, and to prevent discrimination in employment, housing, access to public accommodations, education, or the extension of credit on account of sexual orientation.

(Ord. of 4-26-99, § 1)

Sec. 4.5-22. Definitions.

As used in this section, unless the context otherwise indicates, the following words shall have the following meanings:

Application for credit: Any communication, oral or written, by a person to a creditor requesting an extension of credit to that person or any other person, and includes any procedure involving the renewal or alteration of credit privileges or the changing of the name of the person to whom credit is extended.

Credit: The right granted by a creditor to a person to defer payment of debt or to incur debt and defer its payment, or purchase property or services and defer payment therefor.

Creditor: Any person who regularly extends or arranges the extension of credit for which the payment of a finance charge or interest is required, whether in connection with loans, sale of property or services or otherwise.

Credit sale: Any transaction with respect to which credit is granted or arranged by the seller. The term includes any contract in the form of a bailment or lease if bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the property and services involved and it is agreed that the bailee or lessee will become the owner of the property upon full compliance with the bailee's or lessee's obligations under the contract.

Credit transaction: Any invitation to apply for credit, extension of credit, or credit sale.

Discriminate: Includes, without limitation, segregate or separate.

Employee: An individual who is employed by an employer, but not including any individual employed by his or her parents, spouse, or child, or any individual employed to work within a home by the homeowner or other occupant of the home. "Employee" includes, but is not limited to, unpaid volunteers.

Employer: Any person in this town employing any number of employees, whether paid or volunteer, whatever the place of employment of such employees, and any person outside this town employing any number of employees whose usual place of employment is in this town; any person acting in the interest of any employer, directly or indirectly; and labor organizations, whether or not organized on a religious, fraternal, or sectarian basis, with respect to their employment of employees; but does not include a religious or fraternal corporation or association not organized for private profit and, in fact, not conducted for private profit with respect to employment of its members of the same religion, sect, or fraternity. "Employer" does not include a home owner or other occupant of the dwelling unit with respect to any individual hired by them to work within their home or dwelling unit.

Employment agency: Any person undertaking with or without compensation to procure opportunities to work, or to procure, recruit, refer, or place employees; it includes, without limitation, placement services, training schools and centers, and labor organizations, to the extent that they act as employee referral sources; and it includes any agent of such person.

Extension of credit: Any acts incident to the evaluation of an application for credit and the granting of credit.

Housing accommodation:

Any building or structure or portion thereof, or any parcel of land, developed or undeveloped, which is occupied, or is intended to be occupied or to be developed for occupancy, for residential purposes excepting:

1. The rental of an accessory apartment, as defined in the Falmouth Zoning and Site Plan Review Ordinance, or of not more than four (4) rooms of a one-family dwelling which is occupied by the owner; and
2. The rental of any dwelling owned, controlled, or operated for other than a commercial purpose by a religious corporation.

Person: One (1) or more individuals, partnerships, associations, organizations, corporations, limited liability companies, limited liability partnerships, municipal corporations, legal representatives, trustees in bankruptcy, receivers and other legal representatives, or any similar type of entity, including the town and all agencies thereof.

Place of public accommodation:

Any establishment, operated by a public or private entity, that in fact caters to, or offers its goods, facilities, or services to, or solicits or accepts patronage from, the general public, regardless of where goods or services are provided. This definition shall be liberally construed to accomplish the purpose of the article. This article shall apply to the following establishments which are included for the purpose of illustration only and not by way of limitation:

1. An inn, hotel, motel, or other place of lodging, whether conducted for the entertainment or accommodation of transient guests or those seeking health, recreation, or rest;
2. A restaurant, eating house, bar, tavern, buffet, saloon, soda fountain, ice cream parlor, or other establishment serving or selling food or drink;
3. A motion picture house, theater, concert hall, stadium, roof garden, airdrome, or other place of exhibition or entertainment;
4. An auditorium, convention center, lecture hall, or other place of public gathering;
5. A bakery, grocery store, clothing store, hardware store, shopping center, garage, gasoline station, or other sales or rental establishment;
6. A laundromat, dry cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, dispensary, clinic, bathhouse, or other service establishment;
7. All public conveyances operating on land or water or in the air as well as a terminal, depot, or other station used for specified public transportation;
8. A museum, library, gallery, or other place of public display or collection;
9. A park, zoo, amusement park, race course, skating rink, fair, bowling alley, golf course, golf club, country club, gymnasium, health spa, shooting gallery, billiard or pool parlor, swimming pool, seashore accommodation or boardwalk, or other place of recreation, exercise, or health;
10. A nursery, elementary, secondary, undergraduate, or postgraduate school or other place of education;

11. A day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment;
12. Public elevators of buildings occupied by two (2) or more tenants or by the owner and one (1) or more tenants; and
13. A municipal building, courthouse, town hall, or other establishment of the state or a local government.

When a place of public accommodation is located in a private residence, the portion of the residence used exclusively as a residence is not covered by this article, but that portion used exclusively in the operation of the place of public accommodation or that portion used both for the place of public accommodation and for the residential purposes is covered by this article. The covered portion of the residence extends to those elements used to enter the place of public accommodation, and those exterior and interior portions of the residence available to or used by customers or clients, including rest rooms.

Real estate broker and real estate salesperson: See Title 32, Section 4001, subsections 2 and 3 of the Maine Revised Statutes Annotated, as amended; but including all persons meeting those definitions, whether or not they are licensed or required to be licensed.

Sexual orientation: Having a preference or orientation for, being identified as having a preference or orientation for, or having a history of a preference for, heterosexuality, homosexuality, or bisexuality.

(Ord. of 4-26-99. § 2)

Sec. 4.5-23. Unlawful employment discrimination.

It shall be unlawful employment discrimination, in violation of this article:

For any employer to fail or refuse to hire or otherwise discriminate against any applicant for employment because of sexual orientation or because of such reason to discharge an employee or discriminate with respect to hire, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment, or any other matter directly or indirectly related to employment or in recruiting of individuals for employment or in hiring them to utilize any employment agency which such employer knows, or has reasonable cause to know, discriminates against individuals because of their sexual orientation;

For any employment agency to fail or refuse to classify properly or refer for employment or otherwise discriminate against any individual because of sexual orientation, or to comply with an employer's request for the referral of job applicants, if such request indicates whether directly or indirectly that such employer will not afford full and equal employment opportunities to individuals regardless of their sexual orientation;

For any labor organization to exclude from apprenticeship or membership, or to deny full and equal membership rights to any applicant for membership, because of sexual orientation, or because of such reason to deny a member full and equal membership rights, expel from membership, penalize, or otherwise discriminate in any manner with respect to hire, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment, representation, grievances, or any other matter directly or indirectly related to membership or employment, whether or not authorized or required by the constitution or bylaws of such labor organizations or by a collective labor agreement or other contract, or to fail or refuse to classify properly or refer for employment, or otherwise discriminate against any member because of such sexual orientation, or to cause or attempt to cause an employer to discriminate against an individual in violation of this article;

For any employer or employment agency or labor organization, prior to employment or admission to membership of any individual, to:

1. Elicit or attempt to elicit any information directly or indirectly pertaining to sexual orientation;
2. Make or keep a record of sexual orientation except where privileged information which has been volunteered by the applicant is necessary for an employment agency or labor organization to make a suitable job referral;
3. Use any form of application for employment or personnel or membership blank containing questions or entries directly or indirectly pertaining to sexual orientation;
4. Print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification, or discrimination based upon sexual orientation; or
5. Establish, announce, or follow a policy of denying or limiting, through a quota system or otherwise, employment or membership opportunities of any group because of sexual orientation;

For any employment agency or labor organization to accept a placement contract if the employment agency or labor organization knows that the employer has directly or indirectly indicated an intention of discriminating among applicants for employment, apprenticeship, or membership on the ground of their sexual orientation, or when the employment agency or labor organization knows or has reason to know that the employer having the right to offer such employment has made a practice of such discrimination since the effective date of this article; or

For an employer or employment agency or labor organization to discriminate in any manner against any individual because such individual has opposed any practice which would be a violation of this ordinance, or because such individual has made a charge, testified, or assisted in any manner in any investigation, proceeding, or hearing under this article.

(Ord. of 4-26-99, § 3)

Sec. 4.5-24. Not unlawful employment discrimination.

It shall not be unlawful employment discrimination to record any data required by law, or by the rules and regulations of any state or federal agency, provided such records are kept in good faith for the purpose of complying with law and are not used for the purpose of discrimination in violation of this article.

Sec. 4.5-25. Unlawful housing discrimination.

It shall be unlawful housing discrimination, in violation of this article:

For any owner, lessee, sublessee, managing agent, or other person having the right to sell, rent, lease, or manage a housing accommodation, or any agent of these to make or cause to be made any written or oral inquiry concerning the sexual orientation of any prospective purchaser, occupant, or tenant of such housing accommodation; or to refuse to show or refuse to sell, rent, lease, let, or otherwise deny to or withhold from any individual such housing accommodation because of sexual orientation of such individual; or to issue any advertisement relating to the sale, rental, or lease of such housing accommodation which indicates any preference, limitation, specification, or discrimination based upon sexual orientation; or to discriminate against any individual because of sexual orientation in the price, terms, conditions, or privileges of the sale, rental, or lease of any such housing accommodations or in the furnishing of facilities or services in connection therewith, or to evict or attempt to evict any tenant of any housing accommodation because of sexual orientation;

For any real estate broker or real estate salesperson, or agent of one of them, to fail or refuse to show any applicant for a housing accommodation any such accommodation listed for sale, lease, or rental, because of sexual orientation of such applicant or of any intended occupant of such accommodation, or to misrepresent for the purpose of discriminating on account of sexual orientation of such applicant or intended occupant the availability or asking price of a housing accommodation listed for sale, lease, or rental; or for such a reason to fail to communicate to the person having the right to sell or lease such housing accommodation any offer for the same made by any applicant thereof; or in any other manner to discriminate against any applicant for housing because of sexual orientation of such applicant or of any intended occupant of the housing accommodation, or to make or cause to be made any written or oral inquiry or record concerning the sexual orientation of any such applicant or intended occupant, or to accept for listing any housing accommodation when the person having the right to sell or lease the same has directly or indirectly indicated an intention of discriminating among prospective tenants or purchasers on the ground of their sexual orientation, or when he or she knows or has reasons to know that the person having the right to sell or lease such housing accommodation has made a practice of such discrimination since the effective date of this article; or

For any person to whom application is made for a loan or other form of financial assistance for the acquisition, construction, rehabilitation, repair, or maintenance of any housing accommodation, whether secured or unsecured, or agent of such person, to make or cause to be made any oral or written inquiry concerning the sexual orientation of any individual seeking such financial assistance, or of existing or prospective occupants or tenants of such housing accommodations; or to discriminate in the granting of such financial assistance, or in the terms, conditions, or privileges relating to the obtaining or use of any such financial assistance, against any applicant because of the sexual orientation of such applicant or of the existing or prospective occupants or tenants.

(Ord. of 4-26-99, § 5)

Sec. 4.5-26. Not unlawful housing discrimination.

Nothing in this article shall be construed in any manner to prohibit or limit the exercise of the privilege of every person and the agent of any person having the right to sell, rent, lease, or manage a housing accommodation to set up and enforce specifications in the selling, renting, leasing, or letting thereof or in the furnishings of facilities or services in connection therewith which are not based on the sexual orientation of any prospective or actual purchaser, lessee, tenant, or occupant thereof. Nothing contained in this article shall be construed in any manner to prohibit or limit the exercise of the privilege of every person and the agent of any person making loans for or offering financial assistance in the acquisition, construction, rehabilitation, repair, or maintenance of housing accommodations to set standards and preferences, terms, conditions, limitations, or specifications for the granting of such loans or financial assistance which are not based on the sexual orientation of any existing or prospective owner, lessee, tenant, or occupant of such housing accommodation.

(Ord. of 4-26-99, § 6)

Sec. 4.5-27. Unlawful public accommodations discrimination.

It shall be unlawful public accommodations discrimination, in violation of this article:

For any person, being the owner, lessee, proprietor, manager, superintendent, agent, or employee of any place of public accommodation, to directly or indirectly refuse, withhold from, or deny to any person, on account of sexual orientation, any of the accommodations, advantages, facilities, or privileges of such place of public accommodation, or for such reason in any manner to discriminate against any person in the price, terms, or conditions upon which access to such accommodations, advantages, facilities, and privileges may depend; or

For any person to directly or indirectly publish, circulate, issue, display, post, or mail any written, printed, painted, electronic, or broadcast communication, notice, or advertisement to the effect that any of the accommodations, advantages, facilities, and privileges of any place of public accommodation shall be refused, withheld from, or denied to any person on account of sexual orientation, or that the patronage or custom thereof of any person belonging to or purporting to be of any particular sexual orientation is unwelcome, objectionable, or not acceptable, desired, or solicited, or that the clientele thereof is restricted to members of particular sexual orientation. The production of any such written, printed, painted, electronic, or broadcast communication, notice, or advertisement purporting to relate to any such place, shall be presumptive evidence in any action that the same was authorized by its owner, manager, or proprietor.

(Ord. of 4-26-99, § 7)

Sec. 4.5-28. Unlawful credit discrimination.

It shall be unlawful credit discrimination for any creditor to refuse the extension of credit to any person solely on the basis of sexual orientation in any credit transaction.

(Ord. of 4-26-99, § 8)

Sec. 4.5-29. Not unlawful credit discrimination.

It shall not be unlawful credit discrimination, to comply with the terms and conditions of any bona fide group credit life, accident, and health insurance plan, for a financial institution extending credit to a married person to require both spouses to sign a note and a mortgage.

(Ord. of 4-26-99, § 9)

Sec. 4.5-30. Unlawful education discrimination.

It shall be unlawful education discrimination, on the basis of sexual orientation, to:

Exclude a person from participation in, deny a person the benefits of, or subject a person to, discrimination in any academic, extra curricular, research, occupational training, or other program of activity;

Deny a person equal opportunity in athletic programs;

Apply any rule concerning the actual or potential family or marital status of a person;

Deny admission to the institution or program, or fail to provide equal access to and information about an institution or program through recruitment; or

Deny financial assistance availability or opportunity.

(Ord. of 4-26-99, § 10)

Sec. 4.5-31. Prohibition against retaliation and coercion.

A person may not discriminate against any individual because that individual has opposed any act or practice that is unlawful under this article or because that individual made a charge, testified, assisted, or participated in any manner in an investigation or proceeding under this article.

It is unlawful for a person to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of the rights granted, or protected, by this article or because that individual has exercised or enjoyed, or has aided or encouraged another individual in the exercise or enjoyment of, those rights.

The remedies and procedures available under the enforcement provisions of this article are available to persons for violation of the preceding two (2) paragraphs.

(Ord. of 4-26-99, § 11)

Sec. 4.5-32. Enforcement by civil action.

A violation of this article shall be a civil infraction and shall be enforceable in the Maine Superior Court in a civil action. Within the time limited, a person who has been subject to unlawful discrimination may file a civil action in the superior court against the person or persons who committed the unlawful discrimination. The person filing such a civil action shall simultaneously provide a copy of the complaint to the town clerk.

(Ord. of 4-26-99, § 12)

Sec. 4.5-33. Burden of proof.

In any civil action under this article, the burden shall be on the person seeking relief to prove, by a fair preponderance of the evidence, that the alleged unlawful discrimination occurred.

(Ord. of 4-26-99, § 13)

Sec. 4.5-34. Actions filed under this article.

In any action filed under this article by any person:

Where any person who has been the subject of alleged unlawful housing discrimination has not acquired substitute housing, temporary injunctions against the sale or rental to others of the housing accommodations as to which the violation allegedly occurred, or against the sale or rental of a single housing accommodation substantially identical thereto and controlled by the alleged violator shall be liberally granted in the interests of furthering the purposes of this article, when it appears probable that the plaintiff will succeed upon final disposition of the case;

If the court finds that unlawful discrimination occurred, its judgment shall specify an appropriate remedy or remedies therefor. Such remedies may include, but are not limited to:

1. An order to cease and desist from the unlawful practices specified in the order;
2. An order to employ or reinstate a victim of unlawful employment discrimination, with or without back pay;
3. An order to accept or reinstate such person in a union;
4. An order to rent or sell a specified housing accommodation, or one substantially identical thereto if controlled by the respondent, to a victim of unlawful housing discrimination;
5. An order requiring the disclosure of the locations and descriptions of all housing accommodations which the violator has the right to sell, rent, lease, or manage;

6. An order to pay in cases of unlawful price discrimination the victim thereof three (3) times the amount of any excessive price demanded and paid by reason of such unlawful discrimination; and
7. An order to pay to the complainant civil penal damages not in excess of one thousand dollars (\$1,000.00) in the case of the first order under this article against the respondent, not in excess of two thousand dollars (\$2,000.00) in the case of a second such order against the respondent, and not in excess of three thousand dollars (\$3,000.00) in the case of a third or subsequent such order against the respondent; and

The action shall be commenced not more than two (2) years after the act of unlawful discrimination about which the complaint has been made.

(Ord. of 4-26-99, § 14)

Sec. 4.5-35. Attorneys' fees and costs.

In any civil action under this article, the court, in its discretion, may allow the prevailing party reasonable attorneys' fees and costs.

(Ord. of 4-26-99, § 15)

Sec. 4.5-36. Exceptions.

In addition to the other exceptions and exemptions provided in this article, this article does not:

Require the teaching of any particular subject in the public schools;

Apply to a religious corporation, association, or organization, except when a religious corporation, association, or organization operates a housing accommodation or an institution of education open to the public or acts in the capacity of creditor for the benefit of the public or operates a place of public accommodation open to the public, except that the providing of meeting space by a religious corporation, association, or organization to any nonprofit organization for the nonprofit organization's activities shall not be subject to the provisions of this article and shall not expose the religious corporation, association, or organization to liability under this article for the actions of the nonprofit organization; or

Require any form of affirmative action based on sexual orientation.

(Ord. of 4-26-99, § 16)

Sec. 4.5-37. Severability.

If any portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

(Ord. of 4-26-99, § 17)

FOOTNOTE(S):

--- (1) ---

Editor's note— An ordinance adopted Apr. 26, 1999, enacted provisions which pertained to discrimination based on sexual orientation and which were designated as Ch. II-19. Such provisions have been redesignated by the editor as Ch. II-4.5, Art. II-4.5-2. §§ 4.5-21—4.5-37 for purposes of classification and to maintain the alphabetical sequence of chapter titles within the Code.

CH. II-5 ELECTIONS

Sec. 5-1. Place and time of opening of polls.

It shall be the duty of the town council to fix the place and time of the opening of the polls in the election of officers or in any special election to decide matters submitted to a vote of the citizens, and cause same to be inserted in any warrant and notification to the inhabitants of such election.

(Code 1966, Ch. 201, § 1, Art. III, § 102)

State law reference— Polling times to be determined by the town, limitation, 21-A M.R.S.A. § 626.

Sec. 5-2. Issuance of election warrants.

Warrants for calling elections shall be issued by the town council and contain a statement of the object of the election and the time and place at which the election shall be held. The warrant shall be served by the police chief, constable or any resident of the town by posting an attested copy of the warrant in ten (10) public and conspicuous places at least seven (7) days before the time of the election. The warrants shall be returned to the town clerk before the time of the election therein named.

(Code 1966, Ch. 201, § 1, Art. III, § 103)

State law reference— Warrant requirements, 30-A M.R.S.A. § 2523.

Sec. 5-3. Form of warrants for town elections.

The form of warrants for calling elections of the town shall be as follows:

ELECTION WARRANT

Town of Falmouth, ss. State of Maine

To a police officer, constable or any resident of said Town of Falmouth:

You are hereby required in the name of the State of Maine to notify the voters of this municipality of the election described in this warrant.

To the voters of (name of municipality and voting district, if any):

You are hereby notified that an election will be held at (name of voting place) on (day and date of election) for the purpose of (nomination or election) to the following offices: (list of offices); and determining the following referendum questions: (list of questions).

The polls shall be opened at _____ a.m. and closed at _____ p.m.

The register of voters or board of registration will hold office hours while the polls are open to correct any error in or change a name or address on the voting list; to accept the registration of any person eligible to vote and to accept new enrollments.

A person who is not registered as a voter may not vote in any election. A voter who is not enrolled in a political party may not vote in a primary election.

Given under our hands and the seal of the Town of Falmouth, this _____ day of _____ A.D. 19 _____.

	_____)
--	--------

	_____)
	_____)
	_____)
	_____)
	_____)
	_____)
	Town Council of the Town of Falmouth

(Code 1966, Ch. 201, § 1, Art. III, § 104)

Sec. 5-4. Form of return of warrant.

The form of return of the warrant mentioned in this chapter, shall be in substance as follows:

OFFICER'S RETURN

Cumberland County, ss. State of Maine

I certify that I have notified and warned the voters of _____ to meet at the time and place and for the purpose therein mentioned by posting an attested copy of the within warrant at _____ on the _____ day of _____ A.D. 19 _____ which is at least seven (7) days before the election day.

	_____ Signature of police officer, constable or resident of the Town of Falmouth
Dated at _____	
Date signed _____	

(Code 1966, Ch. 201, § 1, Art. III, § 105)

Sec. 5-5. Precincts.

The Town of Falmouth shall vote in one (1) central location: the Falmouth High School, Woodville Road, Falmouth.

(Code 1966, Ch. 201, § 1, Art. III, § 107; Ord. of 3-21-2005)

Sec. 5-6. Board of registration.

The board of registration shall be appointed as provided by the state law.

(Code 1966, Ch. 201, § 1, Art. III, § 108)

State law reference— Board of registration, 21-A M.R.S.A. § 103.

Sec. 5-7. Election clerks.

The town council shall not later than May first of each general election year appoint election clerks in accordance with 21-A M.R.S.A. § 503.

(Code 1966, Ch. 201, § 1, Art. III, § 109)

Charter reference— Election officials, § 805.

State law reference— Wardens and ward clerks, 21-A M.R.S.A. §§ 501, 631(3); election clerks, 21-A M.R.S.A. §§ 503, 631(3).

Sec. 5-8. Compensation.

Each warden and election clerk shall be paid such amount per day for each election held in the town at which they shall attend, as the town council may determine for each election.

(Code 1966, Ch. 201, § 1, Art. III, § 110)

State law reference— Compensation, 21-A M.R.S.A. §§ 501(2), 503(6).

Sec. 5-9. Records.

The warden shall, forthwith after each election, complete and deposit the records of their respective precinct and all papers connected therewith with the town clerk.

(Code 1966, Ch. 201, § 1, Art. III, § 111)

State law reference— Packaging and return of ballots and lists, 21-A M.R.S.A. § 698.

FOOTNOTE(S):

--- (1) ---

Charter reference— Nominations and elections, § 801 et seq.; initiative and referendum, § 901 et seq.

Cross reference— Administration, Ch. II-2; boundaries of the town, § 2-2; provisions for notices for nuisances, signs, dangerous, unsafe, dilapidated buildings, and any other action the expense of which may be collected from the property owner, § 2-3; town council, § 2-25 et seq.; town clerk, § 2-297.

State Law reference— Elections, 21-A M.R.S.A. § 1 et seq.; municipal elections, 30-A M.R.S.A. § 2551 et seq.

CH. II-6 GENERAL ASSISTANCE

FOOTNOTE(S):

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Editor's note— The Ord. of 4-28-2008, Art. I, Art. II, §§ 2.1, 2.2, Art. III, §§ 3.1, 3.2, Art. IV, §§ 4.1—4.10, Art. V, §§ 5.1—5.8, Art. VI, 6.1—6.10, Art. VII, §§ 7.1—7.5, and Art. VIII adopted Apr. 28, 2008, repealed the former Ch. II-6, §§ 6-1—6-92, and enacted a new Ch. II-6, as set out herein, which contains the general assistance ordinance of the town. The former Ch. II-6 pertained to "General Assistance," and derived from the Ord. of 4-23-90, Art. I, Art. III, §§ 3.1, 3.2, §§ 4.1—4.10, Art. V, §§ 5.1—5.8, §§ 6.1—6.9, §§ 7.1—7.5, Art. VIII; Ord. of 2-25-91, §§ 1—3. The history notes reflect the more recent adoption of the ordinance in its amended form. Sections have been renumbered to conform to Code format; words in brackets [] have been added by the editor for clarity.

Cross reference— Administration, Ch. II-2; provisions for notices for nuisances, signs, dangerous, unsafe, dilapidated buildings, and any other action the expense of which may be collected from the property owner, § 2-3; division of welfare, § 2-298.

ART. II-6-1. IN GENERAL

Sec. 6-1. Statement of policy.

The Municipality of Falmouth 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 chapter, 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 twenty-four (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 twenty-four (24) hours after the completed application is submitted except when the administrator issues nonemergency assistance conditionally on the successful completion of a workfare assignment (see Sec. 6-46 of this chapter).

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 chapter and state general assistance law will be readily available to any member of the public upon request. Notice to this effect will be posted.

(Ord. of 4-28-2008, Art. I)

ART. II-6-2. DEFINITIONS

Sec. 6-2. Common meaning of words.

Unless otherwise apparent or defined, all words in this chapter will have their common meaning.
(Ord. of 4-28-2008, Art. II, § 2.1)

Sec. 6-3. 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 repayments
- 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 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)).

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 Sec. 6-68 less the household income as calculated pursuant to Sec. 6-67, 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 (1) 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 chapter (22 M.R.S.A. § 4301(3)).

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.

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 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.

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 eighteen (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 thirty-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 state residents property tax program (AKA "Circuitbreaker" Program) (36 M.R.S.A. § 6216).
- Aspire support service payments (10-144 CMR Chapter 323).

Initial applicants.

A person who has not applied for assistance in this or any other municipality are considered initial applicants.

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 nonliquid 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 M.R.S.A. § 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 Sec. 6-68, 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 chapter 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 (1) month (22 M.R.S.A. § 4309(1)).

Pooling of income.

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 (1) 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 chapter 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.

Include any program, service, or other sources of support which are an alternative to or supplement for general assistance. There are two (2) kinds of resources: "available" and "potential". Potential resources are programs, services, nonliquid 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).

Thirty-day need.

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

Unforeseen repeat applicants.

Are repeat applicants who have not applied for assistance within the last twelve (12) 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 thirty-day need as established by Sec. 6-66 less the household income as calculated pursuant to Sec. 6-67, provided such a calculation yields a positive number. If the household income is greater than the household's thirty-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.

(Ord. of 4-28-2008, Art. II, § 2.2)

Editor's note—

It should be noted that Appendix I referenced above is not set out at length herein, but is on file and available for inspection in the office of the town clerk.

Secs. 6-4—6-10. Reserved.

ART. II-6-3. ADMINISTRATIVE RULES AND REGULATIONS

Sec. 6-11. 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).

- A. *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.
- B. *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 twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00). 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).
- C. *Misuse of information.* Misuse of any information relating to an applicant or recipient is a punishable offense (22 M.R.S.A. § 42(2)).

(Ord. of 4-28-2008, Art. III, § 3.1)

Sec. 6-12. 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:

1. Provide a valid basis of accounting for municipal expenditures;
 2. Document and support decisions concerning an applicant or recipient; and
 3. 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.
- a. *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.
 - Budget sheets.
 - Information concerning the types and amounts of assistance provided.
 - Narrative statements describing the nature of the emergency situation whenever general assistance is granted in amounts greater than the applicant's mathematical eligibility (i.e., deficit or unmet need, whichever is less).
 - Written decisions.
 - Requests for fair hearings and the fair hearing authority decisions.
 - Workfare participation records.
 - Repayments to the municipality.
 - Narrative writings documenting the need for 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.

- b. *Retention of records.* General assistance records shall be retained for a minimum of three (3) full years. The three-year period shall coincide with the state fiscal year which begins July 1 and ends on the following June 30. Records may be destroyed after three (3) years by one (1) of the two (2) 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.

(Ord. of 4-28-2008, Art. III, § 3.2)

Secs. 6-12—6-20. Reserved.

ART. II-6-4. APPLICATION PROCEDURE

Sec. 6-21. Right to apply.

- a. *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 Sec. 6-29 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.
- b. *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).
- c. *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).
- d. *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 twenty-four (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).

(Ord. of 4-28-2008, Art. IV, § 4.1)

Sec. 6-22. 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.

(Ord. of 4-28-2008, Art. IV, § 4.2)

Sec. 6-23. Contents of the application.

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

1. Applicant's name, address, date of birth, Social Security number or appropriate United States Customs and Immigration Services (USCIS) documentation, and phone number;
2. Names, date(s) of birth, and Social Security number(s) or appropriate USCIS documentation of other household members for whom the applicant is seeking assistance;

3. Total number of individuals living with the applicant;
4. Employment and employability information;
5. All household income, resources, assets, and property;
6. Household expenses;
7. Types of assistance being requested;
8. Penalty for false representation;
9. Applicant's permission to verify information;
10. 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 (5) 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 (5) day's worth, while the applicant proceeds to obtain the required information.

(Ord. of 4-28-2008, Art. IV, § 4.3)

Sec. 6-24. 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.

- a. *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.
- b. *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.
- c. *Applicant rights.* The administrator will inform all applicants of their rights to:
 - Review the municipal general assistance ordinance and state general assistance law;
 - Apply for assistance;

- Receive a written decision concerning eligibility within twenty-four (24) hours of applying for assistance;
 - Confidentiality;
 - Contact the DHHS;
 - Challenge the administrator's decision by requesting a fair hearing.
- d. *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 twelve (12) months from any relative legally liable for the applicant's support (spouses, parents of persons under the age of twenty-five (25), see article VIII (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.

(Ord. of 4-28-2008, Art. IV, § 4.4)

Sec. 6-25. 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:

1. Has remained employed, if previously employed, and not quit work without just cause or been discharged from employment for misconduct;
2. 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;
3. 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
4. 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).

(Ord. of 4-28-2008, Art. IV, § 4.5)

Sec. 6-26. Action on applications.

- a. *Written decision.* The general assistance administrator will give a written decision to the applicant concerning his or her eligibility within twenty-four (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 Sec. 6-46, 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.
- b. *Content.* The written decision will contain the following information:
 1. The type and amount of aid the applicant is being granted or the applicant's ineligibility;
 2. The period of eligibility if the applicant is eligible for assistance;
 3. The specific reasons for the decision;
 4. The applicant's right to a fair hearing; and
 5. The applicant's right to notify the DHHS if he/she believes the municipality has acted illegally (22 M.R.S.A. § 4321).

(Ord. of 4-28-2008, Art. IV, § 4.6)

Sec. 6-27. Withdrawal of an application.

An application is considered withdrawn if:

1. The applicant requests in writing that his or her application be withdrawn; or
2. The applicant refuses to complete or sign the application or any other form needed by the general assistance administrator.

(Ord. of 4-28-2008, Art. IV, § 4.7)

Sec. 6-28. 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:

1. 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.
2. 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 (1) 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;
3. 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).

Sec. 6-29. 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.

- a. *Disqualification.* A person who is currently disqualified from receiving general assistance due to a violation of Sec. 6-45 through Sec. 6-48, or Sec. 6-64, 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 six (6) years or any ill or disabled member of the household (22 M.R.S.A. § 4309(3)).

In the event one (1) or more members of a household are disqualified and assistance is requested for the remaining dependents, the eligibility of those dependents will be calculated as though the household is comprised of the dependents only, except that all household income will be considered available to them.

- b. *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 twenty-four (24) hours, provided that:

1. 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
2. The applicant submits documentation when possible, to verify his or her need. The administrator may contact at least one (1) 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).

- c. *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.

- d. *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) and 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.

1. The applicable time period shall be the thirty (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.
2. 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.
3. 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 chapter 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.
4. 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.
5. The administrator may restrict the issuance of emergency assistance to the difference yielded by the computation in subsection (4), even when such a grant will not totally alleviate the emergency situation.
6. 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.
7. 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.

(Ord. of 4-28-2008, Art. IV, § 4.9)

Sec. 6-30. 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).

1. *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 thirty (30) days after he/she moves provided the recipient remains eligible.
2. *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 six (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)).
3. *Temporary housing.* Hotels/motels and similar places of temporary lodging are considered institutions (-above) 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 six (6) months and may be subject to other penalties (22 M.R.S.A. § 4307(4)).
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)).

(Ord. of 4-28-2008, Art. IV, § 4.10)

Secs. 6-31—6-40. Reserved.

ART. II-6-5. ELIGIBILITY FACTORS

Sec. 6-41. Initial application.

- a. *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 Sec. 6-45). An initial applicant is a person who has never before applied for general assistance in any municipality in the state (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 Sec. 6-68 or the applicant's thirty-day need, whichever is less, and he/she does not have adequate income or other resources available to provide basic necessities.

- b. *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.

(Ord. of 4-28-2008, Art. V, § 5.1)

Sec. 6-42. 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 Sec. 6-67(c). Applicants or recipients must apply for other program benefits within seven (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).

(Ord. of 4-28-2008, Art. V, § 5.2)

Sec. 6-43. 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 (1) 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, or a boat, trailer, recreation vehicle or other assets that are convertible into cash and are nonessential 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 Sec. 6-3, 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 (1) 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 eight thousand dollars (\$8,000.00) may be required, with written, seven-day notice, to make a good faith effort to trade that automobile for an automobile with a market value of less than eight thousand dollars (\$8,000.00). 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 eight thousand dollars (\$8,000.00) 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 Sec. 6-68(f)(7), (8).

- 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 one hundred twenty-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 one hundred twenty-day disqualification will issue. 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 thirty (30) days prior to applying for general assistance unless the applicant can demonstrate the existence of a good faith transaction.

(Ord. of 4-28-2008, Art. V, § 5.3)

Sec. 6-44. 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 one hundred twenty (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 one hundred (100) "excess" acres. Sale of ten (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 Sec. 6-68) (22 M.R.S.A. § 4320).

(Ord. of 4-28-2008, Art. V, § 5.4)

Sec. 6-45. 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.

- a. *Employment; rehabilitation.* All unemployed applicants and members of their households who are sixteen (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.

- b. *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.

- c. *Ineligibility.* After being granted assistance at the time of initial application, applicants will be considered ineligible for further assistance for one hundred twenty (120) days if they, without just cause:
 - 1. Refuse to register for employment with the state job service;
 - 2. 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;
 - 3. Refuse to accept a suitable job offer;
 - 4. Refuse to participate in an assigned training, education or rehabilitation program that would assist the applicant in securing employment;
 - 5. Fail to be available for work; or
 - 6. Refuse to participate or participate in a substandard manner in the municipal work program (see Sec. 6-46).
- d. *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 one hundred twenty-day period from the date of separation from employment (22 M.R.S.A. §§ 4301(8), 4316-A (1-A)).
- e. *Just cause.* Applicants will be ineligible for assistance for one hundred twenty (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:
 - 1. The applicant has a physical or mental illness or disability which prevents him/her from working;
 - 2. The work assignment pays below minimum wages;
 - 3. The applicant was subject to sexual harassment;
 - 4. The applicant is physically or mentally unable to perform required job tasks, or to meet piece work standards;
 - 5. The applicant has no means of transportation to or from work or a training or rehabilitation program;
 - 6. The applicant is unable to arrange for necessary child care or care of ill or disabled family members; or

7. Any reason found to be good cause by the state 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)).

f. *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).

g. *Eligibility regained.* Persons who are disqualified for one hundred twenty (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 Sec. 6-46, under "eligibility regained".

h. *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:

1. A dependent minor child;
2. An elderly, ill, or disabled person; and
3. A person whose presence is required in order to provide care for any child under six (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 (1) 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 as though the household is composed of the dependents only, except that all household income will be considered as available to them.

i. *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.

(Ord. of 4-28-2008, Art. V, § 5.5)

Editor's note—

It should be noted that Appendix I referenced above is not set out at length herein, but is on file and available for inspection in the office of the town clerk.

Sec. 6-46. 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 Sec. 6-45. regarding just cause, dependents, and exemptions also apply to the municipal workfare program.

- a. *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.
- b. *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 Art. II-6-8). 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.
- c. *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 forty (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 forty (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.
- d. 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 twenty-four (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 thirty (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 Sec. 6-70
 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.
- e. *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. § 4316.2(E)). The municipality will provide any special clothes or equipment the recipient needs to perform his or her work assignment.
 - f. *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 one hundred twenty (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 one hundred twenty (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.
 - g. *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 one hundred twenty (120) days, although dependents in the household may be eligible (see Sec. 6-45(h)).

If during the one hundred twenty-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 (1) 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 one hundred twenty-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 one hundred twenty (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 one hundred twenty-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 one hundred twenty-day period of ineligibility for failing to comply with the municipal work program, that participant will be ineligible for a new one hundred twenty-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.

- h. *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)).

(Ord. of 4-28-2008, Art. V, § 5.6)

Sec. 6-47. 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 Sec. 6-3 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).

- a. *Minors.* A minor under the age of eighteen (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 (1) 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 twenty-five (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 twenty-five (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.

- b. *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.
- c. *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 seven-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.
- d. *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 one hundred twenty (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)

(Ord. of 4-28-2008, Art. V, § 5.7)

Sec. 6-48. 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 chapter will be informed in writing of the period of ineligibility.

- a. *Work requirement.* Applicants/recipients who do not comply with a work requirement are disqualified from receiving assistance for a period of one hundred twenty (120) days unless they regain their eligibility (see Sec. 6-45, Sec. 6-46). If an applicant/recipient is provided

assistance and does not comply with the work requirement, the applicant/recipient shall be disqualified for one hundred twenty (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.

- b. *Fraud.* People who commit fraud are disqualified from receiving assistance for a period of one hundred twenty (120) days (see Sec. 6-64). 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.

(Ord. of 4-28-2008, Art. V, § 5.8)

Secs. 6-49—6-60. Reserved.

ART. II-6-6. DETERMINATION OF ELIGIBILITY

Sec. 6-61. 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.

(Ord. of 4-28-2008, Art. VI, § 6.1)

Sec. 6-62. 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 thirty-day prospective analysis, but may elect to disburse that applicant's assistance periodically, e.g., weekly, throughout a thirty-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).

(Ord. of 4-28-2008, Art. VI, § 6.2)

Sec. 6-63. Verification.

- a. *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 (1) month. At the expiration of this period applicants/recipients may reapply for assistance and the person's eligibility will be redetermined.

- b. *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 and liabilities
 - Use of available resources
 - Household composition
- c. *Initial applicants.* A person who has 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).
- d. *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 chapter.
- 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.
- e. *Unforeseen repeat applicants.* Unforeseen repeat applicants are applicants who have not applied for assistance within the last twelve (12) 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.
- f. *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.

- g. *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.
- h. *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 three (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 twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00) 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).

(Ord. of 4-28-2008, Art. VI, § 6.3)

Sec. 6-64. 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:

1. 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;

2. Concealing information from the general assistance administrator in order to obtain assistance to which the applicant or applicant's household is not entitled; or
3. 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.

- a. *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 one hundred twenty (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.
- b. *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 Art. II-6-7. 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 State Rules of Civil Procedure (22 M.R.S.A. § 4309(3)).
- c. *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.
- d. *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 (1) or more members of a household are disqualified and assistance is requested for the remaining dependents, the eligibility of those dependents will be calculated as though the household is comprised of the dependents only, except that the entire household income will be considered available to them.

Sec. 6-65. 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 (1) 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 thirty-day prospective analysis.

When an applicant submits an incomplete or unsigned application, due to the twenty-four-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 thirty-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 thirty-day period of eligibility. When the administrator elects to disburse general assistance for a period of time less than thirty (30) days, subsequent grants of assistance during that thirty-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.

(Ord. of 4-28-2008, Art. VI, § 6.5)

Sec. 6-66. Determination of need.

The period of time used to calculate need will be the next thirty-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 Sec. 6-68, whichever is less. The sum of these expenses, as calculated for a prospective thirty-day period, is the applicant's thirty-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 Sec. 6-29).

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 Sec. 6-68 (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 chapter 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) 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 thirty-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 thirty-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 thirty-day period. Except as is deemed appropriate by the GA administrator for "unforeseen" repeat applicants (see Sec. 6-23), 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 thirty-day prospective income.

Allowable expenditures include reasonable shelter costs (rent/mortgage); the cost of heating fuel, electricity, and food up to the chapter 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.
- c. *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 Sec. 6-68. If income is greater than the overall maximum level of assistance, the applicant will not be eligible except in an emergency (see Sec. 6-29). 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 Sec. 6-68 of this chapter for specific basic necessities except in an emergency or when the administrator elects to consolidate the applicant's deficit, as provided immediately below.
- d. *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 chapter or the actual thirty-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 chapter maximum for that necessity.
1. The practice of consolidating the deficit and applying it toward a basic necessity in amounts greater than the chapter 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 chapter.

Editor's note—

It should be noted that Appendices A—H referenced above are not set out at length herein, but are on file and available for inspection in the office of the town clerk.

(Ord. of 4-28-2008, Art. VI, § 6.6)

Sec. 6-67. Income.

- a. *Income standards.* Applicants whose income exceeds the overall maximum level of assistance provided in Sec. 6-68 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.
- b. *Calculation of income.* To determine whether applicants are in need, the administrator will calculate the income they will receive during the next thirty-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 thirty-day period on basic necessities, as well as any income that was spent on basic necessities in unreasonable excess of the chapter 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 Sec. 6-68, 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 Sec. 6-29). To calculate weekly income and expenses, the administrator will use actual income received or actual anticipated income.
- c. *Types of income.* Income that will be considered in determining an applicant's need includes:
 1. *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)).
 2. *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 thirty-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 chapter 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 state residents property tax program (so-called "circuitbreaker" program) (36 M.R.S.A. § 6216)
3. *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.
 4. *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)).
 5. *Earnings of a son or daughter.* Earned income received by sons and daughters below the age of eighteen (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.
 6. *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.
 7. *The pooling or nonpooling of income.* When two (2) 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 (1) 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.

8. *Lump sum income.* A lump sum payment received by any GA applicant or recipient prior 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.
 - a. Identify the date the lump sum payment was received;
 - b. Subtract from the lump sum payment all required payments;
 - c. 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));
 - d. 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
 - e. Divide the sum created in subsection (4) by the greater of the verified actual monthly amounts for all of the household's basic necessities or one hundred fifty (150) percent of the applicable federal poverty guidelines (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 twelve (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)

(Ord. of 4-28-2008, Art. VI, § 6.7)

Sec. 6-68. Basic necessities; maximum levels of assistance.

- a. *Overall maximum levels of assistance.* Notwithstanding any of the maximum levels of assistance for specific basic necessities listed in appendices B—H of this chapter, 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 Sec. 6-29 of this chapter.
- b. *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 (1) 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.

1. *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 state department of health and human services on or about October of each year. See appendix B 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 chapter maximums.

2. *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 chapter 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.

3. *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 (3) months and the applicant's relative(s) rely on the rental payment for their basic needs. For the purpose of this Sec., 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)).

4. *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 chapter 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 six hundred dollars (\$600.00) 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 § 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.

5. *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:

- a. The marketability of the shelter's equity;
- b. The amount of equity;
- c. 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;
- d. The extent to which liquidation may aid the applicant's financial rehabilitation;
- e. 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;
- f. The imminence of the applicant's dislocation from owned housing because of his or her inability to meet the mortgage payments;

- g. The likelihood that the provision of housing assistance will prevent such dislocation; and
- h. 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:

- a. The monthly mortgage obligation is in accordance with the maximum levels of assistance available for housing appropriate to the applicant's household size;
- b. 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
- c. 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.

- 6. *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 thirty (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 ten (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.

7. *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 (2) 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 sixty (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 state resident property tax program, when available.
8. *Housing maximums.* The maximum levels of housing assistance contained in this chapter 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 state housing authority, those levels are hereby incorporated by reference. See appendix C for the current year's housing maximums. If and when the maximum levels of housing contained in this chapter 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 chapter 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 Sec. 6-29.

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 Sec. 6-29 and Sec. 6-63). 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.

1. *Electricity maximums for households without electric hot water.* See appendix D for the current year's electricity maximums.
 2. *Electricity maximums for households that use electrically heated hot water.* See appendix D for the current year's electricity maximums.
 3. *Nonelectric utilities.* The allowed amount for water and sewer utility service will be budgeted at a thirty-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 Sec. 6-29. 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 Sec. 6-29. See appendix E 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, up to the maximums below. 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 five (5) years of age. See appendix F 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 five (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 22 M.R.S.A. § 396-F(1). Anyone who is not eligible for the hospital's free care program may apply for general assistance. Applicants must apply for assistance within thirty (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 Sec. 6-66.

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 chapter 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 Sec. 6-69), 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 preapproved 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:
 - a. The failure to do so would place the applicant(s) in emergency circumstances;
 - b. There are no other resources available to effect the capital repair; and
 - c. 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 (6), above.

Editor's note—

It should be noted that Appendices A—H referenced above are not set out at length herein, but are on file and available for inspection in the office of the town clerk.

(Ord. of 4-28-2008, Art. VI, § 6.8)

Sec. 6-69. Burials; cremations.

- a. *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 the next business day following the funeral director's 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.
- b. *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 Sec. 6-30.

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.

- c. *The financial responsibility of certain family members.* Grandparents, parents, siblings, children and grandchildren of the deceased, who live in the state or own property in the state, 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.
- d. *Consideration of the financial responsibility of family members.* Generally, when the administrator can make a finding that one (1) 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.

- e. *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 (1) 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 (1) 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.
- f. *Ten days to determine eligibility.* The administrator may take up to ten (10) 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 ten-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 ten-day period allowed by law to unreasonably delay the municipality's decision.
- g. *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 seventy-five dollars (\$75.00) when a paid receipt demonstrating the purchase of an obituary notice is provided to the administrator.
- h. *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.
- i. *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.

Editor's note—

It should be noted that Appendix H referenced above is not set out at length herein, but is on file and available for inspection in the office of the town clerk.

(Ord. of 4-28-2008, Art. VI, § 6.9)

Sec. 6-70. Notice of decision.

- a. *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 twenty-four (24) hours of receiving a completed and signed application (22 M.R.S.A. § 4305(3)) (see Sec. 6-26).

When an applicant submits an incomplete or unsigned application, due to the twenty-four-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.

- b. *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 Sec. 6-26, the notice will state that applicants:
1. Have the right to a fair hearing and the method by which they may obtain a fair hearing and;
 2. 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.
- c. *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)).

Secs. 6-71—6-80. Reserved.

ART. II-6-7. THE FAIR HEARING

Sec. 6-81. Right to a fair hearing.

Within five (5) working days of receiving a written notice of denial, reduction or termination of assistance, or within ten (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.

(Ord. of 4-28-2008, Art. VII, § 7.1)

Sec. 6-82. 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.

- a. *Written request.* To obtain a fair hearing, the claimant, or his or her authorized representative, must make a written request within five (5) working days of receiving the administrator's decision to grant, deny, reduce or terminate assistance, or within ten (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:
 1. The decision on which review is sought;
 2. The reason(s) for the claimant's dissatisfaction and why the claimant believes he/she is eligible to receive assistance; and
 3. 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.
- b. *Scheduling the fair hearing.* Upon receipt of the completed written request the fair hearing authority must meet and hold the hearing within five (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:
 1. 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;
 2. Confront and cross-examine any witnesses presented at the hearing against the claimant; and
 3. 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.

(Ord. of 4-28-2008, Art. VII, § 7.2)

Sec. 6-83. 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 (1) 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, and 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:

1. Not have participated in the decision which is the subject of the appeal;
2. Be impartial;
3. Be sufficiently skilled in interviewing techniques to be able to obtain evidence and the facts necessary to make a fair determination; and
4. 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.

Sec. 6-84. 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:

1. 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;
2. Be opened with a presentation of the issue by the fair hearing authority;
3. Be conducted informally, without technical rules of evidence, but subject to the requirements of due process;
4. Allow the claimant and the administrator the option to present their positions for themselves or with the aid of others, including legal counsel;
5. 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;
6. Result in a decision, based exclusively on evidence or testimony presented at the hearing; and
7. 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).

- a. *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 five (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:
 1. A death or serious illness in the family;
 2. A personal illness which reasonably prevents the party from attending the hearing;
 3. An emergency or unforeseen event which reasonably prevents the party from attending the hearing;
 4. 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

5. 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.

(Ord. of 4-28-2008, Art. VII, § 7.4)

Sec. 6-85. 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 five (5) working days after completion of the hearing. Written notice of the decision will contain the following:

1. A statement of the issue;
2. Relevant facts brought out at the hearing;
3. Pertinent provisions in the law or this chapter related to the decision; and
4. 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 state 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 thirty (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 twenty-four (24) hours.

(Ord. of 4-28-2008, Art. VII, § 7.5)

Secs. 6-86—6-100. Reserved.

ART. II-6-8. RECOVERY OF EXPENSES

Sec. 6-101. Recipients and relatives.

- a. *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).

- b. *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.

- c. *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).
- d. *Relatives.* The spouse of an applicant, and the parents of any applicant under the age of twenty-five (25), are liable for the support of the applicant (22 M.R.S.A. § 4319). In addition, grandchildren, children, siblings, 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).

(Ord. of 4-28-2008, Art. VIII)

CH. II-7 LAND SUBDIVISION

Sec. 7-1. Authority, Purpose and Application of Regulations

Under the authority of MRSA, Title 30, Section 4956, including all acts in amendment thereof and in addition thereto, and any other enabling laws, this *Subdivision Ordinance* of the Town of Falmouth is hereby adopted to encourage the most appropriate use of land; to promote traffic safety; to provide safety from fire and other elements; 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 provide for adequate public services; to assure the comfort, convenience, safety, health and welfare of the people; to protect the environment and to promote the development of an economically sound and stable community.

Effective on: 1/24/2011

Sec. 7-2. Definitions

Those definitions set forth in the *Falmouth Zoning Ordinance* shall apply to the *Subdivision Ordinance* in addition to those in this section.

BLOCK: Any enclosed area bounded by a street(s).

Effective on: 1/24/2011

CLUSTER SEPTIC SYSTEM: A cooperative waste water treatment system serving groups of homes that are within close enough proximity to jointly handle their waste water and that have a long-term maintenance and rejuvenation plan to jointly manage the shared waste water treatment system. [Adopted 12/22/05]

Effective on: 1/24/2011

COMMON OPEN SPACE: Land within or related to a subdivision that is set aside to conserve natural resource, scenic, cultural, historic, or archeological values, provide active or passive recreation, or accommodate support facilities related to the subdivision, and that is restricted from significant development or intensive use except for approved recreational or support facilities and protected in perpetuity in a substantially undeveloped state through legally binding fee ownership or conservation easements. [Adopted 12/22/05]

Effective on: 1/24/2011

COMPREHENSIVE PLAN: Any part or element of the overall plan or policy entitled "Falmouth Comprehensive Plan, 2013."

Effective on: 1/24/2011

CONSERVATION EASEMENT: A nonpossessory interest in real property imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural, scenic or open space values of real property; assuring its availability for agricultural, forest, recreational or open space use; protecting natural, cultural, or historic resources; or maintaining air or water quality and including preservation easements for historic or cultural resources. [Adopted 12/22/05]

Effective on: 1/24/2011

CONSERVATION LAND: Land owned by a public body, land trust, conservation organization, or other group for the purpose of the protection of natural resources or scenic, cultural, historic or archeological values, the provision of open space, and/or for passive recreational use and which is permanently restricted from development or intensive use and protected in perpetuity in a substantially undeveloped state by legally binding arrangements. [Adopted 12/22/05]

Effective on: 1/24/2011

CONSERVATION SUBDIVISION: A subdivision meeting the requirements of the Resource Conservation Zoning Overlay District of the Zoning Ordinance in which a substantial portion of the site is set aside as permanent, common open space. [Adopted 12/22/05]

Effective on: 1/24/2011

ENGINEER: Engineer licensed by the State of Maine.

Effective on: 1/24/2011

ENGINEERED SEPTIC SYSTEM: Any subsurface waste water disposal system designed, installed and operated as a single unit to treat and dispose of 2,000 gallons per day (gpd) or more. [Adopted 12/22/05]

Effective on: 1/24/2011

EXEMPTED LOTS: Lots which are exempted from subdivision review by State law. However, resale of exempted lots within five years of the approval date for a subdivision to others who would not be exempted under State Law shall constitute a re-subdivision.

Effective on: 1/24/2011

INFORMATIONAL CONFERENCE: A required meeting between a potential applicant, their consultant team, and the Town Planner to review the Town's regulations and requirements and the nature of the possible application before any submissions are made or applications filed. [Adopted 12/22/05]

Effective on: 1/24/2011

MUNICIPAL OFFICERS: Falmouth Town Council.

Effective on: 1/24/2011

MUNICIPALITY: Town of Falmouth, Cumberland County, Maine.

Effective on: 1/24/2011

OFFICIAL MAP: Municipal zoning map on file at the Falmouth Town Office.

Effective on: 1/24/2011

PERFORMANCE GUARANTEE: Surety designed to insure the completion of the improvements required by the Planning Board.

Effective on: 1/24/2011

PERSON: Person, firm, partnership, corporation, association or other entity.

Effective on: 1/24/2011

PLANNING BOARD OR BOARD: The Planning Board of the Town of Falmouth created under Article VII, Section 701 of the Town Charter.

Effective on: 1/24/2011

PLOT PLAN: The copy of the final plan to be recorded and in such form as provided by the Cumberland county Registry of Deeds and State Statutes to be accepted for recording.

Effective on: 1/24/2011

RESOURCE IMPACT AND CONSERVATION PLAN: An assessment of the impact of the proposed subdivision on the identified resources on the site and the actions that will be taken to minimize and mitigate these impacts. [Adopted 12/22/05]

Effective on: 1/24/2011

SITE INVENTORY AND ANALYSIS: The Site Analysis Sketch Plan, Site Analysis Narrative, and Existing Resources Site Analysis Plan and supporting data describing the site proposed to be subdivided and analyzing the opportunities and constraints for open space preservation, subdivision, and development. The inventory and analysis are typically submitted for pre-application review prior to submitting a formal application for subdivision approval. [Adopted 12/22/05]

Effective on: 1/24/2011

STEWARDSHIP ACCOUNT: A private account established and funded by the applicant to assure that funds are available to pay for the monitoring of conservation restrictions on common open space on a perpetual basis. [Adopted 12/22/05]

Effective on: 1/24/2011

STEWARDSHIP FUND: An account established and managed by the Town of Falmouth into which payments made by applicants to pay for the monitoring of conservation restrictions held by the Town on common open space are deposited. [Adopted 12/22/05]

Effective on: 1/24/2011

STREET: Alleys, avenues, boulevards, highways, roads, streets or other traffic ways between right of way lines. Streets are further classified according to the function they perform as provided in [Appendix 7-4](#) of this Ordinance.

Effective on: 1/24/2011

SUBDIVISION PLAN, PRELIMINARY: Drawings and/or plans indicating the proposed subdivision and tentative layout submitted for consideration by the Planning Board.

Effective on: 1/24/2011

SUBDIVISION PLAN, FINAL: Drawings and/or plans indicating the final subdivision and layout submitted for final approval by the Planning Board.

Effective on: 1/24/2011

SUBDIVISION: The division of a tract or parcel of land into 3 or more lots within any 5 year period, which period begins after September 23, 1971, whether accomplished by sale, lease, development, building, or otherwise, except when the division is accomplished by devise, condemnation, order of court, or gift to a relative, unless the intent of such gift is to avoid the objectives of this section, or by transfer of any interest in land to the owner of land abutting thereon, shall not be considered to create a lot or lots for purposes of this section. In determining whether a parcel of land is divided into 3 or more lots, land retained by the subdivider for his own use as a single family residence for a period of at least 5 years shall not be included. No sale or lease of any lot or parcel shall be considered as being a part of a subdivision of such a lot or parcel is 40 acres or more in size, except where the intent of such sale or lease is to avoid the objectives of this statute.

Effective on: 1/24/2011

SUBDIVISION, MAJOR: Any subdivision requiring new streets or private ways, extensions of existing streets or private ways; or construction and/or extension of public utilities, and further provided all lots shall meet the minimum area and lot width requirements of the zones in which they are located.

Effective on: 1/24/2011

SUBDIVISION, MINOR: Any subdivision not exceeding five (5) lots, in which all of the lots front on a way accepted by the Town of Falmouth and further provided that all lots shall meet the minimum area and lot width requirements of the zones in which they are located. A minor subdivision shall also include a private way plan meeting the standards of [Appendix 7-5](#), Section (D) 3. of this Subdivision Ordinance.

Effective on: 1/24/2011

TOWN ENGINEER: Engineer employed by the Town.

Effective on: 1/24/2011

WELL EXCLUSION ZONES: Areas within a subdivision that have been identified and designated as being susceptible to well water contamination due to flow paths of existing or proposed waste water disposal systems. Well exclusion zones include land within 100 feet of a septic system as required by the *Maine Subsurface Waste Water Disposal Rules* and areas identified in a groundwater impact analysis as having concentrations of nitrate as nitrogen in excess of the 10 mg/L Maximum Contaminant Level standard of the EPA's *National Primary Drinking Water Regulations*. [Adopted 12/22/05]

Sec. 7-3. Guidelines

When promulgating any subdivision regulations and where reviewing any subdivision for approval, the Planning Board shall consider the following criteria, and before granting approval, shall determine that the proposed subdivision:

- a. Will not result in undue water or air pollution. In making this determination, it shall at least consider: the elevation of land above sea level and its relation to the flood plains; the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for disposal of effluents; and the applicable state and local health and water resources regulations.
- b. Has sufficient water availability for the reasonably foreseeable needs of the subdivision.
- c. Will not cause any unreasonable burden on an existing water supply, if one is to be utilized.
- d. Will not cause unreasonable soil erosion or reduction on the capacity of the land to hold water so that a dangerous or unhealthy condition may result.
- e. Will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highways or public roads existing or proposed.
- f. Will provide for adequate solid and sewage waste disposal.
- g. Will not cause an unreasonable burden on the ability of a municipality to dispose of solid waste and sewage if municipal services are to be utilized.
- h. Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas.
- i. Is in conformance with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan, or land use plan, if any, and
- j. The subdivider has adequate financial and technical capacity to meet the above stated standards.
- k. Whenever situated, in whole or in part, within 250 feet of any pond, lake, river, or tidal waters, will not adversely affect the quality of such body of water or unreasonably affect the shoreline of such body of water.
- l. Will not alone, or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.

In addition to determining compliance with the guidelines a-1 above, the Planning Board shall also consider the compliance of the proposed subdivision with the General Requirements of [Appendix 7-1](#).

The Planning Board shall issue an order denying or granting approval of the proposed subdivision or granting approval upon such terms and conditions as it may deem advisable to satisfy the criteria listed in this section, and to protect and preserve the public's health, safety and general welfare. In all instances, the burden of proof shall be upon the person proposing the subdivision.

Sec. 7-4. Application

- a. Application Submission. Any person creating a subdivision within the meaning of this ordinance shall cause an application for approval of the subdivision to be filed with the

Planning Board. The Planning Board, in writing, shall notify the applicant within sixty (60) days of the preliminary review date and the form the review will take as provided by the terms and conditions of the *Subdivision Ordinance*. Failure of the Board to take action as herein provided shall deem such plan as disapproved.

- b. A checklist of required submissions for preapplication sketch plan and major and minor subdivisions may be developed to assist the applicant and the administration of this ordinance [Amended 11/22/93].
- c. Geographic Information System (GIS) Plan Submissions and Specifications [Amended 03/14/11]:
 - 1. Purpose: This subsection sets forth the required procedures and GIS specifications for submittal of subdivision and site plan information required by other sections of this ordinance in an acceptable GIS format to the Town.
 - 2. Applicability: This subsection applies to submissions required under this section where an electronically prepared boundary survey by a licensed land surveyor is submitted or required.
 - 3. Procedure: The submission of this information shall be considered a condition of final approval and shall be submitted to the Assessing Department prior to any site work or the issuance of any town permits. The submission may occur by email or on compact disc (CD) or USB drive, using the following GIS format specifications:
 - a. All files shall be submitted in AutoCAD .DWG or .DXF or shapefile formats.
 - b. All files shall be geo-referenced to Maine State Plane Coordinates, NAD 83 feet with positional accuracies of three to five feet.
 - c. All features of a common type, regardless of whether they are points, lines, polygons or annotation, should be distinguished by layering and not by color, linetype or symbols. Layers should also be distinguished by whether they show proposed or existing features. These display attributes are added in the plotting process of the GIS.

Effective on: 1/24/2011

Sec. 7-5. Application Fee

- a. An application fee shall be paid in accordance with the fee schedule established by the Town Council and concurrent with the submission of any plan.
- b. Review Escrow Account - Escrow fees as established by the Town Council shall be deposited in an escrow account established by the Town, which monies may be used by the board to pay for professional reviews and advice related to the developer's application as it deems necessary. The Board shall provide the applicant with notice of its intent to spend any portion of this account, which notice shall specify the purpose for the proposed expenditures. If the town expends the review escrow account prior to completing its review, the applicant shall replenish the review escrow to the original amount. [Amended 9/24/01] Those monies deposited by the developer and not spent by the Planning Board in the course of its review shall be returned to the developer with thirty (30) days after the Board renders its final decision on the application. [Amended 1/25/99] [Amended 8/27/07]
- c. Negotiated Exaction Fees - in accordance with Section 7-12, may be assessed for each development that proceeds through the review process.

Effective on: 1/24/2011

Sec. 7-6. Contractual Services

The Planning Board may contract with and appoint outside consultant and professional services to inspect premises and review and provide plans for the purpose of implementing this ordinance. Contractual services are to provide advice to the Planning Board; the Board cannot be bound by any opinions rendered by such service providers.

Effective on: 1/24/2011

Sec. 7-7. Major Subdivision [Amended 12/22/05]

The Town recommends that all major subdivisions be designed and inspected by a multidisciplinary team of professionals that includes surveyors, architects, engineers, and landscape architects, among other professionals, as needed and appropriate. For conservation subdivisions in the Resource Conservation Zoning Overlay (RCZO) District, the following requirements shall apply.

- a. The owner shall retain a landscape architect in order to ensure that the many elements of the subdivision plan are designed and built according to a coordinated and efficient development concept. The owner's landscape architect, and other professionals as needed, shall consult with Town staff or with the town's peer review consultants, in order to ensure compliance with the Town standards. The consultation process shall begin at the time of sketch plan review and extend throughout the design, approval, and construction phases of the project.

The Town may waive the requirement for a landscape architect for subdivisions in the RCZO District or for the consultation process, if in the opinion of the Planning Board the project does not require these services due to its small size or lack of complexity.

All applicants for review of a subdivision located in the Resource Conservation Zoning Overlay (RCZO) District must schedule an informational conference with the Town Planner and their consultant team prior to requesting a preapplication review with the Board. The purpose of this activity is to familiarize the applicant with the Town's procedures and requirements for development within the RCZO District including Conservation Subdivisions and to familiarize the Town's representatives with the nature of the project. At this meeting, the Town Planner will discuss the concept of a conservation subdivision with the applicant and will provide the applicant with information about conservation subdivisions and give the applicant the opportunity to review other information about conservation subdivisions. The applicant shall be prepared to discuss his/her plans for the development in a general nature.

The informational conference shall be held by the Town Planner. The Planner may ask other Town staff and consultants to participate in the informational conference if warranted by the scale and/or nature of the proposal. As part of the meeting, the Town representative(s) and the applicant may visit the proposed site. Such review shall not cause the plan to be a pending application or proceeding. No decisions relative to the plan shall be made at this meeting.

Major subdivision review requires a preapplication review with the Planning Board followed by the submission of a preliminary plan and final plan in accordance with the procedures as specified below:

A. Preapplication Sketch Plan Review Procedure [Adopted 11/22/93]

1. Prior to submitting a preliminary plan application, applicants shall request a preapplication sketch plan review by the Planning Board.
2. The purposes of sketch plan review are to:
 - a. Allow the Planning Board to understand the nature of the proposed development and the issues involved before the design process proceeds;

- b. Allow the applicant to understand the development review process and required submissions;
- c. Identify issues that need to be addressed in future submissions; and,
- d. Approve the general development approach to the project site.

3. The Planning Board may elect to hold a site walk at the preapplication stage.

B. Preapplication Sketch Plan Submissions [Adopted 11/22/93]

Preapplication sketch plan submissions shall conform to the requirements of [Appendix 7-2](#).

C. Preliminary Plan Procedures

1. The subdivider, or his duly authorized representative, shall attend the meeting of the Planning Board to discuss the Preliminary Plan.
2. Within forty-five (45) days after formal submission of a Preliminary Plan, the Planning Board shall take action to give preliminary plan approval, with or without modifications, or disapprove such Preliminary Plan. The reasons of any modification required or the grounds for disapproval shall be stated upon the records of the Planning Board. Failure of the Planning Board to act within such forty-five (45) day period shall constitute disapproval of the Preliminary Plan. Prior to preliminary approval, the Planning Board may hold a public hearing.
3. When granting approval to a Preliminary Plan, the Planning Board shall state the conditions of such approval, if any, with respect to: (1) the specific changes which it will require in the Final Plan; (2) the character and extent of the required improvements for which waivers may have been requested and which in its opinion may be waived without jeopardy to the public health, safety, and general welfare; (3) the amount of improvement or the amount of all bonds therefore which it will require as prerequisite to the approval of the Final Subdivision Plan. The decision of the Planning Board, plus any condition imposed, shall be noted on two (2) copies of the Preliminary Plan.
One copy of the approved preliminary plan, signed by the Chairman of the Planning Board (or Acting Chairman) shall be retained by the Board and one signed copy shall be given to the subdivider. On each such copy, any modifications required or approved by the Board shall be enclosed in lines and numerals or words or symbols at the time of approval, and the following wording in bold type letters written on the plan "APPROVAL OF THIS PRELIMINARY PLAN DOES NOT CONSTITUTE AN ACCEPTANCE OF THE SUBDIVISION." However, failure of the Board to place the above warning on the approved preliminary plan shall not constitute approval of the final plan. The preliminary plan approval shall be limited as described in Section 7-7 (C) (4).
4. Preliminary approval of a Preliminary Plan shall not constitute approval of the Final Plan, but rather it shall be deemed an expression of approval of the design submitted on the Preliminary Plan as a guide to the preparation of the Final Plan. The Final Plan shall be submitted for approval of the Planning Board and for recording upon fulfillment of the requirements of these standards and the conditions of the preliminary approval, if any. Prior to approval of the Final Subdivision Plan, the Planning Board may require additional changes as a result of new information obtained at a public hearing.

D. Preliminary Plan Submissions

Preliminary Plan submissions shall conform to the requirements of [Appendix 7-3](#).

E. Final Plan Procedures

1. The subdivider shall, within six (6) months after the approval of the Preliminary Plan, file with the Planning Board an application for approval of the Final Subdivision Plan in the

form described herein. If the Final Plan is not submitted to the Planning Board within six (6) months after the approval of the Preliminary Plan, the Planning Board may refuse without prejudice to act on the Final Plan and require resubmission of the Preliminary Plan. If approved by the Planning Board, the developer may present a section of the Preliminary Plan for approval, provided such section contains at least 25% of the total number of lots as shown on the Preliminary Plan. The remainder of the Preliminary Plan, as approved by the Board, shall not be altered in any way without further review and approval by the Board.

2. If the proposed subdivision is subject to review by the State of Maine, Department of Environmental Protection in any way, then: The approval of the State of Maine, Department of Environmental Protection shall be secured in writing before official submission of the Final Plan.
3. Water supply system proposals contained in the Subdivision Plan shall be approved in writing by:
 - a. The Portland Water District if existing public water service is to be used, or
 - b. The State of Maine, Department of Human Services, if the subdivider proposes to provide a central supply system.

Such approval shall be secured before official submission of the Final Plan.

4. Sewage Disposal
Sewage disposal shall conform to the regulations of "Sewage Ordinance, ", the Maine Subsurface Wastewater Disposal Rules and to this Ordinance.
5. No Final Plan shall be acted on by the Planning Board until it has held a public hearing thereon. Notice of such hearing shall be published in a newspaper of general circulation at least ten (10) days prior to such hearing. Further, notice of the time and place of such hearing shall be sent not less than ten (10) days before the hearing to the developer and to the owners and to the occupants of properties adjoining such subdivision by the names in the most recent tax records of the Town of Falmouth. Certificates of mailing recording the date such notices were given to the U.S. Postal Service shall be sufficient evidence of the issuance of a notice. Owners of property shall be considered to be the parties listed by the Assessors' Department of the Town of as those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another public hearing and shall not invalidate the action of the Planning Board.
6. The Final Plan shall conform substantially to the Preliminary Plan, including profile and cross section as approved by the Planning Board. Each major subdivision Final Plan shall be drawn at a scale of not more than 40 feet per inch. If two or more sheets are needed to show a subdivision, an index sheet of the same dimensions as the subdivision sheets shall be submitted with them, drawn at such scale as to show the entire subdivision on one sheet.
7. As a condition precedent to the final approval of a major subdivision, the developer shall tender the Planning Board a performance guarantee meeting the requirements of Section 7-11 of this Ordinance. Prior to acceptance of the performance guarantee, the Planning Board shall consider the written recommendation of the Town Engineer.
8. The Planning Board shall, within sixty (60) days from submission of the Final Plan, approve, modify and approve or disapprove the Final Plan. The reasons for any modification required or the grounds for disapproval shall be stated upon the records of the Planning Board. Failure of the Planning Board to act within such sixty (60) days period shall constitute disapproval of the Final Plan. Approval by the Planning Board shall be endorsed in writing on each final plan with the date of such approval and the signature of the majority of the Planning Board members.

The Final Plan shall then be filed with the Falmouth Town Clerk no later than ninety (90) days from the date of approval. Failure to record within the specified time shall be cause for a new review of the plan.

9. The plot plan shall be on mylar and shall be recorded with the Cumberland County Registry of Deeds no later than ninety (90) days from the date of approval. Failure to record within the specified time shall be cause for a new review of the plan.

F. Final Plan Submissions

Final Plan submissions shall conform to the requirements of [Appendix 7-3](#) of this Ordinance.

G. Plan Revisions After Approval

No changes, erasures, modifications, or revisions shall be made in any Final Plan after approval has been given by the Planning Board and endorsed in writing on the Plan, unless the Plan is first resubmitted and the Planning Board approves any modifications. In the event that a Final Plan is recorded without complying with this requirement, the same shall be considered null and void.

Effective on: 1/24/2011

Sec. 7-8. Minor Subdivisions

A. Procedure

1. All applications for Plan approval for Minor Subdivision shall be accompanied by fees as established by the Town Council and payable by check to the Town of . [Amended 8/27/07]
2. The subdivider, or his duly authorized representative, shall attend the meeting of the Planning Board to discuss the Final Plan.
3. The Planning Board shall, within forty-five (45) days from the date of submission, approve, modify and approve, or disapprove the Final Plan. Notice shall be mailed to all abutters, and the Board shall accept written or oral comments for its consideration in its decision to approve, modify or disapprove. The Board shall specify in writing its reasons for any such modification or disapproval. If the Board fails to take action within forty-five (45) days as specified above, the Final Plan shall be deemed disapproved.
4. The plot plan shall be on mylar and shall be recorded with the Cumberland County Registry of Deeds no later than ninety (90) days from the date of approval. Failure to record within the specified time shall be cause for a new review of the plan.
5. The approval of the Planning Board of a minor subdivision plan shall not be deemed to constitute or be evidence of any acceptance by the municipality of any street, easement or other open space shown on the plan.
No minor subdivision plan shall be given final approval by the Planning Board until all the required changes and modifications as required by this Ordinance are made a part thereof. Approval by the Planning Board shall be in writing and signed by a majority of the Board. A copy of the approved plan shall be filed with the Code Enforcement Officer within ten (10) days from the date of approval. The plot plan shall be drawn on mylar with India Ink and shall be recorded with the Cumberland County Registry of Deeds no later than 90 days from the date of approval. Failure to file shall be cause for a new review of the plan. The Planning Board may require a performance guarantee in accordance with Section [7-11](#) of this Ordinance.

B. Minor Subdivisions in the Resource Conservation Zoning Overlay District (RCZO)
[Adopted 12/22/05]

All applicants for review of a subdivision located in the Resource Conservation Zoning Overlay (RCZO) District must schedule an informational conference with the Town Planner prior to requesting a preapplication review with the Board. The purpose of this activity is to familiarize the applicant and their principal consultant team with the Town's procedures and requirements for development within the RCZO District including Conservation Subdivisions and to familiarize the Town's representatives with the nature of the project. At this meeting, the Town Planner will discuss the concept of a conservation subdivision with the applicant and will provide the applicant with information about conservation subdivisions and give the applicant the opportunity to review other information about conservation subdivisions. The applicant shall be prepared to discuss his/her plans for the development in a general nature. The informational conference shall be held by the Town Planner. The Planner may ask other Town staff and consultants to participate in the informational conference if warranted by the scale and/or nature of the proposal. As part of the meeting, the Town representative(s) and the applicant may visit the proposed site. Such review shall not cause the plan to be a pending application or proceeding. No decisions relative to the plan shall be made at this meeting. Minor subdivision review for a subdivision in the RCZO District requires a preapplication review with the Board before the submission of a final plan. The preapplication review shall be in accordance with the procedures and requirements set forth in 7.A. and 7.B. above.

C. Submissions

Minor subdivision plan submissions shall conform to the requirements of [Appendix 7-4](#) of this Ordinance.

D. Plan Revisions After Approval

No changes, erasures, modifications, or revisions shall be made in any Final Plan after approval has been given by the Planning Board and endorsed in writing on the Plan, unless the Plan is first resubmitted and the Planning Board approves any modifications. In the event that a Final Plan is recorded without complying with this requirement, the same shall be considered null and void.

Effective on: 1/24/2011

Sec. 7-9 Street Standards

Street standards shall conform to the requirements of [Appendix 7-5](#), Street Standards.

Effective on: 1/24/2011

Sec. 7-10. Inspection of Required Improvements

- A. At least five (5) days prior to commencing construction of required improvements, the subdivider shall pay an inspection fee as established by the Town Council, payable by check to the Town of , stating the purpose of the fee. The subdivider shall notify the Public Works Director in writing of the time when the subdivider proposes to commence construction of such improvements so that the Town can cause inspection to be made to assure that all municipal specifications and requirements shall be met during the construction of required improvements, and to assure satisfactory completion of improvements and utilities required by the Planning Board. [Amended 12/19/95] [Amended 8/27/07]
- B. Required improvements shall be made and inspected in accordance with [Appendix 7-6](#) of this Ordinance.

Effective on: 1/24/2011

Sec. 7-11. Performance Guarantee

- A. **General.** A performance guarantee shall be drafted such that the Town shall receive written notice at least sixty (60) days prior to their expiration. Construction which occurs such that certification by the Public Works Director is not possible shall be grounds for default of the performance guarantee. A Performance Guarantee may be tendered in the form of either cash or a certified letter of credit, in a form satisfactory to the Planning Board. If cash is accepted the Town and developer shall execute an escrow agreement in a form satisfactory to the Planning Board. It shall be in an amount of money to be determined by the Planning Board with the advice of various Town departments sufficient to cover the cost of completing all improvements required by the Planning Board approval. It shall be conditioned upon the completion of all such improvements within the time limit specified by the Planning Board, which shall not exceed two (2) years from the date of approval.
- B. **Conditional Agreement.** A Conditional Agreement, if acceptable in lieu of a Performance Guarantee, shall be endorsed by the Planning Board on the Final Plan, and shall provide that no lot or parcel of land may be conveyed, and that no permit may be issued by the Building Inspector for any building on any portion of the development until the completion of all such improvements within a period of time determined by the Planning Board not to exceed two (2) years from the date of such agreement.
- C. **Completion of Site Improvements.** Completion shall be determined by the Public Works Director or their designee to their satisfaction, who shall submit written certification to the Community Development Director that all improvements assured by the Performance Guarantee have been constructed in conformance with the Final Plan and all applicable codes and ordinances. In addition, the developer shall furnish at his own expense the signed certification by a registered surveyor or civil engineer that all permanent bounds or monuments have been installed and are accurately in place in the locations designated in the Final Plan.

For projects that include either the construction or extension of streets or any required improvements made in existing street rights of way, the performance guarantee shall not be reduced below \$5,000 until a qualified professional approved by the Public Works Director, and whose services are paid by the developer, has verified, upon visual inspection, that all street rights of way and street easement areas, where improvements are required, are free of invasive terrestrial plants as defined in Chapter 19-2 of this Code. The Public Works Director may also consult with the Conservation Commission regarding the identification of invasive terrestrial plants.

Effective on: 3/27/2017

Sec. 7-12. Negotiated Exactions [Adopted 1/22/90]

- A. **Development Impact Analysis - Residential.** The Planning Board may require the applicant to conduct a development impact analysis which will consider the following demographic features:
1. **Demographic Description.** The analysis must identify the demographic market the project intends to serve, including:
 - a. type of family;
 - b. average family size;
 - c. numbers and ages of children; and
 - d. anticipated time period to fill units or lots.

Associated data, such as anticipated family income levels, type of employment, and projected housing costs may also be presented to support projections associated with the

above demographic description. If transfers from existing Town families and homes are expected, the impact on the secondary market must be projected. The basis for all projections must be provided.

B. Development Impact Analysis - Commercial, Industrial, or Institutional. The Planning Board may require the applicant to conduct a development impact analysis. For commercial, industrial, or institutional development, the applicant shall take the following factors into consideration:

1. Data Description. The analysis must identify data associated with the project including, but not limited to, the following:
 - a. Number of employees, shifts, and period of operation;
 - b. Where retail business is concerned, anticipated trade area, trade area population description, and desired customer mix;
 - c. Area of operating space, seating capacity, rooms, beds, or number of pumps, whichever is appropriate; and
 - d. Where waste production is involved, description of type, volume, and method of removal.

C. Community Facilities Impact Analysis. At the discretion of the Planning Board, the applicant may be required to utilize the above data to conduct an analysis of the following:

1. Estimated impact on the public sewer system, including flow estimated and assessment of capacity;
 2. Estimated impact on traffic systems, including the impact of projected trips on flow characteristics and the impact of traffic on the immediate, existing road structures;
 3. Estimated impact on the school system;
 4. Estimated impact on the Public Works Department;
 5. Any other study deemed necessary by the Planning Board, including, but not limited to, open space, parks, public safety systems, drainage systems, or solid waste.
- Once these analyses have been completed, the applicant shall present appropriate projections and impact assessments to the appropriate Town agency for review and comment.

D. Negotiated Exactions. The Planning Board may require the applicant to participate in municipally or state owned, off-site capital improvements. In accordance with subsection C, where it appears that the proposed development will result in a negative impact or decline in the level of service of any existing off-site capital improvement, the Planning Board shall assess and establish the applicant's level of participation in the off-site capital improvement.

1. Conducting the Assessment. In conducting the assessment, the Planning Board shall consider the following:
 - a. The status of the system and service as a result of the analysis and any potential relationship to items noted and scheduled in the comprehensive plan and capital improvement program.
 - b. The net effect of the proposed development on the capacity of the capital improvement, indicating the percentage share caused by the development.
 - c. A cost estimate for this capital improvement so as to meet the increased demand, a breakdown of the applicant's share of that cost, and an estimate of the remaining

capacity and post improvement capacity available to developments other than the applicant.

2. Improvement Responsibilities. As soon as the applicant's fair share of capital improvement impact has been established by the Planning Board, the Board shall select the method in which the applicant must participate in the capital improvement. The following alternatives are available:

- a. The applicant must agree to make the necessary infrastructure improvements, providing all initial financial carrying costs, establish a construction schedule, and post a performance guarantee to cover all associated costs. The applicant may recover the improvement costs (including engineering and design, construction, and financing expenses) within ten (10) years after improvements are made and in accordance with a specified level of service range associated with the improvement.

For the applicant to recover these costs, subsequent developments must realize a benefit by using the infrastructure improvements financed by the applicant. Cost reimbursement for the applicant shall be established as subsequent developments go through the subdivision or site plan review process.

Calculations shall include adjustments for time-price differentials using the coupon issue yield equivalent of 52-week United States Treasury Bills (1-year Treasury Rate) as an index. Payments shall be made prior to the release of the signed subdivision mylar for recording purposes or the building permit where no recording mylar is involved.

1. Allocation Cost Sharing for Subsequent Development(s). In arriving at the appropriate cost share for subsequent development, applicants shall use the same methodology as that utilized by the initial applicant. In applying the methodology, subsequent applicants shall establish their cost based on the percentage utilization of the improvements in terms of post-construction level of service.
 2. Reallocation of Carrying Costs. At the request of the developer and at the discretion of the Planning Board, the Town may also require subsequent developments to share in the initial financial carrying costs of the necessary infrastructure improvements. If so determined, the carrying costs shall be shared between the initial and subsequent development(s) in direct proportion to their relative impact on the capital improvement. Once apportioned, the initial and subsequent development(s) are eligible for cost reimbursement from subsequent development(s) as described in a. and 1) above.
- b. The Town may agree to complete the improvements. The applicant shall pay the required share of the cost equal to their fair share to the Town prior to the release of the signed subdivision mylar or building permit, said payment to be held in a reserve fund until the improvement is completed. Subsequent developments that realize a benefit by using the infrastructure improvements financed by the Town shall also pay a fair share contribution.
 - c. Upon establishing a negotiated exactions agreement for an infrastructure improvement project, the Planning Board shall describe an improvement benefit district within which subsequent development is likely to benefit from the required improvements. The proposed benefit district and the methodology to be used in assessing future allocation cost sharing and carrying cost reallocation shall then be referred to the Town Council for enactment. Benefit districts enacted by the Town Council shall be effective for a period of ten (10) years from the date of enactment. [Amended 4/27/92].
 - d. Within each negotiated exactions benefit district enacted by the Town Council, all subsequent development applications for site plan or subdivision approval shall be required to participate in cost sharing and/or carrying costs for the infrastructure

improvement project unless the Planning Board determines, per subsections C. and D., that no benefit has been derived from the prior improvement project. [Amended 4/27/92]

- e. If the improvement is not completed within ten (10) years, the fee, plus interest, must be returned to the applicant. If the improvement is made at a cost less than was anticipated, the remaining portion shall be returned to the applicant(s) at amounts equal to their fair share of the improvement.
- f. The Town shall segregate the funds received from exaction agreements from the general revenue fund and shall expend those funds solely for the purpose that was intended.

Effective on: 1/24/2011

Sec. 7-13. Procedural Waivers and *De Minimus* Variations [Amended 6/16/97]

- A. The Planning Board may, after a public hearing, waive the procedures leading up to the Final Approval when, in its opinion, the strict application of the procedure is not required to determine compliance with Section 7-3 and other requirements of this ordinance. In so waiving the requirements of those sections, the Planning Board shall nonetheless require such drawings and documents as necessary to provide a basis to determine compliance and on which to grant or deny approval.
- B. The Planning Board may, after a public hearing, permit a *de minimus* variation from dimensional requirements of this Ordinance not to exceed 5 percent where the Board finds that unreasonable hardship would result from the strict application of the ordinance and that the need for variation is due to the unique circumstances of the property which are beyond the control of the applicant.
- C. The subdivision guidelines and required minimum performance standards of the Ordinance and its appendices shall apply to all subdivision plans. If the Planning Board finds that, due to special circumstances of a particular plan, the application of certain performance standards are not requisite in the interest of public health, safety, and general welfare, the Planning Board may waive the required standards, subject to appropriate conditions. In granting any waivers, the Board shall make findings that the subdivision guidelines have been met with the waiver approval and conditions, and that the effect of granting the waiver will not nullify the intent and purpose of the Comprehensive Plan or the Subdivision Ordinance. [Adopted 6/16/96]

Effective on: 1/24/2011

Sec. 7-14. Enforcement

- A. No plan of a subdivision of land within the Town of Falmouth which would constitute a subdivision as defined herein shall hereafter be filed or recorded in the Registry of Deeds until a Final Plan thereof shall have been approved by the Planning Board in accordance with all of the requirements, design standards, and construction specifications set forth elsewhere in this Ordinance, nor until such approval shall have been entered on such Final Plan by the Planning Board. No lot in a subdivision approved by the Planning Board shall be subsequently further divided without the prior approval of the Planning Board and the recording of a modified plan showing such division. A statement that further divisions require Planning Board approval shall be printed on the Final Plan.
- B. No person, firm, corporation or other legal entity may convey, offer, or agree to convey any land in a subdivision which has not been approved by the Planning Board and recorded in the Registry of Deeds.

- C. In addition to fines imposed by State Law, any person, firm, corporation or other legal entity who conveys, offers or agrees to convey any land in a subdivision which has not been approved as required by this section or violates any provision of this ordinance shall be punished by a fine of not more than allowed by Town Charter for ordinance violations for each such conveyance, offering, agreement, or violation. The Attorney General, the Town of , or the appropriate municipal officers may institute proceedings to enjoin the violation of this Ordinance.
- D. No public utility, water district, sanitary district or any utility company of any kind shall serve any lot in a subdivision for which a Final Plan has not been approved by the Planning Board.
- E. No person shall grade or construct roads, grade land or lots or construct any buildings within a subdivision until such time as the Final Plan of such subdivision shall have been duly approved as provided in this Ordinance and until the original copy of the Final Plan has been duly recorded with all easements and conditions in the Cumberland County Registry of Deeds.

Effective on: 1/24/2011

Sec. 7-15. Subdivisions in Shoreland Zoning

Subdivisions may be permitted within a Shoreland Zone on approval of the Planning Board, after public hearing, and in accordance with the provisions of Div. II-19-1-7 of the *Zoning and Site Plan Review Ordinance* and the provisions of this ordinance.

Effective on: 1/24/2011

Sec. 7-16. Review and Approval by Other Agencies

Where review and approval of any subdivision by any other governmental agency is required, such approval shall be submitted to the Planning Board, in writing, prior to submission of a Final Plan.

Effective on: 1/24/2011

Sec. 7-17. Conflict with Other Ordinances or Regulations

Where a provision of this ordinance appears to be in conflict with any provision of any other ordinance, rule, regulation or statute, that provision which imposes the greater restriction and/or provides for the lesser density of land use shall have precedence.

Effective on: 1/24/2011

Sec. 7-18. Appeals

Appeals from decisions rendered by the Planning Board under this Ordinance shall be taken directly to Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure and no appeal shall lie from decisions of the Planning Board to the Board of Zoning Appeals or to the Falmouth Town Council. [Amended 7/25/88]

Effective on: 1/24/2011

Appendix 7-1 General Requirements

In reviewing applications for the subdivision of land, the Board shall consider the following general requirements. In all instances the burden of proof shall be upon the person proposing the subdivision.

A. Subdivision Plan Shall Conform to Comprehensive Plan

Any proposed subdivision shall be in conformity with a Comprehensive Plan or policy statement of the municipality and with the provisions of all pertinent state and local codes and ordinances.

B. Preservation of Natural and Historic Features

The Board may require that a proposed subdivision design include a landscape plan that will show the preservation of existing trees (10" dbh or more), the replacement of trees and vegetation, graded contours, streams and the preservation of scenic, historic or environmentally desirable areas. The street and lot layout shall be adapted to the topography. Extensive grading and filling shall be avoided as far as possible.

C. Lots Not Suitable for Development [Amended, 7/24/00]

The Board shall not approve for development or building any lots in proposed subdivisions that are:

1. Situated below sea level;
2. Located within the 100 year frequency flood plan as determined by the Falmouth Planning Board, based on information from an authorized federal or state agency, or when such identification is not available or adequate, based on information developed by a competent hydrologist and submitted by the applicant; and/or
3. Located on land which must be filled or drained or on land created by diverting a watercourse.
 - a. In making this determination, applicants shall be required to demonstrate that positive drainage can be achieved from foundation perimeter drains without significantly altering existing topography by raising lot grades. [Adopted, 7/24/00]
 - b. To ensure that important wetlands are not altered by foundation drainage systems and to discourage future filling of wetlands to create useable yard space, a minimum setback of fifty (50 ft.) feet shall be maintained between the upland edge of a wetland in excess of four thousand (4000 sq. ft.) square feet in area, whether on-site or off-site, and any structure. [Adopted, 7/24/00]
 - c. The wetland setback provision of subsection b. above shall not apply to the Exit 10 Master Planned Development District. [Adopted August 28, 2000]

D. Blocks

1. The length, width and shape of blocks shall be determined with due regard to:
 - a. Provisions of adequate building sites suitable to the special needs of the type of use contemplated.
 - b. Zoning requirements as to lot sizes and dimension.
 - c. Needs for convenient access, circulation, control and safety of street traffic.
 - d. Limitations and opportunities of topography.
2. Blocks shall not be less than 400 feet, nor more than 1200 feet in length except as the Planning Board considers necessary to secure the efficient use of land or desired features of street pattern. In blocks exceeding 800 feet in length, the Planning Board may require the reservation of a 20 foot wide deeded easement through the block to provide for the crossing of underground utilities and pedestrian traffic where needed or desirable and may further specify, at its discretion, that a 6 foot wide paved foot path be included. The

Planning Board shall require the subdivider to provide for the proper maintenance of any such easement.

E. Lots

1. The lot size, width, depth, shape and orientation and the minimum building setback lines shall be appropriate for the location of the subdivision and for the type of development and use contemplated.
(NOTE: The Board may exercise its judgment with regard to lot shape even though this exercise may cause the loss of a lot or have similar impacts on the development.)
2. Depth and width of properties reserved or laid out for all purposes shall be adequate to provide for off-street parking and service facilities for vehicles required by the type of use and development contemplated.
3. Double frontage lots and reverse frontage lots shall be avoided except where essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography and orientation. A planting screen easement of at least ten (10) feet, across which there shall be no right of access, shall be provided along the lines of lots abutting such a traffic artery of other disadvantageous use.
4. Side-lot lines shall be substantially at right angles or radial to street lines.
5. For developments subject to site plan review, the provisions of the *Falmouth Site Plan Review Ordinance* shall also apply. [Amended 12/22/05]

F. Easements for Natural Drainage Ways

1. Where a subdivision is traversed by a natural water course, drainage way, channel, or stream, there shall be provided a stormwater easement or drainage right-of-way conforming substantially with the lines of such water course and such further width or construction, or both, as will assure that no flooding occurs and all storm water can be disposed of properly. Such easement or right-of-way shall be not less than 30 feet in width.

G. Utilities

1. The size, type, and location of public utilities, such as street lights, electricity, telephones, gas lines, fire hydrants, etc., shall be approved by the Board and installed in accordance with sound engineering practice.
2. Utilities shall be installed underground in the RA, RB, RD and HL Districts and except as otherwise approved by the Board.

H. Additional Requirements

Street trees, esplanades, and buffer areas may be required by the Planning Board as necessary to insure compliance with the guidelines contained in Section 7-3, and the other provisions of this Ordinance. Where such improvements are required, they shall be incorporated in the Final Plan and executed by the subdivider as construction of the subdivision progresses. Invasive terrestrial plants as defined in Sec. 19-2 are prohibited.

I. Required Improvements

The following are required improvements: monuments, street signs, streets, sidewalks, water supply, sewage disposal and storm drainage, except where the Board may waive or vary such improvements in accordance with the provisions of this ordinance.

J. Special Flood Hazard Provisions

1. The Planning Board shall, when receiving and reviewing subdivisions assure that:

- a. All such proposals are consistent with the need to minimize flood damage; and
- b. All public utilities and facilities, such as sewer, gas, electrical and water systems, are located, elevated and constructed to minimize or eliminate flood damage; and
- c. Adequate drainage is provided so as to reduce exposure to flood hazards; and
- d. In the case of subdivision or other developments greater than 50 lots or 50 acres (whichever is the lesser), that all proposals include base flood elevation data.

K. Public or Communal Water Supplies

1. A public water supply with fire hydrants shall be installed at the expense of the subdivider.
2. The subdivider shall demonstrate by actual test or by a signed affidavit from an authorized representative of the servicing water company that water meeting *Public Health Service, Drinking Water Standards, 1962* can be supplied to the subdivision at the rate of at least 350 gallons per day per dwelling unit, and at an adequate pressure for fire fighting purposes.
3. Storage shall be provided as necessary to meet peak domestic demands and fire protection needs.
4. The subdivider shall demonstrate in the form of signed affidavits from the servicing water company or by engineering reports bearing the signature and seal of a civil engineer registered in the State of Maine, that the proposed subdivision will not result in an undue burden on the source, treatment facilities, or distribution system involved, or provide adequate assurance that such source, treatment facility, or distribution system will be modified to meet the expanded needs.
5. The minimum water-main permitted shall be 6 inches and shall be installed at the expense of the subdivider.
6. The water supply system shall be designed, and installed in accordance with requirements of the Maine Department of Human Services.
7. If a central water supply system is provided by the subdivider, location and protection of the source and design, construction, and operation of the distribution system and appurtenances and treatment facilities shall conform to the recommendations included in the *Manual for Evaluating Public Drinking Water Supplies, Public Health Service No. 1180 (1969)*.

L. Individual Water Supply

1. If, in the opinion of the Board, service to each lot by a public water supply is not feasible, the Board may allow individual wells to be used.
2. Where a developer elects to rely on individual, private wells for water supply to the proposed subdivision, the developer shall:
 - a. provide a registered hydrogeologist's report showing that sufficient water may reasonably be expected on the subdivided lots to support the uses intended; or
 - b. agree to provide a well which will yield an adequate supply of potable water on each lot before that lot is offered for sale.
3. The foregoing provisions notwithstanding, the Board may require a hydrogeologic evaluation where it is concerned about possible groundwater contamination or insufficient areawide groundwater supplies at the proposed subdivision site. The Board may also require the applicant to submit the results of water quality tests as performed by the Maine Department of Human Services, or another certified laboratory.

4. For all subdivisions where well water serves as the domestic water supply or where existing wells serve adjacent properties, the developer shall submit a hydrogeological evaluation demonstrating that the groundwater concentrations of nitrate as nitrogen meet the Maximum Contaminant Level standard of 10 mg/L of the EPA's *National Primary Drinking Water Regulations* at the project boundaries. Where past land activities, such as agriculture, indicate the potential for high background levels of nitrate nitrogen or other groundwater contaminants, the Planning Board may require testing to determine background levels and may place limitations on total groundwater discharges to ensure safe drinking water supplies for existing and/or proposed households. [Adopted 12/22/05]
5. All subdivision plans where wells are used shall contain notes and plan designations of well exclusion zones based on required well/septic system separations and nitrate plume locations established in hydrogeological evaluations required by the Planning Board. [Adopted 12/22/05]

M. Sewage Disposal

1. Sewage disposal shall conform to the regulations of "Sewerage Ordinance, ", the rules of the Maine Department of Environmental Protection and the Maine Subsurface Wastewater Disposal rules as appropriate.
2. In the case of on site sewerage disposal, the Planning Board shall require on site soils investigations prior to final approval. Such investigations may include the location of suitable sites for replacement subsurface sewage disposal facilities.
3. Individual or cluster septic systems may be located in the common open space of cluster and conservation subdivisions, provided that such septic systems are blended into the landscape so as to be unobtrusive and further provided that proper easements and maintenance agreements are in place to ensure long-term operation and replacement or rejuvenation of the system(s). [Adopted 12/22/05]
4. Cluster septic systems shall be constructed with dual filtration beds to provide for continuing operation while service or rejuvenation is being conducted. Cluster systems shall also be provided with an area for expansion and/or replacement of the system. As a further safeguard, no engineered septic systems shall be permitted in subdivisions. All cluster septic systems shall be operated and maintained in keeping with a plan approved by the Planning Board meeting the requirements of [Appendix 7-8](#) for common use facilities, and a sinking fund shall be established to cover the eventual cost of system replacement or rejuvenation. [Adopted 12/22/05]

N. Trails [Adopted 12/22/05]

For conservation subdivisions in the Resource Conservation Zoning Overlay District, a trail system shall be created within the common open space to provide access from the subdivision homes to the open space network created by the subdivision.

If an existing trail traverses the project site, the trail and a 50-foot corridor along it may be delineated as part of the common open space. Land area permanently designated for trails for public use may be credited toward the open space land requirement described in [Section 19-18.5 C.](#) of the Zoning and Site Plan Review Ordinance.

An applicant may propose and develop a new trail. If said trail is available for use by the general public and connects with an existing trail, the land area protected for said trail may be credited toward the open space land requirement described in [Section 19-18.5 C.](#) of the Zoning and Site Plan Review Ordinance.

Proposed trails shall conform to the following standards:

- a. Trail improvements shall demonstrate adherence to principles of quality trail design.
- b. Trails shall have a vertical clearance of not less than ten (10) feet.

- c. The width of the trail surface may vary depending upon type of use to be accommodated, but in no case shall it be less than three (3) feet or greater than six (6) feet.
- d. No trail shall be designed with the intent to accommodate motorized vehicles.

Effective on: 3/27/2017

Appendix 7-2 Preapplication Submissions [Adopted 11/22/93]

A. Site Inventory and Analysis

The site inventory and analysis is intended to provide both the applicant and the Planning Board with an understanding of the site and the opportunities and constraints to its use created by both the natural environment and the built environment. It is anticipated that by requiring this analysis, the resulting development plan will reflect the conditions of the site and that those areas most suitable for the proposed use will be utilized, while those that are not suitable or with significant constraints will be avoided to the maximum extent possible. Therefore, the submission requirements provide that both basic information about the site and an analysis of that information be submitted.

B. General Information

The site inventory and analysis submission shall contain, at a minimum, the following information:

- 1. Names and addresses of the record owner and the applicant;
- 2. Names and addresses of all consultants working on the project;
- 3. Names and addresses of all abutting property owners;
- 4. Evidence of right, title, or interest in the property, and,
- 5. Evidence of payment of the processing fee.

C. Site Inventory Plan

- 1. An accurate inventory plan of the parcel at a scale of not more than one hundred (100) feet to the inch in a number and format as determined by the Planning Department and showing as a minimum: [Amended 8/27/07]
 - a. Name of the property owner, north arrow, date, and scale;
 - b. Boundaries of the parcel;
 - c. Relationship of the site to the surrounding area (including distance to closest street intersection);
 - d. Topography of the site at an appropriate contour interval depending on the nature of the use and character of the site (in many cases, submittal of U.S.G.S. 10' contours will be adequate) identifying areas with slopes of 3 percent or less and areas with slopes in excess of 15 percent;
 - e. Hydrology of the site, including drainage courses, wetlands, streams, ponds, and flood plains.
 - f. Location and size of existing utilities or improvements servicing the site (if none, so state);
 - g. Existing buildings, structures, or other improvements on the site (if none, state so);
 - h. Existing restrictions or easements on the site (if none, state so); and,
 - i. Class B high intensity soil survey.

D. Site Analysis Sketch Plan

1. A site analysis sketch plan at the same scale as the inventory plan, highlighting the opportunities and constraints of the site. This plan, in a number and format as determined by the Planning Department, should indicate: [Amended 8/27/07]
 - a. Prime portions of the site that are suitable for development or use;
 - b. Portions of the site that are suitable for on-site sewage disposal if public sewerage is not available;
 - c. Areas of the site that have development limitations (steep slope, flat, soil constraints, wetlands, flood plains, drainage, etc.) which must be addressed in the development plan;
 - d. Suitable access points and routes for roads and utilities;
 - e. Areas where there may be off-site conflicts or concerns (i.e., noise, lighting, traffic, etc.); and
 - f. Primary and Secondary Conservation Areas for projects involving the creation of a conservation subdivision or that are located in the Resource Conservation Zoning Overlay District. [Adopted 12/22/05]

E. Site Analysis Narrative and Existing Resources Site Analysis Plan for Subdivisions located in the Resource Conservation Zoning Overlay District [Adopted 12/22/05]

1. Site Analysis Narrative

A Site Analysis Narrative prepared by a registered landscape architect shall be submitted, in a number and format as determined by the Planning Department, describing the existing conditions of the site, the constraints and opportunities created by the site, the open space conservation potential of the site, and the proposed development. This submission should include a narrative description of the existing road system that will provide access to the project and any issues related to traffic capacity, safety, sight distances, or other traffic considerations together with any preliminary studies done relative to the site including wetland delineations, traffic studies, market studies, or other information that will help the Board understand the project. [Amended 8/27/07]

2. Existing Resources and Site Analysis Plan

An Existing Resources and Site Analysis Plan in a number and format as determined by the Planning Department shall be prepared by a registered landscape architect to provide the developer and the municipality with a comprehensive analysis of existing conditions, both on the proposed development site and within 500 feet of the site. Conditions beyond the parcel boundaries may be described on the basis of existing published data available from governmental agencies, and from aerial photographs. [Amended 8/27/07]

The town shall review the plan to assess its accuracy, conformance with municipal ordinances, and likely impact upon the natural and cultural resources on the property. Unless otherwise specified by the Planning Board, such plans shall generally be prepared at the scale of 1" = 100' or 1" = 200', whichever would fit best on a single standard size sheet (24" x 36"). The following information shall be included in this Plan:

- a. A vertical aerial photograph enlarged to a scale not less detailed than 1 inch = 400 feet, with the site boundaries clearly marked.
- b. Topography, the contour lines of which shall generally be at two-foot intervals, determined by photogrammetry (although 5-foot intervals are permissible beyond the parcel boundaries, interpolated from contour maps provided by the town). The determination of appropriate contour intervals shall be made by the Planning Board,

which may specify greater or lesser intervals on exceptionally steep or flat sites. Slopes between 15 and 25 percent and exceeding 25 percent shall be clearly indicated. Topography for major subdivisions shall be prepared by a professional land surveyor or professional engineer from an actual field survey of the site or from stereoscopic aerial photography and shall be coordinated with official U.S.G.S. benchmarks.

- c. The location and delineation of ponds, streams, vernal pools and their upland habitats, ditches, drains, and natural drainage swales, as well as the 100-year floodplains and wetlands, as defined in the Zoning Ordinance. Additional areas of wetlands on the proposed development parcel shall also be indicated, as evident from testing, visual inspection, or from the presence of wetland vegetation.
- d. Vegetative cover conditions on the property according to general cover type including cultivated land, permanent grass land, meadow, pasture, old field, hedgerow, woodland and wetland, trees with a caliper in excess of fifteen inches, the actual canopy line of existing trees and woodlands. Vegetative types shall be described by plant community, relative age and condition.
- e. Soil series, types and phases, as mapped by a Class B high intensity soil survey and accompanying data published for each soil relating to its suitability for construction (and, in unsewered areas, for septic suitability).
- f. Ridge lines and watershed boundaries shall be identified.
- g. A viewshed analysis showing the location and extent of views into the property from public roads and from public parks, public forests, and state game lands.
- h. Geologic formations on the proposed development parcel, including rock outcroppings, cliffs, sinkholes, and fault lines, based on available published information or more detailed data obtained by the applicant.
- i. All existing man-made features including but not limited to streets, driveways, farm roads, woods roads, buildings, foundations, walls, wells, drainage fields, dumps, utilities, fire hydrants, and storm and sanitary sewers.
- j. Locations of all historically significant sites or structures on the tract, including but not limited to cellar holes, stone walls, earthworks, and graves.
- k. Locations of trails that have been in public use (pedestrian, equestrian, bicycle, etc.).
- l. All easements and other encumbrances of property which are or have been filed of record with the Cumberland County Registry of Deeds shall be shown on the plan.
- m. Total acreage of the tract, the Net Residential Area as determined in Section 19-64 of the Falmouth Zoning and Site Plan Review Ordinance, and the constrained land area with detailed supporting calculations.

Effective on: 1/24/2011

Appendix 7-3 Major Subdivision Submissions

A. Preliminary Plan Location Map

1. Location Map. The Preliminary Plan shall be accompanied by a Location Map drawn at a scale of not over one thousand (1000) feet to the inch to show the relation of the proposed subdivision to the adjacent properties and to the general surrounding area. The Preliminary Plan shall show all the area within one thousand (1000) feet of any property line of the proposed subdivision. Within such area the Location Map shall show:

- a. All existing subdivisions and approximate tract lines of adjacent parcels together with the names of the record owners of all adjacent parcels of land, those directly abutting or directly across any street adjoining the proposed subdivision.
- b. Locations, widths and names of existing, filed or proposed streets, easements, and building lines pertaining to the proposed subdivision and to the adjacent properties.
- c. The boundaries and designations of zoning districts, parks and other public spaces.
- d. An outline of the proposed subdivision, together with its street system and an indicating of the future probable street system of the remaining portion of the tract, if the Preliminary Plan submitted covers only part of the subdivider's entire holding.

B. Preliminary Plan Project Maps and Information

The Preliminary Subdivision Plan shall be submitted in a number and format as determined by the Planning Department with all dimensions shown in feet or decimals of a foot, drawn to a scale of 1 inch equals not more than one hundred (100) feet, or for plans describing construction of required improvements, a scale of one inch equals forty (40) feet; drawings not to exceed 24"x36". All plans shall be accompanied by the following information: [Amended 8/27/07]

1. Proposed subdivision name or identifying title and the name of the municipality.
2. Name and address of record owner, subdivider and designer of Preliminary Plan.
3. Date of plan submission, true north point and graphic scale.
4. Number of acres within the proposed subdivision, location of property lines, existing easements, buildings, watercourses and other essential existing physical features.
5. The names of all subdivisions immediately adjacent and the names of owners of record of adjacent acreage.
6. The space standard and setback provisions of the Zoning Ordinance applicable to the area to be subdivided and any zoning district boundaries affecting the subdivision.
7. The location and size of any existing or proposed sewers and water mains, culverts, hydrants, and drains on the property to be subdivided. This shall show the connections with existing sewer or water systems. Where public water and/or sewerage is not to be provided, alternative means of water supply and sewage treatment and disposal shall be shown.
8. If individual or collective private sewage disposal system(s) is (are) proposed, the location and results of tests to ascertain subsurface soils and ground water conditions signed and numbered by a licensed site evaluator.
9. Location, names and present and proposed widths of existing and proposed streets, highways, easements, building lines, alleys, parks and other public open spaces both within and abutting the subdivision. Grades and street profiles of all streets, sidewalks or other public ways proposed by the subdivider shall be shown.
10. Contour lines at intervals of five (5) feet or at such intervals as the Planning Board may require, based on United States Geological Survey datum and referred to mean sea level.
11. A soils report identifying the soils boundaries and names in accordance with the USDA Soils Conservation Service National Cooperative Soil Classification.
12. Department of Human Services, Division of Health Engineering approval shall be included for all subsurface wastewater disposal systems designed to handle 2000 gallons per day or more. For all underground sewage disposal systems serving more than one residence,

deeded rights to the system users for all properties to be used for the conveyance, treatment or disposal of sewage shall be presented in a form acceptable to the Planning Board. For all underground sewage disposal systems where sewage generated on one lot is treated on another lot, legal instruments providing the wastewater generator(s) with deeded rights to all components of the conveyance and disposal system which are acceptable to the Planning Board. For both such systems, deeded rights shall include the right of entry, inspection, repair and replacement.

13. Deed reference and map of survey of tract boundary made and certified by a registered land surveyor, tied into established reference points. Deed restrictions, if any, shall be described.
14. A surface drainage plan or stormwater management plan as required and defined in [Appendix 7-7](#) of this ordinance, with profiles and cross sections drawn by a professional engineer, registered in the State of , showing preliminary design of all facilities and conveyances necessary to meet the stormwater management standards as set forth in this ordinance.
15. The proposed lot lines with dimensions and suggested locations of buildings.
16. The location of temporary markers adequate to enable the Board to locate readily and appraise the basic layout in the field.
17. All parcels of land proposed to be dedicated to public use and the conditions of such dedication.
18. The location of all natural features or site elements to be preserved
19. Preliminary layout of any bridges required.
20. A grading and landscaping plan including natural features to be preserved.
Plans shall bear the seals or numbers of the registered professionals responsible for preparing appropriate sections of the plan. Site Inventory and Analysis Plans, Existing Resources and Site Analysis Plans, and landscaping plans shall be stamped by a registered landscape architect, surveys shall be stamped by a registered surveyor, engineering plans shall be stamped by registered professional engineer, soils surveys shall bear the numbers of a soil scientist, subsurface sewage disposal plans shall bear the number of the professional site evaluator responsible for those evaluations, geological evaluations shall bear a registered geologists number and architectural work shall bear the architect's seal.
[Amended 12/22/05]
Applications proposing the creation of a subdivision in the Resource Conservation Zoning Overlay District shall also submit the following additional information: [Adopted 12/22/05]
21. Documentation of the four-step design process for determining the layout of proposed conservation lands, house sites, streets, and lot lines, as described in [Appendix 7-9](#).
22. A Resource Impact and Conservation Plan in a number and format as determined by the Planning Department meeting the following requirements: [Amended 8/27/07]
 - a. The Resource Impact and Conservation Plan shall categorize the impacts of the proposed activities and physical alterations on those resources shown on the Existing Resources and Site Analysis Plan (as required under [Appendix 7-2](#), Section E. 2.). All proposed improvements, including, but not necessarily limited to grading, filling, streets, buildings, utilities, and stormwater detention facilities, as proposed in the preliminary plan and related documents, shall be taken into account in preparing the Resource Impact and Conservation Plan. This plan shall clearly demonstrate that the preliminary plan will minimize site disturbance and the impacts on identified resources to the greatest extent practicable.

- b. The Plan shall identify the potential impacts of the proposed development on identified resources, how the subdivision is being designed to minimize the impacts, and the activities that will be undertaken to mitigate any potential adverse impacts. The plan shall address the potential impacts on the following:
 - i. primary impact areas (i.e., areas directly impacted by the proposed subdivision),
 - ii. secondary impact areas (i.e., areas in proximity to primary areas that may be impacted), and
 - iii. designated protected areas including proposed common open space.
- c. This requirement for a Preliminary Resource Impact and Conservation Plan may be waived by the Board if, in its judgment, the proposed development areas, as laid out in the Sketch Plan or in the Conceptual Preliminary Plan would be likely to cause no more than an insignificant impact upon the site's resources.
- d. A Preliminary Common Open Space Ownership and Stewardship Plan, in a number and format as determined by the Planning Department, if the subdivision will include common open space, that includes, but shall not necessarily be limited to, the following: [Amended 8/27/07]
 - i. A description of all common open space and any other lands and facilities proposed to be owned by the Town, or a conservation organization, or a home owners association, or that will be permanently protected by conservation easements. This description shall include a map indicating the approximate location of these lands and facilities.
 - ii. A description of proposed ownership arrangements for the parcels identified in 1.
 - iii. A description of the proposed conservation restrictions that will permanently protect these parcels.
 - iv. A description of proposed arrangements for the long-term stewardship of the common open space including management objectives and techniques for each parcel or area together with an indication of who will have the primary and secondary responsibilities for this.

C. Final Plan Submissions

- 1. The Final Plan shall be submitted in a number and format as determined by the Planning Department. [Amended 8/27/07] Space shall be reserved thereon for endorsement by all appropriate agencies. The Final Plan shall show:
 - a. All of the information presented on the Preliminary Plan and Location Map and any amendments thereto required by the Board or otherwise added to the plan. Engineering plans submitted shall be final plans on which construction may be based.
 - b. The name, registration number and seal of the engineer, land surveyor, geologist, soil scientist, architect or planning consultant who prepared the plan.
 - c. Street names and lines, pedestrian ways, lanes, easements, rights-of-ways and areas to be reserved for or dedicated to public use.
 - d. The length of all straight lines, the deflection angles, radii, length of curves and central angles of all curves, tangent distance and tangent bearings for each street.
 - e. An actual field survey of the boundary lines of the tract, giving complete descriptive data by bearings and distances, made and certified by a licensed land surveyor. The

corners of the tract shall be located on the ground and marked by monuments as herein required, and shall be referenced as shown on the Plan.

- f. Sufficient data acceptable to the municipal officials 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.
 - g. The survey of the outside boundaries of the tract and the computation of the lot lines shall be performed to an accuracy of one foot in 5,000 feet. If requested by the Planning Board, the surveyor shall furnish copies of computation sheets for outside boundaries showing:
 - 1. sketch of traverse lines;
 - 2. closures;
 - 3. adjustments;
 - 4. coordinates; and
 - 5. computation of outside boundaries.
 - h. By proper designation, all public open space for which offers of cession are made by the subdivider and those spaces to which title is reserved by him.
 - i. Lots and blocks within the subdivision numbered in accordance with local practice.
2. There shall be submitted to the Board with the Final Plan:
- a. A Final Common Open Space Ownership and Stewardship Plan, in a number and format as determined by the Planning Department if the subdivision will include common open space, that documents compliance with the provisions of [Appendix 7-8](#). Ownership, Operation, and Maintenance of Common Use Facilities. [Amended 12/22/05] [Amended 8/27/07]
 - b. Where conveyance of public open space or easements to the Town is contemplated, a written offer to make such conveyance to the Town, and written evidence that the Municipal Officers are willing to accept such conveyances and are satisfied with the terms and conditions of the proposed conveyance and with the legal sufficiency of the proposed transfer documents. Such written evidence shall not constitute an acceptance by the municipality of any such public open space.
 - c. A performance guarantee to secure completion of all improvements required by the Board in accordance with the requirements of this ordinance.

Effective on: 1/24/2011

Appendix 7-4 Minor Subdivision Submissions

- A. The subdivision plan for a Minor Subdivision shall be submitted in a number and format as determined by the Planning Department, and drawn to a scale of not more than forty (40) feet to the inch.[Amended 8/27/07]
- Such sheets shall have a margin of two (2) inches outside of the border lines on the left side for binding and a one (1) inch margin outside the border along the remaining sides. Space shall be reserved thereon for endorsement by all appropriate agencies. The application for approval of a Minor Subdivision shall include all the following information:

1. Proposed name of the subdivision or identifying title, and the name of the municipality in which it is located.
2. The date of submission, north point, graphic map scale, name and address of record owner and subdivider, and names of adjoining property owners.
3. Locations, widths and names of existing, filed or proposed streets, easements, and building lines pertaining to the proposed subdivision and to the adjacent properties.
4. The boundaries and designations of zoning districts, parks and other public spaces.
5. An actual field survey of the boundary lines of the tract, giving complete descriptive data by bearings and distances, made and certified by a license land surveyor. The corners of the tract shall be located on the ground and marked by monuments as herein required, and shall be referenced as shown on the Plan. The survey plan shall show dimensions and areas of each proposed lot.
6. Sufficient data to readily determine 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.
7. The survey of the outside boundaries of the tract and the computation of the lot lines shall be performed to an accuracy of one foot in 5,000 feet. If requested by the Planning Board, the surveyor shall furnish copies of computation sheets for outside boundaries showing:
 - a. sketch of traverse lines;
 - b. closures;
 - c. adjustments;
 - d. coordinates; and
 - e. computation of outside boundaries.
8. Contour lines at intervals of five (5) feet or at such intervals as the Planning Board may require, based on United States Geological Survey datum, referenced to mean sea level. Surface drainage patterns including drainage channels and watershed areas shall be shown.
9. A soils report identifying the soils boundaries and names in the proposed development with the soils information superimposed upon the plot plan in accord with the USDA Soil Conservation Service National Cooperative Soil Classification.
10. All on-site public or communal sewerage and water supply facilities shall be shown and designed to meet the minimum specifications of these standards and all pertinent state and local ordinances. Compliance shall be stated on the Plan and signed by a licensed site evaluator.
11. A surface drainage plan or stormwater management plan as required and defined in Section B of [Appendix 7-7](#) of this ordinance, 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.
12. Electrical facilities.
13. A copy of such covenants or deed restrictions as are intended to cover all or part of the tract.
14. Any other data as determined by the Planning Board to ascertain compliance with Section [7-3](#) or this ordinance.

15. There shall be submitted to the Board with the Final Plan:
- a. Written offers of cession to the Municipality of all easements and public open space shown on the Plan, and copies of agreements or other documents showing the manner in which spaces, title to which is reserved by the subdivider, are to be maintained.
 - b. Written evidence that the Municipal Officers or their appointed agent are satisfied with the legal sufficiency of the documents referred to in Paragraph a., above. Such written evidence shall not constitute an acceptance by the municipality of any public open space referred to in this Appendix.
 - c. A performance guarantee to secure completion of all improvements required by the Board and written evidence that the municipal officials are satisfied with the sufficiency of such guarantee.
 - d. Documentation of the four-step design process for determining the layout of proposed conservation lands, house sites, streets, and lot lines, as described in [Appendix 7-9](#) if the subdivision is located in the Resource Conservation Zoning Overlay District. [Adopted 12/22/05]
 - e. A Common Open Space Ownership and Stewardship Plan, in a number and format as determined by the Planning Department, if the subdivision will include common open space, that documents compliance with the provisions of [Appendix 7-8](#). Ownership, Operation, and Maintenance of Common Use Facilities. [Adopted 12/22/05] [Amended 8/27/07]

Effective on: 1/24/2011

Appendix 7-5 Street Standards

A. Street Names and Signs

1. Streets which join or are in alignment with streets of abutting or neighboring properties shall bear the same name. Names of new streets shall not duplicate nor bear phonetic resemblance to the names of existing streets within the municipality and shall be subject to the approval of the Board.
2. Street name sign shall be furnished and installed by the subdivider. The type, size and location shall be reviewed by the Town Engineer prior to approval by the Planning Board. [Street name signs are exempt from Section 19-44 of this code.](#)

B. Street Classifications [Amended 5/22/89; 6/16/97]

1. Street classification shall be based on the street's ultimate purpose or use as determined by the Planning Board after considering the location of the proposed street and the number and the nature of the uses to be served by the proposed street, both within and outside the proposed subdivision and any anticipated traffic resulting from interconnection with other streets. Dwelling unit figures are provided as an aid to the Planning Board.
 - a. Arterial Street - Falmouth's arterials are U.S. Route 1 and U.S. 100 (the Gray Road). These major streets serve to carry high volumes of traffic into, through, and out of the Town.
 - b. Collector - A street whose principal function is to carry traffic between minor, local, subcollector, and arterial streets, but that may also provide direct access to abutting properties. It serves or is designed to serve, directly or indirectly, more than 100 dwelling units and is designed to be used, or is used to carry, more than 1000 trips per day.

- c. Subcollector - A street whose principal function is to provide access to abutting properties, but is also designed to be used or is used to connect minor and local streets with collector or arterial streets. Including residences indirectly served through connecting streets, it serves or is designed to serve at least 26 but not more than 100 dwelling units, and is expected to, or does handle, between 260 and 1000 trips per day.
- d. Local - A street whose sole function is to provide access to abutting properties. It serves or is designed to serve at least 10 but no more than 25 dwelling units, and is expected to, or does handle, between 100 and 250 trips per day.
- e. Minor Local - A street whose sole function is to provide access to abutting properties. It serves or is designed to serve not more than nine (9) dwelling units, and is expected to, or does handle, up to 99 trips per day.
- f. Street classifications for multifamily residential or non-residential uses are determined by trip generation figures for various uses indicated in the most current edition of the Institute of Traffic Engineers' Transportation and Traffic Engineering Handbook (Hornburger, Keefer, & McGrath, eds., Prentice-Hall, Inc., Englewood Cliffs, N.J.).
- g. In determining the classification of streets where a loop configuration is formed, the classification should be based on an analysis of routes and destinations on individual road segments rather than the full street length. [Adopted 6/16/97]

C. Coordination of New Streets with Surrounding Street System [Adopted 6/16/97]

- 1. The street system of a subdivision should be coordinated with existing, proposed, and anticipated streets outside the subdivision.
- 2. Collector streets should intersect with surrounding collector or arterial streets at safe and convenient locations.
- 3. Subcollector, local, and minor local streets should connect with surrounding streets where necessary to permit convenient movement between residential neighborhoods, to diffuse traffic impacts on the external street system, to allow looping of public utility services, and to provide alternative access to emergency vehicles. Connections shall in any event be provided for but should not be required to actually be constructed where such connection shall cause unreasonable highway or public road congestion, or unsafe conditions with respect to use of the highways or public roads (existing or proposed) that cannot be mitigated through reasonable means (reasonable means shall include but not be limited to relocating the entrance to the proposed road; altering the design or routing of the proposed road; or use of mini-roundabouts or other traffic calming measures) . [Amended 4/26/04]
- 4. Whenever connections to anticipated or proposed surrounding streets are required by this section, the street right of way shall be extended to the property line at the point where the future connection is expected. The Planning Board may require pre-application analysis of adjacent lands to determine suitable connection points. Temporary turnarounds shall be constructed where appropriate.
- 5. Whenever a subdivision street continues an existing street that formerly terminated outside the subdivision, or it is expected that a subdivision street will be continued beyond the subdivision at some future time, the classification of the street will be based upon the street in its entirety, both within and outside of the subdivision.
- 6. In the event that a higher street classification is required because of off-site street upgrades or potential extensions, the developer(s) is (are) eligible for a negotiated exactions agreement under Section 7-12. D. of the Subdivision Ordinance, so that subsequent developers that connect to the street(s) shall pay a proportional share of the added construction costs.

D. Private Streets and Reserve Strips:

1. There shall be no reserve strips controlling access to streets, except where the control of such strips is placed with the Town under conditions approved by the Planning Board.
2. Private streets may be approved by the Planning Board if they meet the street standards set forth in this ordinance, except that subdivisions of 5 lots or less may be approved with unpaved private streets, provided that all other design requirements are met and the plan contains a note to the effect that the Town cannot accept the street until it is brought into conformance with all street standards.
3. Minor subdivisions containing 3 lots or less may be approved with unpaved private ways, providing that all design requirements of Section 19-60 of the Zoning and Site Plan Review Ordinance are met. Private ways are not, however, permitted in major subdivisions as a means to create additional rear lots. [Adopted, 4/24/00]

E. Street Design Standards [Amended 5/22/89, 6/16/97]1. Dimensions for Street Construction.

All streets shall be designed to conform to the standards and schematic drawings contained herein.

Descriptions	Type of Street	
	Collector/Subcollector	Local Minor
Minimum Right-of-Way Width	60'	50'
Shoulder Width	6'	4'
Minimum Grade	0.5%	0.5%
Maximum Grade	8%*	8%*
Minimum Centerline Radius	230'**	150'***

* Road sections of less than 500' lengths can add 1% to the maximum grade, provided that such sections of 9% grade are separated by a minimum distance of 500'.

** For road sections with more that 5% grade, add 50' to the centerline radius for every 1% of grade over 5%.

Descriptions	Type of Street	
	Collector/Subcollector	Local Minor
Minimum Tangent Between Curves of Reverse Alignment	200'	100'
Roadway Crown	¼"/ft.	¼"/ft.
Minimum Angle of Street Intersections	60	60
K Factor - Crest Vertical Curve	30	15
K Factor - Sag Vertical Curve	35	20
Design Speed - MPH	30	25
Maximum Grade at Intersections (within 75' of intersection)	3%	3%
Curb Radii at 90 Intersections	20'	15'
Curb Radii at 60 to 90 Intersections	30'	30'
Curb Radii at 90 to 120 Intersections	40'	30'
Minimum Property Line Radii at Intersections	10'	10'
Sidewalk Width	4'	4'

2. Sight distances - Minimum safe sight distances at intersections shall be determined by analyzing the streets per the standards of the Transportation and Traffic Engineering Handbook. New street entrances onto arterials, collectors, or subcollectors shall require a full traffic study, unless waived by the Planning Board upon recommendation of the Town Engineer. [Amended 5/22/89].
3. Minimum Distance Between Intersections - New street entrances onto existing or proposed streets shall be separated per the table below:

	Arterial	Collector/Subcollector	Local/Minor
Minimum Distance Between Intersections			
Same Side	400'	400'	300'
Opposite Sides	300'	250'	150'

4. Pavement Widths and Sidewalks - Pavement width and sidewalk requirements for each of the street construction classifications shall be as indicated in the following table: [Amended 5/22/89].

Street Type	Minimum Pavement Width (in feet)	Sidewalk Requirement*
Collector	34'	One side
Subcollector	30'	One side
Local	24'	One side
Minor local	22'	None

* Sidewalks may be waived by the Planning Board in the RC and FF Districts

5. Dead End Streets

- a. This section applies to local and minor local streets only. Dead end streets are permitted to provide access to residential neighborhoods in a way that discourages through traffic, limits travel distances from residences to collector roads, keeps traffic volumes and speeds low, and provides a quiet neighborhood setting. To achieve these goals while developing a coordinated street network as described in Subsection (C) of this appendix, dead ends should only be used in locations where it is unlikely that there will be a need for interconnections between adjacent subdivisions and the existing or proposed street network.
In those cases where the Planning Board allows a dead end street with no through connection for vehicular traffic, the Board shall require pedestrian and bicycle connections. [Amended 6/16/97, 4/26/04]
- b. Presentation of special design, discussion and written permission by the Planning Board shall be a requirement for those conditions that may require a dead end street under the category of Subcollector, Collector, Industrial, or Commercial. [Amended 6/16/97]
- c. Maximum length of Dead End Street: 1500 feet measured from the centerline of feeder street to center of turnaround. In those cases where on or off-site street configurations create an effective dead end condition, the dead end length is measured from the point where only one means of access exists and extends over the intervening roadway length(s) to the point of turnaround. [Amended 6/16/97]
- d. Maximum length of Dead End Street in RC and FF Districts shall be 1500 feet with a maximum of fifteen (15) single family homes or less, based upon an evaluation by the Planning Board of site conditions. [Amended 6/16/97]
- e. Radii of cul-de-sac turnaround at end: [Amended 5/22/89, 7/22/91, 6/16/97]

Property Line	75'
Outer Edge of pavement	60'
Inner Edge of pavement	42'

- f. The Planning Board may allow the use of an alternative turnaround design per the following requirements [Amended 6/16/97]:

Dimension of turnaround at end:

Distance from street end 50'

Dimensions of easement 50' x 50'

Dimensions of pavement 22' x 40'

- g. The maximum dead end length in conservation subdivisions may be waived by the Planning Board upon a finding that the waiver is needed due to the remote location of optimum building sites as determined by the four-step design process of [Appendix 7-9](#), and provided that at least two paper street locations are established for interconnection with existing or potential adjacent development(s). The requirement for multiple paper streets may be reduced or eliminated upon a showing that the establishment of such interconnection(s) is precluded by physical barriers that cannot be surmounted by standard construction practices, or that adjacent parcels are fully developed with no provision for street interconnection. [Adopted 12/22/05]
6. Rural Road Design for Conservation Subdivisions [Adopted 12/22/05]
The overriding theme is to allow and encourage flexibility in the application of road design standards to meet the specific needs of individual sites. In general, roads would be required to follow and work with the natural topography rather than altering it to produce straighter, gently sloping road grades.
- a. Objectives for New Rural Roads
- Design with creativity and sensitivity to minimize impacts on scenic, open space, archaeological, social, cultural, and environmental resources;
 - Reduce emphasis on automobile mobility and efficiency and put more emphasis on land access and fitting into the natural surroundings; and,
 - Increase flexibility and sensitivity to the context and unique character of the site, the surrounding landscape, and the vision for the property being developed.
- b. Guidelines for Road Planning
- Horizontal road alignments should work with the topography and existing site conditions to follow the natural contours and avoid physical features that give the land its character.
 - Where feasible, proposed roads should follow existing dirt/gravel roads, especially when they have value as a local historic resource.
 - Where existing roads must be widened to accommodate increased traffic volumes, care should be taken to preserve mature roadside trees and other features which contribute to the road's character.
 - Open fields, agricultural lands, and sensitive habitats should be crossed at the edges, preferably along hedgerows and tree lines. Roadways should be avoided bisecting fields.
 - When roads cross significant viewsheds in open fields, consideration should be given to design approaches that will minimize their visual impact. These may include earth berms (designed with gently tapered side slopes), landscape screening using

native shrubs, and 'ha-ha's' (an old English tradition which puts the roadway in a slight depression and out of view).

- vi. In unusual situations it may be advantageous to split the roadway to preserve significant trees, rock outcrops, and similar features. Care must be taken in these situations to minimize root disturbance and maintain a suitable setback between the edge of the pavement and the object being preserved.
- vii. The view FROM the roadway should be considered as well as the view OF the road.

c. Guidelines for Road Construction /Details

- i. Grading easements or wider than normal rights of way can be effective to blend the side slopes into the existing topography.
- ii. Where drainage culverts are visible, the ends should be cut off to follow the contour of the surrounding grade and/or covered with stone.
- iii. Guardrails should be constructed of wood or self-oxidized steel to avoid a harsh industrial appearance.
- iv. Steep slopes adjacent to roadway should be stabilized with hardy groundcovers and native plantings following current bioengineering practice.
- v. Where rip rap must be used to stabilize slopes and protect stream channels, it should be hand placed (not dumped) and constructed of native stone. The use of freshly crushed stone with a high level of color contrast should be avoided.
- vi. Where stone walls must be crossed, the ends should be rebuilt in keeping with local stone wall construction. Stones disturbed during construction should be stockpiled for later re-use in the subdivision as a way of preserving the character of the landscape.

d. Modification of Engineering Standards

In order to meet the guidelines of subsections b. and c. above, the following subdivision standards may be modified with Planning Board approval to the extent necessary to accomplish the stated guidelines and objectives:

- i. Road curvature (horizontal and vertical);
- ii. Distance between reverse curves;
- iii. Road grade limits;
- iv. Limits of clearing; and,
- v. Drainage.

7. Pavement Design

The Subdivider shall be required to investigate and determine the types and classifications of the sub-base soils. Computations shall be made to determine pavement design standards for construction, which shall be submitted for review by the Public Works Director. If, during construction, subsurface soils vary from original classifications, pavement design shall be modified to meet the new classification. Revised pavement shall be modified to meet the new classification. Revised pavement design shall be submitted to the Public Works Director for approval.

F. Roadway Construction Materials Standards

- 1. Roadway construction materials standards as specified herein shall conform to the current specifications of the Maine Department of Transportation.

2. Standards and dimensions tabulated herein shall be considered as minimum.
3. Minimum Thickness of Materials after Compaction:

Street Materials	Arterial	Collector	Minimum Requirements Local Street
Aggregate Sub-base Course (max. sized stone - 3")	18"	16"	14"
Crushed Aggregate Base Course	6"	4"	3"
Hot Bituminous Pavement	3"	3"	3"
Total Thickness	1 ¼"	1"	1"
Surface Course	1 ¾"	2"	2"
Base Course			
(a) Reinforced Portland Cement Sidewalks: Sand Base Portland Cement Concrete w/mesh\	6" 4"	6" 4"	N/A N/A

Curbing Materials	
(a) Granite Stone Curbing	Type 1
(b) Precast Portland Cement Concrete Curbing	Type 2
(c) Granite Stone Edging	Type 5
(d) Bituminous Concrete Curbing	Type 3

NOTE: Although a variety of benefits are frequently claimed for curbing (ITE 1965), the only two functions that are of major importance are for stormwater control and to protect the pavement edge from unraveling along parking lanes or in very intensive developments where heavy use may erode the planted area at the edge of the pavement. Consequently, curbing should be required wherever on-street parking is anticipated and whenever soil conditions and slopes require that stormwater be channeled along the curb. The latter will need to be determined on a site-by-site drainage and stormwater control plan analysis.

G. Street Construction Standards

1. Grading

All streets, roads and alleys shall be graded to their full width by the subdivider so that pavements and sidewalks can be constructed on parallel profiles. Due to special topographical conditions, deviation from the above will be allowed only with special approval of the Planning Board.

a. Preparation

Before grading is started, the entire right-of-way area shall be cleared of all stumps, roots, brush and other objectionable material and all trees not intended for preservation.

b. Cuts

Tree stumps and other organic materials shall be removed to a depth of 2 feet below the subgrade. Rock and boulders, when encountered, shall be scarified to subgrade.

c. Fill

All material used in the construction of embankments shall be of the quality to meet the standards for embankment of Transportation Standard Specifications. Excess materials including organic materials, soft clays, wet and noncompactible materials, etc., shall be removed from the street site. The fill shall be spread in layers not to exceed 12" loose and compacted: 80% of optimum for sub-base, 95% of optimum for base. The filling of utility trenches and other places shall be mechanically tamped.

d. Side Slopes

All side slopes shall be at a slope of 4 horizontal to 1 vertical except for rural design local streets which may have maximum side slopes of 3 horizontal to 1 vertical. Where cut and fill slopes necessary to meet this and other standards would exceed the right of way width, the right of way width shall be increased to cover all such cut and fill land and to provide adequate space for maintenance access. Slopes and shoulders shall be appropriately vegetated in accordance with an erosion control plan as required in [Appendix 7-7](#) of this Ordinance.

2. Bases and Pavement

The appropriate sections of the Bases and Pavements Divisions of the Maine Department of Transportation Standard Specifications currently in effect at the date of submission of the preliminary plan shall be applicable to this section except as follows:

Bases

a. Aggregate Sub-base Course - Gravel

Aggregate sub-base shall not contain particles of rock exceeding 3" in any dimension.

b. Aggregate Base Course - Crushed

Aggregate base shall not contain particles of rock that will not pass the 2" square sieve.

Pavement

c. Where pavement placed joins an existing pavement, the existing pavement shall be saw cut along a smooth line and to a neat, even vertical joint. No broken or raveled edges and no deviation from grade will be permitted.

d. Grading for the surface course of Hot Bituminous Pavement (Grading C-1) shall be as follows:

Sieve Designation	% By Weight Passing Square Mesh Sieves Grading C-1
½"	100
3/8"	75-100
No. 4	50-85
No. 8	35-70
No. 16	23-57
No. 30	15-44
No. 50	10-30
No. 100	6-22
No. 200	3-8

e. Grading for the base course of Hot Bituminous Pavement shall meet the requirements for Binder, Grading B.

3. Curbing

Section 609 of the Maine State Highway Commission Standard Specifications, revision of June 1968, shall be applicable to this section except as follows:

- a. Curbing shall be limited to Type 1, Type 2, Type 3, and Type 5.
 - b. Vertical or sloped curbing shall be used in accordance with the design standards set forth herein for the particular type of street.
4. Sidewalks
Section 608 of the Maine State Highway Commission Standards Specifications, revision of June, 1968, shall be applicable to this section.
All driveway aprons shall be paved with 2" of bituminous concrete from the gutter side or edge of street pavement to the street right-of-way.

H. Monuments

1. Concrete monuments 4" in diameter or square, 4' long with a flat top shall be set at all street corners, at all points where the street line intersects the exterior of the subdivisions and at angle points and points of curve in each street and on each side of the streets. The top of the monument shall have an indented cross to identify properly the location and shall be set flush with the finished grade.
2. All other lot corners shall be marked with iron pipe not less than 3/4" in diameter and 24" long and driven so as to be flush with the finished grade.

I. Street and Storm Drainage Plans

Construction plans for streets and storm drainage systems shall be designed and prepared by a professional engineer registered in the State of Maine. Plans shall show the plan, profile, cross sections and details of appurtenances. [Amended 8/27/07]

No construction will be permitted until the Planning Board has approved construction drawings. The developer is alerted to other approvals and permits which are required prior to construction. Upon completion of construction and prior to acceptance of the streets, a final set of reproducible record drawings will be required.

Effective on: 7/24/2017

Appendix 7-6 Inspection of Required Improvements

A. Monumentation

Granite monuments shall be set at all outside corners off the proposed subdivision tract and checked by the Public Works Director prior to final approval. A minimum of three (3) granite monuments shall be set at appropriate corners of the perimeter of the proposed subdivision tract and subject to the approval of the Public Works Director. All granite monuments shall be four (4) feet long and six (6) inches above ground, except in lawns, drives, and parking lots where they shall be flush. If the subsurface is ledge between one (1) and four (4) feet deep, a two-foot diameter concrete encasement based on the ledge shall be required. If the ledge is less than one (1) foot deep, a one inch steel rod shall be grouted into the ledge. The position of any monument shall be the sole responsibility of the surveyor(s).

B. Street Signs

Street name signs shall be installed at all street intersections in accordance with the design and specifications set forth by the Public Works Director. All costs incurred, including but not limited to, the cost of the sign and installation costs, shall be at the developer's expense.

C. Field Changes

If at any time before or during the construction of the required improvements the subdivider demonstrates to the satisfaction of the Public Works Director that unforeseen field conditions make it necessary to make de minimus (minor) adjustments in the location or design of such required improvements, the Public Works Director may authorize such de minimus modifications, provided they are within the spirit and intent of the Planning Board's approval and do not waive or substantially alter the requirements of the Board or result in any violation of the Ordinances of the Town of Falmouth.

The Public Works Director shall issue any authorization under this section in writing and shall transmit a copy of such authorization to the Planning Board at its next regular meeting. The Planning Board may require that notice of such de minimus modifications be shown on an "as built" plan and be recorded in the Cumberland County Registry of Deeds.

D. Maintenance of Improvements

If the Town Manager shall find, upon inspection of the improvements performed before the expiration date of the performance guarantee, that any of the required improvements have not been constructed in accordance with plans and specifications filed by the subdivider, he shall so report to the Board and Council. The Municipal Officers shall then notify the subdivider and, if necessary, the financial institution, and take all necessary steps to preserve the municipality's rights under the guarantee. No plan shall be approved by the Planning Board as long as the subdivider is in default on a previously approved Plan.

E. Actions Against Performance Guarantees

The subdivider shall be responsible for all maintenance, such as but not limited to, snow removal, utility lines, street repair, and surface drainage, prior to official acceptance by the Town.

F. Release of Performance Guarantees

Before a subdivider may be released from any obligations required by his guarantee of performance, the Town Manager shall certify that all improvements have been satisfactorily completed in accordance with all applicable standards, state and local codes and ordinances.

Effective on: 1/24/2011

Appendix 7-7 Stormwater Management

A. Intent

An adequate stormwater control and conveyance system shall be provided, including appurtenances such as sediment and detention basins, manholes and piped or professionally designed ditch conveyance systems, to assure that stormwaters discharged from the site are in compliance with the guidelines contained in Section 7-3 and all other requirements of this ordinance.

B. Stormwater Management Plan Required

All Subdivision Applications shall contain a surface drainage plan with profiles and cross sections drawn by a registered professional engineer. This plan shall show ditches, culverts, easements, and other proposed improvements, with the statement in writing attached to the drainage plan indicating that the proposed subdivision will not create erosion, drainage, or runoff problems either in the subdivision or in adjacent properties, and file with the Planning Board properly executed easements as required by the Public Works Director. The plan shall also contain a soil erosion and sediment control plan meeting the requirements of Section 19-72 of the Zoning and Site Plan Review Ordinance and containing the endorsement of the Cumberland County Soil and Water Conservation District. The plan shall also include a post-construction monitoring plan pursuant to Section 19-72A of the Zoning and Site Plan Review Ordinance. [Amended 9/22/03; 9/14/09]

Applications submitted pursuant to this ordinance for projects which will expose more than 60,000 square feet of soil at one time or which will produce more than 10,000 square feet of additional impervious surface must submit a stormwater management plan to the Planning Board for its review and approval, unless the development's storm sewer or ditch network discharges directly into the Presumpscot River or the Atlantic Ocean. Stormwater management plans shall conform to the requirements for a surface drainage plan and shall also meet the requirements of Section 3 of this Appendix.

C. Performance Standards

Stormwater Management Plans shall show means whereby the peak discharge for the developed site shall not exceed the peak discharge for the undeveloped site for the 2, 10, and 100 year storm. Sediments and other pollutants shall be limited, through appropriate management practices, to prevent adverse downstream water quality impacts. Regulations specifying hydraulic calculation techniques and design standards for facilities to achieve this performance standard may be adopted by the order of the Council.

D. Design Standards

1. All stormwater systems within the subdivisions shall be designed to meet the criteria of the performance standards based on rainfall data from weather bureau records in Portland. Flows shall be computed by appropriate professional methods with design computations being submitted for approval.
2. Upstream drainage shall be accomplished by an adequately sized system through the proposed subdivision for existing conditions and future potential development in the upstream drainage area or areas tributary to the proposed subdivision, as determined by the Planning Board.
3. Existing downstream drainage facilities shall be studied to determine the effect of the proposed subdivision's drainage. The developer shall demonstrate to the satisfaction of the Planning Board that the storm drainage from the proposed subdivision will not, in any way, overload or damage existing storm drainage systems downstream from the proposed subdivision.
4. 300 feet shall be considered as the maximum length for carrying open storm water in a street gutter prior to intake at a catch basin for all zones except the Farm and Forest Zone. No stormwater will be permitted to drain across a street or across an intersection.
5. Minimum pipe size for any storm drainage pipe shall be 12 inches.
6. Where open ditches, channels, streams or natural drainage courses are used, either to collect or discharge stormwater, adequately sized perpetual easements shall be provided. Minimum width shall be 30 feet. Approval of the Planning Board shall be required for any open storm drainage system.
7. Where subsurface soils are of the nature requiring an underdrainage system, underdrains shall be installed so that they are discharged by gravity.
8. House foundation drains may be connected to the storm drainage system upon approval by and under the direction of the Public Works Director.
9. All pipe shall be designed to flow at a velocity of two fps. When flowing $\frac{1}{4}$ full.

E. Storm Drainage Construction Standards

1. Materials:

The following types of new material shall be utilized for storm drain construction:

- a. Reinforced Concrete Pipe - Reinforced Concrete Pipe shall meet the requirements of ASTM Designation C-76. Pipe classes of safety of 1.2 on the 0.01 inch crack strength with

a class B bedding. Joins shall be of the rubber gasket type meeting ASTM Designation C 443-70, or of an approved preformed plastic jointing material such as "Ramnek".

- b. Underdrain Pipe - Underdrain Pipe may be of perforated bituminous coated corrugated metal or other pipe meeting similar requirements to that of standard drain pipe.
- c. Catch Basins - Catch Basins shall be of precast concrete construction. Castings shall be square cast iron cascade grate and frame as required for the particular inlet condition with the gratings perpendicular to the curb line. All catch basins shall be provided with a Type I curb face inlet. Precast sections shall meet the requirements of ASTM Designation C-478 and C-76.

F. General Construction Requirements

1. Trenching - All trenching shall be accomplished in accordance with all appropriate state and federal requirements.
2. Maximum trench width at the pipe crown shall be the outside diameter of the pipe plus 2 feet.
3. Pipe shall be bedded in a granular material with a minimum depth of 6 inches below the bottom of the pipe and extending to 6 inches above the top of the pipe.
4. Drain alignment shall be straight in both horizontal and vertical alignment, unless specific approval of a curvilinear drain is obtained in writing from the Planning Board.
5. Catch basins shall be provided at all changes in vertical or horizontal alignments, and at all junctions. On straight runs, catch basins shall be placed at a maximum of 400 foot intervals.
6. All drain outlets shall be terminated in an endwall of concrete construction, or shall be rippedraped to prevent erosion. Facilities for energy dissipation shall be provided.
7. Underdrains shall be laid with perforation down.

Effective on: 1/24/2011

Appendix 7-8 Ownership, Operation, and Maintenance of Common Use Facilities

A. Definitions

The following terms shall have the following definitions for the purposes of this [Appendix 7-8](#):

1. Private Common Use Improvements

Privately owned improvements to a subdivision which will be commonly used by more than one separately owned dwelling, lot, unit, or building. Such improvements may include, but are not limited to, private streets, private wastewater disposal systems, private water supply systems, or private recreational facilities in or for common use.

2. Developer

Any person, firm, corporation, or other entity proposing to establish one or more private common use improvements designed and intended to serve more than one dwelling, lot, unit, or building, including an Association of owners of adjacent developed properties.

3. Owner

The record owner of a dwelling, lot, unit, or building served or to be served by private common use improvements.

B. Private Common Use Improvements Permitted

No private common use improvements shall be permitted unless the owner or owners of all properties to be served thereby are or will be made parties to, and their properties made subject to, an effective recorded declaration or agreement (hereinafter the "Declaration") in a form satisfactory to the Planning Board providing for the continuous maintenance, operation, management, and eventual replacement of such private common use improvements in accordance with the terms of this [Appendix 7-8](#) and the guidelines contained in [Section 7-3](#), the provisions of such Declaration to be covenants which run with the land of each such owner.

C. Establishment of Association

In order to ensure that a subdivision remain in compliance with the guidelines contained in [Section 7-3](#) and the other requirements of this ordinance, the Planning Board may require that the declaration shall provide for the formation of a non-profit Maine corporation which shall be a compulsory Association of all owners from time of all properties to be served by the private common use improvements. Such Association shall be provided with sufficient funds by the developer to meet its anticipated expenses for one year after the date on which the management of the Association is to be turned over to the owners of the dwellings, lots, units, or buildings to be served.

D. Management by Developer

Until the management of the Association is turned over to the owners of the dwellings, lots, units, or buildings to be served by the private common use improvements, all of the duties and responsibilities of the Association and all of its rights and powers, including the assessments and collection of charges, shall be exercised by the developer.

E. Condition of Improvements

At the time that responsibility for the private common use improvements is transferred to the Association, all components of such private common use improvements shall be in good operating order and condition and in compliance with all applicable laws, codes, and regulations. The Association shall not divest itself of responsibility for such private common use improvements except (1) to a duly constituted, responsible public body in connection with that body's assumption of part or all of the responsibilities for the private common use improvements, or (2) upon approval by the Planning Board of the discontinuance of such private common use improvements.

F. Association Duties

After the transfer of responsibility to the Association for the private common use improvements, the Association shall operate, maintain, repair and replace the same in accordance with the Declaration and all applicable laws, codes, and regulations, and shall meet the following requirements:

1. It shall elect officers who shall be responsible for performance of the duties of the Association;
2. It shall cause the regular inspection of the private common use improvements at intervals specified by the Planning Board;
3. It shall make appropriate arrangements for the timely management, operation, maintenance and eventual replacement of all private common use improvements;
4. It shall pay in a timely fashion all expenses necessary or incidental to the performance of its functions and responsibilities.

G. Assessments to Owners

The Declaration shall provide that the Association shall establish and collect from its member's assessments sufficient to perform its duties hereunder and as provided in the Declaration, including supplemental or emergency assessments upon its members to cover any deficits or emergency requirements. The assessments shall include amounts for additions to reserves for major periodic repairs, contingencies and replacements based upon the full, life-cycle cost of the private common use improvements. The Declaration shall include procedures by which the Association can compel any owner to correct any deficiency, malfunction, or other problem on the owner's own property, which affects the operation or integrity of the private common use improvements or can correct the same itself and recover its expense therefore by special assessment against that owner.

H. Collection Procedures

The Declaration shall establish procedures by which payment of all assessments for the management, operation, maintenance and eventual replacement of the private common use improvements can be required. The Declaration shall provide, without limitation, and to the maximum extent permitted by law, that such assessments together with interest thereon and costs of collection thereof shall be a charge on the real estate, dwelling, lot, unit, or building, with respect to which such assessments are made and shall be a lien against such real estate, dwelling, lot, unit, or building. The Declaration shall also provide that each such assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the person who is the owner of such assessed real estate, dwelling, lot, unit, or building at the time when the assessment falls due.

I. Additional Powers

The Declaration shall also authorize the Association to adopt and amend by-laws for conduct of its internal affairs and to have and exercise powers and functions in addition to the foregoing, provided that no by-law, power, function, or other action of the Association shall vary, interfere with, or jeopardize its compliance with this Appendix, or diminish its capacity to manage the private common use improvements in a continuous, responsible manner.

J. Additional Requirements for Common Open Space in Conservation Subdivisions [Adopted 12/22/05]

1. Executory Interest. If any common open space will be owned by a homeowners or community association or a private landowner, the owner(s) shall convey an executory interest with power of termination to the Town of Falmouth.
2. Conservation Provisions. The common open space shall be protected from development or intensive use and shall be maintained as undeveloped open land and/or active or passive recreation land but may include other support uses as approved by the Planning Board as part of the approval of the subdivision. Permanent conservation restrictions shall be established, subject to approval by the Planning Board, to assure that the future use and maintenance of the common open space is consistent with the subdivision approval. These provisions may include deed restrictions or covenants, conservation easements, the sale or transfer of development rights, or other legal mechanisms approved by the Planning Board.
3. Stewardship Provisions. Legally binding provisions shall be established in the conservation restriction tool (e.g., deed, easement) for the periodic monitoring of the use and maintenance of the common open space to ensure that the terms of the restrictions are being met. The monitoring shall occur at least once every two years on an ongoing basis. The party or organization designated to conduct the monitoring shall be qualified in land conservation and resource management, shall have an established record in land management or the oversight of conservation easements or restrictions, shall be willing to assume the review obligation, and shall be subject to approval by the Planning Board.

The party conducting the monitoring shall prepare a written report summarizing the findings of the monitoring and identifying any issues with compliance with the conservation provisions. A copy of the report shall be provided to the owner and the Planning Department within thirty (30) days of the monitoring. The stewardship arrangements shall provide for the enforcement of the conservation provisions by the Town of Falmouth against the owner of the property if the reviewer finds that the conservation provisions are not being met and for the ability of the Town to charge the owners of the property with the costs of enforcement of the provisions.

4. Stewardship Account. A Stewardship Account shall be established by the applicant for all land with conservation restrictions and shall be held and managed by the property owner or grantee. The purpose of this account shall be to pay the costs of the biennial monitoring. The amount of this fund shall be adequate to assure the required monitoring and shall be approved by the Planning Board.

Based on the experience of land trusts in establishing stewardship accounts for lands they monitor, the costs of doing biennial inspections for a period of 20 years to confirm adherence to the terms of open space dedication ranges between \$5000 and \$10,000 depending on the size of the open space parcel. The applicant shall submit a proposal to the Planning Board for an amount within this range, which shall be submitted for peer review prior to final approval.

If the Town holds an executory interest in a property with conservation restrictions or is asked to take ownership of a property, the applicant shall deposit funds required by the Planning Board in the Town's Stewardship Fund. Prior to release of the approved plan, the applicant shall provide the Town Planner with evidence that the Stewardship Account has been established and funded, or that full payment has been made to the Town's Stewardship Fund.

K. Inspection by the Town:

The Declaration shall provide that:

1. Upon request by the Code Enforcement Officer, Plumbing Inspector, or Town Engineer, the Association shall produce for inspection and copying at the Falmouth Town Hall, or permit the inspection and copying at its own office of, any or all of its corporate, financial, operating, inspection, and maintenance records, reports, contracts, budgets and other papers, for the purpose of determining its performance of any compliance with the requirements of the Declaration and this [Appendix 7-8](#);
2. The Code Enforcement Officer, the Plumbing Inspector, or his authorized representative, or the Town Engineer, and other duly authorized employees of the Town bearing proper credentials or identification, shall be permitted to enter at all reasonable times, upon all real or personal property necessary to the operation of the private common use improvements, for inspection, observation, measurement, sampling, and testing related to the operation, maintenance, and repair of the private common use improvements.

L. Penalties

In the event that any developer, Association, or owner is found to be in violation of any provision of a Declaration established under this [Appendix 7-8](#), such violation shall be deemed a violation of this [Appendix 7-8](#) and in addition to remedies available to other interested persons, the Town of Falmouth shall have all powers of enforcement with respect to such violation as it has with respect to violations of this [Appendix 7-8](#).

Effective on: 1/24/2011

Appendix 7-9 Four Step Design Process for Subdivisions in the Resource Conservation Zoning Overlay District [Adopted 12/22/05]

All subdivisions shall be designed in accordance with the following four step process. The submission for the preliminary plan of a major subdivision or the final plan of a minor subdivision (if required by the Planning Board) shall include documentation of the four-step design process for determining the layout of the subdivision including proposed conservation lands, house sites, streets, and lot lines in accordance with the following process. Applicants shall submit four separate sketch maps indicating the findings of each step of the design process, if so requested by the Planning Board.

Step 1: Delineation and Design of Common Open Space

Step 1A. Delineation of Common Open Space

The area to be designated as common open space or otherwise preserved as part of the development shall be delineated based upon the Primary and Secondary Conservation Areas as defined by the Zoning and Site Plan Review Ordinance. The proposed common open space in conservation subdivisions shall be identified in accordance with the following: [Amended 12-17-07]:

1. The minimum percentage and acreage of required common open space shall be calculated by the applicant and submitted in accordance with the provisions of this ordinance and of the Zoning Ordinance.
2. The proposed common open space shall be designated using the Site Analysis Sketch Plan as a base.
3. The Primary Conservation Areas on the site shall be delineated and shall be incorporated into the common open space in accordance with Section 19-18 of the Zoning and Site Plan Review Ordinance.
4. The Secondary Conservation Areas on the site shall then be delineated. In delineating Secondary Conservation Areas, the applicant shall prioritize natural and cultural resources on the tract in terms of their highest to lowest suitability for inclusion in the proposed common open space based upon the priorities set forth in the Zoning and Site Plan Review Ordinance
5. On the basis of those priorities and practical considerations related to the tract's configuration, its context in relation to resource areas on adjoining and neighboring properties, and the applicant's subdivision objectives, sufficient Secondary Conservation Areas shall be identified to be included in the common open space to meet at least the minimum area percentage requirement for common open space. This delineation shall clearly indicate the boundaries as well as the types of resources included within them.

Step 1B. Design of Common Open Space

1. All open space areas shall be part of a larger continuous and integrated open space system within the parcel being developed. At least 75 percent of the common open space shall be contiguous to another common open space area. For the purposes of this subsection, areas shall be considered contiguous if they are within 100 feet of each other and there are no impediments to access between the areas.
2. Common open space shall, to the greatest extent possible, protect site features identified in the Existing Resources and Site Analysis Plan.
3. Natural features shall generally be maintained in their natural condition, but may be modified to improve their appearance, or to restore their overall condition and natural processes, as recommended by natural resource professionals and in compliance with an approved Common Open Space Ownership and Stewardship Plan as provided in Appendix 7-3 for major subdivision submissions and Appendix 7-4 for minor subdivision submissions.
4. No area of common open space shall be less than 50 feet in its smallest dimension and less than 10,000 square feet in area. Open space not meeting this standard is allowed as an added

project enhancement, but shall not be counted toward the required project common open space.

5. The boundaries of common open spaces shall be marked by natural features wherever possible, such as hedgerows, stone walls, edges of woodlands, streams, or individual large trees. Where no such existing demarcations are present, additional plantings, fences, or other landscape features shall be added to enable residents or the public, if applicable, to distinguish where the common open space ends and private lot areas begin. Where structural demarcations, such as fences are used, they shall be the minimum needed to accomplish this objective.
6. Common open space shall include lands located along existing public streets in order to preserve existing rural landscape character as seen from these streets, and shall, in no case, contain less than the required buffer, setback area, or separation distance.

Step 2: Location of Building Sites

Potential building sites shall be tentatively located taking into consideration the proposed common open space and/or the Primary and Secondary Conservation Areas identified in Step 1 as well as other relevant data from the Site Inventory Plan and Site Analysis Sketch Plan, such as topography and soils. Building sites should generally be located at least 100 feet from Primary Conservation Areas and at least 50 feet from Secondary Conservation Areas, taking into consideration the potential negative impacts of development on such areas as well as the potential positive benefits of such locations to provide attractive views and visual settings for residences and other uses.

Step 3: Alignment of Streets and Ways and Creation of a Trail System

Based upon the designated building sites, a circulation plan shall be designed to provide vehicular and pedestrian access to each site. The street layout shall bear a logical relationship to topographic conditions. Impacts of the street plan on proposed Conservation Lands as defined in this Ordinance, Primary Conservation Areas, and Secondary Conservation Areas as defined in the Zoning and Site Review Ordinance shall be minimized, in accordance with Section 19-18 of the Zoning and Site Plan Review Ordinance. Street connections shall generally be encouraged to minimize the number of new cul-de-sacs and to facilitate access to and from buildings in different parts of the subdivision. A trail system shall be created within the common open space to provide access from the subdivision homes to the open space network created by the subdivision. [Amended 12-17-07]

Step 4: Drawing in the Lot Lines

Upon completion of the preceding three steps, lot lines shall be drawn as required to delineate the boundaries of individual lots. Lots shall be designed in keeping with the standards for individual lots found in Section 19-18.5 D. of the Zoning and Site Plan Review Ordinance and shall be further designed to provide each residence with a clear delineation of its property bounds and with useable yard spaces.

Effective on: 1/24/2011

FOOTNOTE(S):

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Editor's note— The subdivision ordinances of the town are not printed in this Code, but are on file in the town clerk's office.

Cross reference— Boundaries of the town, § 2-2; provisions for notices for nuisances, signs, dangerous, unsafe, dilapidated buildings, and any other action the expense of which may be collected from the property owner, § 2-3; planning board, § 2-95 et seq.; waterfront and harbor committee, § 2-115 et seq.; division of planning, § 2-246; division of code administration functions, § 2-248; buildings and building regulations, Ch. II-4; mobile homes and mobile home parks, Ch. II-11; streets, sidewalks and other public places, Ch. II-14; swimming pools, Ch. II-15; traffic and motor vehicles, Ch. II-17; utilities, Ch. II-18; zoning and site plans and flood prevention and protection regulations, Ch. II-19.

CH. II-8 LICENSES, PERMITS AND BUSINESS REGULATIONS

FOOTNOTE(S):

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Cross reference— Administration, Ch. II-2; provisions for notices for nuisances, signs, dangerous, unsafe, dilapidated buildings, and any other action the expense of which may be collected from the property owner, § 2-3; buildings and building regulations, Ch. II-4; condominium conversion regulations, § 4-100 et seq.; marine activities, structures and ways, Ch. II-9; shellfishing, § 9-50; municipal shellfish license required, § 9-55; mobile homes and mobile home parks, Ch. II-11; nuisances, Ch. II-12; streets, sidewalks and other public places, Ch. II-14; taxation and finance, Ch. II-16; parking restrictions at the town landing and requirements for permits for residence, § 17-94; zoning and site plans and flood prevention and protection regulations, Ch. II-19.

State Law reference— Licenses and permits, 30-A M.R.S.A. 3701 et seq.

ART. II-8-1. IN GENERAL

Secs. 8-1—8-39. Reserved.

ART. II-8-2. AMUSEMENTS AND ENTERTAINMENT

FOOTNOTE(S):

--- (2) ---

State Law reference— Dances, 8 M.R.S.A. § 161 et seq.; special permit for music, dancing or entertainment, 28-A M.R.S.A. § 1054.

DIV. II-8-2-1. GENERALLY

Secs. 8-40—8-59. Reserved.

DIV. II-8-2-2. SPECIAL AMUSEMENT PERMITS FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS

Sec. 8-60. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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

Exotic dancing shall mean the appearance of a person or persons, on the licensee's premises, in such a manner or attire as to expose to view any portion of the pubic area, anus, buttocks, vulva or genitals or any simulation thereof, or when any female appears on a licensee's premises in such a manner or attire as to expose to view any portion of the breast referred to as the areola, nipple or simulation thereof. "Expose to view" shall be interpreted to mean, without limitation, clear, see-through or clothing which is otherwise non-opaque.

Licensee shall include any person, individual, partnership, firm, association, corporation or other legal entity which is the holder of a license for the sale of liquor to be consumed on premises owned by said licensee, or any agent or employee of any such licensee.

(Code 1966, Ch. 405, § I(C); Ord. of 5-27-93)

Cross reference— Definitions and rules of construction generally, § 1-2.

Sec. 8-61. Purpose.

The purpose of this division is to control the issuance of special permits as required by 28-A M.R.S.A. § 1054 for music, dancing or entertainment of facilities licensed by the state to sell liquor.

(Code 1966, Ch. 405, § I(B))

Sec. 8-62. Penalty.

Except as otherwise provided by state law, anyone found guilty of violating any provision of this division shall be subject to a fine of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00). Each day such violation continues shall be deemed to be a new offense.

(Code 1966, Ch. 405, § IV(A))

Sec. 8-63. Application.

- a. No licensee for the sale of liquor to be consumed on his licensed premises shall permit on the 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 council a special amusement permit.
- b. Applications for all special amusement permits shall be made in writing to the town council and shall state:
 1. The name of the applicant;
 2. His resident address;
 3. The name of the business to be conducted;
 4. His business address;
 5. The nature of his business;
 6. The location to be used;

7. 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;
8. 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
9. Any additional information as may be required by the town council prior to the issuance of the permit, including but not limited to a copy of the applicant's current liquor license.

(Code 1966, Ch. 405, § II(A)(1), (2))

Sec. 8-64. Requirements.

- a. No special amusement permit shall be issued for any thing or act or premises, if the premises and buildings to be used do not fully comply with all ordinances, codes and regulations of the town.
- b. The fee for a special amusement permit shall be as set by order of the town council and on file in the town clerk's office and is nonrefundable and must be paid when application is made for the permit.
- c. A licensed hotel, Class A restaurant, Class A tavern or restaurant malt liquor licensee as defined in the Maine Revised Statutes who has been issued a special amusement permit may charge admission in designated areas approved in the permit.

(Code 1966, Ch. 405, § II(A)(3)—(5))

Sec. 8-64.1. Regulations for exotic dancing.

The following regulations apply to the performances of exotic dancers in establishments holding a special amusement permit:

1. No dancer shall dance in the establishment except on a platform raised at least two (2) feet from the floor.
2. No dancer shall dance closer than ten (10) feet from any patron.
3. There shall be no fondling, mingling or caressing in the establishment between any patron and any dancer with the intent to sexually arouse or excite a patron's sexual desire.
4. No patron shall directly pay or give any gratuity to any dancer and no dancer shall solicit any pay or gratuity from any patron.

(Ord. of 5-27-93, § 2)

Editor's note—

Provisions enacted by an ordinance adopted May 27, 1993, and designated as § 8-64, have been included herein at the discretion of the editor as § 8-64.1 to avoid duplicative section numbering.

Cross reference— Adult entertainment viewing booths, § 8-80 et seq.

Sec. 8-65. Classes.

- a. The fee for a special amusement permit shall entitle the applicant to one (1) of the following classes of permits:
 1. *Class I.* Permit for live performances of music, provided nevertheless that the Class I permit shall limit the holder of same to three (3) live musicians or singers performing within the

restaurant structure. No dancing or floor show entertainment shall be allowed on the premises holding a Class I permit.

2. *Class II.* All of the privileges allowed in a Class I permit plus dancing within the restaurant structure to recorded or live music with no limitation upon the number of live musicians or singers.
 3. *Class III.* All of the privileges allowed in Class I and Class II permits plus a floor show type of entertainment within the restaurant structure.
- b. The entertainment allowed under any class of permit provided for herein shall be conducted at a level which will limit the range of sound to a radius of two hundred (200) feet of the restaurant structure. Permits issued hereunder shall specify the hours during which permitted entertainment may be provided.
 - c. An applicant may apply for any of the above three (3) classes of permit.

Sec. 8-66. Hearing.

- a. Prior to granting a special amusement permit, the town council shall hold a public hearing after receiving a completed application, at which hearing the testimony of the applicant and that of any interested members of the public shall be taken. Notice of the hearing shall be given a minimum of seven (7) days prior to such hearing to the general public by publication on the Town's website and in writing to the applicant and all abutters within 250 feet from the restaurant structure. The applicant shall pay the cost of the abutters notice. (Amended 04/28/2014)
- b. Prior to obtaining a permit, the applicant must show at the public hearing required in this section that:
 1. The issuance of the requested permit will not be detrimental to the public health, safety, or welfare;
 2. The proposed activity to be licensed will not create a traffic hazard;
 3. The applicant has ample parking to accommodate the proposed activity;
 4. The proposed activity will not, either by reason of its scope or noise, adversely affect surrounding or abutting property and that it will not unreasonably interfere with the use, enjoyment and value of surrounding and/or abutting property;
 5. The applicant is in conformance with all provisions of the town zoning ordinance, all applicable health codes, and other applicable municipal, state and federal codes, ordinances, regulations and statutes;
 6. In the case of a facility located in a residential A, B or C zone, that the activities will not tend to change the residential character of the neighborhood, nor will the activities require the addition of new restaurant dining or bar space, excluding food preparation and storage areas.
- c. In making the determination of whether the applicant has satisfied the criteria set forth in (b) above, the town council shall consider, but shall not be bound by, neighborhood opinion and sentiment.

(Code 1966, Ch. 405, § II(B)(1); Ord. of 6-16-97)

Sec. 8-67. Term of permit.

A special amusement permit shall be valid only for the license year of the applicant's existing liquor license.

(Code 1966, Ch. 405, § II(B)(2), (3))

Sec. 8-68. Inspections.

- a. Whenever inspections of the premises used for or in connection with the operation of a licensed business which has obtained a special amusement permit are approved for or required by ordinance or state law or are reasonably necessary to secure compliance with any town ordinance, code or regulation 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 is requested.
- b. In addition to any other penalty which may be provided, the town council may revoke the special amusement permit of any licensee who refuses to permit any such officer, official or employee to make an inspection or who interferes with such officer, official or employee while in the performance of his duty, provided that no license or special amusement permit shall be revoked unless written demand for the inspection is made upon the licensee or person in charge of the premises at the time it is sought to make the inspection.

(Code 1966, Ch. 405, § II(C))

Sec. 8-69. Suspension or revocation.

The town council may, after a public hearing preceded by notice to interested parties, suspend or revoke any special amusement permit which has been issued under this division on the ground that the music, dancing or entertainment permitted constitutes a detriment to the public health, safety or welfare or violates any town regulations.

(Code 1966, Ch. 405, § II(D))

State law reference— Similar provision, 28-A M.R.S.A. § 1054(7).

Sec. 8-70. Appeals.

- a. Any licensee requesting a special amusement permit from the town council shall be notified in writing of their decision no later than fifteen (15) days from the date his application 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 thirty (30) days after an application for a permit has been denied.
- b. Any licensee who has requested a permit and has been denied or whose permit has been revoked or suspended may, within thirty (30) days of the denial, suspension or revocation, appeal the decision to the board of appeals.

(Code 1966, Ch. 405, § II(E))

State law reference— Appeals, 28-A M.R.S.A. § 1054(8).

Sec. 8-71. Rules and regulations for special use permits.

The town council is hereby authorized, after public notice and hearing, to establish written rules and regulations 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. Such rules and regulations shall be additional to and consistent with all sections of this division.

(Code 1966, Ch. 405, § III)

State law reference— Municipal ordinances or regulations, 28-A M.R.S.A. § 1054(11).

Secs. 8-72—8-79. Reserved.

FOOTNOTE(S):

--- (3) ---

Cross reference— Police department, § 2-430 et seq.

State Law reference— Liquors, 28-A M.R.S.A. § 1 et seq.; public drinking, 17 M.R.S.A. § 2003-A; special permit for music, dancing or entertainment, 28-A M.R.S.A. § 1054.

DIV. II-8-2-3. ADULT ENTERTAINMENT VIEWING BOOTHS

Sec. 8-80. Definition.

Adult amusement device means any electronic or mechanical device used to show, by audio or visual reproduction, projection or otherwise, material containing details, descriptions or narrative accounts of acts of sexual stimulation, intercourse or deviation, the dominant theme of which is an appeal to the prurient interest of the listener or viewer.

(Ord. of 5-27-93)

Sec. 8-81. Prohibition.

No bookstore, arcade, theater, video tape rental store or other commercial facility shall, for compensation or otherwise, allow the use of any adult amusement device within a booth, cubicle, carrel or other area enclosed on more than two (2) sides.

(Ord. of 5-27-93)

Sec. 8-82. Penalty.

Anyone found guilty of violating any provision of this division shall be subject to a fine of not less than fifty dollars (\$50.00) and not more than one hundred dollars (\$100.00) for each offense and shall be subject to such other legal and equitable remedies as may be available to the town.

(Ord. of 5-27-93)

Secs. 8-83—8-99. Reserved.

FOOTNOTE(S):

--- (4) ---

Cross reference— Regulations for exotic dancing, § 8-64.1.

ART. II-8-3. DANCES AND DANCE HALLS

Sec. 8-100. Definition.

Public dance hall shall mean any building, room, hall or other public place which is kept or used for public dancing or in which men, women or children are permitted to engage in dancing.

(Code 1966, Ch. 401, § 1)

Cross reference— Definitions and rules of construction generally, § 1-2.

Sec. 8-101. Exclusions.

The provisions of this article shall not apply to:

1. Private residences;
2. Dances held in a school hall under the direct supervision of the school authorities;
3. Private, nonprofit golf or yacht clubs or fraternal organizations where the holding of dances is only occasional and incidental to the main purpose of the club, but if the premises of a fraternal organization are made available to the general public for rental or use as a public dance hall, such premises when so rented or used shall be considered to be a public dance hall within the meaning of this article and shall be subject to all of the provisions hereof;
4. Church parish houses.

(Code 1966, Ch. 401, § 2)

Sec. 8-102. License and permit required.

It shall be unlawful and a violation of the provisions of this article for any person to operate a public dance hall without having first secured a license from the town council or to conduct a dance in any public dance hall without having first secured a permit from the town clerk.

(Code 1966, Ch. 401, § 4)

Sec. 8-103. License and permit fee.

No person shall conduct or maintain a public dance hall until a license shall have been granted by the town council. No person shall conduct a dance in any public dance hall until a permit has been granted by the town clerk. The fees for such license or permit shall be as on file in the town clerk's office.

(Code 1966, Ch. 401, § 3)

Sec. 8-104. Application for license.

The application for a public dance hall license shall contain the name of the owner or person in control of the building and the location of the dance hall and shall be filed with the town council at least fifteen (15) days before any dance is to be held in such hall. When issued, such licenses shall expire on December thirty-first of the year.

(Code 1966, Ch. 401, § 4)

Sec. 8-105. Application for permit.

The application for dance permit shall contain the name of the applicant and all persons to be employed by the applicant, together with the location of the dance hall, and shall be sent to the town clerk at least seventy-two (72) hours before any dance is to be held. Such permit when issued by the town clerk shall be valid for only one (1) dance at the time and place stated in the application. However, if the application indicates that dances are to be held at stated intervals at the same locations, a permit may be issued for the dances on a quarterly basis.

(Code 1966, Ch. 401, § 4)

Sec. 8-106. Supervision required.

At each dance held in a public dance hall, police supervision shall be required and shall be paid for by the holder of the dance permit unless the chief of police in the exercise of his judgment, deems that such police supervision is not necessary.

(Code 1966, Ch. 401, § 6)

State law reference— Supervision required, 8 M.R.S.A. § 161.

Sec. 8-107. Intoxicating liquors and smoking prohibited.

No person at all under the influence of intoxicating liquor shall be permitted in any public dance hall or on the premises during the progress of any dance. No person shall bring any intoxicating liquors into the public dance hall or on the premises. Smoking shall not be permitted in any public dance hall.

(Code 1966, Ch. 401, § 7)

Sec. 8-108. Inspection.

The town manager shall detail one (1) or more police officers or firefighters to act as inspectors of public dance halls and dances. Such officers shall examine and investigate dance halls and dances from time to time and report to the town manager in writing whether such public dance halls and dances are conducted within the provisions of this article. Such officers shall be given at all reasonable times free access to such hall or place for the purpose of such inspection.

(Code 1966, Ch. 401, § 8)

Sec. 8-109. Dancing after midnight prohibited.

All dances in public dance halls shall be terminated at midnight, according to the then current time.

(Code 1966, Ch. 401, § 9)

Sec. 8-110. Minors to be accompanied by parent or guardian.

No person under sixteen (16) years of age shall attend or take part in any dance or remain in any public dance hall unless such person shall be accompanied by at least one (1) parent or a legal guardian. No person shall misrepresent or make a false statement concerning his age or the age of any other person for the purpose of obtaining admission to or remaining at any dance in any public dance hall. No person shall falsely represent himself to be a parent or legal guardian of any person under that age for the purpose of obtaining the admission of such person to any dance in any public dance hall or for the purpose of securing permission for such person to remain at such dance.

(Code 1966, Ch. 401, § 10)

Secs. 8-111—8-149. Reserved.

FOOTNOTE(S):

--- (5) ---

State Law reference— Dances, 8 M.R.S.A. § 161 et seq.

ART. II-8-4. FOOD SERVICE

Sec. 8-150. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Catering - Providing food and drink at a social event or other gathering lasting one week or less.

Effective on: 7/23/2018

Mobile food vendor shall mean a motor vehicle, trailer or like conveyance capable of being transported from place to place which is constructed to contain, store, prepare and properly preserve food for sale and/or distribution.

Effective on: 7/23/2018

Permanent food service establishment shall mean any food service establishment located in a permanent structure which has received all requisite approvals as required by this Code of Ordinances.

Effective on: 7/23/2018

Sec. 8-151. Enforcement.

This article shall be enforced by the code enforcement officer.

(Code 1966, Ch. 314, § 23)

Effective on: 7/23/2018

Sec. 8-152. Penalty.

Any person violating any of the provisions of this article or obstructing the code enforcement officer in the performance of his required duties or failing, neglecting or refusing to comply with the provisions of this article or operating a food service establishment without a license or after a license shall have been suspended or revoked shall be subject to a fine of not more than one hundred dollars (\$100.00) and each day's violation shall be considered to be a separate offense.

Sec. 8-153. Approval and License required.

Permanent food service establishments and mobile food vendors shall not operate without a license issued by the code enforcement officer. The following application procedures shall apply. Persons are exempt from this license for business conducted as part of a licensed farmers' market under ART. II-8-14.

A. General.

1. No license shall be issued unless the applicant has submitted a copy of a current State of Maine Department of Health and Human Services license to the code enforcement officer. No license shall be valid if such state license has expired.
2. The town and state licenses shall be posted in a conspicuous place.
3. No license shall be approved, either new or renewal, without a public hearing by the Town Council. Such hearing shall be noticed no later than 7 days prior to the hearing date by publication in a local newspaper.
4. Licenses shall be valid for a one year period commencing July 1 and ending June 30. Any license issued after July 1 shall expire on June 30 of the following year.

B. Application. A complete application on a form from the Community Development Department shall be submitted with the necessary fee and a completed checklist of submittal items. The code enforcement officer shall have the authority to develop an application form and submittal checklist to assure that the necessary information is submitted.

C. Renewals. License holders may submit an application for renewal provided that there have been no substantive changes to the location, nature of the operation or any other change as determined by the code enforcement officer. Request for license renewals shall be submitted to the code enforcement officer on or before April 30 of each year. Any renewal request after this date will be considered a new application.

D. Review. Upon such time as the Code Enforcement Officer or their designee deems the application complete it shall be circulated to the Police, Fire, Public Works, and Community Development Departments for a review. Departments shall submit their review to the Code Enforcement Officer no later than 8 business days from receipt. The Code Enforcement Officer shall forward the review to the applicant. They shall also forward the reviews and application with any recommendations from staff to the Town Manager for placement on the next regularly scheduled Council meeting unless the applicant requests additional time to modify or add to the application based on staff review.

E. Approval. The Town Council shall have the sole authority to approve a food service establishment or mobile food vendor license.

F. Issuance. Should the Town Council approve such license, the Code Enforcement Officer shall issue a license containing the conditions and restrictions as imposed by the Town Council.

G. Posting. The license holder shall post the license in a conspicuous place at the approved location.

Sec. 8-154. Reserved.

Effective on: 7/23/2018

Sec. 8-155. Fees.

License fees shall be as approved by the Town Council and on file in the Community Development Department office.

Effective on: 7/23/2018

Sec. 8-156. Suspension and revocation of license.

A food service license may be suspended by the Code Enforcement Officer upon failure of the licensee to comply with any of the terms or conditions of the license. The license may be revoked by the Town Council upon serious or repeated violations of any of the terms of this article after investigation and hearing. A notice of such hearing shall be served upon the licensee or left at the licensed premises at least three (3) days before the time set for the hearing.

Effective on: 7/23/2018

Sec. 8-157. Reinstatement of license suspended.

The licensee may at any time after suspension by the Code Enforcement Officer, make application in writing for reinstatement of the license to the Code Enforcement Officer representing that the condition for which the suspension was imposed has been corrected. The Code Enforcement Officer shall within three (3) business days after receipt of the application make a reinspection of the premises. If he finds that the licensee is complying with the terms of this article, the license shall be reinstated. If the Code Enforcement Officer finds the condition not corrected according to the requirements of this article, he/she may make reinspections at such future times as he/she may deem reasonable. If the licensee fails to satisfactorily comply with the requirements of the Code Enforcement Officer after such inspection or reinspection, the Code Enforcement Officer shall refer the violation to the Town Council for hearing in the manner provided in Sec. 8-156, who may thereafter revoke, continue the suspension, or reinstate the license. The aggrieved licensee shall have the right to appeal to the Cumberland County Superior Court. Repeated incidents of such suspension by the Code Enforcement Officer involving the same licensee shall be considered to be a valid reason for revocation of the license by the Town Council after investigation and hearing as provided in Sec. 8-156.

(Code 1966, Ch. 314, §§ 2.5, 2.6)

Effective on: 7/23/2018

Sec. 8-158. Inspection.

The Health or Code Enforcement Officer, after proper identification, shall be permitted to enter with the permission of the licensee or the person in charge at any reasonable time, any food service establishment within the town for the purpose of making inspections to determine compliance with this article. They shall be permitted to examine the records of the establishment to obtain pertinent information pertaining to food and supplies purchased, received or used and persons employed.

(Code 1966, Ch. 314, § 3)

Effective on: 7/23/2018

Sec. 8-159. Standards

- A. Catering. Food service establishments and mobile food vendors providing catering services, either public or private, are exempt from a license under this section, but shall submit license applications required by the state for review by the Code Enforcement Officer. A fee as established by the Town Council shall be submitted with the the state license application. The state license as issued by the State of Maine shall be submitted to the Code Enforcement Officer prior to catering in the town.
- B. Mobile Food Vendor
 - 1. The following standards shall be iterated in the license approval and approved by the Town Council.
 - a. Dates approved for use. The Town Council shall approve the dates for use but in no event can the dates be longer than six months if the vendor is requesting approval for a static location.
 - b. Location(s). Vendors may apply for multiple static locations in the same application and be approved as one license.
 - c. Hours of Operation. Licenses shall include the hours of operation.
 - 2. Vehicles shall be removed from the site daily at the close of business.
 - 3. Suitability of the site. The location of the vendor shall not interfere with vehicle or pedestrian circulation of permanent uses of the property on which it is located. If parking spaces are utilized to locate vendors, the permanent use must still meet the minimum number of parking spaces required. In the instance of non-conforming uses due to parking, the non-conformity may not be increased.
 - 4. Self-contained. The vendor unit shall be self-contained except that utilization of electric service from a building may be permitted provided it meets all applicable code requirements. Amenities such as tents, table and chairs are prohibited.
 - 5. Signage. Signage shall either be on the vehicle or as permitted elsewhere in this Code of Ordinances.
 - 6. Public Health. No license shall be issued without documentation that the vendor is properly licensed by the State of Maine Department of Health and Human Services.
 - 7. Vehicle Registration. No license shall be issued or be valid without appropriate state registration of the vehicle or trailer.
- C. Permanent Food Service Establishments. Permanent food service establishments shall be located in buildings or structures that meet the requirements of the Zoning and Site Plan Review Ordinance.

Effective on: 7/23/2018

Secs. 8-160—8-249. Reserved.

Effective on: 7/23/2018

ART. II-8-5. RESERVED

Secs. 8-250—8-271. Reserved.

Effective on: 7/23/2018

ART. II-8-6. CABLE TELEVISION

Sec. 8-272. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

CATV shall mean any community antenna television system or facility that, in whole or in part, receives directly or indirectly over the air and amplifies or otherwise modifies signals transmitting programs broadcast by one (1) or more television or radio stations or originates its own signals produced through any of its community access channels 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 of one (1) or more apartment dwellings under common ownership, control or management.

Cable television company shall mean any person, firm or corporation owning, controlling, operating, managing or leasing a CATV system within the town sometimes hereinafter referred to as the company.

(Ord. of 1-23-89, § 2)

Sec. 8-273. Purpose.

The following goals underlie the regulations contained herein:

1. Where economically reasonable, residential cable television services should be offered to the maximum number of town residents.
2. The network should be capable of accommodating both the present and reasonably foreseeable cable television needs of cable subscribers.
3. The network should be improved and upgraded during the franchise term when deemed necessary to meet the needs of cable subscribers.
4. The network authorized by this article shall be responsive to the needs and interests of cable television subscribers.

(Ord. of 1-23-89, § 2)

Sec. 8-274. Franchise required.

No person shall install, maintain or operate within the town or any of its public ways or other public areas any equipment or facilities for the operation of a CATV system unless a franchise authorizing the use of the public ways or areas has first been obtained from the town. Any such franchise shall be nonexclusive.

(Ord. of 1-23-89, § 2)

Sec. 8-275. Franchise contract.

- a. The town council may contract on such terms, conditions and fees as they deem in the best interests of the town and its residents with one (1) or more cable television companies for the operation of a CATV system within the town, including the granting of a franchise for the operation thereof for a period not to exceed ten (10) years.
- b. Applicants for a franchise to be newly awarded shall pay a nonrefundable filing fee to the town which is established by the town council and is on file in the town clerk's office to defray the cost of public notice, advertising and processing expenses relating to such application. The application shall be filed with the town clerk and shall contain such information as the town may require, including but not limited to:
 1. A general description of the applicant's proposed operation;
 2. A schedule of proposed charges;
 3. A statement detailing its previous two (2) fiscal years, estimated ten-year financial projection of its proposed system, its proposed annual town franchise fee, if any, or the basis for same; and
 4. A statement detailing the prior operational experience of the applicant in both CATV and microwave service, including that of its officers, management and staff to be associated with the proposed operation.
- c. Any franchise contract may be revoked by the town council for good and sufficient cause, after due notice to the company and a public hearing thereon, with the right to appeal to the superior court under Rule 80B of the Maine Rules of Civil Procedure.

(Ord. of 1-23-89, § 2)

Sec. 8-276. Public comment periods for award of franchise.

- a. Except in the case of a renewal of a previously existing franchise or agreement, the town shall issue a request for proposals after holding a public hearing with at least seven (7) days' advance notice for the purpose of determining any special local needs or interests regarding cable television.
- b. Any proposal submitted by a prospective CATV franchisee shall be filed in triplicate with the town clerk's office. It shall be deemed a public record and shall be available for a period not less than ten (10) days prior to the town's taking any formal action thereon. Public notice of the filing shall be given.
- c. Before authorizing the issuance of any such franchise contract, the town council shall review the applicant's character, financial and technical qualifications and the adequacy and feasibility of the applicant's qualifications to operate a CATV system within the town, and shall conduct a public hearing thereon with at least seven (7) days' advertised notice prior to the public hearing.

(Ord. of 1-23-89, § 2)

Sec. 8-277. Performance bond and insurance coverage.

Except in the case of a renewal of a previously existing franchise or agreement, upon the execution of any such franchise contract, the cable television company shall file a surety company performance bond in an amount no less than fifty thousand dollars (\$50,000.00) conditioned upon the faithful performance of the contract and full compliance with any laws, ordinances or regulations governing the franchise, including cost of dismantling the system, and evidence of such public liability, copyright infringement and other insurance coverage as the town council may require. When the cable television company has completed the proposed system as set forth in the proposal, and in compliance with the franchise agreement, the town council shall permit the company to cancel the bond except for an amount to cover cost of dismantling the system.

(Ord. of 1-23-89, § 2)

Sec. 8-278. Renewal of franchise or agreement.

- a. The town council may renew a previously existing franchise or agreement for the operation of a CATV system within the town on such terms, conditions and fees as they deem in the best interest of the town for a period not to exceed ten (10) years.
- b. Applicants for a franchise renewal shall pay a nonrefundable filing fee to the town established by the town council and on file in the town clerk's office to defray the cost of public notice, advertising and processing expenses relating to such application. The application shall be filed with the town clerk and shall contain such information as the town may require.
- c. Any franchise contract may be revoked by the town council for good and sufficient cause, after due notice to the company and a public hearing thereon, with the right to appeal to the superior court under Rule 80B of the Maine Rules of Civil Procedure.

(Ord. of 1-23-89, § 2)

Sec. 8-279. Public comment periods for renewal of franchise or agreement.

- a. In the case of a renewal of a previously existing franchise or agreement, the determination of any special local needs may occur at the hearing described in (c) below.
- b. Any application for renewal of a previously existing franchise shall be filed in triplicate with the town clerk's office. It shall be deemed a public record and shall be available for a period not less than ten (10) days prior to the town's taking any formal action thereon. Public notice of the filing shall be given.
- c. Before authorizing the renewal of a previously existing franchise, the town council shall review the application for renewal and shall conduct a public hearing thereon with at least seven (7) days' advertised notice prior to the public hearing.

(Ord. of 1-23-89, § 2)

Secs. 8-280—8-300. Reserved.

FOOTNOTE(S):

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State Law reference— Cable television ordinances, 30-A M.R.S.A. § 3008.

ART. II-8-7. DOOR-TO-DOOR SOLICITATION

Sec. 8-301. Purpose.

The purpose of this article is to secure for the residents of the town the peaceful enjoyment of their homes and property by prohibiting door-to-door solicitation during those times when such solicitation is most intrusive and disruptive; to aid crime prevention and detection; and to ensure that persons engaged in door-to-door commercial solicitation have obtained required state registrations and permits.

(Ord. of 6-24-91, § 1)

Sec. 8-302. Definition.

As used in this article, the term "commercial solicitation" means: To offer goods, services or real property for sale or rent or to provide information for the purpose of promoting the sale or rental of goods, services or real property provided, however, that offering goods or services for sale as part of fundraising for a nonprofit organization shall not be commercial solicitation.

(Ord. of 6-24-91, § 2)

Sec. 8-303. Registration required; limit on hours.

- a. It shall be unlawful to engage in door-to-door commercial solicitation without registration with the town clerk pursuant to this article.
- b. It shall be unlawful to engage in any type of door-to-door solicitation between 9:00 p.m. and 8:00 a.m.
- c. The provisions of this section shall not apply to home visits by prearranged appointment.

(Ord. of 6-24-91, § 3)

Sec. 8-304. Registration—Form and contents.

Registration under this article shall be on forms provided by the town clerk. The form shall elicit at least the following information:

- a. Name, address, and telephone number of the registrant;
- b. Physical description of the registrant;
- c. Name, address, and telephone number of the registrant's employer;
- d. Description of the motor vehicle to be used by the registrant in conducting the solicitation;
- e. Brief description of the types of goods or services to be offered for sale by the registrant; and
- f. For any registrant whose activities would constitute the transient sale of consumer merchandise, as defined in 32 M.S.R.A. § 4681, a copy of the registration issued under 32 M.S.R.A. § 4682-A.

(Ord. of 6-24-91, § 4)

Sec. 8-305. Same—Issuance and term.

- a. The town clerk shall issue a proof of registration upon receipt of a completed registration form.

- b. Each registration shall expire thirty (30) days after issuance but shall be renewed by the town clerk for additional thirty-day periods upon request of the registrant.
- c. Each proof of registration shall contain the name, address, physical description and organizational affiliation of the permittee; a description of the solicitation activity to be engaged in; an expiration date; and the signature and seal of the town clerk. The town clerk shall keep a record of all registrations.

(Ord. of 6-24-91, § 5)

Sec. 8-306. Same—Possession and presentation.

Every person engaged in door-to-door commercial solicitation shall have a valid proof of registration, as required by this article, in his or her possession at all times while so engaged in the town and shall present the proof of registration for inspection upon request of any person.

(Ord. of 6-24-91, § 6)

Sec. 8-307. Violations.

- a. It shall be a violation of this article to engage in door-to-door solicitation activity prohibited by Sec. 8-303 or to disregard a clearly visible sign on private property which prohibits solicitation.
- b. Any person who violates any provision of this article shall be subject to a fine of not more than one hundred dollars (\$100.00) for each violation. Each violation shall constitute a separate offense.

(Ord. of 6-24-91, § 7)

Secs. 8-308—8-310. Reserved.

FOOTNOTE(S):

--- (9) ---

Editor's note— Provisions designated as Art. II-8-7 of Ch. II-8 by an ordinance adopted June 24, 1991, have been included herein at the discretion of the editor as §§ 8-301—8-307.

ART. II-8-8. MASSAGE ESTABLISHMENTS AND MASSAGE THERAPISTS

Sec. 8-311. Title.

This article shall be known as the "Town of Falmouth Massage Establishment and Massage Therapist Regulatory Ordinance" and may be referred to by short title as the "Massage Ordinance."

(Ord. of 5-28-97, § 1)

Sec. 8-312. Purpose.

The purpose of this article is to regulate the practice of massage therapy in order to promote the public health and safety and the general welfare.

(Ord. of 5-28-97, § 2)

Sec. 8-313. Definitions.

For purposes of this article, the following definitions shall apply unless the context clearly implies otherwise:

Massage and therapeutic massage are used interchangeably to mean any method of rubbing, kneading, tapping, vibration, compression, percussion, application of friction or manipulation of the external parts of the human body with the hands or other parts of the body or with the aid of any instrument or device.

Massage establishment and therapeutic massage establishment are used interchangeably to mean any business, including, but not limited to, a sole proprietorship in which the business operations consist of providing or making available massage in the town for consideration or gratuity or with the expectation of receiving consideration or gratuity, whether or not the business has a fixed place of business within the town limits.

Massage therapist means any person who performs therapeutic massage for consideration or gratuity or with the expectation of receiving consideration or gratuity.

Town means the Town of Falmouth.

The following persons shall be exempt from this article:

1. Members of other professions licensed, certified or registered by the state, including but not limited to physicians, chiropractors, physical therapists, cosmetologists or registered nurses performing soft tissue manipulation consistent with the laws of the state governing their practices, provided they do not use the title "massage therapist" unless they choose to meet the requirements of this article.
2. Individuals who practice other forms of tissue work exclusive of massage therapy, such as rolfing, Trager, reflexology, Shiatsu Reiki and polarity, if these practitioners do not use the title "massage therapist" unless they choose to meet the requirements of this article.

(Ord. of 5-28-97, § 3)

Sec. 8-314. Massage therapist license.

No person shall work as a massage therapist in the town without a valid massage therapist license issued pursuant to this article.

(Ord. of 5-28-97, § 4)

Sec. 8-315. Compliance by existing massage therapists.

- a. Any person presently operating as a massage therapist in the town on the effective date of this article shall comply with the terms of this article starting on its effective date and shall obtain a license hereunder within three (3) months of the date of this article.
- b. Any license issued pursuant to this article between the effective date hereof and December 31, 1997, shall be valid until December 31, 1998. For any license issued pursuant to this article after December 31, 1997, the expiration date in Sec. 8-318 shall apply.

(Ord. of 5-28-97, § 5)

Sec. 8-316. Reserved.

Editor's note—

An amendment adopted Dec. 16, 1997, deleted § 8-316, council action; notice of hearing, derived from an ordinance adopted May 28, 1997, § 6.

Sec. 8-317. Application and information.

Each applicant for a license shall:

1. Complete and file an application on a form prescribed by the town clerk;
2. Pay an annual license fee of twenty-five dollars (\$25.00);
3. File the release authorized by 16 M.R.S.A. Section 620(6) (Criminal History Record Information Act) with the application; and

If an application is denied or withdrawn, the license fee and costs for published or mailed notices shall not be refunded.

(Ord. of 5-28-97, § 7; Amend. of 12-16-97)

Sec. 8-318. Qualifications of applicant.

- a. The town clerk shall review the application and other documents and determine whether such documents comply with all the requirements of this article. If compliance is determined, the town clerk shall issue the license.
- b. The police chief or his agent shall investigate the applicant, including the criminal history record information required under Sec. 8-317, and shall report his findings to the town clerk.

(Ord. of 5-28-97, § 8; Amend. of 12-16-97)

Sec. 8-319. Basic proficiency.

Each applicant for a massage therapist license must hold a valid certification as a massage therapist issued by the State of Maine pursuant to Chapter 127 of Title 32 of the Maine Revised Statutes Annotated.

(Ord. of 5-28-97, § 9)

Sec. 8-320. Obtaining license by fraud.

No person shall make any false, untruthful or fraudulent statement, either written or oral, or in any way conceal any material fact, or give or use any fictitious name in order to secure or aid in securing a license required by this article. All names, including but not limited to maiden name, ever used by the applicant must be noted on the application. Any license so secured shall be void.

(Ord. of 5-28-97, § 10)

Sec. 8-321. Standards for denial.

A license shall be denied to any applicant:

1. Who has been convicted of a crime at any time during the five (5) years immediately preceding application that involves dishonesty or false statement or that directly relates to the practice of massage or conviction of a crime for which incarceration for one (1) year or more may be imposed;
2. Who is not at least eighteen (18) years of age;

3. Who has submitted an incomplete application, knowingly made an incorrect statement of a material nature, or failed to supply additional information required by the town clerk or reasonably necessary to determine whether the license is issuable; or
4. Who does not hold a valid state certification as a massage therapist.

(Ord. of 5-28-97, § 11; Amend. of 12-16-97)

Sec. 8-322. Grounds for suspension or revocation.

Any license may be suspended or revoked upon determination that the licensee:

1. Failed to notify the town clerk of any change in material fact set forth in the application for such license; or
2. Violated any provision of this article.

(Ord. of 5-28-97, § 12)

Sec. 8-323. Licenses displayed.

A valid massage therapist establishment license issued by the town shall be displayed at all times in an open and conspicuous place in the massage establishment or must be readily available to be produced immediately if demanded of the licensee.

(Ord. of 5-28-97, § 13)

Sec. 8-324. Prohibited activities.

- a. No massage therapist shall administer a massage to a patron whose genitals are exposed.
- b. No massage therapist shall administer or agree to administer a massage to the genital or anus of a patron.
- c. No massage therapist shall administer a massage unless he or she is fully clothed in non-transparent clothing of the type customarily worn by massage therapists while administering a massage.
- d. No massage therapist shall administer a massage on a minor without the written consent of the minor's parent or legal guardian.

(Ord. of 5-28-97, § 14)

Sec. 8-325. Closing hours.

No massage establishment shall be kept open for massage purposes between the hours of 10:00 p.m. and 6:00 a.m. provided that any massage begun before 10:00 p.m. may be completed.

(Ord. of 5-28-97, § 15)

Sec. 8-326. Supervision.

At all times when open for business, a therapeutic massage establishment shall have upon the premises a licensed massage therapist or person who possesses a combination massage establishment/massage therapist license who shall be available to supervise the operation of the establishment and assure that no violations of this article occur.

(Ord. of 5-28-97, § 16)

Sec. 8-327. List of employees.

The therapeutic massage establishment shall keep a written list of the names and current addresses of all employees, both on duty and off duty. Such list shall be shown to the chief of police or his authorized deputy, the town clerk or his/her representative upon request.

(Ord. of 5-28-97, § 17)

Sec. 8-328. Penalties.

The violation of any provision of this article shall be punished by a fine not less than one hundred dollars (\$100.00) per day. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense. In addition to such penalty, the town may enjoin or abate any violation of this article by appropriate action.

(Ord. of 5-28-97, § 18)

Secs. 8-329—8-340. Reserved.

FOOTNOTE(S):

--- (10) ---

Editor's note— An ordinance of May 28, 1997, did not specifically amend the Code; hence, inclusion of §§ 1—18 of such ordinance as Art. II-8-8, §§ 8-311—8-328, was at the discretion of the editor.

ART. II-8-9. LARGE OUTDOOR EVENTS

Sec. 8-341. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Event coordinator shall mean the person responsible for the outdoor event.

Licensee shall mean the person named in the application.

Outdoor event shall mean any gathering held outdoors with the intent to attract one thousand (1,000) or more persons for a festival, exhibition, amusement, show, fair, theatrical performance, musical performance, road race/athletic event or other similar activity.

Performance guaranty shall mean a performance bond issued by an entity authorized to do business in Maine, cash escrow, or other financial guarantee acceptable to the town clerk and in a form approved by the town attorney/finance director, provided by an applicant for an outdoor event license to guarantee the payment of: the costs of the prompt cleaning of the grounds after the close of the outdoor event, and the town police, fire, rescue, other municipal employees and public works prevention and law enforcement activities performed by the town as a result of the outdoor event (the "public costs"). These public costs shall be those costs incurred by the town in connection with the proposed outdoor event which would not be incurred by the town if the outdoor event were not held. The town shall release the performance guaranty if the event coordinator pays all such public costs within thirty (30) working days after the outdoor event.

Person shall mean any natural person, sole proprietor-ship, partnership, corporation or other entity.

Town shall mean the Town of Falmouth, Maine.

Town clerk shall mean the town clerk of Falmouth, Maine.

Town council shall mean the town council of the Falmouth, Maine.

(Ord. of 9-22-2003, § II)

Sec. 8-342. Requirement of a license for outdoor events.

- a. The provisions in this article relating to payment of fees and costs and to obtaining performance bonds do not apply to outdoor events sponsored by the Falmouth School Department or any other agency or department of the Town of Falmouth.
- b. No person may sponsor, promote, operate or hold any outdoor event unless a license therefore is first obtained from the Town Clerk.
- c. The licensing procedure will be administered in the following manner:
 1. The person(s) seeking a license must file an application form with the town clerk no less than 30 days before the proposed commencement of the outdoor event.
 2. A non-refundable application fee of twenty-five dollars (\$25.00) must accompany the application.
 3. The fee for the license shall be established by order of the town council. The town clerk may at its discretion reduce or waive the fee for charitable and nonprofit organizations.
 4. The application for an outdoor event to be held on private property, must include an agreement with the property owner allowing use of the facility or property, unless the property or facility is owned by the applicant.
 5. Within five (5) days of the receipt of an application, the town clerk shall notify the town manager, police, fire and rescue chiefs/ code enforcement officer, and Falmouth Community Programs of the application.

When considering the issuance of a license for an outdoor event, the town clerk may seek advice from the police chief, fire chief, rescue chief, code enforcement officer, health officer and such other town officials as the clerk deems necessary.

(Ord. of 9-22-2003, § III)

Sec. 8-343. License standards.

In reviewing outdoor event license applications, the town clerk shall determine whether to issue a license based upon whether the application meets all of the following standards:

1. *Safety and access.* That convenient and safe access for the ingress and egress of pedestrian and vehicular traffic exists, and that traffic safety will be maintained on streets serving the outdoor event.
2. *Site.*
 - a. That the outdoor event assembly area will be well drained and so arranged to provide sufficient space for persons assembled, vehicles, sanitary facilities, and appurtenant equipment.

- b. That trees, underbrush, large rocks and other natural features will be left intact and undisturbed whenever possible, and that the natural vegetative cover shall be retained, protected, and maintained so as to facilitate drainage, prevent erosion, and preserve the scenic attributes.
- c. That the site shall be maintained free from accumulation of refuse, and from health and safety hazards constituting a nuisance.
- d. The assembly area shall be adequately lighted, but lighting shall not unreasonably reflect beyond the assembly area boundaries unless adjacent properties are uninhabited.
- e. The licensee shall be responsible for the posting of an area of "No Parking" under the direction of the chief of police.

3. *Sanitation.*

- a. That when water is not available under pressure, and non water carriage toilets are used, at least three (3) gallons of water per person per day shall be provided for drinking and lavatory purposes.
- b. That where water under pressure is not available, equivalent facilities shall be provided and installed in accordance with the requirements of the Department of Human Services, Bureau of Health, Mass Gathering Rules and informational guidelines.
- c. That the required sanitary facilities will be conveniently accessible and well marked.
- d. That wastewater will be discharged in a manner consistent with the requirements of the State Department of Human Services, division of Health Engineering.
- e. That disposal and/or treatment of any excretion or liquid waste will be in a manner consistent with the requirements of the State Department of Human Services, Division of Health Engineering.

4. *Refuse disposal.*

- a. That refuse will be collected, stored, and transported in such a manner as to protect from odor, infestation of insects and/or rodents any and other nuisance condition, or conditions which are inconsistent with the health, safety, and welfare to the patrons of the outdoor event or of the public.
- b. That all refuse will be collected from the assembly area at least twice each twelve (12) hour period of the outdoor event, with a minimum of two (2) such collections per outdoor event exceeding six (6) hours, or more if it is necessary, and disposed of at a waste disposal site approved by the town.
- c. That the grounds and immediate surrounding property will be cleared of refuse within twenty-four (24) hours following the outdoor event.

5. *Safety.*

- a. That where an electrical system is installed, it will be installed and maintained in accordance with the provisions of the applicable State standards and regulations and the Town's electrical codes.
- b. That the grounds, building, and related facilities will be maintained and used in a manner as to prevent fire and in accordance with the applicable local fire prevention regulations.
- c. That internal and external traffic and security control will meet requirements of the applicable State and local law enforcement agencies.

6. *Medical.* That all medical services will be as approved by the town's chief of rescue.

(Ord. of 9-22-2003, § IV)

Sec. 8-344. License decision and conditions.

- a. The town clerk may deny the license or grant the license, or grant the license and impose such reasonable conditions on the issuance of a license as would safeguard the public interest; including, requiring the applicant to:
 1. Post a performance guaranty in an amount estimated by the town clerk to be equal to the public costs;
 2. Meet with the chief of police to determine if there is a need to hire security and to determine what level of security shall be in place. The cost of certified police officers, rescue and fire personnel for security; including overtime and benefits costs are set by the Town and will be paid by the licensee. All security guards and/or police must be approved by the chief of police. In addition, the police chief will approve the traffic control plan;
 3. Agrees to pay for any equipment or supplies provided to them by the town; and
 4. Demonstrate, by means of a written, descriptive plan addressing the standards of this article, that adequate facilities will be provided at the site of the outdoor event, in order to protect the health of the people who attend, including:
 - a. Adequate waste disposal facilities;
 - b. Adequate fire fighting, rescue and police personnel, facilities, equipment; first aid, and;
 - c. Adequate water supplies
 - d. Adequate communication equipment
 - e. Give notice to the appropriate town, county and state officials, as named by the town clerk;
 - f. Adequate on-site parking spaces will be available if applicable.
 - g. Demonstrate, by means of a written descriptive plan, that adequate parking spaces will be available;
 - h. Provide for outdoor events, a detailed plan showing how crowd security and police protection of private property will be accomplished;
 - i. A detailed plan for controlling traffic to be approved by the chief of police.

Each of the above mentioned items to be approved by the appropriate Department Heads.

(Ord. of 9-22-2003, § V)

Sec. 8-345. Appeals to town council.

Any person who is denied an outdoor event license by the town clerk or who objects to any condition in a license granted to that person by the town clerk, may appeal the town clerk's decision to the town council within five (5) days. After a de novo hearing, the town council shall affirm or reverse the decision of the town clerk applying the provisions of Sec. 8-343 and Sec. 8-344.

(Ord. of 9-22-2003, § VI)

Sec. 8-346. Inspections.

The person in charge of the site which is the subject of an application for or has been issued an outdoor event license shall admit any officer, official or employee of the town authorized to make inspections of the site for compliance with this article or any other ordinance or statute at any reasonable time that admission is requested.

In addition to any other penalty which may be provided, the town council may revoke the outdoor event permit of any licensee in the town who refuses to permit entry by any such officer, official or employee, or who interferes with such officer, official or employee while in the performance of his or her duty.

(Ord. of 9-22-2003, § VII)

Sec. 8-347. Waivers.

The town clerk may, in the clerk's discretion, waive any of the requirements under Sec. 8-343 of this article, if the clerk finds the requirement of information or materials with the application is unnecessary or irrelevant to the review of a particular outdoor event permit application.

(Ord. of 9-22-2003, § VIII)

Sec. 8-348. Enforcement, penalty, assignability.

The town shall enforce this ordinance through its code enforcement officer. Anyone violating any provision of this article shall be subject to revocation of their outdoor event license and a fine in the amount of one hundred dollars (\$100.00) for each violation. Each day such violation continues shall constitute a separate offense. Licenses issued hereunder shall not be transferable or assignable.

(Ord. of 9-22-2003, § IX)

Sec. 8-349. Reserved.

ART. II-8-10. PERSONAL WIRELESS SERVICE FACILITIES SITING

Sec. 8-350. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Personal wireless service facility: A facility for the provision of personal wireless service, as that term is defined by 47 U.S.C. Section 332 (Section 704 of the Telecommunications Act of 1996), and includes, by way of illustration and not limitation, federally licensed commercial wireless telecommunications services such as cellular, personal communications services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), and also includes unlicensed wireless services and common carrier wireless exchange access services. A facility includes monopole type towers and any attached transmitting or receiving devices and equipment shelters and cabinets.

Reference tree height: The height in elevation proposed by the applicant and approved by the planning board for determining the top elevation of a treetop facility's monopole mounting structure. This may be either: a) the average crown elevation of the highest quartile of trees with a diameter at breast height (DBH) greater than ten (10) inches within seventy-five (75) feet of the proposed monopole; or b) the crown elevation of a shorter tree that has been strategically identified for screening and camouflaging purposes. Approval by the planning board shall be based upon its determination of which alternative best promotes the objectives of this article X in the particular circumstances of the application.

Skylining: Locating a personal wireless service facility in such a way that the sky is the backdrop of any portion of the facility.

Tier I personal wireless service facility or Tier I facility: A personal wireless service facility that (i) is located entirely within an existing building but which may include a self-contained shelter or cabinet not exceeding one hundred fifty (150) square feet that is not within the building; (ii) is located within or camouflaged by an addition to an existing structure determined by the reviewing entity to be in character with the structure and its surroundings; or (iii) is located within or camouflaged by a new structure determined by the reviewing authority to be in character with and scale of its surroundings. Permits for Tier I facilities are issued by the code enforcement officer.

Tier II personal wireless service facility or Tier II facility: A personal wireless service facility that either (i) consists of one (1) or more antennas, other than a microwave dish, attached to an existing structure, other than a flag pole, that conforms to existing zoning regulations, that do not exceed the height of the structure, and are flush mounted to the structure, together with associated personal wireless service equipment; or (ii) is a treetop facility. Permits for Tier II facilities are issued by the planning board.

Tier III personal wireless service facility or Tier III facility: A personal wireless service facility which is not a Tier I or Tier II facility and which is located on a monopole that does not exceed two hundred (200) feet in height as measured from the facility base to the highest point of the facility (the word facility includes any attached receiving or transmitting device). Permits for Tier III facilities are issued by the planning board after approval of a conditional rezoning by the town council.

Treetop facility: A personal wireless service facility consisting of a self supporting monopole having a single shaft, and includes associated antennas, mounting structures, equipment cabinets and other essential personal wireless service equipment.

(Ord. of 4-25-2005)

Sec. 8-351. Zoning.

Personal wireless service facilities shall be allowed, with a permit issued under this article, in accordance with the land use tables of Div. II-19-1-3 of the Falmouth Zoning and Site Plan Review Ordinance and, more specifically, shall be allowed as follows:

- a. Tier I facilities shall be permitted use in all zoning districts.
- b. Tier II facilities shall be a permitted use in the following zoning districts: SB-1, BP, MUC, VMU, CO, Exit 10 and Village Center.
- c. Tier III facilities where the tower base is at or above four hundred (400) feet based on the United States Geological Survey datum referred to mean sea level. Additionally, Tier III facilities may be allowed by conditional rezoning as approved by the town council pursuant to section 19-17 of the zoning and site plan review ordinance upon a showing by the applicant that (a) except for the height limitations on Tier I and Tier II facilities, the provisions of this Art.

II-8-10 have been met; (b) it is impractical to meet coverage and/or capacity needs of the applicant through one (1) or more Tier I or Tier II facilities; and (c) the visual impact of a single facility would be less than the visual impact of the number of Tier I and/or Tier II facilities required to meet such need.

In case of conflict between this Sec. 8-351 and the zoning and site plan review ordinance, the latter ordinance shall control.

(Ord. of 4-25-2005)

Sec. 8-352. Purpose.

This article is intended to regulate the location, siting and design of personal wireless service facilities throughout the town in order to:

1. Minimize adverse visual impacts of personal wireless service facilities through careful design, siting and vegetative screening; and
2. Avoid damage to adjacent properties from structural failure of facilities and falling ice from facilities through engineering and careful siting.

(Ord. of 4-25-2005)

Sec. 8-353. Permit required.

A personal wireless service facility (hereinafter sometimes "facility") may not be established after the enactment of this article without a Tier I, Tier II or Tier III facility permit issued by the appropriate authority.

1. *Application for approval.* Each request for approval of a facility shall include the following information:
 - a. A completed application form, signed by (i) the parcel owner, the owner's agent (with proof of the agency) or a person with a contract to purchase or lease the parcel and (ii) the proposed facility's owner. If the contract purchaser or lessee signs the application, they shall also submit the parcel owner's written consent to the application.
 - b. A boundary survey by a Maine registered surveyor of the parcel on which the facility will be located. In cases where the facility will be on leased land, references in this article to "parcel" and to "lot" shall mean the underlying fee ownership tract and not the boundaries of the leased land.
 - c. Whenever the application is signed by other than a natural person, the complete legal name of the entity, a description of the type of entity, and written documentation that the person signing on behalf of the entity is authorized to do so shall accompany the application.
 - d. Except where the facility will be located entirely within an existing structure, a scaled plan and a scaled elevation view and other supporting drawings, calculations and documentation as may be required by the planning board, signed and sealed by an appropriate professional licensed or registered in the State of Maine. The plans and supporting drawings, calculations, and documentation shall show:
 - i. The location and dimensions of all existing and proposed improvements on the parcel including access roads and structures, the location and dimensions of significant natural features and the maximum height of the facility, measured both as height above existing grade and height above sea level.

- ii. The benchmarks and datum used for elevations: The datum shall coincide with NAD83 or the most current version.
 - iii. The design of the facility, including the specific type of support structure and the design, type, location, size, height, elevation and configuration of all existing and proposed antennas and other equipment.
 - iv. Identification of each paint color on the facility, by manufacturer color name and color number. A paint chip or sample shall be provided for each color.
 - v. The topography within a one mile radius of the proposed facility, in contour intervals not to exceed twenty (20) feet for all lands within Falmouth, and in contour intervals shown on the US Geological Survey topographic survey maps or the best topographic data available for lands not within Falmouth (This submission is not required if the facility will be attached to an existing structure).
 - vi. The height, crown elevation, caliper, and species of all trees greater than ten (10) inches diameter at breast height where the drip line is located within seventy-five (75) feet of the facility that are relied upon to establish the proposed height and/or screening of the monopole. All trees that will be adversely impacted or removed during installation or maintenance of the facility shall be noted regardless of their distance to the facility. (This submission is not required if the facility will be attached to an existing structure).
 - vii. All existing and proposed setbacks from lot lines and lease area perimeter lines, parking, fencing and landscaping.
 - viii. The location of all existing access ways and the location and design of all proposed access ways.
 - ix. Residential and commercial structures on site and within two hundred (200) feet of the facility, and residential and zoning district boundaries. (This submission is not required if the facility will be attached to an existing structure.)
- e. Photographs, where possible, or perspective drawings of the facility, all existing facilities within two hundred (200) feet of the site, if any, and the area surrounding the site.
- f. For any proposed monopole, photographs taken of a balloon test, which shall be conducted as follows:
- i. The applicant shall contact the planning board within ten (10) days after the date the application was submitted to schedule a date and time when the balloon test will be conducted. The test shall be conducted within forty (40) days after the date the application was submitted, and the applicant shall provide the town with sufficient notice so that the town may provide sufficient notice to the public and members of the planning board of the date of such test, and provided that this notice shall include a provision for a fall back date for the test, in the event of inclement weather.
 - ii. Prior to the balloon test, the locations of the access road, the lease area, the facility site, the reference tree and the tallest tree (in elevation) within twenty-five (25) feet of the proposed monopole, and a representative "average" tree shall be surveyed and staked or flagged in the field.
 - iii. The test shall consist of raising one (1) or more balloons from the site to a height equal to the top elevation of the proposed facility.
 - iv. The balloons shall be of a color or material that provides maximum visibility.
 - v. The photographs of the balloon test shall be taken from the nearest residence and from appropriate locations on abutting properties, along each section of a publicly used road from which the balloon is visible, and from other properties and locations as deemed

appropriate by the planning board. For sections of publicly used roads with view corridors more than one thousand (1,000) feet in length, photographs shall be taken at the beginning, middle and end of the corridor. The applicant shall identify the camera type, film size, and focal length of the lens for each photograph. At a minimum, one (1) set of photographs shall be provided using a focal length equivalent to fifty (50) mm.

- g. If antennas are proposed to be added to an existing structure, all existing antennas and other equipment on the structure, as well as all ground equipment, shall be identified by owner, type and size. The method(s) by which the antennas shall be attached to the mounting structure shall be depicted.
 - h. A scaled map (one (1) inch equal to or less than two thousand (2,000) feet) showing the location along publicly used roads illustrating where the tower will be visible based on the results of the balloon test. The map shall be keyed to clearly identify areas where the tower is or will be visible during leaf-on and leaf-off conditions.
 - i. If the proposed facility would be located on lands subject to a conservation easement or an open space easement, a copy of the recorded deed of easement and the express written consent of all easement holders to the proposed facility.
2. *Setbacks; Exemption from regulations otherwise applicable:* Except as otherwise exempted in this paragraph, each facility shall be subject to all applicable regulations in this Art. [II-8-10](#).
- a. The tower or other mounting structure shall be set back from all property lines by a distance of one hundred (100) percent of the total facility height, provided, however, the planning board may authorize a facility to be located closer to any lot line if there are no structures used as dwelling units, places of employment or shelter for animals within the facility's fall zone and if the applicant obtains an easement or other recordable document, acceptable to the town attorney, prohibiting such structures on the portion of the abutting parcel that is within the facility's fall zone (e.g., the setback of an eighty-foot tall facility could be reduced to thirty (30) feet if an easement is established prohibiting development on the abutting lot within a fifty-foot fall zone). If the right-of-way for a public street is within the fall zone, the town public works department and/or the Maine Department of Transportation shall be included in the staff review in lieu of recording an easement or other document for the right-of-way. However, the planning board may waive this requirement for facilities which are mounted on or contained within a structure used for another purpose.
 - b. Personal wireless service facilities shall not be subject to the minimum lot size requirements, minimum site size requirements, maximum lot coverage requirements, minimum net residential area requirements, or minimum setback requirements contained in the applicable provisions of Div. [II-19-1-3](#) of the zoning and site plan review ordinance.
 - c. Site plan review under Div. [II-19-1-9](#) of the zoning and site plan review ordinance shall not be required for a personal wireless service facility application.
3. *Facilities not permitted in certain areas.* Except for Tier I facilities, personal wireless service facilities shall not be sited or built on the following:
- a. Land shown to be in the flood way or coastal high hazard area on the flood boundary of flood insurance rate maps of the town;
 - b. Land which is unsuitable for development in its natural state because of topography, drainage, or subsoil conditions. Specific conditions include but are not limited to:
 - i. Areas having unstable soils subject to slumping, mass movement, or accelerated erosion;

- ii. Areas classified as wetlands by state or federal law;
 - iii. Areas characterized by "coastal wetlands" as that term is defined in 38 M.R.S.A. subsection 472(2); and
 - iv. Land in resource protection districts.
4. *Standards for Tier I facilities.* Each Tier I facility may be established upon code enforcement officer approval of a Tier I facility permit application satisfying the requirements of subsection (1) and demonstrating that the facility will be installed and operated in compliance with all applicable provisions of this Art. II-8-10, and meeting the following conditions:
- a. The facility shall comply with subsection (3).
 - b. The facility shall be designed, constructed and maintained as follows: (i) guy wires shall not be permitted; (ii) outdoor lighting for the facility shall be permitted only during maintenance periods, regardless of the lumens emitted; (iii) any equipment cabinet not located within an existing structure shall be screened from all lot lines either by terrain, existing structures, existing vegetation, or by added vegetation approved by the code enforcement officer with the advice of a landscape architect; (iv) a grounding rod, whose height shall not exceed two (2) feet and whose width shall not exceed one (1) inch in diameter at the base and tapering to a point, may be installed at the top of the facility or the structure; and (v) within one (1) month after the completion of the installation of the facility the applicant shall provide a statement to the code enforcement officer certifying that the height of all components of the facility complies with this regulation.
 - c. Equipment shall be attached to the exterior of a structure only as follows: (i) the total number of arrays of antennas attached to the existing structure shall not exceed three (3), and each antenna proposed to be attached shall not exceed the size shown on the application, which size shall not exceed one thousand one hundred fifty-two (1,152) square inches; (ii) no antenna shall project from the structure beyond the minimum required by the mounting equipment, and in no case shall any point on the face of an antenna project more than twelve (12) inches from the existing structure; and (iii) each antenna and associated equipment shall be a color that matches the existing structure. For purposes of this section, all types of antennas and dishes regardless of their use shall be counted toward the limit of three arrays.
 - d. Any fence needed for the facility shall blend with its surroundings and shall fence in the minimum area necessary to protect equipment and to protect the owner from liability.
5. *Standards for Tier II facilities.* Each Tier II facility may be established upon planning board approval of a Tier II facility permit application satisfying the requirements of subsection (1) and demonstrating that the facility will be constructed, installed and operated in compliance with all applicable provisions of this Art. II-8-10 and satisfying the following criteria:
- a. The facility shall comply with subsection (3) and subsection (4).
 - b. The site shall provide adequate opportunities for screening and the facility shall be sited to minimize its visibility from adjacent parcels and streets, regardless of their distance from the facility. If the facility would be visible from a river, bay or lake, regardless of whether the site is adjacent thereto, the facility also shall be sited to minimize its visibility from such river, bay, or lake. If the facility would be located on lands subject to a conservation easement or an open space easement, the facility shall be sited so that it is not visible from any natural feature specifically identified for protection in the deed of easement.
 - c. The facility shall not have an unreasonable adverse visual impact on resources identified in the town's open space plan.

- d. A facility may not be located so that it and three (3) or more existing or approved personal wireless service facilities would be within an area comprised of a circle centered anywhere on the ground having a radius of two hundred (200) feet.
- e. The maximum base diameter of the monopole shall be thirty (30) inches and the maximum diameter at the top of the monopole shall be eighteen (18) inches.
- f. The top of the monopole, measured in elevation above mean sea level, shall not exceed the height approved by the planning board. The facility shall not be more than ten (10) feet taller than the reference tree height and shall include any base, foundation, or grading that raises the pole above the pre-existing natural ground elevation; provided that the height approved by the planning board may be up to thirty (30) feet taller than the tallest tree and further provided that:
 - i. The applicant demonstrates to the planning board that there is not a substantial difference in the visibility of the monopole at the proposed height when compared to a height of ten (10) feet above the reference tree height;
 - ii. There is not a substantial difference in adverse impacts to resources identified in the town's open space plan caused by the monopole at the proposed height; and
 - iii. There is not an increase in skylining of the proposed facility. For purposes of evaluating skylining, the skylining determination shall be based on the line of site at ground or water level observations from a viewpoint not less than seven hundred fifty (750) feet and not greater than one statutory mile on publicly used roads, navigable waters, or from property where the general public has legal right of access. The planning board may as part of the approval to a height of thirty (30) feet above the tallest tree require that the facility use "stealth" technology, i.e., to camouflage the monopole by, for example, creating the appearance of a tree.
- g. Each monopole shall be a color that will blend into the surrounding trees. The antennas, supporting brackets, and all other equipment attached to the monopole shall be a color that closely matches that of the monopole. The ground equipment, the ground equipment cabinet, and the concrete pad shall also be a color that closely matches that of the monopole, provided that the ground equipment and the concrete pad need not be of such a color if they are enclosed within or behind an approved structure, facade or fencing that (i) is a color that closely matches that of the monopole, (ii) is consistent with the character of the area, and (iii) makes the ground equipment and concrete pad invisible at any time of the year from any other parcel or public or private street.
- h. Each wood monopole shall be constructed so that all cables, wiring and similar attachments that run vertically from the ground equipment to the antennas are placed on the pole to face the interior of the property and away from public view, as determined by the code enforcement officer. Metal monopoles shall be constructed so that vertical cables, wiring and similar attachments are contained within the monopole's structure.
- i. The following shall be submitted with the permit application: (i) certification by a Maine registered surveyor stating the reference tree height that is used to determine the permissible height of the monopole; and (ii) a final set of revised plans for the construction of the facility. The planning board shall review the surveyor's certificate and the plans to assure that all applicable requirements have been satisfied before a building permit may be issued.
- j. The following shall be submitted to the code enforcement officer after installation of the monopole is completed and prior to the issuance of certificate of occupancy: (i) certification by a registered surveyor stating the height of the monopole, measured both in feet above ground level and in elevation above mean sea level, using the benchmarks or reference

datum identified in the application; and (ii) certification stating that the lightning rod's height does not exceed two (2) feet above the top of the monopole and width does not exceed a diameter of one (1) inch.

- k. Notice of the planning board's consideration of an application for a Tier II facility shall be sent by the town to the owner of each lot abutting the lot and the owner of lots located within a seven hundred fifty-foot radius on which the proposed facility will be located. The notice shall describe the nature of the facility, its proposed location on the lot, its proposed height, the location where the complete Tier II application may be viewed, and the date, time and location where the planning board will consider the application. The notice shall be mailed by first class mail or hand delivered at least ten (10) days prior to the planning board meeting. Mailed notice shall be mailed to the last known address of the owner, and mailing the notice to the address shown on the current real estate tax assessment records of the town shall be deemed compliance with this requirement. The failure of an owner to receive the notice as provided herein shall not affect the validity of an approved Tier II facility and shall not be the basis for an appeal.
- l. The following shall apply only to a tree top facility:
 - i. As part of an application for a Tier II facility permit involving a tree top facility, the applicant shall submit a tree conservation plan prepared by a certified arborist. The plan shall be submitted to the planning board for review and approval to assure that all applicable requirements have been satisfied. The plan shall specify tree protection methods and procedures, and identify all existing trees to be removed on the parcel for the installation, operation and maintenance of the facility. Except for the tree removal expressly authorized by the planning board, the applicant shall not remove or cause to be removed existing trees within the facility's fall zone, i.e., a distance equal to the height of the facility, measured in all directions of any part of the facility. In addition, the planning board may identify additional trees or lands up to two hundred (200) feet from the facility to be included in the plan.
 - ii. The installation, operation and maintenance of the facility shall be conducted in accordance with the tree conservation plan. Dead and dying trees identified by the arborist's report may be removed if so noted on the tree conservation plan. If tree removal is later requested that was not approved by the planning board when the tree conservation plan was approved, the applicant shall submit an amended plan. The planning board may approve the amended plan if the proposed tree removal will not adversely affect the visibility of the facility from any location off of the parcel. The planning board may impose reasonable conditions to assure that the purposes of this paragraph are achieved.
 - iii. The facility shall be disassembled and removed from the site within ninety (90) days of the date of its use for personal wireless service purposes is discontinued.
 - iv. No slopes associated with the installation of the facility and accessory uses shall be created that are steeper than 2:1 unless retaining walls, revetments, or other stabilization measures acceptable to the planning board are employed.
- 6. *Standards for Tier III facilities.* Each Tier III facility may be established upon planning board approval of a Tier III facility permit application satisfying the requirements of subsection (1), and demonstrating that the facility will be constructed, installed and operated in compliance with all applicable provisions of this Art. II-8-10, and satisfying the following criteria. In cases where a conditional rezoning approval from the town council is required, the applicant shall obtain the town council approval before submitting an application to the planning board. The town council shall follow the conditional rezoning procedures contained in the zoning and site

plan review ordinance and Sec. 8-351 of this article. The planning board shall consider the following criteria in addition to the requirements of subsection (1):

- a. The facility shall comply with subsection (3), subsection (4), and subsection (5)(b), (c), (d), (g) and (k).
- b. In no event shall a Tier III facility exceed two hundred (200) feet above grade level.
- c. Tier III facilities that are not subject to special painting or lighting standards of any federal agency shall meet as far as is practical the visual standards for Tier II facilities and at a minimum shall have a galvanized finish or be painted in a sky tone above the top of surrounding trees and shall be painted in an earth tone below treetop level or should be camouflaged by a "stealth" treatment.
- d. Unless existing vegetation provides a buffer strip the width of the required fall zone, calculated as the equivalent of the facility's height, the planning board shall require that all property lines along roadways or visible to existing abutting or nearby buildings (within one-fourth ($\frac{1}{4}$) mile radius) be landscaped as follows:
 - i. With six (6) to eight (8) foot evergreen shrubs planted in an alternate pattern, five (5) feet on center and within fifteen (15) feet of the site boundary.
 - ii. With at least one (1) row of deciduous trees, not less than two and one-half ($2\frac{1}{2}$) inch to three (3) inch caliper measured three (3) feet above grade, and spaced not more than twenty (20) feet apart and within twenty-five (25) feet of the site boundary.
 - iii. With at least one (1) row of evergreen trees at least four (4) to five (5) feet in height when planted, and spaced not more than fifteen (15) feet apart within forty (40) feet of the site boundary.
 - iv. In lieu of the foregoing, the planning board may determine that the existing vegetation must be supplemented to meet an equivalent means of achieving the desired goal of minimizing the visual impact. To assist in making that determination, the planning board may require the applicant to provide a visual impact analysis by a qualified professional.

(Ord. of 4-25-2005)

Sec. 8-354. Transmission towers—Zoning and site plan review ordinance.

Transmission towers, as defined in the zoning and site plan review ordinance, existing on the date of enactment of this article shall continue to be governed by the terms of Sec. 19-66 of the zoning and site plan review ordinance. All personal wireless service facilities created after the date of enactment of this article shall comply with the terms of this article.

(Ord. of 4-25-2005)

ART. II-8-11. TEMPORARY SIGNS

Sec. 8-355. Purpose.

The purpose of this article is to permit temporary advertising and informational signs while preventing the proliferation of signs and creating hazards to traffic.

(Ord. of 5-30-2012)

Sec. 8-356. Definitions.

The definitions in Div. II-19-1-2 of the zoning and site plan review ordinance apply to this article except for *free standing sign*. For purposes of this section, free standing sign refers to any sign placed in or on the ground and includes A-frame signs. Terms not defined shall have the customary dictionary meaning.

(Ord. of 5-30-2012)

Sec. 8-357. Applicability.

Unless otherwise exempted this article applies to all exterior temporary signs in the town. Temporary signs shall not be counted in calculating the maximum number of permanent signs allowed on a lot or the maximum gross display area allowed on a wall which are regulated by zoning and site plan review ordinance.

(Ord. of 5-30-2012)

Sec. 8-358. Exemptions.

Signs on town owned or controlled properties and signs erected or placed by the town are exempt from this article.

(Ord. of 5-30-2012)

Sec. 8-359. Authority and administration.

This article shall be administered and enforced by the code division and enforced by the code enforcement officer, except for those signs as regulated in Sec. 17-4. Any person who places or causes to be placed a sign in violation of this article commits a civil violation for which a civil penalty of no less than one-hundred dollars (\$100.00) shall be imposed. Each day a sign remains in violation of this article constitutes a separate violation.

(Ord. of 5-30-2012)

Sec. 8-360. Validity and severability.

This article applies in addition to the restrictions and requirements applicable to signs under the town zoning and site plan review ordinance and any other town ordinance. Should any section or provision of this article be declared by any court to be invalid, such decision shall not invalidate any other section or provision. This article shall not be construed to repeal any existing bylaws or ordinances, or to impair the provisions of private restrictions placed upon property.

(Ord. of 5-30-2012)

Sec. 8-361. Permit required.

Temporary signs, except temporary advertising signs and new business/business relocation signs do not require a permit but must comply with all provisions of this article.

(Ord. of 5-30-2012)

Sec. 8-362. Prohibitions.

All temporary signs not expressly permitted by this article are prohibited.

(Ord. of 5-30-2012)

Sec. 8-363. General.

Temporary signs are permitted and shall conform to standards within municipal, state or federal ordinances, statutes or regulations and the following standards:

1. Temporary signs specified in this section shall not be attached to fences, trees, utility poles, or the like, shall not be placed in a position that will obstruct or impair vision or traffic, either pedestrian or vehicular, shall not infringe on handicap accessibility, nor in any manner create a hazard or disturbance to the health and welfare of the general public.
2. Unless specifically permitted in Sec. 8-364, no signs are permitted in any public right-of-way.
3. No digging or excavation shall occur within any public right-of-way.
4. Signs under this section are exempt from setback requirements in the zoning and site plan review ordinance.
5. No sign may be placed within five (5) feet of street pavement.
6. Maximum allowable height for free standing signs is ten 10 feet, except for signs placed in a street right-of-way between five (5) and fifteen (15) feet from the edge of the street pavement, where signs are limited to thirty-six (36) inches in height.
7. Illumination, both internal and external, is prohibited.
8. No sign or part of a sign shall consist of or include visible moving parts, pennants, ribbons, streamers, balloons, spinners or other similar devices to attract attention.

(Ord. of 5-30-2012)

Sec. 8-364. Types of temporary signs permitted.

1. *Signs giving public notice.* One (1) sign of a temporary nature such as an advertisement of a charitable function, notice of meeting or other non-commercial sign of a similar nature is permitted on the lot where the event occurs for a period not to exceed thirty (30) days and shall be removed by the organization that posted the sign. Freestanding, A-frame, and wall signs are allowed with a maximum size of twelve (12) square feet of display area in the F, RA, RB & RC districts and sixteen (16) square feet of display area in the SB, BP, MUC, VMU & CO districts.
2. *Real estate signs.* One (1) temporary freestanding or wall real estate sign may be erected advertising the sale, lease, or rental of the premises upon which the sign is located for the duration of the availability of the property. Maximum allowed size is nine (9) square feet of display area in the F, RA, RB & RC districts and sixteen (16) square feet of display area in the SB, BP, MUC, VMU & CO districts.
3. *Development or construction site.* One (1) temporary development or construction sign may be erected on the project site provided such sign shall be limited to a general identification of the project and shall be removed within thirty (30) days after completion of the project. Maximum size of a freestanding sign is sixteen (16) square feet of display area. Wall signs in the F, RA, RB & RC districts may be sixteen (16) square feet of display area and thirty-two (32) square feet of display area in the SB, BP, MUC, VMU & CO districts.

4. *Political signs.* Signs bearing political messages relating to an election, primary or referendum may be placed in any district, except in a floodplain. Political signs may be placed within a right-of-way in such locations as will not create a safety hazard, not prior to six (6) weeks before the election, primary or referendum to which they relate and must be removed by the candidate or political committee not later than one (1) week after election day.
5. *New business or business relocation signs.* A maximum of two (2) temporary signs may be erected to announce a new business or a relocated business provided each sign is no larger than eight (8) square feet of display area and is removed within sixty (60) days of installation. Home occupations are not eligible for temporary signs under this article. Sign types permitted are:
 - a. One (1) wall sign which may consist of any material and temporarily cover a permanent wall sign or temporarily attached to a wall, and
 - b. Either a free-standing sign which may utilize existing sign posts or be on new posts that are removed at the end of the time period, or an A-frame which must be removed during non-business hours.
 - c. Location shall be on the same property as the business and shall not interfere with sight distance from any egress.
6. *Farm stand signs.* Signs erected by growers of fresh fruit and vegetable crops advertising those fresh fruit and vegetable crops are permitted if crops are offered for sale by the grower on the premises on which those crops are grown and if the following requirements are met:
 - a. Signs may be erected, maintained and kept in place only from June 1st to December 1st of each year.
 - b. Signs may advertise only those fruits and vegetables that are available for immediate purchase.
 - c. No grower may have more than six (6) signs posted or in place within the town at any one (1) time, not more than four (4) of which may be located off the premises on which these crops are grown.
 - d. No signs may exceed six (6) square feet of display area, and all signs must be located within three (3) miles, by road of the farm stand.
 - e. Signs may be erected on off premise private property, but only with the landowner's prior, written consent. Signs may also be erected within, but only at the outside edge of, rights of way that receive no federal aid.
7. *Temporary advertising signs.*
 - a. *Applicability.* Any individual business owners may place temporary advertising signs in accordance with this section. Home occupations are not eligible for temporary signs under this section.
 - b. *Exemptions.* Signs permitted under this section are exempt from the Route One and Exit 10 design guidelines.
 - c. *Standards.*
 1. One (1) temporary advertising sign may be placed for up to seven (7) consecutive days for up to four (4) non-consecutive occurrences per calendar year for each business.
 2. The following types of temporary advertising signs are permitted:
 - i. Wall

- ii. Freestanding. Freestanding signs are not permitted in VC 1.
 - iii. A-frame. A-frame signs under this section are not permitted in VC 1.
- 3. Non-electronic changeable copy is permitted on all sign types.
- 4. Maximum allowable size is sixteen (16) square feet of display area.
- 5. Minimum required height for lettering is five (5) inches.
- 6. Businesses located on a lot with frontage on a street may place a temporary sign within the right-of-way adjacent to the property boundary if permission is obtained from whoever controls the right-of-way.
- 7. Temporary advertising signs shall not cover permanent sign content.
- d. *Registration of signs.*
 - 1. Any business owner intending to use this section shall register all signs with the code division on a form provided by the town.
 - 2. The initial registration shall include the dates of the initial temporary sign occurrence and be accompanied by a twenty-five dollar (\$25.00) fee.
 - 3. The applicant must register thereafter for each additional occurrence declaring specific dates for temporary sign placement with no additional fee charged.
 - 4. The registration period shall be the effective date of this article through December 31, 2013.
- e. *Sunset clause.* This section for temporary advertising signs is repealed effective December 31, 2013, unless further legislative action is taken to extend the provision.
- 8. *Temporary A-Frame Signs in VC Districts.*
 - a. *Applicability.* Any individual business owner may place temporary advertising signs in accordance with this section provided that the building entrance where the sign is placed is in conformance with the setback requirements under Sec. 19-11 of the Zoning and Site Plan Review Ordinance. This section is in addition to:
 - b. *Standards.*
 - 1. One (1) A-frame temporary advertising sign may be utilized during business hours.
 - 2. No more than one (1) sign per building entrance.
 - 3. Sign shall be within twelve (12) feet of the building entrance.
 - 4. Sign shall be a minimum of three (3) feet from any entrance, stairs or other pedestrian access.
 - 5. Sign shall be located in a well-lit area after sunset.
 - 6. Sign may be in the public ROW if a revocable license agreement and waiver of liability are executed and permission granted by the town.
 - 7. Sign shall be stored inside outside business hours.
 - 8. Signs shall be weighted or secured to avoid being carried away.
 - 9. No add-ons such as balloons, flags, streamers or lighting are permitted.
 - 10. No changeable copy is permitted. Chalkboard or white board is allowed.

11. Maximum allowable size is six (6) square feet of display area on each sign face, with legs a maximum of six (6) inches in height.

(Ord. of 5-30-2012; Ord. of 5-13-2013)

FOOTNOTE(S):

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Editor's note— The zoning, flood prevention and protection and site plan regulations of the town are not printed in this Code, but are on file in the town clerk's office.

ART. II-8-12 SINGLE-USE CARRYOUT SHOPPING BAGS

Sec. 8-365 Title

This Section shall be titled and referred to as the "Ordinance Regulating Single-Use Carryout Shopping Bags."

Effective on: 4/1/2016

Sec. 8-366 Purpose, Intent.

It is in the best interests of the citizens and visitors of Falmouth to reduce the cost to the Town of solid waste disposal and to protect the environment and natural resources by discouraging the distribution and use of disposable, single-use, carryout shopping bags and encouraging the use of reusable shopping bags in Stores, as defined in this Section.

Effective on: 4/1/2016

Sec. 8-367 Findings.

The Town Council hereby finds as follows:

1. The use of single-use carryout bags has a negative impact on the environment and on wildlife; and
2. Despite the value of single-sort recycling, plastic film from single-use plastic shopping bags binds and clogs sorting equipment and becomes a burden on recycling operations. In turn, Town taxpayers must bear costs associated with these effects on the solid waste stream; and
3. The Town, through its policies, programs, and laws, supports efforts to reduce the amount of waste that must be disposed of by supporting the waste management hierarchy (reduce, reuse, recycle, compost, waste-to-energy, landfill); and
4. Falmouth is a coastal community with an obligation to protect the ocean environment from plastic debris; and
5. It is estimated that approximately two million single-use plastic shopping bags are distributed to Falmouth customers each year; and
6. Studies document, and participating municipalities report, that prohibiting the free distribution of single-use carryout bags can dramatically reduce the number of those types of bags; and

7. The Town Council believes that the best alternative to single-use carryout bags is the use of reusable bags for shopping, which is accomplished through prohibiting the free distribution of single-use carryout bags by stores.

Effective on: 4/1/2016

Sec. 8-368 Authority

This Ordinance is adopted pursuant to the Town's home rule authority pursuant to 30-A M.R.S. § 3001 *et seq.*

Effective on: 4/1/2016

Sec. 8-369 Definitions

As used in this Ordinance the following terms have the following meanings:

Single-use Carryout Bag means a bag other than a reusable bag, as defined below, 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 bags, including paper bags, but does not include reusable bags, produce bags, product bags or bags provided by pharmacists to contain prescription drugs, or bags distributed at dry cleaning establishments.

Produce Bag or **Product Bag** means any bag without handles used exclusively to carry produce, meats, other foods items or merchandise to the point of sale inside a store or to prevent such items from coming in direct contact with other purchased items.

Reusable Bag means a bag that meets all of the following criteria:

- a. Designed and manufactured to withstand repeated uses over a period of time;
- b. Is machine washable or, made from a material that can be cleaned and disinfected regularly;
- c. Is at least 4 mil thick, if made from plastic; and
- d. Has the capability of carrying a minimum of 18 pounds.

Store means a retail establishment located within the Town of Falmouth engaged in the sale, rental and/or lease of perishable or non-perishable goods to the ultimate consumer for direct use or consumption and not for resale, with a floor area whose square footage exceeds 10,000 feet.

Effective on: 4/1/2016

Sec. 8-370 Exemptions

This Ordinance shall not apply to (1) dine-in or take-out restaurants; (2) dry cleaners; and (3) horticultural nurseries and/or commercial greenhouses.

Effective on: 4/1/2016

Sec. 8-371 Restrictions on Single-use Carryout Bags

- a. Except as provided in this Section, no Store (as defined above) 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 purposes of transporting food or merchandise out of the establishment.
- b. A Store may make available for sale to a customer a Single-Use Carryout Bag for a mandatory, uniform charge of five cents (\$0.05) per bag.
- c. All monies collected by a Store for the sale of Single-Use Carryout Bags under this Section 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. Notwithstanding this section, no Store may make available for sale a Single-Use Carryout Bag unless the amount of the sale of the Single-Use Carryout Bag is separately itemized on the sale receipt.
- f. No Store shall rebate or otherwise reimburse a customer any portion of the charge required in subsection (b).

Effective on: 4/1/2016

Sec. 8-372 Permitted Bags

Nothing in this Section shall be construed to prohibit customers from using bags of any type that the customer brings to the Store for their own use or from carrying away from the store goods that are not placed in a bag provided by the Store.

Effective on: 4/1/2016

Sec. 8-373 Record Keeping and Inspection

Every Store shall keep complete and accurate records or documents of the purchase and sale of any Single-Use Carryout, for a minimum period of three (3) years from the date of purchase and sale, which record shall be available for inspection at no cost to the Town during regular business hours by any Town employee authorized to enforce this Article. Unless an alternative location or method of review is mutually agreed upon, the records or documents shall be available at the Store's address. The provision of false information including incomplete records or documents to the Town shall be a violation of the Ordinance.

Effective on: 4/1/2016

Sec. 8-374 Violations and 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) determines that a violation of this Section has occurred, he/she shall issue a written warning notice to the Store that the violation has occurred. Subsequent violations of this Section shall be subject to the penalties set forth below.

Violations of this Section shall be punishable by fines as follows:

- a. A fine not exceeding \$250 for the first violation in a one-year period;
- b. A fine not exceeding \$500 for the second and each subsequent violation in a one-year period.

Effective on: 4/1/2016

Sec. 8-375 Effective Date

The provisions of this ordinance shall become effective on April 1, 2016.

Effective on: 4/1/2016

Sec. 8-376 Severability

If any part or provision of this Section or the application thereof to any person or circumstances is held invalid, the remainder of this Section, 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 Section are severable.

Effective on: 4/1/2016

ART. II-8-13 COMMERCIAL WASTE HAULING (Adopted 5/22/2017)

Sec. 8-377. Purpose.

The purpose of this ordinance is to increase the enjoyment of residential properties adjacent and near to commercial and industrial establishments by reducing the amount of noise associated with the servicing of commercial waste containers during certain times of day.

Effective on: 5/22/2017

Sec. 8-378. Authority.

This Ordinance is adopted pursuant to the Town's home rule authority pursuant to 30-A M.R.S. § 3001 *et seq.*

Effective on: 5/22/2017

Sec. 8-379. Applicability.

This ordinance shall apply to all business establishments that utilize commercial waste containers that are serviced by a solid waste hauler.

Effective on: 5/22/2017

Sec. 8-380. Restrictions.

Commercial waste haulers are restricted from the servicing of waste containers between the hours of 10:00 pm and 6:00 am.

Effective on: 5/22/2017

Sec. 8-381. Penalties and 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) determines that a violation of this Section has occurred, he/she shall issue a written warning notice to the business establishment that the violation has occurred. Subsequent violations of this Section shall be subject to the penalties set forth below.

Violations of this Section shall be punishable by fines as follows:

- a. A fine not exceeding \$250 for the first violation in a one-year period;
- b. A fine not exceeding \$500 for the second and each subsequent violation in a one-year period.

Effective on: 5/22/2017

ART. II-8-14. FARMERS' MARKETS

Sec. 8-390. Purpose and Applicability

The purpose of this ordinance is to regulate the temporary use of land for the establishment of farmers' markets as defined by 7 M.R.S. §415, where the primary purpose of the market is to make local farm and food products available to the public.

Effective on: 4/12/2017

Sec. 8-391. Authority.

This Ordinance is adopted pursuant to the Town's home rule authority pursuant to 30-A M.R.S. § 3001 *et seq.*

Effective on: 4/12/2017

Sec. 8-392. Administration and Enforcement.

This ordinance shall be administered by the Community Development Department and enforced by the Code Enforcement Officer.

Effective on: 4/12/2017

Sec. 8-393. Standards and Restrictions.

A. **Areas where permitted.** Farmers' markets are permitted by license within the Town in accordance with all standards and restrictions of this article and any other applicable ordinances of the Town and laws of the State. Notwithstanding the provisions of Sec. 14-121.2, farmers' markets may be permitted on town parks and public lands.

B. **Licensing**

1. **Authority.** The Town Council may permit by license agreement the use of public or private property for the purpose of operating a farmers' market. Such agreement shall be between the Town and a state licensed non-profit whose primary purpose is to establish and maintain a farmers' market and complies with all applicable state law.
2. **Term.** The term of a license shall not extend beyond a 12 month period. Annual renewals may be permitted in the same manner as an initial license agreement.

C. **Permitting Procedure**

1. **Application Submittal.** Applicants shall submit an application packet in a manner specified by the Town and shall include such fees as established by the Town Council.
2. **Staff Review.** The Community Development Department shall circulate the application packet to the Fire, Police, Wastewater and Public Works Departments within 3 business days of the receipt of a complete application. In the case of town property being requested for use, the Parks and Community Programs Department shall be included in the review

process. The review departments shall submit comments within 5 business days to the Community Development Department, who shall prepare and submit a recommendation within 5 business days to the Town Manager.

3. **Public Hearing.** Subsequent to the receipt of the staff recommendation and prior to the issuance of a license agreement, the Town Council shall hold a public hearing as required in Sec. 213, Public Hearing on Ordinances of the Town Charter. In addition to general notice, notice of the public hearing shall be mailed to immediate abutters no later than 7 days prior to the hearing.

D. Products and Services.

1. **Permitted.** The market shall be comprised of a group of vendors that collectively result in farm and food products as defined under 7 M.R.S. §415 being the primary products offered. The license agreement shall specify the particular number and type of vendors in any given market.
2. **Prohibited.** Products expressly prohibited are live animals, invasive terrestrial plants, weapons, fireworks, tobacco or tobacco products and marijuana or marijuana products.

Effective on: 4/12/2017

ART. II-8-15 MORATORIUM ON RETAIL MARIJUANA ESTABLISHMENTS AND RETAIL MARIJUANA SOCIAL CLUBS

WHEREAS, the "Marijuana Legalization Act," has become law in Maine, codified in the Maine Revised Statutes in Title 7, chapter 417; and

WHEREAS, the Marijuana Legalization Act (hereinafter, "Act") authorizes municipalities to regulate or prohibit retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities and retail marijuana testing facilities as well as retail marijuana social clubs, as those terms are defined in the Act; and

WHEREAS, the proposed Act will not limit the privileges or rights afforded by the Maine Medical Use of Marijuana Act (22 M.R.S.A. §§ 2421 – 2430-B) to qualifying patients, primary caregivers, or registered dispensaries, including cultivation facilities associated with any of those classifications; and

WHEREAS, the Town's current ordinances do not include any specific regulations related to retail marijuana establishments or retail marijuana social clubs under the proposed new Act; and

WHEREAS, the unregulated location and operation of retail marijuana establishments retail marijuana social clubs within the Town of Falmouth raises legitimate and substantial questions about the impact of such establishments and social clubs on the Town, including questions about the compatibility of retail marijuana establishments and retail marijuana social clubs with existing uses and development in residential, mixed-use and commercial zoning districts; the potential adverse health and safety effects of retail marijuana establishments and retail marijuana social clubs on the community if not properly regulated; the possibility of illicit sale and use of marijuana and marijuana products to minors and misuse of marijuana and marijuana products by those who would abuse the uses authorized under the Act; potential criminal activity associated with the cultivation, manufacturing, sale and use of marijuana and marijuana products for non-medicinal purposes and the potential increased burden on the Town's police and fire departments; and the adequacy of the Town's streets and infrastructure to accommodate the additional traffic and/or population that may result from the presence of retail marijuana establishments or retail marijuana social clubs; and

WHEREAS, the possible effect of the location and operation of retail marijuana establishments and/or retail marijuana social clubs within the Town may have potentially serious implications for the health, safety and welfare of the Town and its residents; and

WHEREAS, the Town needs time to review the Act, any state regulations promulgated to implement the Act, and its own ordinances to determine the implications of future proposed retail marijuana establishments and/or retail marijuana social clubs to develop reasonable ordinances governing the location and operations of such establishments and stores and social clubs to address the concerns cited above; and

WHEREAS, the Town's current ordinances are insufficient to prevent serious public harm that could be caused by the unregulated development of retail marijuana establishments and retail marijuana social clubs and other uses authorized by the Act, thereby necessitating a moratorium; and

WHEREAS, the Town Council, the administration and any other Council designated committee or board shall study the Town's current ordinances to determine the land use and other regulatory implications of retail marijuana establishments and retail marijuana social clubs and consider what locations, if any, local licensing requirements and conditions of approval, if any, might be appropriate for such uses; and

WHEREAS, a moratorium is necessary to prevent an overburdening of public facilities that is reasonably foreseeable as the result of retail marijuana establishments retail marijuana social clubs and other uses authorized by the Act, being located in the Town; and

WHEREAS, it is anticipated that such a study, review, and development of recommended ordinance changes will take at least one hundred and eighty (180) days from the date the Town enacts this Moratorium Ordinance on retail marijuana establishments and retail marijuana social clubs;

NOW, THEREFORE, be it ordained by the Town Council of the Town of Falmouth, that the following Moratorium Ordinance on retail marijuana establishments and retail marijuana social clubs be, and hereby is, enacted, and, in furtherance thereof, the Town Council does hereby declare a moratorium on the location, operation or licensing of any retail marijuana social clubs and any retail marijuana establishments within the Town.

This Moratorium Ordinance shall take effect immediately upon approval by the Town Council, but shall be applicable as of April, 2017 as expressly provided below. The moratorium shall remain in effect for one hundred and eighty (180) days from the date of applicability of this Ordinance, unless extended, repealed, or modified by the Town Council pursuant to 30-A M.R.S. § 4356(3), for the express purpose of drafting an amendment or amendments to the Town's current ordinances to protect the public from health and safety risks including, but not limited to, compatibility of retail marijuana establishments and retail marijuana social clubs with existing and permitted uses in residential, mixed-use and commercial zoning districts; the correlation of retail marijuana establishments and retail marijuana social clubs with medical marijuana cultivation facilities and dispensaries, all as defined in the Act; the potential adverse health and safety effects of retail marijuana establishments and retail marijuana social clubs on the community if not properly regulated; the possibility of illicit sale and use of marijuana and marijuana products to minors and misuse of marijuana and marijuana products by those who would abuse the uses authorized under the new law; criminal activity associated with the cultivation, manufacturing, sale and use of marijuana and marijuana products for non-medicinal purposes and the potential increased burden on the public safety agencies serving the Town in responding to the same; and the adequacy of the Town's infrastructure to accommodate the additional traffic and/or population that may result from the presence of retail marijuana establishments or retail marijuana social clubs in the Town.

BE IT FURTHER ORDAINED, that this Ordinance shall apply to retail marijuana social clubs and retail marijuana establishments as those terms are defined by the Act, codified at 7 M.R.S.A. §§ 2442 (36), (38), (39), (40) (41), that may be proposed to be located within the Town on or after the April 12, 2017 applicability date of this Ordinance; and

BE IT FURTHER ORDAINED, that notwithstanding the provisions of 1 M.R.S.A. § 302 or any other law to the contrary, this Ordinance, when enacted, shall govern any proposed retail marijuana establishments or retail marijuana social clubs for which an application for a building permit, Certificate of Occupancy, site plan or any other required approval has not been submitted to and granted final approval by the Code Enforcement Officer, Planning Board or other town official or board prior to the applicability date of this Ordinance; and

BE IT FURTHER ORDAINED, that no person or organization shall develop or operate a retail marijuana establishment or retail marijuana social club within the Town on or after the effective date of this Ordinance without complying with whatever ordinance amendment or amendments the Council may enact as a result of this Moratorium Ordinance; and

BE IT FURTHER ORDAINED, that during the time this Moratorium Ordinance is in effect, no officer, official, employee, office, administrative board or agency of the Town shall accept, process, approve, deny, or in any other way act upon any application for a license, building permit or any other type of land use approval or permit and/or any other permits or licenses related to a retail marijuana establishment or retail marijuana social club; and

BE IT FURTHER ORDAINED, that those provisions of the Town's ordinances that are inconsistent or conflicting with the provisions of this Ordinance, are hereby repealed to the extent that they are applicable for the duration of the moratorium hereby ordained, and as it may be extended as permitted by law, but not otherwise; and

BE IT FURTHER ORDAINED, that if retail marijuana establishments or retail marijuana social clubs are established in violation of this Ordinance, each day of any continuing violation shall constitute a separate violation of this Ordinance, and the Town shall be entitled to all rights available to it in law and equity, including, but not limited to, fines and penalties, injunctive relief, and its reasonable attorney's fees and costs in prosecuting any such violations; and

BE IT FURTHER ORDAINED, that should any section or provision of this Ordinance be declared by any court of competent jurisdiction to be invalid, such a declaration shall not invalidate any other section or provision; and

BE IT FURTHER ORDAINED that this Moratorium Ordinance may be extended by the Town of Falmouth Town Council, after notice and hearing, for additional 180-day periods in accordance with 30-A M.R.S.A. § 4356(3).

Effective on: 4/12/2017

CH. II-9 MARINE ACTIVITIES, STRUCTURES AND WAYS

FOOTNOTE(S):

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Cross reference— Provisions for notices for nuisances, signs, dangerous, unsafe, dilapidated buildings, and any other action the expense of which may be collected from the property owner, § 2-3; waterfront and harbor committee, § 2-115 et seq.; buildings and building regulations, Ch. II-4; licenses, permits and business regulations, Ch. II-8; certain discharges into the public sewer system prohibited, § 18-190 et seq.; zoning and site plans and flood prevention and protection regulations, Ch. II-19.

State Law reference— Marine resources, 12 M.R.S.A. § 6001 et seq.

ART. II-9-1. IN GENERAL

Sec. 9-1. Jumping and diving from town landing pier.

Jumping and diving from the fixed portion of the town pier is prohibited. Any person who violates this section shall be subject to a fine not to exceed twenty-five dollars (\$25.00). All fines shall be recovered to the use of the town on complaint or by other appropriate action before a court of competent jurisdiction.

(Ord. of 7-24-2000)

Editor's note—

An ordinance adopted July 24, 2000, prohibited jumping and diving from the town landing pier and was designated as § 9-90. Such provisions have been redesignated by the editor as § 9-1 for purposes of classification.

Secs. 9-2—9-49. Reserved.

ART. II-9-2. SHELLFISHING

Sec. 9-50. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Guest means any person, adult, or child, invited to assist the holder of a recreational shellfish license.

Municipality refers to the Town of Falmouth, Maine.

Nonresident refers to anyone not qualified as a resident under the article.

Possess means dig, take, harvest, ship, transport, hold, buy and sell retail soft-shelled clam shell stock.

Resident refers to a person who has been domiciled in this municipality for at least one hundred eighty (180) days prior to the time the claim of such residence is made and shall be deemed to be a resident of Falmouth.

Shellfish means soft-shell clams (*Mya Areniaria*) and quahogs (*Mercenaria Mecenaria*).

Town closed conservation area means a clam flat or clam flats closed pursuant to Sec. 9-63 of this article.

(Ord. of 9-22-97)

Sec. 9-51. Short title.

This article shall be known and may be cited as the Municipal Shellfish Ordinance of the Town of Falmouth, Maine.

(Ord. of 9-22-97)

Sec. 9-52. Purpose.

The purpose of this article is to establish a shellfish conservation program for the town which will ensure the protection and optimum utilization of shellfish resources within its limits. These goals will be achieved by means which may include:

1. Licensing;
2. Limiting the number of shellfish harvesters;
3. Restricting the time and area where digging is permitted;
4. Limiting the minimum size of clams taken; and
5. Limiting the amount of clams taken daily by a harvester.

(Ord. of 9-22-97)

Sec. 9-53. Shellfish conservation warden.

A shellfish conservation warden shall be appointed by the town council. The warden shall complete a training program and be certified by the State Commissioner of Marine Resources. The warden shall enforce the shellfish ordinance of the town and may arrest all violators. The warden may serve all processes pertaining to this article. The warden shall also have within his jurisdiction the power of a marine patrol officer provided in 12 M.R.S.A. § 6025(4). Powers conferred herein, pursuant to 12 M.R.S.A. § 6671(8) shall be limited to enforcement of this article.

(Ord. of 9-22-97)

Sec. 9-54. Shellfish conservation commission.

The shellfish conservation program for the town will be administered by the shellfish conservation commission consisting of five (5) members. These members will be appointed by the town council for three-year terms. In addition, the shellfish conservation warden shall serve as an ex-officio member. The commission's responsibilities include:

1. Establishing annually, in conjunction with the department of marine resources, the number of shellfish digging licenses to be issued;
2. Surveying the clam flats to maintain current information on shellfish resources;
3. Submitting to the town council proposals for the expenditures of funds for the purpose of shellfish conservation;
4. Keeping this article under review and making recommendation for its amendments;
5. Securing and maintaining records of shellfish harvest from the town's managed shellfish areas and closed areas that are conditionally opened by the department of marine resources;
6. Recommending conservation closures and openings to the town council in conjunction with the department of marine resources;
7. Submitting an annual report to the municipality and the department of marine resources covering the above topics and all other commission activities.

(Ord. of 9-22-97)

Sec. 9-55. Conservation and management of shellfish resources.

It is hereby determined as follows:

1. The clam flats of the town are a very valuable shellfish resource which is important to the community.
2. These flats are not an inexhaustible resource, and, therefore, they must be prudently managed in order to remain viable.
3. As part of the management process it may be necessary to: restrict the taking of shellfish by limiting shellfish licenses; restrict the size and quantity of shellfish which may be harvested; and, take other measures outlined in this article.

(Ord. of 9-22-97)

Sec. 9-56. Municipal shellfish license required.

It is unlawful for any person to dig or take shellfish from the shores and flats of this municipality without having a current, valid license issued by this municipality as provided by this article.

(Ord. of 9-22-97)

Cross reference— Licenses, permits and business regulations, ch. II-8.

State law reference— License authorized, 12 M.R.S.A. § 6671(3).

Sec. 9-57. Harvesting.

The harvesting of shellfish within the Town of Falmouth is permitted only during those hours starting one-half (½) hour before sunrise and ending one-half (½) hour after sunset. It is unlawful to harvest shellfish during the time starting one-half (½) hour after sunset to one-half (½) hour before sunrise.

(Ord. of 9-22-97)

Sec. 9-58. Designation, scope and qualifications.

There shall be the following described license, each of which must be signed by the licensee and by the town clerk to be valid. The license is valid from September 1 to August 31.

Recreational shellfish license. This license is available to residents and nonresidents and entitles the holder and one (1) or more guests to dig and take no more than one (1) peck of shellfish for any one (1) day for the holder.

The recreational shellfish license holder may not engage in the wholesale or retail sale of any shellfish harvested under that license.

(Ord. of 9-22-97)

Sec. 9-59. Application.

- a. Any person qualifying under the terms of this article may apply to the town clerk for a license as required by this article on forms provided by the town clerk. No other person may apply for or be issued or retain the license that is provided by this article. The town clerk may require the applicant to produce evidence of these qualifications before issuing the license.
- b. The application must obtain the applicant's name, period of residence, current address, birth date, height, weight, signature and whatever other information, if any, the town council may from time to time require.

- c. Any person who gives false information on a shellfish license application will cause the shellfish license to become invalid and void.

(Ord. of 9-22-97)

Sec. 9-60. Limit.

Because the shellfish resources are limited and because a recreational digger can be expected to harvest a certain volume of clams per year, the number of diggers must be controlled. This number will vary from year to year depending upon estimates of the resource capabilities and management requirements consistent with good resource utilization. The following procedures will be followed to exercise the control:

1. Prior to June 1, the town shellfish commission, shall submit its recommendation of the number of resident and nonresident recreational shellfish licenses to be made available to the commissioner of marine resources for approval.
2. The shellfish conservation commission will notify the town clerk and the town council of Falmouth in writing prior to July 1 of the number of resident and nonresident recreational shellfish licenses to be made available. The town council then shall adopt a shellfish license allocation. The shellfish conservation commission, in preparing a recommended allocation of shellfish licenses, and the town council, in adopting an allocation of shellfish licenses, shall provide and reserve a minimum number of recreational licenses for nonresidents, which shall be a number less than ten (10) percent of the number of recreational shellfish licenses provided for residents.
3. Notice of the number of licenses available and the procedure for application shall be published in a trade or industry publication or in a newspaper with general circulation effective in reaching persons affected, not less than ten (10) days prior to the period of issuance, and will be posted in the town offices until the period for issuance concludes.
4. The town clerk shall issue resident and nonresident recreational shellfish licenses, if made available by the town council, in the following manner. Commencing on the first business day of September annually the town clerk shall accept applications for resident and nonresident recreational licenses. Applicants must appear in person at the office of the town clerk. In each of those two (2) categories licenses shall be awarded on a first come, first served basis.
5. Any of the quotas established in subsection (1) above not used by November 30 shall be issued by the town clerk without regard to residence eligibility.
6. A copy of the Falmouth Shellfish Ordinance shall be given with each shellfish license issued and a map of the Falmouth flats with open and closed areas.

(Ord. of 9-22-97)

Sec. 9-61. Records.

The town clerk shall note on the application the date the license was issued, sign it, and file the application with the clerk's records. A photostatic copy of the recreational license shall be provided for each family member.

(Ord. of 9-22-97)

Sec. 9-62. Fees.

The fee for a license shall be on file in the town clerk's office. All fees are to be paid upon presentation of the application. The town clerk shall pay all fees received to the town treasurer. The fees are as follows:

1. Recreational shellfish license fifteen dollars (\$15.00); over age sixty-two (62), free.
2. Nonresident recreational shellfish license thirty dollars (\$30.00); over age sixty-two (62), free.

(Ord. of 9-22-97)

Sec. 9-63. Regulating and opening and/or closing shellfish areas.

The town council, upon information from the shellfish commission and shellfish conservation warden, may order appropriate action concerning the opening and closing of shellfish areas in the town. Any proposed changes in the status of the shellfish areas shall have the approval of the state commissioner of marine resources and in no case may the town council regulate an area closed by regulations of the state commissioner.

(Ord. of 9-22-97)

Sec. 9-64. Minimum size limit for soft-shelled clams.

- a. It is a violation of this article and 12 M.R.S.A. § 6681(3) to possess soft-shelled clam stock whose shells are less than two (2) inches in the largest diameter.
- b. Any person may possess soft-shell clams less than two (2) inches if they comprise less than ten (10) percent of any bulk pile. The tolerance shall be determined by the numerical count of not less than one (1) peck nor more than four (4) pecks taken at random from various parts of the bulk pile or by a count of the entire pile if it contains less than one (1) peck.
- c. Whoever violates the provisions of this section shall be punished as provided by 12 M.R.S.A. § 6681(6) or by appropriate noncriminal proceedings or both.

(Ord. of 9-22-97)

Sec. 9-65. Enforcement, penalty, separability, repeal and duration.

- a. *Enforcement.* The Falmouth Police Department, special police officers as provided in 30-A M.R.S.A. § 2672, and the Shellfish Conservation Warden, shall enforce this article.
- b. *Penalty.* A person who violates this article shall be punished as provided in 12 M.R.S.A. § 6671 as amended from time to time.
- c. *Separability.* If any provision of this article is declared to be invalid, the declaration does not affect the remainder of the article.
- d. *Repeal.* Any article regulating the harvesting or conservation of shellfish in the town and any provision of [or] other town article which is inconsistent with this article is hereby repealed.

(Ord. of 9-22-97)

Sec. 9-66. Misrepresentation.

In addition to any criminal penalties which may result from a violation of this article, the shellfish license granted to any person who gives false information on a shellfish license application will be automatically void.

(Ord. of 9-22-97)

Sec. 9-67. Suspension.

- a. *Violation of shellfish ordinance.* The town clerk shall suspend any and all shellfish licenses issued under this article, if the license holder is convicted in court of violating any section of this article.
- b. *Suspension based on conviction in a town closed conservation area.* The town clerk shall suspend any and all shellfish licenses issued under this article if the license holder has been convicted in court of possessing shellfish from a town closed conservation area.
- c. *Length of suspension for (a) and (b) above.* The suspension of a license may not exceed the following:
 1. Thirty (30) days from the date of the first conviction.
 2. Three hundred sixty-five (365) days (one year) from the date of the second conviction.
- d. *Application standards.* Any conviction more than three (3) years before last conviction shall not be counted in determining lengths of suspension.

(Ord. of 9-22-97)

Sec. 9-68. Hearing.

Any licensee whose shellfish license has been suspended shall be entitled to a hearing before the town manager upon the filing of a written request for hearing with the town manager within thirty (30) days following the effective date of suspension; the applicant shall be given at least seven (7) days' prior written notice of the date, time and place of hearing before the town manager. Any person aggrieved by the town manager's decision may appeal to the superior court within thirty (30) days from the receipt of the town manager's written decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.

(Ord. of 9-22-97)

Sec. 9-69. Sale of shellfish.

Any shellfish confiscated in violation of the Town of Falmouth's Shellfish Conservation Ordinance may be sold and the revenues returned to the Town of Falmouth's Shellfish Conservation Program.

(Ord. of 9-22-97)

Secs. 9-70—9-79. Reserved.

FOOTNOTE(S):

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Editor's note— An ordinance adopted Sept. 22, 1997, amended the town's shellfish ordinance in its entirety as set out in Art. [II-9-2](#), §§ 9-50—9-69. An ordinance adopted Sept. 25, 2000, provided for the renewal of the shell fish conservation ordinance for a period of three years. Formerly, such article had pertained to the same subject matter, derived from ordinances adopted Nov. 26, 1984; Aug. 24, 1987; Oct. 24, 1988; and Sept. 26, 1994.

Cross reference— Division of health, § 2-300; licenses, permits and business regulations, Ch. [II-8](#).

State Law reference— Shellfish, scallops, miscellaneous licenses, 12 M.R.S.A. § 6601 et seq.

ART. II-9-3. RESERVED

Secs. 9-80—9-89. Reserved.

Editor's note—

Formerly §§ 9-80—9-89 pertained to boats as derived from ordinances of Apr. 28, 1986, §§ 1—8; Sept. 25, 1989, § (1); Mar. 25, 1991; Apr. 22, 1991; and May 27, 1998. Former §§ 9-80—9-89 were repealed as superseded by an ordinance adopted Jan. 27, 2003. See Art. II-9-4 of this chapter.

ART. II-9-4. COASTAL WATERS

Sec. 9-90. General.

- a. *Purpose:* The Coastal Waters Ordinance is hereby established regulating marine activities within the tidal waters of the Town of Falmouth, Maine, in order to ensure safety to persons and property, to promote availability, preservation and use of valuable public resources, and to create a fair and efficient framework for administration of same.
- b. *Authority:* This article is adopted pursuant to the authority granted by 38 M.R.S.A. section 2 and 30-A MRSA section 3001.
- c. *Applicability:* The provisions of this article shall apply to all tidal waters located within the boundaries of the Town of Falmouth, Maine.
- d. *Repeal:* All prior harbor regulations including those enacted in December 1977, as amended, are hereby repealed.
- e. *Severance:* If any provision or clause of this article or application thereof to any person or persons is held to be invalid, such invalidity shall not affect the validity of other provisions or application, and to this end provisions of this article are declared to be severable.
- f. *Conflict:* Nothing contained herein shall be construed to conflict with the lawful jurisdiction of the United States government with respect to enforcement of navigation, shipping or anchorage and associated laws of the State of Maine.

(Ord. of 3-25-2002, § 1; Ord. of 1-27-2003; Ord. of 11-27-2006)

Sec. 9-91. Definitions.

As used in this Art. II-9-4, the following terms shall have the following meanings, except when the context clearly indicates a different meaning:

Anchorage: All tidal waters within the boundaries of the Town of Falmouth.

Boat: Any floating object designed and used primarily for self-propelled navigation on the water.

Boat yard: A place adjacent to tidal waters, where, as a business or gainful occupation, boats are hauled, stored, repaired and/or constructed.

Channel/fairway: An area to be utilized for the safe passage of vessels as defined by channel markers. No vessels will be moored or anchored within channel/fairway.

Commercial passenger boat: A boat which carries passengers for hire, on a charter or scheduled service basis or both.

Floating business: A building constructed on a raft or hull that is represented as a place of business.

Houseboats: A raft, hull, barge or vessel, designed primarily to be used as living quarters, and providing living, sleeping, cooking and sanitary facilities, whether temporarily or permanently.

Household: Those persons living in a single dwelling unit.

Marina: An all-tide waterfront facility, whose activities include sales, storage and maintenance of boats, and which provides slips for permanent or transient berthing, sells fuel and supplies for boats and provides vehicle parking.

Marine vendor: Any person, having no fixed place of business in the town, selling or offering for sale or rent tangible commodities from the town wharf or any of the floats attached thereto or from the parking area at the town wharf or from any boat tied up at the town wharf, and where delivery is made at the time of the sale.

Marina mooring: Mooring assignment used by marinas and yacht clubs primarily for rental to transient marine traffic.

Mooring: All means of securing a vessel to a particular location other than a pier or dock and other than temporarily by anchor for a period of less than one week or by attaching to the shore (including out-hauls). The term includes year-round and seasonal moorings.

Mooring service: A business engaged in installing and inspecting moorings and which employs qualified mooring inspectors.

Insurance: The owner/operator of a mooring service which uses the town wharf shall maintain liability insurance, workers' compensation and federal longshoreman act insurance with policy limits of no less than one million dollars (\$1,000,000.00) which names the Town of Falmouth as an additional insured.

Non-resident: All persons not residents of the Town of Falmouth are classified as non-resident.

Non-resident commercial marine enterprise: A commercial marine enterprise without a fixed place of business within the Town of Falmouth for at least one hundred eighty (180) calendar days in the preceding calendar year.

Non-resident fisherman: A non-resident of the Town of Falmouth who derives a majority of his/her annual income from lobstering, clamming or fishing or other marine fishery.

Person: The word "person" as used herein shall include the singular and plural, and shall also mean or include any firm or corporation, association, club, partnership or society.

Qualified mooring inspector: A person who satisfies the harbormaster that he/she is qualified to inspect a mooring tackle as to condition and size. Qualifications shall be judged by past experience in installing and inspecting moorings, familiarity with mooring tackle, including the size and kind of mooring tackle needed for the safe mooring of different size vessels.

Resident: Any person who occupies a dwelling for more than one hundred eighty (180) days in a calendar year within the Town of Falmouth, a Falmouth real estate taxpayer or registered voter in the Town of Falmouth.

Resident commercial marine enterprise: A business located in the town for more than one hundred eighty (180) calendar days in the preceding calendar year and in business for the purpose of sales, storage, service or maintenance of boats. To be considered a resident commercial marine enterprise the business must prove:

1. That a majority of its income is derived from the commercial marine enterprise, and
2. That the business has separate business quarters defined by lease or contract.

Resident fisherman: A resident of the town who derives a majority of his/her annual income from lobstering, fishing or clamming, or any other marine fishery and who has obtained all necessary permits, licenses and approvals.

Resident/recreational mooring assignment: This category of mooring assignment is limited to natural persons who are residents of the town.

Riparian, direct and indirect: Notwithstanding the provisions of 38 M.R.S.A. § 11 to the contrary, the owners of property which fronts upon the anchorage and which is used as a residence are direct riparian owners and, as such, qualify for a single mooring. Where property with at least fifty (50) feet of frontage on the anchorage is a common element physically integrated within a condominium or is land owned by a homeowners association and physically integrated within a residential subdivision, unit owners in the condominium and house owners in the subdivision who are members of the association, as the case may be, are indirect riparian owners and, as such, qualify for a single mooring per unit or lot.

Skiffs, also known as dinghies: A light rowboat, of nine (9) feet or less in length.

Slip: A berthing space at floats or docks.

Town wharf: The wharf and floats located at end of town landing road in Falmouth.

Yacht club: A private association of persons organized to promote recreational boating.

(Ord. of 3-25-2002, § 1; Ord. of 1-27-2003; Ord. of 11-27-2006; Ord. of 1-24-2011, § 3)

9-92. Falmouth Harbor/Waterfront Committee.

- a. *Purpose:* The Falmouth Harbor/Waterfront Committee exists for the general purpose of studying and evaluating public use and access to coastal waters; to advise the town council on policy matters and proposed regulations concerning the town's coastal waters; to oversee the maintenance and care of town owned waterfront facilities through the harbormaster and in conjunction with state and federal authorities. The harbor/waterfront committee sits as a board of appeals to hear an appeal from any person aggrieved by any decision, act or failure to act by the harbormaster. The committee shall regularly inform the town council, planning board, and such other boards, committees, commissions, or officials of the town of its activities, as is appropriate. The harbor/waterfront committee shall be consulted by the town council before any moratorium on moorings is enacted.
- b. *Organization:*
 1. The Falmouth Harbor/Waterfront Committee shall consist of seven (7) members, with one (1) member representing Handy Boat, and one member representing Portland Yacht Club. All seven (7) members shall be appointed by the town council and shall serve without compensation. Each committee member shall be a resident of the Town of Falmouth, except for those representing Handy Boat and Portland Yacht Club. There shall not be more than two non-residents on the committee at any time.
 2. Neither a municipal officer nor his/her spouse may be a member of the committee.
 3. Any questions of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon shall be decided by a majority vote of the members, except the member who is being challenged.

4. The town council shall have the power to remove any member of the harbor/waterfront committee for cause and shall have the power to replace appointees who leave the committee. The chairman of the committee shall notify the town council chairman of the forfeiture of office by a committee member.
5. The term of office of a member shall be three (3) years.
6. The committee shall annually in the month of October elect a chairman, vice-chairman and secretary from its membership and may create and fill such other offices as it may determine. Officers shall serve one-year terms and shall be eligible for re-election.
7. The committee shall conduct its meetings in accordance with Roberts Rules of Order (10th edition).

(Ord. of 3-25-2002, § 1; Ord. of 1-27-2003; Ord. of 4-24-2006; Ord. of 11-27-2006; Ord. of 08-22-2016)

Sec. 9-93. Harbormaster.

- a. The harbormaster shall enforce this article and the provisions of 38 M.R.S.A. sections 1 through 6. The harbormaster may also enforce other state laws and Falmouth ordinances when violations of those laws and ordinances occur within his/her sworn jurisdictional authority. The harbormaster shall be the overseer of the town's moorings, floats, gangways, wharves, and channels and ensure their proper maintenance is provided for.
- b. The harbormaster shall regularly attend the harbor/waterfront committee meetings and inform the committee of his/her activities as well as provide such available information as may be requested by the committee for the execution of its duties.
- c. Upon completion of training and certification by the Maine Criminal Justice Academy, the harbormaster and deputy shall have the authority granted by Title 38 of the Maine Revised Statutes and the authority to carry a weapon and to make arrests.

(Ord. of 3-25-2002, § 1; Ord. of 1-27-2003; Ord. of 11-27-2006)

Sec. 9-94. Mooring assignments.

The application shall be accompanied by the appropriate fee.

- a. *Application:* Persons with moorings in the anchorage of the town shall apply for renewal of their mooring assignments each year. By January 1 of each year, the harbormaster shall mail an application to each person who received a mooring assignment the previous year and in fact used this assignment for its prescribed use, and to other applicants who have asked to receive a mooring application. The applicant shall return the completed application to the harbormaster before March 15 that year. Mooring applications which are returned after that date will be assessed a late fee as specified in the town harbor fee schedule. The burden of proof in determining residence, legitimacy of business usage, principal use of a vessel or any issues of adequacy of design or construction, shall be upon the applicant.
- b. *Termination:* All persons who had been assigned a mooring and whose mooring assignment is to be terminated by the harbormaster for reasons of non-compliance with this article or any other reason shall receive written notification from the harbormaster. This notice shall state the fact of termination and the reason for termination, and inform the applicant of his/her right to appeal the decision of the harbormaster to the harbor/waterfront committee, as prescribed in Sec. 9-100 below.
- c. *Mooring assignment application:* Each application shall contain the following:

1. The applicant's name (or applicants' name in the event the mooring assignment is to be held jointly by adult members of the same household), complete address, home telephone number, place of employment and work telephone number, access point and email address;
2. The boat name, state or federal registration number, the vessel identification number, the engine number, name and address of boat owner(s);
3. The type of boat, i.e., sail, power, inboard or outboard. Dinghies, kayaks, canoes and similar small, low profile vessels do not qualify for mooring assignments.
4. Length of boat and hull configuration i.e. deep keel, shallow draft;
5. Name, address and telephone number of the mooring service who will set, service and inspect the mooring;
6. The signature of the applicant and date of application;
7. Date of last mooring inspection;
8. GPS bearings; and
9. A copy of the current vessel registration, or federal documentation certificate.

The application shall be accompanied by the appropriate fee.

- d. *Incomplete applications:* Each application that fails to provide the above listed information will be deemed incomplete. All applications must include the appropriate fee. Those without the appropriate fee shall be deemed incomplete. Incomplete applications shall be returned to the applicant without further action by the harbormaster. Fraudulent application (which is to include misrepresentation of your access point) is grounds for immediate termination of mooring assignment.
- e. *Mooring fees:* Mooring shall be as set forth in the town harbor fee schedule adopted by the town council.
 1. Residents per mooring\$57.00
(Including sixty (60) rental moorings—Handy boat; ten (10) guest moorings—Portland Yacht Club)
 2. All non-residents who have moorings in the anchorage and have paid the current fee will be given a permit that will allow them one (1) free launch and retrieval of their boat from the boat ramp.
 3. All outstanding fees or fines must be paid prior to the issuance of a current mooring sticker.
- f. *Mooring sticker:* A valid mooring registration sticker must be affixed to the boat on the starboard side following the state registration sticker.
- g. Failure to pay appropriate launch fees will result in a violation of this article.
Launch permits shall be available at the town hall, the harbormasters office and such other convenient locations as the harbormaster may determine. The harbor/waterfront committee shall review fees once bi-annually and may make recommendations for adjustments to the town council.
- h. *Mooring assignment:* All persons who received and used a mooring assignment in the previous year and all persons who will access their mooring from a place other than town landing, and whose mooring application was received in a complete and timely fashion, will receive a mooring assignment for the current year before June 1st of that year. The harbormaster shall also, whenever practicable, locate a mooring for boat owners who are direct riparian owners or

indirect riparian owners in front of their property if requested to do so, or if that location is determined by the harbormaster to be impracticable, at another location within the anchorage chosen by the harbormaster, provided that the total number of indirect riparian owner moorings in the anchorage shall not exceed two hundred fifty (250).

Additionally, the harbormaster shall issue mooring assignments to persons who will access their mooring through town landing and who are on the waiting list established under Sec. 9-94(i), but such new mooring assignments may not exceed the number of mooring assignments not renewed from the previous year. Persons on the waiting list who receive a mooring permit must pay the appropriate mooring fee within fifteen (15) days and will have one (1) year to install a mooring and have a boat on same. Any such person failing to do so will forfeit their mooring permit and, upon request, will be returned to the waiting list and take the position on the list they would have been assigned as a new applicant on the date they requested to be reinstated to the waiting list. All assignments from the waiting list shall use the priorities set forth in subsection (i) of this section. The harbormaster and the harbor/waterfront committee will endeavor to maintain a balance of not less than ten (10) percent non-residential mooring assignments.

- i. *Waiting list:* The harbormaster shall maintain one (1) chronological waiting list with complete application information for all applicants who have applied for but not received a mooring assignment and who will access their mooring through town landing. Persons desiring a place on the waiting list may apply at any time by making out a mooring application form and filing it with the harbormaster. A ten dollar (\$10.00) waiting list fee will be charged upon initial application and then an additional ten dollar (\$10.00) fee per year must be paid to remain on the waiting list and to maintain current location on the list. Waiting list renewal fees must be paid prior to March 15th each year or the applicant will be removed from the waiting list. For the year in which an applicant is offered and accepts a mooring, the ten dollar (\$10.00) fee paid for that year will be applied to the mooring fee. The waiting list shall be in ten (10) sections, each section in chronological order as to when the application was received, with recreational applications being limited to natural persons. At all times the following priority order shall be maintained:

1. Resident fisherman;
2. Resident/recreational;
3. Commercial passenger boat;
4. Resident commercial marine enterprise;
5. Resident: additional mooring;
6. Non-resident recreational;
7. Rental moorings;
8. Non-resident fisherman;
9. Non-resident commercial marine enterprise;
10. Non-resident: additional mooring.

A copy of this waiting list shall be posted in the town office and shall be provided to all members of the harbor/waterfront committee, and made available for any commercial marine enterprise or any others who request a copy.

- j. *Numbers:*

1. Marinas shall be assigned a total of not more than seventy (70) mooring assignments each, all of which will be located within the area designated as the Special Anchorage by the

United State Coast Guard. These moorings shall be considered a rental mooring as approved by the US Army Corps of Engineers.

2. Yacht clubs in existence as of January 1, 1999 shall be allowed not more than ten (10) mooring assignments each as approved by the U.S. Army Corps of Engineers.

- k. *Sole use:* All mooring assignments (with the exception of Army Corps of Engineer Permitted Marina and Yacht Club Moorings) shall be used exclusively for the personal use of the applicant and solely for the boat listed in the application.
- l. *Abandonment of assignments:* The harbormaster shall deem abandoned any mooring assignment unused/unpaid by the applicant for his/her vessel for a period of one (1) season. Subsequent application for a mooring number assignment by that person must be in accordance with the procedure outlined for new applications, including placement in chronological sequence on the waiting list. Extension appeals will be considered on a case by case basis by the harbor master.
- m. *Placement:* The harbormaster shall develop a plan for the placement of moorings in the harbor, giving consideration to the size, hull type, construction, windage of boats, and the location of the channel. He/she shall assign/reassign locations to each mooring and ensure placement in the correct location. All moorings not located in the correct location shall be moved by the owner at his/her own expense in accordance with the instructions of the harbormaster. In the event of the failure of the owner to comply with these instructions, the harbormaster shall move or remove the improperly located mooring and the cost shall be borne by the owner of the relocated mooring. If this is determined to be a hazard or safety issue, the owner must comply within forty-eight (48) hours.
- n. *Mooring construction and placement:* All mooring construction and placement, in the anchorage must be approved by the harbormaster.
- o. All mooring buoys shall be white in color with a blue horizontal stripe and shall have the current permit registration number and owners name in three (3) inch letters painted above the water line in a contrasting color. A letter designation may be placed upon the mooring buoys by marinas, boatyards, yacht clubs and commercial marine enterprises to designate moorings owned by them. Despite dimension standard established herein, any parts of mooring showing excessive wear or any mooring or gear, which do not meet with the harbormaster's approval, shall not be permitted.
 - 1. All new or replaced permanent moorings shall comply with the following minimum specifications:
 - a. Each permanent mooring shall consist of a mushroom, granite block or helix, a minimum one-half-inch heavy steel bottom chain attached to a minimum one-half-inch top chain (a single chain is acceptable), mooring buoy and a pennant: polypropelene use is not acceptable. Each mooring must have one (1) top and swivel; all swivels and shackles must be to the appropriate size diameter.
 - b. All mooring blocks shall be constructed of solid granite with steel staples or eyebolt extending completely through the block. Cement blocks, old engines and other miscellaneous weighted objects are unacceptable as mooring anchors in the harbor.
 - c. The mooring scope shall be approximately two (2) times the water depth at maximum high water. Total scope shall include bottom chain and top chain and pennant to the bow of the boat and pennant to the bow of the boat.
 - d. Recommended mooring guidelines:

Recommended mooring guidelines		
Under 15'	power/sail	150 lb mushroom
15'—19'	power/sail	200 lb mushroom
20'—27'	power/sail	250 lb mushroom
28'—30'	power/sail	300 lb mushroom
31'—33'	power/sail	400 lb mushroom
34'—38'	power/sail	500 lb mushroom
39'—45'	power/sail	600 lb mushroom
46'—50'	power/sail	1000 lb mushroom
51'—56'	power/sail	1200 lb mushroom
56'—65'	power/sail	1600 lb mushroom

Granite blocks will equal to four (4) times the weight of a mushroom anchor.

For the safety of his/her boat and that of adjacent boats mooring permit holders are responsible for having their moorings set, inspected and making the required or necessary adjustments or repairs.

- e. Despite dimension standard established herein, any parts of mooring showing excessive wear or any mooring or gear, which do not meet with the harbormaster's approval, shall not be permitted.
- f. All mooring buoys shall be white in color with a blue horizontal stripe and shall have the current permit registration number and the owner's name in three-inch letters painted above the water line in a contrasting color. A letter designation may be placed upon the mooring buoys by marinas, boatyards, yacht clubs and commercial marine enterprises to designate moorings owned by them.
- g. All moorings shall be of appropriate size and designed for the largest size boat likely to be placed thereon, and shall be of a construction approved by the harbormaster.

2. *Winter conditions:*

- a. Winter spars must be used to mark moorings and such spars shall be connected to their moorings with non-floating rope (no wire cable permitted). Winter spars may not be set before September 1 and must be installed by December 31 and removed by June 1 each year. By January 1 all moorings shall have mooring balls exchanged for a winter spar. Winter spars remaining in the water after June 1 shall have their mooring removed by the harbormaster at the expense of the owner and be subject to a fine as specified in the town harbor fee schedule as adopted by the town council and in accordance with Sec. 9-105(c) of this article.
- b. No watercraft (exception: working commercial vessels) will be permitted on mooring between November 30 and March 30 inclusive. Any watercraft may be removed from the water at the owner's expense after November 30.
- p. *Setting:* If the applicant who has received a mooring assignment sells, transfers, no longer owns or otherwise loses the boat on that mooring during the course of a year, he/she shall notify the harbormaster immediately. The mooring assignment shall not be assigned or sold to the person purchasing that boat without prior approval of the harbormaster.
- q. *Inspection:*
 - 1. An approved mooring service shall inspect and approve or be otherwise satisfied that each mooring is in safe condition before it is placed in the anchorage.

2. Moorings must be inspected every two (2) years by a qualified mooring inspector. A list of qualified mooring inspectors may be obtained by contacting the harbormaster. The harbormaster has the authority to require any necessary maintenance or replacement of parts or the whole mooring, tackle and/or gear. Inspection forms shall be complete and legible.
3. The harbormaster shall maintain a file on each mooring listing the date of the last inspection and the name of the person who last inspected it.

r. *Anchoring:*

1. No boat/barge shall anchor in the channel/fairway or in a manner so that the boat shall lie, at any tide, in the confines of the channel/fairway.
2. Boats at anchor may anchor only in those areas of the anchorage permitted by the harbormaster and not to exceed fourteen (14) days.

- s. *Other floating objects:* No mooring in the harbor shall be utilized to secure any floating object other than a single boat, mooring derrick, small boat storage float or lobster raft. All floats/rafts shall have permits from the Army Corps of Engineers, and shall be placed at the direction of the harbormaster.

Lobster rafts shall be allowed by Falmouth residents only, need to be permitted by the Army Corps of Engineers, and shall be placed in the anchorage at the discretion of the harbormaster within the confines of the jurisdiction. Any valid permitted lobster raft on January 1, 2007 is grandfathered.

- t. *Ownership:* Nothing in this article creates an ownership interest in a mooring assignment. If a holder of a resident/recreational or commercial mooring assignment dies, the mooring assignment reverts to the next of kin.
- u. *Residency status and fees:* If a person who holds a valid mooring assignment changes residency status, whether from resident to non-resident or from non-resident to resident, he/she is expected to immediately notify the harbormaster. In the case of change from resident to non-resident, the fee will increase the year following the residency change. In the case of non-resident to resident, there will be no remission of fees.

v. *Number of moorings:*

1. Residents of the town shall be entitled to register two (2) moorings each year and non-residents shall be entitled to register one (1) mooring each year.
2. Notwithstanding [subsection (v)(1)] above, persons with moorings in the coastal waters of the town on December 31, 1985, shall be entitled to register the same number of moorings under this section as they had on December 31, 1985. The rights created by this subsection shall be assignable.

- w. *Temporary attachment of dinghies and small vessels:* Persons with moorings in the anchorage may tie up their dinghy, kayak, canoe or other low profile vessel to their mooring for periods of not more than seven (7) consecutive days when the vessel listed in their mooring application is off the mooring. Tie up for longer periods is allowed only with prior permission of the harbormaster.

(Ord. of 3-25-2002, § 1; Ord. of 1-27-2003; Ord. of 11-27-2006; Ord. of 12-18-2007; Amd. of 12-22-2008; Amd. of 12-14-2009; Amd. of 4-12-2010(1); Amd. of 4-12-2010(2); Ord. of 1-24-2011, §§ 1, 2, 4; Ord. of 1-9-2012, § 1)

Effective on: 2/22/2016

Sec. 9-95. Use of town wharf and landings.

- a. *Tying up:* No vessel other than a permitted skiff shall be made fast to the town wharf except for twenty (20) minutes as required for loading or unloading. There shall be no overnight tie-ups. Exceptions may be made in emergencies only by permission of the harbormaster. No vessel other than the harbormaster's patrol boat shall tie up to the town wharf in the space marked for use by the harbormaster.
- b. *Storage:* Except as provided in subsection (g) of this section, personal property, including but not limited to lobster traps, motor vehicles, cradles, boats and floats shall not be stored on the town wharf or landing for more than thirty (30) minutes. Any designated loading zone shall be used only for lobster traps, fishing gear and other items in transit.
- c. *Usage:* No person shall loiter, create a public nuisance, or partake of alcoholic beverages on the town wharf or landing.
- d. *Jumping and diving from the town wharf:* Jumping, swimming and diving from, at or near the town wharf is prohibited. Violators may be subject to a fine as specified in the town harbor fee schedule as adopted by the town council. All fines shall be recovered to the use of the town on complaint or by other appropriate action before a court of competent jurisdiction.
- e. *Obstruction:* It shall be unlawful to obstruct by any means whatsoever the free use of the town wharf or landing or any other common landing place. Said areas shall be used only for loading and unloading. Vessels shall not remain tied up at said structures for a period longer than is reasonably necessary for this purpose, except by permission of the harbormaster in case of emergency. The harbormaster shall remove or cause to be removed, any unattended vessel obstructing free use of said areas after due effort has been made to notify the master or owner of said vessel of the above violation. The vessel shall be responsible for all costs associated with said action.
- f. *Non-commercial/recreational skiffs:* No skiffs, dinghies, or similar vessels shall be allowed on top of the town wharf. Their owners shall maintain such vessels and the owners shall be liable for any damage occurring to the town property or other vessels. Any such vessels maintained in the anchorage and using town facilities for a total [of] or more than fourteen (14) days per annum shall be registered with the harbormaster by notation on the application or a mooring permit and have the mooring space number and the owner's name visibly displayed on the inside transom of said vessel. Skiffs may be secured at the finger floats on the north side of the floats off the town wharf provided they comply with all of the below conditions:
 - 1. Effective January 1, 2007 a valid skiff registration sticker must be affixed to any skiff stored at the town wharf or any approved adjacent storage area. Not more than fifty (50) resident skiff registration stickers and twenty (20) non-resident skiff registration stickers shall be issued annually. If there are any unused non-resident permits available after April 30, they may be issued to residents at the resident fee. The registration fee shall be as specified in the town harbor fee schedule as adopted by the town council. Commercial fishermen shall be exempt from this fee. Registration stickers shall be available annually on a first come first serve basis the second Saturday in April each year.
 - 2. Each skiff shall be marked with the owner's name and mooring number for purposes of identification.
 - 3. No skiffs may be secured on the outer faces of the town floats or under the town landing pier.
 - 4. All skiffs shall be properly secured and maintained. Skiffs shall not be secured with chains or wire, nor padlocked to the float and will not be left overnight with fuel onboard.
 - 5. No skiff longer than nine (9) feet may be secured on the town floats.

6. Skiffs in violation will be impounded and stored at owner's expense.
7. The town may supply a fleet of municipal dinghies available for public use, in accordance with rules to be established by the harbor master.
- g. *Lobster traps:* The maximum number of traps on floats is forty (40). Traps shall be removed the same day that they are placed on the float and must not obstruct access to floats. No traps or gear shall be permitted on docks or floats on Saturday or Sunday at anytime during the year. No traps are allowed on docks or floats from July 1 until after Labor Day on docks or floats. Traps and bait are not to be dragged down main dock.
- h. *Use of public landing ramp and/or parking area at the town wharf:*
 1. The public landing ramp is intended to be used primarily for noncommercial launching of recreational boats.
 2. The town council may, by order, establish a fee schedule for use of the public landing ramp or parking area or both by non-residents, commercial launchers and venders, which fee schedule shall be kept on file in the town clerk's office. There shall be no fee for resident noncommercial launchers.
 - a. Upon request by a resident and upon payment of the appropriate fee by non-residents, commercial launchers and venders, the town clerk shall issue a permit authorizing the use of the public landing ramp or parking area or both.
 - b. Persons launching boats shall have in their possession the required permit and shall display the permit upon request of the harbormaster or his agent.
 3. There will be no parking of trailers in the lower parking lot at any time year round.
 4. The harbormaster shall have the authority to prohibit the use of the public landing ramp and parking area if the harbormaster, in his sole discretion, deems that the activity will interfere with the use of the landing for launching of recreational boats or if the harbormaster deems that use to be unsafe or likely to cause damage to the public landing ramp or parking area or both. Parking for residents only is permitted at the town landing lower lot as well as the upper lot on Route 88. These resident vehicles must display a current town sticker, which may be purchased for a fee specified in the town harbor fee schedule as adopted by the town council (good for three (3) years) at the town hall or harbormaster's office upon presenting a current vehicle registration. There is also handicap parking available in the lower and upper lots.
 5. In addition to other penalties set forth in this article, any person who violates this section shall be responsible for the cost of repair or reconstruction should damage to the public landing ramp or parking area or both result from the violation.

(Ord. of 3-25-2002, § 1; Ord. of 1-27-2003; Ord. of 11-27-2006; Ord. of 12-18-2007; Amd. of 12-22-2008; Amd. of 5-26-2009; Amd. of 12-14-2009; Amd. of 03-27-2017)

Effective on: 3/27/2017

Sec. 9-96. Town landings.

The town harbor/waterfront committee has responsibility for setting and administering policy and the harbormaster has authority over these sites.

(Ord. of 3-25-2002, § 1; Ord. of 1-27-2003; Ord. of 11-27-2006; Amd. of 12-14-2009)

Sec. 9-97. Operations.

No boat shall be operated within the anchorage at a speed in excess of five (5) knots, or so as to cause excessive wake.

(Ord. of 3-25-2002, § 1; Ord. of 1-27-2003; Ord. of 11-27-2006; Amd. of 12-14-2009)

Sec. 9-98. Disruptive conduct.

It shall be a violation of this article for any person to disrupt the safe and lawful activities, or to threaten the public safety, in or around the docks, wharfs, floats or tidal waters of the town.

(Ord. of 3-25-2002, § 1; Ord. of 1-27-2003; Ord. of 11-27-2006; Amd. of 12-14-2009)

Sec. 9-99. Floats; anchorage; menaces to navigation.

The harbormaster is authorized to take whatever action is necessary and appropriate to remove any menace to navigation within the waters of the town. This shall include, but is not limited to, contracting for removal of the menace at the expense of the town, another governmental entity, or the person responsible for the creation of the menace.

(Ord. of 3-25-2002, § 1; Ord. of 1-27-2003; Ord. of 11-27-2006; Amd. of 12-14-2009)

Sec. 9-100. Appeals.

- a. Any and all persons aggrieved directly or indirectly by a decision, order, rule act or failure to act of the harbormaster may appeal said decision, order, rule, act or failure to act to the harbor/waterfront committee. In deciding any appeal, the committee shall hold a hearing and approve, approve with modifications or conditions or disapprove the decision, order, rule, act or failure to act from which the appeal is made.
- b. Such appeals shall be made in writing to the committee within five (5) calendar days of the decision, order, rule, act or failure to act from which the appeal is taken. It must state with specificity the decision, order, rule, act or failure to act from which the appeal is taken and the reason for the appeal. The harbor/waterfront committee at its next regular meeting shall consider the appeal.
- c. Any decision, order, rule, act or failure to act by the harbormaster concerning the location of moorings or boats, as a result of which location there is immediate danger to lives or property, shall not be stayed pending appeal.
- d. Any party may take an appeal from a decision of the harbor/waterfront committee within thirty (30) days after the decision is rendered to the superior court in accordance with the Maine Rules of Civil Procedure.

(Ord. of 3-25-2002, § 1; Ord. of 1-27-2003; Ord. of 11-27-2006; Amd. of 12-14-2009)

Sec. 9-101. Wharf permits.

Any person who has at the date of enactment of this article, a legal wharf and/or dock system, may expand that wharf and/or dock system only in accordance with the following. An application consisting of scale drawings of the proposed project should be made to the town harbor/waterfront committee. The applicant shall appear at a harbor/waterfront committee meeting to answer questions. The project must not unreasonably interfere with customary or traditional public access ways to, or public trust rights (fishing, fowling, and navigation) in, on, or over the submerged lands; unreasonably interfere with fishing or other existing marine uses of the area; unreasonably diminish the availability of services and facilities necessary for commercial marine activities; or unreasonably interfere with ingress and egress of riparian owners. The harbor/waterfront committee must approve any changes or amendments to the original application before construction shall begin. Receipt of approval under this section does not relieve the applicant from the responsibility of obtaining approval from other town, state and federal agencies with jurisdiction over the proposed expansion.

(Ord. of 3-25-2002, § 1; Ord. of 1-27-2003; Ord. of 11-27-2006; Amd. of 12-14-2009)

Sec. 9-102. Dumping of sewage prohibited.

No person may discharge, spill or permit to be discharged sewage, garbage, or other pollutants from any boat into the tidal waters within the boundaries of the town or onto the ice or banks thereof in such a manner that the same may fall or be washed into such waters or in such a manner that the drainage there from may flow into such waters.

(Ord. of 3-25-2002, § 1; Ord. of 1-27-2003; Ord. of 11-27-2006; Amd. of 12-14-2009)

Sec. 9-103. Licensing for commercial passenger boats using town wharf and floats.

- a. *Purposes.* The purposes of this section are to fairly allocate the scarce public resources of berthing space and tie-up time at the Falmouth Town Wharf and to protect the health, safety and welfare of users of the town wharf and passengers on commercial passenger boats which may utilize the town wharf. The town wharf is public property which the town manages for the benefit of all the residents of Falmouth and mooring owners and it is not the intent of this article to create any private property rights or interests in the use of that public property.
- b. *Definition and interpretation.* Terms used in this section shall have the same meanings as terms, which are defined in Sec. 9-91. In addition, the following terms have the following meanings.

Commercial passenger boat means a boat, which carries passengers for hire, on a charter or scheduled service basis or both.

New license means a license issued to an applicant who did not hold a valid license for a commercial passenger boat of the same capacity category on October 31 next preceding the date on in which the application is made.

Operator means the owner, lessee or other person with the legal right to possession and control of a boat.

Parking means off-street parking, which complies with the requirements of the Falmouth Zoning Ordinance.

Renewal license means a license issued to an applicant who held a valid license for a commercial passenger boat of the same capacity category on October 31 next preceding the date on which the application is made. The applicant must produce documentation that he/she has transported commercial passengers within the Town of Falmouth within the previous twelve (12) months.

- c. *Regulations.*

1. *License required:* No commercial passenger boat shall use the town wharf without first obtaining and maintaining a license under this article.
 2. *Performance standards:* Notwithstanding anything to the contrary in this article, commercial passenger boats using the town wharf shall comply with the following standards:
 - a. Commercial passenger boats shall use only those portions of the town wharf which has been designated for such use by the harbormaster;
 - b. No commercial passenger boat shall be tied up or berthed at the town wharf for longer than thirty (30) minutes per hour or more than once per hour;
 - c. Boarding areas shall be kept clean and free of litter. Passengers shall be advised to carry out what they carry in;
 - d. No signs advertising the service shall be allowed on public property with the exception of a schedule of times and description of service posted on the public bulletin board;
 - e. Amplified sound shall not exceed fifty-five (55) decibels during the day and forty-five (45) decibels at night;
 - f. The operators of commercial passenger boats shall work together on scheduling their services, so that the town wharf is used most efficiently;
 - g. The operators of commercial passenger boats shall be flexible and accommodate other users of the town wharf; and
 - h. Each commercial passenger boat shall pass necessary U.S. Coast Guard inspection for that vessel's type and class.
 3. *Insurance:* The operator of each commercial passenger boat which uses the town wharf shall maintain liability insurance with policy limits of no less than one million dollars (\$1,000,000.00) which names the Town of Falmouth as an additional insured.
- d. *Limits on size of boats, number of license, categories.*
1. *Size limited:* No license shall be issued for a commercial passenger boat, which exceeds forty (40) feet in length, or twelve (12) feet in beam. The beam may increase to sixteen (16) feet with the permission of the harbormaster.
 2. *Large capacity vessel:* A boat which is USCG licensed to transport more than six (6) passengers.
 3. *Small capacity vessel:* A boat which is USCG licensed to transport a maximum of six (6) passengers.
 4. *Licenses per category:* No more than six (6) licenses for commercial passenger boats shall be issued or shall be in effect at any time.
 5. *Waiting list:* The harbormaster shall maintain a waiting list of all applicants who have not been issued a commercial passenger license. A copy of the list shall be posted in the office of the harbormaster. Applications shall be dated upon receipt at the town office and shall be considered in chronological sequence (regardless of year received) in accordance with the following priority:
 - a. Resident.
 - b. Non-resident.
- e. *License fees.* The annual fees for license under this section shall be as specified in the town harbor fee schedule as approved by the town council:

f. *License application filing period.* Application for licenses under this article must be received in the office of the town clerk on a regular town office business day during the following periods of each year:

1. November 1 through March 1.

g. *Application requirements.* Applications for a license under this section shall be made by the operator of the commercial passenger boat in writing and under oath on a form provided by the town clerk. The application shall contain the following information and/or submissions:

1. Name of the applicant;
2. A brief description of the form of the applicant's business i.e., sole proprietor, sole proprietor doing business under a trade name, corporation, limited liability company, partnership, etc.;
3. The applicant's residence address or local business address;
4. The applicant's mailing address, designated by the applicant as the address where the applicant will accept any notices served under this article;
5. A photograph of the commercial passenger boat taken within sixty (60) days immediately prior to the date of the filing of the application, which picture shall be two (2) inches by two (2) inches at minimum;
6. A brief description of the types of charter/passenger/for-hire activities to be operated;
7. A statement of the maximum number of passengers the applicant will transport in the commercial passenger boat;
8. A copy of certificate of insurance complying with the requirements of subsection (c)(3) of this section;
9. Copies of all United States Coast Guard licenses held by the operator;
10. A copy of the most recent United States Coast Guard Inspection Certificate for the commercial passenger boat if applicable;
11. A statement that the applicant has not committed any violations of this article within the year prior to the date of application; and
12. A statement that the applicant has not, within the year prior to the date of application, operated a commercial passenger boat in an unlawful manner or in any manner so as to constitute a threat to the public health, safety or welfare.

From the date of filing the application until the expiration or surrender of any license issued as a result of the application, the applicant is required to notify the clerk in writing of any changes in any of the information contained in the application.

h. *Award of license of harbor/waterfront committee.* The town clerk shall forward all timely applications to the town harbor/waterfront committee, which shall act on the applications as follows:

1. *Resident applicants.* At its first meeting after November 7 of each year, the harbor/waterfront committee shall award available licenses to resident applicants who qualify, first to applicants for renewal licenses, and then to applicants for new licenses, awarded by drawing lots if there is more than one (1).
2. *Non-resident applicants.* At its first meeting after November 15 of each year, if all available licenses have not been awarded under subsection (h)(1) above, the harbor/waterfront committee shall award the remaining license to non-resident applicants who qualify, first to

applicants for renewal licenses, and then to applicants for new licenses, awarded by drawing lots if there is more than one (1).

- i. *Qualifications for license.* Before awarding a license under subsection (h) of this section, the harbor/waterfront committee must find that the applicant qualifies by meeting the following standards:
 1. The applicant has proven that he/she has either a mooring or other adequate berthing for his/her vessel within the tidal waters of the town;
 2. The applicant has provided evidence of the insurance required by subsection (c)(3) of this section;
 3. The applicant has been issued all licenses required by the United States Coast Guard for the operation of the commercial passenger boat;
 4. The applicant has not committed any violations of this article within the year prior to the date of application;
 5. The applicant has not operated a commercial passenger boat in an unlawful manner or in any manner so as to constitute a threat to the public health, safety or welfare.
- j. *Issuance of license by clerk.* After the harbor/waterfront committee has awarded the licenses under subsection (h) of this section, the town clerk shall issue the licenses to the successful applicants, to become valid on January 1 at 12:01 a.m.
- k. *Term of licenses.* All licenses issued under this section shall take effect on the date of issuance by the town clerk under subsection (j) of this section and shall expire on the following December 31 at 11:59 p.m.
- l. *Effect of licenses.* Licenses issued under this section are valid only for the commercial passenger boat and the operator identified on the application. Any change in the status of any of those factors must be reviewed and approved by the harbor/waterfront committee upon application made by the license holder.
- m. *Revocation of licenses.* The harbor/waterfront committee may revoke a license, after hearing, for any of the following causes: Before revoking a license, the town harbor/waterfront committee shall provide the operator with notice and the opportunity to be heard. The town harbor/waterfront committee shall give the operator written notice of the grounds for revocation and of the date, time and place of the hearing, mailed to the operator at the mailing address designated in the operator's license application at least seven (7) days before the scheduled hearing date. If the operator chooses to waive a hearing, the operator may surrender the license to the town clerk at any time prior to the scheduled hearing.
 1. Failure of the operator to comply with the qualification standards of subsection (i) of this section;
 2. Fraud, misrepresentation, or false statement contained in the application license;
 3. Fraud, misrepresentation, or false statement made in the course of carrying on the operator's business or any commercial passenger boat;
 4. Any violation of this article;
 5. Conducting the commercial passenger boat business in any unlawful manner.
- n. *Interim provisions for issuance of licenses.* Notwithstanding the provisions of subsections (f) and (h) of this section, license applications for licenses under this section shall be accepted for a period of seven (7) days prior to the effective date of this section. On the first town office business day after the effective date, the town clerk shall forward the applications to the

harbor/waterfront committee. At its first meeting after the effective date, the harbor/waterfront committee shall award the licenses to qualified applicants in each capacity category, first to resident applicants and then to non-resident applicant.

(Ord. of 3-25-2002, § 1; Ord. of 1-27-2003; Ord. of 11-27-2006; Amd. of 12-14-2009)

Sec. 9-104. Commercial marine ventures.

All commercial marine activities (rafts, pens, lobster buyers, bait dealers, etc.) within the tidal waters of the town require prior approval from the harbormaster subject to location, navigational safety, area and compatibility and to alleviate any problems regarding commercial or recreational fishing and/or navigation. Such structures associated with marine activities shall be maintained in good and serviceable condition.

All commercial marine activities shall be in full compliance with town ordinances and rules and regulations.

(Ord. of 3-25-2002, § 1; Ord. of 1-27-2003; Ord. of 11-27-2006; Amd. of 12-14-2009)

Sec. 9-105. Penalties.

- a. *Enforcement:* It shall be the primary duty of the harbormaster to enforce the provisions of this article. If the harbormaster shall find any provision of this article being violated, he/she shall notify the person responsible for said violation, either verbally or in writing, indicating the nature of the violation and ordering the action necessary to correct it. The harbormaster shall maintain a written record of said notices. In the event that the violation causes or threatens to cause property damage, then notification of the violation shall be the fastest means available. In this case, if contact with the mooring or boat owner or corrective action cannot be made within twenty-four (24) hours, the harbormaster is authorized to take whatever corrective action is necessary, the expense and risk for which shall be borne by the mooring or boat owner. If the mooring or boat owner fails to satisfy all financial obligations arising out of this incident prior to January 1 of the succeeding year, he/she shall forfeit his/her mooring assignment until such obligation is satisfied. This section shall not limit in any way the authority of the harbormaster to act as provided in 38 M.R.S.A. § 1.
- b. *Legal action:* When the above action does not result in the abatement or correction of the violation condition, the harbormaster is authorized to seek any all actions, legal or equitable. In addition to seeking civil penalties, the town may enjoin any person from violating or continuing to violate a provision of this article and may seek any other legal or equitable remedies necessary to achieve compliance with the requirements of this article. In any such action, which the town prevails, the town shall be awarded reasonable attorney's fees and the cost of suit in addition to any other relief to which it may be entitled.
- c. *Civil penalty:* Violation of any provision of this article shall be prosecuted and relief, fees and penalties granted and assessed pursuant to the provisions of 30-A M.R.S.A. § 4452.
- d. *Failure to obey order of the harbormaster:*
 1. *Offense defined:* As provided by 38 M.R.S.A. § 13, a person is guilty of failure to obey an order of the harbormaster if the person intentionally, knowingly or recklessly fails to obey any lawful order of the harbormaster.
 2. *Penalty:* Failure to obey an order of the harbormaster is a Class E Crime.
- e. *Forfeiture:* Moorings and skiffs abandoned by their owners shall be impounded by the harbormaster. Said abandoned property shall be disposed of according to the procedures

outlined established by the harbormaster. Any mooring company whom assists the town in removing said property may petition the harbormaster to obtain the property if, after six (6) months, the owner fails to claim the property. Any skiff left tied to the town float without proper identification or left sunk or awash for a period exceeding forty-eight (48) hours shall be deemed abandoned for the purposes of this section. The town shall not be liable for any damage sustained by an impounded skiff or mooring.

- f. *Removal of moorings:* The harbormaster may remove any mooring with improper number or without a number, or located in an improper place or improperly constructed, if two (2) weeks after written notice to the owner thereof, said owner fails to correct the problem. Notice shall be in writing and shall include the action to be taken by the owner and the fact that the mooring is subject to removal, and that the owner is liable for a fine.
- g. *Termination and suspension:* The harbormaster shall suspend or terminate for a period of one (1) year both the right to use the town wharf and the mooring assignment of any mooring owner for non-compliance with this article, or failure to comply with any order of the harbormaster given according to the provisions of this article. After one (1) year, the applicant may reapply for a mooring assignment.

(Ord. of 3-25-2002, § 1; Ord. of 1-27-2003; Ord. of 11-27-2006; Amd. of 12-14-2009)

Sec. 9-106. Houseboats.

Notwithstanding any other provision of this article to the contrary, houseboats are prohibited from mooring or anchoring in the anchorage except at marinas which provide the following:

1. A permanent float, dock or slip from which the houseboat may be directly boarded from land;
2. Connection to a public water supply by means of an individual anti-backflow valve;
3. A sewer connection to a public sewage system;
4. A year-round, all weather supply of electricity;
5. Parking as required by the codes and ordinances of the municipality where the marina is located; and
6. Compliance with the applicable land use codes.

(Ord. of 1-27-2003; Ord. of 11-27-2006)

Sec. 9-107. Aquaculture ventures.

All aquaculture ventures (mussel rafts, oyster farming, salmon pens etc.) must be brought before the harbor/waterfront committee and the harbormaster, who shall hold a public hearing on the proposed venture. No aquaculture venture involving the use of rafts, pens or other structures in the anchorage may proceed without the approval of the harbormaster. The harbormaster shall approve or deny the proposed venture based upon the effects of the proposal on public safety and navigation. The harbormaster may require that the person proposing the aquaculture venture to have all applicable state and federal permits before the harbormaster grants his/her approval.

(Ord. of 1-27-2003; Ord. of 11-27-2006)

Sec. 9-108. Mooring services rules and regulations.

- a. No person shall install or inspect moorings or offer to install or inspect moorings for hire within the anchorage without first registering the mooring service with the harbormaster.

- b. Mooring services operating within the anchorage shall adhere to the following rules:
1. Mooring buoys shall comply with the requirements of Sec. 9-94(o)(1)(f) before being set or re-set.
 2. A certificate of insurance indicating the coverages set forth in Sec. 9-91 as listed under the definition (mooring service) shall be provided to the harbormaster annually.
 3. Approval of the harbormaster shall be obtained at least two (2) days prior to setting, hauling out, relocating or adjusting any mooring. The service shall provide to the harbormaster the location, by site and section, of such mooring before and after the action for which approval is sought.
 4. Moorings for which the service is responsible shall be readjusted within two (2) days after notification by the harbormaster.
 5. All new moorings being set must be registered and have had a complete mooring inspection.
 6. Mooring services shall inspect moorings for which they are responsible at least once every two (2) years. Failure to perform such inspections may result in rejection of any mooring renewal application for that mooring; the harbormaster's causing the mooring to be inspected at the owner's expense; and/or an order to remove the mooring tackle at the owner's expense.
- c. Any mooring service which fails to comply with the rules in this section is subject to having its privilege to operate in the anchorage suspended by the harbormaster.

(Ord. of 1-27-2003; Ord. of 11-27-2006)

FOOTNOTE(S):

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Cross reference— Buildings and building regulations, Ch. II-4; land subdivision, Ch. II-7; marine activities, structures and ways, Ch. II-9; boat mooring, § 9-81 et seq.; mobile homes and mobile home parks, Ch. II-11; streets, sidewalks and other public places, Ch. II-14; zoning and site plans and flood prevention and protection regulations, Ch. II-19.

State Law reference— Authority for harbor committees, 38 M.R.S.A. § 7.

CH. II-10 MISCELLANEOUS OFFENSES

Sec. 10-1. Use of firearms.

This section is enacted pursuant to 30-A M.R.S.A. § 3001 and the home rule authority of the town in order to provide for the safety of residents of the town; to eliminate a threat to the peaceable enjoyment and use of property; and to maintain an appropriate educational environment on public school property.

- a. *Trespass with a firearm.* A person in possession of a firearm who is not a duly authorized law enforcement officer engaged in the proper exercise of his duties, shall not enter upon private property for any purpose without the permission of the property owner.

- b. *Discharge of firearms.* The discharge of firearms, including without limitation handguns, rifles, shotguns and gas-operated weapons, for any purpose in the town is hereby prohibited with the following exceptions:
1. The discharge of shotguns in connection with lawful hunting is allowed, where prior permission of the property owner has been obtained, in the following areas of the town:
 - a. The area within fifty (50) feet inland from the high-water mark along the Presumpscot River estuary from Interstate 295 on the northerly shore of the estuary to a point where the easterly sideline of Greenway Drive extended northerly would intersect the high-water mark;
 - b. The shoreline of Casco Bay from the Martin Point Bridge to the Town of Cumberland, except the area designated as part of the Back Cove Sanctuary as described in 12 M.R.S.A. § 7651; and
 - c. The entire area lying westerly of Middle Road except the following school and residential zones:
 - i. The area bounded by Middle Road, Falmouth Road, Allen Avenue Extension and that portion of the Presumpscot River that runs between Allen Avenue Extension and the Middle Road, which area also includes the Plummer-Motz School and the Lunt School;
 - ii. The area surrounding the Falmouth Elementary/Middle/High School and bounded by Woodville Road, Falmouth Road, the East Branch of the Piscataqua River (except the area fifty (50) feet from the easterly shore thereof) and Field Road, provided, however, that this prohibition shall not apply within such area if, before October 1, each year, the police chief reports to the town council that (i) a line five hundred (500) feet from the school property line is posted with signs including the language "No Hunting" and at intervals not less than one hundred (100) feet and (ii) hunting is allowed only with the written permission of the landowner, which permission must be kept in the possession of the hunter. The erection of signs as provided herein shall be at the option of the landowner and at the expense of the town. Such signs must be maintained throughout the hunting season.
 2. For those areas in which the discharge of firearms is permitted, when the discharge of a firearm is within five hundred (500) feet of any dwelling, the permission of an adult residing at the dwelling unit must be obtained prior to any discharge.
 3. The discharge of .22 caliber pistols at night in conformity with state regulation for the purpose of hunting raccoons is allowed in those areas designated for the discharge of shotguns under paragraph (1).
 4. Target practicing is allowed, but only in those areas of the town designated for discharge of shotguns under paragraph (1) and only within the confines of areas for which a permit as a range has been obtained from the chief of police and only with such types and calibers of firearms and under such conditions as shall be specifically enumerated by the chief of police in such permit. Such permit shall be valid for any period of time as shall be designated thereon by the chief of police but in no event shall any such permit be valid without renewal for more than one (1) year. The chief of police shall refuse to issue a permit only when he finds that the issuance of such permit will pose a danger or possibility of danger to life or property.
 5. The discharge of firearms is allowed on their own property by those property owners and their permittees described in, and for all purposes listed in, 12 M.R.S.A. §§ 7501, 7502, and 7504, and all other Maine statutes regulating hunting.

- c. The permission required by subsections (a) and (b) of this section may be evidenced either by a writing from the owner or dwelling resident as the case may be, kept on the person of the permittee or, implicitly, if the owner does not post signs at approximately eye level at reasonable intervals around the perimeter of the property indicating that trespassing is prohibited, except that written permission must be obtained to discharge a firearm with five hundred (500) feet of any dwelling.
- d. *Possession of firearms on school property.* The possession of firearms on school property is prohibited except in connection with supervised educational programs.
- e. *[No hunting.]* No hunting in parks and public land areas designated under Sec. 14-121, with either firearms or bow and arrow, and hunting is further prohibited within three hundred (300) feet of any playing field or, parking area located on town owned property.
- f. *Protection of life and property.* Nothing in this section shall be construed to prohibit the use of firearms when justified for the protection of human life or property or by duly authorized police officers in the proper exercise of their duties.
- g. *Enforcement and penalty.*
 - 1. Police officers of the town shall have the authority and power to enforce this section.
 - 2. Any person violating this section shall be subject to the maximum fine allowable for the town and/or confiscation of the firearm used in such violation.

(Ord. of 5-30-91; Ord. of 12-20-93; Ord. of 7-24-95; Ord. of 10-23-2000; Ord. of 12-19-00; Ord. of 9-26-2011)

Sec. 10-2. Regulation of sale or transfer of handguns.

- a. No person in the town shall sell, give or in any manner transfer title to any person any handgun as hereinafter defined, except in accordance with the provisions of this section.
- b. A handgun shall mean a firearm having a barrel length of less than fifteen (15) inches and designed and intended to be fired with one (1) hand using fixed ammunition.
- c. Such person selling or in any manner transferring the title of such handgun shall require the person seeking to purchase or obtain such handgun to sign a certificate containing the following information:

Name ____

Driver's License No. ____

or

Date of Birth ____

Draft Card No. ____

Address ____

How long at such address ____

Occupation ____

Present Employer ____

Physical Description: Sex ;#rule; Ht. ;#rule; Wt. ;#rule; Color Hair ;#rule; Color Eyes ;#rule;

Distinguishing Marks ____

Have you ever been convicted of assault, assault and battery or a felony? ____

If so, description thereof ____

Are you under complaint or indictment for assault, assault and battery or a felony? ;#rule;

If so, description thereof ____

Are you a user of or addicted to marijuana or any other depressant, stimulant or narcotic drug? ;#rule;

Have you ever been judged by a court as a mental defective or been committed to or voluntarily been a patient at a mental institution? ;#rule;

If so, where? ____

	____ Signature
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- d. Such person selling or otherwise transferring title shall deliver such certificate to the chief of police or his duly authorized representative at police headquarters. The chief of police or his authorized representative shall have seventy-two (72) hours after receipt of the certificate to make any examination of the records contained in the police department and in the state police headquarters to determine from such records whether the person signing such certificate has been convicted of or is under complaint or indictment for assault, assault and battery or a felony; is a user of or addicted to marijuana or any other depressant, stimulant or narcotic drug; or has ever been judged by a court as a mental defective or has been committed to or voluntarily been a patient at a mental institution. The chief of police or his designee shall report such finding to the person submitting such certificate.
- e. Any person selling, giving or delivering a handgun to any person before the expiration of seventy-two (72) hours or when notified within such period by the chief of police or his authorized representative that a person signing such certificate has been convicted of or is under complaint or indictment for assault, assault and battery or a felony; is a user of or addicted to marijuana or any other depressant, stimulant or narcotic drug; or has been judged by a court as a mental defective or has been committed to or voluntarily been a patient at a mental institution shall be guilty of violation of this section and subject to a fine of not more than one hundred dollars (\$100.00). Any person who signs a certificate containing false information for the purpose of complying with the provisions of this section shall be guilty of a violation of this section and subject to a fine of not more than one hundred dollars (\$100.00).

(Code 1966, Ch. 311, §§ 1—6)

State law reference— Record of sale, 15 M.R.S.A. § 455.

Sec. 10-3. Restriction on residence of convicted sex offenders.

- a. *Authority.* This section is enacted pursuant to 30-A M.R.S.A. § 3001 and 30-A M.R.S.A. § 3014.
- b. *Definitions.*

Convicted sex offender.

A person convicted of any current or former Maine crime listed in former title 17, §§ 2922—2924 or title 17-A, chapter 11 or 12; a conviction for an attempt or solicitation of those listed crimes; or any conviction for any former or current crime in any other jurisdiction in which the person engaged in substantially similar conduct to that of the earlier specified current or former Maine crimes.

- c. *Prohibition.* A convicted sex offender whose crime involved a victim who had not attained the age of 14 years at the time of the offense may not establish a residence within seven hundred fifty (750) feet of the real property line of a public or private elementary, middle or secondary school or within seven hundred fifty (750) feet of the real property line of municipally owned property where children are the primary users, including, without limitation, playgrounds and athletic fields. The prohibition of this section shall not apply to persons who, on the date of adoption of this section, resided within the seven hundred fifty (750) foot restricted areas.
- d. *Penalties.* Any person who, after written notice from the Town, fails or refuses to comply with its requirements of this section shall be subject to a minimum penalty of five hundred dollars (\$500.00) per day payable to the Town. In addition to monetary penalties, the Town may also seek injunctive relief from the courts. If the Town prevails in an action for violation of this section, it shall be entitled to its reasonable attorneys fees and costs.

(Ord. of 1-9-2012)

Sec. 10-4. Use and sale of consumer fireworks prohibited.

- a. A person may not use, sell or offer for sale consumer fireworks, as defined in 8 M.R.S.A. §221-A, in the town.
- b. In addition to applicable penalties provided by 8 M.R.S.A. §223-A, violation of the provisions of this section is a civil violation punishable in accordance with Sec. 1-14. The Town Police Department may confiscate and dispose of any consumer fireworks that are in violation of this section.
- c. Pursuant to 8 M.R.S.A. §227-B, nothing in this section shall be construed to limit or regulate fireworks displays, as defined in 8 M.R.S.A. §221-A, or the issuance of permits for fireworks displays by the Maine Commissioner of Public Safety or a designee.

(Ord. of 11-14-2011)

FOOTNOTE(S):

--- (1) ---

Cross reference— Provisions for notices for nuisances, signs, dangerous, unsafe, dilapidated buildings, and any other action the expense of which may be collected from the property owner, § 2-3; police department, § 2-430 et seq.

CH. II-11 MOBILE HOMES AND MOBILE HOME PARKS

(RESERVED)

FOOTNOTE(S):

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Editor's note— The mobile home and mobile home park ordinances are not codified herein, but are on file in the town clerk's office.

Cross reference— Provisions for notices for nuisances, signs, dangerous, unsafe, dilapidated buildings, and any other action the expense of which may be collected from the property owner, § 2-3; planning board, § 2-95 et seq.; waterfront and harbor committee, § 2-115 et seq.; buildings and building regulations, Ch. II-4; land subdivision, Ch. II-7; licenses, permits and business regulations, Ch. II-8; loud, offensive noises prohibited, § 12-1; certain discharges into the public sewer system prohibited, § 18-190 et seq.; zoning and site plans and flood prevention and protection regulations, Ch. II-19.

State Law reference— Mobile home parks, 30 M.R.S.A. § 4064 et seq.; regulation of manufactured housing, 30-A M.R.S.A. § 4553.

CH. II-11.5 PROPERTY ASSESSED CLEAN ENERGY (PACE)

FOOTNOTE(S):

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Editor's note— Ord. of Dec. 13, 2010 did not specify manner of inclusion. To facilitate indexing, said provisions have been codified as Ch. II-11.5.

ART. II-11.5-1. PURPOSE AND ENABLING LEGISLATION

Sec. 11.5-1. Purpose.

By and through this chapter, the Town of Falmouth 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 the town. The Town of Falmouth declares its purpose and the provisions of this chapter to be in conformity with federal and state laws.

(Ord. of 12-13-2010, (Art. I, § 1)

Sec. 11.5-2. Enabling legislation.

The Town of Falmouth enacts this chapter 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.).

(Ord. of 12-13-2010, (Art. I, § 2)

Secs. 11.5-3—11.5-22. Reserved.

ART. II-11.5-2. TITLE AND DEFINITIONS

Sec. 11.5-23. Title.

This chapter shall be known and may be cited as "the Town of Falmouth Property Assessed Clean Energy (PACE) ordinance" (the "ordinance")."

(Ord. of 12-13-2010, (Art. II, § 3)

Sec. 11.5-24. Definitions.

Except as specifically defined below, words and phrases used in this chapter shall have their customary meanings; as used in this chapter, the following words and phrases shall have the meanings indicated:

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.

Municipality means the Town of Falmouth.

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.

PACE assessment means an assessment made against qualifying property to repay a PACE loan but is not a municipal tax assessment.

PACE district means the area within which the municipality establishes a PACE program hereunder, which is all that area within the municipality's boundaries.

PACE loan means a loan, secured by a PACE mortgage, made to the owner(s) of a qualifying property by the Trust pursuant to a PACE program to fund energy saving improvements.

PACE mortgage means a mortgage, with the Trust as mortgagee, securing a loan made pursuant to a PACE program to fund energy saving improvements on qualifying property.

PACE program means a program established under state statute by the Trust and a municipality under which property owners can finance energy savings improvements on qualifying property.

Qualifying property means real property located in the PACE district of the municipality.

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.

Trust means the Efficiency Maine Trust established in 35-A M.R.S.A. § 10103 and/or its agent(s), if any.

(Ord. of 12-13-2010, (Art. II, § 4)

Secs. 11.5-25—11.5-30. Reserved.

ART. II-11.5-3. PACE PROGRAM

Sec. 11.5-31. 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.

(Ord. of 12-13-2010, (Art. III, § 1)

Sec. 11.5-32. Amendment to PACE program.

In addition, the municipality may from time to time amend this chapter 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.

(Ord. of 12-13-2010, (Art. III, § 2)

Secs. 11.5-33—11.5-40. Reserved.

ART. II-11.5-4. CONFORMITY WITH THE REQUIREMENTS OF THE TRUST

Sec. 11.5-41. 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 chapter and those standards, rules or model documents substantially conflict with this chapter, the municipality shall take necessary steps to conform this chapter and its PACE program to those standards, rules, or model documents.

(Ord. of 12-13-2010, (Art. IV, § 1)

Secs. 11.5-42—11.5-50. Reserved.

ART. II-11.5-5. PROGRAM ADMINISTRATION; MUNICIPAL LIABILITY

Sec. 11.5-51. 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:

1. The Trust will enter into PACE agreements with owners of qualifying property in the municipality's PACE district;
 2. 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;
 3. The Trust, or its agent, will disburse the PACE loan to the property owner;
 4. The Trust, or its agent, will send PACE assessment statements with payment deadlines to the property owner;
 5. The Trust, or its agent, will be responsible for collection of the PACE assessments;
 6. The Trust, or its agent, will record any lien, if needed, due to nonpayment of the assessment;
 7. The Trust or its agent on behalf of the Trust 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 chapter, 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.

(Ord. of 12-13-2010, (Art. V, § 1)

Sec. 11.5-52. 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 Sec. 11.5-51(a) of this article, a municipality has no liability to a property owner for or related to energy savings improvements financed under a PACE program.

(Ord. of 12-13-2010, (Art. V, § 2)

CH. II-12 NUISANCES

Sec. 12-1. Loud, offensive noises prohibited.

No person shall make, continue or cause to be made or continued any loud, boisterous, unnecessary or unusual noises which shall either annoy, disturb, injure or endanger the comfort, repose, health, peace or safety of others. The sounding of any horn or signalling device except as a danger warning; the playing of any radio, musical instrument, phonograph or any other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of neighboring inhabitants and passersby; the use of any loudspeaker or amplifier for the purpose of commercial advertising or attraction of the public to a specific building, location or business; yelling, shouting, hooting, whistling, or singing shall be considered to be loud, disturbing, and unnecessary noises and a violation of this section but such enumeration shall not be deemed exclusive.

(Code 1966, Ch. 303, § 1)

Cross reference— Animals, Ch. II-3; buildings and building regulations, Ch. II-4; mobile homes and mobile home parks, Ch. II-11; traffic and motor vehicles, Ch. II-17.

Sec. 12-2. Littering prohibited.

- a. No person shall throw or deposit, or cause to be thrown or deposited in any street, sidewalk, court, square, lane, alley or public place, any sawdust, soot, ashes, cinders, garbage, paper, shavings, hair, shreds, manure, oysters, clam or lobster shells, waste or dirty water or any animal, vegetable or offensive matter whatsoever. No person shall throw or cast any dead animal or any foul or offensive matter in any dock or within the tidelands, nor shall land any foul or offensive animal or vegetable substance within the town. No person shall cast any waste or garbage in the waters of Casco Bay, Falmouth portion of Highland Lake, Presumpscot River, all branches of the Piscataquis River, Mill Creek and other Falmouth waters. No person shall throw, cast or place any living animal with intent to drown the same in any dock or any area listed above. It shall be the duty of the town manager or his designated official to cause the enforcement of the provisions of this section and to prosecute any and all persons violating any provisions.
- b. All dirt, sawdust, soot, ashes, cinders, garbage, paper, shavings, hair shreds, manure, oysters, clam or lobster shells or any animal or vegetable substances or foul or offensive material or filth of any kind in any house, building, cellar, yard or other place which the health officer shall deem necessary for the health of the town to be removed shall be carried away therefrom by and at the expense of the owner or occupant of such house or other place where the same shall be found, and removed to such place as directed within twenty-four (24) hours after notice in writing to that effect given by the chief of police or health officer.
- c. Whenever any person shall have been duly notified to remove any of the above substances or to perform any other act or thing which it may be his duty to perform for the preservation of the health of the town and the time limit for the performance of such duty shall have elapsed without a compliance of such notice, the chief of police or health officer shall forthwith cause such substance to be removed at the expense of the person so notified. The chief of police or health officer shall cause all persons who shall violate or disobey any provision of this section to be prosecuted and punished.
- d. If in the opinion of the health officer, it shall be for the health or comfort of the inhabitants of the town that any particular substance should be removed forthwith and without delay, it shall be his duty to cause the same to be removed accordingly. If the substance existed in violation of this section or of any of the laws, regulations or ordinances relating to the health of the town, then the expense of removing the same shall be paid by the owner or occupant of the house or other place where the same was found. If payment shall be refused on demand by the chief of police, a suit shall be filed in the name of the town.

(Code 1966, Ch. 305, §§ 1—3, 5)

Cross reference— Buildings and building regulations, Ch. II-4; streets, sidewalks and other public places, Ch. II-14; streets, § 14-40 et seq.

State law reference— Litter control, 17 M.R.S.A. § 2261 et seq.

Sec. 12-3. Junked motor vehicles prohibited.

- a. *Public property.* It shall be unlawful for any person to deposit, place, leave, or abandon any discarded, worn out or junked motor vehicles, or parts thereof on any public street or any public place in the town. The town shall have the right to remove or cause to be removed any such vehicle or part thereof from any public street or public place and dispose of it as it sees fit without any liability whatsoever.
- b. *Private property.* It shall be unlawful for any person to deposit, place, leave, or abandon any discarded, worn out or junked motor vehicle or parts thereof, on any private property in the town, except in duly authorized locations. It shall be unlawful for any person owning or occupying private property in the town to keep or allow to accumulate any discarded, worn out or junked motor vehicle or parts thereof, on private property after having received written notice by certified mail from the town by an official designated by the town manager ordering the removal from the property of any discarded, worn out or junked motor vehicle or parts thereof. If any person shall fail for a period of ten (10) days after receipt of the notice and order to remove any such vehicle or parts thereof or to apply for a hearing before the town council to appeal such decision, the town shall have the right by its duly authorized agent to remove the vehicle, or parts thereof, from any private property and dispose of it as it sees fit without any liability whatsoever. In addition to any fine provided in Sec. 1-14 the person depositing or keeping such vehicle, or parts thereof on public highways, public places or private property shall be liable to the town for the cost of removal thereof and shall pay the costs within thirty (30) days after demand.
- c. *Enforcement.* It shall be the duty of the town manager or his designated official to cause the enforcement of the provisions of this section and to prosecute any and all persons violating any of the provisions.

(Code 1966, Ch. 313, §§ 1—5, 7, 8)

Cross reference— Streets, sidewalks and other public places, Ch. II-14; traffic and motor vehicles, Ch. II-17; zoning and site plans and flood prevention and protection regulations, Ch. II-19.

FOOTNOTE(S):

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Cross reference— Administration, Ch. II-2; provisions for notices for nuisances, signs, dangerous, unsafe, dilapidated buildings, and any other action the expense of which may be collected from the property owner, § 2-3; division of health, § 2-300; animals, Ch. II-3; buildings and building regulations, Ch. II-4; licenses, permits and business regulations, Ch. II-8; solid waste, Ch. II-13; traffic and vehicles, Ch. II-17; utilities, Ch. II-18; certain discharges into the public sewer system prohibited, § 18-190 et seq.

CH. II-13 SOLID WASTE (AMENDED 5/22/2017)

Sec. 13-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section:

Acceptable waste shall mean ordinary household, municipal, institutional, commercial and industrial solid waste including, without limitation, the following:

1. Garbage, trash, rubbish, paper and cardboard, plastics, refuse, beds, mattresses, sofas, refrigerators, washing machines, bicycles, baby carriages and automobile or small vehicle tires;
2. Processible portions of commercial and industrial solid waste;
3. Wood and lumber, tree limbs, branches, ties, logs and trees, if no more than four and one-half (4½) feet long and eight (8) inches in diameter, and leaves, twigs, grass and plant cuttings; and
4. Recyclable materials.

Acceptable waste shall not include hazardous waste, as defined in 38 M.R.S.A. § 1303-B and this section, demolition debris as defined in this section and special waste as defined in this section.

Effective on: 5/22/2017

Class I residential waste shall be defined as acceptable waste generated by a residential unit as defined in this ordinance.

Effective on: 5/22/2017

Class II residential waste shall be defined as acceptable waste generated by condominium and apartment complexes containing more than three (3) dwelling units.

Effective on: 5/22/2017

Commercial recyclable materials shall be defined as that portion of commercial solid waste which consists of recyclable materials.

Effective on: 5/22/2017

Commercial waste shall be defined as solid waste generated by stores, offices, restaurants, warehouses, and other non-manufacturing, non-processing activities. Commercial waste does not include household, process, industrial, or special wastes.

Effective on: 5/22/2017

Construction and Demolition debris (CDD) shall be defined as solid waste resulting from construction, remodeling, repair and demolition of structures. It includes but is not limited to building materials, discarded furniture, asphalt, wall board, pipes, and metal conduits. It excludes: partially filled containers of glues, tars, solvents, resins, paints, or caulking compounds; friable asbestos; and other special wastes.

Effective on: 5/22/2017

Designated waste hauler shall mean a waste hauler or waste company that the town has entered into a contract with for the purposes of collecting household waste from residential units.

Disposal shall mean the discharge, deposit, dumping or placing of any solid waste into or on any land or body of water, or the incineration of any solid waste.

Disposal facilities shall mean any land or structure or combination of land area and land structures, including dumps, recycling centers, and transfer stations used for storing, salvaging, reducing, incinerating or disposing of solid wastes pursuant to the waste handling agreement and amendments thereto entered into between the town and ecomaine, including any transfer station or similar facility which may be constructed by the town in connection with the use of the disposal facilities.

Effective on: 5/22/2017

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.

Effective on: 5/22/2017

Hazardous waste shall mean a waste substance or material, in any physical state, designated as hazardous by the Board under 38 M.R.S.A. §1319-O. It does not include waste resulting from normal household or agricultural activities. The fact that a hazardous waste or a part or a constituent may have value or other use or may be sold or exchanged does not exclude it from this definition.

Effective on: 5/22/2017

Recyclable materials shall be defined as materials that would otherwise be disposed of or processed as waste or the mechanized separation of waste, other than through combustion, and the creation and recovery of reusable materials other than as a fuel for the generation of electricity. This may include without limitation newspapers, magazines, paperboard, paper products, cardboard, plastics, metal, foil, glass, aluminum, waste oil, mixed paper, batteries, white goods and other materials deemed recyclable by the town.

Effective on: 5/22/2017

Residential unit shall be defined as a structure within the town containing not more than three (3) dwelling units.

Resource recovery shall mean the recovery of materials or substances that still have useful physical or chemical properties after serving a specific purpose and can be reused or recycled for the same or other purpose.

Solid waste shall mean useless, unwanted or discarded solid material with insufficient liquid content to be free flowing, including but not limited to rubbish, garbage, refuse-derived fuel, scrap materials, junk, refuse, inert fill material, and landscape refuse, but does not include hazardous waste, biomedical waste, septic tank sludge, or agricultural wastes. The fact that a solid waste, or constituent of the waste, may have value, be beneficially used, have other use, or be sold or exchanged, does not exclude it from this definition.

Effective on: 5/22/2017

Special wastes shall be defined as any solid waste generated by sources other than household and typical commercial establishments that exists in such an unusual quantity or in such a chemical or physical state, or any combination thereof, that may disrupt or impair effective waste management or threaten the public health, human safety or the environment and requires special handling, transportation and disposal procedures. Special waste includes, but is not limited to:

1. Ash;
2. Industrial and industrial process waste;
3. Sludge and dewatered septage;
4. Debris from nonhazardous chemical spills and cleanup of those spills;
5. Contaminated soils and dredge materials;
6. Asbestos and asbestos-containing waste;
7. Sand blast grit and non-liquid paint waste;
8. High and low pH waste;
9. Spent filter media residue; and

10. Shredder residue.

Effective on: 5/22/2017

Unacceptable waste shall be defined as solid waste which is not acceptable waste and includes, without limitation, sewage and its derivatives, 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.

(Ord. of 9-26-88(1), § 3)

Effective on: 5/22/2017

Sec. 13-2. Purpose.

The purposes of this chapter are 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 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 in accordance with the provisions of 38 M.R.S.A. § 1304-B.

(Ord. of 9-26-88(1), § 2)

Effective on: 5/22/2017

Sec. 13-3. Administration.

- a. The town council may establish a system for the collection and disposal of acceptable waste and may adopt such rules and regulations and adopt within the town such schedule of charges for such collection service as may be appropriate which are on file in the town clerk's office.
- b. The town council shall establish the rules and regulations governing the availability and use of the disposal facilities. The operation of the disposal facilities shall conform to all pertinent regulations and directives of all local, county, state or federal agencies which may have jurisdiction.
- c. It shall be the duty of the director of public works to enforce the provisions of this chapter.

(Ord. of 9-26-88(1), §§ 5, 8.2)

Effective on: 5/22/2017

Sec. 13-4. Penalty.

- a. Residents who violate any of the provisions of this chapter shall be punished by a fine of not more than one hundred dollars (\$100.00) plus costs and attorney's fees, for each violation, which fine shall be recovered upon complaint to the use of the town. Each day upon which a violation continues shall be considered a separate violation.
- b. Commercial waste-hauling companies that violate any of the provisions of this chapter shall be punished by a fine of not more than two hundred fifty dollars (\$250.00) plus costs and attorney's fees, for each violation, which fine shall be recovered upon complaint to the use of the town. Each day upon which a violation continues shall be considered a separate violation.

(Ord. of 9-26-88(1), §§ 8.5, 8.6)

Sec. 13-5. Solid waste disposal facilities.

In accordance with the provisions of 38 M.R.S.A. § 1304-B, the town hereby designates the ecomaine disposal facility, Portland, Maine and its mini-transfer station and recycling center located at Woods Road, Falmouth, as the exclusive facilities for disposal of solid wastes generated within the boundaries of the town. The disposal by any person, including any person licensed as a waste hauler in accordance with this ordinance, of any acceptable waste generated within the town at any place other than at these disposal facilities is prohibited, provided however, the owner of any lot, or any other person with the permission of the lot owner, may deposit or dump inert substances such as earth, rocks, concrete or similar material for fill purposes only, subject to state or local land use regulations.

(Ord. of 9-26-88(1), § 4)

Effective on: 5/22/2017

Sec. 13-6. Restrictions and fees for disposal.

- a. No person shall permanently dispose of waste or refuse of any kind upon any land within the corporate limits of the town unless such land has been designated by the town council as a solid waste disposal facility. Nothing in this subsection shall prohibit any person from composting vegetable and plant materials on his/her property for noncommercial use.
- b. Certain materials may be excluded by regulation from those refuse materials which may be deposited at a solid waste disposal facility. These excluded materials may include wood, trees, tree limbs, branches, ties, logs, leaves, twigs, grass, plant cuttings, stumps, junk automobile bodies and bulky waste which may require special processing prior to disposal.
- c. Except for licensed disposal of hazardous waste, special wastes, or infectious wastes, it shall be unlawful for any person, to burn or incinerate any solid waste within the town other than wood, trees, tree limbs, branches, ties, logs, leaves, twigs, grass and plant cuttings.

(Ord. of 9-26-88(1), § 6)

Effective on: 5/22/2017

Sec. 13-7. Authorized disposal facility users.

The availability and use of the portions of the disposal facilities located within the town shall be limited to residents of the town and their contractors and agents for the sole purpose of disposing of solid waste generated within the town, and to those residents of any other municipality which may, by written agreement, be authorized to use such portions of the disposal facilities.

For certain materials, authorized users must purchase, in advance, a disposal ticket for the amount of waste to be disposed of. This disposal ticket must be presented at the time of use of the solid waste disposal facilities. Failure to exhibit such disposal ticket shall result in the denial of use of the facilities. The town shall reserve the right to develop an alternative to the disposal ticket system for purposes of payment for services and disposal.

Availability and use of the recycling facilities is for residents of the town. The purchase of an annual permit, in the form of a window sticker, will permit the use of the recycling facilities.

(Ord. of 9-26-88(1), § 7.1; Ord. of 3-28-94)

Effective on: 5/22/2017

Sec. 13-8. Residential disposal.

- a. Unless collection services are provided at town expense, all residents of the town who produce Class I residential waste, as defined in Sec. 13-1 shall individually contract with the town's designated waste hauler for the purposes of removing household waste from the curb of a public or private road. In lieu of using collection services, residents may individually dispose of such waste at designated town facilities.
- b. All residents of the town who produce Class II residential waste as defined in Sec. 13-1 or commercial waste as defined in Sec. 13-1 shall contract with a waste hauler for waste collection and disposal or shall individually dispose of waste at the appropriate town designated disposal facilities.
- c. The town council may establish by order the methods that residents utilize for solid waste collection and disposal. The council may levy such taxes and fees as are necessary to institute and continue such programs.

(Ord. of 9-26-88(1), § 7.2; Ord. of 4-22-91; Ord. of 9-23-2013(1))

Sec. 13-9. Waste segregation.

- a. Residential waste shall be kept separate from commercial waste at all times during collection, transportation and delivery to the designated disposal facilities. Waste generated or collected outside of the town shall at all times be kept separate from waste generated or collected in the town.
- b. Residents who rake, collect, and bag leaves shall dispose of said leaves in a separate manner and method than the disposal of solid waste or household trash.

(Ord. of 9-26-88(1), § 7.3)

Effective on: 5/22/2017

Sec. 13-10. Resource recovery.

For the purposes of resource recovery, the town council may require solid waste to be separated into such categories as may be established by town regulation and disposed of only in such manner and at such sites and locations as designated.

(Ord. of 9-26-88(1), § 7.4)

Sec. 13-11. Property rights.

Any solid waste deposited within the disposal facilities shall become the property of the town or ecomaine. No one shall salvage, remove or carry off any such deposited solid waste without prior approval of the town.

(Ord. of 9-26-88(1), § 7.5)

Effective on: 5/22/2017

Sec. 13-12. Schedules of charges for disposal.

The town council may establish by order schedules of waste disposal charges to be charged for the use of the disposal facilities or any portion of the disposal facilities located within the town, which schedules may include different waste disposal charges for residents of the town, businesses located within the town and commercial refuse collectors collecting solid waste within the town and may include different schedules for disposal of different kinds of solid waste. All fees collected shall be for the use of the town and are on file in the town clerk's office.

(Ord. of 9-26-88(1), § 8.1)

Sec. 13-13. Waste Hauler Licensing.

Sec. 13-13.1 License required.

No person engaged in the business of solid waste hauling shall collect or transport solid waste generated within the town without obtaining a license from the town and paying the required licensing fee. Such licenses shall be issued by the public works director for the calendar year and shall be subject to the terms and requirements set forth in this section.

(Ord. of 10-27-2003)

Effective on: 5/22/2017

Sec. 13-13.2. Application for license.

In order to acquire a license for the collection of solid waste within the town, the applicant shall submit to the town such information as the town deems necessary, together with the required fees. Fees for obtaining a waste hauler license shall be established by order of the town council.

(Ord. of 10-27-2003)

Effective on: 5/22/2017

Sec. 13-13.3. Exemptions.

This license and fee provisions of this chapter shall not apply to a person or business that hauls solid waste generated exclusively by the person or business.

(Ord. of 10-27-2003)

Effective on: 5/22/2017

Sec. 13-13.4. Violations.

Any failure to comply with the requirements of this chapter shall be considered a violation. In addition to the penalty provisions set forth in Sec. 13.4, the town may suspend a solid waste hauling license for up to thirty (30) days for a first violation of the provisions of this chapter and may suspend a solid waste hauling license for up to 60 days for a second violation. The town may suspend a solid waste hauling license for any period of time for any subsequent violation or may revoke the license for the remainder of the year. The town may deny a license to any person who received two (2) or more suspensions during prior years or whose license was revoked during the prior year.

The town shall notify a licensee of any violation that could result in a suspension or revocation and shall hold a hearing prior to taking any action on a potential suspension or revocation.

(Ord. of 10-27-2003)

Effective on: 5/22/2017

Sec. 13-13.5. Penalties.

Notwithstanding the provisions of Sec. 13-4 of this chapter, any person violating the provisions of Sec. 13-13 of this chapter shall be subject to a fine of at least two hundred fifty dollars (\$250.00), but not more than two thousand five hundred dollars (\$2500.00) for each violation. Fines shall be recovered upon complaint made by the town. Each day upon which a violation continues shall be considered a separate violation. The town shall be entitled to recover its attorney's fees and to court costs in any action in which the court finds that a violation has occurred. In addition to penalties, the town may seek injunctive relief to prevent the continuance of an ongoing or recurring violation.

(Ord. of 10-27-2003)

Effective on: 5/22/2017

FOOTNOTE(S):

--- (1) ---

Cross reference— Administration, Ch. II-2; provisions for notices for nuisances, signs, dangerous, unsafe, dilapidated buildings, and any other action the expense of which may be collected from the property owner, § 2-3; division of health, § 2-300; public works department, § 2-460 et seq.; animals, Ch. II-3; buildings and building regulations, Ch. II-4; nuisances, Ch. II-12; streets, sidewalks and other public places, Ch. II-14; utilities, Ch. II-18; certain discharges into the public sewer system prohibited, § 18-190 et seq.; zoning and site plans and flood prevention and protection regulations, Ch. II-19.

State Law reference— Litter control, 17 M.R.S.A. § 2261 et seq.; solid waste management, 38 M.R.S.A. § 1301 et seq.; landfill moratoria, 30-A M.R.S.A. § 4554; license, 38 M.R.S.A. § 1305.

CH. II-14 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

FOOTNOTE(S):

--- (1) ---

Cross reference— Provisions for notices for nuisances, signs, dangerous, unsafe, dilapidated buildings, and any other action the expense of which may be collected from the property owner, § 2-3; parks and community programs advisory committee, § 2-85 et seq.; planning board, § 2-95 et seq.; waterfront and harbor committee, § 2-115 et seq.; parks and community programs department, § 2-400 et seq.; public works department, § 2-460 et seq.; land subdivision, Ch. II-7; licenses, permits and business regulations, Ch. II-8; littering prohibited, § 12-2; junked and abandoned motor vehicles prohibited on public and private property, § 12-3; solid waste regulations, Ch. II-13; traffic and motor vehicles, Ch. II-17; stopping, standing and parking, § 17-80; parking restrictions at the town landing and requirements for permits for residents, § 17-94.

State Law reference— Highways, 23 M.R.S.A. § 1 et seq.; local highway law, 23 M.R.S.A. § 2701 et seq.

ART. II-14-1. IN GENERAL

Sec. 14-1. Specific property conveyed to town; use and prohibitions.

The property conveyed to the Town of Falmouth by the Falmouth Memorial Post No. 164, American Legion by deeds dated July 15, 1964 and February 20, 1998, shall be used exclusively for recreational purposes. No further cutting of trees shall be allowed on this property, except for the purposes of enhancing recreational opportunities, protecting the public from safety hazards, and for sound tree management practices. The storage or placement of materials, construction of roads, ways, improvements of any kind or further development shall not be permitted on this property, except for the sole purpose of creating a recreational facility or improving an existing recreational facility.

(Ord. of 5-24-99)

Editor's note—

At the request of the town, an ordinance adopted May 24, 1999, which pertained to property conveyed to the town by Post No. 164, American Legion, was included in the Code. The ordinance was added to Ch. II-14 with the town's concurrence, and the editor designated such provisions as § 14-1. Such ordinance, approved by the voters on Feb. 9, 1999, was amended to read as herein set out.

Secs. 14-2—14-39. Reserved.

ART. II-14-2. STREETS

FOOTNOTE(S):

--- (2) ---

Cross reference— Provisions for notices for nuisances, signs, dangerous, unsafe, dilapidated buildings, and any other action the expense of which may be collected from the property owner, § 2-3; public works department, § 2-460 et seq.; littering prohibited, § 12-2; stopping, standing and parking on streets and public places, § 17-80; extension of sewer system, § 18-230.

DIV. II-14-2-1. GENERALLY

Sec. 14-40. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Those definitions set forth in the Falmouth Zoning and Site Plan Review Ordinance and the Falmouth Subdivision Ordinance shall apply to this article in addition to those in this section.

Director of public works shall mean the director of public works for the town.

Planning board shall mean the planning board of the town created under article VII, section 701 of the Charter.

Private way shall mean a way for vehicular traffic in which there is no public right of travel.

Street shall mean a way, street or road maintained under public authority for vehicular traffic and including the entire right-of-way.

Town engineer shall mean an engineer employed by the town as the town engineer.

(Ord. of 2-27-89, § 2)

Sec. 14-41. Purpose.

The regulations in this article are hereby adopted to set forth and confirm the status of accepted town streets and roads; to provide a procedure whereby persons may apply for town acceptance of publicly dedicated private ways; to adopt minimum specifications to which such ways must conform prior to consideration for acceptance; and to provide for adequate review and control of activities which take place within public streets and private ways to assure the preservation and enhancement of safe use and economical maintenance of town streets and ways.

(Ord. of 2-27-89, § 1)

Sec. 14-42. Driveway entrances and curb cuts.

- a. No driveway or curb cut to a street may be constructed without first obtaining a permit from the code enforcement officer. The code enforcement officer shall review the proposed location and design and consider the following before a permit is granted:
 1. Drainage requirements;
 2. Sight distances;
 3. Safe and efficient traffic flow;
 4. Adequacy of design for intended use;
 5. Consolidation of curb cuts on arterial and collector streets. Any sidewalks or curbs crossed may be required to be rebuilt to adequately serve the use.
- b. A permit under this section shall not be required for driveways or curb cuts which appear on a plan which has received subdivision or site plan review approval.

(Ord. of 2-27-89, § 9)

Sec. 14-43. Miscellaneous activities within the public way.

Notwithstanding that the public way is intended for public travel and convenience, other uses are permissible when not in conflict with public interest. The following criteria shall apply to uses within the street right-of-way:

1. Mailboxes may be located in the public way when located so as not to obstruct visibility for safe vehicle operation and not to interfere with the maintenance of the public way. Mailboxes shall be placed as follows:
 - a. The box will be a minimum of forty-two (42) inches above the edge of pavement;
 - b. The reflectors will be located on the side facing oncoming traffic; and
 - c. The standard or upright will be at least four (4) feet from the edge of pavement.
2. Lawns and other ground cover may be located within the right-of-way so long as the landscape will not adversely affect visibility for safe vehicle operation nor impede storm drainage and snow and ice removal activities. No ground cover (shrubs or trees) may be placed within four (4) feet of the edge of pavement without written permission of the director of public works. The director of public works shall review the location and design to determine if curbing or drainage modifications are necessary.
3. No water other than the natural flow from a site may be discharged into the right-of-way of a street without written permission from the director of public works. The director shall review the proposed location and design and consider the following before granting any permit:

- a. Adequacy of downstream drainage system;
- b. Impact upon the public way;
- c. Snow and ice removal and control.

(Ord. of 2-27-89, § 10)

Sec. 14-44. Location of transmission facilities.

- a. When a written location permit for facilities over or under public ways is required to be obtained from the town pursuant to title 35 M.R.S.A. Ch. 179, the licensing authority shall be the director of public works.
- b. The application for a permit shall meet the requirements of 35 M.R.S.A. § 2483 and shall be acted upon in accordance with the procedures set forth therein.
- c. The town council may review decisions of the town engineer as provided by 35M.R.S.A. § 2483(14).
- d. Appeals from decisions made under this section shall be conducted as provided by 35 M.R.S.A. § 2483(14) and as otherwise provided by law.

(Ord. of 2-27-89, § 11)

Secs. 14-45—14-50. Reserved.

DIV. II-14-2-2. DEDICATION AND ACCEPTANCE

Secs. 14-51—14-59. Reserved.

Sec. 14-60. Accepted town streets.

The official list of the streets of the town is on file in the town clerk's office.

(Ord. of 7-12-2010)

Sec. 14-61. Purpose for acceptance of private ways.

The town may accept title in fee for a private way to promote the public benefit, including, but not limited to, public safety and provision of town services. For the purposes of this division the terms private way and street shall be as defined in Sec. 14-40 of division II-14-2-1 of this chapter.

(Ord. of 7-12-2010)

Sec. 14-62. Procedure.

1. Prior to submittal of a formal application, the applicant must present to the public works department the following documentation:
 - a. Proof of unencumbered fee simple title in the private way being proposed for acceptance;

- b. Proof that all improvements required by the planning board have been satisfactorily completed and that all performance guarantees associated with those improvements have been released; and
 - c. Proof that the private way has endured without damage at least two (2) consecutive freeze/thaw cycles after construction.
 - d. Proof by the verification by a qualified professional approved by the public works department and compensated by the applicant that the street rights of way and any other property proposed to be conveyed in any manner to the town has been free of invasive terrestrial plants as defined in Chapter 19-2 of this Code for a period of two years prior to the application filing. In the event that invasive terrestrial plants are present, the applicant shall provide proof to the public works director that there have been appropriate eradication methods applied for a minimum of two growing seasons in a manner acceptable to the public works director.
2. An application packet including an original application form as prescribed by the director of parks and public works and all required documents and items specified in Sec. 14-63 plus three (3) copies, shall be submitted to the parks and public works department. Applications may contain multiple streets within a development.
 3. The director of public works, or their designee, shall determine if the application is complete within thirty (30) business days of receipt.
 4. If the application is determined incomplete, the public works staff shall notify the applicant of the missing information. When an application is determined to be complete, the department shall forward the application to the community development director, police chief and fire chief.
 5. The community development director, director of public works, police chief, and fire chief shall provide written reports within thirty (30) days of receipt of the determination of completeness. Reports shall address the following:
 - a. Conformance with the town's comprehensive plan as well as other adopted plans that address desired street patterns;
 - b. Budget impact regarding provision of adequate municipal services;
 - c. Expenditures by the town for upgrading or extending water and/or sewer mains, storm drains, sanitary sewers, gas mains, culverts, underdrains and all underground and overhead utilities;
 - d. Town liability for damage to private property such as, but not limited to, walks, fences, lawns and other items that encroach within the proposed right-of-way; and
 - e. Any concerns for providing public safety and access to the street and its occupants.
 6. At such time as the director of parks and public works determines that the application is ready for consideration by the town council, the town manager shall place the application on the next available town council agenda.
 7. If the town council determines that the street is in order for acceptance, an order shall be scheduled at such time as the director of public works determines that all documents noted in Sec. 14-63(11) are submitted and acceptable.

(Ord. of 7-12-2010)

Effective on: 3/27/2017

Sec. 14-63. Application and documents required.

1. A plot plan showing the as-built condition of the private way drawn to a scale of forty (40) feet to one (1) inch or a scale acceptable to the director of public works and on one (1) or more sheets of paper not exceeding twenty-four (24) inches by thirty-six (36) inches in size. Subdivision plans approved by the planning board after May 30, 1984, may be considered acceptable for the above requirements, after being updated to reflect as-built conditions. The plan(s) shall include at a minimum:
 - a. Magnetic and true north;
 - b. Bar and ratio scale;
 - c. Current ownership, name of way and subdivision, if any;
 - d. Date of planning board approval, revision dates and other pertinent information;
 - e. The location, frontage lengths and current ownership of all adjoining lots of land;
 - f. Right-of-way width(s);
 - g. Location of easements with necessary metes and bounds for location in the field and deed reference;
 - h. Location of all underground and overhead utilities, including sanitary sewer and building laterals, transformers, electrical service, telephone service, cable and fiber optic service, water mains, fire hydrants, utility poles and street lights;
 - i. Locations of boundary monuments including type;
 - j. Location, species and size of street trees;
 - k. Location and schedule of any street signs, including name, speed limit, and caution signs;
 - l. Edge of pavement, edge of shoulders, edge of sidewalks and edge of curbs;
 - m. Pavement markings;
 - n. Original and finished contours associated with the private way, both within and outside of the right-of-way;
 - o. Natural and manmade drainage courses with contours at not greater than two-foot intervals plus all existing storm drainage systems, including any laterals installed for connecting to building foundation and /or floor drains;
 - p. All angles, bearings curve data and radii necessary for the plotting of the streets and lots and their reproduction on the ground, including turning radii;
 - q. The relative location to the nearest public street or way, together with the stations of their sidelines;
 - r. Any private improvements which encroach within the right-of-way such as irrigation systems, fences, walls, etc.; and
 - s. Seal and signature of a Maine registered land surveyor or Maine professional engineer and certification that the plans reflect an "as-built" condition.
2. A profile of the proposed street drawn to a horizontal scale of forty (40) feet to one (1) inch and vertical scale of four (4) feet to one (1) inch. The profile shall show:
 - a. The profile of the centerline of the proposed street;
 - b. Centerline stationing;
 - c. Street grades at critical points;

- d. Elevations of all underground utilities, drainage structures, including pipe sizes and materials, pipe slope and the location and inverts of all catch basins and manholes;
 - e. Complete curve data for all vertical curves; and
 - f. Seal and signature of a Maine professional engineer.
- 3. A cross section of the proposed street drawn to a horizontal scale of five (5) feet to one (1) inch and a vertical scale of one (1) foot to one (1) inch with the following details:
 - a. The location, size, materials and conditions of the existing and proposed water and/or sewer mains, storm drains, sanitary sewers, gas mains, culverts, underdrains;
 - b. The location of all underground and overhead utilities; and
 - c. Seal and signature of a Maine professional engineer.
- 4. Documentation on any deviations from the current street standards.
- 5. List of waivers granted by the planning board for street standards.
- 6. A digital copy of all plans and documents shall accompany the paper submission, one (1) file set in PDF format and one (1) in AutoCad (dwg) format.
- 7. Proposed warranty deed describing the right-of-way, all necessary easements, and paper street connections to other properties. Deed shall reference any existing easements encumbering the property being deeded.
- 8. Application fees as required by the town council (see land use fee schedule).
- 9. Copies of any documents containing restrictions or easements on the development, such as utility easements, declarations of covenants, and the like.
- 10. Public and private responsibilities for improvements within the right-of-way. If it is proposed that the town assume these costs, historical costs of maintenance shall be provided. Ownership or maintenance responsibility for detention ponds and common space outside of the right-of-way shall not be transferred to the town without specific approval of the town council. The request shall include a statement about the responsibility for:
 - a. Street lights and landscape lighting;
 - b. Fire hydrants;
 - c. Landscaping;
 - d. Signs;
 - e. Walls and fences; and
 - f. Copy of, and if applicable, transfer of, any Maine Department of Environmental Protection, Army Corps of Engineers or other stormwater, wetlands or similar permits. Any transfer of permits must be under conditions that the town does not agree to maintenance obligations over and above those required by the town's typical NPDES Phase 2 requirements.
- 11. Defect guarantee.
 - a. A defect guarantee shall be furnished prior to the order for acceptance by the town council to provide funds for a period of two (2) years from the date of acceptance for repair of any defects or conditions of the street that are determined by the director of public works to be unsatisfactory to the town. The guarantee shall be in an amount as indicated in the land use fee schedule. This guarantee shall be in addition to and independent from any performance guarantee given to the town in connection with any other matter.

- b. The guarantee shall be tendered in the form of either a certified bank check made payable to the town, or an irrevocable letter of credit in a form satisfactory to the finance director. If a check is submitted, the town will enter into an escrow agreement with the account holder. All defect guarantees shall be drafted such that the town shall receive written notice at least sixty (60) days prior to their expiration.
12. Documentation required prior to an order by the council to accept the street. Prior to the council scheduling an order to accept the street, the applicant shall produce the following documents as required:
 - a. An executed warranty deed with a metes and bounds description of the property being offered to the town for acceptance as a street and as approved by the town;
 - b. Recordable mylars and one (1) paper copy of the plans of the street for recording at the Cumberland County Registry of Deeds;
 - c. Defect guarantee, amount as set by the town council;
 - d. Executed light pole agreement;
 - e. Title insurance; and
 - f. Any other item as required by the town council.

(Ord. of 7-12-2010)

Effective on: 3/27/2017

Sec. 14-64. Street design standards.

The council shall consider the following when reviewing private ways proposed for acceptance:

1. The land subdivision ordinance's street construction and design objectives and standards which are currently in effect;
2. The street design approved by the planning board and any waivers that may have been granted;
3. The deviation between the current standard and the built condition;
4. The ability to provide public services along and within the private way such as school bussing, trash pick-up, emergency services and plowing;
5. E911 street addressing conformance; and
6. Street connectivity. Street connectivity may be required for streets not yet approved by the planning board as of May 23, 2005. The town council shall review the proposal against the following standards:
 - a. Reduction of costs to provide waste collection, snowplowing, public transit and school-related transit including decrease in travel time and mileage,
 - b. Shortening of emergency access response times and the provision of alternative routes;
 - c. Diffusion of traffic and reduction of traffic impacts and congestion on public roadways and intersections;
 - d. Connectivity between residential and commercial developments;
 - e. Trail, bike and pedestrian connections; and
 - f. Future connections to new developments.

7. Minimum thresholds required. Minimum thresholds required are:
 - a. For private ways serving residential development, certificates of occupancy have been issued for a minimum of sixty-five (65) percent of the approved units, with rounding to occur to the next highest whole number.
 - b. For streets in commercial developments, certificates of occupancy have been issued for a minimum of sixty-five (65) percent the number of lots or buildings whichever is greater, with rounding to occur to the next highest whole number.

(Ord. of 7-12-2010)

Sec. 14-65. Acceptance of streets and private ways required by the public interest.

Notwithstanding the provisions of any other section of this article, the town may at any time lay out and accept any street or way in the town as a public street whenever the public interest requires pursuant to authority granted under 23 M.R.S.A. § 3022 and 3023.

(Ord. of 7-12-2010)

FOOTNOTE(S):

--- (3) ---

Editor's note— An ordinance adopted July 12, 2010, amended Div. II-14-2-2 by repealing §§ 14-51—14-59 and enacting §§ 14-60—14-65. Former Div. II-14-2-2 pertained to the dedication and acceptance of city streets and derived from ordinances adopted Feb. 27, 1989; and Jan. 25, 1993.

DIV. II-14-2-3. STREET ADDRESSING

Sec. 14-66. Purpose.

The purpose of this division is to enhance the easy and rapid location of properties by law enforcement, fire, rescue and emergency medical services personnel in the Town of Falmouth.

(Ord. of 2-22-99, § 1)

Sec. 14-67. Authority.

This division is adopted pursuant to and consistent with the Municipal Home Rule powers as provided for in Article VIII, Part 2, Section 1 of the Constitution of the State of Maine and Title 30-A MSRA Section 3001.

(Ord. of 2-22-99, § 2)

Sec. 14-68. Administration.

This division shall be administered by the addressing committee which is authorized to and shall assign physical addresses to all properties, both on existing and proposed streets, in accordance with the criteria in Sec. 14-70 and Sec. 4-71. The addressing committee shall also be responsible for maintaining the following records:

1. A Falmouth Street Map depicting all named streets with authorized names and status as to public or private. The map shall be updated annually as of each April 1st.

2. An alphabetical listing of all authorized street names. The list shall be updated as street names are authorized.
3. A listing of all properties (tax parcels) with the assigned physical address referenced to the parcel map/lot ID. The list shall be updated annually.

(Ord. of 2-22-99, § 3)

Sec. 14-69. Definitions.

[For the purpose of this division, the following words and phrases shall have the meaning ascribed thereto:]

Addressing committee: The committee shall consist of the police chief, fire chief and a representative from each of the following departments: planning, code enforcement and assessing.

Street: Any road, street, avenue, lane, private way or driveway which provides access to two (2) or more structures.

Structure: Any manmade building/object which has a permanent wired telephone.

(Ord. of 2-22-99, § 4)

Sec. 14-70. Naming system.

All streets shall be named, regardless of whether ownership is public or private. A street name assigned by the Town of Falmouth shall not constitute or imply acceptance of the street as a public way. Applications for new street names will be reviewed by the addressing committee for comment and authorization.

The following criteria shall govern the naming of streets:

New street names shall not be the same as existing street names (i.e. Pine Road and Pine Lane).

New street names shall not sound similar to existing street names (i.e. Beech Street and Peach Street).

Each street shall have the same name throughout its entire length.

(Ord. of 2-22-99, § 5)

Sec. 14-71. Numbering system.

Sequential number pairs shall be assigned in ascending order to every 100-foot interval along all new streets, with even numbers on the left and odd numbers on the right.

The following criteria shall govern the assignment of new numbers:

Numbering directions shall be in a general east to west and south to north direction for primary streets. Numbering on dead end streets shall originate at the intersection with the main street and terminate at the dead end.

The number assigned to each structure shall be that of the number interval closest to the front door. If the front door is not visible from the street, the number shall be on that of the interval closest to the driveway.

Corner lots will be numbered on the street which the front door faces. If the front door is not visible from the street, the number shall be on the street adjacent to the driveway.

Each structure shall receive one (1) number. Structures with multiple occupants will have unit/suite/apartment assigned (e.g. 235 Maple Street, Apt. 2, 1213 Main Street, Suite 2E).

Cul-de-sacs with buildable lots within the center of the cul-de-sac will be numbered continuously around the cul-de-sac on both sides in the direction of the traffic flow. Cul-de-sacs with no buildable lots in the center will be numbered as a straight street with odd numbers and even numbers meeting on the far side of the cul-de-sac.

(Ord. of 2-22-99 § 6)

Sec. 14-72. Compliance.

All owners or occupants of the structure shall, within one hundred twenty (120) days of adoption of this ordinance [February 22, 1999], display and maintain the assigned street number in the following manner:

Number on the structure. Where the structure is within fifty (50) feet of the street, the assigned number shall be located on the front of the structure near the front door or entry.

Number at street: Where the structure is over fifty (50) feet from the street, the displayed number shall be displayed on a post or mailbox at the street line next to the walk or drive accessing the structure, or where appropriate as determined by public safety officials. The displayed number shall be between four (4) and (6) six feet above the ground and visible from both directions.

Size and color of number. Displayed numbers shall be between four (4) and six (6) inches in height and shall be of a contrasting color to any background. Either the number or the background shall be of a reflective nature for visibility at night.

(Ord. of 2-22-99, § 7)

Sec. 14-73. New developments and subdivisions.

All new construction and subdivisions shall be named and numbered in accordance with the provisions of this division and as follows:

1. *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 committee. This shall be done at the time of the issuance of the building permit.
2. *New subdivisions and private ways.* Any prospective subdivider shall show a proposed road name and lot numbering system on the pre-application submission to the planning office. Approval by the planning board, after consultation with the addressing committee, shall constitute the assignment of road names and numbers of the lots in the subdivision. On the final plan showing proposed roads, the applicant shall mark on the plan, lines or dots, in the center of the streets every one hundred (100) feet so as to aid in the assignment of numbers to structures subsequently constructed.

(Ord. of 2-22-99, § 8)

Sec. 14-74. Address revisions.

In the event a resident or residents wish to change an existing physical address, the following procedure will be adhered to:

The resident(s) will request the change via a letter to the addressing committee, in care of the police chief.

At least two-thirds of the residents affected by the change must be in support of the change, and must have signed the letter.

The addressing committee will review the requested change, and may request the residents to meet with them.

In the event a resident who is affected by the proposed change does not support the change, they may address their concerns to the addressing committee at anytime.

In the case of an approval for change by the addressing committee, the committee will have the authority to make the change.

Should a resident wish to appeal the committee's decision, said appeal will be made to the town council.

(Ord. of 2-22-99, § 9)

Sec. 14-75. Grandfathered properties.

Structures on dead end streets that, on the date of adoption of this division [February 22, 1999], are using street addresses with the name of the main street with which they intersect may continue using the name of the main street in their street address provided:

Within one hundred twenty (120) days of adoption of this ordinance [February 22, 1999,] the town clerk receives a written request signed by at least eighty (80) percent of the owners of structures on the dead end street requesting that they be allowed to continue using the name of the main street; and

All house lots and/or structures on the dead end street must be able to be assigned a street number, in accordance with this division, that falls between the street numbers that have been assigned to the house lots and/or structures on the main street that are immediately adjacent to the intersection of the main street and the dead end street.

If the town does not receive a request within the one hundred twenty (120) days of the adoption of this ordinance [February 22, 1999], it will be assumed that the residents do not want the existing street name grandfathered, and a new street name and numbering will be assigned to homes along the dead-end street.

(Ord. of 2-22-99, § 10)

Sec. 14-76. Enforcement.

Any violation of the provisions of this division shall be punishable in accordance with and subject to the provisions of Sec. 1-14 of the Falmouth Code of Ordinances.

(Ord. of 2-22-99, § 11)

Secs. 14-77- 14-78. Reserved.

FOOTNOTE(S):

--- (4) ---

Editor's note— An ordinance adopted February 22, 1999, § 12, provided for the repeal of §§ 14-71—14-73, being the substantive sections of former Div. II-14-2-3, which pertained to the naming of streets as derived from an ordinance adopted February 27, 1989. Secs.1—11 of the 1999 ordinance adopted new provisions which pertained to similar subject matter. Such provisions have been designated by the editor as Div. II-14-2-3, §§ 14-66—14-76.

DIV. II-14-2-4. EXCAVATIONS

Sec. 14-79. Utility planned work program and utility map.

- a. Each year on or before March thirty-first, each public utility shall submit to the director of public works its planned work program for the ensuing year, which need not include emergency work nor normal house service lines. Thereafter, no permit shall be issued to a utility for excavations not contained within its planned work program, except for emergencies and normal house service lines, unless a written application for such excavation shall be specifically approved by the director of public works.
- b. Upon the request of the director of public works, each utility having underground lines within the town shall furnish to the town, free of charge and updated at least once each year, a street map showing the locations of all of its underground utility lines within the town and the approximate diameter and installation depth of each line.

(Ord. of 2-27-89, § 12.2)

Sec. 14-80. Permit required.

No person including a utility shall dig up, excavate, tunnel, undermine or in any manner break up any street or make or cause to be made any excavation in or under the surface of any street for any purpose or place, deposit or leave upon any street any earth or other material obstructing or tending to interfere with the free use of the street, unless such person including a utility shall first have obtained a street opening permit from the public works director as provided in Sec. 14-84.

(Ord. of 2-27-89, § 12.1)

Sec. 14-81. Commencement of work.

Excavation work must be started no later than thirty (30) days from the date of issue of the street opening permit. After the expiration of this thirty-day period, such permit shall become null and void.

(Ord. of 2-27-89, § 12.3)

Sec. 14-82. Restricted time period.

No person shall be granted a street opening permit from December first of each year to March thirty-first of the following year unless an emergency or special condition exists and written permission is obtained from the director of public works. A written explanation shall be submitted to the director of public works explaining the special situation or emergency prior to the issuing of the permit.

(Ord. of 2-27-89, § 12.4)

Sec. 14-83. Moratorium.

A five-year moratorium, except for emergency or special situations, on the issuance of any street opening permit is in effect after the completion of a new or newly reconstructed roadway.

(Ord. of 2-27-89, § 12.5)

Sec. 14-84. Application for permit.

- a. No street opening permit shall be issued unless a written application is submitted to the director of public works for review.
- b. The application shall state the name and address of the applicant and an emergency phone number that will be answered twenty-four (24) hours per day, the type of work to be done, signatures of approval from utilities, name of the place and street number and purpose of the excavation, the date of commencement and date of completion of excavation.
- c. The application shall be accompanied by a diagram of the planned excavation submitted on an eight-and-one-half-inch by eleven-inch sketch showing trench locations, widths, depths, location of all barricades, warning signs, detour signs and detour routes and such other information as may be reasonably required by the director of public works.
- d. If the applicant is other than a public utility and intends to excavate in the vicinity of a facility owned or operated by a public utility or oil pipeline owned by a person, the applicant shall provide the information required by the town under this section to the utility or person owning such facility in addition to providing such information to the town.
- e. The application for permit shall be accompanied by payment of a permit fee and opening fee established by the town council which is on file in the town clerk's office.
- f. A preconstruction meeting may be held, if felt to be warranted by the director of public works.
- g. The application shall be accompanied by proof of notice to the utilities as provided in 23 M.R.S.A. § 3360.
- h. An application fee established by the town council which is on file in the town clerk's office shall be paid for each issuance and renewal of the street opening permit. When required by the provisions of this division, additional charges for resurfacing the street excavation for which a permit is requested shall be paid to the town before issuance of the permit. When additional charges for resurfacing are required by the provisions of this division, those charges shall be computed from the table of charges per square yard which is on file in the town clerk's office.

(Code 1966, Ch. 402, § 1; Ord. of 2-27-89, § 12.6(a)—(g))

Sec. 14-85. Additional charges and fees.

- a. Minimum charges which are on file in the town clerk's office shall be made for any street or sidewalk opening equivalent to two (2) square yards, and any street or sidewalk opening for bar holes used to test gas and waterlines equivalent to two (2) square yards.
- b. Where three (3) or more street openings are made in a sequence fifteen (15) feet or less, center to center, between each adjacent opening, the permittee shall be charged for one (1) opening measured from the first opening to the last opening.
- c. All street opening permit fees and charges shall be paid to the town and shall constitute a special fund for the reconstruction and repaving of such excavations and long-term maintenance of streets.
- d. Upon the completion of the excavation work and after settlement is stabilized, a measurement shall be made by the town of the size of the opening and a bill or refund will be mailed to the permittee depending upon the cost of the opening to be repaired. The cost will be equal to the total number of square yards multiplied by the rate which is on file in the town clerk's office.

(Code 1966, Ch. 402, §§ 1, 2; Ord. of 2-27-89, § 12.6(h)—(k))

Sec. 14-86. Reason for denial of permit.

The director of public works, may deny any street opening permit if it is felt that such excavation would endanger the life or property of the citizens of the town or if such excavation

would endanger the general public or interfere with snow removal. The denial may be appealed within thirty (30) days to the town council. All denials by the director of public works shall be made in writing to the applicant.

(Ord. of 2-27-89, § 12.4)

Sec. 14-87. Notice of commencement of work.

The excavator shall give notice to the director of public works not more than seventy-two (72) hours nor less than twenty-four (24) hours before excavation work begins.

(Ord. of 2-27-89, § 12.7)

Sec. 14-88. Requirements for conducting excavation.

- a. The excavation work shall be performed and conducted so as not to interfere with access to fire hydrants, fire stations, valve housing structures, traffic-signal cables and loops and all other equipment as designated by the town.
- b. Regardless of the type of material excavated, only dry granular material shall be used for backfill purposes, and all unsuitable material shall be forthwith removed from the site of excavation. The backfill material shall be thoroughly compacted in twelve-inch layers by suitable methods and in all cases only approved bank-run gravel shall be used for the top twelve (12) inches.
- c. When the backfill material has been placed and compacted as directed, the excavator shall install a temporary patch using a hot or cold bituminous mix of a type approved by the director of public works. This patch shall remain in place for a period of sixty (60) days, during which time the excavator shall be responsible for the maintenance of same. At the end of this period the excavator shall install a permanent patch as hereinafter set forth.
- d. Permanent resurfacing of pavement excavations shall be completed within sixty (60) days of initial excavation. A bituminous hot mix shall be applied in accordance with specifications given by the director of public works. The permanent surfacing shall consist of asphaltic concrete only and shall be installed in two (2) courses, the first course to consist of a binder mix and the final to consist of a finish mix, the total depth of which shall be four (4) inches (compacted thickness). In preparing the trench for the final surfacing, the old material shall be fully excavated and the edges of the trench cut off six (6) inches wider than the original width of the excavation. All edges shall be neatly trimmed to form straight lines insofar as possible, and a compressor or masonry saw shall be used for this purpose. Compaction of the trench shall be by means of vibratory equipment or other mechanical means of a type approved by the director of public works. All edges shall be sealed using an approved sealing compound.
- e. If in the judgment of the director of public works traffic control is necessary, the applicant shall at his cost provide such control as may be required.

(Ord. of 2-27-89, §§ 12.8—12.12)

Sec. 14-89. Insurance.

Prior to the issuance of a permit to make an excavation within the right-of-way, the contractor must file a certificate of insurance with the town. The certificate shall include comprehensive and liability coverage of at least five hundred thousand dollars (\$500,000.00).

(Code 1966, Ch. 402, § 3; Ord. of 2-27-89, § 12.13)

Secs. 14-90—14-100. Reserved.

ART. II-14-3. USE OF TOWN AND SCHOOL FACILITIES

Sec. 14-101. Priority use of school facilities.

- a. School board sanctioned activities will take precedence over any other requested or previously permitted use of school facilities, except for the following limitation: members of the Falmouth community shall have priority to use all school facilities in a manner compatible with the operation of school related programs during the hours from 6:00 a.m. to 10:00 p.m. for a portion of each school week.
- b. Falmouth community programs will be the immediate secondary user and take precedence over any other requested or previously permitted use of school facilities. The school department and the community programs department reserve the right to assign alternate space if other needs for the space arise, or to revoke any permission for the use of school or community facilities, at any time and without prior notice or liability, should the school department or community programs department determine that such action is necessary or desirable.
- c. Falmouth organizations or Falmouth residents may be afforded the use of school or town facilities for recreational, civic, cultural, educational or political activities which in the opinion of the school department/community programs department (or its designees) do not interfere with the conduct of school/community programs or the best interests of the school system/town and whose activity appears appropriate for the actual facility requested.
- d. Groups or individuals from outside the town may be afforded the use of school or town facilities at the discretion of the Falmouth School Department/Community Programs Department (or its designees).
- e. The school department and the community programs department reserve the right to assign alternate space if other needs for the space arise, or to revoke any permission for the use of the school facilities, at any time and without prior notice or liability, should the school department or community programs department determine that such action is necessary or desirable. Any appeal regarding the use of the school facilities shall be made to and decided by the schools' superintendent.

(Ord. of 4-23-2001)

Sec. 14-102. Priority use of community facilities.

- a. The community programs department will have first priority use of all community facilities and will take precedence over any other requested or previously permitted use, except for precedence agreements with the school department for specified activities or facilities.
- b. School board sanctioned activities will be the immediate secondary users and will take precedence over any other requested or previously permitted use of community facilities.

- c. Falmouth organizations and individuals as described in Sec. 14-101(c) of "Priority Use of School Facilities".
- d. Outside groups or individuals as described in Sec. 14-101(d) of "Priority Use of School Facilities".
- e. The community programs department and the school department reserve the right to assign alternate space if other needs for the space arise, or to revoke any permission for the use of the town facilities, at any time and without prior notice or liability, should the community programs department or the school department determine that such action is necessary or desirable. Any appeal regarding the use of the town facilities shall be made to and decided by the community programs director.

The school department and community programs reserve the right to deny facility use if the proposed activities would jeopardize equipment and/or facilities; conflict with school or community program activities; violate local, state, or federal law; present a hazard to the general public; or be contrary to the best interests of the school department or the town and the welfare of its residents.

(Ord. of 4-23-2001)

Sec. 14-103. Scheduling and supervision responsibilities.

- a. The school department's building principals or their designees are responsible for the scheduling of all school board sanctioned educational/extra-curricular activities and facilities and shall disseminate these schedules with the superintendent, assistant principals, athletic administrators, director of buildings and grounds, special activity/facility directors, staff and the community programs department as far in advance as possible. Facility use updates and changes must also be reported to all of the above individuals as quickly as possible.
- b. The community programs department director or his/her designee is responsible for scheduling all the school and town facilities for non-school sanctioned organizations or individuals after consulting with the building principals or their designees to determine the availability of school facilities and surveying his/her own department to assess the availability of town facilities as requests for facility use are made.
- c. The community programs department will be responsible for collecting all rental fees from third and fourth priority facility users and dispersing them fairly between the school department and town depending on such criteria as: the facilities utilized, the cost to maintain and repair the facilities, and the cost to supervise the use of the facilities. The town and the school department will review annually such costs and revise the fee schedule and allocation of fees accordingly.
- d. The community programs department will be responsible for providing appropriate supervision and insuring policy enforcement for all activities approved by the department utilizing school and community facilities.
- e. The school department will be responsible for providing appropriate supervision and insuring policy enforcement for all school board sanctioned activities utilizing school or community facilities.
- f. For third and fourth priority users the individual whose signature appears on the use permit application will be considered the person responsible for supervision of the facility requested. He/she will also be responsible for the safety and well being of all people at the facility and any damages inflicted on the facility or equipment during the permitted time period. The school department or community programs department may require additional supervisory personnel to be on site at the cost of the permit user.

Sec. 14-104. Rules, regulations and disclaimers.

- a. Priority of facility use will be periodically reviewed to review accommodation of school/community use priorities, to evaluate the impact on the facility, to review allocation of costs and fees between the school department and the town, the length of a past pattern of acceptable use, Falmouth youth needs, the number of individuals involved, including Falmouth adults, Falmouth adult needs, field conditions and weather reports, profit/nonprofit, staffing/parking/security/safety/supervision/equipment requirements, insurance, and other logistical concerns. To qualify as a third priority user, youth group participants must be eighteen (18) years old or younger and all teams and organizations must have a minimum of two-thirds Falmouth residents.
- b. All application forms for the use of a specific school or community facility use must typically be submitted to the community programs director or his/her designee at least two (2) weeks prior to the requested date of use but not more than three (3) months before such date to help facilitate fair and equitable scheduling. All fees must be paid, proof of insurance provided, and all other stipulations met before the permit is issued. If the permit must be withdrawn due to a scheduling conflict caused by the school or community programs, all fees will be refunded. If the user chooses not to use the facility as requested and notifies the community programs department at least two (2) weeks before the scheduled usage date, there will be a full refund. There will be no refund of fees if notification occurs less than two (2) weeks before the scheduled usage date unless there is an unusually compelling reason for such a default.
- c. A copy of each application will be kept on file at the community programs department offices.
- d. The individual whose signature appears on any such application form will be considered the individual responsible for the supervision and use of the facility/facilities requested and he/she must provide adequate and appropriate supervision at all times. He/she will also be responsible for all rental fees, proof of liability insurance/bodily harm, facility/equipment damages, theft, or loss of any kind that occurs related to usage of the facility.
- e. The school department/community programs department property insurance and general liability insurance does not extend to community groups or individuals utilizing school or town facilities. Therefore, any individuals or groups using Falmouth school or community facilities for any purpose are advised to obtain an insurance bond for liability (one million dollars (\$1,000,000)) and damage (twenty-five thousand dollars (\$25,000)) before signing for a facility permit. The school department or community programs department may insist upon such insurance as a requirement before issuing a usage permit. The school department and the town shall be named as additional insured in all such policies and all insurance provided by the facility user shall be primary to any insurance which the school department or community programs department may have. All insurance required by this agreement shall be placed with insurers licensed to do business in the State of Maine and acceptable to the school department and the community programs department.
- f. The school department and community programs staff are only expected to service their own sanctioned programs. All other users are allowed to utilize the town or school facilities at their own risk on an "as is, where is" basis. There should not be any expectation from permit users that the building or grounds will be "set up" for their specific use or situation. If the school or town facilities staff is able to provide a special service over and above their normal employment requirements, it will have to be at an extra expense and considered an "act of good will", not an expectation for any future use.
- g. It is the responsibility of the persons or organizations using school or community facilities to leave them in the same condition in which they were received. If this is not done to the

satisfaction of the appropriate building principal (or his/her designee) or the community programs director (or his/her designee), a charge shall be levied for any required "clean-up", "pick-up", or "fix-up" costs (including labor) in excess of any fees that would otherwise be applicable. A lack of respect and responsibility could result in the denial of future permits to the permit applicant or group. Any proposed alteration to a school or community facility must be approved in writing in advance.

- h. It is the responsibility of the persons or organizations using school or community resources to inform all K-8 families of program cancellations if such programs are scheduled immediately after school.
- i. No permitted or walk-in user shall change the appearance, rearrange, or attempt to improve the school or community facility to meet his/her needs without the express consent of the school department and/or the community programs department.
- j. To the extent feasible, the hours during which school or community facilities are used shall coincide with the hours during which custodians are on regularly scheduled duty. To the extent after-hour use results in overtime pay for custodians or other staff, the additional cost will be the permitted user's expense.
- k. The school department and community programs department reserve the right to require school or community personnel to be present during the permitted period at the expense of the individual or group in question. In many instances custodians, school staff, school directors, and others may be required to be in attendance because of negotiated contracts.
- l. All individuals or groups using school or community facilities are responsible for the preservation of order during all activities and are required to comply with all applicable statutes, ordinances, and regulations, in addition to any policies or conditions imposed by the school department and the community programs department. If security is deemed to be necessary, arrangement and payment for police services shall be the responsibility of the individual or group in question. Proof of police protection or private security may be required to receive the initial permit.
- m. The possession, consumption or sale of alcoholic beverages, tobacco products or illegal drugs at any community or school facility is prohibited.
- n. Gambling on school or community property is prohibited unless allowed as an approved, legal, fund raiser (i.e. casino nights, fifty-fifty (50/50) raffles and bingo) for school or community booster groups. Such activities must be approved by the school building principal (or his/her designee) or the community programs director (or his/her designee).
- o. The use of weapons, open flames (including candles), or other incendiary special effects is prohibited at all facilities unless approved in advance by the school building principal or (his/her designee) or the community programs director. At all times, the user or owner of such devices will remain liable for any harm or damages inflicted on other human beings, private property, or school and community facilities.
- p. Bringing animals to school or community facilities is to be discouraged due to liability and health issues. Bringing animals into school or community buildings requires the approval of the school building principal (or his/her designee) or the community programs director (or his/her designee). Although the presence of animals outdoors is also discouraged, if an animal is present, it must be on a leash or other type of restraint and the person in charge of the animal must be prepared to clean up any bodily fluids released by the animal. The person in charge of the animal will be liable for any personal harm or damage caused by the animal while at the permitted facility. Exceptions will be granted for animals providing assistance for a person's disability (seeing-eye dogs) or providing rescue or emergency services.

- q. All permit applicants must restrict themselves to appropriate use of all facilities. (Facility use should be dictated by its design.) Falmouth school buildings, playing fields, trails, and tracks are for foot traffic only. The only motorized vehicles in or on school facilities should be maintenance vehicles. All other vehicles or recreational equipment such as four-wheel drives, snowmobiles, roller blades, scooters, skateboards, bicycles, motorcycles etc. are prohibited without permission of the school department. All school facilities require permitted use by third and fourth priority users as do most all community facilities. Park facilities will be handled by the community programs department on a case by case basis in accordance with the town's park and trail use ordinance. Golfing is prohibited on all school and community facilities.
- r. Any individual or group utilizing school or community facilities for any purpose (including non-permitted walk-on use) agrees to save, indemnify and hold harmless the town and all its employees, the town council and all its members, the school department and all its employees, the school board and all of its members, and the community programs department and all of its employees, from and against, any and all liabilities, actions, courses of action and damages arising out of any negligent or tortuous acts on the part of the facilities applicant, applicants' employees or agents, and from any and all fines, suits, claims, demands and actions of any kind or nature of any and all persons by virtue of or arising from the use of said facilities, equipment, or activity participation. It is also important to note that participation in recreational and athletic activities can cause bodily injury, sickness, disease, or death or injury to or destruction of tangible property, including the loss or use thereof. Therefore, all of the aforementioned groups and individuals shall also be held harmless from and against all claims, damages, losses, and expenses, just or unjust, included but not limited to costs of defense, including attorney's fees arising out of or resulting from the performance of any facility usage agreement.
- s. Permitted users acknowledge and agree that they will be solely responsible for all royalties or charges which are due or may become due on material used for or during an event. The facility user warrants to the school department and community programs department that such royalties or charges have been paid or will be paid promptly in accordance with law. The permitted facility user further agrees to hold the school department and community programs department harmless and to indemnify both for all costs or losses, including attorney's fees in defense claims, just or unjust, relating to payment of any royalty, charge or fee for use of material by the permitted user during the use of the school or community facilities.
- t. The school department or the community programs department reserves the right to waive, modify, or institute requirements in addition to those listed herein should it be deemed necessary and/or in the best interest of the school department or the community programs department. The school department and community programs department encourage all youth sport administrators to certify their coaches.
- u. The school department and the community programs department shall approve a schedule of fees for the use of school and community facilities, based upon actual costs or similar fees charged by surrounding communities that can be fairly applied to third and fourth priority users. In addition, groups which charge admission or otherwise raise money at the permitted event may be assessed a user fee not to exceed fifteen percent of the profit.
- v. The town and the school department will cooperate at all times with recognized organizations such as the Red Cross and Civil Defense in order to make the town and school facilities available during emergencies and for purposes of emergency planning.
- w. Theater: In the rental of the theater:
 - 1. Any non-school or non-Falmouth government group must have an insurance bond for liability (one million dollars (\$1,000,000.00)) and damage (twenty-five thousand dollars (\$25,000.00)). This provision can be waived or modified for good cause. Any facilities used

by the applicant will be examined carefully after use and the applicant agrees to make restitution promptly for any loss or damage occurring during the applicant's use of the facilities.

2. The town and its school and town representatives shall be named as additional insured in all such policies and all insurance provided by the applicant and shall be primary to any insurance which the school department may have.
3. The applicant will furnish certificates of insurance indicating that it has provided the coverage required herein no later than fourteen (14) days prior to the use of the theater.
4. All insurance shall be placed with insurers licensed to do business in the State of Maine and acceptable to the school department.
5. Minors (under the age of eighteen (18)) using the theater are to be supervised at a ratio of at least fifteen (15) minors to one (1) adult.
6. The theater's stage lighting, sound system studio or projection areas may be used only with prior approval. Their use may require employment of an authorized school employee or designee. Cost of this technician is to be paid by the applicant at the rate established in the attached table. Special regulatory or technical requirements may necessitate the hiring of an additional employee. The costs for such arrangement must be borne by the applicant.

OTHER COSTS:

- a. Janitorial services: Janitorial services are charged at the existing contract rate and may include set-up, break-down, locking/unlocking doors, and general maintenance. During regular school days before 10:00 p.m., janitorial fees will accrue only for actual services. On non-school days and after 10:00 p.m., janitorial fees will apply to the entire time the facility is in use.
- b. Kitchen help: A regular school department kitchen worker shall be required when renting any school kitchen facility. Kitchen help shall be charged at the existing contract rate per person per hour.

(Ord. of 4-23-2001)

Secs. 14-105—14-120. Reserved.

FOOTNOTE(S):

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Editor's note— An ordinance adopted Apr. 23, 2001, pertained to use of town and school facilities, did not specify manner of codification. Therefore, at the discretion of the editor, said provisions have been included as Art. II-14-3, §§ 14-101—14-104.

ART. II-14-4. USE OF PARKS AND PUBLIC GROUNDS

Sec. 14-121. Establishment and purpose of rules and regulations.

The rules and regulations as set out in this article are hereby established for the management and protection of the parks and other public lands, defined as areas operated as recreational areas or conservation areas, owned by the Town of Falmouth and for the protection of the persons lawfully entitled to use same.

1. *Park hours of operation.*

- a. Parks and public lands shall normally be open to the public from sunrise until sunset unless otherwise posted. The public is prohibited from being in parks when they are closed to public use except as authorized by the town manager or designee.
- b. Woods Road Community Forest shall be closed to the public from December 1 to March 31 each year per Department of Environmental Protection Order L-13859-L3-M-M as a deer wintering yard. (Adopted 5/8/2017)
- c. The town manager or designee is authorized to close any park or portion thereof at any time for the protection of park property or the public health, safety or welfare.

2. *Permits.*

- a. Permits shall be required for the exclusive use of all or portions of park areas, buildings or trails and for the use of park areas and facilities when they are otherwise closed to the public. Permits for park use may be obtained from the director of parks and community programs or designee, who may require the permittee to provide proof of insurance in such form and in such amounts as the director or designee deems reasonable. Permits must be requested at least two weeks in advance.
- b. Permits from the director of parks and community programs or designee shall be required for any gathering, entertainment, game, tournament, exhibition or similar use. The director or designee may require the permittee to provide proof of insurance in such form and in such amounts as the director or designee deems reasonable. Permission for the above listed uses must comply with the large outdoor event and the use of town and school facilities ordinances.
- c. It shall be unlawful for any person to use, without payment, any facility or area for which a permit fee is required or user fee charged, unless payment has been waived.

3. *Unlawful occupancy.* It shall be unlawful for any person to:

- a. Enter any building or be upon any park area after the posted closing time or before the posted opening time, or contrary to posted notice in any park or while any park area or park building is under construction.
- b. Use a park area or park building in a manner which requires a permit after having received a permit revocation during the time period specified.

4. *Alcohol/tobacco.* Alcoholic beverages and tobacco products are prohibited in park and public land areas, with the exception of the sale of malt liquor, hard apple cider or wine in sealed containers at a licensed farmers' market.

5. *Solicitations and concessions.* It shall be unlawful for any person to:

- a. Solicit, sell or otherwise peddle any goods, wares, merchandise, services, liquids or edibles in a park except by authorized concession or written permission granted by the town manager or designee.
- b. Expose, distribute or place any commercial sign, advertisement, notice, poster or display in a park without authorization from the town manager or designee. This prohibition shall not apply to signs erected in connection with recognition of sponsorship by a business or individual of non-profit events and athletic teams within the town, provided that the sign has been authorized by the director of parks and community programs or designee.
- c. Bring in, set up, construct, manage or operate any amusement or entertainment device without permission from the director of parks and community programs or designee. Other town permits and licenses may be required before engaging in the foregoing activities.

6. *Pets/animals.* (Amended 5/8/2017)

- a. All pets and animals must be on a leash, cord or chain, not longer than ten feet, held by a person physically able to control the dog, or off leash as long as they are within voice command of their custodian, with the following exceptions:
 1. all pets and animals, within 300 feet of any parking area or trailhead, must be on a leash as described in Section 14-121 6.a.
 2. all pets and animals that are brought to any scheduled/organized activity or event must be on a leash as described in Section 14-121 6.a.
 3. no pets and animals are allowed in designated child play areas.
 4. all pets and animals must be on a leash as described in Section 14-121 6.a. April 1 through September 30 at the following areas:
 - i. Hadlock Community Forest
 - ii. North Falmouth Community Forest
 - iii. Suckfish Brook Conservation Area
 5. all pets and animals are prohibited in the River Point Conservation Area.
 - b. It is a violation of this section to allow a pet to disturb, harass or interfere with any town employee or visitor or to damage any town property or visitor's property.
 - c. Any animal owner whose animal destroys or damages any improved areas such as landscaping, fields, trails or equipment shall be responsible for the damage caused by the animal.
 - d. It shall be a violation of this section for any person who owns, possesses or controls a dog to fail to dispose of any feces left by his/her dog on any improved park, trails, public lands, sidewalk or street. Disposal of dog feces must be off park property or public lands.
 - e. This section shall not apply to service dogs accompanying any person with a disability, who because of their disability is physically unable to comply with the requirements of this section.
 - f. The provision of this subsection (6) may be enforced by the director of parks and community programs, the chief of police or their designee.
 - g. Notwithstanding the provisions of Sec. [14-122](#), a violation of this subsection (6) shall be punished by a minimum fine of \$50.00 for the first offense, \$100.00 for the second offense and \$250.00 for the third offense.
7. *Littering.* It shall be unlawful for any person to deposit, scatter, drop or abandon bottles, cans, broken glass, sewage, trash, tobacco litter, waste or other material. Disposal of waste shall be in a sanitary manner off park property.
8. *Release of harmful or foreign substances.* It shall be unlawful for any person to:
- a. Place any debris or other pollutant in or upon any park or public lands or any body of water in or adjacent to a park or any tributary, stream, storm sewer or drain flowing into such waters.
 - b. Discharge wastewater or any other wastes in a park or public lands, except into designated containers, drains or dumping stations.
 - c. Release a pesticide in or upon any park or public land except as permitted by the town.

9. *Destruction/defacement/alteration of park and public land property/signs.* It shall be unlawful for any person to:
- Intentionally deface, vandalize or otherwise cause destruction to park or public land property.
 - Intentionally deface, destroy, cover, damage or remove any placard, notice or sign, whether permanent or temporary, posted or exhibited by the town.
 - Build an encroaching structure, such as a fence or garden, on park or public land property without the express written permission from the director of parks and community programs.
 - Erect a structure, create an impervious area or otherwise alter the developed or undeveloped area of parks and public lands without the express written permission from the director of parks and community programs.
10. *Disturbance of natural features.* It shall be unlawful for any person to:
- Intentionally remove, alter, injure or destroy any tree, turf, other plant, rock, soil or mineral without a permit.
 - Dig any trenches, holes or other excavations in a park or public land without permission from the director of parks and community programs.
 - Introduce any plant, animal or other agent within a park without permission from the director of parks and community programs.
11. *Hunting/wildlife.* It shall be unlawful for any person to:
- Kill, trap, hunt, pursue or in any manner disturb or cause to be disturbed, any species of wildlife in any park or public land areas that are posted "No Hunting." All fishing, hunting and discharge of firearms shall be in accordance with state and local laws and ordinances. (The town council shall designate, by order, public property to be posted "No Hunting" in this section.)
 - Remove any wild animal, living or dead, from a park or public land without necessary state permits or licenses.
 - Release or abandon any animal within a park or public land without necessary state permits or licenses.
 - Construct a permanent deer stand on town property, or fail to remove a temporary deer stand within seven days after the end of the deer hunting season.
12. *Possession and use of weapons/firearms/fireworks.* It shall be unlawful for any person to:
- Possess, fire or discharge, or cause to be fired or discharged across, in or into any portion of a posted park or public land, any gun or firearm, spear, bow and arrow, crossbow, sling shot, air or gas weapon, paintball gun, or any other dangerous weapon or projectile, without permission from the director of parks and community programs or designee.
 - Possess, set off or attempt to set off or ignite any firecracker, fireworks, smoke bombs, or other pyrotechnics without authorization of the director of parks and community programs or designee and the necessary state permits.
13. *Fires.* It shall be unlawful for any person to:
- Start an open fire in any park or public land (including for cookouts and camping) except by express permission from the director of parks and community programs or designee.

Applicants requesting permission for a fire of any type must also acquire a fire permit through the town fire department.

- b. Scatter or leave unattended lighted matches, ashes, burning tobacco, paper or other combustible materials.
14. *Snowmobiles.* Snowmobiles are permitted to travel on designated trails within parks and designated public lands owned by the town. Such designated lands to be determined by the director of parks and community programs or their designee.
 - a. *ATV's, motorized vehicles.* The operation of all-terrain vehicles (ATV's), dirt bikes or other off-road vehicles are prohibited in all town parks and public lands.
15. *Trails.* Trails within parks and public lands may generally be used for non-motorized recreation such as hiking, mountain biking, cross-country skiing and cross-country running and may otherwise be used as posted. Trail users may propose new trail locations to director of parks and community programs, but no new trails may be constructed on town property without town approval.
16. *Personal conduct/public nuisance interference with others.* It shall be unlawful for any person to engage in any course of conduct or participate in any activity in any park or public land where such conduct or participation is unreasonably and unnecessarily hazardous to the personal safety of or impairs or limits the lawful use and enjoyment of the facility or area by other persons.
17. *Noise/public disturbance.* It shall be unlawful for any person to:
 - a. Make any unnecessary noise which disturbs the peace and quiet of the park or public land or causes discomfort or annoyance to park or public land visitors of normal sensitivity, except for special programs at dates and times as authorized by permit.
 - b. Install, use or operate or permit the use or operation within the parks or public lands of any of the following devices:
 1. Loudspeaker or sound amplifying equipment without a permit.
 2. Radios, tape players, phonographs, television sets, musical instruments or other machine or device for the production or reproduction of sound in such a manner as to be disturbing or a nuisance to persons of normal sensitivity within the area of audibility.
18. *Movement of benches, seats, athletic equipment or other park equipment.* No benches, seats, athletic equipment or other equipment of the town shall at any time be moved, removed or altered without permission from the town.
19. *Golf.* Practicing of golf is not permitted in any park, playground, or public land owned by the town, except where specifically designated or as authorized by the director of parks and community programs or designee.
20. *Camping.* Overnight camping is prohibited in all parks and public lands, except where specifically designated or as authorized by the director of parks and community programs or designee.
21. *Parking.* Parking or driving of any vehicle, including vehicles for the purposes of loading and unloading supplies and all catered or concession vehicles, is not permitted except where specifically designated or as authorized by the director of parks and community programs or designee.

22. *Interference with employee performance of duty.* It shall be unlawful for any person to impersonate any employee of the town or interfere with, harass or hinder any employee in the discharge of his/her duties.
23. *Archeological digs, historic artifacts.* Detecting, excavating and/or removing historical artifacts is prohibited on all town parks and public lands except with written permission granted by the town manager or their designee.

(Ord. of 5-22-2003; Ord. of 9-26-2011; Amd. of 3-11-2013)

Effective on: 5/8/2017

Sec. 14-122. Penalty.

Penalties for violation of this article shall be as provided in Sec. 1-14 of this Code. In addition to such penalties, the town may issue a written order to any person violating this article prohibiting that person from using town parks for a period of not more than one year.

(Ord. of 5-22-2003; Ord. of 9-26-2011; Amd. of 3-11-2013)

CH. II-15 SWIMMING POOLS

Sec. 15-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Building inspector is the building inspector of the town or his authorized representative.

Health officer is the health officer of the town or his authorized representative.

Private swimming pool is a body of water in an artificial or semi-artificial receptacle or other container whether located indoors or outdoors, above or below ground, used or intended to be used for private swimming by adults or children or both adults and children, operated and maintained by any person and shall include all structures, appurtenances, equipment, appliances and other facilities appurtenant to and intended for the operation and maintenance of a swimming pool.

Public swimming pool is equivalent to a private swimming pool except for which is open for use by the general public and a fee may or may not be charged.

Wading pool shall mean any artificially constructed pool, not designed, used or intended to be used for swimming purposes, with a maximum area of one hundred twenty (120) square feet and a maximum water depth of twenty-four (24) inches.

(Code 1966, Ch. 315, § 2, ¶¶ 1, 2)

Sec. 15-2. Permit required; fee.

No person shall construct, begin construction, establish or begin establishing a private or public swimming pool without having obtained a permit issued by the building inspector upon approval of the health officer or his authorized representative and payment of the permit fee, which is on file in the town clerk's office.

(Code 1966, Ch. 315, § 3, ¶ 1)

Sec. 15-3. Enforcement.

This chapter shall be enforced by the building inspector.

(Code 1966, Ch. 315, § 12, ¶ 1)

Sec. 15-4. Jurisdictional limits of the building official.

In accordance with 25 M.R.S.A. § 2351, the building official shall have jurisdiction within the corporate limits of the town.

(Code 1966, Ch. 315, § 13, ¶ 1)

Sec. 15-5. Appeal; procedure.

An appeal may be taken from any order of the building official in accordance with 30-A M.R.S.A. § 3007 to the zoning board of appeals.

(Code 1966, Ch. 315, § 14, ¶ 1)

Sec. 15-6. Conflicting regulations.

Where any other ordinance, statute, code, regulation or law appears to be in conflict with the provisions of this chapter, the more restrictive requirement shall have precedence.

(Code 1966, Ch. 315, § 20, ¶ 1)

Sec. 15-7. Certificate of use required.

No person shall use any public or private swimming pool until a certificate of use shall have been officially issued by the building inspector on approval of the health officer indicating compliance with all the terms and conditions of this chapter.

(Code 1966, Ch. 315, § 3, ¶ 3)

Sec. 15-8. Other permits required.

Where applicable, plumbing and electrical permits shall be issued for the construction of a public or private swimming pool prior to the issuance of the required building permit.

(Code 1966, Ch. 315, § 3, ¶ 4)

Sec. 15-9. Application.

All requests for a swimming pool permit shall be on a written application approved by the building inspector or his authorized representative setting forth, among other things, dimensions of the pool including length, width and depth, street address where located, accessory equipment, kind, type and capacity of filter system, width of pool deck, liquid capacity of pool, dimensions of all proposed buildings, use of all buildings and amount of permit fee and accessory equipment.

(Code 1966, Ch. 315, § 4, ¶ 1)

Sec. 15-10. Addendum to application.

Attached to and made a part of the application shall be a plot plan, dated and signed, showing, including, but not limited to, the entire lot on which the swimming pool will be located, location of all existing buildings, proposed buildings and swimming pools along with lot line dimensions, yard setbacks from all proposed construction, location of backflow dry well and type and height of fencing.

(Code 1966, Ch. 315, § 4, ¶ 2)

Sec. 15-11. Minimum yard depths of swimming pools.

All swimming pools shall meet the minimum yard setbacks for structures, measured from the nearest edge of the pool to the lot line, as provided in the town's zoning ordinance unless varied by appeal as provided in the zoning ordinance.

(Code 1966, Ch. 315, § 5, ¶ 1)

Sec. 15-12. Construction and design.

The construction and design of public and private swimming pools shall conform to the requirement of the town building code adopted in Sec. 4-70. All materials used in the construction of swimming pools shall be waterproof and easily cleaned and the lining shall be light in color.

(Code 1966, Ch. 315, § 6, ¶¶ 1, 2)

Sec. 15-13. Setback from filter beds.

All swimming pools shall be set back from filter beds at least twenty (20) feet.

(Code 1966, Ch. 315, § 6, ¶ 5)

Sec. 15-14. Building code fence provisions.

The fence provisions of the town building code adopted in Sec. 4-70 shall apply to all public or private swimming pools constructed or erected and shall apply to all existing public or private swimming pools constructed or erected provided notice be given to owners of existing pools advising them of the requirements with sixty (60) days to comply on receipt of notice.

(Code 1966, Ch. 315, § 8, ¶ 1)

Sec. 15-15. Soil suitability.

Prior to issuing any swimming pool permit on a lot that is not to be connected with the public sewer service, the applicant must satisfy the building inspector that soil conditions are or will be suitable for a sanitary absorption of waste materials. Standards established by the state department of health and welfare shall be the guidelines for soil suitability determination as set forth in the state plumbing code and standards of the soil conservation service. Where soils are found to be unsuitable, the building inspector shall deny the application for a permit and may only issue a swimming pool permit on submission of a plan approved by the state department of health and welfare. The plan shall have a letter attached, signed by an official of the department, setting forth approval and conditions, if any.

(Code 1966, Ch. 315, § 17, ¶ 1)

FOOTNOTE(S):

--- (1) ---

Cross reference— Provisions for notices for nuisances, signs, dangerous, unsafe, dilapidated buildings, and any other action the expense of which may be collected from the property owner, § 2-3; division of health, § 2-300; health officer, § 2-301; buildings and building regulations, Ch. II-4; land subdivision, Ch. II-7; certain discharges into the public sewer systems prohibited, § 18-190 et seq.; zoning and site plans and flood prevention and protection regulations, Ch. II-19.

State Law reference— Swimming pool enclosures, 22 M.R.S.A. § 1631 et seq.; swimming pool, public, 22 M.R.S.A. § 2661 et seq.

CH. II-16 TAXATION AND FINANCE

FOOTNOTE(S):

--- (1) ---

Charter reference— Fiscal year, § 501; budget, § 502 et seq.; tax administration, § 601 et seq.

Cross reference— Administration, Ch. II-2; provisions for notices for nuisances, signs, dangerous, unsafe, dilapidated buildings, and any other action the expense of which may be collected from the property owner, § 2-3; department of financial administration, § 2-270 et seq.; licenses, permits and business regulations, Ch. II-8; parking restrictions at the town landing and requirements for permits for residents, § 17-94.

State Law reference— Tax base sharing, 30-A M.R.S.A. § 5751 et seq.; fiscal matters, 30-A M.R.S.A. § 5601 et seq.

ART. II-16-1. IN GENERAL

Secs. 16-1—16-39. Reserved.

ART. II-16-2. FINANCE

Sec. 16-40. Warrants and legal documents.

All warrants for disbursements of money and all necessary legal documents shall be signed by either the chairman of the town council or the chairman of the council finance committee.

(Code 1966, Ch. 201, § 1, Art. II, § 105)

Sec. 16-41. Funds.

Every town official shall keep an accurate account of all moneys which may, by virtue of his office, come into his hands from whatever source, stating from whom received, and on what account the same was paid. He shall pay such moneys to the town treasurer at such periods as the town treasurer may require.

(Code 1966, Ch. 201, § 1, Art. II, § 107)

Sec. 16-42. Fees.

All fees levied by the town council shall be on file in the town clerk's office.

Sec. 16-43. Disposal of surplus property.

- a. *Real property.* Upon order of the town council, town owned real property which is unfit or unnecessary for town use shall be sold, exchanged or donated by the town manager on such conditions as the council may prescribe. If such properties are offered for sale, it shall be by a competitive bidding process with publication and invitations to bid at least thirty (30) days prior to the opening of the bids unless the council, by order:
 1. Waives competitive bidding and sets forth unusual circumstances justifying such waiver;
 2. Authorizes sale by public auctions;
 3. Authorizes sale by a competitive negotiation process identifying the criteria, in addition to price, which may be considered in selecting a proposal; or
 4. Authorizes sale or transfer of interests in real property, acquired by the town by virtue of nonpayment of taxes, to the tax payer or the taxpayer's successor in interest.Nothing herein shall limit or modify the discretion of the council, acting in the best interests of the town, to reject any sale or offer to purchase.
- b. *Personal property.* The town manager or the manager's designee shall oversee the disposal of personal property, which the manager determines to be surplus and which has a value of ten thousand dollars (\$10,000.00) or less, except in the event of a trade for purchases planned and approved in the capital plan. Such trades may be in the amount of fifty thousand dollars (\$50,000.00) or less. The manager shall determine the appropriate means of disposal, including:
 1. Competitive bid;
 2. Public auction;
 3. Negotiated sale or trade;
 4. For items valued at less than one hundred dollars (\$100.00), sale at the town's transfer station resale facility; and
 5. By discarding the personal property if the town manager determines that it is in the best interests of the town or that the property is valued at less than twenty dollars (\$20.00).

Personal property with a value in excess of ten thousand dollars (\$10,000.00) or in the event of any and all trades where the value is in excess fifty thousand dollars (\$50,000.00) shall be disposed of in accordance with the direction of the town council.

(Ord. of 10-26-98; Ord. of 9-23-2013(2))

Secs. 16-44—16-79. Reserved.

FOOTNOTE(S):

--- (2) ---

Charter reference— Division of assessment, town assessor, § 601 et seq.

Cross reference— Sewer service charges, § 18-160 et seq.; extension of sewer systems, § 18-230.

ART. II-16-3. TAXATION

DIV. II-16-3-1. GENERALLY

Secs. 16-80—16-109. Reserved.

DIV. II-16-3-2. EXEMPTIONS

Sec. 16-110. Foreclosure of tax lien mortgages waiver—Authorized.

The town council finds that payment of property taxes can create a financial hardship for certain low income elderly and disabled residents. To ameliorate this hardship, the town council, acting pursuant to authority granted by 36 M.R.S.A. § 944, authorizes the town treasurer to waive the foreclosure of tax lien mortgages for eligible persons as defined herein.

(Ord. of 10-24-88(1), § 1)

Sec. 16-111. Same—Criteria.

In order to be eligible for the waiver of foreclosure of tax lien mortgage as provided for in Sec. 16-110, a person must:

1. Be at least sixty (60) years of age or be receiving federal disability payments, such as supplemental security income;
2. Be the owner of real estate in the town on which a tax lien has been filed;
3. Have a household adjusted gross income of not more than thirteen thousand four hundred dollars (\$13,400.00). Household adjusted gross income shall mean the adjusted gross income, as shown on the latest federal tax return, for all persons in the applicant's household; and
4. Have at least seventy (70) percent equity in their real estate, which shall be valued at the latest assessed value.

(Ord. of 10-24-88(1), § 2)

Sec. 16-112. Same—Conditions.

- a. The town treasurer shall, after receipt of a properly completed application by an eligible person, waive foreclosure of the tax lien mortgage on such person's real estate and shall record such waiver in the registry of deeds. The treasurer shall not waive foreclosure in cases where the total unpaid property taxes on the real estate exceeds twenty-five (25) percent of the person's equity in the real estate.
- b. The aggregate amount of tax lien mortgage foreclosure waivers granted in any budget year shall not exceed the amount appropriated for that purpose except with approval of the town council.

(Ord. of 10-24-88(1), §§ 3, 4)

Sec. 16-113. Same—Expiration.

This waiver shall expire one (1) year from October 24, 1988.

(Ord. of 10-24-88(1), § 5)

FOOTNOTE(S):

--- (3) ---

State Law reference— Foreclosure for equitable relief, procedure, 36 M.R.S.A. § 944.

Sec. 16-114 Excise Tax Exemption for Eligible, Active Duty Military Personnel

1. Authority.

This ordinance is enacted pursuant to 36 M.R.S.A. § 1483-A, which expressly authorizes such ordinances.

2. Excise tax exemption; qualifications.

Vehicles owned by a resident of the Town of Falmouth who is on active duty serving in the United States Armed Forces and who is either permanently stationed at a military or naval post, station or base outside this State or deployed for military service for a period of more than 180 days and who desires to register that resident's vehicle(s) in this State are hereby exempted from the annual excise tax imposed pursuant to 36 M.R.S.A. § 1482.

To apply for this exemption, the resident must present to the town's excise tax collector certification from the commander of the resident's post, station or base, or from the commander's designated agent, that the resident is permanently stationed at that post, station or base or is deployed for military service for a period of more than 180 days.

For purposes of this section, "United States Armed Forces" includes the National Guard and the Reserves of the United States Armed Forces.

For purposes of this section, "deployed for military service" has the same meaning as in 26 M.R.S.A. § 814(1)(A).

For purposes of this section, "vehicle" has the same meaning as in 36 M.R.S.A. § 1481(5) and does not include any snowmobiles as defined in 12 M.R.S.A. § 13001.

3. Effective date; duration.

This ordinance shall take effect immediately upon enactment by the town and shall remain in effect unless and until it or 36 M.R.S.A. § 1483-A is repealed.

Effective on: 3/23/2015

CH. II-17 TRAFFIC AND MOTOR VEHICLES

FOOTNOTE(S):

--- (1) ---

Cross reference— Provisions for notices for nuisances, signs, dangerous, unsafe, dilapidated buildings, and any other action the expense of which may be collected from the property owner, § 2-3; police department, § 2-430 et seq.; land subdivision, Ch. II-7; nuisances, Ch. II-12; loud, offensive noises prohibited, § 12-1; junked and abandoned motor vehicles prohibited on public and private property, § 12-3; streets, sidewalks and other public places, Ch. II-14; zoning and site plans and flood prevention and protection regulations, Ch. II-19.

State Law reference— Motor vehicles, 29 M.R.S.A. § 1 et seq.

ART. II-17-1. IN GENERAL

Sec. 17-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

All-night parking.

The words all-night parking shall mean the parking of a vehicle for a period of time longer than one (1) hour between the hours of 2:00 a.m. and 6:00 a.m. of any day except for physicians or other persons on bona fide emergency calls.

Park.

The word park shall mean the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.

Resident.

The word resident shall mean a person who resides and is domiciled in the town or who, although not domiciled in the town, owns a dwelling in the town which he or she occupies for more than thirty (30) days in a calendar year.

Roadway.

The word roadway shall mean that portion of a street, way or road designed or ordinarily used for vehicular traffic.

Standing.

The word standing shall mean any stopping of a vehicle, whether occupied or not.

Street, way or road.

The word street, way or road shall mean 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.

Vehicle.

The word vehicle shall mean:

1. Every vehicle which is self-propelled; and
2. Any vehicle defined as a trailer according to 29 M.R.S.A. § 1.

(Code 1966, Ch. 702, § 1(a)—(h); Ord. of 11-26-90)

Cross reference— Definitions and rules of construction generally, § 1-2.

State law reference— Definitions, 29 M.R.S.A. § 1.

Sec. 17-2. Signs required.

No provision of this chapter 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.

(Code 1966, Ch. 702, § 2; Ord. of 11-26-90)

Sec. 17-3. Temporary signs.

The chief of police is hereby authorized to place temporary no-parking signs or detour signs and to route traffic by the direction of police officers of the town in circumstances of emergency or congestion such as, but not limited to, fires, funerals, church services, parades, sporting events and where the traffic generated by private business locations requires such direction and control.

(Code 1966, Ch. 702, § 17)

Sec. 17-4. 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. Every such prohibited sign, signal or marking is hereby declared to be a public nuisance and the chief of police is hereby empowered to remove the same or cause it to be removed without notice.

(Code 1966, Ch. 702, § 3)

Sec. 17-5. Snow accumulation.

When the width of a roadway is decreased by reason of snow accumulation or by any other reason to less than twelve (12) feet, the chief of police is authorized to prescribe temporary traffic and parking regulations and to place such traffic signs as may be necessary to give notice of the regulations.

(Code 1966, Ch. 702, § 18)

Sec. 17-6. 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 of any traffic-control device, signal, sign or marker installed under the provisions of this chapter or state law. Every such person shall obey each and every provision of this chapter.

(Code 1966, Ch. 702, § 11)

Sec. 17-7. 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.

(Code 1966, Ch. 702, § 10)

Sec. 17-8. 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 to answer for an offense against any provision of this chapter 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.

(Code 1966, Ch. 702, § 16)

Sec. 17-9. Certain vehicles prohibited from certain streets.

No truck or bus other than an emergency, public works vehicle or a local passenger bus picking up and discharging passengers along designated routes at specified stops shall travel over the following streets or parts of streets except 1.) trucks or buses which are owned by and registered to persons or by corporations controlled by persons who reside within the restricted areas if such trucks or buses are stored at their residence and are transiting to or from the residence and 2.) when necessary to render service to or to deliver supplies to persons residing adjacent thereto where other means of access to such residences are not reasonably convenient:

Brook Road between Leighton Road and Mountain Road.

For purposes of this section, "truck" shall mean all vehicles with a classification of Class 5 or higher, as defined by the Federal Highways Administration 13-Category Scheme of vehicle classifications (FHWA 13-Category Scheme).

Effective on: 1/26/2015

Sec. 17-10. Vehicle restricted on certain public property.

- a. "Motorized vehicles" for the purposes of this section shall include all vehicles propelled by a motor regardless of horsepower capacity and shall include motorized minibikes and snowmobiles so called and shall include all those commercially manufactured or the homemade variety.
- b. No person shall operate or allow to be operated any licensed or unlicensed or registered or unregistered motorized vehicle within the property bounds of any municipally owned property other than those areas specifically designated for vehicular use. For the purposes of this section, municipally owned property shall include but not be limited to school grounds, recreational areas, public works garages, town hall grounds, lands which are subject to control by the municipality by virtue of conservation easements granted to the municipality and other properties designated as property owned by or under the control of the town.

(Code 1966, Ch. 502, §§ 1, 2)

Sec. 17-11. Penalty.

Whoever violates any of the provisions of this chapter, upon conviction, shall be punished by a fine of not more than twenty-five dollars (\$25.00) for each offense, to be recovered on complaint to the use of the town.

(Code 1966, Ch. 702, § 19)

Secs. 17-12—17-49. Reserved.

ART. II-17-2. OPERATION OF VEHICLES

Sec. 17-50. 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 onto a sidewalk or upon entering the roadway and shall yield the right-of-way to all vehicles approaching on the roadway.

(Code 1966, Ch. 702, § 9)

Secs. 17-51—17-79. Reserved.

FOOTNOTE(S):

--- (2) ---

State Law reference— Operation of vehicles, 29 M.R.S.A. § 891 et seq.

ART. II-17-3. STOPPING, STANDING, PARKING

Sec. 17-80. 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 provision of this chapter. The fact that a vehicle is unlawfully parked shall be prima facie evidence of the unlawful parking of such vehicle by the person in whose name such vehicle is registered.

(Code 1966, Ch. 702, § 15)

Sec. 17-81. Obstructions 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.

(Code 1966, Ch. 702, § 7)

Sec. 17-82. Authority to remove vehicle while illegally parked.

Any vehicle parked or standing in a manner described in Sec. 17-81, Sec. 17-89 and Sec. 17-91 may be removed by or under the direction of or at the request of the chief of police or any police officer to a garage or storage place. 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 call upon wreckers on the towing list maintained pursuant to Sec. 17-82.1 to remove the vehicle. Notwithstanding any language herein contained, the removal and storage of a vehicle pursuant to this chapter, and the payment of the charges specified herein, shall in no way relieve or prevent prosecution for the violation of any provision of this chapter.

(Code 1966, Ch. 702, § 8(a); Ord. No. 71-2014, 12-9-2013)

Sec. 17-82.1. Wreckers and vehicle towing.

- a. *Purpose.* In order to ensure that the streets of the town remain safe, open and free of hazard and to further effectuate the efficient enforcement of the town's traffic, parking, snow removal and related ordinances, this section provides for licensing and regulating persons engaged in the business of providing vehicle towing and associated repair services at the request of the

town police department; establishes rates for such services; and regulates the storage and disposition of vehicles so towed.

- b. *Definitions.* As used in this section, the following words, terms and phrases have the following meanings except where the context clearly indicates a different meaning:

Storage and release facility means the real property and any structures thereon to which wreckers tow or transport vehicles for storage until the vehicle owner claims the vehicle.

Towing list means a list maintained by the police department containing the names of those wreckers licensed by the town to respond to requests by the police department for the towing of vehicles. The towing list itself shall consist of two (2) lists:

1. A primary list of wreckers capable of having a wrecker vehicle at a scene within thirty (30) minutes of a towing request by the police department.
2. A secondary list to be used by the police department when the wreckers in the primary list are not available which shall include but not be limited to any wrecker with a history of response times of more than thirty (30) minutes or failure to respond, as determined by the police department.

Wrecker means an individual or business entity offering towing or flatbed service, whereby vehicles are or may be towed or otherwise removed from one (1) place to another by the use of a motor vehicle adapted to and designed for that purpose.

Wrecker vehicle means a motor vehicle, such as a tow truck or flatbed, intended to be used to tow or otherwise transport other vehicles.

- c. *Minimum requirements.* The following minimum requirements shall be met on a continuous basis by all licensees:

1. Licensees shall operate and maintain storage and release facilities within a fifteen (15) mile radius of the police department headquarters at 2 Marshall Drive, Falmouth.
2. Licensees shall permit the chief of police or his/her designee to conduct one (1) regular and two (2) random inspections of each wrecker vehicle during the term of the license.
3. Licensees shall permit the chief of police or his/her designee to conduct one (1) regular and two (2) random inspections of each storage and release facility during the term of the license.
4. Licensees shall maintain such records as required by regulations promulgated by the chief of police and shall permit their inspection by the chief or his designee during normal business hours.
5. Vehicles must be towed or carried, not driven, to storage and release facilities.
6. Licensees must provide a secure storage and release facility
7. The police chief or his/her designee must be notified of any unclaimed vehicle by forwarding a copy of the invoice or tow slip for any unclaimed vehicle once a month to the police chief or his/her designee. Said documents shall be forwarded by the tenth day of each month and shall include documentation for each vehicle in licensee's possession that remains unclaimed on the last day of the preceding month.
8. In the event of any vehicle being towed or transported following an accident, licensees shall clean the accident area of all nonhazardous vehicular debris resulting from the accident, unless otherwise directed by on-scene public safety personnel.
9. Licensees shall not make any repairs to vehicles without the consent of the owner.

10. Vehicles shall be released from storage in accordance with this section and regulations promulgated by the chief of police.
 11. Licensees shall defend, indemnify and hold the town harmless from all claims for damage to property and injuries to persons resulting from the licensees' negligence in the towing or storage of vehicles pursuant to this article.
 12. Licensees shall conspicuously post current rates for services under this section at the storage and release facility.
 13. Licensees shall release vehicles within one (1) hour of the owner's request and payment of any applicable fees.
- d. *Maintenance of towing lists.* The police department shall observe the following procedure for maintaining the towing list and contacting wreckers for service calls:
1. Notwithstanding that wreckers will initially be assigned to either the primary or secondary list, the police department shall move wreckers with a history of unavailability or slow response time from the primary list to the secondary list and may move wreckers with a history of satisfactory response time from the secondary to the primary list.
 2. The police department shall call wreckers on the primary list on a rotating basis.
 3. The police department may contact wreckers on the secondary list as needed.
- e. *Rates for services.* The maximum rates for services regulated under this section shall be as set by order of the town council and on file in the town clerk's office.
- For purposes of section 17-84(2), the rates in this section shall be the maximum fees allowed to be charged in connection with release of a vehicle.
- f. *Disposition of abandoned vehicles.*
1. The licensee shall comply with the procedures set forth in title 29-A M.R.S.A. §§ 1851—1859, abandoned vehicles.
 2. In the event of an unclaimed or abandoned vehicle, the licensee's sole remedy shall be as outlined in title 29-A M.R.S.A. §§ 1851—1859 regarding unclaimed and abandoned vehicles.
- g. *Release of vehicles impounded pursuant to provisions for towing parked vehicles.* Whenever a vehicle has been removed and stored pursuant to police request for violation of this article, it shall not be released until the payment of penalty fees owed to the town have been paid and the requirements of Sec. 17-84 have been met.
- h. *Removal of towed vehicle or parts thereof from wreckers' lot.* Upon written application of the owner of a vehicle, the chief of police or the chief's authorized representative, suitable arrangements may be made for the retrieval of specified personal effects, as defined in 29-A M.R.S.A. § 1861, in the vehicle if there are exigent circumstances requiring retrieval prior to the owner reclaiming the vehicle.
- i. *License required.*
1. Wreckers wishing to be placed on the towing list must apply for a wrecker license on forms provided by the police department
 2. Within thirty (30) days after receipt of an application under this division, the chief of police shall conduct an investigation to determine: the truth, accuracy and adequacy of the information contained in the application; the ability of the applicant to furnish the required service and to abide by the regulations and provisions set forth herein; the applicant's past record of performance in any wrecker or towing business and the adequacy of the

applicant's equipment and storage facilities. Upon completion of the investigation, the chief of police shall grant the license and place the wrecker on one (1) of the towing lists or deny the license. The chief of police shall notify the applicant in writing of such decision and the findings and reasons, if any, for inclusion on the secondary towing list or for denial of the license, as the case may be.

3. The following information must be submitted prior to commencement of the investigation:
 - a. Location, size and security features of the storage facility on which towed vehicles will be stored;
 - b. Location of release facility to which the public must come to claim stored vehicles;
 - c. List of towing equipment, including size and capacity;
 - d. Description of the two (2) way mobile communications and base station to be used for each wrecker and at the office where calls are received;
 - e. Statement of willingness to provide release of vehicles on a continuous twenty-four (24) hour-a-day basis each day of the year;
 - f. Such other information as the chief of police may require on the application.
4. Licenses shall be valid until the wrecker is removed from the towing list at the wrecker's request or by the chief of police pursuant to the provisions of this section.
- j. *Regulations may be promulgated by the chief of police.* The chief of police is hereby authorized to promulgate regulations not inconsistent with this section to carry out its intent. All licenses issued pursuant to this section shall be subject to such applicable regulations as are adopted hereunder either prior to or after the date of the issuance thereof.
- k. *Insurance required.*
 1. No wrecker shall be accepted on the towing list until the applicant has deposited with the chief of police copies of the following policies:
 - a. Garage keeper's legal liability policy covering the premises, including fire, theft, windstorm, vandalism and explosion, in the amount of at least twenty-five thousand dollars (\$25,000.00), with each vehicle suffering damage or loss being deemed a separate claim.
 - b. Towing/wrecker service commercial liability policy covering the operation of the licensee's business, equipment or other vehicles for any bodily injury or property damage. This policy shall be in the minimum amount of four hundred thousand dollars (\$400,000.00) combined single limit for personal injury and property damage, or such other amount as may be stated in Maine Tort Claims Act (14 M.R.S.A. § 8001 et seq.) as the monetary limit of municipal liability, whichever amount shall be greater. Each wrecker insured shall be identified by make, model and vehicle identification number (VIN).
 - c. Road service liability coverage for the lifting, hoisting and towing of vehicles must be included in the licensee's garage keeper's legal liability policy.
 2. Each policy required above shall name the town as an additional insured and the certificate evidencing the same shall be in a form satisfactory to the town attorney. The licensee shall maintain such insurance at all times during the term of the license, and the licensee shall provide the chief of police with not less than thirty (30) days' advance written notice of the cancellation, expiration or non-renewal of said insurance.

3. The lapsing or cancellation of any policy as required hereinabove shall result in the immediate termination of the wrecker's license without any action on the part of the town.
- l. *Grounds for revocation, suspension or denial.* A license issued under this division may be suspended or revoked and an application for a license may be denied by the chief of police upon a determination that the licensee, applicant or wrecker operator:
 1. Violated any of the requirements or regulations established herein or by the chief of police under this section;
 2. Provided unsatisfactory services for police requested towing; or
 3. Has been convicted of any crime or has had his/her driver's license revoked or suspended by the state at any time during the five (5) years immediately preceding application; or has been imprisoned at any time during the preceding five (5) years, provided that said conviction was for an offense which is rationally related to the purpose of licensing wreckers.No license shall be suspended or revoked without a hearing conducted not less than seven (7) nor more than thirty (30) days after written notice has been served on the licensee personally or by first class mail, postage prepaid. The notice shall contain a generalized statement of the complaint.

m. *Appeals.*

1. An appeal to the town council may be taken by any person aggrieved by the granting, granting with conditions, denial, suspension or revocation of a license hereunder by the chief of police by filing a written notice of appeal in the office of the town clerk within thirty (30) days of the decision appealed from. Such notice of appeal shall state the basis for the appeal. Within thirty (30) business days after the filing of the notice of appeal, the town council shall hold a de novo hearing and may affirm, reverse or modify the decision appealed from.
2. An appeal from any final decision of the town council may be taken by any party to the superior court in accordance with the provisions of Rule 80B of the Maine Rules of Civil Procedure.

n. *Enforcement.*

1. Any violation of this section shall be punishable by a fine not exceeding one hundred dollars (\$100.00), and each day that a violation continues shall be treated as a separate offense.
2. The chief of police or his designee may, prior to commencement of court action, issue a notice of violation to any person charged with a violation of this section. Said notice shall be in a form approved by the town attorney and shall provide a method by which a person charged with a violation of this division may waive court action with respect to the violation by payment of a specified fee within a stated period of time.

(Ord. No. 71-2014, 12-9-2013)

Effective on: 4/27/2015

Sec. 17-83. 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 by 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 the vehicle.

(Code 1966, Ch. 702, § 8(b))

Sec. 17-84. 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 the vehicle;
2. Pay to the person having possession of the vehicle reasonable charges for the towing and storing of the vehicle; and
3. Sign a receipt for the vehicle.

(Code 1966, Ch. 702, § 8(c))

Sec. 17-85. Parking on paved or improved surface.

No vehicle shall be parked on the paved or improved surface of any street, way or road when it is practicable to park elsewhere.

(Code 1966, Ch. 702, § 12)

State law reference— Similar provision, 29 M.R.S.A. § 1111.

Sec. 17-86. Parking on left.

No vehicle shall be parked or stopped on the left side of any street, way or road so that it is facing oncoming traffic.

(Code 1966, Ch. 702, § 13)

Sec. 17-87. Fire lanes.

The words fire lanes shall mean those areas which from time to time may be designated by the chief of the fire department as being necessary to assure access to property by emergency vehicles including, but not limited to, fire, police and emergency vehicles. No parking, standing or stopping shall be allowed in a designated fire lane. In publicly owned and managed parking lots or areas, signs or barriers designating the fire lanes shall be erected and maintained by the town. In privately owned or operated parking lots or areas, the owner or manager will be responsible for the erection and maintenance of any required signs or barriers.

(Code 1966, Ch. 702, § 1(i))

Sec. 17-88. Prohibited parking.

No person shall stand or park a vehicle upon a street, way or road for the principal purpose of:

1. Displaying it for sale;
2. Washing, greasing or repairing such vehicle except for repairs necessitated by an emergency;
3. For the primary purpose of advertising or for the sale of any personal property or for the exercise of any business, profession or calling.

(Code 1966, Ch. 702, § 4)

Sec. 17-89. Stopping, standing or parking prohibited at specific locations.

No person shall stop, stand or park a vehicle in any of the following places nor shall any person move a vehicle not owned by him into any of the places, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer, other authorized person or traffic-control device:

1. On a sidewalk;
2. In front of a public or private driveway;
3. Within an intersection;
4. Within ten (10) feet of a fire hydrant;
5. On a crosswalk;
6. Within twenty (20) feet of the near corner of the curbs at an intersection;
7. Within thirty (30) feet upon the approach to any flashing beacon, stop sign or traffic-control signal located at the side of a roadway;
8. Between a safety zone and the adjacent curb;
9. Within twenty (20) feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station;
10. Alongside or opposite any street excavation or obstruction when such stopping, standing or parking would obstruct traffic;
11. On the roadway side of any vehicle stopped or parked at the edge or curb of a street or double park;
12. Upon any bridge or other elevated structure upon a highway;
13. At any place where official signs prohibit stopping;
14. Within or upon any designated fire lane in a parking lot, whether the parking lot is publicly or privately owned.

(Code 1966, Ch. 702, § 5)

Sec. 17-90. Regulations.

The stopping, standing and/or parking of vehicles and movement and types of traffic are hereby regulated on the streets or parts of the streets and other areas owned or controlled by the town set forth in the traffic schedule and when signs are erected giving notice thereof, the stopping, standing and/or parking of vehicles and movement and types of traffic shall be regulated as set forth in Sec. 17-92, Sec. 17-93, Sec. 17-94 and Sec. 17-95 and Sec. 17-98 for such streets or parts of streets and other areas owned or controlled by the town.

(Ord. of 8-27-84, § 1; Ord. of 9-26-88(2), § 1; Ord. of 11-24-97, § 2)

Sec. 17-91. Snow removal; parking prohibited at certain times.

No vehicle shall be parked at any time on any street, way or road so as to interfere with or hinder the plowing or removal of snow from any street, way or road. The chief of police may cause any vehicle parked on any street, way or road so as to interfere with or hinder the plowing or removal of snow to be removed from the street in accordance with the provisions of Sec. 17-82. No vehicle shall be parked on any town-maintained way or road between the hours of midnight and 6:00 a.m. from November fifteenth to April fifteenth.

(Code 1966, Ch. 702, § 6)

Sec. 17-92. No parking at any time.

- a. Parking is prohibited at all times, every day in the following areas:

Depot Road north and south sides extending one hundred fifty (150) feet on both sides from its intersection with U.S. Route 1.

Foreside Road (Route 88) easterly side from Utility Pole #228 southerly to Utility Pole #210.

Foreside Road (Route 88) easterly side extending seventy-five (75) feet north from the intersection of Johnson Road with Town Landing Road.

Foreside Road (Route 88) westerly side extending three hundred and twenty-five (325) feet north from the intersection of Foreside Road with Johnson Road.

Hardy Road north and south sides beginning at the westerly side of driveway at 41 Hardy Road thence westerly to the driveway of the residence at 117 Hardy Road.

Allen Avenue Extension east and west sides extending one thousand (1,000) feet on both sides of the bridge.

Knight Street both sides from Foreside Road (Route 88) to Utility Pole #1.

Lunt Road, directly in front of Lunt School, the area bordered by the two (2) entrances to the school: the west side of the west entrance, towards Falmouth Road intersection for a distance of fifty (50) feet and the east side of the east entrance in the direction of Plummer-Motz School for a distance of twenty-five (25) feet.

Mariner Lane. No parking on the north side of the street from the intersection of Rt. 88 to the end of the street. Parallel parking only on the south side of the street.

Middle Road north and south sides beginning at 170 Middle Road and extending to the intersection at Falmouth Corner.

Route 88 easterly side from Old Mill Road northerly one thousand five hundred (1,500) feet.

Route 88 westerly side from Johnson Road southerly six thousand eight hundred (6,800) feet.

Town Landing Road north side from Utility Pole #9 to the shoreline.

Town Landing Road north side from Foreside Road (Route 88) to a point fifty-two (52) feet easterly of Utility Pole #8.

Town Landing Road south side from the Foreside Road to the shoreline.

U.S. Route 1 east and west sides extending two hundred (200) feet on both sides from its intersection with Depot Road.

Waites Landing Road north side from the driveway at 96 Waites Landing Road east to the end of the road.

Waites Landing Road south side from Fire Hydrant #126 east to the end of the road.

- b. Parking is prohibited at all times, every day in all fire lanes, including:

In the shops at Falmouth Village, an area thirty (30) feet wide commencing from the building curb of the sidewalk, not including designated parking spaces.

In the West Falmouth Crossing Shopping Center, an area thirty (30) feet wide commencing from the building curb of the sidewalk, not including designated parking spaces.

In the Wal-Mart/Hoyt's Plaza, an area thirty (30) feet from the curb of the shopping center sidewalk.

- c. Parking is prohibited at all times of the day during specific dates:

Depot Road southwest side from the junction of the Legion Road to the junction of the Lunt Road from May 1 to October 1.

- d. Parking is prohibited at specific times and on specific dates:

Andrews Avenue—No parking, tow away zone, May 1 until October 31 from 6:00 a.m. to 6:00 p.m. Designated spaces at the east end of Andrews Ave. are to be utilized as parking for Mackworth Island for Falmouth residents only.

Squidere Lane—No parking on the east side of the road from the intersection of Depot Road to the Blackstone cul-de-sac.

(Code 1966, Ch. 702, App. 1(A); Ord. of 9-26-88(2), § 2; Ord. of 5-22-89, § 2; Ord. of 10-23-89, § 1; Ord. of 11-21-89, § 1; Ord. of 12-16-97; Ords. (3) of 8-28-2000; Ord. of 9-24-2001; Ord. of 10-24-2005; Amd. of 4-28-2008; Amd. of 12-8-2008; Amd. of 7-27-2009; Amd. of 12-14-2009; Ord. No. 125-2013, 5-29-2013)

Sec. 17-93. All-night parking prohibited.

Parking all night as defined in Sec. 17-1 is prohibited in the following areas:

Town Landing Road north side from a point fifty-two (52) feet easterly of Utility Pole #8 to Utility Pole #9.

Waites Landing Road north side from a point opposite Hydrant #126 east to the driveway at 96 Waites Landing Road.

(Code 1966, Ch. 702, App. 1(D); Ord. No. 9-26-88(2), § 3)

Sec. 17-94. Parking restrictions at the town landing.

- a. Parking is prohibited every day between the hours of 10:00 p.m. and 5:00 a.m. at the town landing.
- b. Parking on the real estate owned or controlled by the town located adjacent to and east and northeast of the east and northeast right-of-way line of Town Landing Road and bounded by Casco Bay and the town landing pier and boat ramp hereinafter referred to as town landing parking area is hereby restricted as follows:
 1. All parking within the town landing parking area shall be only within the numbered or marked parking areas and spaces therein as determined by the chief of police.
 2. All parking areas and spaces in the town landing parking area from May fifteenth through September thirtieth of each year shall be used only by residents of the town as defined in Sec. 17-1 except the following three (3) spaces shall not be restricted to residents:

- a. Two (2) parking spaces which shall be designated and used only for loading and unloading;
 - b. One (1) parking space which shall be designated and used only for emergency vehicles.
3. Four (4) parking spaces, as marked or designated shall be limited to no more than two (2) hours for each vehicle using the four (4) parking spaces.
 4. All applicable parking regulations for the town landing parking area shall be posted or marked at or near the town landing parking area, as determined by the chief of police.
 5. Parking in the town landing parking area during the period from May fifteenth through September thirtieth of each year shall be limited to motor vehicles and no trailers shall park therein.
- c. All vehicles parking in the town landing parking area during the period from May fifteenth through September thirtieth of each year shall park pursuant to permit only except for the two (2) parking spaces limited to loading and unloading and the one (1) space limited to emergency vehicles as set forth herein. The permits shall be evidenced by decals to be displayed in a prominent place on the front windshield of the vehicle. The permits and decals shall be issued by the town clerk to residents of the town as defined in Sec. 17-1. Any resident obtaining a permit and decal shall be required to sign a register to be maintained by the town clerk indicating the residence address of the person obtaining the permit and decal. The register of the town clerk for this purpose shall also include the year, model, make and license plate number of the vehicle to which the decal shall be attached. The permits and decals shall be available only during business hours at the office of the town clerk. There shall be no fee for obtaining the permit and decal. No more than one (1) permit or decal shall be issued to any one (1) person.
 - d. Violations of any of the provisions hereof shall be subject to a parking ticket and fine of fifteen dollars (\$15.00) which shall be enforced by any means permitted under the laws of the state including without limitation, 29 M.R.S.A. and this chapter. The town shall also be entitled to remove any vehicle parked or standing in violation of the provisions of this Sec. in accordance with the laws of the state including without limitation, 29 M.R.S.A. and Sec. 17-82 through Sec. 17-84

(Code 1966, Ch. 702, App. 1(C), (D); Ord. of 8-27-84, § 2)

Cross reference— Licenses, permits and business regulations, Ch. II-8; streets, sidewalks and other public places, Ch. II-14; taxation and finance, Ch. II-16.

Sec. 17-95. Parking areas owned by town.

Parking at the town-owned parking area located at the southwest corner of the intersection of Foreside Road (Route 88) and Johnson Road is restricted to town residents, provided, however, that six (6) parking spaces shall be made available for use by town residents and nonresidents. These six (6) parking spaces shall be identified by appropriate signs. Residents who desire to park in this parking area shall display the resident's permit in Sec. 17-94(c) except that no permit is required to park in the resident/nonresident spaces.

(Ord. of 9-26-88(2), § 4; Ord. of 4-27-92)

Sec. 17-96. Handicapped parking areas.

- a. No person shall park a vehicle in a parking space designated for use by handicapped persons unless such vehicle displays a special registration plate or placard issued pursuant to 29

M.R.S.A. § 252 or a similar plate or placard issued by another state. A parking space on private property is designated for use by handicapped persons if it is marked by a sign conforming to the standards set forth herein and identified in a handicapped parking schedule maintained in police department files. A public parking space is designated for use by handicapped persons if it is marked by a posted sign consisting of a profile view of a wheelchair with occupant in white on blue background and the following warning: "Handicapped Parking: Special Plate Required. Unauthorized vehicles are subject to a fine." Such sign must be adjacent to and visible from the parking space it marks.

- b. The chief of police or his designated agent may enter into agreements with owners of private off-street parking to provide for the enforcement of parking spaces reserved by such owners for use by handicapped persons. The schedule of handicapped parking spaces to be enforced by the town pursuant to agreements between the owners of the property on which they are located and the chief of police or his designated agent is on file in the chief of police's office. Such spaces shall be marked by the owner in the manner set forth in (a) above; their number and location shall be recorded in a handicapped parking schedule maintained in police department files.

(Code 1966, Ch. 702, §§ 5A, 5B)

Sec. 17-97. Two-hour parking.

Parking is limited to two (2) hours on both sides of Foreside Road (Route 88) beginning at a point sixty-five (65) feet southerly of Johnson Road and continuing southerly for a distance of six hundred fifty (650) feet.

Sec. 17-98. One-way streets.

The following streets within the Town of Falmouth shall be designated as "one-way" and traffic proceeding in the direction opposite to the direction of permitted travel shall be in violation of this section.

Stonecrest Drive, from its intersection with Stapleford Drive to a point approximately 580 feet in a southeasterly direction; direction of permitted travel is southeast to northwest.

(Ord. of 11-24-97, § 1)

Sec. 17-99. Parking restrictions at Presumpscot River Falls Park.

- a. Parking at Presumpscot River Falls Park is prohibited every day during the period beginning one (1) hour after sunset and ending one (1) hour before sunrise.
- b. Any violation hereof shall be subject to a parking ticket and fine of fifteen dollars (\$15.00) which shall be enforced by any means permitted under the laws of the state including without limitation, 29 M.R.S.A. and this chapter. The town shall also be entitled to remove any vehicle parked or standing in violation of the provisions of this section in accordance with the laws of the state including without limitation, 29 M.R.S.A. and Sec. 17-82 through Sec. 17-84 of this chapter.

(Ord. of 6-28-99)

Sec. 17-99.1 Parking and standing restrictions near and at the schools complex on Woodville Road.

- a. Parking, standing and stopping is prohibited between 7:00 a.m. and 7:00 p.m. on Woodville Road, easterly side, from Utility Pole CMP # 10 northerly to Utility Pole CMP # 29, Woodville Road, westerly side, from Utility Pole CMP # 10-S northerly to Utility Pole CMP #29S with the exception of the frontage adjacent to the Middle School building.
- b. Parking, standing and stopping is prohibited between 7:00 a.m. and 3:30 p.m. at the School Department Administration Building parking area located on the easterly side of Woodville Road, except parking is allowed for school department employees and persons on business in that building and is otherwise allowed on Saturdays, Sundays and holidays.
- c. Parking is prohibited at all times, every day, in the following locations. All areas of the schools complex (Elementary School, Middle School, High School and recreational fields on both sides of Woodville Road) that are posted with appropriate signs.
- d. Violations of any of the provisions hereof shall be subject to a parking ticket and fine of fifteen dollars (\$15.00) which shall be enforced by any means permitted under the laws of the state including, without limitation, 29 M.R.S.A. and this chapter. The town shall also be entitled to remove any vehicle parked or standing in violation of the provisions of this section in accordance with the laws of the state including, without limitation, 29 M.R.S.A. and Sec. 17-82 through Sec. 17-84 of this chapter.

(Ord. of 8-9-2010)

Editor's note—

Ord. of 8-9-2010 enacted provisions intended for use as § 17-100. To preserve the style of this Code, and to facilitate indexing, said provisions have been redesignated as § 17-99.1

FOOTNOTE(S):

--- (3) ---

Cross reference— Streets, sidewalks and other public places, Ch. II-14; streets, § 14-40.

State Law reference— Parking, 29 M.R.S.A. § 1111 et seq.

ART. II-17-4. REGULATION OF MOTOR VEHICLE WEIGHT ON POSTED WAYS AND BRIDGES

Sec. 17-100. Purpose and authority.

The purpose of this article is to prevent damage to town ways and bridges which may be caused by vehicles of excessive weight, to lessen safety hazards and the risk of injury to the traveling public, to extend the life expectancy of town ways and bridges, and to reduce the public expense of their maintenance and repair. This article is adopted pursuant to 30-A M.R.S.A. § 3009 and 29-A M.R.S.A. §§ 2395 and 2387.

(Ord. of 3-21-2005)

Sec. 17-101. Restrictions and notices.

The town council may, either permanently or seasonally, impose such restrictions on the gross registered weight of vehicles traveling over designated town ways and bridges as, in their judgment, may be necessary to protect the traveling public and to prevent excessive damage to town ways and bridges.

A notice specifying the designated sections of the town way or the bridge, the prescribed restrictions, the periods of restrictions, the date of posting and the signature of the town manager or the public works director must be conspicuously posted at each end of the town way or bridge. Whenever a restriction expires or is lifted, the notices shall be removed wherever posted. Whenever a restriction is revised or extended, existing notices shall be removed and replaced with new notices.

(Ord. of 3-21-2005)

Sec. 17-102. Prohibition; exemptions.

Whenever notice has been posted as provided herein, no person may thereafter operate any vehicle with a gross registered weight in excess of the restriction during any applicable time period on any way or bridge so posted unless otherwise exempt as provided herein or the possession of a special permit.

All town and school vehicles are exempt from this article. Heating fuel delivery trucks operating with a Maine Department of Transportation permit and vehicles transporting well drilling equipment operating during a drought emergency declared by the governor are exempt from this article, as provided in 29-A M.R.S.A. § 2395 (4-A).

(Ord. of 3-21-2005)

Sec. 17-103. Special permits.

The owner or operator of any vehicle not otherwise exempt as provided herein may apply in writing for a permit to operate notwithstanding the restrictions imposed pursuant to this article. The town council may issue a special permit if it finds that: (a) no other route is reasonably available to the applicant and (b) the applicant has tendered suitable security running to the town in an amount sufficient to repair any damage to the town way or bridge which may result from the applicant's use. Notwithstanding making such findings, the town council may refuse to issue a special permit if it determines that the proposed use will pose an unacceptable risk to public safety or to the condition of the way or bridge.

(Ord. of 3-21-2005)

Sec. 17-104. Enforcement; penalties.

This article may be enforced by the code enforcement officer or any law enforcement officer.

Any violation of this article shall be punishable in accordance with Sec. 17-11, provided that the fine provided therein shall be assessed for each one thousand (1,000) pounds of registered gross vehicle weight over the posted weight limit. In addition, the town may seek restitution for the cost of repairs to any damaged way or bridge necessitated by the unlawful use and may seek reasonable attorney's fees and costs.

(Ord. of 3-21-2005)

CH. II-18 UTILITIES

FOOTNOTE(S):

--- (1) ---

Cross reference— Administration, Ch. II-2; provisions for notices for nuisances, signs, dangerous, unsafe, dilapidated buildings, and any other action the expense of which may be collected from the property owner, § 2-3; division of health, § 2-300; sewer department, § 2-500 et seq.; buildings and building regulations, Ch. II-4; land subdivision, Ch. II-7; nuisances, Ch. II-12; solid waste, Ch. II-13; zoning and site plans and flood prevention and protection regulations, Ch. II-19.

ART. II-18-1. IN GENERAL

Sec. 18-1. Regulation of poles and wires; permit.

When a written location permit for facilities is required to be obtained from the town pursuant to 35 M.R.S.A. Ch. 179, the licensing authority shall be the town engineer. The application for a permit shall meet the requirements of 35 M.R.S.A. § 2483 and shall be acted upon in accordance with the procedures set forth therein. The town council may review decisions of the town engineer as provided by 35 M.R.S.A. § 2483(14). Appeals from decisions made under this section shall be conducted as provided by 35 M.R.S.A. § 2483(14) and as otherwise provided by law.

(Ord. of 7-22-85, § 4)

State law reference— Regulation of poles and wires, 35 M.R.S.A. § 2481 et seq.

Sec. 18-2. Deposits, fees, charges.

All deposits, fees, charges and assessments levied by the town council including connection charges, permit fees and rate schedules for utilities service by the town are on file in the town clerk's office.

Secs. 18-3—18-49. Reserved.

ART. II-18-2. SEWER SYSTEM

FOOTNOTE(S):

--- (2) ---

Cross reference— Provisions for notices for nuisances, signs, dangerous, unsafe, dilapidated buildings, and any other action the expense of which may be collected from the property owner, § 2-3; sewer department, § 2-500 et seq.; plumbing code adopted, § 4-75.

State Law reference— Sewers and drains, 30-A M.R.S.A. § 3401 et seq.

DIV. II-18-2-1. GENERALLY

Sec. 18-50. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Terms not defined shall have the customary dictionary meaning. Other terms shall be defined as provided in this section.

Appeals board shall mean the sewer board of appeals of the town.

BOD (Biochemical oxygen demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty (20) degrees Celsius, expressed in parts per million.

Building drain shall mean that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste or other drainage.

Building sewer shall mean the extension from the building drain to the public sewer or approved private collector.

Combined sewer shall mean a sewer receiving both surface runoff and sewage.

Collector shall mean a public or private sewer to which building sewers are connected and which conducts sewerage to an interceptor.

Developer shall mean any person who undertakes to construct simultaneously or in planned sequence more than one (1) housing unit on a given tract or land subdivision.

Engineer shall mean a professional engineer retained by the town council.

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.

Industrial wastes shall mean the liquid wastes from industrial manufacturing processes, trade or business as distinct from sanitary sewage.

Interceptor shall mean a public sewer that conducts sewerage to the sewer treatment plant.

Natural outlet shall mean any outlet into a watercourse, pond, ditch, lake or other body of surface or ground water.

pH shall mean the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

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 inch in any dimension.

Public sewer shall mean a common sewer directly controlled by the town.

Sanitary sewer shall mean a sewer to which storm, surface, and ground waters are not intentionally admitted.

Sewage shall mean a combination of the liquid and the water-carried wastes from residences, business buildings, institutions and industrial establishments, together with such ground, surface, and storm waters as may be present.

Sewage treatment plant shall mean any arrangement of devices and structures used for treating sewage.

Sewage works shall mean all facilities for collecting, pumping, treating and disposing of sewage.

Sewer shall mean a pipe or conduit for carrying sewage.

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.

Superintendent shall mean the superintendent of the sewer department of the town or his authorized representative.

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 laboratory filtering.

Watercourse shall mean a channel in which a flow of water occurs, either continuously or intermittently.

(Ord. of 8-26-85, § 2)

Cross reference— Definitions and rules of construction generally, § 1-2.

Sec. 18-51. Purpose and intent.

The purpose of this article is to promote the health, comfort, public convenience and general welfare of the citizens of the town by eliminating existing pollution, preventing further pollution and controlling sewerage systems through regulations and restrictions. This article shall restrict and regulate the accumulation, transportation, treatment and disposal of sewage in such a manner that the creation of any sewerage system, whether public or private, industrial or residential, shall not result in pollution, health hazards or other nuisances for the citizens of the town.

(Ord. of 8-26-85, § 1.1)

Sec. 18-52. Authority.

The town council shall have the authority pursuant to 30-A M.R.S.A. § 3402 and all other applicable state statutes to administer, enforce, amend or repeal this article or any clause or provision thereof as may be necessary or desirable in the judgment of the town council for the efficient operation of any sewerage system.

(Ord. of 8-26-85, § 1.2)

Sec. 18-53. Scope.

This article shall completely supersede all other sewer ordinances enacted by the town prior to August 26, 1985, which other ordinances are hereby repealed except as otherwise noted herein.

(Ord. of 8-26-85, § 1.3)

Sec. 18-54. Compliance.

Hereafter any person owning any building or structure within the town which is the source of sewage and/or industrial wastes or who proposes to erect such building or structure shall comply with the requirements of this article.

(Ord. of 8-26-85, § 1.4)

Sec. 18-55. Violations and penalties.

- a. Any person found to be violating any provision of this article shall be served by the town with a written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.
- b. Any violation of this article shall be deemed to be a nuisance subject to all available legal and equitable remedies. In addition, any violation of any provision of this article upon conviction shall be punishable by a fine of not more than one hundred dollars (\$100.00). Each day that a

violation continues after the expiration of the period of time stated in the notice provided under (a) above shall constitute a separate offense.

(Ord. of 8-26-85, § 11)

Sec. 18-56. Sanitary facilities required.

Every building intended for human habitation, occupancy, employment, recreation or other purposes situated within the town shall be provided with suitable and sufficient sanitary facilities for the use of the occupants thereof which facilities in character, number and method of installation shall comply with all health laws of the state, ordinances of the town and rules and regulations of the bureau of health so far as the same are compatible and not inconsistent.

(Code 1966, Ch. 304, § 1; Ord. of 8-26-85, § 3.3)

Sec. 18-57. Unlawful disposal.

It shall be unlawful for any person to place, deposit or permit to be deposited in any unsanitary manner on public or private property within the town or in any area under the jurisdiction of the town, any human or animal excrement, garbage or other objectionable waste. The term unsanitary manner shall not include reasonable spreading of animal excrement or other fertilizer in farming or animal husbandry operations, nor shall it include the presence of sludges or bioash at approved D.E.P. sites.

(Ord. of 8-26-85, § 3.1)

Sec. 18-58. Unlawful discharge.

It shall be unlawful to discharge to any natural outlet within the town or in any area under the jurisdiction of the town any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this article.

(Ord. of 8-26-85, § 3.2)

Sec. 18-59. Inspection of properties.

The sewer 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, but not limited to, inspection, observation, measurement, sampling, testing, repair and maintenance of any portion of the public sewage works in accordance with the provisions of 30-A M.R.S.A. § 3007 and other applicable provisions of state law.

(Ord. of 8-26-85, § 9.2)

Secs. 18-60—18-89. Reserved.

DIV. II-18-2-2. ADMINISTRATION

Sec. 18-90. Board of sewer appeals—Creation and appointment.

There is hereby established a board of sewer appeals. The members of the board shall be appointed by the town council. They shall be residents of the town and shall serve without compensation. In accordance with the laws of the state the following provisions shall apply:

1. The board shall consist of three (3) members and one (1) associate member;
2. The term of office of members and associate members shall be two (2) years except that the initial appointment of members shall be made for one (1), two (2) and three (3) years respectively for members and three (3) years for the associate member;
3. No town councilmember shall be a member or associate member of the board of sewer appeals;
4. When a member is unable to act because of conflict of interest, physical incapacity or absence, the associate member shall act in his stead;
5. When there is a permanent vacancy, the town council shall appoint a person to serve for the unexpired term;
6. The board of sewer appeals shall elect a chairman and a secretary from its own membership annually in the month of April.

(Ord. of 8-26-85, § 10.1)

Cross reference— Procedure for removal of members of boards, committees, commissions, § 2-40; boards, committees, commissions, § 2-40 et seq.; vacancies on appointive boards, § 2-41.

Sec. 18-91. Same—Powers, duties and jurisdiction.

The board of sewer appeals shall have the following powers and duties to be exercised only upon written appeal by a party aggrieved by a decision of the sewer superintendent or of the engineer insofar as such decision arises from requirements of this article:

1. To determine whether the decisions of the officers are in conformity with the provisions of this article and to interpret the meaning of this article in cases of uncertainty.
2. To grant variances from the terms of this article where there is no substantial departure from the intent of this article and/or where necessary to avoid undue hardship. Construction costs exceeding fifteen (15) percent of the assessed value of the buildings on the land to be served by public sewer shall be considered as prima facie evidence of undue hardship. The owner shall provide at least three (3) estimates of construction costs from reputable contractors.

(Ord. of 8-26-85, § 10.2; Ord. of 2-24-92)

Sec. 18-92. Same—Hearings.

The board of sewer appeals shall annually determine a regular monthly meeting date. All appeals or other matters to come before the board requiring a notice as described herein shall be filed with the town clerk at least fifteen (15) days prior to the next monthly meeting day. The town clerk shall cause to be advertised in a newspaper of general circulation in the town a notice of such appeal identifying the property involved, the nature of the appeal and stating the time and place of public hearing of such appeal which shall not be earlier than ten (10) days after the date of such publication. Owners of properties within three hundred (300) feet of the property for which the appeal is made shall be notified by mail. Failure of any such owner to receive this notice shall not invalidate the proceedings herein described. The board of sewer appeals shall not continue hearings on an appeal to a future date except for good cause. Written notice of the decision of the board shall be sent to the appellant and to the officer concerned, forthwith. Failure of the board to issue such notice within forty-five (45) days of the date of the hearing shall constitute a denial of the appeal.

(Ord. of 8-26-85, § 10.3)

Sec. 18-93. Same—Appeal procedure.

- a. Any person and any town department aggrieved by the decision of the sewer superintendent or engineer which decision arises from provisions of this article may appeal such decision to the board of sewer appeals.
- b. Within thirty (30) days of the date of the decision of the sewer superintendent or engineer, the appeal shall be entered at the office of the town clerk upon forms to be approved by the board of appeals. The appellant shall set forth in the form the grounds of the appeal and shall refer to the specific provisions of the sewerage article involved. Following the receipt of any appeal, the town clerk shall notify forthwith the officer concerned and the chairman of the board of appeals. The appellant shall pay to the town treasurer a fee which is on file in the town clerk's office.
- c. An aggrieved party may appeal from the decision of the board of sewer appeals to the superior court as provided by the laws of the state.
- d. After a decision has been made by the board of sewer appeals, a new appeal of similar import shall not be entertained by the board until one (1) year has lapsed from the date of the decision, except that the board may entertain a new appeal if the chairman believes that owing to a mistake of law or misunderstanding of fact, an injustice was done or if he believes that a change has taken place in some essential aspect of the appeal.

(Ord. of 8-26-85, §§ 10.4, 10.5)

Secs. 18-94—18-119. Reserved.

FOOTNOTE(S):

--- (3) ---

Cross reference— Provisions for notices for nuisances, signs, dangerous, unsafe, dilapidated buildings, and any other action the expense of which may be collected from the property owner, § 2-3.

DIV. II-18-2-3. CONNECTIONS

Sec. 18-120. Required.

The owners of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes requiring the disposal of sewage situated within the town and abutting on any street, alley or right-of-way in which there is located a public sanitary sewer of the town is hereby required at his expense to install suitable sanitary facilities therein in accordance with Sec. 18-56, and to connect such facilities directly to the proper public sewer in accordance with the provisions of this article within ninety (90) days after date of official notice to do so, provided that the public sewer is available. If the public sewer is available, it should be connected to unless the construction cost exceeds fifteen (15) percent of the assessed value of the buildings on the land to be served by public sewer.

(Ord. of 8-26-85, § 3.4; Ord. of 2-24-92)

Sec. 18-121. New public sewers.

- a. When a public sewer becomes available, the building sewer shall be connected to the sewer within ninety (90) days after date of official notice to connect and the private septic tank or cesspool shall be cleaned of sludge and filled with clean back-run gravel or dirt or shall be removed.
- b. Notwithstanding subsection (a) of this section, when a public sewer becomes available to a single-family residential structure, the owner of that structure may elect not to connect to the sewer within ninety (90) days after notice to connect provided that the owner:
 1. Within said ninety-day period, notifies the sewer department and the licensed plumbing inspector in writing of the owner's election and provides the sewer department and the licensed plumbing inspector with a certificate from a Maine licensed site evaluator that the subsurface waste water disposal system serving that structure is functioning properly;
 2. Every two (2) years after the date of the initial certification. The homeowner shall provide the sewer department and the local plumbing inspector with a certificate, from a Maine Licensed Site Evaluator or Certified, Onsite Subsurface Wastewater Disposal System Inspector; attesting that the subsurface waste water disposal system is functioning properly, or contract to have the septic tank pumped and cleaned and provide proof of such cleaning to the sewer department and local plumbing inspector; and
 3. Connects to the public sewer before sale of the structure; upon failure of the subsurface waste water disposal system; and, in any event, before the expiration of ten (10) years from the date of the original notice to connect. A notice shall be recorded in the Cumberland County Registry of Deeds stating that connection having been made.

An owner who makes an election under this subsection (b) shall nevertheless be responsible for payment of such special assessments under Sec. 18-234 and impact fees under Sec. 18-235 as may be levied by the town. Such assessment and fees may be paid over a period not to exceed ten (10) years as provided in Sec. 18-234(b).

(Ord. of 8-26-85, § 3.7; Ord. of 3-23-92; Ord. of 2-28-2005)

Sec. 18-122. When sewers not available.

- a. Where sewers are inaccessible, such building shall comply with the following:
 1. All sewage shall discharge into a private sewage disposal works of a design and capacity approved by the plumbing inspector;
 2. The overflow from such private sewage disposal works shall not empty into any public street or on any public place nor in any natural waterway nor on any private property

unless filtered or otherwise treated and purified in a manner approved by the health officer.

- b. Whoever violates any of the provisions of this section shall upon conviction be punished by a fine of not more than one hundred dollars (\$100.00) plus costs which fine shall be recovered on complaint to the use of the town.

(Code 1966, Ch. 304, §§ 2, 3)

Sec. 18-123. Building permits.

No building permit shall be issued for a new dwelling or structure requiring sanitary facilities within the town unless a permit for wastewater disposal by public sewer connection or subsurface wastewater disposal system has been issued.

(Ord. of 8-26-85, § 4.4)

Sec. 18-124. Permit required.

No person other than authorized town personnel shall uncover, make any connections with or opening into, use, alter or disturb any public sewer or appurtenances thereof without first obtaining a written permit from the sewer superintendent. A permit and inspection fee shall be paid to the town as specified which is on file in the town clerk's office.

(Ord. of 8-26-85, § 4.1)

Sec. 18-125. Costs by owner.

All costs and expenses incident to the installation, connection and maintenance of the building sewer shall be borne by the owner. The owner shall indemnify the town from any loss or damage that may be directly or indirectly occasioned by the installation, connection or maintenance of the building sewer.

(Ord. of 8-26-85, § 4.2)

Sec. 18-126. Excavations.

All excavations made on town property or within the highway right-of-way shall be made in accordance with current best practices of safety for the traveling public. Additionally, the contractor is required to conform to the town's ordinance for road opening permits. Public property disturbed in the course of any such work shall be restored in a manner satisfactory to the director of public works. A contractor must present a certificate of insurance showing minimum liability coverage of one hundred thousand dollars (\$100,000.00)/three hundred thousand dollars (\$300,000.00) for bodily injury and a minimum liability coverage of twenty-five thousand dollars (\$25,000.00) for property damage including collapse and underground coverage before a permit will be issued for construction of building sewers or sewer extensions. Sewer extensions may require higher coverage if recommended by the engineer.

(Ord. of 8-26-85, § 4.3)

Cross reference— Excavations, § 14-79 et seq.

Sec. 18-127. Independent sewer required.

A separate and independent building sewer shall be provided for every building, except where one (1) building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard or driveway. In such cases the building sewer from the front building may be extended to the rear building with the approval of the sewer superintendent and the whole considered as one (1) building sewer except for purposes of permit fees and connection charges established under Sec. 18-131 and sewer service charges established under Sec. 18-160.

(Ord of 8-26-85, § 5.2)

Sec. 18-128. Use of old sewers.

Old building sewers may be used in connection with new buildings only when they are found, on examination and test satisfactory to the sewer superintendent to meet all requirements of this article.

(Ord. of 8-26-85, § 5.3)

Sec. 18-129. Connection to force mains.

Building sewers, private and public may connect to a force main if the main is two and one-half (2½) inches or less.

(Ord. of 8-26-85, § 5.4)

Sec. 18-130. Inspection of building sewer.

The applicant for a building sewer permit shall notify the sewer superintendent when the building sewer is ready for inspection. The connection to the public sewer shall be made under the inspection of the sewer superintendent. When trenches are open for the laying of building sewer pipes, such trenches shall be inspected by the sewer superintendent before the trenches are filled. The person performing such work shall notify the sewer superintendent when the installation of the building sewer is completed. If the trench is filled before inspection, the sewer superintendent may require it to be reexcavated for inspection.

(Ord. of 8-26-85, § 9.1)

Sec. 18-131. Connection charges; permit fees; accounting.

- a. A schedule of permit fees and connection charges established for the connection of any building or property to a sanitary, combined or interceptor sewer within the town whether constructed by the town or the Portland Water District or conveyed to the town is on file in the town clerk's office.
- b. Permit fees and connection charges shall be due and payable upon application for a sewer connection permit. The town council may by order readjust the amounts of the connection charges according to the then-prevailing costs of construction and the anticipated number of such connections. Such connection charges shall not be required for connections from any property assessed for a portion of the cost of sewer construction under Sec. 18-233
- c. The funds collected by the town as sewer connection charges shall be placed in a separate fund for future sewer construction, sewer debt retirement, contributions to sewer capital costs and any other sewer-related purposes which do not conflict with the Clean Water Act, 33 U.S.C. § 1251 et seq., or its successor provisions and applicable federal regulations.

Sec. 18-132. Private collector sewers.

Private collector sewers which conduct sewerage from building sewers to an interceptor are not the preferred method of servicing houses, buildings and other properties. However, they may be allowed with the approval of the superintendent provided that the buildings to be connected are under common ownership at the time of application and remain under common ownership; and provided that the buildings to be connected via one (1) sewer connection shall be located on one (1) legal lot. The owner or owners of the proposed private collector sewer shall submit to the superintendent the following as part of the application for approval:

1. Plans, prepared by a Maine registered professional engineer, showing the proposed layout, including existing and to be constructed infrastructure;
2. An evaluation, prepared by a Maine registered professional engineer, of all existing private infrastructure proposed as part of the private collector sewer for size, pitch and integrity; any needed improvements to existing private infrastructure; and a cost comparison for connecting to the public sewer by individual service lines versus connecting by the proposed private collector; and
3. An agreement, in a form recordable at the Cumberland County Registry of Deeds, regarding the ownership of and maintenance responsibility for the proposed private collector. The agreement shall contain a statement acknowledging that the town will have no maintenance responsibility for the private collector.

The superintendent shall approve the proposed private collector unless the superintendent finds that the collector will not function properly; will not be more cost effective than individual service lines; will risk harm to or interfere with the public sewer system; will not be properly maintained; or will otherwise pose a risk to public health, safety and welfare. Each house, building or property connected to the public sewer by a private collector shall pay the normal individual sewer connection, service, user, and inspection fees. No building permit for a house, building or other property to be connected to the public sewer by a private collector may be issued until the private collector has been approved by the superintendent.

Exceptions to the foregoing may be made and the use of a private collector sewer allowed by the superintendent if:

- a. The private collector sewer, with property stubs, was constructed prior to June 13, 2004 and meets the criteria of subsections (1) and (3) above;
- b. The construction of the private collector sewer and stubs is in compliance with the plans and town standards; and
- c. No properties will be served by the private collector sewer other than those that were intended to be served by the private collector sewer as constructed and that are parties to the original maintenance agreement for the private collector sewer.

(Ord. of 6-14-2004)

Sec. 18-133. Connection of septic tanks.

No septic tank may be connected to a public sewer. Septic tanks connected to a public sewer on the effective date of this section shall be disconnected from the sewer within two (2) years of the effective date of this section and the septic tank shall [be] cleaned of sludge and filled with clean back-run gravel or dirt or shall be removed. Septic tanks connected to a private sewer system which is accepted by the Town as a public sewer after the effective date of this section shall be disconnected from the sewer within two (2) years of the acceptance and decommissioned as herein provided. Violations of this section shall be punishable pursuant to Sec. 18-55 and 30-A M.R.S.A. § 4452.

(Ord. of 1-11-2010)

Secs. 18-134—18-159. Reserved.

FOOTNOTE(S):

--- (4) ---

Cross reference— Provisions for notices for nuisances, signs, dangerous, unsafe, dilapidated buildings, and any other action the expense of which may be collected from the property owner, § 2-3; buildings and building regulations, Ch. II-4; state plumbing code adopted, § 4-75.

DIV. II-18-2-4. SERVICE CHARGES

Sec. 18-160. Sewer service charges.

A schedule of sewer service rates established for the use of the sewage works in the town by residential, commercial, multiple-family, multiplex, restaurant and school users and for disposal of septic tank wastes from town properties and wastes from holding tanks of boats in Falmouth Harbor, is on file in the town clerk's office. The town council may by order readjust this rate schedule according to the then-prevailing cost of the sewage works provided that the source of not less than ninety (90) percent of the revenues needed for retiring debt service, capital expenditures, operation and maintenance of the sewage works shall be such sewer service charges.

(Ord. of 8-26-85, § 6.1)

Editor's note—

At the request of the city, as of 4-6-09, the specific sewer rate fees found in the Ord. of 7-23-2007 have been removed from this section.

Secs. 18-160.1, 18-160.2 Reserved.

Editor's note—

At the request of the city, as of 4-6-09, §§ 18-160.1, 18-160.2, which pertained to sewer service rates have been removed from this Code. As per § 18-160, a schedule of sewer service rates is on file in the town clerk's office.

Sec. 18-161. Assessment and bill procedure.

Sewer service charges shall be assessed in the following manner:

1. Annual charges shall be based on a flat rate or on water usage in accordance with a schedule of charges established by order of the town council.

2. All properties with buildings that are connected and that have plumbing whether occupied or unoccupied shall pay the minimum charge.
3. All sewer charges shall be committed to the treasurer of the town for collection. The town council may authorize delegation of billing and collection functions to the Portland Water District.
4. An interest charge at the same rate as established by the town council for uncollected taxes shall be paid on all bills not paid within thirty (30) days after date of billing.

(Ord. of 8-26-85, §§ 6.2—6.4; Ord. of 12-16-96; Ord. of 8-22-2005)

Sec. 18-162. Sewer liens.

There shall be a lien on real estate served or benefited by the sewer and sewer disposal system to secure the payment of service charges duly established hereunder which shall take precedence over all other claims on such real estate excepting only claims for taxes. The town treasurer shall have the same authority and power to collect such service charges as are granted by 38 M.R.S.A. § 1208 to treasurers of sanitary sewer districts. In addition to the lien established hereby, the town may maintain a civil action against the party so charged for the

amount of the sewer charges in any court competent to try the same and in such action may recover the amount of such charge with legal interest on the same from the date of the charge and costs.

(Ord. of 8-26-85, § 6.5)

Sec. 18-163. Special service charge for industry.

A special sewer charge shall be established for any industrial firm or organization who by virtue of the volume, strength or unusual characteristic of their waste alone would overload or upset the capacity or efficiency of the sewerage works or any part thereof if such waste entered the public sewer or whose waste disposal situation is such that it would be in the public interest to waive the basic requirements. The town council, after appropriate study, and advice from the sewer superintendent, shall establish a special sewer service charge to the industrial firm by separate agreement with the firm. The applicable portions of the preceding sections, as well as the equitable rights of the public shall be the basis for such an arrangement.

(Ord. of 8-26-85, § 6.6)

Sec. 18-164. Use of charges.

The charges and assessments levied pursuant to this division shall be used in a manner which is consistent with the Clean Water Act, 33 U.S.C. § 1251 et seq., and all other applicable federal regulations.

(Ord. of 8-26-85, § 6.7)

Sec. 18-165. Reserve fund.

A portion of the funds collected pursuant to this division shall be placed in a separate reserve fund for repairs and improvements to and replacement of the public sewage works and other necessary capital expenses. The contribution to the reserve fund shall be determined on a year-to-year basis.

(Ord. of 8-26-85, § 6.8)

FOOTNOTE(S):

--- (5) ---

Cross reference— Finance, § 16-40 et seq.

DIV. II-18-2-5. DISCHARGE REGULATIONS

Sec. 18-190. Discharges to the public sewer.

- a. 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:

Constituents	Permissible range
Suspended solids	180 to 350 ppm
B.O.D.	140 to 300 ppm
Chlorine requirements	5 to 15 ppm

1. Any liquid or vapor having a temperature higher than one hundred fifty (150) degrees Fahrenheit;
2. Any waters or wastes which contain grease or oil or other substances that will solidify or become discernably viscous at temperatures between thirty-two (32) and one hundred fifty (150) degrees Fahrenheit;
3. Any waters or wastes containing fats, grease, oils, whether emulsified or not, exceeding an average of fifty (50) parts per million (four hundred seventeen (417) pounds per million gallons) ether soluble matter;
4. Any gasoline, benzine, naphtha, fuel oil, mineral oil or other flammable or explosive liquid, solid or gas;
5. 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 wastes is capable of creating a public nuisance or hazard to life or of preventing entry into sewers for their maintenance and repair;
6. Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor of three-fourths horsepower or greater shall be subject to the review and approval of the sewer superintendent;
7. Any ashes, cinder, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastic, cardboard, wood, paunch manure, hair and fleshings, entrails, lime slurry, lime residues, beer or distillery slops, whey, chemical residues, paint residues, cannery waste, bulk solids 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 sewerage works;
8. Any waters or wastes, acid and alkaline in reaction, having corrosive properties capable of causing damage or hazard to structures, equipment or personnel of the sewage works. Free acids and alkalies must be neutralized at all times with a permissible pH range of 6.0 to 9.5;

9. Any cyanides in excess of two (2) parts per million by weight as CN;
10. Any long half-life (over 100 days) of toxic radioactive isotopes without a special permit;
11. Any waters or wastes that for a duration of fifteen (15) minutes has a concentration greater than five (5) times that of normal sewage as measured by suspended solids and B.O.D. and/or which is discharged continuously at a rate exceeding one thousand (1,000) gallons per minute except by special permit. Normal sewage shall be construed to fall within the following ranges:

Constituents	Permissible range
Suspended solids	180 to 350 ppm
B.O.D.	140 to 300 ppm
Chlorine requirements	5 to 15 ppm

12. Any stormwater, roof drainage, spring water, cistern or tank overflow, footing drain, discharge from any vehicle wash rack or water motor or the contents of any privy vault, septic tank or cesspool or the discharge effluent from any air conditioning machine or refrigeration unit.
- b. No person shall discharge or cause to be discharged any waters or wastes containing a toxic or poisonous substance, a high chlorine demand or suspended solids in sufficient quantity to injure or interfere with any sewage 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. Such toxic substances shall be limited to the average concentrations listed hereinafter in the sewage as it arrives at the treatment plant and at no time shall the hourly concentration at the sewage treatment plant exceed three (3) times the average concentration. If concentrations listed are exceeded, individual establishments will be subject to control by the sewer superintendent in volume and concentration of wastes discharged.

Limits of toxic substances in sewage

Iron, as Fe5.0 ppm

Chromium, as Cr (hexavalent)3.0 ppm

Copper, as Cu1.0 ppm

Chlorine requirements15.0 ppm

Phenol10.0 ppm

Cyanide, as CN0.5 ppm

Cadmium, as Cd0.5 ppm

Zinc, as ZN0.5 ppm

Nickel1.5 ppm

- c. The admission into the public sewers of any waters or wastes having a five-day biochemical oxygen demand greater than three hundred (300) parts per million; or containing more than three hundred fifty (350) parts per million of suspended solids or containing more than fifteen (15) parts per million of chlorine requirement or containing any quantity of substances having the characteristics described in (a) and (b) above or having an average daily flow greater than two (2) percent of the average daily sewage flow of the town shall be subject to the review and approval of the engineer. Where necessary, in the opinion of the engineer, the owner shall

provide at his expense such preliminary treatment as may be necessary to reduce the biochemical oxygen demand to three hundred (300) parts per million and the suspended solids to three hundred fifty (350) parts per million by weight or reduce the chlorine requirements to fifteen (15) parts per million or reduce objectionable characteristics or constituents to within the maximum limits provided for in (a) above or control the quantities and rates of discharge of such waters or wastes. Plans, specifications and any other pertinent information relating to proposed preliminary treatment facilities shall be submitted for the approval of the sewer superintendent. No construction of such facilities shall be commenced until the approvals are obtained in writing. Failure to comply with one (1) or more of the remedial procedures as required will constitute a violation of this article.

- d. All measurements, tests and analyses of the characteristics of waters and wastes to which reference is made in (a) through (c) above shall be determined in accordance with Standard Methods for the Examination of Water and Sewerage upon suitable samples taken at control manholes provided for in Sec. 18-194. In the event that no specific manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected.

(Ord. No. 8-26-85, App. 2)

Sec. 18-191. Prohibited discharges to sewer.

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 sanitary sewer.

(Ord. of 8-26-85, § 7.1)

Sec. 18-192. Storm sewer discharges.

Industrial cooling water or unpolluted process waters may be discharged on approval of the town engineer, to a storm sewer or natural outlet. The sewer superintendent may sample industrial cooling water or unpolluted process waters as mentioned in this division. Records of such sampling shall be made available on request to other agencies having jurisdiction over the discharges to the receiving waters.

(Ord. of 8-26-85, § 7.2; Ord. of 4-25-2005, § 2)

Sec. 18-193. Preliminary treatment.

- a. Grease, oil and sand interceptors shall be provided when they are necessary for the proper handling of liquid waters containing grease in excessive amounts or any flammable wastes, sand and other harmful ingredients except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the sewer superintendent and shall be located as to be readily and easily accessible for cleaning and inspection.
- b. Grease and oil interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperatures. They shall be of substantial construction, watertight and equipped with easily removable covers which when bolted in place shall be gastight and watertight.
- c. Where installed, all grease, oil and sand interceptors shall be maintained by the owner at his expense in continuously efficient operation at all times and shall be readily accessible and open to inspection by the sewer superintendent at any time.

(Ord. of 8-26-85, § 7.3)

Sec. 18-194. Manhole required.

When required by the sewer superintendent, the owner of any property other than a single-family residence shall install a suitable control manhole in the building sewer to facilitate observation, sampling and measurement of the wastes. Such a manhole, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans approved by the sewer superintendent. The manhole shall be installed by the owner at his expense and shall be maintained by him so as to be safe and accessible at all times.

(Ord. of 8-26-85, § 7.4)

Secs. 18-195—18-229. Reserved.

FOOTNOTE(S):

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Cross reference— Buildings and building regulations, Ch. II-4; marine activities, structures, and ways, Ch. II-9; mobile homes and mobile home parks, Ch. II-11; nuisances, Ch. II-12; solid waste, Ch. II-13; swimming pools, Ch. II-15; zoning and site plans and flood prevention and protection regulations, Ch. II-19.

DIV. II-18-2-6. EXTENSIONS

Sec. 18-230. Sewer extended by public contract.

Sewer extensions including individual building sewers from the sewer to the property line may be contracted by the town under public contract if in the opinion of the town council, the number of properties to be served by such extension warrants its cost. Under this arrangement, the property owner shall pay for and install the building sewer from the public sewer to his residence or place of business in accordance with the requirements of Sec. 18-124 et seq. Property owners may propose sewer extensions within the incorporated town by drafting a written petition, signed by a majority of the benefiting property owners and filing it with the town council.

(Ord. of 8-26-85, § 8.1)

Sec. 18-231. Private extensions to the public sewer.

If the town does not elect to construct a public sewer extension under public contract, the property owners, builders or developers may request permission from the town council to construct the sewer extension at their own expense. The town council may grant or deny the request as it deems to be in the best interest of the town and may impose such reasonable conditions as it deems necessary to protect the interests of the town including, without limitation, conditions, requiring the applicant to provide the town with an irrevocable letter of credit or other form of security to ensure proper completion of the project. If an extension is approved by the town council under this paragraph, the property owners, builders or developers must pay for the entire installation, including all expenses incidental thereto. A permit shall be required for each building sewer as required in Sec. 18-124. Design and construction of sewers shall be in accordance with design and construction specifications which shall be given to the property owner, builder or developer at the time the permit is obtained. The installation of the sewer extension shall be subject to periodic inspection by the sewer superintendent and the expenses for this inspection shall be paid for by the owners, builders or developers. The sewer superintendent's decisions shall be final in matters of quality and methods of construction. The cost of sewer extensions thus made, including all building sewers, shall be absorbed by the developers or the property owners.

(Ord. of 8-26-85, § 8.2)

Sec. 18-232. Acceptance of private extensions to the public sewer.

All sewer extensions, including pumping stations, constructed by the property owner, builder or developer after final approval of the sewer superintendent, shall become the property of the town within a time period of six (6) months and shall thereafter be maintained by the town. The sewers or pumping stations, after their acceptance by the town, shall be guaranteed against defects in materials and workmanship for twelve (12) months. The guarantee shall be in the form of a maintenance guarantee bond in an amount not less than ten (10) percent of the engineer's estimate of the cost of the extension. Two (2) mylar two-foot by three-foot copies of as-built plans shall be supplied.

(Ord. of 8-26-85, § 8.3)

Sec. 18-233. Exemption from connection charges.

Any property owner, builder or developer who constructs, or contractually participates in the construction of a sewer extension pursuant to Sec. 18-231 which sewer extension is then conveyed to the town shall not be charged a sewer connection fee under Sec. 18-131.

(Ord. of 8-26-85, § 8.4)

Sec. 18-234. Special assessments for sewer extensions.

- a. When a sewer extension project has been completed by public contract, the town council may assess up to one-half of the cost of the project against the benefited properties in accordance with state statutes. The amount of the assessment on each property shall be determined by the town council on a just and equitable basis. Notwithstanding the foregoing, when seventy-five (75) percent or more of the landowners that will be benefitted by the project petition the town council to construct the project and agree in the petition to pay an assessment higher than one-half the cost, then the town council may assess such higher amount. All assessments made upon parcels of land under this article shall create a lien for the benefit of the town.
- b. Upon written application of the owner of any real estate subject to an assessment for a sewer extension under this section or for the abatement of a malfunctioning domestic sewage disposal unit under 30-A M.R.S.A. § 3428(4), the town council may provide that such

assessments be paid over ten (10) years in annual installments with interest at a rate established by order of the town council.

- c. When an owner of real estate assessed under this section feels that the assessment effects a hardship on him, he may make a written request to the town council to determine the existence of a hardship. There shall be a prima facie case of hardship in cases in which a parcel of real estate used as a lot for a single-family residence is subject to an assessment which is based in part on the potential for division of that parcel of real estate into additional lots. In such cases, the town council may defer payment of a portion of the assessment attributable to the potential additional lots, together with interest thereon, for a period of time not to exceed ten (10) years or until the real estate is subdivided, developed or sold, whichever occurs first. As a condition to any deferral of payment of an assessment under this subsection, the owner shall agree in writing to the proposed method of payment and shall execute a promissory note to the town securing his obligation. Notice of the lien of the town and of the written agreement of the owner to the proposed method of payment shall be recorded in the Cumberland County Registry of Deeds. In addition to the lien established hereby and any other statutory remedies, the town may maintain a civil action against any party subject to assessment under this article for the amount of the assessment in any court competent to try the same and in such action may recover the amount of the assessment with interest from the date of assessment and costs.

(Ord. of 8-26-85, § 8.5; Ord. of 2-24-92)

Sec. 18-235. Sewer improvement benefit district impact fee.

- a. The town council may establish sewer improvement benefit districts, hereinafter referred to as "benefit districts," in such areas of the town as the council may from time to time determine. Such benefit districts shall consist of areas which will be served or have recently been served by sewer infrastructure improvements, including sewer extension completed by public contract, increased capacity of existing public sewers, and other improvements to existing sewers, such as pumping stations.
- b. Within each benefit district, an impact fee shall be charged to commercial, industrial, institutional and residential developments which are issued building permits within twenty (20) years after the establishment of the benefit district. Payment of the impact fee shall be a prerequisite to obtaining a building permit.
- c. A schedule of impact fees shall be established by the town council after receiving a recommendation from the planning board. In determining the impact fees to be charged, the council and the planning board shall employ the methodology set forth in section 12 of the Falmouth Subdivision Ordinance, "Negotiated Exactions," so are as may be applicable and such other methodologies as they deem appropriate in order to calculate an impact fee which reflects each development's fair share of the cost of the sewer infrastructure improvement. Such cost or anticipated cost, if not already constructed, shall include actual and/or anticipated construction, engineering, design and financing expenses. The cost of infrastructure improvements within the benefit district completed within five (5) years prior to establishment of the benefit district and in anticipation of growth within the benefit district may be included in the costs used for determining impact fees. Impact fees charged to development may include adjustments for time-price differentials using the coupon issue yield equivalent of the fifty-two-week United States Treasury Bills (one-year treasury rate) as an index in order to achieve equity among fees paid at different times.
- d. For uses existing at the time of establishment of the benefit district or for which a building permit had been issued prior to the establishment of the benefit district, an assessment pursuant to 30-A M.R.S.A. § 3442 shall be charged in lieu of an impact fee. Any property charged an impact fee which has paid an assessment pursuant to 30-A M.R.S.A. § 3442 shall

receive a credit against the impact fee in an amount equal to the assessment paid for potential additional development.

- e. All impact fees paid shall be placed in a fund segregated from the town's general revenues and may be expended solely for the purposes for which they were collected including, without limitation, retirement of debt or reimbursement for costs incurred by the town for construction of the sewer improvement which benefits the property against which the impact fee is charged.
- f. Impact fees collected for a sewer improvement under this section which have not been expended on that improvement within twenty (20) years of establishment of the benefit district shall be refunded. When impact fees collected equal the cost of the sewer infrastructure improvements, the town shall cease collecting impact fees within the benefit district and the town council shall dissolve the district.

(Ord. of 1-28-91)

Sec. 18-236. Sewer improvement benefit districts established.

There are hereby established within the town the following sewer improvement benefit districts within which impact fees shall be charged in amounts established by order of the town council pursuant to Sec. 18-235(c) and kept on file in the office of the town clerk:

1. *Johnson Road East Benefit District.* A Johnson Road East Benefit District is established consisting of the area east of U.S. Route One in the vicinity of the sewer extension constructed in 1989 along Johnson Road, east of U.S. Route One, and along Shady Lane and Valley Avenue (hereinafter the "Johnson Road East Sewer Extension"). An impact fee shall be charged to developments within the Benefit District as provided in Sec. 18-235(b) provided the development connects to the Johnson Road East Sewer Extension. (This Johnson Road East Benefit District was established by vote of the town council on December 15, 1992).

(Ord. of 12-15-92)

FOOTNOTE(S):

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Cross reference— Provisions for notices for nuisances, signs, dangerous, unsafe, dilapidated buildings, and any other action the expense of which may be collected from the property owner, § 2-3; buildings and building regulations, Ch. II-4; streets, § 14-40; finance, § 16-40 et seq.

CH. II-19 ZONING AND FLOODPLAIN MANAGEMENT

FOOTNOTE(S):

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Editor's note— The zoning, flood prevention and protection and site plan regulations of the town are not printed in this Code, but are on file in the town clerk's office.

Editor's note— At the city's instruction, Ord. of Sept. 24, 2007, Arts. I—XV, set out provisions intended for inclusion with Ch. II-19. For purposes of clarity, and at the editor's discretion, these provisions have been included as Art. II-19-2.

Cross reference— Boundaries of the town, § 2-2; provisions for notices for nuisances, signs, dangerous, unsafe, dilapidated buildings, and any other action the expense of which may be collected from the property owner, § 2-3; board of appeals, § 2-60 et seq.; parks and community programs advisory committee, § 2-85 et seq.; planning board, § 2-95 et seq.; waterfront and harbor committee, § 2-115 et seq.; division of planning, § 2-246; division of code administration functions, § 2-248; animals, Ch. II-3; buildings and building regulations, Ch. II-4; condominium conversion regulations, § 4-100 et seq.; land subdivision, Ch. II-7; licenses, permits and business regulations, Ch. II-8; marine activities, structures and ways, Ch. II-9; junked and abandoned motor vehicles prohibited on public and private property, § 12-3; solid waste regulations, Ch. II-13; swimming pools, Ch. II-15; traffic and motor vehicles, Ch. II-17; utilities, Ch. II-18; certain discharges into the public sewer system prohibited, § 18-190 et seq.

ART. II-19-1. IN GENERAL

Div. II-19-1-1. Purposes, Authority, Scope and Intent

Conflict of Laws, Validity, Severability

Sec. 19-1 Purposes.

This Falmouth Zoning and Site Plan Review Ordinance and its regulations are designed for all the purposes of zoning embraced in Maine Revised Statutes, among other things: to promote and conserve the health, safety, convenience, and welfare of the inhabitants; to encourage the most appropriate interrelationships of land uses and groups of land uses in the various parts of the town; to secure safety from fire, panic, epidemics, flooding and other dangers; to provide adequate access of light and air; to prevent overcrowding of real estate; to lessen congestion in the streets; to facilitate the adequate provisions of transportation, water, sanitary facilities, schools, parks and other public requirements, to strengthen the economic base and enhance the appearance of the business and commercial districts throughout the town; to protect significant natural, historic, and cultural resources, to preserve open space, and to preserve and increase amenities throughout the Town of Falmouth [Amended, 4/27/87; 12/22/05]

Effective on: 12/9/2013

Sec. 19-2 Applicability.

Under the authority of the Title 30 M.R.S.A. 1917 and 4962, any other enabling statutes, and all amendments thereto, the Town of Falmouth hereby regulates pursuant to this Ordinance the inspection, materials, construction, demolition, alteration, repair, height, bulk, area, ground coverage, location and use of buildings and structures, and the use of land, throughout the Town; and also hereby divides the Town into districts of defined and described herein, and shown on an official copy of the Town zoning map, as amended, including the Resource Conservation Zoning Overlay District Map, on file with the Town Clerk which map is hereby incorporated into this Ordinance. [Amended 12/22/05]

Effective on: 12/9/2013

Sec. 19-3 Conflicting Provisions.

In general, this Ordinance is complementary to other Falmouth ordinances affecting the use, height, area and location of buildings and the use of land, but where this Ordinance imposes a greater restriction in any respect than is imposed by other laws, the provisions of this Ordinance shall control.

Effective on: 12/9/2013

Sec. 19-4 Severability.

The invalidity of any section or provision of this Ordinance shall not affect the validity of any other section or provision.

Effective on: 12/9/2013

Sec. 19-5 Prohibited Uses.

It is the intent of this Ordinance that any use not specifically allowed as either a permitted use or a conditional use is specifically prohibited. The Town Council may amend this Ordinance to allow other permitted uses and conditional uses pursuant to Section 19-168.

Effective on: 12/9/2013

Div. II-19-1-2. Definitions

The word "shall" is mandatory and the word "may" is permissive. Terms not defined shall have the customary dictionary meaning. Other terms shall be defined as provided in this section.

Accessory Animal Husbandry Use: Activities located on the same lot(s) of an operating animal husbandry operation that are subordinate and related to the primary use of animal husbandry and limited to:

- A. indoor and outdoor agricultural education and
- B. the processing, packaging and storage of fiber from animals raised on the premises. [Adopted 7/10/17]

Effective on: 7/10/2017

Accessory Apartment: A separate and subordinate dwelling unit located within a single family detached dwelling. [Amended 5/24/04]

Effective on: 12/9/2013

Accessory Building or Use: A subordinate building or use customarily incidental to, and located on the same lot with, the main building or use, such as a garage, workshop, and the like.

Effective on: 12/9/2013

Accessory Cottage: A separate and subordinate dwelling unit that is located on the same lot as a single family detached dwelling but is contained in a detached garage or other out building, or is its own structure. [Adopted 5/24/04]

Effective on: 12/9/2013

Accessory Dwelling Unit: An Accessory Apartment or Accessory Cottage. [Adopted 5/24/04]

Effective on: 12/9/2013

Accessory Farm Use: Activities located on the same lot(s) as an operating farm that are subordinate and related to the primary use of farming and limited to:

- A. indoor and outdoor agricultural education;
- B. processing, packaging and storage of crops grown on the premises;
- C. lease or rent of garden plots to the public and

D. pick-your-own operations. [Adopted 7/10/17]

Effective on: 7/10/2017

Acre: A measure of land containing 43,560 square feet.

Effective on: 12/9/2013

Affordable Housing: Decent, safe, and sanitary dwellings, apartments or other living accommodations for households making at or below eighty (80%) percent of the median household income as determined by the Maine Department of Economic and Community Development. [Adopted 3/27/89]

Effective on: 12/9/2013

Aggrieved Person or Party: A person who participated in a hearing, if one is held under this ordinance, and who suffers a particularized injury as a result of the grant or denial of a permit, approval, or variance under this ordinance.

Effective on: 12/9/2013

Agricultural Education: The teaching of farming, animal husbandry, natural resources and land management through hands on experience and guidance. [Adopted 7/10/17]

Effective on: 7/10/2017

Agriculture: The production, keeping or maintenance for sale or lease, of plants and/or animals, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock; fruits and vegetables; and ornamental and green house products. Agriculture does not include forest management and timber harvesting activities (applies to Shoreland Zoning, Div. II-19-1-7). [Adopted, 5/27/92]

Effective on: 12/9/2013

Alteration: A change, addition, or modification, requiring construction, including any change in the location of structural members of buildings such as bearing walls, columns, beams, or girders, but not including cosmetic or decorative changes.

Effective on: 12/9/2013

Animal Husbandry: Boarding, raising, breeding or keeping of animals, fowl or birds, for commercial purposes including, without limitations, swine, poultry, cattle and horses.

Effective on: 12/9/2013

Antenna: A system of electrical conductors that emit or receive radio waves, including microwave dishes. [Adopted, 7/23/90]

Effective on: 12/9/2013

Aquaculture: the growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species (applies to Shoreland Zoning, Div. II-19-1-7). [Adopted 5/27/92]

Effective on: 12/9/2013

Art & Craft Studio: A business or commercial establishment which provides working space for artists or craftspeople including facilities for classes or demonstrations and the sales of foods. Activities may include the sales of supplies or materials necessary for these activities. [Effective 1/25/88]

Effective on: 12/9/2013

Assisted Living Facility: A residential facility that provides a State licensed program of assisted living services to consumers in private apartments in buildings that include a common dining area. Services include medication management, 24-hour supervision, and assistance with the activities of daily living, social activities, transportation and other health-related services. [Adopted 10/13/09]

Effective on: 12/9/2013

Attic: The unfinished portion or portions of a building which are located immediately below and wholly or partly within the roof framing.

Effective on: 12/9/2013

Automobile Dealership: A facility that sells or leases new or used automobiles, light trucks or other similar motorized transportation vehicles. The facility may maintain an inventory of the vehicles for sale or lease on site and may provide on-site facilities for the repair and service of the vehicles as an accessory use. [Adopted 5/13/13]

Effective on: 12/9/2013

Automobile Graveyard: A yard, field, or other area used as a place of storage for three or more unserviceable, discarded, worn-out or junked automobiles.

Effective on: 12/9/2013

Ballet Arts Facility: A business establishment engaging in dance instruction and performances in ballet, tap, jazz and modern dance; or theatrical performances. [Adopted 5/24/04]

Effective on: 12/9/2013

Bank of Parking: One row of parking, including access, in front of a building's primary façade, regardless of angle. [Adopted 5/13/13]

Effective on: 12/9/2013

Basement: A space underneath a building having at least one-third (1/3) but not more than two-thirds (2/3) of its floor to ceiling height above the average finished grade within twenty (20) feet of the building and with a floor to ceiling height of not less than six and one half (6 1/2) feet.

Effective on: 12/9/2013

Bed and Breakfast Establishment: A business, whether carried on in a commercial building or dwelling, which has a maximum of eight (8) bedrooms and which provides overnight accommodations and breakfast, but no other meals or cooking facilities, to guests for compensation. No guest may stay longer than seven (7) consecutive nights. [Amended, 5/27/93]

Effective on: 12/9/2013

Board: The Board of Zoning Appeals of the Town of Falmouth.

Effective on: 12/9/2013

Boat Launching Facility: A facility designed primarily for the launching and landing of watercraft, and which may include an access ramp, docking area, and parking spaces for vehicles and trailers (applies to Shoreland Zoning, Div. II-19-1-7). [Adopted 5/27/92]

Effective on: 12/9/2013

Building: Any structure designed or intended for the shelter, housing or enclosure of persons, animals, processes, equipment or property of any kind.

Effective on: 12/9/2013

Building Inspector: The Building Inspector of the Town of Falmouth, also referred to as the Code Enforcement Officer.

Effective on: 12/9/2013

Built, Erected: The words "built" and "erected" shall each contain the other and shall include the words "constructed," "reconstructed," "altered," "enlarged," "moved," and any others of like significance.

Effective on: 12/9/2013

Business and Professional Offices: The place of business of doctors, lawyers, accountants, financial advisors, architects, surveyors, real estate and insurance businesses, psychiatrists, counselors, and the like, or in which a business conducts its administrative, financial or clerical operations including banks and other financial services. [Amended, 7/22/91, 5/27/93].

Effective on: 12/9/2013

Car Wash: An establishment engaged in the washing of motor vehicles.

Effective on: 7/24/2017

Cellar: A space, underneath a building, with less than one-third of its floor to ceiling height above the average finished grade within twenty (20) feet of the building or with a floor to ceiling height of less than six and one half (6 1/2) feet.

Effective on: 12/9/2013

Cemetery: Property used for the interring of the dead.

Effective on: 12/9/2013

Change in Use: The change from an existing use to another use, including without limitation, the addition of a new use to an existing use.

Effective on: 12/9/2013

Channel: A water-course between defined banks created by the action of surface water and characterized by the lack of terrestrial vegetation and by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil parent material or bedrock.

Effective on: 12/9/2013

Church: A building or structure, or groups of buildings or structures, designed, primarily intended or used for the conduct of religious services and accessory uses associated therewith.

Effective on: 12/9/2013

Coastal high hazard area: The portion of the 100-year floodplain that is subject to storm related coastal flooding and that is identified as a coastal high hazard area on the most recent version of the FEMA floodplain maps for Falmouth. [Adopted 12/22/05]

Effective on: 12/9/2013

Code Enforcement Officer: Code Enforcement Officer of the Town of Falmouth, also referred to as the Building Inspector.

Effective on: 12/9/2013

Commercial School – A for-profit business facility or institution which provides instruction or tutoring by previous arrangement for a particular skill or subject to a group of students in a classroom or similar type setting and may include private lessons as an ancillary service. By way of example only, commercial schools may include schools for performing arts, fine arts, photography, driving, pottery, business, beauty, sports, language or driving.

Effective on: 12/9/2013

Common Open Space: Land within or related to a subdivision that is set aside to conserve natural resource, scenic, cultural, historic, or archeological values, provide active or passive recreation, or accommodate support facilities related to the subdivision, and that is restricted from significant development or intensive use except for approved recreational or support facilities and protected in perpetuity in a substantially undeveloped state through legally binding fee ownership or conservation easements. [Adopted 12/22/05]

Effective on: 12/9/2013

Conditional Use: A conditional use is a structure or use which is generally appropriate with restrictions in a given zone, which if controlled as location, size and off-site impacts may have no adverse effects upon the public health, safety or welfare. The only structures or uses which shall be permitted as conditional uses are those listed as conditional uses in Div. II-19-1-3 or specifically described as conditional uses in other provisions of this Ordinance.

Effective on: 12/9/2013

Conditional Rezoning: The process by which a property owner or developer, in consideration for the rezoning of his property, agrees to the imposition of certain conditions or restrictions not imposed on other similarly zoned properties.

Effective on: 12/9/2013

Congregate Housing: "Congregate Housing" means residential housing consisting of private apartments and central dining facilities and within which a congregate housing supportive services program serves elderly occupants. [Amended 10/13/09]

Effective on: 12/9/2013

Conservation Subdivision: A residential development, whether or not part of a subdivision and including private way developments, meeting the requirements of Section 19-18.5 in which a significant portion of the site is set as common open space and permanently protected. [Adopted 12/22/05, Amended 3/12/18]

Effective on: 3/12/2018

Country Estate Lot: An oversized residential lot that meets the requirements of Section 19-18.6 or 7. [Adopted 12/22/05]

Effective on: 12/9/2013

Country Estate Subdivision: A subdivision consisting of Country Estate lots meeting the requirements of Section 19-18.6. [Adopted 12/22/05]

Effective on: 12/9/2013

Currently Developed: Areas having at least one principal structure per five hundred (500) feet of shoreland or wetland frontage, when these areas extend for more than one thousand (1,000) feet (applies to Shoreland Zoning, Div. II-19-1-7). [Adopted 5/27/92]

Effective on: 12/9/2013

Day Care Center: A private establishment providing day care for 13 or more persons which charges for their care and holds all legally required licenses and approvals.

Effective on: 12/9/2013

Day Care Home: A private home providing day care for up to 12 persons which charges for their care and which holds all legally required licenses and approvals. A day care home may also include the part time care of up to 20 persons. Part time in this use shall mean: 1) 4 hours or less per day, per person, and 2) the total number of persons during the day not to exceed 20.

Effective on: 12/9/2013

Deck: A level structure adjacent to a building elevated above the surface of the ground which may have a railing, but no roof, awning or other covering.

Effective on: 12/9/2013

Decorative Changes: Repainting, residing, reroofing; adding, removing or replacing trim, railings, or other non-structural architectural details.

Effective on: 12/9/2013

Designated Great Pond, River, Saltwater Body, Stream or Wetland: A water body or area of land represented on the Official Zoning Map and subject to regulation under various provisions of Div. II-19-1-7 Shoreland Zoning of this Ordinance. [Adopted 5/27/92; amended 5/26/09]

Effective on: 12/9/2013

Diverse Housing: housing that is not age-restricted and is integrated with retail, service, office and/or restaurant uses in a mixed use development. [Adopted 5/24/04]

Effective on: 12/9/2013

Dormer: A dormer is a modification of a roof which increases the elevation of a portion of that roof for the purposes of providing either more interior space or a window.

Effective on: 12/9/2013

Drive-Through Facility: A use, otherwise allowed as a permitted or conditional use in the district where located, which is designed or used in such a manner as to permit customers or patrons to receive goods or services while remaining in their motor vehicles. [Adopted, 4/27/87]

Effective on: 12/9/2013

Dwelling: A structure or portion thereof containing one or more dwelling units, but not including a motel, hotel, boarding house, tourist home, mobile home, or similar structure.

Effective on: 12/9/2013

Dwelling, Multi-family: A building designed or intended to be used, or used exclusively for residential occupancy by three (3) or more families living independently of one another and containing three (3) or more dwelling units. [Amended 7/11/16]

Effective on: 7/11/2016

Dwelling, Single Family Detached: A building designed or intended to be used exclusively for residential occupancy by one family only and containing only one (1) dwelling unit, or one (1) dwelling unit with an accessory apartment as permitted under Section 19-55, including a manufactured housing unit with no horizontal dimension smaller than twenty-four (24) feet.

Effective on: 12/9/2013

Dwelling, Two-Family: A building designed or intended to be used, or used exclusively for residential occupancy by two (2) families living independently of one another and containing two (2) dwelling units, but excluding single-family dwellings with an accessory dwelling unit as permitted under Section 19-55. [Adopted, 4/4/05][Amended 7/11/16]

Effective on: 7/11/2016

Dwelling Unit: A room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time, and containing cooking, sleeping and toilet facilities. 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. [Amended 5/26/09, 05/09/16]

Effective on: 5/9/2016

Elderly Boarding Care: Care for persons over the age of 60 which is greater than that necessarily attendant upon mere eating and lodging services but which is less than that attendant upon nursing home or hospital care. Elderly boarding care may include personal supervision, protection from environmental hazards, diet care, grooming care, hand and foot care, skin care, mouth and teeth care, shampooing, bathing, assistance in ambulation, supervision and assistance in the administration of medications, diversional or motivational activities, and stimulation of, or assistance in, activities of daily living or physical exercise. [Adopted 5/28/96]

Effective on: 12/9/2013

Elderly Boarding Home: An owner occupied house having no more than four (4) elderly residents which for consideration is maintained wholly or partially for the purpose of providing elderly residents with boarding care. The term elderly boarding care does not include any facility otherwise providing residential services, health care, treatment, rehabilitation, or related services or other facilities within the definition of "health institution", as defined in this Ordinance. Conversion of a single family dwelling to use as an elderly boarding home shall not be considered an expansion or enlargement requiring approval under Div. II-19-1-6 provided there is no enlargement of the structure. [Adopted 5/28/96]

Effective on: 12/9/2013

Emergency Operations: Operations conducted for the public health, safety or general welfare, such as protection of resources from immediate distribution or loss, law enforcement, and operations to rescue human beings and livestock from the threat of destruction or injury.

Effective on: 12/9/2013

Essential Services: Facilities for the transmission or distribution of water, gas, electricity or communications or for the collection, treatment or disposal of wastes, including, without limitation, towers, poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm and police call boxes, traffic signals, hydrants and similar accessories but not buildings. Wastewater pump stations are not considered buildings for purposes of application of this definition. [Amended 7/28/14]

Effective on: 7/28/2014

Excavating Business: The operation by a lot owner of the business of off-site land excavation incidental to construction of buildings, driveways, parking areas, streets and the like, including the on-site storage of vehicles and equipment and the maintenance of administrative offices associated therewith. [Amended, 4/25/88]

Effective on: 12/9/2013

Extractive Industries: The excavation, processing or storage of soil, topsoil, peat, loam, sand, gravel, rock or other mineral deposits, not including:

- a. The excavation of material incidental to approved construction of buildings, driveways or parking areas;
- b. The excavation of material incidental to and at the site of construction or repair of streets; and
- c. The excavation, processing or storage of less than one hundred (100) cubic yards of material on a lot within a one year period.

Effective on: 12/9/2013

Family: One or more persons occupying a dwelling unit, whether or not related to each other by birth, adoption or marriage, but not to consist of more than 6 unrelated persons.

Effective on: 12/9/2013

Farming: The commercial production, keeping, harvesting or grading for sale of plants useful to humans, including, but not limited to:

- A. forages and sod crops;
- B. grains and seed crops;
- C. bees and apiary products; and
- D. horticultural or green house products.[Amended 07/10/17]

Effective on: 7/10/2017

Flood Plain: Land subject to inundation by storm or flood water caused by overflow from the normal high water mark of any coastal or inland waters, or as defined or identified by the Flood Boundary Maps of the Town of Falmouth.

Effective on: 12/9/2013

Floodway: The portion of the 100-year floodplain that must remain open and undeveloped and that is identified as a floodway on the most recent version of the FEMA floodplain maps for Falmouth. [Adopted 12/22/05]

Effective on: 12/9/2013

Floor Area, Gross: The sum in square feet, of the total floor area of a building, as measured from the interior faces of the outside walls. In the Shoreland Zone, floor area shall include the horizontal area of any unenclosed portions of a structure such as porches and decks. [Adopted, 5/27/92]

Effective on: 12/9/2013

Floor Area Ratio: The gross floor area of all buildings on a lot divided by the lot area. [Adopted 12/22/05]

Effective on: 12/9/2013

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 (applies to Shoreland Zoning, Div. II-19-1-7). [Adopted 5/27/92]

Effective on: 12/9/2013

Forestry: Management of forest land primarily for the growth and harvesting of trees.

Effective on: 12/9/2013

Foundation: The supporting substructure of a building or other structure (excluding wooden sills and post supports in the Shoreland Zone and notwithstanding provisions in the FEMA Coastal Construction Manual), including basements, slabs, frost walls, or other base consisting of concrete, block, brick or similar material. [Adopted 5/27/92; amended 5/26/09]

Effective on: 12/9/2013

Four Step Design Process: A process for laying out a subdivision or Country Estate Development by identifying open space, home sites, access and lot lines as set forth in the Town of Falmouth's Land Subdivision Ordinance. [Adopted 12/22/05]

Effective on: 12/9/2013

Frontage, Shore: The length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline at normal high-water elevation (applies to Div. II-19-1-7 Shoreland Zoning). [Adopted 5/27/92; amended 5/26/09]

Effective on: 12/9/2013

Frontage, Street: The horizontal distance measured between the intersections of the side lot lines of a lot with the right-of-way of a street.

Effective on: 12/9/2013

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 and inland waters and which cannot be located away from these waters. The uses include, but are not limited to, commercial and recreational fishing and boating facilities, marinas, navigation aides, basins and channels, which cannot reasonably be located or operated at an inland site, and uses which primarily provide general public access to marine or tidal waters (applies to Shoreland Zoning, Div. II-19-1-7). [Adopted 5/27/92]

Effective on: 12/9/2013

Gas Station: A business establishment engaged in the sale of engine fuel (stored only in underground tanks), kerosene, motor oil and lubricants, directly to the public. All dispensing of fuels, lubricants, and fluids shall be done entirely on the property. [Adopted 5/13/13]

Effective on: 12/9/2013

Great Pond: Any inland body of water which in a natural state has a surface area in excess of ten (10) acres, and any inland body of water artificially formed or increased which has a surface area in excess of thirty (30) acres. [Adopted 5/27/92; amended 5/26/09]

Effective on: 12/9/2013

Greenhouse: A building or structure whose roof and sides are made largely of a transparent or translucent material and in which the temperature and humidity may be regulated for the cultivation of plants year-round and includes high tunnels and hoopouses. [Adopted 12/09/13]

Effective on: 12/9/2013

Grocery Retail: A self-service retail store selling primarily food products for consumption off site. [Adopted 11/26/12]

Effective on: 12/9/2013

Habitable Attic: An attic which has a stairway as a means of access and egress and in which the ceiling area at a height of 7 1/3 feet above the attic floor is not more than one third the area of the next floor below. Every bedroom and living area in a habitable attic shall have a second means of escape. This second means of escape shall either be 1) an egress window within 20 feet of grade, 2) a window which is directly accessible to the fire department rescue apparatus as approved by the Fire Chief, or 3) a window or door which opens onto an exterior balcony. [Adopted, 7/22/91]

Effective on: 12/9/2013

Half-Story: An attic or habitable attic as defined. A half story shall also include a basement which has more than one third but less than half of its floor to ceiling height above the average finished grade within twenty feet of the building. [Amended, 7/22/91]

Effective on: 12/9/2013

Health Institutions: A hospital, clinic, nursing home, boarding care facility and any other place for the treatment or diagnosis of human ailments other than a professional office.

Effective on: 12/9/2013

Home Occupation: An accessory use of a dwelling unit for gainful employment as permitted in Section 19-54.

Effective on: 12/9/2013

Horticultural Nursery: The growing, cultivation, storage, and sale of garden plants, seeds, flowers, trees, shrubs, and fertilizers, as well as the sale of garden tools and similar accessory and ancillary products, to the general public. [Adopted 5/13/13]

Effective on: 12/9/2013

Housing for Older Persons: A multi-family dwelling intended for or occupied by persons identified as eligible for “housing for older persons” as defined in the Federal Housing for Older Persons Act, 42 U.S.C. Section 3607(b)(2) [Adopted 05/09/16]

Effective on: 3/27/2017

Hotel: A building with guest rooms used primarily for transient occupancy of individuals who are lodged, with or without meals, with the majority of the rooms having access through the main lobby of the building. [Amended 5/13/13]

Effective on: 12/9/2013

Household Pet: A tame or domesticated animal living primarily within a dwelling unit and kept for the enjoyment of its occupants.

Effective on: 12/9/2013

Impervious Surface: That portion of a site which is or will be improved with principal and accessory buildings and structures, and driveways, parking lots, pedestrian walkways, signs and other improvements on the surface of the ground which are more impervious than the natural surface of the site.

Effective on: 12/9/2013

Internal Drive – A private street created in a VC District with or without a dedicated right of way which may provide frontage for purposes of establishing front setbacks for buildings. [Adopted 5/13/13]

Effective on: 12/9/2013

Invasive Terrestrial Plants : Species of plants as listed below. [Adopted 5/13/13, Amended 3/27/17]:

Invasive Terrestrial Plants	
Scientific Name	Common Name
Acer ginnala	Amur maple
Acer platanoides	Norway maple
Aegopodium podagraria	Bishop’s weed
Ailanthus altissima	Tree of heaven
Alliaria petiolata	Garlic mustard
Amorpha fruticosa	False indigo
Ampelopsis glandulosa	Porcelain berry
Artemisia vulgaris	Common mugwort
Berberis thunbergii	Japanese barberry
Berberis vulgaris	European barberry
Celastrus orbiculata	Asiatic bittersweet
Centaurea biebersteinii	Spotted knapweed
Cynanchum louiseae	Black swallowwort
Eleagnus umbellata	Autumn olive
Euonymus alatus	Burning bush
Euphorbia cyparissias	Cypress spurge
Fallopia baldschuanica	Chinese bindweed

Fallopia japonica	Japanese knotweed
Frangula alnus	Glossy buckthorn
Heracleum mantegazzianum	Giant hogweed
Hesperius matronalis	Dame's rocket
Impatiens glandulifera	Himalayan balsam
Iris pseudacorus	Yellow iris
Lepidium latifolium	Perennial pepperweed
Ligustrum obtusifolium	Blunt-leaved privet
Ligustrum vulgare	Common privet
Lonicera morrowii	Morrow honeysuckle
Lonicera japonica	Japanese honeysuckle
Lonicera maackii	Amur honeysuckle
Lonicera tartarica	Tartarian honeysuckle
Lythrum salicaria	Purple loosestrife
Microstegium vimineum	Japanese stilt-grass
Paulownia tomentosa	Pawlownia
Persicaria perfoliata	Mile-a-minute weed
Phellodendron amurense	Amur cork tree
Phragmites australis	Common reed
Poa nemoralis	Wood blue grass
Polygonum perfoliatum	Mile-a-minute vine
Populus alba	White cottonwood
Reynoutria x bohemica	Bohemian knotweed
Rhamnus cathartica	Common buckthorn
Robinia pseudoacacia	Black locust
Rosa multiflora	Multiflora or rambler rose

Effective on: 3/27/2017

Junkyard: A yard, field or other area used as a place of storage for discarded, worn-out or junked plumbing, heating supplies, household appliances, furniture, discarded scrap or junked lumber, old or scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, waste or scrap iron, steel or other ferrous or non-ferrous materials, including garbage dumps, waste dumps and sanitary landfills.

Effective on: 12/9/2013

Kennel: An establishment in which more than four (4) dogs or four (4) cats more than one year old are housed, bred, boarded, trained or sold.

Effective on: 12/9/2013

Land Reclamation: The placement of solid fill and materials in a formerly excavated gravel pit for the purpose of reclamation of such gravel pit, provided, however, that all necessary Maine Department of Environmental Protection permits have been obtained. [Amended, 4/25/88]

Effective on: 12/9/2013

Landscape Buffer: An area within a property or site, generally adjacent to and parallel with a property line, either consisting of natural existing vegetation or created by the use of trees and shrubs, designed to limit continuously the view of and/or sound from the site to adjacent sites or properties. [Adopted 8/26/96]

Effective on: 12/9/2013

Landscaped Buffer Strip: A landscaped area adjacent to and parallel with the front property line of a lot or parcel. The border strip may be crossed by drives, access roads or pedestrian ways but otherwise shall be maintained in a landscaped state. The border strip shall not be used for parking, the storage of material, equipment or wastes or the display of any equipment, material or products. [Effective 1/25/88]

Effective on: 12/9/2013

Library: A non municipal public or private facility that provides physical and/or electronic availability of books, periodicals, and other information sources and media to the general public or members. [Adopted, 4/4/05]

Effective on: 7/10/2017

Light Manufacturing: a business establishment engaged in the manufacturing, packaging, processing, assembling, or testing of goods or products, provided that all operations shall be carried on indoors and in such a manner as to confine smoke, fumes, dust, odors, and noise to the premises, and that no operations shall constitute a hazard by reason of the potential for fire, explosion, radiation release or other casualty. [Adopted, 4/27/87]

Effective on: 12/9/2013

Local farm and food products: agricultural, marine, forestry, horticultural, viticultural, dairy, livestock, poultry, and bee raising products or the processed or manufactured products thereof grown, processed, packaged, and distributed by Maine citizens or businesses located wholly within the borders of Maine. [Adopted 02/27/12]

Effective on: 12/9/2013

Local home prepared foods: food products processed or produced in a non-commercial kitchen in the state of Maine. [Adopted 02/27/12]

Effective on: 12/9/2013

Lot: An area of land in one ownership, or one leasehold, with ascertainable boundaries established by deed or instrument of record, or a segment of land ownership defined by lot boundary lines on a land subdivision plan duly approved by the Planning Board and recorded in the Cumberland County Registry of Deeds.

Effective on: 12/9/2013

Lot Area: The area of land enclosed within the boundary lines of a lot, minus land below the normal high-water line of a water body or upland edge of a designated wetland and areas within the right-of-way of streets as defined. [Adopted, 5/27/92]

Effective on: 12/9/2013

Lot Coverage: That percentage of the lot covered by buildings.

Effective on: 12/9/2013

Lot Front: On any lot bounded on more than one side by a street, or a lot bounded by both a street and ocean or lake frontage, the "lot front" shall be the street, lake or ocean frontage designated "lot front" in any building permit application for such lot.

Effective on: 12/9/2013

Lot Lines: The property lines bounding a lot.

Effective on: 12/9/2013

Lot Line, Front: The line separating the lot from a street and ordinarily regarded as the front of the lot. On any lot bounded on more than one property line by a street, the front lot line shall be that property line of the lot designated as "street frontage" in any building permit application for such lot.

Effective on: 12/9/2013

Lot Line, Rear: The line opposite and most distant from the front lot line; or in the case of triangular or otherwise irregularly shaped lots, a line ten (10) feet in length entirely within the lot, parallel to and at a maximum distance from the front lot line.

Effective on: 12/9/2013

Lot Line, Side: Any lot line other than the front lot line or rear lot line.

Effective on: 12/9/2013

Lot of Record: A lot shown on a deed or subdivision plan recorded in the Cumberland County Registry of Deeds as of a certain date. [Adopted 12/22/05]

Effective on: 12/9/2013

Lot Width: The width of any lot shall be measured wholly within the lot, at the required setback depth, along a line parallel to the front lot line. Lots located on a curved street shall be measured wholly within the lot, at the required setback depth, along a line parallel to a straight line connecting the intersections of the front lot line with the side lot lines.

Effective on: 12/9/2013

Manufactured Housing Subdistrict: An area within a zoning district in which manufactured housing units can be located on undeveloped lots subject to the same requirements as single family detached dwellings except as provided in Section 19-43.

Effective on: 12/9/2013

Manufactured Housing Unit: A mobile home constructed after June 15, 1976, which complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974 and complies with the standards set forth below, or a modular home which the manufacturer certifies is constructed in compliance with the State of Maine's Manufactured Housing Act and Regulations and complies with the following additional standards:

- a. The unit shall be constructed with a pitched roof having a pitch of 3 in 12 or greater.
- b. The roof shall be covered with asphalt composition shingles or wood shingles or shakes which meet the requirements of the Falmouth Building Code.
- c. The exterior wall surfaces shall be covered with materials similar to traditional site-built housing units. These materials may include clapboards, simulated clapboards such as conventional vinyl or metal siding, wood shingles, or similar materials, but shall not include smooth, ribbed or corrugated metal or plastic panels except as permitted above.
- d. The minimum horizontal dimension of the unit as installed on the site shall be fourteen (14) feet.
- e. The minimum floor area of the unit shall be seven hundred and fifty (750) square feet.

Effective on: 12/9/2013

Manufacturing: The making of goods and articles by hand or machinery including assembly, fabrication, finishing, packaging and processing.

Effective on: 12/9/2013

Marina: A business establishment having frontage on the navigable water within the town and providing for hire off shore mooring or docking facilities for boats and accessory services and facilities such as: boat sales, rental and storage, marine supplies and equipment, marina engine and hull repairs, construction and outfitting of pleasure craft, fuel and oil, electricity, fresh water, ice, shower and laundry facilities and on-premises restaurant.

Effective on: 12/9/2013

Marquee: A permanent structure fastened entirely to a building and projecting from the wall above an entrance to provide shelter for automobile passenger loading and unloading to the entrance. [Adopted 5/13/13]

Effective on: 12/9/2013

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 (applies to Shoreland Zoning, Div. II-19-1-7). [Adopted, 5/27/92]

Effective on: 12/9/2013

Mixed Use Development: A planned, integrated development involving two or more different uses including, but not limited to, office, residential, light manufacturing, and retail, in an architecturally harmonious environment with common access and utility systems. [Effective 1/25/88]

Effective on: 12/9/2013

Mobile Home: A detached dwelling unit designed to be transported, after fabrication, on streets or highways on its own wheels, or on a flat bed or other trailer or on detachable wheels, and not meeting the definition of a manufactured housing unit.

Effective on: 12/9/2013

Motel: A building or group of attached or detached buildings containing rental guest rooms with or without cooking facilities in each room, most rooms having a separate bathroom and outside entrance, designed or intended to be used by automobile transients.

Effective on: 12/9/2013

Municipal Use: A governmental use funded in whole or in part by the Town of Falmouth including, by way of illustration, without limitation, municipal buildings, public schools, public parks, public recreational facilities, Falmouth Memorial Library, fire stations, and Town owned and operated antennae and towers serving public works, police, fire, or rescue agencies.

Effective on: 7/10/2017

Museum: A non-profit institution operated principally for the purpose of preserving and exhibiting objects of historical, cultural, scientific or artistic interest and which may also engage in incidental retail sale of items related to its principal purpose.

Effective on: 12/9/2013

Neighborhood Variety/Convenience Store: A store with up to 3,000 square feet of gross floor space intended to serve a residential neighborhood with a limited variety of foods, beverages and dry goods, including, but not limited to, newspapers, emergency home repair articles and other household items. It may also include the sale of prepared foods, for consumption on or off-site, provided that such sale is accessory to the principal use and does not use drive-through. [Adopted 8/28/06]

Effective on: 12/9/2013

Net Leasable Area: In a building or project, floor space that may be rented to tenants excluding common areas and space devoted to the heating, cooling, and other equipment of a building.

Effective on: 12/9/2013

Nonconforming Structure, Use or Lot: A structure, use, or lot, lawfully existing prior to the effective date of this Ordinance in 1965 or lawfully existing between that date and the effective date of the revision of this Ordinance in 1983, or the effective date of any amendment to this Ordinance, which is not a permitted structure, use or lot in the district where located pursuant to the provisions of this Ordinance, as amended.

Effective on: 12/9/2013

Normal High-Water Line: 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. In the case of coastal wetlands, the normal high-water line is considered to be the upland edge of the wetland, and not the edge of the open water (applies to Div. II-19-1-7 Shoreland Zoning). [Adopted, 5/27/92; amended 5/26/09]

Effective on: 12/9/2013

Normal High Water Mark, Coastal Waters: That line on the shore of tidal waters which is ten (10) feet above mean low water sea level.

Effective on: 12/9/2013

Normal High Water Mark, Inland Waters: That line on the shores and banks of non-tidal waters which is apparent because of the contiguous different character of the soil or the vegetation due to the prolonged action of the water. Relative to the vegetation, it is that line where the vegetation changes from predominantly aquatic to predominantly terrestrial (by way of illustration, aquatic vegetation includes, but is not limited to the following plants and plant groups - upland grasses, aster, lady slipper, wintergreen, partridge berry, sarsaparilla, pines, cedars, oaks, ashes, alders, elms and maples). In places where the shore or bank is of such character that the high water mark cannot be easily determined (rock slides, ledges, rapidly eroding or slumping banks) the normal high water mark shall be estimated from places where it can be determined by the above method.

Effective on: 12/9/2013

Nursing Facility: "Nursing Facility" means an institution or a distinct part of an institution which is primarily engaged in providing skilled nursing care and related services for residents who require medical or nursing care, rehabilitation services or health-related care and services above the level of room and board. [Adopted 10/13/09]

Effective on: 12/9/2013

Open Space: The portion of a lot or site which is maintained in its natural state or planted with grass, shrubs, trees or other vegetation and which is not occupied by buildings, structures or other impervious surfaces.

Effective on: 12/9/2013

Outdoor Display of Automobiles – An area of a lot, used for the display of automobiles for purchase or lease, which use is accessory to a building used as an automobile dealership and located on the same lot. [Adopted 5/13/13]

Effective on: 12/9/2013

Outdoor Eating Areas: An area designed to provide outdoor seating for customers as an accessory use to a restaurant or carry-out restaurant. This term shall not include areas set aside for employees. [Adopted, 5/28/96]

Effective on: 12/9/2013

Outdoor Recreation Facilities: Any outdoor recreational use such as, but not limited to, golf courses, tennis courts, riding stables, swimming pools, or ice skating rinks, but not including campgrounds, drive-in movie theaters, race tracks, water slides, miniature golf and mechanical or motorized rides. [Adopted, 4/27/87]

Effective on: 12/9/2013

Outdoor Retail Display– A dedicated area of a lot, used for display of merchandise or goods available for purchase from the business and directly accessible by the public, which use is accessory to a building used for retail on the same lot. [Adopted 5/13/13]

Effective on: 12/9/2013

Outdoor Sales and Storage: The sale or storage of goods or materials outdoors as an accessory to a permitted or conditional use which is conducted in a building or permanent structure. [Adopted, 4/27/87]

Effective on: 12/9/2013

Parking Space: An area abutting a street or drive measuring at least nine (9) feet in width by eighteen (18) feet in length, exclusive of space required for access and maneuvering, and intended or used for parking passenger vehicles.

Effective on: 12/9/2013

Patio: A level area adjacent to a dwelling unit constructed of stone, cement or other materials located at ground level, with no railing or other structure above the level of the ground.

Effective on: 12/9/2013

Person: An individual, firm, association, organization, partnership, trust, company or corporation.

Effective on: 12/9/2013

Personal Service: An establishment where nonprofessional services, involving the care of a person or of their personal goods or apparel, are provided. This definition applies only to the Residential Community Overlay District (RCOD). [Adopted 10/13/09]

Effective on: 12/9/2013

Personal Use Airstrip: A personal use airstrip is a grass landing strip to be used by fixed wing aircraft and which strip meets the requirements of Section 19-74. [Adopted, 9/26/05]

Effective on: 12/9/2013

Place of Worship: A building or structure, or groups of buildings or structures, designed, primarily intended or used for the conduct of religious services and accessory uses associated therewith. [Adopted 5/13/13]

Effective on: 12/9/2013

Planning Board: The Planning Board of the Town of Falmouth.

Effective on: 12/9/2013

Pond: Any inland body of water, except a man-made body of water, completely surrounded by land held by a single owner.

Effective on: 12/9/2013

Primary Conservation Area: The portion of a site containing: 1) land that meets the descriptions in subsections 19-64.1, Net Residential Area, c, d or f; 2) a protected natural resource as defined in subsection 19-71.3, Buffers and Setbacks Adjacent to Streams, Ponds and Wetlands; or 3) land within a buffer or setback required by subsection 19-71.4. [Adopted 12/22/05] [Amended 12/17/07]

Effective on: 12/9/2013

Primary façade – The first floor face of a building in a VC District which serves as the main pedestrian entrance and faces a public street or internal drive. [Adopted 5/13/13]

Effective on: 12/9/2013

Primary frontage – In a VC District the frontage on which the main entrance of a building faces. [Adopted 5/13/13]

Effective on: 12/9/2013

Principal Building: The building in which the primary use of the lot is conducted.

Effective on: 12/9/2013

Principal Use: The primary use to which the premises are devoted or for which the premises are arranged, designed or intended to be used.

Effective on: 12/9/2013

Private Access Drive: An alternative form of access to a Country Estate lot that meets the requirements of Section 19-73. [Adopted 12/22/05]

Effective on: 12/9/2013

Private Club: A group of people organized for a common purpose to pursue common goals, interests or activities, such as social or recreational, and usually characterized by certain membership qualifications, payment of fees or dues, and a constitution and bylaws.

Effective on: 12/9/2013

Private School: A private institution for education or instruction including a college, university, or school conducting classes pursuant to a program approved by the State Board of Education or similar governmental agency, but not including commercially operated schools, such as schools of beauty, culture, business, dancing, driving, music or recreation.

Effective on: 12/9/2013

Processing of Mineral Materials for Resale: The handling, screening, or storage of soil, topsoil, peat, loam, sand or rock extracted from an off-site source for the purpose of resale. [Amended, 4/25/88]

Effective on: 12/9/2013

Public Utilities: [Repealed 7/28/14]

Effective on: 7/28/2014

Recent Flood Plain Soils: The following soil series as described and identified by the National Cooperative Soil Survey (applies to Shoreland Zoning, Div. II-19-1-7) [Amended, 5/27/92]:

- Alluvial
- Cornish
- Charles
- Fryeburg
- Hadley
- Limerick
- Lovewell

Medomak
Ondawa
Podunk
Runmey
Saco
Suncook
Sunday
Winooski

Effective on: 12/9/2013

Recreational Vehicle: A vehicle or vehicular attachment not exceeding three hundred twenty (320) square feet in gross floor area designed for temporary sleeping or living quarters for one or more persons, including without limitation, a pick-up camper, travel trailer, tent trailer or motor home.

Effective on: 12/9/2013

Research Facilities: Facilities involved in the intellectual or physical study and analysis of materials, organisms, or ideas. [Adopted 4/4/05]

Effective on: 12/9/2013

Residential Planned Development: A planned, integrated residential development involving detached single-family dwellings, two-family dwellings or multiplexes or a combination thereof in an architecturally harmonious environment with common access and utility system. [Effective 1/25/88]

Effective on: 12/9/2013

Restaurant: An establishment where food and drink is prepared and served to or consumed by the public.

Effective on: 12/9/2013

Restaurant - Carry-out: A restaurant which by design of physical facilities or by service or packaging procedures permits as a principal use the purchase of prepared, ready-to-eat food intended to be consumed off the premises. [Adopted, 4/27/87]

Effective on: 12/9/2013

Restaurant - Drive-Through: A restaurant which may contain indoor and/or outdoor seating and has a drive-through facility which permits customers to obtain food and drink while remaining in their vehicles. [Adopted, 4/27/87]

Effective on: 12/9/2013

Retail Service: Establishments providing services to the general public primarily for personal or household use, excluding those services defined in Business and Professional Offices. May include the sale of goods that is incidental and subordinate to the service. [Adopted 12/09/13]

Effective on: 12/9/2013

Retail and Service Establishment: A business establishment engaged in the sale, rental, or lease of goods or services to the ultimate consumer for direct use or consumption and not for resale, and may include the display and sale of products and services outside of the building occupying up to and including 100 square feet of area. Fuel pumps are considered an accessory use to a retail and service establishment in all districts except VC1 and VC2. [Adopted 4/27/87] [Amended 5/13/13]

Effective on: 12/9/2013

Riding Stable: Any land or structure designed, intended or used for the keeping of horses or ponies for hire, either with or without instructions in riding.

Effective on: 12/9/2013

Riprap: Rocks, irregularly shaped, and at least six (6) inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes of two (2) units horizontal to one (1) unit vertical or less. [Adopted, 5/27/92]

Effective on: 12/9/2013

Road: A route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motor vehicles. Within the Shoreland Zone, the term road includes driveways. [Amended, 5/27/92]

Effective on: 12/9/2013

Roadside Stand: A permanent structure accessory to either a residential or farm use intended for retail of locally made products as identified in Section 19-34.1 of this ordinance. [Adopted 02/27/12]

Effective on: 12/9/2013

Salt Marsh: Areas along coastal waters (most often along coastal bays) which support salt tolerant species, and where, at average high tide during the growing season, the soil is regularly inundated by tidal waters. The predominant species is saltmarsh cordgrass (*Spartina alterniflora*). More open areas often support widgeon grass, eelgrass, and Sago pondweed (applies to Shoreland Zoning, Div. II-19-1-7). [Adopted, 5/27/92]

Effective on: 12/9/2013

Salt Meadow: Areas which support salt tolerant plant species bordering the landward side of salt marshes or open coastal water, where the soil is saturated during the growing season but which is rarely inundated by tidal water. Indigenous plant species include salt meadow cordgrass (*Spartina patens*) and black rush; common threesquare occurs in fresher areas (applies to Shoreland Zoning, Div. II-19-1-7). [Adopted, 5/27/92]

Effective on: 12/9/2013

Secondary Conservation Area: The portion of a site that has open space, recreational, natural resource, scenic, cultural, historic, or archeological value and should be considered for inclusion within the common open space of a conservation subdivision but is not within the Primary Conservation Area. [Adopted 12/22/05]

Effective on: 12/9/2013

Senior Center: A facility with regular operating hours and staff that provide for a broad spectrum of health, social, nutritional and education services and recreational activities targeted for persons sixty (60) years of age and older. [Adopted 5/30/12]

Effective on: 12/9/2013

Setback: The horizontal distance from the nearest part of a structure to a lot line or street line, whichever is closer to the structure. [Amended, 1/24/00]

Effective on: 12/9/2013

Setback, Front: The setback from the front lot line. [Amended, 1/24/00]

Effective on: 12/9/2013

Setback, Normal High-Water Line: The nearest horizontal distance from the normal high-water line of a water body or from the upland edge of a designated wetland to the nearest part of a structure, road, parking space or other regulated object or area (applies to Shoreland Zoning, Div. II-19-1-7). [Adopted, 5/27/92]

Effective on: 12/9/2013

Setback, Rear: The setback from the rear lot line. [Amended, 1/24/00]

Effective on: 12/9/2013

Setback, Side: The setback from a side lot line. [Amended, 1/24/00]

Effective on: 12/9/2013

Service Garage: A business establishment engaged in general repair, engine rebuilding, parts replacement, rebuilding or reconditioning of motor vehicles, body, frame or fender straightening and repair, painting and undercoating, Repair of motor vehicles shall performed inside an enclosed building. [Added 5/13/13]

Effective on: 12/9/2013

Side Street: Bucknam Road, Depot Road, Clearwater Drive and Fundy Road. This definition is applicable to the VC Districts. [Adopted 5/13/13]

Effective on: 12/9/2013

Sign: An object, device, display or structure, or part thereof consisting of the combination of the sign supporting structure and the sign display area, visible to the public and outside of a building, which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including words, letters, figures, design, symbols, fixtures, colors, illumination or projected images. [Amended 1/24/11; 7/24/17]

- a. A-Frame Sign: A portable sign composed of two surfaces of the same size and attached on one side so that the sign is hinged and can be easily placed or removed on the ground by one individual. [Adopted 5/26/09]
- b. Off-premise Sign : A structure designed, intended or used for advertising a product, property, business, entertainment, service, amusement or the like, and not located where the matter advertised is available or occurs. . [Amended 7/24/17]
- c. Directional Sign: A free standing or wall mounted traffic control sign located on private property intended to direct or regulate the movement of traffic to protect public safety. [Adopted 5/13/13, Amended 7/24/17]
- d. Free Standing Sign: A sign supported by one (1) or more uprights or braces permanently affixed into the ground. [Amended 4/11/16; 7/24/17]
- e. Fuel Pump Canopy Sign: A sign affixed to the vertical plane of a roof covering fuel pumps. [Adopted 5/13/13]
- f. Marquee Sign: A sign affixed to a marquee. [Adopted 5/13/13]
- g. Portable Sign: A sign not designed or intended to be permanently affixed into the ground or to a structure.
- h. Projecting Sign– A sign that is wholly or partly dependent upon a building for support and whose sign faces are perpendicular to the wall on which it is mounted. [Adopted 5/13/13]
- i. Roof Sign: A sign located upon or over a roof of a building.
- j. Temporary Sign: A sign designed, intended to be displayed or displayed for a limited period of time.[Amended 1/24/11, 5/30/12]

- k. **Wall Sign:** A sign attached to, supported by, or projecting from a building wall, awning, canopy or part thereof and for which the message is parallel to the wall on which it is attached. [Amended 1/24/11; 5/13/13; 7/24/17]

Effective on: 7/24/2017

~~**Sign Area:** The rectangular area of the sign containing all written and graphical content, measured as the smallest height and width dimensions that include all content and excluding any supporting structure such as a stone wall. (Applicable to property identification signs) [Adopted 1/24/11]~~
repetitive with Sign Display Area

Effective on: 7/24/2017

Sign Display Area or Display Area: The total area of one face of a sign, excluding supporting structures and the area containing the street number or address.[Adopted 1/24/11][Amended 5/30/12; 7/24/17]

Effective on: 7/24/2017

Sign Refacing or Refacing: The replacement of the sign display area, or a portion thereof, such as a sign panel. [Adopted 1/24/11; amended 7/24/17]

Effective on: 7/24/2017

Sign Supporting Structure: The portion of a sign consisting of materials not included in the sign display area. [Adopted 1/24/11] [Amended 05/30/12;7/24/17]

Effective on: 7/24/2017

Site: An area of land in single or multiple ownership or leasehold upon which a multi-family , conservation subdivision, commercial development or other similar development is located or to be located. [Amended 12/22/05]

Effective on: 3/27/2017

Site Inventory and Analysis: The Site Analysis Sketch Plan, Site Analysis Narrative, and Existing Resources Site Analysis Plan and supporting data as set out in the Land Subdivision Ordinance that describe the site proposed to be subdivided and analyze the opportunities and constraints for open space preservation, subdivision, and development. [Adopted 12/22/05]

Effective on: 12/9/2013

Skilled Nursing Facility: "Skilled Nursing Facility" means an institution or a distinct part of an institution which is primarily engaged in providing skilled nursing care and related services for residents who require medical or nursing care or rehabilitation services on an inpatient basis and do not require acute level of care. [Adopted 10/13/09]

Effective on: 12/9/2013

Story: That portion of a building contained between any floor and the floor or ceiling next above it, unless defined as an attic, cellar or half story.

Effective on: 12/9/2013

Stream: A channel between defined banks created by the action of surface water, whether intermittent or perennial, and which has two (2) or more of the following characteristics.

- a. It is depicted as a solid or broken blue line on the most recent edition of the U.S. Geological Survey seven-and-one-half (7.5) minute series topographic map or, if that is not available, a fifteen (15) minute series topographic map.
- b. It contains, or is known to contain, flowing water continuously for a period of at least six (6) months of the year in most years.

- c. The channel bed is primarily composed of mineral material such as sand and gravel, parent material, or bedrock that has been deposited or scoured by water.
- d. The channel contains aquatic animals such as fish, aquatic insects, or mollusks in the water or, if no surface water is present, within the stream bed.
- e. The channel contains aquatic vegetation and is essentially devoid of upland vegetation.

Stream does not mean a ditch or other drainage way constructed, or constructed and maintained, solely for the purpose of draining storm water or a grassy swale. [Adopted 5/27/92; amended 5/26/09]

Effective on: 12/9/2013

Street: For the purposes of this Ordinance, the term street shall include:

- a. A way established or maintained under public authority;
- b. A way shown on a plan of a subdivision duly approved by the Planning Board and recorded in the Cumberland County Registry of Deeds;
- c. A private way 50 feet wide subject to the requirements of Section 19-60.
- d. The following existing private ways are hereby considered streets as a matter of right:

Pride Farm Road (Road 2)
 Rockaway Road (Road 1)
 Hideaway Lane (Road 4)
 Shaw Road
 Huston Road (Road 3)
 Stagecoach Road
 Madokawando Road
 Sunset Road (Road 5)
 Old Powerhouse Road
 Thornhurst Road
 Lowell Farm Road (Road 6)

Effective on: 12/9/2013

Structure: Any combination of materials covering more than 10 square feet constructed or erected above or below or upon the surface of the ground or water including a porch or deck. The term structure shall not include:

- a. a boundary wall or fence;
- b. an awning or tent for a specific event (limited to 6 days) for which a town permit has been issued;
- c. an uncovered and unenclosed patio or terrace, except in the Shoreland Zone. [Amended 7/28/14]
- d. a retractable awning or shade used solely to screen a door or window;
- e. a backyard tent used for sleeping; or
- f. paving of driveways or parking lots, except in the Shoreland Zone.[Adopted 4/27/87]
- g. essential services or any portion thereof which is located underground.[Added 7/28/14]

Effective on: 12/9/2013

Tier I Personal Wireless Service Facility or Tier I Facility: As defined in the Personal Wireless Service Facilities Ordinance. (Town of Falmouth Code of Ordinances, Chapter 8, Art. II-8-10) [Adopted, 4/25/05]

Effective on: 12/9/2013

Tier II Personal Wireless Service Facility or Tier II Facility: As defined in the Personal Wireless Service Facilities Ordinance. (Town of Falmouth Code of Ordinances, Chapter 8, [II-8-10](#)) [Adopted, 4/25/05]

Effective on: 12/9/2013

Tier III Personal Wireless Service Facility or Tier III Facility: As defined in the Personal Wireless Service Facilities Ordinance. (Town of Falmouth Code of Ordinances, Chapter 8, Art. [II-8-10](#)) [Adopted, 4/25/05]

Effective on: 12/9/2013

Timber Harvesting: The cutting and removal of trees from their growing site, and the attendant operation of cutting and skidding machinery but not the construction or creation of roads. Timber harvesting does not include the clearing of land for approved construction (applies to Shoreland Zoning, Div. [II-19-1-7](#)). [Adopted, 5/27/92]

Effective on: 12/9/2013

Town: Municipality of Falmouth, Maine.

Effective on: 12/9/2013

Tradesman's Office: The office of a self-employed craftsman or person in a skilled trade involving only the management of the business and including no exterior storage of vehicles, material or equipment. [Effective 1/25/88]

Effective on: 12/9/2013

Transition Zone: The area between the edge of the property boundary abutting the Route One right of way and the sidewalk located within the Route One right of way. [Adopted 5/13/13]

Effective on: 12/9/2013

Transmission Tower: Any free standing or guyed structure, except for amateur (ham) radio towers and municipally owned and operated towers, on which transmitting and/or receiving antennae and associated cable and supports are located. [Adopted, 4/23/90]

Effective on: 12/9/2013

Unfragmented Habitat Block: An area with a minimum of one hundred fifty (150) acres of contiguous mature forest. [Adopted 12/22/05]

Effective on: 12/9/2013

Upland Edge: The boundary between upland and wetland (applies to Shoreland Zoning, Div. [II-19-1-7](#)). [Adopted, 5/27/92]

Effective on: 12/9/2013

Variance: A relaxation of the provisions of this Ordinance imposing restrictions of height, lot coverage, lot size, or setback as permitted by Section [19-120](#) of this Ordinance.

Effective on: 12/9/2013

Volume of a Structure: The volume of all portions of a structure enclosed by roof and fixed exterior walls as measured from the exterior faces of these walls and roof (applies to Shoreland Zoning, Div. [II-19-1-7](#)). [Adopted, 5/27/92]

Effective on: 12/9/2013

Warehouse: A structure or building used primarily for the storage of articles, goods or materials. [Adopted, 4/27/87]

Effective on: 12/9/2013

Waterbody: Highland Lake, the Presumpscot and Piscataqua Rivers, tidal areas, and any designated stream (applies to Shoreland Zoning, Section II-19-1-7). [Adopted, 5/27/92]

Effective on: 12/9/2013

Water crossing: Any project extending from one bank to the opposite bank of a river or stream, whether under, through, or over the water course. Such projects include but may not be limited to roads, fords, bridges, culverts, water lines, sewer lines, and cables, as well as maintenance work on these crossings (applies to Shoreland Zoning, Div. II-19-1-7). [Adopted, 5/27/92]

Effective on: 12/9/2013

Wetlands: See wetland, coastal; wetland, forested; wetland, freshwater; wetland, inland; and wetland of special significance. [Adopted, 5/27/92; amended 5/26/09]

Effective on: 12/9/2013

Wetland, Coastal: All tidal and subtidal land; an area with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; or any swamp, marsh, bog, beach, flat, or other contiguous lowland that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables, published by the National Ocean Service. A coastal wetland may include portions of a coastal sand dune. [Amended 5/27/92; amended 5/26/09]

Effective on: 12/9/2013

Wetland, Forested: A freshwater wetland dominated by woody vegetation that is twenty (20) feet tall or taller (applies to Div. II-19-1-7 Shoreland Zoning). [Adopted, 5/27/92; amended 5/26/09]

Effective on: 12/9/2013

Wetland, Freshwater: A swamp, marsh, bog, and similar area that is inundated or saturated by surface or groundwater at a frequency and for a duration sufficient to support, and which under normal circumstances does support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and is not considered part of a great pond, coastal wetland, or stream. [Adopted 5/26/09]

Effective on: 12/9/2013

Wetland, Inland: Areas enclosed by the normal high water mark of inland water and areas otherwise identified on the basis of soils, vegetation, or other criteria as inland wetlands including but not limited to swamps, marshes or bogs.

Effective on: 12/9/2013

Wetland of Special Significance: All coastal wetlands and great ponds are considered wetlands of special significance. In addition, a freshwater wetland which has one (1) or more of the following characteristics is considered a wetland of special significance.

- a. Critically imperiled or imperiled community. The freshwater wetland contains a natural community that is critically imperiled or imperiled, as defined by the Maine Natural Areas Program.
- b. Significant wildlife habitat. The freshwater wetland contains significant wildlife habitat.
- c. Location near a coastal wetland. The freshwater wetland is located within two hundred fifty (250) feet of a coastal wetland.
- d. Location near a great pond. The freshwater wetland is located within two hundred fifty (250) feet of the normal high water line and within the same watershed of any lake or pond classified as a great pond.

- e. Aquatic vegetation, emergent marsh vegetation, or open water. The freshwater wetland contains, under normal circumstances, at least twenty thousand (20,000) square feet of aquatic vegetation, emergent marsh vegetation, or open water, unless the twenty thousand (20,000) or more square foot area is the result of an artificial pond or impoundment.
- f. Wetland subject to flooding. The freshwater wetland area is inundated with floodwater during a one hundred (100) year flood event based on flood insurance maps produced by the U.S. Federal Emergency Management Agency or other site- specific information.
- g. Peatland. The freshwater wetland is or contains peatlands, except those that the Maine Department of Environmental Protection determines as previously mined peatland, or portion thereof, is not a wetland of special significance.
- h. Stream. The freshwater wetland area is located within twenty-five (25) feet of a stream, whether or not it is immediately adjacent. [Adopted 5/26/09]

Effective on: 12/9/2013

Wetland, Structure: Piers, docks, wharves, breakwaters, causeways, uses projecting into water bodies:

- a. Temporary Wetland Structure: A structure which remains in the water for less than seven (7) months in any period of twelve (12) consecutive months.
- b. Permanent Wetland Structure: A structure which remains in the water for seven (7) months or more in any period of twelve consecutive months.

Effective on: 12/9/2013

Wholesale Establishment: A business establishment engaged in the bulk sale of goods or materials, not manufactured or processed on the premises, for resale. [Adopted, 4/27/87]

Effective on: 12/9/2013

Wholly Enclosed Place of Assembly, Amusement, Recreation, Culture, and Government: An establishment providing a) indoor recreation facilities such as a bowling alley, skating rink, swimming pool, tennis or racquet ball courts but not including a mechanical, electronic, video or computer game arcade; b) mechanical, electronic, video or computer games if such games are accessory to a principal use which conforms to the provisions of this Ordinance or (c) presentation of the performing arts and cinematography. In the Tidewater Master Planned Development District, such facilities are limited to public gatherings and activities related to approved uses of the Master Plan [Amended, 5/27/93; 4/4/05; 11/26/12]

Effective on: 12/9/2013

Zero Lot Line: The location of a building on a lot in such a manner that one or more of the building's sides rests directly on a lot line. [Adopted, 3/27/89]

Effective on: 12/9/2013

Div. II-19-1-3. ESTABLISHMENT OF DISTRICTS

Sec. 19-6 Districts

The Town of Falmouth is hereby divided into the following classes of districts as shown on the Zoning Map. The distinction of Residential Rural, Residential Growth and Commercial Growth are as depicted on the September 2014 Rural/Growth Boundary Map approved by the Town Council as part of the adoption of the 2013 Comprehensive Plan.

A. Residential Rural Districts

1. Farm and Forest District (FF)
2. Highland Lake Residential District (HL)
- B. Residential Growth Districts
 1. Residential District (RA)
 2. Residential District (RB)
 3. Residential District (RC)
 4. Residential District (RD)
 5. Open Space Residential District [Adopted 3/27/89] [Repealed 6/19/06] (OSRD)
- C. Commercial/Mixed Use Growth Districts
 1. Village Center 1 (VC1) [Adopted 05/13/2013]
 2. Village Center 2 (VC2) [Adopted 05/13/2013]
 3. Village Center Civic (VCC) [Adopted 05/13/2013]
 4. Mixed Use Cluster District (MUC)
 5. Village Mixed Use District (VMU)
 6. Elementary School Redevelopment District (ESRD) [Adopted 05/30/12]
 7. Business and Professional District (BP)
- D. Overlay Districts
 1. Route 100 Corridor Overlay District (CO) [Adopted 1/25/88]
 2. Shoreland Districts:
 - a. Resource Protection District (RP)
 - b. Limited Residential District (LR)
 - c. Limited Commercial District (LC)[Adopted 5/27/92]
 - d. Stream Protection District (SP) [Adopted 5/27/92]
 3. Retirement Community Overlay Districts
 - a. Ocean View Retirement Community (OVRC)[Adopted 11/23/98]
 - b. Avesta Retirement Community (AVRC) [Adopted 05/23/16]
 4. Highland Lake Conservation Overlay District (HLCOD) [Adopted 11/27/00]
 5. Resource Conservation Zoning Overlay District (RCZO) [Adopted 12/22/05]
 6. Water View Overlay District (WVOD) [Adopted 05/30/12]
 7. Village Center Overlay District [Adopted 11/23/98] [Repealed 05/13/13]
 8. Garden Center Special Overlay District (GCSOD) [Adopted 05/12/2014]
- E. Special Districts
 1. West Falmouth Crossing Master Planned Development District (WFCMP) [Adopted 1/26/98] [Amended 12/22/05]
 2. Tidewater Master Planned Development District (TWMP) [Adopted 4/4/05]
 3. Village Park Special District (VPSD) [Adopted 05/28/2014]

4. Hat Trick Drive Special District (HTDSD) [Adopted 11/24/2014]
5. 234 Middle Road Special District (MRSD) [Adopted 11/24/08]
6. Gray Road Special District (GRSD) [Adopted 07/13/15]

Effective on: 3/27/2017

Sec. 19-7 Farm and Forest District (FF)

The farm and forest district is an area which is not expected to be provided with public sewer, located in a generally rural area and intended to remain in that character. The district allows residential uses at low density and recreational and agricultural pursuits.

Permitted Structures and Uses

- A. Accessory animal husbandry use [Adopted 7/10/17]
- B. Accessory buildings & uses
- C. Accessory dwelling unit [Adopted 7/11/16]
- D. Accessory farm use [Adopted 7/10/17]
- E. Animal husbandry
- F. Farming
- G. Forestry
- H. Municipal buildings & uses
- I. Outdoor recreation
- J. Single Family Detached Dwellings
- K. Tier I Personal Wireless Service Facilities [Adopted, 4/25/05]
- L. Tier III Personal Wireless Service Facilities [Adopted, 4/25/05]
- M. Personal Use Airstrip [Adopted, 9/26/05]
- N. **Essential Services** ** [Adopted, 7/28/2014]

Conditional Uses

- A. Cemeteries
- B. Day care centers [Amended, 7/22/91]
- C. Day care homes [Amended, 7/22/91]
- D. Churches
- E. Extractive Industries
- F. Health Institutions
- G. Home occupations
- H. Kennels
- I. Libraries
- J. Museums
- K. Private clubs
- L. Private schools
- M. Riding stables
- N. Amateur Radio Towers [Adopted, 4/23/90]
- O. Veterinary Clinics [Adopted, 5/27/93]
- P. Bed and Breakfast Establishments [Adopted 5/27/93]
- Q. Elderly Boarding Home [Adopted, 5/28/96]
- R. Outdoor Eating Areas [Adopted, 5/28/96]
- S. Roadside Stand [Adopted 02/27/12]

**[Note: establishment of an essential service that includes vehicular access or structures requires site plan approval by the Planning Board.]

[Table amended 1/24/11/, 7/11/16,11/14/16]	Max. Lot Coverage	Minimum Lot Size		Max. Residential Density (sq ft) See Section 19- 64.1	Min. site size (acres)
		Lot Area (sq ft)	Lot Width (ft)		

All Uses	15%	--	250'		--
Cemeteries		--	--	--	10
Day Care Centers		--	--	--	2
Churches		--	--	--	5
Health Institute		--	--	--	5
Private Clubs		--	--	--	3
Private Schools		--	--	--	3
Riding Stables		--	--	--	3
Single Family Detached & Other Uses		80,000	--	80,000 [Adopted 7/11/16]	--

Minimum Setbacks in Feet			
	Front Setback	Side Setback	Rear Setback
Single Family Detached & Other Uses	25	20	40
Cemeteries, Day Care Centers, Churches, Riding Stables, Veterinary Clinics Health Institutions, Private Clubs, Private Schools, Kennels	50	50	50

Effective on: 7/10/2017

Sec. 19-8 Residential A District (RA)

Permitted Structures and Uses	Conditional Uses
A. Accessory Building & Uses B. Accessory Dwelling Units [Adopted 7/11/16] C. Accessory Farm Use [Adopted 07/11/17] D. Farming E. Forestry F. Municipal Buildings & Uses G. Single Family Detached Dwellings H. Two family [Adopted 7/11/16] I. Multi family [Adopted 7/11/16] J. Tier I Personal Wireless Service Facilities [Adopted, 4/25/05] K. Essential Services ** [Adopted, 7/28/2014]	A. Cemeteries B. Day Care Centers [Amended, 7/22/91] C. Day Care Homes [Amended, 7/22/91] D. Churches E. Congregate Housing F. Health Institutions. G. Home Occupations H. Libraries I. Marinas J. Museums K. Private Clubs L. Private Schools M. Amateur Radio Towers [Adopted, 4/23/90] N. Bed and Breakfast Establishments [Adopted, 5/27/93] O. Elderly Boarding Home [Adopted, 5/28/96] P. Outdoor Eating Areas [Adopted, 5/28/96] Q. Roadside Stand [Adopted 02/27/12]
**[Note: establishment of an essential service that includes vehicular access or structures requires site plan approval by the Planning Board.]	

	Minimum Lot Size		Max. Lot Coverage	Max. Residential Density (sq ft) See Section 19-64.1	Min. site size (acres)
	Lot Area (sq ft)	Lot Width (ft)			
All Uses	--	--	20%	--	--
Cemeteries	--	300	--	--	10
Day Care Centers	--	200	--	--	2
Churches	--	300	--	--	5
Congregate Housing	--	300	--	7,500	5
Health Institute	--	300	--	--	5
Multi family	15,000	100	--	10,000	--
Private Clubs	--	200	--	--	3
Private Schools	--	200	--	--	3
Two family	10,000	50	--	10,000	--
Single Family Detached & Other Uses	10,000	50	--	10,000 [Amended 1/24/11]	--

Minimum Setbacks In Feet			
	Front Setback	Side Setback	Rear Setback
Single Family, Detached, Two family, Multi family and Other Uses [Amended 7/11/16]	10	10	30
Cemeteries; Day Care Centers, Private Clubs, Private Schools	50	50	50
Congregate Housing, Health Institute, Churches	100	100	100

Effective on: 3/12/2018

Sec. 19-9 Residential B District (RB)

Permitted Structures and Uses	Conditional Uses
Accessory Buildings & Uses	Cemeteries
Accessory Dwelling Units	Day Care Centers [Amended 7/22/91]
Farming	Day Care Homes [Amended 7/22/91]
Forestry	Churches
Municipal Buildings & Uses	Congregate Housing
Single Family Detached Dwellings	Extractive Industries
Two family	Health Institutions
Multi family	Home Occupations
Tier I Personal Wireless Service Facilities [Adopted 4/25/05]	Libraries
Essential Services** [Adopted 7/28/2014]	Marinas
Accessory Farm Use [Adopted 7/10/17]	Museums
	Private Clubs
	Private Schools
	Amateur Radio Towers [Adopted 4/23/90]
	Bed and Breakfast Establishments [Adopted 5/27/93]
	Elderly Boarding Home [Adopted 5/28/96]
	Outdoor Eating Areas [Adopted 5/28/96]
	Neighborhood Variety/Convenience Store* [Adopted 8/28/06]
	Roadside Stand [Adopted 02/27/12]
**Establishment of an essential service that includes vehicular access or structures requires site plan approval by the Planning Board	* Applies only in that part of the RB District bounded by I-295, the Turnpike Spur, and the Presumpscot River

	Minimum Lot Size		Max. Lot Coverage	Max. Residential Density (sq ft) See Section 19-64.1	Min. site size (acres)
	Lot Area (sq ft)	Lot Width (ft)			
All Uses	--	--	20%	--	--
Cemeteries	--	300	--	--	10
Day Care Centers	--	200	--	--	2
Churches	--	300	--	--	5

Congregate Housing	--	300	--	7,500	5
Health Institute	--	300	--	--	5
Multi family	30,000	150	--	25,000	--
Private Clubs	--	200	--	--	3
Private Schools	--	200	--	--	3
Two family	25,000	100		25,000	--
Single Family Detached, & Other Uses	25,000	100	--	25,000 [Amended 7/11/16]	--

Minimum Setbacks in Feet			
	Front Setback	Side Setback	Rear Setback
Churches, Congregate Housing, Health Institution	100	100	100
Cemeteries, Day Care Center, Private Club, Private School	50	50	50
Single Family Detached, Two family, Multi family and Other Uses	15	15	30

Effective on: 3/12/2018

Sec. 19-10 Residential C District (RC)

Permitted Structures and Uses <ul style="list-style-type: none"> A. Accessory Buildings & Uses B. Accessory Dwelling Unit C. Accessory Farm Use [Adopted 7/10/17] D. Farming E. Forestry F. Municipal Buildings & uses G. Single Family Detached Dwellings H. Tier I Personal Wireless Service Facilities [Adopted, 4/25/05] I. Essential Services** [Adopted, 7/28/2014] 	Conditional Uses <ul style="list-style-type: none"> A. Churches B. Health Institutions C. Libraries D. Museums E. Private Clubs F. Private Schools G. Amateur Radio Towers [Adopted, 4/23/90] H. Bed and Breakfast Establishments [Adopted 5/27/93] I. Elderly Boarding Home [Adopted, 5/28/96] J. Outdoor Eating Areas [Adopted, 5/28/96] K. Roadside Stand [Adopted 02/27/12]
**[Note: establishment of an essential service that includes vehicular access or structures requires site plan approval by the Planning Board.]	

[Table amended 1/24/11]	Minimum Lot Size		Max. Lot Coverage	Max. Residential Density (sq ft) See Section 19-64.1	Min. site size (acres)
	Lot Area (sq ft)	Lot Width (ft)			
All Uses	--	--	20%		--
Churches	--	300	--		5
Health Institute	--	300	--		5
Clubs	--	200			3
Private Schools	--	200	--		3

Single Family Detached & Other Uses	60,000	160	--	60,000 [Adopted 7/11/16]	--
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Minimum Setbacks In Feet

	<u>Front Setback</u>	<u>Side Setback</u>	<u>Rear Setback</u>
Churches, Health Institutions	100	100	100
Private Clubs, Private Schools	50	50	50
Single Family Detached & Other Uses	25	20	40

Effective on: 7/10/2017

Sec. 19-10.1 Residential D District (RD)

Permitted Structures and Uses	Conditional Uses
<ul style="list-style-type: none"> A. Accessory Buildings & Uses B. Accessory Dwelling Unit C. Accessory Farm Use [Adopted 07/10/17] D. Farming E. Forestry F. Municipal Buildings & Uses G. Single Family Detached Dwellings H. Two Family I. Multi Family J. Tier I Personal Wireless Service Facilities [Adopted, 4/25/05] K. Essential Services** [Adopted, 7/28/2014] 	<ul style="list-style-type: none"> A. Cemeteries B. Day Care Centers [Amended 7/22/91] C. Day Care Homes [Amended 7/22/91] D. Churches E. Congregate Housing F. Extractive Industries G. Health Institutions H. Home Occupations I. Libraries J. Marinas K. Museums L. Private Clubs M. Private Schools N. Amateur Radio Towers [Adopted, 4/23/90] O. Bed and Breakfast Establishments [Adopted, 5/27/93] P. Elderly Boarding Home [Adopted, 5/28/96] Q. Outdoor Eating Areas [Adopted, 5/28/96] R. Roadside Stand [Adopted 02/27/12]
<p>**[Note: establishment of an essential service that includes vehicular access or structures requires site plan approval by the Planning Board.]</p>	

	Minimum Lot Size		Max. Lot Coverage	Max. Residential Density (sq ft) See Section 19-64.1	Min. site size (acres)
	Lot Area (sq ft)	Lot Width (ft)			
All Uses	--	--	20%	--	--

Cemeteries	--	300	--	--	10
Day Care Centers	--	200	--	--	2
Churches	--	300	--	--	5
Congregate Housing	--	300	--	7,500	5
Health Institute	--	300	--	--	5
Multi Family	45,000	150	--	30,000	--
Private Clubs	--	200	--	--	3
Private Schools	--	200	--	--	3
Two Family	30,000	100		30,000	--
Single Family Detached & Other Uses	30,000	100	--	30,000	--

<u>Minimum Setbacks in Feet</u>			
	<u>Front Setback</u>	<u>Side Setback</u>	<u>Rear Setback</u>
Church, Congregate Housing, Health Institution	100	100	100
Cemetery, Day Care Center, Private Club, Private School	50	50	50
Single Family Detached, Two Family, Multi Family, Other uses	15	15	30

Effective on: 3/12/2018

Sec. 19-10.2 Highland Lake Residential District (HL)

Permitted Structures and Uses A. Accessory Buildings & Uses B. Accessory Dwelling Unit C. Accessory Farm Use [Adopted 7/10/17] D. Farming E. Forestry F. Municipal Buildings & Uses G. Single Family Detached Dwellings H. Two Family I. Tier I Personal Wireless Service Facilities [Adopted, 4/25/05] J. Essential Services ** [Adopted, 7/28/2014]	Conditional Uses A. Cemeteries B. Day Care Centers [Amended 7/22/91] C. Day Care Homes [Amended 7/22/91] D. Churches E. Congregate Housing F. Extractive Industries G. Health Institutions H. Home Occupations I. Libraries J. Marinas K. Museums L. Private Clubs M. Private Schools N. Amateur Radio Towers [Adopted, 4/23/90] O. Bed and Breakfast Establishments [Adopted, 5/27/93] P. Elderly Boarding Home [Adopted, 5/28/96] Q. Outdoor Eating Areas [Adopted, 5/28/96] R. Roadside Stand [Adopted 02/27/12]
**[Note: establishment of an essential service that includes vehicular access or structures requires site plan approval by the Planning Board.]	

	Minimum Lot Size		Max. Lot Coverage	Max. Residential Density (sq ft) See Section 19-64.1	Min. site size (acres)
	Lot Area (sq ft)	Lot Width (ft)			
All Uses	--	--	20%	--	--
Cemeteries	--	300	--	--	10
Day Care Centers	--	200	--	--	2
Churches	--	300	--	--	5
Congregate Housing	--	300	--	7,500	5
Health Institute	--	300	--	--	5
Two Family		200	--	30,000	2
Private Clubs	--	200	--	--	3
Private Schools	--	200	--	--	3
Single Family Detached, & Other Uses	40,000	150	--	40,000	--

<u>Minimum Setbacks In Feet</u>			
	<u>Front Setback</u>	<u>Side Setback</u>	<u>Rear Setback</u>
Cemetery, Day Care Center, Private Club, Private School	50	50	50
Church, Congregate Housing, Health Institution	100	100	100
Single Family Detached, Two Family and Other Uses	25	20	40

Effective on: 7/10/2017

Sec. 19-11 Village Center Districts (VC1, VC2 and VCC)

Sec. 19-11.1 Purpose of the Districts: The Village Center is planned as a mixed use area, providing the community with a vibrant retail and service, professional office and residential core. Specific purposes are:

- A. Provide and encourage greater intensity of land use;
- B. Capitalize on existing utility infrastructure;
- C. Allow mixed uses of commercial, residential and civic;
- D. Provide transportation infrastructure that supports motorists, pedestrian, transit riders and cyclists; and
- E. Create a building edge at the sidewalk.

Effective on: 12/9/2013

Sec. 19-11.2 General Requirements

If any portion of this section conflicts with any other section of this ordinance or the Subdivision Ordinance, the standards of this section shall prevail.

Effective on: 12/9/2013

Sec. 19-11.3 Use and Maximum New Ground Floor Tenant Area Tables

19-11.3.1 VC1 and VC2

Permitted Uses, Conditional Uses and Maximum New Ground Floor Tenant Area (MNGFTA)				
Permitted Uses	VC 1 MNGFTA (sq. ft.)	Category of Use	VC 2 MNGFTA (sq. ft.)	Category of Use
Accessory building or use	50,000	P	50,000	P
Art and Craft Studio ¹	na	P	na	P
Automobile dealership (sales, service, storage & rental)	na	X	50,000	P
Bed and Breakfast Establishment	50,000	P	50,000	P
Business and professional office ²	50,000	P	50,000	P
Commercial School	20,000	P	20,000	P
Car Wash [Amended 7/24/17]	na	X	20,000	CU
Day care center	50,000	P	50,000	P
Dwelling Unit ¹	na	P	na	P
Gas Station	na	CU	na	CU
Home Occupation	na	P	na	P
Horticultural Nursery	na	P	na	P

Permitted Uses, Conditional Uses and Maximum New Ground Floor Tenant Area (MNGFTA)				
Permitted Uses	VC 1 MNGFTA (sq. ft.)	Category of Use	VC 2 MNGFTA (sq. ft.)	Category of Use
Hotel	na	P	na	P
Light manufacturing ¹	na	P	na	P
Municipal use	50,000	P	50,000	P
Outdoor recreation facility, permanent structure	50,000	CU	50,000	CU
Outdoor retail display > 100 and ≤2,500 square feet as an accessory use	na	P	na	P
Outdoor display of automobiles as an accessory use to automobile dealership	na	X	No limit	P
Place of Worship	50,000	P	50,000	P
Private club	50,000	P	50,000	P
Private School	20,000	P	20,000	P
Restaurant, including carry-out/outdoor seating	50,000	P	50,000	P
Restaurant, drive-through	na	X	50,000	CU
Retail and service establishment, includes outdoor retail display not to exceed 100 sq. ft.	50,000	P	50,000	P
Retail, grocery ³	60,000	P	60,000	P
Service garage	50,000	CU	50,000	CU
Tier I & Tier II Personal Wireless Service Facility	na	P	na	P
Tradesmen's Office ¹	na	P	na	P
Wholly enclosed place of assembly, amusement, recreation, culture, and government	50,000	P	50,000	P
¹ Permitted on upper floors only				
² Includes Veterinary Clinic				
³ Retail, Grocery is limited to 60,000 gross square feet total for all floors				
P – Permitted; CU – Conditional Use Permit Required; X – Not permitted				

19-11.3.1.a Performance Standards for Horticultural Nursery

1. Expansions or replacements of indoor or outdoor components of existing horticultural nurseries shall require site plan approval under Div. II-19-1-9 of this ordinance.
2. Greenhouses are exempt from the maximum setback requirements in Section 19-11.5.1 and architectural standards under Section 19-11.5.5 provided that they are located a minimum of 100 feet from any lot line adjacent to a public right of way.
3. Structures, including greenhouses, located within 100 feet of any lot line adjacent to a public right of way shall meet all requirements of Section 19-11.
4. The Planning Board may require screening measures to minimize the bulky appearance of and glare from greenhouses if visible from neighboring properties. Measures required shall be compatible with light and ventilation needs of the greenhouse operations.
5. Storm water runoff treatment shall meet current Low Impact Development standards.(See Maine Stormwater Best Practices Manual.)

Effective on: 12/9/2013

19-11.3.2 VCC, Village Center Civic

Permitted Uses, Conditional Uses and Maximum New Ground Floor Tenant Area (MNGFTA)		
Accessory building or use	50,000	P
Municipal use	50,000	P
Private club	50,000	CU
Tier I & Tier II Personal Wireless Service Facility	Na	P
P – Permitted; CU – Conditional Use Permit Required; X – Not permitted		

Effective on: 12/9/2013

Sec. 19-11.4 Exemptions and Allowances for Existing Ground Floor Tenant Areas

Sec. 19-11.4.a. Definition of terms.

For the purposes of this section, the following terms shall be defined as:

1. "Existing building footprint" is defined as the building footprint existing as of November 26, 2012.
2. "Existing nonconforming tenant area" is defined as a ground floor tenant area existing as of November 26, 2012, which exceeds the ground floor tenant area limitations in Tables [19-11.3.1](#) and [19-11.3.2](#).
3. "Ground floor tenant area" is defined as the first floor indoor space occupied by an individual tenant, either by rent, lease or ownership and as measured from the interior wall faces.

Effective on: 12/9/2013

Sec. 19-11.4.b. Determination of existing ground floor tenant area.

When determining the ground floor area of existing tenant areas, the Code Enforcement Officer shall rely on current town records unless it is determined by the Officer that more accurate data exists.

Effective on: 12/9/2013

Sec. 19-11.4.c. Existing nonconforming tenant areas, whether occupied or vacant as of November 26, 2012 shall be exempt from the Maximum Ground Floor Tenant Area requirements in Section [19-11.3.1](#) and [19-11.3.2](#).

Effective on: 12/9/2013

Sec. 19-11.4.d. Use of existing ground floor tenant area.

1. Notwithstanding the ground floor tenant area limitations specified in Table [19-11.3.1](#) and [19-11.3.2](#), any existing nonconforming tenant area, either vacant or occupied, may be reconfigured within an existing building footprint in the following manner.
 - a. Existing areas equal to or greater than 60,000 square feet shall not exceed the existing nonconforming tenant area.
 - b. Areas greater than 50,000 and less than 60,000 square feet may be expanded up to and including 60,000 square feet.
 - c. Conforming tenant areas may be incorporated into the reconfiguration of nonconforming tenant areas.
2. The number of times reconfiguration of tenant spaces may occur is unlimited provided that each reconfiguration meets the requirements in Section [19-11.4.d](#) (1) above.

3. In no event shall there be an increase in the number of nonconforming ground floor tenant areas in any building except for buildings occupied by or approved for a single tenant area as of November 26, 2012. Tenant area in buildings occupied by a single nonconforming tenant may be reconfigured to create up to and including two nonconforming ground floor tenant areas.

Effective on: 12/9/2013

Sec. 19-11.4.e. Alteration of existing building footprint.

Existing building footprints may be altered to accommodate the reconfiguration or expansion of nonconforming tenant areas up to and including 60,000 square feet provided that the alteration occurs within the area created by the horizontal extension of the outermost existing building walls.

Effective on: 12/9/2013

Sec. 19-11.4.f. Exemption for ground floor tenant area of approved site plans.

Site plans approved by the Planning Board under Div. II-19-1-9 of this ordinance are exempt from the ground floor tenant area limitations in Section 19-11.3.1 and 19-11.3.2 above provided that the project has commenced in accordance with Section 19-132. Amendments or re-approvals to site plans requiring Planning Board approval are not exempt.

Effective on: 12/9/2013

Sec. 19-11.5. Village Center Performance Standards

These standards govern the development and re-development of properties within the Village Center Districts and are intended to be integrated with 2013 Route One South Infrastructure Plan. These standards apply to any new development or redevelopment requiring site plan approval under Div. II-19-1-9 of this ordinance. Standards are required unless expressly noted that the approval authority may grant waivers.

Sec. 19-11.5.1 General Dimensional Requirements

1. VC1 and VCC lot requirements:
 - a. Front setback from a public ROW or the sidewalk of an internal drive for buildings – minimum of 0 and maximum of 20 feet. Accessory structures and buildings are exempt provided that no access by the public is permitted.
 - b. Side and rear setbacks – none
2. VC2 lot requirements
 - a. Front setback from a public ROW or the sidewalk of an internal drive for buildings – minimum of 0 and maximum of 55 feet. Accessory structures and buildings are exempt provided that no access by the public is permitted.
 - b. Side and rear setbacks – none
3. The maximum height of buildings in all districts is 65 feet.

Effective on: 12/9/2013

Sec. 19-11.5.2 General Site Planning. The goal is to create a village area of well-sited, attractive and functional buildings with an emphasis on building interaction with the streetscape. New buildings shall be designed as integral elements in the creation of a village scale landscape and shall be oriented toward an existing or new street or drive.

1. Corner Lots - Buildings located on a lot fronting more than one street or internal drive shall be placed at the intersection of the streets or internal drive so that the front setback is met for all frontages unless the site plan designates a future building site at the intersection.

2. New buildings on lots that have at least 70% of the frontage length within eighty (80) feet of the front lot line developed with buildings are exempt from meeting the setbacks provided that the existing buildings remain in place.
3. Businesses that provide shopping carts shall provide designated cart storage both in the parking lot and inside the store.
4. Outdoor retail display shall meet the following standards:
 - a. Shall be in a dedicated area;
 - b. Shall not interfere with approved parking areas, landscaping, stormwater management structures or vehicle and pedestrian circulation;
 - c. Shall only be open to the public during the same hours as the primary use;
 - d. The outdoor display of merchandise shall not exceed a maximum height of six (6' 0") feet; and
 - e. Areas immediately adjacent to a public right(s) of way shall be enclosed with a solid fence or wall to screen views from the right(s)-of-way. The maximum height of the enclosure shall be ten (10' 0") feet. The design of the fencing enclosure shall be compatible with the main building(s) and surrounding development.
5. Internal drives are encouraged to develop street frontage for existing buildings and provide more opportunity for infill development.
6. Neighborhood Compatibility – Sites developed adjacent to residential district boundaries shall be designed, where possible, so that service areas, parking lots, outdoor storage yards and other similar features do not face toward the district boundary. If orienting these areas toward adjacent residential district boundaries is unavoidable, adequate year round screening and noise reduction shall be provided. (See Section 19-11.5.7, Landscaping and Screening)
7. 2013 Route One South Infrastructure Plan – The 2013 Route One South Infrastructure Plan (Plan) is hereby adopted as an addendum to this Ordinance. The permitting authority shall rely on the Plan as a guide for access management and streetscape improvements. The permitting authority shall have the authority to modify the improvements if it is determined that the goal of the improvement can be achieved by some other method and that the modifications are in the best interest of the Town and is of equal or greater benefit to the Town.

Effective on: 12/9/2013

Sec. 19-11.5.3 Streetscape–Site planning and architectural design shall complement and be integrated with the improvements made by the Town and recommended in the Plan. Buildings at or near the street edge are a necessary component of a village streetscape. Development along all street frontages should encourage pedestrian interest and provide safe movement.

- A. When there is a gap between the sidewalk/proposed sidewalk on Route One or side streets and the front property line, the applicant shall confer with the Town regarding improvements within the right of way to provide a transition.
- B. Street trees, curbing, pedestrian lighting and sidewalks are required components on both sides of all side streets. Where improvements are not installed by the Town as part of the Plan, the property owner shall be responsible for the installation of improvements.
- C. Street Furnishings – Street furnishings, including outdoor seating or space for pedestrians and patrons are encouraged and may be placed in the public right-of-way with the permission of the Town if not provided on site adjacent to the street. Street furnishings are also encouraged on private property and should be located between the building and the sidewalk. They may include bicycle racks, benches, planters or other similar furnishings. Materials shall be durable

and able to withstand heavy public use and Maine climate conditions. Street furnishings shall be secured in such a manner that they cannot be removed easily.

Effective on: 12/9/2013

Sec. 19-11.5.4 Internal Drives– Internal drives may be constructed to bring existing buildings into conformance with front setbacks, to provide street frontage and access for new buildings, to provide alternate routing to existing public streets and to provide pedestrian mobility.

1. Internal drives shall be designed with measures to provide maximum mobility for pedestrians and cyclists as well as motorists.
2. Internal drives may be used for loading zones provided the volume and frequency of deliveries can be accommodated.
3. Internal drives are subject to the construction standards in the Subdivision Ordinance, Appendix 5, (F), (G) and (I). The permitting authority may waive standards to promote traffic calming and pedestrian safety, mobility and comfort.
 - a. Lane widths – Travel lanes shall be no narrower than 9 feet and no wider than then 11 feet.
 - b. Sidewalks - Sidewalks shall be installed on both sides of the internal drive. Sidewalks shall be a minimum of five feet in width and must be separated from the drive by vertical curbing. Where existing development provides a sidewalk along the frontage of existing buildings, no additional sidewalk is required along that portion of drive frontage and no additional curbing shall be required.
 - c. Street trees – Trees shall be located at an interval of 30 feet on center and shall be of a species listed in the Shade Tree List published by the Town.
 - d. Pedestrian lighting – Pedestrian lighting shall be installed at an interval of 60 feet on center and with a height of no greater than 14 feet.
 - e. On street parking – On street parking is encouraged. If provided, parking spaces shall have minimum dimensions of 7 feet x 20 feet.
 - f. Curbing and structured drainage facilities shall be provided.
4. Notwithstanding the provisions of this section, Hat Trick Drive, as constructed by the Town, is an internal drive for purposes of this ordinance.[Adopted 11/24/2014]

Effective on: 11/11/2014

Sec. 19-11.5.5 Architecture for new building development and redevelopment of existing buildings–A high level of architectural quality is expected. The standards below apply to any new building or building expansion. Existing buildings are encouraged to be renovated to meet the standards.

1. General Design Standards
 - a. All buildings and building additions shall be designed by a Maine Licensed Architect unless otherwise waived by the Planning Board.
 - b. No particular architectural style is required but all styles shall incorporate good architectural design with respect to scale, proportion, massing and balance. They shall be human scaled and designed to create a positive contribution to the street upon which they sit. Architectural styles shall not be mixed on a single building.
 - c. Corporate, franchise or trademark architecture. Individual corporate image, trademark, or marketing architectural design elements and colors shall be incorporated only as secondary design elements to the development and not as dominant elements. These architectural design elements shall not define the character or style of the building or development.

- d. Building Orientation – The primary facades and main pedestrian entrances of buildings shall be situated on a public street or internal drive with the emphasis on public streets where buildings face multiple public streets or internal drives.
 - e. At least one customer entrance shall be provided along a building face that fronts a public street or internal drive. Where frontages are on both a public street and a internal drive, one entrance shall be located on the public street.
2. Standards specific to redevelopment of and additions to nonconforming buildings due to setback requirements. Expansions shall not result in the increase of any nonconformity of the building. For purposes of this section increased nonconformity includes reducing the linear feet of a building which is parallel to and closest to a street frontage.
- a. Additions shall be limited to 50% of the first floor gross square footage of nonconforming buildings as of the date of the adoption of this ordinance. Additions greater than 50% shall be considered a new building.
 - b. Additions of 50% or less made to existing nonconforming buildings are exempt from the maximum front setback provided that the area between the building and the primary frontage is improved in such a manner to promote and encourage pedestrian access to the building and to provide a visual connection to the primary frontage. This may include but is not limited to sidewalk extensions, patios, outdoor seating, and street furniture. The Planning Board shall have authority to determine the extent of improvements necessary.
 - c. Existing nonconforming buildings may be partially demolished. If more than 75% of the existing building, as of the date of the adoption of this section, is demolished and replaced, the resulting building is required to meet the setbacks and is considered a new building.
 - d. Parking areas between an existing building and the street may remain as long as screening as required in Section [19-11.5.10](#), Parking Areas is provided.
3. Exterior Wall Materials –Durable building materials shall be used such as brick, clapboard, wood shingles or stone. Synthetic or composite siding materials are acceptable if they are substantially identical in appearance as natural materials and of equal or greater durability. Concrete block, split face block, multi-colored brick, asphalt shingles, T-111, plywood, and metal siding are prohibited.
- a. Highly reflective materials (e.g. plastic panels, brushed aluminum, bronzed glass) are permitted only for windows and doorways.
 - b. Stain or paint shall be applied to wood building materials in such a manner that completely covers knotholes or other imperfections in the siding.
4. Façade design – Facades for buildings are to provide visual interest at the street level and shall be proportioned to human scale.
- a. Foursquare Design – All sides of a building should be equally attractive. Architectural details such as texture, pattern, color, and building form used on the front façade should be incorporated on all building facades.
 - b. Primary entrances to buildings shall be emphasized by detailing, massing, changes in materials, or other architectural methods. Entrances shall be proportional to the scale of the building.
 - c. Design elements that add depth and visual interest to building facades such as mixing materials and colors, decorative trim and molding, cornice details, stepped facades, and columns are encouraged. Decorative elements shall be consistent with the architectural character of the building and scaled appropriately.

- d. Façade articulation – Façade articulations are required to reduce the apparent length, monotony and mass of larger buildings, creating the illusion of several smaller buildings with common walls and a consistent rhythm of facades. All buildings shall have sufficient relief which interrupts the horizontal and vertical plane of each wall. No wall surface shall exceed 50 feet without an interruption in the horizontal plane of the wall of a minimum of three feet.
- e. Repeating Façade Treatments – Building facades shall include in their detailing some form of a repeating pattern that includes no less than one of these design elements that shall repeat horizontally: color change, texture change and material module change.
- f. Multi-story Treatment - A building's style shall be consistent throughout; details from different eras and inconsistent styles shall not be mixed on a single building.
 - 1. Multistory buildings shall be designed to accommodate a pedestrian scale by providing a sense of “base,” “middle” (where applicable), and “top.”
 - 2. Standards:
 - a. Ground-level facades along public streets or internal drives shall be given a “stronger” appearance than upper floors. Distinction of ground-level facades from other floors shall occur by incorporating a minimum of two of the following features: color change, texture change and material module change.
 - b. Ground floor ceiling height shall be taller than upper stories to emphasize the ground floor as the “base” of the buildings. Ground floor ceiling heights shall be a minimum of 10 feet.
 - c. Middle floors of the building shall be made distinct from the ground floor by a change in material or color, window treatment, incorporation of balconies, stepbacks, and signage.
 - d. Horizontal moldings, belt courses, or other features shall be utilized to create visual separation between each story of the building. Alignment of horizontal moldings shall be considered and relate to the moldings of adjacent building facades that are consistent with these standards, where feasible.
 - e. The top of the building shall emphasize a prominent edge when viewed against the sky, utilizing elements such as projecting parapets, cornices, upper level stepbacks, or pitched rooflines.
- g. Murals – Murals may be used to treat existing blank facades and may include realistic architectural style detail similar to that on the front façade or artwork. Murals shall be approved by the permitting authority and may not be used as signage.
- h. Marquees and Awnings – Marquees and awnings are permitted on buildings at a first floor entrance facing a public street or an internal drive. They may project over a public ROW provided that proof of insurance is provided. A minimum clearance of ten feet shall be maintained between the ground surface and the lowest element of the marquee or awning.
- i. Functional Elements – All vents, down spouts, flashing, electrical conduits, meters, service connections and other functional elements shall be treated as integral parts of the design. Where appropriate, these elements shall be painted to match the color of the adjacent surface, unless used expressly as an accent.
- j. Auxiliary structures, including freestanding pad structures, shall be architecturally consistent with the primary structures on the site in the use of color, material and detailing.

5. Fenestration – The patterns of windows and doorways shall be designed to reflect the internal function of the building in a fashion that complements its façade and form.
 - a. Transparency Standards - Facades facing a public street or internal drive shall have a minimum of 30% of window space between the height of 3 and 8 feet. Retail buildings are encouraged to have a minimum of 70% of window space.
 - b. Windows shall generally be vertical or square in proportion rather than a horizontal ribbon window or other long horizontal window arrangements. Window frames should be recessed into the wall and shall have prominent detailing around the opening such as sills, shutters, relief, trim boards to create a frame around the opening.
 - c. Awnings – Fixed or retractable awnings are permitted at ground floor levels to provide protection for pedestrians. Awnings shall be designed as an integral part of the building façade and should be sized to match window and doorway openings.
6. Roofs
 - a. Flat roofs are allowed only on multi-story buildings. Mechanical equipment on flat roofs shall be hidden from view from any street as well as any adjacent building by an enclosed parapet a minimum of 42 inches high or higher if necessary.
 - b. Cool or green roofs are encouraged for flat roofs.
 - c. Where the roof will be visible, the roofing materials shall be selected to complement the color and texture of the building's façade.
 - d. Roof design shall minimize the potential for snow to unload into the front setback or public right of way.
 - e. Gas Stations and Service Garage Canopies – Pitched roofs and fascia trim are required for canopies.
7. Service bays shall be oriented so that the openings are not directly accessed from Route One or a side street and are screened from view from the street. The Planning Board may waive this requirement if it determines that there is no other alternative.

Effective on: 12/9/2013

Sec. 19-11.5.6 Pedestrian and Bicycle Movement Development shall include a well-defined safe circulation system that encourages walking and cycling within the Village Center with connections to adjacent neighborhoods. This should be provided with pathways between sidewalks, sidewalks on public streets and sidewalks on internal drives.

1. Pedestrian circulation systems shall provide connectivity between internal pathways, sidewalks on adjacent public and internal streets, buildings and parking lots.
2. Sidewalks and pathways shall avoid crossing parking lots at entrances, service areas and other potential points of conflict where possible. Where such crossings are unavoidable, they shall be as direct as possible.
3. Pedestrian islands shall be installed in streets, drives and driveways where the crossing distance is greater than 32 feet. Pedestrian refuge islands shall be a minimum of six feet wide.
4. Where crosswalks occur, a change in materials, textures or colors shall be provided to emphasize the crossing and enhance visibility.
5. Bike racks shall be provided at a minimum of one at each customer entrance of a building and be placed so to minimize bicycle-pedestrian conflicts. Bike racks may be placed in a public right of way with permission of the Town.

Effective on: 12/9/2013

Sec. 19-11.5.7 Landscaping and Screening– A landscaping plan shall be designed to complement the proposed or redeveloped buildings, reinforce pedestrian circulation, highlight transitions between parking and the building, provide shade to parking areas, provide stormwater treatment, add seasonal interest to the property and provide appropriate screening to adjacent residential properties and districts.

1. The plan shall be developed in accordance with Section 19-70 of this Ordinance.
2. An emphasis should be made to use indigenous species that are insect and disease resistant.
3. Invasive species of plants are prohibited.
4. Where appropriate, landscaping should be integrated with water quality treatment measures.
5. Plantings shall be integrated with the installation of underground utilities and lighting. Mature size of plantings shall be considered in relationship to lighting and signage.
6. Fence materials, where used, shall be durable and of high quality. Materials may include wrought or cast iron, stone, masonry, heavy-gauge aluminum, wood, galvanized steel or other similar material. Fences shall not exceed a height of six feet unless approved by the permitting authority.
7. Landscape elements shall be designed in conjunction with the lighting plan to eliminate dark spots and possible hiding places.
8. Machinery, HVAC equipment, trash collection, truck loading areas, utility meters and other service functions shall be incorporated into the overall design of the building and site so that the visual and acoustic impacts of these functions are fully contained and out of view of a public right of way, internal drive and abutting residential districts. Screening shall be of equal quality of the principal materials of the buildings and landscape and may consist of vegetation, berming or fencing or a combination of these elements to provide a year round opaque screen a minimum of six feet high or of sufficient enough height to block the view from an adjacent pedestrian.
9. Screening between sites in the VC Districts and adjacent residential districts shall provide a visual and acoustic buffer for uses within those residential districts, provide a transition between development in the two districts, shade paved and unpaved surfaces, and screen nighttime light from adjacent property. Screening shall consist of, at a minimum, a year round opaque screen a minimum of six feet high and ten feet deep consisting of a mix of landscaping, berming or fencing. The permitting authority may require additional screening if determined that the minimum does not provide adequate screening.

Effective on: 12/9/2013

Sec. 19-11.5.8 Lighting– In addition to the standards in Section 19-149, the following standards shall be met. Where the standards differ, the standards in this section shall prevail. The minimum level of lighting shall be provided to provide security, safety and visual appeal for both pedestrians and motorists.

1. The placement of lighting fixtures shall be at a pedestrian scale, downwardly directed, and shielded or reflected so as to avoid direct line of sight from pedestrians to the light source unless the light source is very low wattage and issues of glare do not exist.
2. The use of “shoe box” fixtures is prohibited.
3. Lighting from store windows, entryways, marquis, canopies, awnings, soffits, and other integral building features shall be integrated with and enhance sidewalk lighting.
4. Materials used in the light fixtures, poles, and bases shall be of a uniformly high quality.

5. Luminaires shall be housed in a luminaire that is classified by IESNBA as a cut-off distribution. Maximum wattage is 250 watts or the lumen equivalent, except for pedestrian spaces where the maximum wattage is 100 watts or the lumen equivalent.
6. Non cut-off luminaires may be used but are limited to 100 watts or the lumen equivalent.
7. Maximum mounting height, including the base, is 20 feet for parking areas and 14 feet for pedestrian areas.
8. Parking Lot lighting:
 - a. Light poles shall be incorporated in landscaped areas wherever possible to avoid damage from vehicles.
 - b. Light poles installed in non-protected areas of lots may include a base no greater than one foot in height to prevent damage to the pole.

Effective on: 12/9/2013

Sec. 19-11.5.9 Signage—Buildings shall be marked with attractive, legible signs that complement the architecture and site detailing. Permitting of signs shall be as required in Section 19-44 of this ordinance except where provisions for permitting are noted in this section.

1. All buildings shall display the street number on the primary façade. The full street address may be displayed. The number or address must: a) be a minimum of 4.5 feet from the ground; b) have lettering a minimum of five inches in height; and c) have lettering a contrasting color with the surface on which it is mounted.
2. Freestanding Signs
 - a. Quantity
 1. VC1and VCC - One sign only is permitted at each intersection of an internal drive with a public street and at the intersections of a commercial driveway with a public street or an internal street. Signs may be placed in the ROW with the permission of the Town. No more than one sign is permitted for each public street frontage.
 2. VC2 - No more than two signs per lot per street or internal drive frontage. A minimum separation of 100 feet shall be maintained between all signs, measured along the abutting right of way or edge of an internal drive.
 - b. Letter and character height shall be a minimum of five inches and a maximum of 15 inches.
 - c. Sign area
 1. VC1 and VCC - Maximum size is 64 square feet.
 2. VC2 – Maximum size is 100 square feet.
 - d. Height – Total height measured includes all framing and posts.
 1. VC1 and VCC - Maximum height is 12 feet
 2. VC2 – Maximum height is 16 feet
 - e. Simple geometric shapes are required.
3. Projecting Signs are permitted in VC1, VC2 and VCC.
 - a. May be projected over the public right of way with an annual certificate of insurance naming the Town of Falmouth as an additional insured.

- b. May be mounted on the first and second story only.
 - c. Maximum size of 9 square feet.
 - d. Shall be a minimum of 8 feet above the sidewalk, measured from the lowest point of the sign.
 - e. Limited to one per building frontage for each business tenant on the first floor frontage.
4. Canopy, gas station are permitted in VC1 and VC2. Signs are limited to two faces of the canopy and a maximum of 16 square feet on any one canopy side.
 5. Wall Signs are permitted in VC1, VC2 and VCC.
 - a. Wall signs shall be incorporated into the façade of the building and shall not obscure architectural details. Signage shall be mounted on vertical surfaces without projecting above the fascia trim.
 - b. Wall signs are limited to two per business, with one located on the primary façade and one other on the side or rear façade.
 - c. Wall signs shall be a minimum of eighteen inches (18") from the edge of a vertical wall.
 - d. Maximum size shall not exceed 64 square feet.
 - e. Maximum gross display area of all wall signs on any given wall shall not exceed ten (10%) percent of the wall area to which they are attached.
 - f. Letters and characters shall be a minimum of five inches in height.
 - g. The maximum size of letters and characters shall be determined by taking into account the sign's location and its relationship to the street. Lettering shall be sized so as not to overwhelm the building facade and large-scale lettering is generally discouraged where buildings are located at or near a street or internal drive. Where buildings are located farther from a street or internal drive lettering size may be larger to increase the sign's visibility.
 6. Marquee Signs are permitted in VC1 and VC2.
 - a. Manual reader boards are permitted.
 - b. Letter and character height shall be a minimum of five and a maximum of 15 inches.
 - c. Maximum size – 64 square feet
 - d. Quantity – The sign may occupy all faces of the marquee.
 - e. Sign area shall be included as part of the calculation of wall area in Section [19-11.5.9.5.e](#).
 - f. Letters and characters shall be a minimum of five and a maximum of 15 inches in height.
 7. Materials for all signs shall be limited to matte or dull finishes, except for lettering and accent gilding.
 8. Directional signs are permitted where necessary for maintaining public safety on to and within the site. The display area of a directional sign shall not exceed two square feet and free standing signs shall not exceed four feet in height. Content shall be limited to directional text such as "enter", "exit", "drive-thru" or the like. Logos are limited to twenty-five percent (25%) of the sign face. Signs shall be reviewed under Section [19-127](#) as part of Planning Board Site Plan Review or Minor Site Plan Review as required.
 9. Nonconforming signs may be maintained in their current configuration and location. Content may be altered with approval from the Community Development Director or their designee.

The Code Enforcement Officer may approve the relocation of a nonconforming sign provided that the relocation does not increase the nonconformity of the sign.

10. Electronic and manual reader boards are expressly prohibited except as provided for in Section 19-11.5.9.6 above. Existing nonconforming reader boards may be maintained but may not be altered or replaced.
11. No signs are permitted above the second story, including signs in windows, with the exception that wall signs, are permitted on the third or fourth story.
12. No sign shall have visible moving parts or consist of banners, ribbons, streamers, spinners or other similar devices.
13. No off-premise sign, including business directional signs as defined in 23 MRSA §1903, shall be erected in a VC District, other than as allowed under Section 19-11.5.9.2 above.
14. Externally Lit Signs
 - a. Illumination level on the vertical surface of the sign shall be bright enough to provide a noticeable contrast with the surrounding building or landscape without causing undue spillover and glare.
 - b. Lighting fixtures illuminating signs shall be top mounted where possible and aimed and shielded so that light is directed only onto the sign facade.
 - c. Outlining signs is prohibited.
15. Internally Lit Signs
 - a. Internally lit signs shall consist of light lettering or symbols on a dark background. Letters and symbols shall constitute no more than 40% of the surface area of the sign.
 - b. Internally lit individual letters and symbols are preferred over whole panels that are internally lit.

Effective on: 3/12/2018

Sec. 19-11.5.10 Parking Areas (see also Section 19-38-19-39 and Section 19-136-19-139 of this ordinance)– Parking areas within the Village Center shall be designed to accommodate adequate parking while minimizing impervious surface.

1. Parking shall be located to the maximum extent practicable toward the rear of buildings and located along property lines where joint use or combined parking areas with abutting properties are proposed, exist or are anticipated.
2. Parking shall be visually broken up to create a series of smaller outdoor spaces with no more than 20 cars grouped without separation. Landscaped islands between areas or banks of parking stalls shall be a minimum of 6 feet in width.
3. Vehicle accommodation is not permitted between any public street or internal drive and new buildings in the VC1 District.
4. One bank of parking and/or one access lane may be located between the street or internal drive and new buildings in the VC2 District. A bank of parking may only be allowed on one street frontage for buildings placed at or within 100 feet of the corner of a lot with frontage on two streets/internal drives.
5. Parking lots shall be designed to accommodate snow storage on site or a plan for off-site storage shall be approved.
6. Landscaping within parking lots shall be designed to create spaces, define edges, provide shading, add seasonal interest and provide water quality treatment for runoff.

7. Shade trees shall be planted to meet a minimum ratio of 1 tree for every 5 spaces. Trees shall be evenly distributed and planted to maximize the shading effect.
8. Shade trees shall be a species as listed on the Shade Tree List published by the Town or other suitable species as approved by the permitting authority.
9. The development of on-street parking on public streets in collaboration with the Town is strongly encouraged.
10. Shared parking is strongly encouraged to reduce vehicular traffic, minimize impervious surface and encourage pedestrian movements between buildings.
11. If parking is located adjacent to a public street or internal drive it shall be screened with a year round screen between the parking and the sidewalk. The screen shall have a height between 36" and 42" and consist of a combination of landscaping and fencing. Screening areas shall be between 4 and 7 feet in depth. Pedestrian access to the parking lot shall be provided from the sidewalk as well as from any internal drive or commercial driveway. Automobile headlight illumination from parking areas shall be screened from the street. Screening shall also be provided where parking is adjacent to buildings on adjacent lots unless there is approved shared parking.
12. Landscaped islands and strips may be designed to function as a storm water facility that captures, detains, absorbs and infiltrates storm water runoff and non-point pollutants originating on the parking surface being screened.

Effective on: 12/9/2013

Sec. 19-11.5.11 Service Areas– Provisions for servicing buildings, including loading docks, service entrances, trash disposal, utilities and mechanical equipment shall be provided in such a way that minimizes visual blight, offensive odors and excessive noise.

1. Accommodation of deliveries is encouraged to be provided at the front door or other shared entrance rather than a dedicated area.
2. Where deliveries are of such a magnitude that dedicated areas are required, they shall be located in such a manner as to minimize the impact to adjacent streets, buildings, residential uses and districts.
3. Service areas shall be sheltered and/or screened with complementary architectural elements or landscape buffers to minimize visibility from adjacent properties, internal streets and public ways. Building materials shall consist of high quality wood fencing and gates, natural or painted, or masonry or cast-in-place concrete walls with exterior veneer to match architectural features of the primary building.

Effective on: 12/9/2013

Sec. 19-11.5.12 Stormwater Management Facilities– Stormwater management facilities shall be treated as an integral and attractive part of the landscape and be generally compliant with the recommendations of the 2013 Route One Stormwater Management Grant Report or other stormwater management plan as may be adopted by the Town. The location of bioretention areas, rain gardens, filter strips, swales, and constructed wetlands is permitted in required setback areas, parking islands and in buffer strips.

Effective on: 12/9/2013

Sec. 19-11.5.13 Focal Points–Focal points may be established at corners or intersections to create a sense of place, provide pedestrian continuity along the street, provide wayfinding and provide a more varied visual experience for pedestrians and motorists.

1. Focal points may include freestanding small structures, artwork and landscaping. Examples include pedestrian shelters, gazebos, bandstands, shade structures, bus stops, free-standing sculptures, flower gardens, flagpoles and fountains.
2. Focal points should be sized to reflect the importance of the transition.
3. With approval of the Town, they may be placed in the public right of way.
4. Focal points may include water quality treatment.

Effective on: 12/9/2013

Sec. 19-11.5.14 Outdoor Spaces– Human scaled outdoor spaces such as courtyards, outdoor seating, bus stops and pedestrian refuges are encouraged. If provided they should be designed to encourage pedestrian mobility, provide attractive visual features and provide for functional outdoor spaces. If constructed:

1. Spaces shall be highly visible to provide safety and presence.
2. Spaces shall be durable and maintained year round.
3. Spaces shall be well lit, either by street and pedestrian lighting or special lighting to assure safety during use.
4. Furnishings for spaces shall be chosen for their compatibility with the design elements of the 2013 Route One South Infrastructure Plan and be of durable materials able to withstand severe weather conditions and retain their appearance with minimal maintenance.

Effective on: 12/9/2013

Sec. 19-12 Business and Professional District (BP)

To establish within the Town of Falmouth space for business and professional offices, with exceptions for certain other uses with appropriate site design. Uses locating in this District shall be located, sited and landscaped in such a manner as to preserve open space, control vehicle access and traffic, maintain appropriate setbacks, buffers and natural screening, and to screen parking areas from Route One and other roadways.

<u>Permitted Structures and Uses</u>	<u>Conditional Uses</u>
<ul style="list-style-type: none"> A. Business and professional offices B. Retail Service C. Tier I Personal Wireless Service Facilities [Adopted, 4/25/05] D. Tier II Personal Wireless Service Facilities [Adopted, 4/25/05] E. Essential Services** [Adopted, 7/28/2014] 	<ul style="list-style-type: none"> A. Light manufacturing operations B. Laboratory facilities C. Private clubs D. Research facilities E. Warehouses and wholesale distributors not exceeding 30,000 SF in gross floor area and not having more than two off-street loading berths. F. Hotels and motels, but only on the westerly side of U.S. Route One in the area between Bucknam Road and Johnson Road. G. Churches [Amended, 7/22/91] H. Outdoor Eating Areas [Adopted, 5/28/96] I. Day Care Centers [Adopted, 7/23/01] J. Ballet Arts Facilities [Adopted 5/24/04] K. Commercial Schools not exceeding 2,000 square feet of net leasable area. [Adopted 5/27/08]
<p>**[Note: establishment of an essential service that includes vehicular access or structures requires site plan approval by the Planning Board.]</p>	

Minimum Lot Size		Maximum Impervious Surface	Minimum Setbacks (ft)		
Lot Area (sq ft)	Lot Width (ft)		Front	Side	Rear
40,000	200	50%	80	25	50

Min. setback between parking areas and roadways (ft)	Min. setback where residential district abuts (ft)	Max. height of structures (ft)	Min. distance between buildings at closest point
40	75	39	25

Effective on: 12/9/2013

Sec. 19-13 Mixed Use Cluster District (MUC)

To establish within the Town of Falmouth areas for well-planned mixed use developments with access to the region's major highway system.

Permitted Structures and Uses	Conditional Uses
<ul style="list-style-type: none"> A. Accessory buildings and structures B. Accessory Dwelling Unit C. Business and professional offices D. Wholly enclosed places of assembly, amusement, recreation, and government E. Wholesale, warehousing and distributions facilities F. Light manufacturing operations with no exterior storage of material, equipment or products G. Retail businesses as part of a mixed use development H. Two family or multi family as part of a mixed use development I. Research facilities J. Restaurants (including carry-out or drive through restaurants)[Amended 11/14/12] K. Residential planned developments as part of mixed use development L. Municipal buildings and uses M. Tradesman's offices N. Single Family Detached Dwellings (only in established residential areas and except on lots fronting on Gray Road) [Adopted 5/28/96] O. Tier I Personal Wireless Service Facilities [Adopted, 4/25/05] P. Tier II Personal Wireless Service Facilities [Adopted, 4/25/05] Q. Commercial Schools as part of mixed use development [Adopted 5/27/08] R. Grocery retail as part of a mixed-use development. [Adopted 11/26/12] S. Essential Services** [Adopted, 7/28/2014] 	<ul style="list-style-type: none"> A. Outdoor recreation facilities B. Day Care Centers C. Churches D. Excavating Business E. Land reclamation F. Processing of Mineral materials for resale [Amended, 4/25/88] G. Veterinary Clinic [Amended,7/22/91] H. Outdoor Eating Areas [Adopted, 5/28/96] I. Day Care Homes [Adopted, 7/23/01]
<p>**[Note: establishment of an essential service that includes vehicular access or structures requires site plan approval by the Planning Board.]</p>	

"MUC"- Mixed Use Cluster

	Min. Lot	Min.	Max. Lot	Min. Setbacks	Max. Residential Density (sq ft) See Section 19-64.1
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	Area (Sq ft)	Lot Width	Coverage	Front	Side	Rear	
Single family detached & Accessory dwelling units	20,000	125 ft.	20%	25	20	40	n/a [Ed. Note - correction made to column 3/9/09]
All other uses	--	200 ft.	30%	50	25	25	10,000 with public sewerage or 20,000 w/o public sewerage

Effective on: 11/14/2016

Sec. 19-14 Village Mixed Use District (VMU)

To establish within the Town of Falmouth areas for small scale, low intensity nonresidential uses which are compatible with the residential character of the district. Areas designated as VMU are areas with historical development patterns as village centers.

Permitted Structures and Uses	Conditional Uses
<ul style="list-style-type: none"> A. Retail and service establishments with less than 5,000 SF of gross floor area B. Professional offices C. Art and craft studios D. Tradesman's offices E. Restaurants (not including carry-out or drive through restaurants) with less than sixty seats F. Museums G. Bed and Breakfast establishments H. Single family detached dwellings I. Two Family J. Multi Family K. Residential planned developments L. Municipal buildings and uses M. Accessory buildings and uses N. Accessory Dwelling Units O. Tier I Personal Wireless Service Facilities [Adopted, 4/25/05] P. Tier II Personal Wireless Service Facilities [Adopted, 4/25/05] Q. Commercial Schools with less than 5,000 SF of gross floor area R. Grocery Retail with less than 5,000 SF of gross floor area S. Essential Services** [Adopted, 7/28/2014] 	<ul style="list-style-type: none"> A. Cemeteries B. Day care centers C. Day care homes D. Churches E. Health institutions F. Libraries G. The conversion of an existing structure into multi-family housing with no more than three dwelling units H. Congregate care facilities I. Home occupations J. Veterinary Clinic [Amended, 7/22/91] K. Elderly Boarding Home [Adopted, 5/28/96] L. Outdoor Eating Areas [Adopted, 5/28/96]
<p>**[Note: establishment of an essential service that includes vehicular access or structures requires site plan approval by the Planning Board.]</p>	

	Min. Lot Area (Sq ft)	Min. Lot Width	Max. Lot Coverage	Min. Setbacks			Max. Residential Density (sq ft) See Section 19-64.1
				Front	Side	Rear	
All other	--	150 ft.	35%	25	15	15	10,000 with public sewerage -

uses							20,000 w/o public sewerage
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Additional Standards

1. The conversion of an existing building or structure to another use shall be permitted only if off-street parking can be provided to meet the requirements of Section 19-38.
2. The enlargement of an existing building or structure shall be permitted only if off-street parking can be provided to meet the requirements of Section 19-38.
3. Any modification of any existing building or structure including, without limitation, any enlargement or change in use which results in an increase in the level of traffic generation, shall be permitted only if the vehicle entrance(s) meets the sight distance requirements set forth in Section 19-140 or improvements will be made to meet this requirement.
4. Notwithstanding the setback requirements above and in subsection 19-136.c, the area between the front lot line and a line drawn at the actual front setback depth and parallel to a straight line connecting the intersections of the front lot line with the side lot lines shall not be used for parking or service and shall be maintained as landscaped area except for necessary access roads and pedestrian ways.
5. In areas where the existing buildings have an established uniform setback relationship to the street, any new building or modification to an existing building shall maintain this established relationship notwithstanding the setback provisions of this section. An established uniform setback relationship is deemed to exist when the actual front setbacks for the two adjacent parcels on either side of and fronting on the same street as the subject parcel are within +/- 5 feet of the average actual front setback for the four (4) parcels. For lots near intersections, the parcels on the opposite side of the intersection and on the same side of the street shall be considered for this determination if necessary.

Effective on: 11/14/2016

Sec. 19-15 Route 100 Corridor Overlay District (CO) [Amended, 7/22/91]

To establish additional development standards for all uses within one thousand (1,000) feet either side of the centerline of Route 100 (the Gray Road), throughout its length in Falmouth, to assure that the traffic capacity of Route 100 is maintained while the visual environment and rural character of the corridor is maintained.

<u>Permitted Structures and Uses</u>	<u>Conditional Uses</u>
1. Any use permitted in the underlying district which is not prohibited by this section except extractive industries. [Amended 12/22/05]	1. Any conditional use in the underlying district which is not excepted under this section
2. Residential Planned Developments.	
3. Office, retail and service uses as part of a residential planned development provided that less than ten (10%) percent of the total lot area is devoted to the non- residential uses and the non-residential development does not have a separate vehicular access	
4. Tier I Personal Wireless Service Facilities [Adopted, 4/25/05]	
5. Tier II Personal Wireless Service Facilities [Adopted, 4/25/05]	
6. Essential Services** [Adopted, 7/28/2014]	
**[Note: establishment of an essential service that includes vehicular access or structures requires site plan approval by the Planning Board.]	

Additional Standards

1. The setback of residential planned development from Route 100 shall be fifty (50) feet. [Amended 12/22/05]
2. The minimum net residential area per dwelling unit may be reduced by ten (10%) percent for residential planned developments which maintain a one hundred (100) foot landscaped buffer zone between Route 100 and the nearest building. The net residential area per dwelling unit may be reduced an additional five (5%) percent for each additional fifty (50) feet of buffer width to a maximum reduction of twenty-five (25%) percent. [Amended 12/22/05]
3. Any residential lot created after the effective date of the subdivision, whether or not a part of a subdivision, shall have its required road frontage on a street other than Route 100 unless the Planning Board determines that physical conditions particular to the parcel justify the granting of a waiver from this requirement. A waiver shall be granted only if there will be no further subdivision of the parcel and one of the following conditions is met:
 - a. There is too little road frontage to reasonably allow creation of a new way;
 - b. The shape or physical condition of the parcel does not permit access to or creation of a street other than Route 100; or
 - c. Common access will be utilized which will allow all proposed lots to be serviced by one new curb cut.
4. The limitation on curb cuts found in subsection 19-140.b, shall apply to all parcels within the Overlay District.8
5. Repealed July 24, 2017.
6. All uses shall be required to maintain a landscaped border strip along the street right-of-way of Route 100 meeting the requirements of subsection 19-153. The width of the border strip shall be related to the setback of the building as shown on the following table:

<u>Width of Border Strip</u>	<u>Building Setback</u>
10 ft.	less than 25 ft.
15 ft.	25 to 49 ft.
20 ft.	50 to 74 ft.
25 ft.	75 to 99 ft.
30 ft.	100 ft. or more

7. Prior to the division of any existing lot of record having a gross lot area of ten (10) acres or more or five hundred (500) or more feet of street frontage on Route 100 and prior to the submission of a subdivision or site plan for all or a portion of a lot, the owner shall file a master development plan with the Planning Board.

The master development plan shall be conceptual in nature and shall be based upon a site inventory plan identifying the major development opportunities and constraints associated with the site. This inventory shall be prepared by a registered landscape architect or registered professional engineer and shall show in a conceptual manner natural drainage features, environmentally sensitive areas, prime development areas, potential points of vehicular access, and other significant man-made and natural features of the site.

The master development plan shall address the overall use of the parcel, the overall vehicular circulation system within the parcel, the coordination of accesses onto Route 100, the general layout of utilities and drainage and provisions for buffering. The master development plan shall also demonstrate how the requirements of the Corridor Overlay District and the standards of this Ordinance will be met.

Once the master development plan has been filed with the Planning Board, any division of land or application for approval shall be consistent with the plan unless a revised master development plan is filed.

8. The minimum separation of principal buildings shall be the height equivalent of the taller building.

Effective on: 7/24/2017

Sec. 19-16 Open Space Residential District (OSRD) [Adopted, 3/27/89] [Repealed 6/19/06]

Effective on: 12/9/2013

Sec. 19-17 Conditional Rezoning [Adopted, 7/23/90]

On occasion, general zoning district designations and traditional zoning methods are inadequate to fully deal with the unusual nature or unique location of specific proposals for development. In these special situations, more flexible and adaptable zoning methods are needed to permit differing land uses in both developed and undeveloped areas.

To achieve this flexibility, conditional rezoning is hereby adopted pursuant to authority granted under Title 30-A, M.R.S.A., § 4352. Conditional rezoning imposes stricter and more individualized restrictions on development than those imposed by the general zoning standards in order to mitigate potential negative impacts on subject, abutting, and nearby properties caused by the rezoning.

Such rezonings may also permit development that is more consistent with the growth management objectives of the Town.

All conditional rezonings by the Town Council must: 1) be consistent with the Comprehensive Plan and the Open Space Plan; 2) establish rezoned areas which are consistent with the existing and permitted uses within the original zones; and 3) only include restrictions which relate to the physical development or operation of the property.

Sec. 19-17.1 Requests for conditional rezoning shall be submitted in writing to the Town Council with a fee as established by the Town Council. Upon receipt of a request for conditional rezoning, the Town Council may adopt an order referring the request to the Planning Board for review and recommendation. The Town Council shall conduct at least one public hearing before any property is rezoned under this subsection. Notice of the hearing shall be posted in the Town Hall at least fourteen (14) days before the public hearing and shall be published in a newspaper of general circulation at least two (2) times, the date of the first publication to be at least seven (7) days prior to the hearing. Notice shall also be sent to the owners of all abutting property at their last known address. This notice shall contain a copy of the proposed conditions and restrictions, with a map indicating the property to be rezoned.

Effective on: 12/9/2013

Sec. 19-17.2 All development and use of rezoned property must comply with the performance standards of this Ordinance and with the use and spatial requirements of the zoning district in which the rezoned property is placed. Conditions imposed by the Town Council may be more restrictive, but not less restrictive, than the applicable requirements of this Ordinance. Conditions and restrictions shall relate to the physical development or operation of the property and may include, without limitation, the following:

- a. Limitations on the number and types of permitted and conditional uses, and re-designation of permitted to conditional uses and vice versa.
- b. Restrictions on the scale and density of development, and on the days and hours of operation.

- c. Specifications for the design and layout of buildings or other improvements, including landscaping.
- d. Schedules for commencement and completion of construction.
- e. Performance guarantees securing completion and maintenance of improvements, including landscaping, and guarantees against defects.
- f. Preservation of open space and buffers, and protection of natural areas and historic sites.
- g. Provisions for reservation or dedication of land for public purposes.
- h. Contributions toward the provision of municipal services required by the development, including, for example, infrastructure improvements such as roads and sewers, and specialized maintenance needs arising from the rezoning.
- i. Provisions for enforcement and remedies for breach of any conditions or restrictions.

Effective on: 12/9/2013

Sec. 19-17.3 Preliminary site plan or subdivision review must be completed before the Town Council conducts its final hearing and takes final action to approve the request for rezoning. The Planning Board may conduct the preliminary site plan or subdivision review concurrently with Council review of the request for rezoning.

Effective on: 12/9/2013

Sec. 19-17.4 If the Town Council rezones the proposed property under this section, the conditions, uses, and standards shall remain in effect unless and until such time as:

- a. one hundred and eighty (180) days pass without the filing of final site plans and subdivision plans to the Planning Board, unless the applicant shows that additional time is necessary due to required local, state, or federal permits or approvals;
- b. the Planning Board denies the request for final site plan or subdivision approval based upon the criteria and standards of those ordinances; or
- c. the developer abandons the project and the developer or property owner(s) request that the rezoning be rescinded. The Council may also initiate said rescinding if it is determined to be in the public interest.

Effective on: 12/9/2013

Sec. 19-18 Resource Conservation Zoning Overlay District (RCZO)

Sec. 19-18.1 Applicability

The provisions of the Resource Conservation Zoning Overlay (RCZO) District shall apply to those areas described on the Zoning Map but do not apply to residential planned developments or to Sec.19-21, Retirement Community Overlay Districts. The requirements of this District only apply to new single-family, two-family, and multi-family residential development that requires review and approval by the Planning Board.

Effective on: 3/12/2018

Sec. 19-18.2 Coordination with the Underlying Zone

The provisions of this district supplement the provisions of the underlying zoning district. Where the specific provisions of the RCZO District vary from the requirements of the underlying district, these provisions shall govern.

Effective on: 3/12/2018

Sec. 19-18.3 Conformance with Other Standards

All development and use of land within the RCZO District shall conform to all other requirements of the Zoning and Site Plan Review Ordinance except as specifically provided for in Section 19-18.

Effective on: 12/9/2013

Sec. 19-18.4 Allowed Development Patterns

The development of land within the RCZO District may occur in accordance with any one or a combination of the following development patterns:

- a. Conservation Subdivisions – A parcel of land may be developed in accordance with the provisions of Sub-Section 19-18.5, Standards for Conservation Subdivisions.
- b. Country Estate Subdivisions – A parcel of land may be subdivided into lots in accordance with the provisions of Sub-Section 19-18.6, Standards for Subdivision Development Using Country Estate Lots.
- c. Country Estate Lots That Are Not Part of a Subdivision – Individual lots that are not part of a subdivision may be created in accordance with the provisions of Sub-Section 19-18.7, Country Estate Developments Not Involving a Legal Subdivision of Land.
- d. Exempt Lots – A single residential lot may be created from an existing lot of record in accordance with the provisions of Sub-Section 19-18.8, Exempt Lots.

Effective on: 3/12/2018

Sec. 19-18.5 Standards for Conservation Subdivisions

- A. **Purpose** – The preferred form of development within the Resource Conservation Zoning Overlay (RCZO) District is conservation subdivisions. This section establishes standards for conservation subdivisions that set aside a significant portion of the site as common open space that is permanently protected while allowing the dwellings to be located on the portions of the site that have the least natural, cultural, or historical resource value for conservation purposes. The standards are intended to ensure that those areas of the site that are not developable or that have natural resource value are included in the common open space.

These provisions are designed to ensure that conservation subdivisions developed in the Town of Falmouth:

1. Preserve those areas of the site that have the highest natural resource value for conservation purposes;
2. Preserve identified historic, archeological, and cultural features located on the site;
3. Locate the buildings and structures on those portions of the site that are most appropriate for development;
4. Create continuous open spaces or “greenways” by linking the common open spaces in adjoining subdivisions wherever possible; and,
5. Minimize the impact of residential development on the Town, neighboring properties, and the natural environment.

- B. **Maximum Density** - [repealed 7/11/2016] See Sec. 19-64

- C. **Required Common Open Space** – Common open space shall be designated as prescribed below: [Amended 12/17/07]

1. Minimum Acreage Amount Required – The acreage amount of common open space provided within the subdivision shall be equal to or greater than the sum of the following (rounded up to the nearest tenth of an acre): [Amended 5/14/18]

- a. In the F and HL Districts: fifty percent (50%) of the calculated Net Residential Area; plus the area equal to the total number of acres of unsuitable area that were deducted from the gross area of the site to determine the Net Residential Area under Section 19-64. [Amended 1/24/11]
 - b. In the RA, RB, RC, and RD Districts: thirty percent (30%) of the calculated Net Residential Area; plus the area equal to the total number of acres of unsuitable area that were deducted from the gross area of the site to determine the Net Residential Area under Section 19-64.
2. Priorities for Land Included in Open Space – The land set aside in the common open space shall be proposed by the applicant based upon the following priorities. Final selection of the land to be set aside as common open space shall be determined by the Planning Board based on its assessments of the importance of the types of conservation areas in the context of the project's location and configuration. [Amended 12/17/07]

Priority 1 - Primary Conservation Areas as defined in Div. II-19-1-2. [Amended 12/17/07]

Priority 2 - Secondary Conservation Areas that provide protection for unique or irreplaceable resources including the habitat of rare, significant, or endangered species, the upland habitat of vernal pools mapped by the Town, archeological or historic sites, landmarks, and cemeteries.

Priority 3 - Secondary Conservation Areas that provide for the continuation of resource systems into or through the site such as shorelands, river or stream corridors, wildlife travel corridors, trails, and unfragmented habitat blocks. The width of such corridors shall be as follows: [Amended 12/17/07]

 - a. Shorelands, river or stream corridors - 100% of the width of any required vegetative buffer in addition to the required buffer
 - b. Wildlife travel corridors – 300 feet
 - c. Trail Corridors – 25 feet on either side of the trail

Priority 4 - Secondary Conservation Areas that are adjacent to other protected open space.

Priority 5 - Secondary Conservation Areas that maintain the rural character of roadsides.

Priority 6 - Secondary Conservation Areas that include identified scenic resources including viewsheds and agricultural fields along with the forested margin adjacent to these resources.

Priority 7 - Secondary Conservation Areas that encompass groups of small wetlands not included in #1, streams or ponds in a continuously forested area.

Priority 8 - Other Secondary Conservation Areas including fields, aquifer recharge areas, deer yards, and other identified habitat.
3. Use of the Common Open Space -- The common open space in a Conservation Subdivision shall not be used as the location for dwelling units or other nonresidential buildings or parking except as provided for below and shall only be used for the following purposes:
 - a. The conservation and protection of natural resource areas, wildlife habitats, scenic features or views, and identified cultural or historic features such as stone walls, cemeteries, and similar identified features or resources;
 - b. Outdoor recreation uses and facilities including related accessory structures and buildings that are compatible with the overall scale and character of the subdivision provided that no more than 25% and a maximum of 3 acres of the common open space is altered or developed for recreational facilities and that any building shall have a gross

floor area of less than two hundred (200) square feet and the total gross floor areas of all such buildings shall be less than one thousand (1,000) square feet;

- c. Indoor community or recreational facilities that primarily serve residents of the subdivision, having a total gross floor area for all such facilities of less than two thousand (2,000) square feet, and that are compatible with the overall scale and character of the subdivision;
 - d. Forest management and agricultural uses including animal husbandry that are specifically approved by the Planning Board as part of the subdivision approval;
 - e. Support facilities necessary for the subdivision including individual or community wells, stormwater management facilities, underground utility lines and related facilities such as sewer pump stations, small community storage buildings, and similar buildings and structures that are needed for the operation of the subdivision but not including personal storage buildings or sheds;
 - f. Individual or group subsurface wastewater disposal systems or parts thereof, provided that this use was approved as part of the subdivision plan and that appropriate legal arrangements are established and approved by the Planning Board for the maintenance and operation of these facilities;
 - g. Other appropriate uses that are compatible with the overall scale and character of the subdivision and that are specifically approved by the Planning Board.
Permanent provisions for the use, ownership, and maintenance of the common open space including provisions for screening and buffering shall be established subject to approval by the Planning Board as part of the approval of the subdivision in accordance with Ch. II-7, Land Subdivision.
4. Stewardship Requirements -- Appropriate legal mechanisms for the on-going maintenance and stewardship of the common open space shall be established, including the creation of a stewardship account or payment to the Town's Stewardship Fund as set forth in Ch. II-7, Land Subdivision, subject to approval by the Planning Board as part of the approval of the subdivision in accordance with Ch. II-7, Land Subdivision Ordinance.
5. Common open space shall not be included in residential lots. [Adopted 5/29/07]
- D. **Standards for Individual Residential Lots** -- Lots, where applicable, that are created for residential development as part of a conservation subdivision, and the subsequent development of those lots, shall conform to the following standards:

- 1. Minimum Lot Size -- Individual lots that are created as part of a Conservation Subdivision may be smaller than the required minimum lot size for the district in which it is located. The size of the individual lots shall be shown on the subdivision plan and shall be subject to Planning Board approval based upon its finding that the lot sizes will allow for the creation of a high quality living environment for the residents of the subdivision and provide for adequate sewage disposal. In no case shall any lot served by a subsurface wastewater disposal system in RB, RC, RD, HL or FF be less than twenty thousand (20,000) square feet in area. In no case shall any lot in RB, RC, RD, HL or FF served by the public sewer system be less than ten thousand (10,000) square feet in area. In no case shall any lot served by a subsurface wastewater disposal system in RA be less than 10,000 square feet in area. In no case shall any lot served by the public sewer system in RA be less than 5,000 square feet in area. [Amended 07/11/16]
- 2. Minimum Lot Width -- The minimum lot width for lots in a conservation subdivision in RC, HL or FF shall be one hundred twenty-five (125) feet. Lots in RB or RD shall have a minimum lot width of 100 feet. Lots in RA shall have a minimum lot width of 50 feet.

Notwithstanding the provisions above, the Planning Board may reduce the minimum lot width by up to fifty (50%) percent provided that the project is developed according to an approved master development plan where each individual lot is subject to design review of the lot layout and building design according to parameters and guidelines submitted by the developer and approved by the Planning Board. Said design parameters shall include maximum lot coverage, floor area ratio, and major building axis line relationship to street line (parallel or perpendicular) for each lot to ensure that each lot will be developed in a way that coordinates with adjacent lots, prevents building crowding, and provides adequate yard spaces and privacy screening, while avoiding a repetitive pattern of housing orientation and design throughout the project. [Amended 7/11/16]

3. Minimum Street Frontage – The minimum street frontage for lots in a conservation subdivision in RC, HL or FF shall be no less than one hundred twenty-five (125) feet. Lots in RB or RD shall have a minimum street frontage of 100 feet. Lots in RA shall have a minimum street frontage of 50 feet. Notwithstanding the provisions above, the Planning Board may reduce the minimum street frontage by up to 50% if a master development plan is submitted per subsection 2 above. Lots that have their required street frontage on a turning circle may have less street frontage than the required minimum, but in no case shall any lot have less than fifty (50) feet of street frontage, except for lots in RA, which may not be less than 25 feet. The amount of frontage for the individual lots shall be shown on the subdivision plan and shall be subject to Planning Board approval based upon its finding that the lot frontages will allow for the creation of a high quality living environment for the residents of the subdivision and provide adequate access to the residences and other facilities.
4. Minimum Front Setback – The minimum front setback for lots in a conservation subdivision shall be fifteen (15) feet except for lots in RA and RB, for which the minimum front setback shall be 10 feet. The Planning Board shall approve the minimum front setback for each lot as part of the subdivision approval. The size of the minimum front setback for each lot shall be shown on the subdivision plan and may vary from lot to lot or in different areas of the subdivision. In approving the minimum setbacks, the Planning Board shall find that the setbacks will: 1) allow the principal building to be sited in accordance with the Four Step Design Process, 2) allow for the creation of a high quality living environment for the residents of the subdivision, 3) allow for the preservation of significant natural resources, and 4) provide for adequate privacy for each unit based upon the character of the lot and proposed landscaping of the lot.
5. Minimum Building Separation/Setbacks – When a side or rear yard of a lot containing a residence or other building abuts the external perimeter or property line of a Conservation Subdivision, the minimum side and rear yard setbacks shall be the required minimum setback for the underlying district in which the subdivision is located. The minimum side and rear yard setbacks from internal property lines within a Conservation Subdivision shall be determined by the Planning Board as part of the subdivision approval and may be less than the required setbacks established by the district regulations. The size of the minimum setbacks for each lot shall be shown on the subdivision plan and may vary from lot to lot or in different areas of the subdivision. In approving the minimum setbacks, the Planning Board shall find that the setbacks will: 1) allow the principal buildings to be sited in accordance with the Four Step Design Process, 2) allow for the creation of a high quality living environment for the residents of the subdivision, 3) allow for the preservation of significant natural resources, and 4) provide for adequate privacy for each unit based upon the character of the lot and proposed landscaping of the lot. In all cases, the separation distance between principal buildings within the subdivision, whether on the same lot or on different lots, shall conform to the requirements of the Town's building code and the NFPA fire protection codes based upon the type of construction and the use of the buildings.

- E. **Layout and Design of the Subdivision** – The subdivision, including the location of the common open space, lots, and streets, shall be laid out in accordance with the Four Step Design Process set forth in the Land Subdivision Ordinance. Documentation of the Four Step Design Process shall be provided as part of the subdivision application.
- F. **Streetscape Buffers Adjacent to Existing Public Streets** -- A vegetated buffer strip shall be maintained along any public street existing as of April 1, 2005 that is adjacent to a Conservation Subdivision to minimize the visual impact of the Conservation Subdivision on the streetscape. The depth of the buffer strip shall be at least one hundred (100) feet. This provision shall be reduced to twenty-five (25) feet for individual residential lots that front on public streets that existed as of April 1, 2005. No parking, buildings, structures, or recreational facilities, with the exception of trails required under [Appendix 7-1 N](#) of Land Subdivision, shall be permitted within this buffer strip but accessory structures such as signs, walls, underground utility structures, and drainage facilities may be located within this buffer. The buffer strip may be crossed by driveways or access drives that run essentially perpendicular to the street. The buffer strip shall be naturally vegetated or landscaped in a manner appropriate to the existing site conditions and the secondary conservation value of the strip. The treatment of the buffer strip shall be subject to approval by the Planning Board as part of the approval of the subdivision. Appropriate legal mechanisms shall be established by the subdivider, subject to approval by the Planning Board as part of the approval of the subdivision, to assure that the buffer strip will be permanently protected and maintained. [Amended 5/29/07]
Trails required under [Appendix 7-1 N](#) of Land Subdivision Ordinance may be located within the buffer strip. [Adopted 5/29/07]
- G. **Perimeter Buffers** -- A vegetated buffer strip shall be maintained along the external perimeter or property line of the Conservation Subdivision, with the exception of property lines along public streets, to minimize the impact of the Conservation Subdivision on abutting properties. The width of the buffer strip shall be at least fifty (50) feet. If the buffer strip abuts a water body or wetland, the width and treatment of the buffer strip shall be expanded to comply with the most restrictive requirements of Div. [II-19-1-7](#), Shoreland Zoning and Section [19-71](#), where applicable. No parking, buildings, structures, or recreational facilities, with the exception of trails required under Appendix 1(N) of the Subdivision Ordinance, shall be permitted within this buffer strip but accessory structures such as walls, underground utility structures, and drainage facilities may be located within this buffer. The buffer strip shall be naturally vegetated or landscaped and the treatment shall be subject to approval by the Planning Board as part of the approval of the subdivision. Appropriate legal mechanisms shall be established by the subdivider, subject to approval by the Planning Board, to assure that the buffer strip will be permanently protected and maintained. [Amended 5/29/07]
Trails required under [Appendix 7-1 N](#) of Land Subdivision and street right of ways for future street connections may be located within the buffer strip. [Adopted 5/29/07]
Access roads may be located in the buffer strip where the Planning Board determines through the 4-Step Design Process that the resulting road location and subdivision design best achieves the purposes of a conservation subdivision as listed in Section [19-18.5.A.1-5](#). [Adopted 5/29/07]
- H. **Conceptual Long Range Development Plan** -- When a Conservation Subdivision will not utilize the entire parcel and there is potential for future subdivision or development of the parcel or any of the lots being created, the application for subdivision approval shall include a Conceptual Long Range Development Plan showing the potential utilization of the lots and the balance of the parcel not being subdivided. The Long Range Plan is intended to be conceptual in nature, to rely on published data about natural resources relevant to the parcel and the built environment, and to demonstrate that the current subdivision proposal will not compromise important conservation values or the long term development of the parcel as a Conservation Subdivision. This plan shall show the relationship of the proposed subdivision area to the

balance of the parcel and to adjacent land. This plan shall analyze the conservation and development potential of the remaining area of the parcel and shall show, in general terms, the potential street network, open space areas, and development areas in a manner that demonstrates that both the proposed development and the future development can occur so that it conforms to the requirements for Conservation Subdivisions and preserves the significant natural resource and conservation values of the entire parcel.

- I. **Alteration of Natural Resources** – [Adopted 12-17-07] The Planning Board may allow the alteration of only those protected resources and their associated buffers and setbacks, as defined in Section 19-71, for those improvements listed in Section 19-71.5. B. with a finding that:
 1. The resulting subdivision design best achieves the purposes of a conservation subdivision as listed in Section 19-18.5.A.1-5 and as determined through the Four Step Design Process (see Appendix 7-9, Land Subdivision);
 2. The design is integrated with the natural topographic conditions and minimizes the need for cuts and fills;
 3. That the impacts on the resource(s) and their respective buffers and setbacks as defined in Section 19-71 have been minimized; and
 4. The design and function of the improvements incorporate accepted best management practices.

Effective on: 5/14/2018

Sec. 19-18.6 Standards for Subdivision Development Using Country Estate Lots

- A. **Purpose** – The alternative form of development within the Resource Conservation Zoning Overlay (RCZO) District is the use of Country Estate lots either as part of a subdivision or as individual lots that do not constitute a subdivision. This section establishes standards for a subdivision using Country Estate lots. The standards are intended to assure that the layout of the lots respects those areas of the site that have natural resource value, protects the rural character of the RCZO District, and provides reasonable access to lots for public safety purposes.
- B. **Standards for Individual Lots** – Country Estate lots shall conform to the following standards:
 1. **Minimum Lot Size** – The minimum lot size for a Country Estate lot is three hundred fifty thousand (350,000) square feet
 2. **Minimum Net Residential Area Per Unit** – The minimum net residential area per unit is forty-thousand (40,000) square feet. [Amended 1/24/11]
 3. **Minimum Lot Width** – The distance between the opposing lot lines measured through the principal buildings on the lot shall be three hundred (300) feet
 4. **Minimum Lot Access Requirements** – A Country Estate lot shall have frontage on a public street, approved private way, or an approved private access drive meeting the provisions of Section 19-75. A Country Estate lot shall have the following minimum street frontage based upon the type of street:
 - a public street in existence as of April, 1, 2005 400 ft
 - a public street created after April 1, 2005 200 ft
 - an approved private way 100 ft
 - an approved private drive for country estates 25 ft
 5. **Minimum Property Line Setback** – All principal buildings shall be setback a minimum of seventy-five (75) feet from any property line. Accessory buildings and structures with less than two hundred (200) square feet of footprint area shall be set back a minimum of fifty

(50) feet from any property line. Any other accessory buildings and structures shall be setback a minimum of seventy-five (75) feet from any property line.

- C. **Layout and Design of the Development** – Any subdivision shall be laid out in accordance with the Four Step Design Process set forth in [Appendix 7-9](#) of Land Subdivision. This process shall be used to guide the location of building sites, lots, and access to minimize the impact on identified Primary and Secondary Conservation Areas. Documentation of the Four Step Process shall be provided as part of the review of the project.
- D. **Streetscape Buffers** – A vegetated buffer strip shall be maintained on any Country Estate lot that fronts on or otherwise abuts any public street existing as of April 1, 2005 to minimize the visual impact of the development on the streetscape. The depth of the buffer strip shall be at least fifty (50) feet. No parking, buildings, structures, or recreational facilities shall be permitted within this buffer strip but accessory structures such as signs, walls, underground utility structures, and drainage facilities may be located within this buffer as well as trails required under [Appendix 7-1](#) N of Land Subdivision. The buffer strip may be crossed by driveways or access drives that run essentially perpendicular to the street. The buffer strip shall be naturally vegetated or landscaped in a manner appropriate to the existing site conditions and the secondary conservation value of the strip. The treatment of the buffer strip shall be subject to approval by the Planning Board as part of the approval of the development. Appropriate legal mechanisms shall be established to assure that the buffer strip will be permanently protected and maintained. [Amended 5/29/07]
- E. **Perimeter Buffers** -- A vegetated buffer strip shall be maintained along the external perimeter or property line of the Conservation Subdivision, with the exception of property lines along public streets, to minimize the impact of the Conservation Subdivision on abutting properties. The width of the buffer strip shall be at least fifty (50) feet. If the buffer strip abuts a water body or wetland, the width and treatment of the buffer strip shall be expanded to comply with the most restrictive requirements of Section [II-19-1-7](#), Shoreland Zoning and Section [19-71](#), where applicable. No parking, buildings, structures, or recreational facilities, with the exception of trails required under [Appendix 7-1](#) N of Land Subdivision, shall be permitted within this buffer strip but accessory structures such as walls, underground utility structures, and drainage facilities may be located within this buffer. The buffer strip shall be naturally vegetated or landscaped and the treatment shall be subject to approval by the Planning Board as part of the approval of the subdivision. Appropriate legal mechanisms shall be established by the subdivider, subject to approval by the Planning Board, to assure that the buffer strip will be permanently protected and maintained. [Amended 5/29/07]
Trails required under [Appendix 7-1](#) N of Land Subdivision and street right of ways for future street connections may be located within the buffer strip. [Adopted 5/29/07]
Access roads may be located in the buffer strip where the Planning Board determines through the Four Step Design Process that the resulting road location and subdivision design best achieves the purposes of a conservation subdivision as listed in Section [19-18.5.A.1-5](#). [Amended 5/29/07]
- F. **Conceptual Long Range Development Plan** -- When a development involving Country Estate lots will not utilize the entire parcel and there is potential for future subdivision or development of the parcel, the application for approval shall include a Conceptual Long Range Development Plan showing the potential utilization of the lots and the balance of the parcel not being subdivided. The Long Range Plan is intended to be conceptual in nature, to rely on published data about natural resources relevant to the parcel and the built environment, and to demonstrate that the current development proposal will not compromise important conservation values or the long term development of the parcel. This plan shall show the relationship of the proposed lots to the balance of the parcel and to adjacent land. This plan shall analyze the conservation and development potential of the remaining area of the parcel

and shall show, in general terms, the potential access and development areas in a manner that demonstrates that both the proposed development and the future development can occur so that it conforms to the requirements of the RCZO District and preserves the significant natural resource and conservation values of the entire parcel.

Effective on: 3/12/2018

Sec. 19-18.7 Country Estate Developments Not Involving a Legal Subdivision of Land

Any proposed division of land in the Resource Conservation Zoning Overlay District that will create two (2) or more Country Estate lots within any five (5) year period shall be done in accordance with a plan approved by the Planning Board. If the division does not create a subdivision, this plan may be combined with a plan for a private way or a plan for a private access drive. If the division is not subject to review and approval by the Planning Board under one of these provisions, Planning Board approval of a Plan for a Country Estate Development shall be required prior to the sale or transfer of any of the lots. The plan and its review shall conform to the following requirements:

- a. The plan showing the Country Estate Development shall be prepared by a registered land surveyor. The plan shall be labeled "Plan for a Country Estate Development" and shall provide an approval block for the signatures of the Planning Board members. The plan shall delineate each of the lots to be created and the proposed access for each lot.
- b. The applicant shall submit an Existing Resources and Site Analysis Plan and documentation of the Four Step Design Process for the site as provided for Ch. [II-7](#) , Land Subdivision. These submissions shall cover those areas of the site proposed for division. The Existing Resources and Site Analysis Plan shall be prepared by a registered landscape architect unless the Planning Board determines that the project does not require these services due to the absence of primary or secondary conservation areas as defined by this ordinance and as indicated in Section [19-18.5.C.2](#).
- c. The approved plan shall be recorded in the Cumberland County Registry of Deeds within ninety (90) days of the date of the Planning Board approval. If the plan is not recorded within this time period, the approval of the Planning Board shall be null and void.
- d. In reviewing requests for approval of a Plan for a Country Estate Development under this subparagraph, the Planning Board shall apply such standards and criteria, and may impose such conditions, as are applicable to conditional uses under subsections [19-119](#) and [19-123](#) of this Ordinance and the provisions of the RCZO District.
- e. After a Plan for a Country Estate Development has been approved by the Planning Board, no further Country Estate lots shall be created from the initial lot or by the further division of any of the Country Estate lots without the prior approval of such lots by the Planning Board under this subsection.

Effective on: 12/9/2013

Sec. 19-18.8 Exempt Lots

Any lot of record as of April 1, 2005 may be divided to create one additional exempt lot whether or not such division is a subdivision, provided that all of the following conditions are met:

1. The lot of record shall be held in separate ownership from any abutting property.
2. Both of the lots created by the division shall meet the minimum lot size requirements for the underlying district including minimum lot size, minimum lot width, and minimum street frontage and the minimum suitable building area per lot requirement of Section [19-64.2 a](#).
3. If the division is a subdivision as defined by this ordinance or Ch. [II-7](#), Land Subdivision, the division shall be subject to review and approval by the Planning Board in accordance with Ch. [II-7](#).

Sec. 19-19 West Falmouth Crossing Master Planned Development District (WFCMP) [Adopted 1/26/98] [Amended 12/22/05; 6/15/09]

To create a planned development at the West Falmouth Crossing interchange that will be in keeping with the semi-rural character of West Falmouth and surrounding neighborhoods. To permit maximum creativity in site design and to ensure high quality construction with special attention to landscaping, lighting, building orientation and form, coordination of architecture, and signage. To accomplish these goals, the Town Council may approve a Master Development Plan that guides the site plan review process in keeping with general performance standards of the ordinance, but with more flexibility granted to developers and the Planning Board in implementing the approved Master Development Plan. **(Formerly Exit 10 Master Planned Development District)*

Table 19-19 Uses Allowed - West Falmouth Crossing	
Permitted Structures and Uses	Conditional Uses
<ul style="list-style-type: none"> A. Accessory buildings and structures B. Business and professional offices C. Wholly enclosed places of assembly, amusement, recreation, and government D. Retail business as part of a mixed use development E. Research facilities F. Restaurants (not including carry-out or drive through service) G. Municipal buildings and uses H. Tradesman's offices I. The following additional uses if specifically shown on a Master Development Plan approved by the Town Council: <ul style="list-style-type: none"> 1. Motels and hotels 2. Restaurants with carry out and/or drive through service 3. Movie theaters 4. Service establishments 5. Convenience stores with gas pumps as an accessory use 6. Outdoor recreational facilities 7. Light manufacturing operations with no exterior storage of material, equipment or products 8. Wholesale, warehousing, and distribution facilities 9. Automobile related sales and services J. Tier I Personal Wireless Service Facilities [Adopted, 4/25/05] K. Tier II Personal Wireless Service Facilities [Adopted, 4/25/05] L. Commercial schools as part of a mixed use development [Adopted 5/27/08] M. Grocery Retail as part of a mixed use development [Adopted 11/26/12](Note: The Town Council may require design specific information for Master Plan approval of items 9.a. through i.) N. Essential Services** [Adopted, 7/28/2014] 	<ul style="list-style-type: none"> A. Day care centers B. Churches C. Veterinary clinic D. Public utilities E. Outdoor eating areas
<p>**[Note: establishment of an essential service that includes vehicular access or structures requires site plan approval by the Planning Board.]</p>	

Sec. 19-19.A For projects for which a Master Development Plan has not been approved, the dimensional requirements shall be as follows: [Amended, 5/27/99]

Minimum Lot Area Sq.	Minimum Lot Width	Maximum Lot Coverage	Minimum Setbacks		
			Front	Side	Rear

None	200 ft.	30%	50	25	25
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Effective on: 12/9/2013

Sec. 19-19.B For projects for which a Master Development Plan has been approved, the dimensional requirements shall be as follows: [Amended, 5/27/99]

1. 50 foot setback Leighton Road,
2. 40 foot setback from Route 100; and
3. 25 foot setback from the boundary lines of all properties that are not part of the approved Master Development Plan (other than Leighton Road and Route 100).

Effective on: 12/9/2013

Sec. 19-19.1 Planning Board Waivers

In approving site plans for development in the West Falmouth Crossing Master Planned Development District, the Planning Board shall waive or reduce these space and bulk requirements if it finds that all of the following conditions have been met:

- a. A Master Development Plan for the site has been approved by the Town Council in accordance with the standards and procedures set forth below; and,
- b. The waiver or reduction is consistent with the approved Master Development Plan; and,
- c. The amount of the reduction is appropriate to reasonably accommodate the development.

Effective on: 12/9/2013

Sec. 19-19.2 Exit 10 Design Guidelines

All development in the West Falmouth Crossing Master Planned Development District shall be consistent with the Exit 10 Design Guidelines dated December 9, 1997. In approving site plans for development in the district, the Planning Board must find that the proposed development will be carried out in a manner that is consistent with the design guidelines. In making determinations of consistency, the Planning Board may require peer review analyses provided by qualified design professionals. [Amended 11/10/08; Effective 01/01/09]

Effective on: 12/9/2013

Sec. 19-19.3 Master Development Plan Sign Controls

The number, size and location of signs shall conform to the requirements set forth in this ordinance, unless a Master Development Plan has been approved. If a Master Development Plan has been approved by the Town Council the provisions of Sections 19-44 through 19-53 of this Ordinance shall not be applicable insofar as they relate to number, size and location of signs in the area covered by the approved Master Development Plan. The Planning Board may approve signage for a parcel within an approved Master Development Plan if it finds that the proposed signage in terms of number, size and location is consistent with the Exit 10 Design Guidelines. [Amended, 5/27/99; 6/15/09; 7/24/17]

Effective on: 7/24/2017

Sec. 19-19.4 Master Development Plan Approval

In addition to the requirements of the Route 100 Corridor Overlay District for the preparation and filing of a Master Development Plan with the Planning Board, the owner of a parcel of land may seek Town Council approval of a Master Development Plan that will supersede the standard Mixed Use Cluster zoning. If the owner seeks such approval and the Council approves the Master Development Plan, all subsequent development activities in the area covered by the Plan shall be consistent with the approved Master Development Plan.

Effective on: 12/9/2013

Sec. 19-19.5 Master Development Plan Submissions

The Master Development Plan shall identify the proposed location, size, and use type of all buildings and shall show parking locations, roads and drives, and buffer zones. The Master Development Plan shall be conceptual in nature and shall be based upon a site inventory plan identifying the major development opportunities and constraints associated with the site. This inventory shall be prepared by a registered landscape architect or registered professional engineer and shall show in a conceptual manner natural drainage features, environmentally sensitive areas, prime development areas, potential points of vehicular access, and other significant man-made and natural features of the site.

Effective on: 12/9/2013

Sec. 19-19.6 Master Development Plan Procedure

The Town Council shall hold a public hearing on a proposed Master Development Plan within forty-five (45) days, but not sooner than twenty one (21) days of the submission of a Master Development Plan. At least ten (10) days prior to the hearing, the Council shall notify by mail the owners of all property abutting the property covered by the Master Development Plan. For the purposes of this section, the owners of the property shall be considered to be the parties listed by the tax assessor for the Town of Falmouth as those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action of the Council.

Notwithstanding the foregoing, with respect to a Master Development Plan filed at least twenty-one days prior to the adoption of this Ordinance, the Town Council may hold such public hearing on such proposed Master Development Plan at the same meeting at which the Town council adopts this Ordinance so long as notice of the filing of such Master Development Plan has been provided by mail to the owners of all property abutting the property covered by the Master Development Plan at least ten (10) days prior to such hearing.

Effective on: 12/9/2013

Sec. 19-19.7 Master Development Plan Findings and Conditions

In approving Master Development Plans under this provision, the Town Council shall find that the proposed development is consistent with the purpose of the West Falmouth Crossing Master Planned Development District, the Route 100 Study, and the Town's adopted comprehensive plan. Prior to approving a Master Development Plan, the Town Council may request reports from the Town Planner, Fire Chief, and Public Works Director containing their recommendations as to the development proposal. The Town Council may consider attaching conditions to the zoning approval including:

- a. Limitations on the number and types of permitted and conditional uses;
- b. Restrictions on the scale and density of development;
- c. Conceptual design and layout of buildings or other improvements, including buffering;
- d. Time frames for commencement and completion of public infrastructure;
- e. Performance guarantees securing completion and maintenance of improvements, including landscaping, and guarantees against defects;
- f. Preservation of open space and buffers, and protection of natural areas and historic sites;
- g. Provisions for reservation or dedication of land for public purposes;

- h. Contributions toward the provision of municipal services required by the development, including, for example, infrastructure improvements such as roads and sewers, and specialized maintenance needs arising from the rezoning; and,
- i. Provisions for enforcement and remedies for breach of any conditions or restrictions.

Effective on: 12/9/2013

Sec. 19-19.8 Master Development Plan Time Limits [Amended 10/10/2012]

If the Town Council grants approval of a Master Development Plan, the applicant's legal rights, duties or privileges determined thereby, shall expire if the development is not commenced within two (2) years of the date on which approval was granted and shall expire as to any portion of the development that is not substantially completed within twenty (20) years of the date on which approval was granted. The Council may extend these time limits upon showing by the applicant that additional time is needed due to required local, state, or federal permits or approvals, or because of market conditions. This provision shall be retroactive and shall apply to any master development on or after January 26, 1998.

Effective on: 12/9/2013

Sec. 19-19.9 Master Development Plan Filing and Transfers

A copy of the approved Master Development Plan shall be filed with the Town Planner and shall be included in all subsequent applications for site plan review. In approving a Master Development Plan, the Town Council may designate certain public improvements to be undertaken by the developer that are of particular importance to the Council (the "Designated Public Improvements"). Prior to the date that such Designated Public Improvements have been completed and accepted by the Town, the approval of the Master Development Plan may not be assigned without Town Council approval. The Town Council shall approve such transfer if the proposed transferee can demonstrate to the Council's satisfaction that it has the technical and financial capacity to complete the Designated Public Improvements. After the Designated Public Improvements have been completed and accepted by the Town, the approval of the Master Development Plan may be assigned without the need for Town Council approval.

Effective on: 12/9/2013

Sec. 19-19.10 Master Development Plan Amendments

Any amendment to the Master Development Plan, other than a "Minor Revision", as defined below, must first be approved by the Town Council before becoming effective. The approval of an amendment to the Master Development Plan, other than a Minor Revision, must comply with the same procedural requirements set forth above for the approval of the original Master Development Plan. A Minor Revision is any proposed change to a Master Development Plan that does not significantly expand the overall square footage of the improvements on the project, change the use of any portion of the project to a use that requires Town Council approval, as set forth above, or modify any conditions that may have been placed upon the project by the Town Council in approving the original Master Development Plan. A Minor Revision may be approved by the Planning Board.

Effective on: 12/9/2013

Sec. 19-19.11 Master Development Plan Zoning Reversion

If the Town Council rezones a West Falmouth Crossing Master Planned Development, the permitted uses and development standards shall be governed exclusively by the provisions of this subsection 19-19 and not by the underlying district in which such land is located unless and until such time as:

- a. one hundred and eighty (180) days pass without the filing of final site plans and subdivision plans to the Planning Board, unless the applicant shows that additional time is needed due to required local, state, or federal permits or approvals; or,

- b. the developer abandons the project and the developer or property owner(s) request that the rezoning be rescinded.

In such cases, the land tract shall revert to the original or underlying zoning.

Effective on: 12/9/2013

Sec. 19-19.12 Master Development Plan Height Limitations

No building shall exceed three (3) stories or thirty-nine (39) feet in height, as measured from the average finished grade within twenty (20) feet of the Building; provided, however, that if a Master Development Plan has been approved by the Town Council and such plan sets forth a height limitation, the height limitations set forth in such approved Master Development Plan, including any notes thereto, shall be applicable and shall control any contrary provision in this Ordinance. [Adopted 3/26/01]

Effective on: 12/9/2013

Sec. 19-20 Village Center Overlay District (VCO) [Adopted, 11/23/98] [Repealed 5/13/13]

Effective on: 12/9/2013

Sec. 19-21 Retirement Community Overlay District (RCOD)

[Adopted 11/23/98, Amended 10/13/09, 05/30/12, 05/23/16]

The Retirement Community Overlay District is intended to provide flexibility and creativity in the design and development of retirement communities that provide a range of living environments for older residents in locations that are appropriate for this type of development. The overlay district is designed to foster high quality communities that are an asset to the Town and are integrated into the neighborhood.

Sec. 19-21.1 Initial Designation of Overlay Districts [Repealed 05/30/12]

Effective on: 12/9/2013

Sec. 19-21.2 Effect of Designation as an Overlay District

The Retirement Community Overlay District is intended to function as an overlay district. As such, the requirements of the underlying zoning district will remain in force and will apply to all use of land and buildings within the Overlay District except as specifically modified by the provisions of this section. The designation of an Overlay District is intended to recognize that a planned retirement community has special considerations that do not apply to other uses and to allow for additional flexibility in the permitting of these uses in return for an increased level of community oversight.

Effective on: 12/9/2013

Sec. 19-21.3 Designation of or amendment to a Retirement Community Overlay District

The Town Council may designate or amend a Retirement Community Overlay District in accordance with the following procedures and standards:

- a. **Procedure** - The Town Council shall consider requests for the designation of a Retirement Community Overlay District. Requests for the designation of a district may be initiated by the Planning Board, the Long-range Planning Advisory Committee (LPAC), or the owners of at least 75% of the total land area proposed to be included in the district. Designation requests by property owners shall be made in writing and shall provide the information set forth below.

The Council shall hold a public hearing on the request within forty-five (45) days, but no sooner than twenty-one (21) days, of its receipt by the Town provided that the Community Development Director or their designee has determined that all of the required information has been provided. Notice shall be given by first class mail at least fourteen (14) days prior to the hearing to all owners of property within the proposed district or amendment thereto and all owners of property within five hundred (500) feet of the proposed district of the public hearing.

For the purposes of this section, the owners of property shall be considered to be the parties listed by the Tax Assessor for the Town of Falmouth as those against whom taxes are assessed at the time of notice. Failure of any property owner to receive notice of the public hearing shall not necessitate another hearing nor invalidate any action of the Town Council.

- b. **Standards** - In considering requests for the designation or amendment of a Retirement Community Overlay District, the Council may vote to create or amend such a district only if it finds that:

1. The designation of the Overlay District is consistent with the Town's Comprehensive Plan,
2. The designation will result in the development or expansion of a quality retirement community,
3. The community is or will be served by public sewerage and public water with adequate capacity to serve the development,
4. The community will provide a continuum of care that offers a variety of levels of care and a range of services to elderly and/or disabled residents,
5. The community will be designed to provide a sense of a unified development with a common design character,
6. The community will include housing for at least one hundred fifty (150) residents in a range of accommodations,
7. The designation of the district will not have an unduly negative impact on neighboring properties, and
8. The area to be designated is located in a Residential A (RA), Residential B (RB), or Village Mixed Use (VMU) District.

- c. **Submission Requirements** - If the request for the designation of a Retirement Community Overlay District is initiated by the owners of the property within the proposed overlay district, the request shall be accompanied by the following:

1. A narrative description of the housing types and, if any, range of care and service options to be offered and a discussion of how these are consistent with the definition of a retirement community. [Amended 05/23/16]
2. A conceptual master plan showing, in general terms, the proposed location and size of buildings, roads and drives, parking areas, recreational facilities, and other development features. The conceptual master plan shall be prepared by a registered landscape architect, registered architect, or registered professional engineer and shall be based upon a site analysis plan identifying the major developmental opportunities and constraints associated with the proposed district. The site analysis plan shall show in a conceptual nature the primary drainage features and patterns of the proposed district, environmentally sensitive areas, prime development areas, potential points of vehicular access, and other significant manmade and natural features of the proposed district.

The Town Council may waive the provision for the submission of a conceptual master plan for the designation of an overlay district in conjunction with a retirement community existing as of the date of adoption of this section if the proposed overlay district includes the property that is already in use as a retirement community.

A request for the designation of a Retirement Community Overlay District initiated by the Planning Board or the Long-range Planning Advisory Committee that does not involve a specific development proposal is not subject to these submission requirements.

- d. **Repeal** - The Town Council may repeal any Overlay District and terminate all rights in the overlay provisions if:
 - 1. Necessary Subdivision or Site Plan approvals have not been obtained for the retirement community within two (2) years of the Town Council's vote to create or amend the overlay district, or
 - 2. Substantial construction has not been begun on the improvements shown on the approved Subdivision or Site Plan within three (3) years of the Town Council's vote to create or amend the district.

Effective on: 5/23/2016

Sec. 19-21.4 Subdivision and/or Site Plan Approval

The Planning Board, prior to its approval of a Subdivision or Site Plan, shall find that the application is generally consistent with the conceptual master plan if such a plan was approved as part of the designation process.

Effective on: 12/9/2013

Sec. 19-21.5 Permitted Uses

In addition to the uses allowed in the underlying zoning district, the following uses shall be permitted uses in any Retirement Community Overlay District:

- a. Living arrangements and services for the elderly and/or people with disabilities including, but not limited to:
 - 1. congregate housing,
 - 2. independent housing with residential support services,
 - 3. assisted living facility,
 - 4. nursing facility or skilled nursing facility,
 - 5. adult day care,
 - 6. senior center,
 - 7. health institution or;
 - 8. memory loss care.
- b. Associated uses, provided that use or uses are incidental and subordinate to the residential facilities, are designed and will function as an integral part of the community and are to serve primarily the residents. Uses include, but are not limited to:
 - 1. indoor and outdoor recreational facilities
 - 2. financial services,
 - 3. medical and dental services,
 - 4. maintenance facilities

5. personal services, or
6. places of worship

c. Housing for older persons

Effective on: 5/23/2016

Sec. 19-21.6 Space and Bulk Standards

Notwithstanding the requirements of the underlying zoning district, a retirement community and all uses, buildings, and structures associated with it shall be governed by the following provisions:

- a. **Minimum site size** - a retirement community shall include a minimum of thirty (30) acres. Individual lots within the community shall be a minimum of twenty thousand (20,000) square feet in size.
- b. **Minimum net residential area per elderly dwelling unit** - for each dwelling unit occupied by an elderly or disabled household there shall be a minimum of 5,000 square feet in RA and 6,000 square feet of net residential area in RB and VMU within the overall area of the retirement community. [Amended 7/11/16]
- c. **Minimum net residential area per care bed** - for each bed in an assisted living facility or other accommodation for the elderly or person with disabilities there shall be a minimum of two thousand (2,000) square feet of net residential area within the overall area of the retirement community.
- d. **Minimum lot width** - any individual lot within a retirement community shall have a width of 50 feet in RA and 100 feet in RB and VMU. [Amended 7/11/16]
- e. **Maximum lot coverage** - the total portion of the overall area of the retirement community covered by buildings and structures shall be not more than twenty (20) percent.
- f. **Maximum building height** - no building shall exceed four (4) stories or forty-five (45) feet as measured in accordance with Section 19-53.
- g. **Minimum building separation** - all buildings and structures shall be separated by a minimum of ten (10) feet at the closest point. This separation shall not apply to units in attached housing.
- h. **Maximum building area** - any building located within seventy-five (75) feet of the perimeter of the overall site shall have a total floor area of less than five thousand (5,000) square feet. The maximum size of any building shall be a total floor area of one hundred thousand (100,000) square feet.
- i. **Minimum setbacks** - These provisions are designed to allow smaller buildings to be located near the perimeter of the retirement community while requiring that larger buildings be more centrally located within the site. Therefore, the required minimum setback of buildings and structures shall be as defined below.

The minimum setback from the external perimeter of the district shall be as follows:

Building Height	Minimum Setback
Not more than two (2) stories or thirty (30) feet	Fifty (50) feet
Not more than three (3) stories or forty (40) feet	Ninety (90) feet
Not more than four (4) stories or forty-five (45) feet	One hundred fifty (150) feet

1. The setback requirement from a perimeter street shall not apply to an existing building or any portion of an existing building that is located within the required setback provided that:
 - a. the building will not be expanded in the direction of the street,

- b. the height of the building will not be increased, and
- c. the gross floor area of the building will not be increased by more than sixty (60) percent or two thousand (2,000) square feet, whichever is less.

2. The setback from internal street rights-of-way shall be twenty-five (25) feet.

- j. **Single Family Dwelling** – Notwithstanding the provisions of Section 19-30.a, more than one single family dwelling may be permitted on a lot.

Effective on: 7/11/2016

Sec. 19-21.7 Development Along Adjacent Roads

When the development proposal provides for the construction or expansion of a building visible from an existing road, special consideration shall be paid to the design of the building and site. In general, buildings shall be designed so that they appear to face the road. No service or storage areas shall be located between the building and the road. Curb cuts onto roads shall be minimized where practical. Parking lots shall be located internally where practical, rather than between the buildings and the existing road. If a side walk or pedestrian way exists along the existing road, provisions shall be made to link it with the proposed buildings.

Effective on: 12/9/2013

Sec. 19-21.8 Design Elements (RCOD-OVRC-AVRC)

The design of the retirement community shall reflect an overall sense that the entire community is part of a single development with a pedestrian friendly, neighborhood scale. As such, the buildings shall convey a common character but need not be similar in either design or scale. In general, high intensity, high traffic uses and core facilities should be sited in central locations within the community where feasible, with lower intensity uses on the perimeter.

- a. Common elements such as signs, lighting, and site furniture and improvements should be used where practical to establish a sense of community.
- b. Where appropriate, provisions for pedestrian linkages should be made to bring the elements of the retirement community together.
- c. Notwithstanding Section 19-46, the Planning Board may approve off-premise signs provided a master sign plan for the District is approved by the Planning Board. The master sign plan shall provide for compatible design elements such as color, form, materials and lighting. All signs shall comply with 23 M.R.S.A. Chapter 21, Maine Traveler Information Services.[Amended 5/30/12;7/24/17]

Effective on: 7/24/2017

Sec. 19-21.9 Ocean View Retirement Community (OVRC)

The Ocean View Retirement Community is designated as a Retirement Community Overlay District as depicted on the Official Zoning Map and the Approved OVRC Conceptual Master Plan dated November 9, 2015. The requirements of the RCOD shall apply to the OVRC except as specifically modified in this sub section.

a. Building Height and External Setbacks

Building Height & External Setbacks	Minimum Setback to External Lot Lines
Not more than two (2) stories or thirty (30) feet	Thirty (30) feet
Not more than three (3) stories or forty-five (45) feet	Ninety (90) feet
Not more than four (4) stories or sixty (60) feet	One hundred fifty (150) feet

Notwithstanding the table above, buildings shall maintain a minimum setback of twenty (20) feet from the Elementary School Redevelopment District (ESRD) boundary.

- b. **Internal Setbacks:** There shall be no required setback from internal lot lines, or from internal street rights of way, within the District.

Effective on: 5/23/2016

Sec. 19-21.10 Avesta Retirement Community (AVRC) [Adopted 05/23/16]

The Avesta Retirement Community is designated as a Retirement Community Overlay District as depicted on the Official Zoning Map and the Approved AVRC Conceptual Master Plan dated May 23, 2016. The requirements of the RCOD shall apply to the AVRC except as specifically modified in this subsection.

- A. **Affordability.** All dwelling units shall be affordable housing as defined in this ordinance.
- B. **Age restriction.** All dwelling units shall be housing for older persons as defined in this ordinance.
- C. **Exemptions from standards.** The AVRC shall be exempt from Sec. 19-21.3.b.4., relative to the provision of a continuum of care and range of care and 6., relative to maximum number of residents required.
- D. **Minimum site size.** Four (4) acres.
- E. **Minimum net residential area per elderly dwelling unit.** The AVRC is exempt from this provision.
- F. **Maximum number of dwelling units.** The maximum number of dwelling units shall not exceed thirty-nine (39.)
- G. **Building Height and External Setbacks**

Building Height & External Setbacks	Minimum Setback to External Lot Lines
Not more than two (2) stories or thirty-five (35) feet	Thirty (30) feet

- H. **Internal setbacks.** There shall be no required setback from internal rights of way, within the District.
- I. **Maximum building area.** Any building located within seventy-five (75) feet of the perimeter of the overall site shall have a total floor area of no more than twenty thousand (20,000) square feet. The maximum size of any building shall be a total floor area of twenty thousand (20,000) square feet.
- J. **Parking requirement.** Notwithstanding any contrary provision of Section 19-38, thirty-nine (39) parking spaces shall be provided on-site.
- K. **Minimum lot street frontage.** Fifty (50) feet.

Effective on: 5/23/2016

Sec. 19-22 Highland Lake Conservation Overlay District (HLCOD) [Adopted 11/27/00]

Sec. 19-22.1 Purpose

The District is established in order to protect Highland Lake from the phosphorus contained in stormwater runoff from developed areas.

Effective on: 12/9/2013

Sec. 19-22.2 District Boundaries

The boundaries of the District coincide with the watershed of Highland Lake and are depicted on the official Zoning Map of Falmouth.

Effective on: 12/9/2013

Sec. 19-22.3 Requirements

- a. Any project that requires private way, site plan or subdivision approval by the Planning Board shall prepare a phosphorus control plan according the following requirements:
 1. The project shall not export available phosphorus in stormwater runoff at a rate of more than .053 lbs/acre/year.
 2. The phosphorus control plan shall be prepared in accordance with the manual entitled: Phosphorus Control in Lake Watersheds: A Technical Guide to Evaluating New Development, by the Maine Department of Environmental Protection, 1992, or its most recent revision.
- b. The construction of a single family home, the expansion of more than 200 square feet of building footprint on an existing home, or the clearing of trees and moving of soil material for the purpose of building a single family home, requires a phosphorus control permit from the Code Enforcement Officer.
 1. A phosphorus control and sedimentation and erosion control plan that shows how the project shall meet the requirements of this ordinance shall be submitted to the Code Enforcement Officer for approval. The plan shall be prepared by a professional who is qualified for the task as determined by the Code Enforcement Officer. The plan shall show lot boundaries, the limits of the area that will be cleared for development, the direction of stormwater flow, the location of streams, wetlands, and waterbodies, if any, and the location and type of phosphorus control and sedimentation and erosion control measures to be installed and maintained as part of the project.

The plan shall meet the following requirements:

 - a. A buffer strip 50 feet wide consisting of natural forestland that meets the requirements of Section 19-22.4 shall be retained along the property boundaries downslope of the developed area of the lot. The buffer strip shall intercept and treat the stormwater runoff from at least 90% of the developed area of the lot, including at least 90% of the area consisting of buildings, driveways, and other impervious surfaces. If lot size, lot shape, existing development on the lot, or topography make a 50 foot buffer impractical, as determined by the Code Enforcement Officer, then a phosphorus control plan shall be prepared and implemented according to Section 19-22.5. If the lot is located in a subdivision with a phosphorus control plan approved by the Planning Board, then a phosphorus control plan shall be submitted that shows what phosphorus control measures, if any, are located on the property and how they shall be maintained.
 - b. Erosion and sedimentation control measures shall be implemented according to the requirements of Section 19-72. [Amended 9/22/03]
 2. A written notice that the property is regulated by a phosphorus control permit shall be filed at the Cumberland County Registry of Deeds within ten days of plan approval. A copy of the notice filed at the Registry shall be submitted to the Code Enforcement Office within this same time period as proof of the filing.

3. A phosphorus control plan may be amended with the approval of the Code Enforcement Officer. The amended plan shall be filed at the Code Enforcement Office.
4. A review fee as established by the Town Council shall accompany applications for phosphorus control permits.[Amended 8-27-07]

Effective on: 12/9/2013

Sec. 19-22.4 Natural Forestland Buffers

A. General Intent

The standards of this section are designed to protect the natural ability of forestland to remove phosphorus from stormwater runoff. For this reason, failure to protect the buffer area according to these standards is a violation of the phosphorus control permit.

B. Measurement of Buffer

Buffers shall consist of upland and run parallel to lot lines. The width of the buffer shall be measured 50 feet horizontally and perpendicular to the lot line. Buffers are not required below portions of the lot that will remain undeveloped. If a wetland lies on the downslope side of the lot in a position where the buffer should be located, the buffer shall be laid out parallel to the upland edge of the wetland rather than the lot boundary.

C. Maintenance Standards

1. Stormwater runoff must enter the buffer as sheet flow. Creating drainage channels through the buffer strip is not permitted.
2. No soil, rock, construction debris, vehicle bodies or parts, pollutants, trash, fill material, or debris may be placed, stored, or dumped in the buffer strip.
3. No trucks, cars, dirt bikes, ATVs, bulldozers, backhoes, or other motorized vehicles may be permitted within the buffer strip.
4. Any level spreader directing flow to the buffer strip must be regularly inspected and adequately maintained to preserve the function of the level spreader.
5. Removal of trees and other vegetation is permitted only if an evenly distributed stand of trees and other vegetation is maintained. The buffer must score a minimum of 12 points in any 25 foot by 25 foot section (625 square feet) as determined by the following rating system:

Diameter of Tree at 4 ½ Feet above Ground Level in Inches	Points
2-4	1
4-12	2
> 12	4

6. Where existing trees and other vegetation result in a rating score less than 12 points, no trees may be cut or sprayed with biocides except for the normal maintenance of dead, windblown, or damaged trees and for pruning of tree branches below a height of 12 feet provided that two thirds of the tree's canopy is maintained.
7. Structures are not permitted within the buffer area, except that signs, fence posts or utility poles that are already located within the area selected as a buffer may remain if the Code Enforcement Officer determines that these structures do not impair the functional value of the buffer for filtering stormwater runoff.
8. No undergrowth, ground cover vegetation, leaf litter, organic duff layer, or mineral soil may be disturbed or removed from the buffer strip.

Effective on: 12/9/2013

Sec. 19-22.5 Phosphorous Control According to Table 1

a. Purpose of the Table

Table 1 provides flexibility for preparing phosphorus control plans on lots where a 50-foot natural forestland buffer is impractical due to site constraints.

b. Scoring the Plan

The plan must score at least 15 points. The points must be earned using one filtering method and three or more treatment areas. The points are added from the filtering method and the treatment areas to achieve the total score. More than one filtering method may be used on the plan in order to treat runoff from the developed area on the lot. However, only the filtering method with the lowest point value can be included in the calculation for phosphorus control. Credit for areas to be treated only includes the developed portions of the property, as shown in the Table. The Other Options section is to be used only if the project cannot score the minimum number of points based solely on the treatment of stormwater runoff. Credit for phosphorus control is only permitted if the stormwater runoff enters buffer strips as sheet flow. Channeling of stormwater flow through buffer strips is not permitted.

Table 1 – Phosphorus Control Options		
BMP	Point Value/BMP	Points
Filtering Method		
A. Natural forestland buffer with intact duff layer and canopy. The buffer must meet the measurement and maintenance requirements of Section 19-22.4.	45' wide = 9 40' wide = 8 35' wide = 7 30' wide = 6 25' wide = 5	
B. Non-wooded buffer consisting of old fields, orchards, and cutover lands where grass and herbs at least 6 inches high are left to grow at ground level.	100' wide = 3 75' wide = 2 50' wide = 1	
C. Landscape buffer consisting of closely spaced trees and shrubs in a prepared planting bed. The topsoil must contain at least 6 inches of sandy loam, unless excavating the plant bed would disturb the roots of existing trees and shrubs within the buffer area. At least two inches of organic mulch such as decomposed bark or wood chips must be maintained on the soil surface. A level spreader may be needed in sloping areas in order to intercept and distribute the runoff into the buffer as sheet flow.	20' wide = 7 15' wide = 5 10' wide = 3	
D. Structural filter bed or phosphorus control pond.	3	
Treatment Areas		
E. Lawn runoff, including tennis courts, basketball courts, and related impervious surfaces used mainly by pedestrians.	90-100% of area = 3 75-89% of area = 2 60-74% of area = 1	
F. Roof runoff, including other impervious surfaces associated with buildings, such as decks, porches, walkways, and patios.	90-100% of area = 2 75-89% of area = 1	
G. Driveway runoff, including other impervious surfaces associated with parking, maintenance, and storage of	90-100% of area = 3 75-89% of area = 2	

motor vehicles, boats, RVs, and trailers.	60-74% of area = 1	
H. Road runoff from public and private ways, exclusive of the areas described in No. 7. Credit may not be obtained for public and private ways that are already managed for phosphorus control under the terms of a private way, subdivision, or site plan permit.	1 pt / 1,000 s.f. of road surface up to a max. of 4 pts.	
Other Options (Extra credit only)		
I. Driveway, parking, and other vehicular access areas are paved, covered with crushed stone, grass pavers, dry laid pavers, or other permanent and nonerodible surfaces. Gravel and stonedust are not considered permanent, nonerodible surfaces.	100% of area = 290-99% of area = 1	
J. An unstable and eroding shoreline along the lake or natural stream channel is stabilized. Credit is only allowed if the erosion is the result of factors beyond the control of the property owner.	1 pt. / 50 ft. of shoreline up to a max. of 3 points	
Total Score		

Effective on: 12/9/2013

Sec. 19-23 Tidewater Master Planned Development District (TWMP)[Adopted, 4/4/05]

The purpose of the Tidewater Master Planned Development District is to allow the development of the Tidewater area into a high quality, mixed use commercial-residential neighborhood while preserving a significant portion of the area as open space including much of the historic Tidewater Farm. The standards and procedures of the district are designed to permit maximum creativity in site design and to ensure high quality construction with special attention to landscaping, lighting, building orientation and form, coordination of architecture, and signage. To accomplish these goals, the Town Council may approve a Master Development Plan that guides the site plan review process in keeping with general performance standards of the ordinance, but with more flexibility granted to developers and the Planning Board in implementing the approved Master Development Plan.

Sec. 19-23.1 Allowed Uses

The use of land, buildings and structures within the Tidewater Master Planned Development District shall be consistent with the adopted Master Development Plan. The following uses shall be specifically allowed in accordance with the Master Development Plan:

Table 19-23.1 Tidewater Master Planned Development District	
Permitted Structures and Uses	Conditional Uses
A. Accessory buildings and structures B. Single family detached dwellings C. Two-family dwellings D. Multiplexes E. Apartments on the upper floors of a mixed-use building F. Business and professional offices G. Research facilities	A. Public utilities B. Light manufacturing operations with no exterior storage of material, equipment or products C. Home occupations D. Roadside Stands [Adopted 02/27/12]

H. Wholly enclosed places of assembly, amusement, recreation, and government I. Outdoor facilities for recreation, entertainment and culture J. Retail and service establishments and commercial schools [Adopted 5/27/08] K. Restaurants (not including drive through service) L. Outdoor eating areas M. Hotels N. Municipal buildings and uses O. Day care centers P. Churches Q. Health Institutions R. Libraries S. Museums T. Private clubs U. Farming V. Animal Husbandry W. Forestry X. Riding Stables Y. Grocery Retail [Adopted 11/26/12]	
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Effective on: 4/12/2017

Sec. 19-23.2 Dimensional Standards

The placement of buildings, structures, parking, and site improvements shall be generally consistent with the adopted Master Development Plan. All buildings and structures within the district shall conform to the following dimensional standards:

A. Lot Size

There shall be no requirement for the minimum size of lots within the District. Notwithstanding other provisions of the ordinance, more than one principal building may be located on a lot.

B. Lot Width and Street Frontage

There shall be no requirement for the minimum width of lots within the District. The requirement that lots must have frontage on a street shall not apply to buildings and structures that are developed in conformance with the adopted Master Development Plan.

C. Front Setback

A. Single-family and two-family dwelling units from the right-of-way of public streets -	20 feet
B. Single-family and two-family dwelling from the edge of the travelway of private streets	20 feet
C. Non-residential and mixed use buildings and multiplexes from the right-of-way of public streets	None
D. Non-residential and mixed use buildings and multiplexes from the edge of the travelway of private streets	None

D. Side and Rear Setback

All principal buildings shall be separated by a minimum of twenty (20) feet but there shall be no required setback from internal lot lines within the District.

E. Maximum Building Height

All buildings within the District shall be limited to a maximum of three (3) stories. This requirement shall not apply to towers, spires, and similar architectural features. The maximum height of such features shall be sixty (60) feet.

F. Perimeter Buffer

No buildings or structures shall be located within twenty (20) feet of the boundary of the Master Planned Development District and this area shall be maintained as a naturally vegetated or landscaped buffer strip except where the boundary is adjacent to an existing non-residentially developed parcel.

Effective on: 12/9/2013

Sec. 19-23.3 Additional Standards and Requirements

Notwithstanding other provisions of this ordinance, the placement of buildings, structures, parking, and site improvements shall be generally consistent with the adopted Master Development Plan and development within the Tidewater Master Planned Development District shall conform to the following standards:

A. Off Street Parking and Loading

Parking shall be provided for uses within the District in conformance with the provisions of Section 19-38 except as follows:

1. on street parking in conformance with the approved Master Development Plan may be counted toward the parking requirement for non-residential uses
2. parking does not have to be located on the same lot as the use it serves provided that such parking is located within five hundred (500) feet of the use
3. parking may be located in the area adjacent to the property or lot line in conformance with the adopted Master Development Plan provided such parking is appropriately screened
4. the required number of parking spaces for all dwelling units including multiplex units shall be two (2) spaces per unit

B. Wetland Buffers

The requirements of Section 19-71 shall not apply to development, including single-family dwellings, that is in accordance with the approved Master Development Plan and a plan for the protection of wetlands is submitted and approved as part of the development review process.

C. Multiplex Standards

The requirements of Section 19-42 shall not apply to multiplex development that is in conformance with the approved Master Development Plan.

D. Road Standards

1. New public streets constructed as part of the Tidewater development shall conform to the standards for public streets set forth in the Town's Subdivision Ordinance except as provided in this section.
2. Tidewater Lane that will provide access to the open space, Foundation facilities, and the inn will be a public road. The first 1,165 lineal feet from Clearwater Drive will be paved. The remaining section of this road will be built with a gravel surface until such time as the volume of traffic dictates paving of the road as set forth in the Master Development Plan.
3. Private streets and access drives shall be built to the Town's construction standards for private ways but shall not be required to conform to the design standards for public streets

or private ways. These facilities shall conform to the adopted Master Development Plan and the following minimum requirements except as provided in 4:

- 24 feet wide travelway
 - 3 foot gravel shoulders
 - open drainage
 - pedestrian facilities provided on one side of all streets that are not dead ends – these facilities can include stonedust or similar paths that are separate from the travelway
4. To minimize the impact on wetlands, both public and private streets will be narrowed where they cross wetlands. In these situations, a minimum travelway width of twenty (20) feet will be provided. Side slopes in these areas may be increased to a ratio of 1:2.

E. Standards for Animal Husbandry

1. All animal husbandry shall be conducted in accordance with a written management plan that is subject to review and approval by the Town Council. The management plan shall specify the types of animals and the maximum number of each type of animals that will be on the premise together with any related activities including the slaughtering, processing, and/or sale of animals. The plan shall identify how the external impacts of the animal husbandry and related activities including noise, odors, and run-off will be managed and minimized.
2. The Town Council shall approve the management plan only if it finds that the animal husbandry and related activities will be consistent with the Master Development Plan and will not create a nuisance for residents of the Tidewater development or adjacent residential properties. In approving the management plan, the Council may impose conditions on the activities or operation of the animal husbandry to assure that the impact is minimized.
3. There shall be no swine or cattle kept on the premises except as incidental to an agricultural, educational, or community use.

Effective on: 12/9/2013

Sec. 19-23.4 Planning Board Waivers

In approving site plans for development in the Tidewater Master Planned Development District, the Planning Board shall waive or reduce the space and bulk requirements if it finds that all of the following conditions have been met:

- a. A Master Development Plan for the site has been approved by the Town Council in accordance with the standards and procedures set forth below; and,
- b. The waiver or reduction is consistent with the approved Master Development Plan; and,
- c. The amount of the reduction is appropriate to reasonably accommodate the development.

Effective on: 12/9/2013

Sec. 19-23.5 Design Guidelines

All development in the Tidewater Master Planned Development District shall be consistent with the Tidewater Village Design Guidelines and schematic plans / elevations for homes and town homes approved as part of the Master Development Plan. In approving site plans for development in the district, the Planning Board must find that the proposed development will be carried out in a manner that is consistent with the design aspects of the Master Development Plan and the Development Parameters for the Tidewater Master Planned Development District. In making determinations of consistency, the Planning Board may require peer review analyses provided by qualified design professionals.

Effective on: 12/9/2013

Sec. 19-23.6 Master Development Plan Sign Controls

The Master Development Plan shall include an overall design concept for signage within the Tidewater development. The signs in each phase of the development shall conform to this overall concept. The number, size and location of signs shall conform to the requirements set forth in Sections 19-44 through 19-52 of this Ordinance unless specific deviations from these requirements have been approved as part of the Master Development Plan.

Effective on: 7/24/2017

Sec. 19-23.7 Master Development Plan Approval

Prior to the issuance of any permits or approvals within the District, the owner of a parcel of land shall seek Town Council approval of a Master Development Plan that will supersede the existing zoning. Once the owner seeks such approval and the Council approves the Master Development Plan, all subsequent development activities in the area covered by the Plan shall be consistent with the approved Master Development Plan.

Effective on: 12/9/2013

Sec. 19-23.8 Master Development Plan Submissions

The Master Development Plan shall identify the proposed location, size, and use type of all buildings and shall show parking locations, roads and drives, and buffer zones. The Master Development Plan shall be conceptual in nature and shall be based upon a site inventory plan identifying the major development opportunities and constraints associated with the site. This inventory shall be prepared by a registered landscape architect or registered professional engineer and shall show in a conceptual manner natural drainage features, environmentally sensitive areas, prime development areas, potential points of vehicular access, and other significant man-made and natural features of the site.

Effective on: 12/9/2013

Sec. 19-23.9 Master Development Plan Procedure

The Town Council shall hold a public hearing on a proposed Master Development Plan within forty-five (45) days, but not sooner than twenty one (21) days of the submission of a Master Development Plan. At least ten (10) days prior to the hearing, the Council shall notify by mail the owners of all property abutting the property covered by the Master Development Plan. For the purposes of this section, the owners of the property shall be considered to be the parties listed by the tax assessor for the Town of Falmouth as those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action of the Council.

Notwithstanding the foregoing, with respect to a Master Development Plan filed at least twenty-one days prior to the adoption of this provision of the Ordinance, the Town Council may hold such public hearing on such proposed Master Development Plan at the same meeting at which the Town Council adopts this section of the Ordinance so long as notice of the filing of such Master Development Plan has been provided by mail to the owners of all property abutting the property covered by the Master Development Plan at least ten (10) days prior to such hearing.

Effective on: 12/9/2013

Sec. 19-23.10 Master Development Plan Findings and Conditions

In approving Master Development Plans under this provision, the Town Council shall find that the proposed development is consistent with the purpose of the Tidewater Master Planned Development District and the Town's adopted comprehensive plan. Prior to approving a Master Development Plan, the Town Council may request reports from the Town Planner, Fire Chief, and Public Works Director containing their recommendations as to the development proposal. The Town Council may consider attaching conditions to the zoning approval including:

- a. Limitations on the number and types of permitted and conditional uses;
- b. Restrictions on the scale and density of development;
- c. Conceptual design and layout of buildings or other improvements, including buffering;
- d. Time frames for commencement and completion of public infrastructure;
- e. Performance guarantees securing completion and maintenance of improvements, including landscaping, and guarantees against defects;
- f. Preservation of open space and buffers, and protection of natural areas and historic sites;
- g. Provisions for reservation or dedication of land for public purposes;
- h. Contributions toward the provision of municipal services required by the development, including, for example, infrastructure improvements such as roads and sewers, and specialized maintenance needs arising from the rezoning; and,
- i. Provisions for enforcement and remedies for breach of any conditions or restrictions.

Effective on: 12/9/2013

Sec. 19-23.11 Master Development Plan Time Limits [Amended 03/23/2015; 09/16/15; 04/11/16; 10/24/16; 11/13/17; 9/24/18]

If the Town Council grants approval of a Master Development Plan, the applicant's legal rights, duties or privileges determined thereby, shall expire if the development is not commenced within two (2) years of the date on which approval was granted and shall expire as to any portion of the development that is not substantially completed on or before October 21, 2019. The Council may extend these time limits upon showing by the applicant that additional time is needed due to required local, state, or federal permits or approvals, or because of market conditions.

Filing for Site Plan Review under Div. II-19-1-9 is prohibited through October 21, 2019 for areas TF2 and TF3 as designated on the Tidewater Master Planned Development District Plan as amended.

Effective on: 9/24/2018

Sec. 19-23.12 Master Development Plan Filing and Transfers

A copy of the approved Master Development Plan shall be filed with the Town Planner and shall be included in all subsequent applications for site plan review. In approving a Master Development Plan, the Town Council may designate certain public improvements to be undertaken by the developer that are of particular importance to the Council, as listed in Exhibit B of the Limited Development Agreement Public-Private, between Tidewater, LLC and the Town of Falmouth. Prior to the date that such Designated Public Improvements have been completed and accepted by the Town, the approval of the Master Development Plan may not be assigned without Town Council approval. The Town Council shall approve such transfer if the proposed transferee can demonstrate to the Council's satisfaction that it has the technical and financial capacity to complete the Designated Public Improvements. After the Designated Public Improvements have been completed and accepted by the Town, the approval of the Master Development Plan may be assigned without the need for Town Council approval.

Effective on: 12/9/2013

Sec. 19-23.13 Master Development Plan Amendments

Any amendment to the Master Development Plan, other than a "Minor Revision", as defined below, must first be approved by the Town Council before becoming effective. The approval of an amendment to the Master Development Plan, other than a Minor Revision, must comply with the same procedural requirements set forth above for the approval of the original Master Development Plan. A Minor Revision is any proposed change to a Master Development Plan that does not significantly expand the overall square footage of the improvements or the number of dwelling units in the project, change the use of any portion of the project from one type or category of use to another type, or modify any conditions that may have been placed upon the project by the Town Council in approving the original Master Development Plan. A Minor Revision may be approved by the Planning Board.

Effective on: 12/9/2013

Sec. 19-23.14 Master Development Plan Zoning Reversion

Once the Town Council approves the creation of the Tidewater Master Planned Development District, the permitted uses and development standards shall be governed exclusively by the provisions of this subsection 19-23 and not by the provisions of the previous zoning district in which such land is located unless and until such time as:

- a. one (1) year passes without the filing of final site plans and subdivision plans to the Planning Board, unless the applicant shows that additional time is needed due to required local, state, or federal permits or approvals; or,
- b. the developer abandons the project and the developer or property owner(s) request that the rezoning be rescinded.

In such cases, the land tract shall revert to the original zoning without the need for formal action by the Town Council.

Effective on: 12/9/2013

Sec. 19-24 234 Middle Road Special District (MRSD) [Adopted 11/24/08; Effective 01/13/09]

Sec. 19-24.1. Purpose.

Pursuant to Section 19-17 of the Zoning and Site Plan Review Ordinance, Conditional Rezoning, the property identified by Assessor's Map U23 – 002 is rezoned due to the unique architecture of the mercantile structure in a residential district, the historic use characteristics of the structure and its physical location relative to the existing travel lanes of Middle Road (Route 9).

Effective on: 12/9/2013

Sec. 19-24.2. Zone Changed from RB to MSRD with Conditions.

The zoning map for the Town of Falmouth, Maine, is amended as shown on the attached fragmentary map entitled, "Fragmentary Map for Property Rezoned from Residential B (RB) to Middle Road Special District (MRSD), with Conditions and Restrictions, adopted November 24, 2008" This fragmentary map is hereby incorporated in and made a part of said zoning map.

Effective on: 12/9/2013

Sec. 19-24.3. Conditions and Standards for Zone Change to MRSD.

Wherever inconsistencies exist between these provisions and other provisions of the Zoning and Site Plan Review Ordinance, the provisions within this section shall prevail. The property described in Section 19-24.1 above shall be limited as follows:

- A. Existing Use – At the time of the adoption of this section, the use of the property consists of one second floor residential unit.
- B. Change, Expansion or Addition –Site Plan approval by the Planning Board must be obtained prior to any change of use, addition of a new use, structural alteration or modification of lot lines or site improvements. The Planning Board shall apply the requirements of Div. II-19-1-9 of this Ordinance except that, where Div. II-19-1-9 is more restrictive, the standards of this section shall apply.
- C. Site Access – Prior to establishment of a use other than a single-family dwelling under this section, the property owner is required to obtain the necessary approvals to establish a curb cut to Middle Road and to complete construction in conformance with approved permits.
- D. Permitted Uses:
 - 1. Single – Family Detached Dwelling
 - 2. Accessory Building and Use
 - 3. Accessory Dwelling Unit
- E. Conditional Uses
 - 1. Home Occupation
 - 2. Two-family
 - 3. Multi-family
 - 4. Bed and Breakfast Establishment
 - 5. Neighborhood Variety /Convenience Store
 - 6. Retail and Service Establishments
 - 7. Professional Office
 - 8. Restaurant with no drive-thru
 - 9. Outdoor Eating Area
 - 10. Commercial School
 - 11. Tradesmen Office
 - 12. Art and Craft Studio
- F. Space and Bulk Regulations – The existing lot size, maximum lot coverage, net residential area per dwelling unit, minimum site size, structure height and setbacks shall be considered conforming within this district for all permitted uses.
- G. Off-Street Parking [Amended 03/09/09]

1. Dimensional Requirements - Off-street parking shall be limited to the square footage amount equal to the existing paved and gravel surface area on the site currently used for parking. This area may be reconfigured to maximize the amount of parking. All spaces, access and aisle widths shall meet the minimum dimensional requirements as specified in Divs. II-19-1-5 and II-19-1-9 of this Ordinance.
 2. Required Parking – No minimum amount of off-street parking spaces or loading areas are required.
- H. Building Conditions –No additions are permitted that increase the building footprint or peak height of the building. Architectural changes may be permitted through Site Plan review approved by the Planning Board and the Board shall use the Route One Design Guidelines as a basis for architectural review.
- I. Lighting - All lighting must conform to Div. II-19-1-9 of this Ordinance and shall be designed and installed to minimize spillover and glare onto abutting residential properties. Mounting heights for all external fixtures shall not exceed fourteen (14) feet with exception of sign lighting.
- J. Signage – A comprehensive signage plan shall be part of any site plan approval. Existing signs documented under paragraph B. above may be used in their current location and configuration. The Planning Board may permit reductions in size, or a change in location or configuration provided the redesigned sign conforms to the Route One Design Guidelines. No internally lit signs are permitted. Number and dimensions of additional signs are regulated as in the RB District.
- K. Landscaping and Screening - Year-round screening for parking, utility structures, and garbage disposal from the abutting properties is required for all uses other than single family dwellings to provide appropriate visual separation between non-residential and adjacent residential uses.
- L. Protection of Natural Resources – The property shall comply with any and all requirements elsewhere in this ordinance that provide for the protection of natural resources.

Effective on: 7/24/2017

Sec. 19-25 Elementary School Redevelopment District (ESRD) [Adopted 05/30/12]

Sec. 19-25.1 Purpose- The District is established to redevelop the area on the site of the historic Plummer, Mason-Motz and Lunt Schools. The site is unique due to the type, size and placement of buildings, the history of use of the property as elementary schools and its proximity to OceanView Retirement Community.

Effective on: 12/9/2013

Sec. 19-25.2 Conformance with Other Requirements- All development and use of land within the ESRD District shall conform to all other requirements of the Zoning and Site Plan Review Ordinances except as specifically provided for in this section.

Effective on: 12/9/2013

Sec. 19-25.3 District Boundaries- The boundaries of the ESRD are as depicted on the Official Zoning Map.

Effective on: 12/9/2013

Sec. 19-25.4 Subdivision and/or Site Plan Approval- The Planning Board, prior to its approval of a Subdivision and/or Site Plan shall find that the application is generally consistent with the Approved Conceptual Master Plan dated November 9, 2015. [Amended 05/09/16]

Effective on: 5/9/2016

Sec. 19-25.5 Permitted Uses

- a. Municipal buildings and uses
- b. Living arrangements and services for the elderly and/or people with disabilities including, but not limited to:
 1. congregate housing,
 2. independent housing with residential support services,
 3. assisted living facility,
 4. nursing facility or skilled nursing facility,
 5. adult day care, senior center,
 6. health institution or
 7. memory loss care.
- c. housing for older persons
- d. outdoor recreational facilities
- e. wholly enclosed place of assembly, amusement, recreation, culture and government
- f. auditorium
- g. business and professional offices
- h. accessory building
- i. private school
- j. retail and service establishments limited to 2,000 gross square feet

Effective on: 5/9/2016

Sec. 19-25.6 Dimensional Standards

a. Lot Requirements

All Uses	Minimum Lot Size		Max. Lot Coverage	Min. net residential area per dwelling unit	Min. site size
	Lot Area	Lot Width			
	na	na	na	na	na

- b. **Setbacks:** There are no required setbacks.
- c. **Building Height** - No building shall exceed four (4) stories or sixty (60) feet.

Effective on: 12/9/2013

Sec. 19-25.7 Master Sign Plan– Any permanent sign installed within the District shall be depicted on a master sign plan as approved by the Planning Board. The master sign plan shall be in accordance with Sections 19-44 – 19-52 and shall provide for compatible design elements such as color, form, materials and lighting.

Effective on: 12/9/2013

Sec. 19-25.8 Parking

- a. **Setbacks** – The Planning Board may waive the front yard parking setback requirements of Section 19-136.C if the location of the parking is consistent with the Approved Conceptual Master Plan.
- b. **Off-Street Parking** – The Planning Board shall determine the minimum number of off-street parking spaces required. The number and proximity of on-street parking spaces may be considered when determining the minimum number of off-street spaces required.
- c. **Shared Parking** – The Planning Board may allow shared parking on multiple lots and between all uses.

Effective on: 12/9/2013

Sec. 19-25.9 Underground Utilities– Notwithstanding Section 19-133.d, existing above ground utility lines may remain above ground. New utilities shall be placed underground.

Effective on: 12/9/2013

Sec. 19-26 Water View Overlay District (WVOD) [Adopted 05/30/12]

To establish within the Town of Falmouth an area as shown on the attached fragmentary map entitled, “Proposed Waterview Overlay District” and dated February 23, 2012. Non-conforming single family dwellings and nonconforming lots shall receive a Conditional Use Approval from the Board of Zoning Appeals and comply with Sections 19-119 and 19-123.

Effective on: 12/9/2013

Sec. 19-26.1 Garden Center Special Overlay District (GCSOD) [Adopted 05/12/2014]

Sec. 19-26.1.1 Purpose

This district is established in to allow for outdoor retail display and general storage of gardening and horticultural supplies as well as the outdoor storage of bales and pallet storage in the amount and volume permitted prior to the rezoning to VC1.

Effective on: 5/12/2014

Sec. 19-26.1.2 Conformance with Other Requirements of this Ordinance

This District shall be overlain on the underlying district and provisions herein shall supersede and replace all provisions elsewhere in this ordinance with the exception of Division II-19-1-2 Definitions, Division II-19-1-8 Board of Zoning Appeals, and Division II-19-1-10 Administration.

Effective on: 5/12/2014

Sec. 19-26.1.3 District Boundaries

The boundaries of the GCSOD are as depicted on the Garden Center Special Overlay District Fragmentary Zoning Map dated March 18 which shall be made part of the Official Zoning Map upon adoption.

Effective on: 5/12/2014

Sec. 19-26.1.4 Site Plan Review

Site improvements shall be made in accordance with the plan entitled “Site and Landscaping Plan, Seasonal Retail Sales – 2014, prepared by Sewall Associates, and dated March 18, 2014” (Plan). Modifications, proposed after the adoption of this amendment, meeting the criteria for Minor Site Plan Review may be approved provided the modifications meet all of the ordinance provisions of the underlying district.

A. Completion of Site Improvements

1. No use of the district area other than the loading area shall commence until such time as a performance guarantee for 110% of the estimated cost of improvements as shown on the District Plan is submitted in a form satisfactory by the Community Development Director.
2. Notwithstanding 1) above, the screening of bales and pallets shall be substantially complete within thirty (30) days of the adoption of this amendment and fully installed within forty-five (45) days of the adoption of this amendment.
3. All improvements as shown on the Plan shall be completed on or before December 31, 2014. The Community Development Director may allow a onetime extension if it is determined that extenuating circumstances warrant. An extension shall not exceed June 30, 2015.

Effective on: 5/12/2014

Sec. 19-26.1.5 Permitted Uses

The following uses are permitted:

- A. Outdoor Retail Display
- B. Outdoor Sales and Storage
- C. Loading Area
- D. Parking
- E. Any other use in the underlying district provided it meets all provisions of the Zoning and Site Review Ordinance.

Effective on: 5/12/2014

Sec. 19-26.1.6 Performance Standards for Outdoor Retail Display and Outdoor Sales and Storage Use

Outdoor Retail Display and Outdoor Sales and Storage shall meet the following general standards and those standards as shown on the Plan.

- A. Shall be in a dedicated area;
- B. Areas immediately adjacent to a public right(s) of way shall be enclosed with a fence and landscaping to screen views from the right(s) of way. Storage areas must be enclosed with a solid fence or wall.
- C. The maximum height of a fence shall be eight (8' 0") feet. The design of the fencing enclosure shall be compatible with the main building(s) and surrounding development.
- D. Storage of bales and empty pallets may be located outside a fenced area on the day they are being removed, however, in no event shall they be located outside a fenced area overnight;
- E. Streetscape - Street frontages should encourage pedestrian interest and provide safe movement through installation of street trees, curbing, pedestrian lighting and sidewalks.

Effective on: 5/12/2014

Sec. 19-26.1.7 District Termination

This district shall be considered terminated if:

- A. The performance guarantee is not submitted as required in Section [19-26.1.4](#) above.
- B. Improvements as shown on the plan are not complete as required in Section [19-26.1.4](#) above.

Effective on: 5/12/2014

Sec. 19-26.2 Village Park Special District (VPSD) [Adopted 05/28/14]

Sec. 19-26.2.1 Purpose.

The Village Park Special District (VPSD) is established due to the existing configuration of the park, including the great lawn, gazebo, outdoor ice rink, maintenance shed, and existing parking lot on the site. The unique nature of the park improvements and the construction of a seasonal, pavilion-style ice hockey rink with additional non-hockey off season recreational and municipal uses in the same location of the existing rink does not meet the strict provisions of the Village Center 1 (VC1) District. Maintaining the current locations of the park improvements will serve the town and the purpose of the VC1 District.

Effective on: 5/28/2014

Sec. 19-26.2.2 Conformance with other Requirements.

All development and use of land within the VPSD shall conform to all requirements of the Zoning and Site Plan Review Ordinance in Sec. 19-11.5 except as specifically provided for in this section and Sec. 19-26.2.4 below.

a. Dimensional Standards – Dimensional standards shall comply with the VC1 zone except that uses shall be exempt from setback requirements in Sec. 19-11.5.1, paragraphs 1 and 2.

b. Architectural Standards – Architectural Standards shall comply with the VC1 zone except for the following:

1) Metal siding may be used in conjunction with other durable building materials noted in Section 19-11.5.5.3.

2) Unenclosed areas are exempt from the architectural design requirements of the VC1 zone. (Sections 19-11.5.5.3 through 19-11.5.5.5.)

3) Facades facing a public street or internal drive shall provide fenestration appropriate to the internal function. A minimum of 30% fenestration between three feet and ten feet is encouraged but not required if inappropriate for the internal use. ie: locker rooms, bathrooms, storage rooms, etc.

c. Parking Areas – The parking lot design shall comply with the VC1 zone except for the following:

1) The existing parking area shall be allowed between the building and Hat Trick Drive.

2) Screening between the parking area and Hat Trick Drive is not required.

Effective on: 5/28/2014

Sec. 19-26.2.3 District Boundaries.

The boundaries of the VPSD are as depicted on the Village Park Fragmentary Zoning Map dated April 28, 2014 which shall be made part of the Official Zoning map upon adoption.

Effective on: 5/28/2014

Sec. 19-26.2.4 Site Plan Review.

Site improvements specifically related to the hockey rink shall be made in accordance with the plans entitled “Casco Bay Hockey Association, Rink Project – 2014, prepared by Blais Civil Engineers, sheets C1 through C14, dated May 27, 2014 and revised through July 31, 2014 and “Casco Bay Hockey”, prepared by Port City Architecture, sheets A2.0 and A3.0, dated July 21, 2014 (Plans), and shall be exempt from the Section 9 of this Ordinance, Planning Board Site Plan Review. Future changes to the site shall be reviewed under Div. II-19-1-9. of this Ordinance, Planning Board Site Plan Review where applicable.

a. Completion of Site Improvements

1. No use of the hockey rink shall commence until such time as a Certificate of Occupancy is issued.
2. All improvements as shown on the Plans shall commence within nine months and shall be completed within 18 months of the effective date of this amendment. The Community Development Director may allow a onetime extension if it is determined that extenuating circumstances related to construction so warrant.

Effective on: 5/28/2014

Sec. 19-26.2.5 Permitted Uses.

- a. Any use permitted in the Village Civic District (VCC)
- b. Outdoor recreation facilities with a Maximum New Ground Floor Tenant Area (MNGFTA) of no greater than 50,000 gross square feet.

Effective on: 5/28/2014

Sec. 19-26.3 Hat Trick Drive Special District (HTDSD) [Adopted 11/24/14]

Sec. 19-26.3.1 Purpose.

The Hat Trick Drive Special District (HTDSD) is established due to the location of the right of way that the designed street lies within. The right of way is situated on four parcels, Tax Assessor's U24-007-001, U24 – 007-002, U52 – 002 and U52-005. Hat Trick Drive as constructed by the Town is established for public use in the Public Private Limited Development Agreement dated November 17, 2014.

Effective on: 11/24/2014

Sec. 19-26.3.2 Conformance with other Requirements.

The HTDSD shall conform with the design standards as shown on the plans entitled "Route One/Village Commercial District – Hat Trick Drive" prepared by Sewall Associates and dated May 13, 2014 and consisting of four sheets: Index, C1 , C2 and L1, or as the plan may be amended by the Town of Falmouth for final construction.

Effective on: 11/24/2014

Sec. 19-26.3.3 District Boundaries.

The boundaries of the HTDSD are as depicted on the plans as referenced in Section 19-26.3.2 above and include any and all improvements associated with the construction of the street, including landscaping, storm drainage and signage, and which shall be made part of the Official Zoning map upon adoption.

Effective on: 11/24/2014

Sec. 19-26.3.4 Site Plan Review.

The construction of Hat Trick Drive shall comply with the plans as referenced in Section 19-26.3.2 above and shall be exempt from site plan review under Section 9 of this ordinance.

Effective on: 11/24/2014

Sec. 19-26.4 Gray Road Special District (GRSD) [Adopted [07/13/2015]

Sec. 19-26.4.1 Purpose.

The District is established to remove the prohibition of parking in the front setback as required in Sec. 19-136.

Effective on: 7/13/2015

Sec. 19-26.4.2 Conformance with Other Regulations.

All development and use of land within the District shall conform to all requirements of the MUC and Route 100 Corridor Districts except as specifically exempted in this section.

Effective on: 7/13/2015

19-30.3 District Boundaries.

The boundaries of this District are the parcel lines of Map R05-Lot 45-B as referenced on the 2014 Assessor's Map.

Effective on: 7/13/2015

Sec. 19-26.4.4 Parking in the Front Setback.

Parking is permitted in the front setback.

Effective on: 7/13/2015

Sec. 19-26.5 Contract Zoning [Adopted 9/26/16]

Sec. 19-26.5.1 Authority

Pursuant to 30-A M.R.S.A., §4352 and as defined by 30-A M.R.S.A. § 4301(5), contract zoning is hereby authorized for rezoning of property by the Town Council.

Sec. 19-26.5.2 Purpose

On occasion, general zoning district designations and traditional zoning methods can be inadequate to fully deal with the unusual nature or unique location of specific proposals for development. In these special situations, more flexible and adaptable zoning methods are needed to assure public benefit and mitigate potential negative impacts on subject, abutting, and nearby properties.

Effective on: 9/26/2016

Sec. 19-26.5.3 Geographic Extent of Applicability

Rezoning under this section shall be permitted in BP, VMU, MUC, GRSD, RA, RB, RC and RD districts.

Effective on: 9/26/2016

Sec. 19-26.5.4 Relationship to Other Provisions.

1. Relationship to Ordinance in General. Any and all standards, requirements and provisions for development in Chapter II-19 of the Code of Ordinances shall remain in force for the base and overlay districts in which the project is located, with the exception of any variations to said districts, whether more permissive or more stringent, granted by the Town Council as part of a contract zoning agreement under this section.
2. Shoreland Zoning. Any variations to existing Shoreland Districts as a result of a contract zoning agreement shall receive Maine DEP review and approval in accordance with 38 M.R.S.A §438-A(3) as may be required prior to the amendment becoming effective.

Effective on: 9/26/2016

Sec. 19-26.5.5 Findings General.

The Town Council, prior to or as part of an approval of a contract zoning agreement under this section, shall find that the resulting development to be permitted by the agreement and the agreement:

1. Are consistent with the adopted Comprehensive Plan;
2. Allow uses that are consistent with the existing, permitted and conditional uses within the underlying zoning district;
3. Include only conditions and restrictions that relate to the physical development or operation of the property; and
4. Provide public benefit that would not exist under the current zoning.

Effective on: 9/26/2016

Sec. 19-26.5.6 Contract Zoning Agreement Required.

In order to allow for flexibility for the development of the land, to assure public benefit, and to mitigate potential negative impacts on subject, abutting, and nearby properties, a contract zoning agreement is required. Conditions and restrictions may include, by way of example:

1. All variations from standards of Chapter II-19 of the Code of Ordinances
2. Open space, historic or natural resources and natural buffer zones to be protected
3. Limitations on the number and types of uses
4. Design and layout of buildings, site and any site improvements
5. Scale and density of development
6. Days and hours of operation
7. Provisions for reservation or dedication of land for public purposes
8. Provisions for affordable housing
9. Contributions toward the provision of municipal services required by the development, such as, infrastructure improvements and specialized maintenance needs arising from the rezoning
10. Schedules for commencement and completion of construction including any phasing plan.
11. Performance guarantees securing temporary erosion and sediment control measures, all improvements associated with the project and maintenance of improvements
12. Provisions for enforcement and remedies for breach of any conditions or restrictions
13. Procedures for modifications or amendments.

Effective on: 9/26/2016

Sec. 19-26.5.7 Procedures, Conceptual Review.

The Community Development Committee (CDC) of the Town Council shall review and comment on the conceptual proposal as indicated below. The purpose of concept review is to allow the applicant an opportunity to discuss the project and be advised on compliance with the general findings required by the Town Council for approval. This provides the foundation to build a formal application that meets the basic requirements for approval and allows for informal dialogue and feedback on the conceptual proposal.

1. Application Submittal. The applicant shall submit their conceptual request for a contract zoning agreement on an application form provided by the Community Development Department and shall be accompanied by a fee as approved by the Town Council. The application shall contain the items as indicated in Sec. 19-26.5.9 1. below.
2. Concept review. Once the application is considered complete by the Community Development Director or their designee, the CDC shall meet to review the proposal, determine if the general findings under Sec. 19-26.5.5 above have been met and may offer recommendations or comments regarding the design or operational elements of the conceptual proposal.

3. Abutter Notice. Immediate abutters to the property on which the conceptual proposal is located shall be notified by first class mail at least seven (7) days prior to the date of the conceptual review. The term abutter shall mean an owner of property located adjacent to the subject property as identified in the town's GIS records at the time of the notice.
4. Failure to meet findings. Should a final determination of the CDC indicate that the applicant has failed to meet the findings under Sec. 19-26.5.8 above, the applicant may proceed to formal review under paragraph H. below within 60 days of the final determination.

Effective on: 9/26/2016

Sec. 19-26.5.8 Procedures, Formal Review

The following procedure shall be used to submit any request for a a contract zoning agreement under this section.

1. Application Submittal. The applicant shall submit their formal request for a contract zoning agreement on an application form provided by the Community Development Department and shall be accompanied by a fee as approved by the Town Council. The application shall contain the items as indicated in Sec. 19-26.5.9 2. below. At such time the Community Development Director or their designee determines the application is complete, it shall be forwarded to the Planning Board and the Town Council.
2. Planning Board Review. The Planning Board shall review the proposal and forward any observations, recommendations and comments to the Town Council. This review will also serve as the pre-application sketch review required for subdivisions where applicable.
3. Town Council Review. Following the Planning Board review in Sec. 19-26.5.8 2. above, the Town Council shall review the proposal. Following its review, the Town Council may refer the proposal to the Planning Board for a hearing as prescribed in Sec. 19-26.5.8 4. below.
4. Planning Board Hearing. Should the Town Council refer the proposal to the Planning Board, the Planning Board, as the municipal reviewing authority, shall hold a hearing which meets the requirements of 30-A MRS Sec. 4352(8).
5. Town Council Hearing. The Town Council shall hold a hearing, which hearing requirements shall be no less stringent than the public hearing requirements of Section 213 of the Town Charter. The Town Council may elect to hold a joint hearing with the Planning Board.
6. Final consideration by Town Council. Prior to adopting a contract zoning agreement, the Town Council shall determine that the proposed contract zoning agreement meets the requirements of each determination in Sec. 19-26.5.5 above. The Town Council shall state its reasons for its findings and conclusions for each of those determinations.

Effective on: 9/26/2016

Sec. 19-26.5.9 Submission Requirements

The following plans and documentation shall be submitted in compliance with the submittal requirements as established by the Community Development Department, in adequate number and format to facilitate the review of the proposal.

1. Concept review. The following items shall be submitted as part of a concept review application.
 - a. Address of property and Map-Lot
 - b. Evidence of right, title, or interest in the property
 - c. Names and contact information of the record owner and the applicant
 - d. Written description of the proposal including use, scale and general physical development scheme.

- e. Map showing property to be rezoned with current zoning, as well as current zoning and uses within 500 feet of the property.
 - f. Sketch plan showing conceptual site improvements.
 - g. Comprehensive Plan compliance statement with explanation
 - h. Statement of public benefit that would not result under current zoning
 - i. Compliance with existing and permitted uses of the district(s)
 - j. List of variations from existing zoning requested
 - k. Need for utility extensions
2. Formal review. The following items shall be submitted as part of a formal application. Any application for a project that requires a pre-application sketch review under Chapter II-7 of the Code of Ordinances shall also meet the submittal requirements of [Appendix 7-2](#) of that Chapter.
- a. Names and contact information of the record owner and the applicant
 - b. Names and contact information of all consultants working on the project
 - c. Evidence of right, title, or interest in the property
 - d. Parcel map showing parcel in relationship to abutting parcels and street network.
 - e. Existing conditions plan of the development site or parcel at a scale necessary to adequately represent the site and improvements but no more than one hundred (100) feet to the inch
 - i. Name of the property owner, north arrow, date, and scale;
 - ii. Map-block-lot and street address
 - iii. Metes and bounds of the parcel
 - iv. Relationship of the site to the surrounding area (including distance to closest street intersection)
 - v. Topography of the site at an appropriate contour interval depending on the nature of the use and character of the site
 - vi. Location and size of existing utilities and stormwater improvements
 - vii. Existing buildings, structures, or other improvements
 - viii. Existing restrictions, rights of way and easements
 - ix. The location and delineation of water features whether natural or manmade, including ponds, streams, rivers, wetlands, vernal pools and their upland habitats, ditches, drains, and natural drainage swales, as well as the 100-year floodplain
 - x. Watershed boundaries
 - xi. Indication if the parcel or portions thereof are located within the urbanized area as defined by federal census bureau. [NOTE: in the urbanized area, may be subject to increased stormwater permitting requirements]
 - xii. A viewshed analysis showing the location and extent of views into the property from public roads
 - xiii. Locations of all historically significant sites or structures on the tract, including but not limited to cellar holes, stone walls, earthworks, and graves.
 - xiv. Locations of trails that have been in public use (pedestrian, equestrian, bicycle, etc.)
 - xv. Total acreage of the tract

- xvi. Net Residential Area calculated for residential development
- f. Proposed Conceptual Development Plan - A plan at the same scale as the existing conditions plan, highlighting the opportunities and constraints of the site and including the following:
 - i. Prime portions of the site that are suitable for development or use
 - ii. Portions of the site that are suitable for on-site sewage disposal if public sewerage is not available
 - iii. Areas of the site that have development limitations (steep slope, flat, soil constraints, wetlands, flood plains, drainage, etc.)
 - iv. Suitable access points and routes for roads and utilities
 - v. Areas where there may be off-site conflicts or concerns (i.e., noise, lighting, traffic, etc.)
 - vi. Structures within 100 feet of all subject property boundaries and the use of those structures.
 - vii. Proposed location and type of development, including buildings, signage, driveways, parking, and buffering
 - viii. Conceptual building elevations for commercial structures showing height, placement on lot, orientation to the street, and public entrances.
 - ix. Sidewalks, public parking, bus stops, and bicycle accommodation within 100 feet of the development site.
- g. Proposals that will trigger a MDOT Traffic Movement Permit must submit a traffic impact study.
- h. Draft contract zoning agreement including all applicable items listed in Sec. 19-26.5.6 above and at a minimum the following:
 - i. Statement of proposed use of the property
 - ii. List of specific zoning changes requested
 - iii. List of conditions and restrictions proposed
 - iv. Site analysis describing major features of the property
 - v. Statement of consistency with the Comprehensive Plan
 - vi. Statement of consistency with the district(s) uses
 - vii. Statement of public benefit that would not result under current zoning

Effective on: 9/26/2016

Sec. 19-26.5.10 Consulting and review fees.

The Town Council may require any and all consulting and review fees to be paid by the applicant and may require funds to be placed in escrow at the time of the Town Council review.

Effective on: 9/26/2016

Div. II-19-1-4. GENERAL PROVISIONS

The following general provisions shall apply to all districts:

Sec. 19-27 Required Conformance.

No structures that require a building permit shall be erected or used, and no lot shall be used or divided, unless in conformity with the provisions of this Ordinance. All structures and lots, and uses of structures and lots, which fail to conform with the provisions of this ordinance are prohibited, except as provided herein. [Amended, 2/28/05]

Effective on: 12/9/2013

Sec. 19-28 Applicability.

When a lot is situated in part in the Town of Falmouth and in part in an adjacent municipality, the provisions of this Ordinance shall be applied to that portion of such lot as lies in the Town of Falmouth in the same manner as if the entire lot were situated in Falmouth.

Effective on: 12/9/2013

Sec. 19-29 Transected Boundary.

When a lot is transected by a zoning district boundary, the regulations set forth in this Ordinance applying to the larger part by area of such lot may also be deemed to govern in the smaller part beyond such zoning district boundary but only to an extent not more than thirty (30) linear feet in depth beyond said zoning district boundary.

Effective on: 12/9/2013

Sec. 19-30 Access Requirements for Lots [Amended 12/22/05]

- a. Only one single family detached dwelling shall be permitted on a lot.
- b. No dwelling shall be erected except on a lot that fronts on a street as defined, and the minimum street frontage, measured along the lot line at the street, shall be at least equal to the minimum lot width, except:
 1. As provided in Sections 19-82 and 19-83 for “grandfathered lots.”
 2. As provided in Section 19-18.6 and 19-18.7. for country estates lots served by private drives.

Effective on: 12/9/2013

Sec. 19-31 Area Requirements.

Land within the lines of a street on which a lot abuts shall not be counted as part of such lot for the purpose of meeting the area requirements of this Ordinance even though the fee to such land may be in the owner of such lot.

Effective on: 12/9/2013

Sec. 19-32 Public Purpose.

Any land taken by eminent domain, or conveyed for a public purpose for which the land could have been or was taken by eminent domain, shall not be deemed to be transferred in violation of the lot size, lot coverage and setback provisions of this Ordinance.

Effective on: 12/9/2013

Sec. 19-33 Setbacks for Accessory Structures [Adopted, 2/28/05] [Amended 3/27/06]

Storage sheds, swimming pools, tennis courts and children’s play structures that are accessory structures, in all Districts may encroach into required side or rear setbacks in accordance with the following requirements:

- a. Storage sheds and children's play structures that are accessory to a residential use may be located in a rear or side setback provided that they are not more than one hundred (100) square feet in area and not exceeding ten (10) feet in height.
- b. In the Farm and Forest District and all Residential Districts, the drip line and/or edge of the accessory structure may be located no closer than 3 feet to side and rear lot lines. (*International Building Code 2003, Table 602, b; no fire resistance rating required in accessory structures when accessory to Group R3 {1 & 2 family dwellings} and the separation distance is 3 feet or more.*)
- c. No accessory structure shall be located closer to the street than the front setback required for the principal building, except fences, gates, mailboxes, newspaper receptacles, signs, or similar roadside structures with less than 100 square feet of footprint, as well as entry pillars and statues. On any such structure with lights, there shall be no glare onto the public roadway, and no flashing lights shall be permitted.

Effective on: 12/9/2013

Sec. 19.34 Setbacks for Wastewater Pump Station [Adopted, 7/28/2014]

Wastewater pump stations are exempt from structural setbacks in Section 3. However, they shall meet the setbacks to the greatest extent practical. In determining the greatest practical extent, the following shall be considered: 1) depth of the lot; 2) proximity to abutting uses; 3) the slope of the land; 4) the potential for soil erosion; 5) the type and amount of vegetation to be removed; 6) the proposed building's site elevation in regard to the floodplain; and 7) proximity to wetlands. The permitting authority may place conditions on an approval to mitigate any negative impact to the site or abutting properties. [Adopted, 7/28/14]

Effective on: 7/28/2014

Div. II-19-1-5. SPECIFIC REQUIREMENTS

The following specific requirements shall apply to uses in all districts except as noted:

Sec. 19-34 Accessory Uses

An accessory use shall not include any use injurious or offensive to the neighborhood as initially determined by the Building Inspector.

Parking or storage for more than one commercial motor vehicle is specifically prohibited as an accessory use in the Farm and Forest and Residential Districts except as an accessory to a farm, truck garden, nursery, or home occupation approved under Section 19-54.

Sec. 19-34.1 Roadside Stands [Adopted 02/27/12][Amended 7/10/17;7/24/17]

1. Approvals required.
 - a. Individual Roadside stand. Roadside stands as a stand alone accessory use are exempt from Div. II-19-1-9, Planning Board Site Plan Review. The Board of Zoning Appeals may permit a roadside stand as a Conditional Use. In addition to meeting the standards in Sections 19-119 and 19-123, roadside stands shall meet the following requirements and be shown on a scaled drawing of the lot and building elevation plan submitted as part of a Conditional Use Application.
 - b. Roadside Stands as part of a development requiring Planning Board Site Plan Review. Planning Board Site Plan Review is required for roadside stands that are proposed in conjunction with other uses that require Site Plan Review under Div. II-9-1-9. These stands

are considered permitted uses and do not require a Conditional Use approval by the Board of Zoning Appeals.

2. Outdoor display area in conjunction with a roadside stand is permitted and shall be limited to 200 gross square feet.
3. Minimum of three parking spaces shall be provided meeting the ordinance requirements under Div. II-19-1-5, with the exception of Section 19-38.g.
4. Products sold are limited to:
 - a. Local home prepared foods,
 - b. Local farm and food products, and
 - c. Products registered as Maine Made by the Maine Department of Economic and Community Development
5. Roadside stands shall only be located on lots that have a minimum of 125 feet of lot width and are at least twenty thousand (20,000) square feet in size.
6. Minimum setbacks for all improvements related to a roadside stand – Roadside stands are exempt from setback requirements elsewhere in this ordinance.
 - a. Front - 10 feet from the front lot line
 - b. Side - 50 feet from the side lot lines, and
 - c. Rear - 40 feet from the rear lot line.
7. Conversion of roadside stands to another use is permitted only if all appropriate setbacks are met.
8. Maximum floor area
 - a. FF District
 - i. Accessory to a primary residential use- 400 gross square feet
 - ii. Accessory to a primary farm use - 800 gross square feet
 - b. All other Districts where permitted - 300 gross square feet
9. Building height
 - a. New Buildings - one story and 24 feet.
 - b. Notwithstanding paragraph a. above, roadside stands may utilize existing structures on the property.

Effective on: 7/24/2017

Sec. 19-35 Deposit of Waste Material

Garbage, rubbish or other wastes shall be dumped only in areas designated by the Town except that soil, gravel, rock or other material may be deposited for the purpose of regrading or landscaping.

Effective on: 12/9/2013

Sec. 19-36 Boat Storage

No vessel exceeding twenty-four (24) feet in length shall be stored or parked on any residential property unless the vessel is stored or parked so as not to violate the minimum front and side setbacks for structures and is not less than ten (10) feet from the rear lot line.

Effective on: 12/9/2013

Sec. 19-37 Buffers

- a. No structure shall be erected or any use permitted in nonresidential districts unless a buffer strip at least seventy-five (75) feet wide is provided and maintained between any adjoining residential district and the nonresidential structure or use. Such buffer area shall be for the purpose of eliminating or minimizing any adverse effects upon the environmental or aesthetic qualities of abutting properties or any type of nuisance affecting the health, safety, welfare and property values of the residents of Falmouth.
- b. All buffer areas shall be developed and maintained within the 75 foot required setback except that no more than 45 feet shall be required for such purpose. The remaining setback area may be used for parking and loading.

Effective on: 12/9/2013

Sec. 19-38 Off-Street Parking [Amended 5/24/04; 5/13/13; 8/26/13; 07/11/16]

- a. To match actual demand for parking with supply the permitting authority shall determine the number of off-street parking spaces required. The number and proximity of on-street parking spaces shall be considered when determining the number of spaces required. The table below provides the minimum number of parking spaces required for the uses listed. Parking for uses not listed shall be determined by the permitting authority. Staff may waive parking requirements for improvements approved under Minor Site Plan Review if it is satisfactorily demonstrated to the staff by the applicant that there is adequate parking provided for the property without the addition of spaces as required in this section. For purposes of this section the term independently accessible shall mean that each parking space shall be accessible for use without need for the removal of any other vehicle from any other approved parking space on the site.

(1)	Dwelling	
	a. Single Family, Two family	2 spaces per unit, spaces for each unit in a two family must be independently accessible
	b. Multi family	1 space per unit
	c. Accessory Dwelling Unit	1 space per unit, must be independently accessible
	d. Units in VC1 and VC2	1 space per unit
(2)	Motel, bed and breakfast, hotel	1 space per sleeping room
(3)	School	5 spaces per room used for purpose of instruction.
(4)	Health Institution (bed facilities only)	1 space for every 3 beds and 1 for each employee based on the highest expected average employee occupancy.
(5)	Place of worship, enclosed place of assembly	1 space for every 5 seats of assemblage
(6)	Retail and service establishment	1 space for every 500 square feet of gross floor area or permanent outdoor retail display area.
(7)	Restaurant, indoor seating only	1 space for every 3 seats

(8)	Business and professional office	1 space for every 500 square feet of gross leasable area, exclusive of common and bulk storage areas.
(9)	Warehousing, wholesaling, manufacturing	1 space for every 1,000 square feet of gross leasable area
(10)	Day Care Home	2 per dwelling unit plus 2 additional spaces.
(11)	Day Care Center	1 per full-time employee plus 1 space for every four persons attending the day care center at any one time.
(12)	Congregate Housing Facility	1 space per dwelling unit
(13)	Elderly Boarding Home	2 per dwelling unit plus 1 space per non-owner elderly resident.
(14)	Ballet Arts Facility	1 space for every 200 sq. ft. of office area and 1 space for every 500 sq. ft. of instruction/performance space. [Added 5/24/04]

- b. Shared and off-site parking may be approved by the Planning Board provided the applicant provides evidence of legal rights to the parking in perpetuity. Off-site and shared parking shall be located within 1,300 feet, measured from a customer entrance, and be accessible by sidewalk or pathway.
- c. A parking space shall measure at least nine (9) feet in width by eighteen (18) feet in length, exclusive of space required for access and maneuvering.
- d. In any residential district, parking areas for non-residential uses shall be set back at least twenty-five (25) feet from any property line.
- e. Parking Standards in the Retirement Community Overlay District: [Adopted 10/13/09]

Assisted Living	1 space for every 3 beds and 1 for each employee
Skilled Nursing- Nursing –Memory Care	one space per 10 beds plus 1 for each employee
Congregate Housing	1 space per dwelling unit.
Single or Multi Family, Attached or Detached Dwelling	2 spaces per dwelling unit

Effective on: 7/11/2016

Sec. 19-39 Loading Area Requirements [Amended 5/13/13]

In connection with every building or group of buildings which is to be occupied by a non-residential use, loading areas shall be provided appropriate to the individual business as determined and approved by the Planning Board. The applicant shall provide documentation regarding the appropriate type of loading area required.

Effective on: 12/9/2013

Sec. 19-40 Animals

- a. Household pets are allowed in all districts. Animals kept for personal use or enjoyment not falling within the definitions of household pets, including but not limited to wild animals, horses, cattle, sheep, goats, swine, and poultry are permitted only in accordance with the provisions of this section.
- b. Regulations for Animals Other Than Household Pets Kept for Personal Use or Enjoyment [Amended 10/27/08]:

	<u>F</u>	<u>RB & VMU</u>	<u>RA & RC</u>	<u>All Other Districts</u>
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Minimum Lot Size	40,000 sq ft	40,000 sq ft	40,000 sq ft	Not Permitted
Animals Specifically Prohibited	None	Swine	Swine and Cattle	Not Permitted

- c. The keeping of more than one horse or head of cattle shall require an additional 10,000 square feet per animal in addition to the minimum lot size.
- d. No animals of any kind shall be boarded, raised, kept or bred for commercial purposes in residential districts RA, RB and RC [Amended 12/12/11].
- e. Keeping of Poultry [Adopted 10/27/08; Amended 12/12/11]:
 - 1. General Restrictions
 - a. No roosters shall be permitted in any district with the exception of Farm and Forest.
 - b. No slaughtering shall be permitted in any district with the exception of Farm and Forest.
 - c. Lots 40,000 square feet or greater in the F, RB and VMU Districts are exempt from the requirements in paragraph 2 below.
 - d. Notwithstanding paragraph 19-40.b. above, no minimum lot size in RA and RC Districts is required.
 - 2. The following requirements shall be met for the keeping of poultry on lots less than 40,000 square feet in F, RB and VMU and all lots regardless of size in RA and RC.
 - a. Fencing and enclosed coops shall be setback a minimum of twenty (20) feet from all property lines.
 - b. Poultry shall be contained by fencing or other suitable materials installed in such a manner and to a sufficient height to restrict poultry from leaving the fenced area.
 - c. Enclosed coops, if utilized, shall not exceed one (1) in number, 100 gross square feet or 12 feet in height.
 - d. Waste Storage and Removal - Provision must be made for the storage and removal of chicken manure. All stored manure shall be covered by a fully enclosed structure with a roof or lid over the entire structure. No more than three (3) cubic feet of manure shall be stored. All other manure not used for composting or fertilizing shall be removed. In addition, the henhouse, chicken pen and surrounding area must be kept free from trash and accumulated droppings. Uneaten feed shall be removed in a timely manner.

Effective on: 12/9/2013

Effective on: 7/11/2016

Sec. 19-42 Multi family dwelling [Amended 05/09/16; 07/11/16]

A multi family dwelling shall contain no more than six dwelling units. On a site with more than one two family or multi family dwelling, each dwelling shall contain an average of four or fewer dwelling units.

Effective on: 7/11/2016

Sec. 19-43 Installation of Manufactured Housing Units

The following standards shall apply to the installation of any manufactured housing units on a residential lot:

- a. The wheels, any undercarriage or transporter unit and the tongue shall be removed and the unit shall be placed on a permanent foundation. Any element that is essential to the structural integrity of the unit is exempt.
- b. The foundation shall comply with the requirements of the Town's building code for residential structures. At a minimum the foundation shall consist of a four (4) foot frost wall completely surrounding the perimeter of the unit with a slab or crawl space.
- c. The exterior plumbing shall comply with the Maine State Plumbing Code.
- d. The exterior electrical connections shall comply with the National Electrical Code.
- e. The unit shall be sited on the lot so that the acute angle between an imaginary line running parallel to the short axis of the unit, and a line parallel to a straight line connecting the intersections of the front lot line with the side lot lines, is not less than thirty (30) degrees. This requirement shall not apply if the width of the front building face including the unit and any permanently attached additions is more than twenty-four (24) feet, or if minimum setback distances cannot be met upon impositions of this standard.

Effective on: 12/9/2013

Sec. 19-44 Permanent Signs - General Provisions [Amended 5/26/09][Amended 1/24/11, 05/30/12,7/24/17]

- A. Purpose. The purpose of regulating signs is to promote and protect the public health, welfare and safety by regulating outdoor signs of all types; to protect property values, enhance and protect the physical appearance of the community, preserve the scenic and natural beauty and provide a more enjoyable and pleasing community; to reduce driving distractions and obstructions that may contribute to traffic accidents, reduce hazards that may be caused by signs overhanging or projecting over public right of way, curb the deterioration of natural beauty and community environment and to promote Falmouth as a distinctive community.
- B. Sign Permits. After the effective date of this ordinance and except as otherwise herein provided, no person shall erect or move any signs without first applying for and obtaining a sign permit. Applications shall be on forms prescribed and provided by the town setting forth such information as may be required for a complete understanding of the proposed work. Signs requiring an approval from the Planning Board or Community Development Director must in addition obtain a permit from the Code Enforcement Officer prior to installation. [Amended 1/24/11;7/24/17]
 1. Signs permitted by the Code Enforcement Officer. [Adopted 1/24/11]
 - a. [Repealed 05/30/12]
 - b. Signs not otherwise requiring approval by the Planning Board or Community Development Director.
 - c. Refacing of any existing sign in any district other than those listed in 3(c) below. [Adopted 5/30/12]
 2. Signs requiring Planning Board Approval. [Adopted 1/24/11]- Submittal requirements shall include such information referenced in Sections 19-128.a (4) and 19-133.e. of this ordinance.
 - a. Any new sign in excess of twenty (20) square feet of display area.[Amended 5/30/12]
 - b. Any new sign located in BP, VC1, VC2, VCC, OVRC, AVRC, CO, or any special district. [Amended 5/13/13;7/24/17]

3. Signs requiring approval by the Community Development Director or the Director's designee. [Adopted 1/24/11] - Submittal requirements shall include the information referenced in Sections 19-128.a (4) and 19-133.e. and any other requirements as may be deemed necessary by staff for a complete understanding of the proposed work.
 - a. Replacement of signs equal to or less than twenty (20) square feet of display area in the BP, VC1, VC2, VCC, CO, or any Special District. [Amended 5/13/13, 7/24/17]
 - b. Replacement of signs equal to or less than twenty (20) square feet of display area previously approved by the Planning Board. [Amended 7/24/17]
 - c. Refacing of any existing sign in the BP, VC1, VC2, VCC, CO or any Special District [Amended 5/13/13; 7/24/17]
 - d. Any new sign equal to or less than twenty (20) square feet of display area in the VC1, VC2 and VCC Districts. [Added 8/26/13; 7/24/17]
4. Permit Fees. No sign permit application shall be processed until the prescribed fee has been paid as established by the Town Council. [Amended 8/27/07;7/24/17]
- C. General Safety Standards for Signs. No sign, whether new or existing, shall be permitted that causes a sight, traffic, health or welfare hazard, or results in a nuisance, due to illumination, placement, display, or manner of construction.
- D. Exemptions. [Amended 7/24/17]
 1. Governmental signs erected and maintained for public safety and welfare or pursuant to and in discharge of any governmental function, or required by law, ordinance or governmental regulation.
 2. Street numbers and addresses as assigned by the Town.
 3. Street name signs as regulated under Chapter 7, Appendix 7-5, Subdivision Ordinance.
- E. Design Guidelines. Any sign located in the BP, MRSD, TWMP, WFC, CO, VMU, MUC or GR District shall comply with the applicable design guidelines as noted in the table below.

Table 19-44 G. Design Guidelines Review - Signs	
District	Design Guidelines
BP, MRSD	Route One Design Guidelines
TWMP	Tidewater Village and Tidewater Farm Design Guidelines
WFC, CO, VMU, MUC, GR	Exit 10 Design Guidelines

- F. Measurement of Signs.
 1. Sign Display Area. Sign display area shall be measured as the square footage of the smallest rectangular area containing all letters, characters and numbers. For freestanding signs

where the two faces of the signs are not viewable at the same time, only one face shall constitute the display area.

2. Sign Height - Sign height shall be the height of the sign as measured from the average elevation of the original ground to the highest point of the sign supporting structure or sign display area. In cases where sign display area is incorporated into a fence or wall, the total sign height will be measured to the top of the sign display area.
3. Sign Length - Sign length shall be the horizontal dimension of the sign display area.

Effective on: 7/24/2017

Sec. 19-46 Regulations Applicable to Permanent Signs [Amended 5/26/09; 1/24/11; 5/13/13; 4/11/16; 7/24/17]

The following provisions relating to permanent signs are applicable in all districts except where otherwise noted. Signs within the VC Districts are regulated under Section 19-11.

- a. Prohibited signs and sign components.
 1. No sign shall project over a public right of way.
 2. No off-premises signs, including official business directional signs as defined in 23 MRSA, subsection 1903, shall be constructed, erected, or maintained in any district, except as expressly permitted by the terms of this Ordinance. [Amended 5/30/12]
 3. No sign shall be erected in a floodplain.
 4. No portable or roof signs shall be permitted unless otherwise specified. [Amended 5/26/09]
 5. No sign shall have visible moving parts, blinking, moving or glaring illumination, or any part consisting of banners, pennants, ribbons, streamers, spinners or other similar devices.
 6. A string of lights shall not be used for the purpose of advertising or attracting attention unless as an integral part of a permitted sign.
- b. Sign Materials - For signs in districts that are not governed by design guidelines, signs shall be made of natural materials such as stone, brick or wood or materials that mimic natural materials.
- c. Directional Signs. Directional signs are permitted where necessary for maintaining public safety on to and within the site. The display area of a directional sign shall not exceed two square feet and free-standing signs shall not exceed four feet in height. Content shall be limited to directional text such as "enter", "exit", "drive-thru" or the like. Logos are limited to twenty-five percent (25%) of the sign face. Signs shall be reviewed under Section 19-127 as part of Planning Board Site Plan review or Minor Site Plan Review as required.
- d. Nonconforming Signs. Nonconforming signs may continue but may not be altered or relocated on the same premises without approval by the Board of Zoning Appeals as a conditional use. Nonconforming signs located within the public right of way shall not be permitted to be relocated within the public right of way. [Adopted 4/27/87]
- e. Signs located in HT, VP and GC shall conform to the requirements in Section 19-11.5.9 for VC1.

Effective on: 7/24/2017

Effective on: 7/25/2017

Sec. 19-50 Free-Standing Signs

Unless otherwise provided, free-standing signs shall conform to the following provisions with the exception of signs in VC1, VC2 and VCC which are regulated under Sec. 19-11.5.9.

- a. BP District off-premise allowance. Where access to a lot is provided by an off-site driveway, one sign may be placed off-site provided that the sign is wholly located within 80 feet of the intersection between each edge of the driveway and the front lot line of the lot on which the off-site driveway entrance is located.
- b. Sight Distance– The sign must be designed to provide adequate sight distance for exiting traffic as determined by the permitting authority.
- c. Signs incorporated in a wall or fence. – Fences or walls may be utilized as a sign supporting structure, and are exempt from total sign height.
- d. Height to Width Ratio – All signs shall be oriented horizontally with a height equal to or less than the width.

Table 19-50 Free-standing Signs*							
Standard	Residential Districts			Non-Residential Districts			
	RA-RB RC-RD - HL	FF	BP	VMU- MUC GR	RCOD OVRC AVRC	ESRD	TW WF
Number per lot	1	1	2	2	PB	MP	DG
Maximum size (square feet of sign display area)	4	6	64	48	PB	MP	DG
Maximum height (feet including sign support structure)	6	6	12	12	12	MP	12
Maximum length (feet)	4	6	16	16	16	MP	16
Minimum character height (inches)	3	4	5	DG	PB	MP	DG
Maximum character height (inches)	9	12	15	DG	PB	MP	DG
Minimum distance between signs (feet)	na	na	na	100	100	100	100
Rear Setback (feet)	15	15	15	15	PB	MP	DG
Side Setback (feet)	10	10	15	15	PB	MP	DG
Front Setback (feet)	0	0	0	15	PB	MP	DG
PB - Planning Board, MP-Master Sign Plan, DG - Design Guidelines *Directional signs are regulated under Section 19-46 d. and Section 19-11.5.9.9							

Sec. 19-51 Wall Signs

Wall signs shall conform to the following with the exception of VC1, VC2 and VCC which are governed by Sec. 19-11 5.9

- a. No wall sign shall extend beyond a party wall separating occupancies.
- b. Wall signs shall not project more than twelve inches beyond the roof edge or the face of the wall, awning or canopy to which they are mounted.
- c. Maximum gross display area of all wall signs on any given wall shall not exceed ten (10%) percent of the wall area to which they are attached.

Table 19-51 Wall Signs*								
Standard	Residential Districts			Non-Residential Districts				
	RA RC HL	RB RD	FF	BP	VMU MUC	RCOD OVRC AVRC	ESRD	TW WF
Maximum size (square feet)	6	8	12	64	48	PB	MP	DG
Minimum character height (inches)	3	4	4	5	5	PB	MP	DG
Maximum character height (inches)	9	12	12	15	15	PB	MP	DG
Maximum height above the eaves (feet)	7					PB	MP	DG
PB-Planning Board, MP - Master Sign Plan, DG-Design Guidelines								
* Directional Signs are regulated under Section 19-46 d. and Section 19-11.5.9.9								

Sec. 19-52 Illumination of Signs [Amended 1/24/11;7/24/17]

Illumination of Signs shall meet the requirements of applicable design guidelines where required under Section 19-44 with the exception of VC1, VC2, GC, VP, HT and VCC, which are regulated under Sec. 19-11. In addition, the following restrictions shall apply.

- a. Internal Illumination - Signs with internal illumination are permitted except in RA, RB, RC, RD, FF, HL, BP, ESRD, RCOD, OVRC, AVRC and VMU.
- b. External Illumination – Signs may be externally illuminated in any district provided light fixtures are shielded and no spill over occurs to the street or adjacent properties.

Sec. 19-53 Height Restrictions

- a. No building shall exceed two and one-half (2 1/2) stories or thirty-five (35) feet in height, as measured from the average finished grade within twenty (20) feet of the building. This restriction shall not apply to farm buildings not used for human habitation, windmills, antennas, transmission towers, church steeples, flagpoles, chimneys, skylights, and penthouses

or other extensions for mechanical equipment. On public school campuses and in the BP and MUC Districts, no building shall exceed three (3) stories or thirty-nine (39) feet so measured. All three (3) story buildings shall be protected by an automatic fire suppression system in accordance with the Falmouth Building and Fire Safety Ordinance. [Amended 2/22/99]

- b. Notwithstanding any provision of paragraph (a) to the contrary, single family detached dwellings are not restricted by number of stories but may not exceed thirty-five (35) feet in height. [Adopted 5/28/96]
- c. The top floor of any building of gambrel or mansard roof design shall be considered a full story.

Effective on: 12/9/2013

Sec. 19-54 Home Occupations [Amended 10/25/93, 04/09/12; 7/24/17]

- a. The purpose of the Home Occupations provision is to permit the conduct of only those businesses which are reasonably compatible with the residential districts in which they are located. Home occupations are limited to those uses which may be conducted within a residential dwelling or accessory structure without substantially changing the appearance or condition of the residence or accessory structure.

Business uses conducted wholly within a residence or accessory structure which are incidental to the residential use of the property and are of no impact to the surrounding properties are permitted as a matter of right if they conform with the following criteria:

- 1. are carried on only by a member or members of the family residing in the dwelling unit;
 - 2. there is no exterior storage of materials or variation from the residential character of the principal building.
 - 3. there are no objectionable conditions such as noise, vibrations, smoke, dust, electrical disturbance, odors, heat, glare, or activity at unreasonable hours;
 - 4. there is no traffic generated by the home occupation.
 - 5. the dwelling or accessory structure is not altered substantially to accommodate the home occupation; and
 - 6. no more than one vehicle used primarily for the home occupation shall be kept on the property.
- b. All other home occupations or professions which are accessory to and compatible with a residential use in an RA, RB, RD, HL, VMU, or F district may be permitted as a conditional use, if approved by the Board of Zoning Appeals after public hearing with due notice given, and if the home occupation conforms with the following criteria:
 - 1. It does not materially injure the character or usefulness of the dwelling unit or accessory structure for normal residential purposes.
 - 2. It is carried on wholly within the dwelling or accessory structure.
 - 3. It is carried on primarily by a member or members of the family residing in the dwelling unit. Not more than two persons other than family members residing in the dwelling unit shall be employed on the premise in connection with the home occupation.
 - 4. There is no exterior storage of materials or variation from the residential character of the principal building.
 - 5. Objectionable conditions such as noise, vibration, smoke, dust, electrical disturbance, odors, heat, glare, or activity at unreasonable hours, shall not be permitted.

6. The traffic generated by such home occupation shall not increase the volume of traffic so as to create a traffic hazard or disturb the residential character of the immediate neighborhood.
7. In addition to the off-street parking provided to meet the normal requirements of the dwelling, adequate off-street parking shall be provided for the vehicles of each employee and the vehicles of the maximum number of users the home occupation may attract during peak operating hours.
8. The home occupation may utilize:
 - a. Not more than twenty (20%) percent of the dwelling unit floor area, provided that for the purposes of this calculation unfinished basement and attic spaces are not included.
 - b. Unfinished attic and basement spaces.
 - c. One accessory structure. The floor area utilized in the accessory structure shall not exceed fifty (50%) percent of the total floor area of the dwelling unit as previously calculated

Effective on: 7/24/2017

Sec. 19-55 Accessory Dwelling Units

Sec. 19-55.1 General [Amended 07/11/16]

The purpose of Accessory Dwelling Units, which include Accessory Apartments and Accessory Cottages, is to provide a diversity of housing for town residents while protecting the single family character of residential neighborhoods. The following provisions apply:

- a. Only one Accessory Dwelling Unit shall be permitted per single family dwelling.
- b. An Accessory Dwelling Unit shall not exceed 100% of the gross floor area of the single family dwelling to which it is accessory, not including garages, porches, decks or unfinished areas, or 850 square feet of gross floor area, whichever is less.
- c. The single family dwelling unit in which an Accessory Apartment is located shall have only one main entrance and all other entrances shall appear subordinate to the main entrance. An entrance leading to a foyer with entrances leading from the foyer to the two dwelling units is permitted.

Effective on: 7/11/2016

Sec. 19-55.2 Accessory Apartments [Repealed 07/11/2016]

Effective on: 7/11/2016

Sec. 19-55.3 Accessory Cottages [Repealed 07/11/2016]

Effective on: 7/11/2016

Sec. 19-56 Service Stations and Garages

Washing, lubricating, and major repairing of motor vehicles shall be performed inside enclosed buildings and all dispensing of fuels, lubricants, and fluids shall be done entirely on the property of the service station or garage.

Effective on: 12/9/2013

Sec. 19-57 Junk Yards and Salvage Operations Prohibited

Junk yards, salvage operations, and automobile dismantling operations are expressly prohibited in the BP, VC1, VC2, and VCC Districts. [Amended 5/13/13]

Sec. 19-58 Congregate Housing

All congregate housing facilities shall be serviced by public sewer and water systems with adequate capacities to handle the reasonably foreseeable needs of the development.

Effective on: 12/9/2013

Sec. 19-59 Recreational Vehicles

A recreational vehicle may be stored or parked on a residential lot as an accessory use to a dwelling unit, subject to the following standards:

- a. Location:
 1. It is located inside a garage or other structure; or
 2. It is located:
 - a. No closer to the front lot line than the front building line of the principal structure or in compliance with the front setback requirement for the district; and
 - b. In compliance with the side and rear setback requirements for the district; or
 - c. At least ten (10) feet from side and rear property lines and, in the opinion of the Code Officer, adequately screened from neighboring residences by evergreens and other natural visual buffering materials
- b. No recreational vehicle stored as an accessory use to a dwelling unit under this subsection shall be occupied during such storage;
- c. Guests of residents of the Town of Falmouth who are traveling in or with a recreational vehicle may occupy that recreational vehicle on the land of said residents of Falmouth, but only on a completely temporary basis not to exceed seven (7) days in any ninety (90) day period.

Effective on: 12/9/2013

Sec. 19-60 Private Ways

The Planning Board may approve the use of a fifty (50) foot private way to provide frontage and access to individual lots of land in accordance with the following provisions:

- a. A plan showing the private way shall be prepared by a registered land surveyor. The plan shall be labeled "Plan of a Private Way" and shall provide an approval block for the signatures of the Planning Board members. The plan shall delineate the proposed way and each of the lots to be served by the private way.
- b. A street plan, cross section, drainage plan, and an erosion and sedimentation control plan meeting the requirements of Section 19-72 shall be submitted for each private way serving two (2) or more lots. Submissions of approved plans shall also meet the requirements of Section 19-128.a.5, Geographic Information System (GIS) Plan Submissions and Specifications. [Amended 9/22/03; 3/14/11]
- c. The plan shall bear notes that the Town of Falmouth will not be responsible for the maintenance, repair, or plowing of the private way and that further lot divisions utilizing the private way are prohibited without prior approval of the Falmouth Planning Board.
- d. If the private way is to provide access to two (2) or more lots, a maintenance agreement shall be required by the Planning Board and recorded in the Cumberland County Registry of Deeds.

The maintenance agreement shall specify the rights and responsibilities of each lot owner with respect to the maintenance, repair and plowing of the private way.

- e. The construction of private ways shall meet the following minimum standards:

	Number of Lots Served		
	1	2 to 3	4 or more
Minimum Roadway Width	12’*	16’	Same as Local Residential Streets
Minimum Subbase (Heavy Road Gravel)	12”	15”	“
Wearing surface (Fine Gravel)	2”	2”	“
Maximum length of dead end	2000 ¹	1500 ¹	“
Maximum Grade	10%	8%	“
Minimum Grade	0.5%	0.5%	“
Turn around at Dead End	Hammer Head or “T”	Hammer Head or “T”	“
Storm Water Drainage	Approval of Public Works Director		

*One turnout to provide space for 2 vehicles to pass shall be provided for every 500 feet of the private way.

Note 1 – The limitation on the length of a dead end shall not apply to private ways in the Resource Conservation Zoning Overlay District that serve only Country Estate lots. [Adopted 12/22/05]

- f. The plan shall be recorded in the Cumberland County Registry of Deeds within ninety (90) days of the date of the Planning Board approval. If the plan is not recorded within this time period, the approval of the Planning Board shall be null and void.
- g. In reviewing requests for approval of private ways under this subparagraph, the Planning Board shall apply such standards and criteria, and may impose such conditions, as are applicable to conditional uses under Sections 19-119 and 19-123 of this Ordinance.
- h. The owner or owners shall convey to the Town an easement, described by metes and bounds, for sewer purposes over the entire right of way and shall record the easement in the Cumberland County Registry of Deeds.
- i. After a private way has been approved by the Planning Board to provide access to a lot or lots, no further lots shall be created which are to be provided access by means of the private way without the prior approval of the use of the private way for access to such lots by the Planning Board under this subsection.
- j. At least five (5) days prior to commencing construction of the private way in accordance with the ordinance specifications and with adequate provision for storm drainage, the applicant shall pay an inspection fee as established by the Town Council. Such fee shall be made payable by check to the Town of Falmouth, stating the purpose of the fee. [Amended, 7/23/01][Amended 8/27/07]
- k. If the private way will serve two (2) or more Country Estate lots in the Resource Conservation Zoning Overlay District, the applicant shall submit a Site Inventory and Analysis Plan and documentation of the Four Step Design Process for the site as provided for in the Land Subdivision Ordinance. [Adopted 12/22/05]

Effective on: 12/9/2013

Sec. 19-61 Extractive Industries

Extractive industries may be permitted by the Board of Zoning Appeals as a conditional use subject to the requirements of Section 19-119 and 19-123 and the specific requirements of this section.

- a. Any extractive industry which requires a permit from the Maine Department of Environmental Protection under the Site Location of Development Act shall obtain written approval from the Department of Environmental Protection prior to filing an application with the Board of Zoning Appeals.
- b. The Board of Zoning Appeals may require a performance guarantee in accordance with Section 11 of the Falmouth Subdivision Ordinance, sufficient to cover the cost of rehabilitation of the site at the conclusion of operations.
- c. A buffer strip of not less than one hundred (100) feet shall be maintained between the location of any extraction of materials and all property lines.
- d. All areas of standing water exceeding two (2) feet in depth shall be entirely enclosed by a fence.
- e. No extraction of materials shall be permitted which creates a slope steeper than two (2) feet horizontal to one (1) foot vertical.
- f. Operation of equipment and extraction of materials from the site shall be permitted only Monday through Friday between the hours of 7:30 a.m. and 5:30 p.m.
- g. Suitable traffic control measures shall be made available by the operator at all access points to public streets. Truck routes shall be restricted to collector and arterial streets, unless otherwise specified by the Board of Zoning Appeals. All loads shall be covered or trimmed a minimum of three (3) inches below the edges of the sideboard of truck bodies to prevent spillage of materials being transported.
- h. Upon cessation of the extraction of materials or upon the expiration of the Board of Zoning Appeals approval, the site shall be rehabilitated in accordance with a plan approved and endorsed by the Cumberland County Soil Conservation Service and approved by the Board of Zoning Appeals.

Effective on: 12/9/2013

Sec. 19-62 Cemeteries

- a. All burial plots and structures used for interment, including mausoleums, vaults and columbarie shall be set back at least fifty (50) feet from all property lines.
- b. A cemetery may be permitted as an accessory use to a church, provided that the area of the cemetery does not exceed two (2) acres, that the fifty (50) foot setback requirement is met, and that the church is located on a conforming lot.

Effective on: 12/9/2013

Sec. 19-63 Day Care Centers

- a. All outside play equipment shall meet the required front, side, and rear setback requirements.
- b. Outside play areas shall be buffered from adjoining uses by appropriate fencing or plantings.
- c. Day care centers may be permitted in a residential district on the same lot with a single family dwelling if the lot size meets the lot size requirement for a day care center.

Effective on: 12/9/2013

Sec. 19-64 Net Residential Area

Sec. 19-64.1 Net Residential Area and Maximum Residential Density. [Amended 7/11/16, 11/14/16]

The maximum number of dwelling units for projects requiring Planning Board review shall be the quotient of the net residential area for the development site divided by the maximum residential density allowance as stated in the zoning district dimensional table. Net residential area shall be determined by subtracting from the gross acreage the following:

- a. 10% for roads and parking.
- b. Land which is cut off from the main parcel by a road, existing land uses, or where no means of access has been provided, so that it is isolated and unavailable for building purposes or for common use.
- c. Land shown to be in the flood way or coastal high hazard area on the Flood Boundary of Flood Insurance Rate Maps of the Town of Falmouth.
- d. Other land which is unsuitable for development in its natural state because of topography, drainage, or subsoil conditions. Specific conditions include but are not limited to:
 1. Areas having sustained slopes in excess of twenty-five (25%) percent or unstable soils subject to slumping, mass movement, or accelerated erosion.
 2. Areas classified as wetlands by state or federal law. [Amended 8/26/96]
 3. Areas characterized predominately by "coastal wetlands" as that term is defined in 38 M.R.S.A. subsection 472(2). [Amended 12/22/86]
- e. Land in rights-of-way or easements.
- f. Land in Resource Protection Districts.

Effective on: 11/14/2016

Sec. 19-64.2 Minimum Net Residential Area Per Lot [Adopted 8/26/96] [Amended 7/24/2000; 12/22/05; 1/24/11; 3/14/11; 7/11/2011; 7/11/2016; 11/14/16, 03/27/16]

Any residential lot created after August 26, 1996 must meet the following lot area requirements:

- A. After deducting land that falls within the categories in Section 19-64.1.b through f, the lot area equals at least the following square footage per dwelling unit:
 1. RA – 5,000
 2. RB - 10,000
 3. RC - 30,000
 4. RD - 15,000
 5. FF – 40,000
 6. VMU – with sewer 5,000, without sewer 10,000
 7. MUC – with sewer 7,500, without sewer 15,000
- B. Lots created in the RCZO under Section 19-18.5 D. shall have at least 50% of the total lot area consist of land that does not fall within the categories in Sections 19-64.1 b through f or else meet the requirements of Section 19-64.2 A.
- C. For residential planned developments, at least seventy-five (75%) percent of any lot shall consist of land that does not fall within the categories of Section 19-64.1. b through f.
- D. Notwithstanding subsections A, B, and C above, lots created prior to August 26, 1996 and altered in either of the following ways shall not be considered new lots for purposes of this section:

1. subsequently divided if the division is for purposes of conveyance to a governmental or non-profit agency for the sole purpose of protecting natural resources in perpetuity or providing public access to protected natural resource areas; or
2. encumbered with an easement or other legal instrument held by a governmental or non-profit agency for the purposes of protecting natural resources in perpetuity or providing public access to protected natural resource areas.

Effective on: 3/27/2017

Sec. 19-65 Light Manufacturing

Light manufacturing shall conform to the following standards:

1. There shall be no exterior storage or assembly of materials or products.
2. There shall be no activity which is defined as a high hazard in the current BOCA Basic Building Code.
3. Noise inherently and recurrently generated shall not exceed 65 DBA between the hours of 7:00 a.m. and 7:00 p.m. and 55 DBA between the hours of 7:00 p.m. and 7:00 a.m. as measured at the property boundary using the A frequency weighting network and the fast response on a sound level meter manufactured according to standards prescribed by the American Standards Association.
4. No vibrations or odors shall be noticeable at the property line. [Adopted 4/27/87]

Effective on: 12/9/2013

Sec. 19-66 Transmission Towers [Adopted,4/23/90]

To regulate the location and erection of transmission towers in all districts in order to:

- minimize adverse visual effects of towers through careful design, siting, and vegetative screening; and
 - avoid potential damage to adjacent properties from tower failure and falling ice through engineering and careful siting of tower structures.
- a. All transmission towers in the Farm and Forest District, with the exception of amateur (ham) radio towers and municipal transmission towers, shall be located so that the tower base is at or above elevation four hundred (400') feet based on United States Geological Survey datum referred to mean sea level. No transmission tower shall exceed two hundred (200') feet in height as measured from the tower base to the highest point of the tower and any attached receiving or transmitting device.
 - b. The tower base shall be set back from all property lines by a distance of one hundred (100%) percent of the total tower height, including any attached transmitting or receiving devices. Accessory structures and guy wire anchors shall meet the minimum setback of the zoning district.
 - c. To ensure that towers have the least practicable adverse visual effect on the environment, towers that are 200 feet or less in height and are not subject to special painting or lighting standards of any federal agency shall have a galvanized finish or be painted in a skytone above the top of surrounding trees and shall be painted in an earthtone below treetop level.
 - d. Unless existing vegetation provides a buffer strip the width of the required setback as calculated in subsection b, the Board shall require that all property lines along roadways or visible to existing abutting or nearby buildings (within 1/4 mile radius) be landscaped as follows:

1. With six to eight (6-8') foot evergreen shrubs planted in an alternate pattern, five (5') on center and within fifteen (15') feet of the site boundary.
 2. With at least one row of deciduous trees, not less than 2 1/2" to 3" caliper measured three (3') feet above grade, and spaced not more than twenty (20') feet apart and within twenty-five (25') feet of the site boundary.
 3. With at least one row of evergreen trees at least four to five (4-5') feet in height when planted, and spaced not more than fifteen (15') feet apart within forty (40') feet of the site boundary.
 4. In lieu of the foregoing, the Board may determine that the existing vegetation must be supplemented to meet an equivalent means of achieving the desired goal of minimizing the visual impact. To assist in making that determination, the Board may require the applicant to provide a visual impact analysis by a qualified professional.
- e. Accessory facilities in the Farm and Forest District may not include offices, long-term vehicle storage, other outdoor storage, or broadcast studios, except for emergency purposes, or other uses that are not needed to send or receive transmission signals.
 - f. Transmission towers erected after the effective date of this ordinance amendment shall meet all applicable requirements of federal and state regulations and shall be designed and installed in accordance with the standards of the Electronic Industries Association (EIA) Structural Standards for Steel Antenna Towers and Antenna Supporting Structures.
 - g. Within twelve (12) months of the effective date of this ordinance amendment, all existing transmission towers shall be inspected and analyzed by a qualified professional engineer. The engineer shall submit a letter of opinion under his seal to the Code Enforcement Officer (CEO) stating the condition of the tower, the maximum safe loading capacity, and steps that must be taken to correct any safety deficiencies. Safety inspections of all existing and newly erected towers shall be conducted annually thereafter by the tower owner/operator, and an inspection checklist developed by the CEO shall be submitted for his review and approval. Any structural alterations that may be necessary to increase the loading capacity or to bring a tower into compliance shall require conditional use approval of the Board of Zoning Appeals.
 - h. The provisions of this subsection 19-66 shall apply to all transmission towers existing in the Town on the date of enactment of the Personal Wireless Service Facilities Ordinance and shall continue to apply to such existing transmission towers notwithstanding the enactment of the Personal Wireless Service Facilities Ordinance. No new transmission towers may be erected after enactment of the Personal Wireless Services Facilities Ordinance except in compliance with that ordinance. [Adopted, 4/25/05]

Effective on: 12/9/2013

Sec. 19-67 Placement or Removal of Fill Material [Adopted 7/22/91] [Amended 9/22/03]

Definition of Fill Material: Fill material shall mean clean soil material, rocks, bricks, and cured concrete, which are not mixed with other solid or liquid waste, and which are not derived from an ore mining activity.

The purpose of this provision is to control erosion, protect wetlands, minimize storm water runoff and minimize other nuisances associated with filling and other earth moving activities. It is intended that this provision shall apply to both approved construction for which a building permit has been issued, as well as activities that do not require a building permit.

- a. The following guidelines shall govern the placement or removal of fill material in all districts: [Amended, 5/28/96]

1. Normal excavation or removal of fill for which a building permit has been issued, no permit required
 2. 0 - 15 cubic yards, no permit required
 3. 16 - 1000 cubic yards, CEO permit required
 4. over 1000 cubic yards, Planning Board permit required
- b. All activities regulated under this section shall implement erosion and sedimentation control measures as required in Section 19-72. [Amended 9/22/03]
 - c. Fill shall not be placed within ten (10) feet of drainage ways, streams or wetland areas without approval by the Planning Board.
 - d. Roadways and other public areas shall be kept clean of mud, dirt, debris or other material that may constitute a hazard or nuisance to the public.
 - e. Adequate traffic control shall be provided on public roadways to ensure safe access and passage during construction activities.
 - f. Submissions of approved plans shall also meet the requirements of Section 19-128.a.5, Geographic Information System (GIS) Plan Submissions and Specifications. [Adopted 3/14/11]

Effective on: 12/9/2013

Sec. 19-68 Elderly Boarding Care [Adopted, 5/28/96]

The elderly deserve special consideration because of their unique physical, social, financial, and psychological needs. The purpose of allowing elderly boarding care is to support the elderly by:

- a. reducing the economic hardship which can accompany home ownership; and
- b. providing alternatives to the isolation of living alone and to the impersonal aspects of institutionalization.

At the same time, property values and the character of neighborhoods are protected by permitting only those housing options that are compatible with surrounding uses and do not overburden town services.

Each elderly boarding home must obtain conditional use approval and pass inspection by the Code Enforcement Officer for compliance with all relevant building codes. In addition, proof of a current State license shall be required if the elderly boarding home is required to be licensed by the Maine Department of Human Services.

Effective on: 12/9/2013

Sec. 19-69 Rate of Residential Growth [Adopted 7/24/00] [Amended 5/24/04; 12/19/06; 5/13/13; 07/11/2016]

- a. **Applicability** - A development permit is required for the construction of new dwelling units as required below.
- b. **Legal authority** - This section is adopted pursuant to Home Rule Powers as provided for in Article VIII-A of the Maine Constitution, 30-A M.R.S.A. §2101 et seq., and 30-A M.R.S.A. §4360. [Amended 4/28/03]
- c. **Purpose** - The purpose of this section is to:
 1. Provide for the local housing needs of the Town's existing residents;

2. Plan for continued residential population growth of the Town at a rate that is compatible with the orderly and gradual expansion of community services, including education, fire and police protection, road maintenance, waste disposal, health services, etc;
 3. Avoid a situation in which the rapid completion of major subdivisions, housing many families with school-age children, could outstrip the towns capability to expand its schools and other services soon enough to avoid serious overcrowding; and
 4. Ensure fairness in the allocation of building permits.
- d. **Exemptions** - The following are exempt from the provisions of this section:
1. The repair, replacement, reconstruction or alteration of any existing building or structure.
 2. The repair, replacement, reconstruction, construction or alteration of a nonresidential building or structure.
 3. The repair, replacement, reconstruction, construction or alteration of congregate housing, elderly boarding homes, and dwelling units located in a RCOD.[Amended 5/09/16]
 4. The repair, replacement, reconstruction, construction or alteration of any dwelling unit meeting the definition of affordable housing.
 5. The repair, replacement, reconstruction, construction or alteration of any dwelling unit in the VC Districts. [Adopted 5/13/13]
 6. The repair, replacement, reconstruction, construction or alteration of any dwelling unit meeting the definition of housing for older persons. [Adopted 05/09/16]
- e. **Maximum rate of residential growth:**
1. Town Wide Growth Cap. The maximum number of development permits issued in any calendar year shall be limited in the manner prescribed below. For the calendar year 2016, the number of permits shall be half of the total listed.
 - a) No more than 65 development permits total for new single family detached dwelling units, two-family dwelling units or manufactured housing dwelling units combined.
 - b) No more than 24 development permits for new multi-family dwelling units.
 - c) No more than 20 development permits for new accessory dwelling units.
 2. Growth Cap applicable to Farm and Forest (FF) and Highland Lake (HL) Districts only. The maximum number of development permits issued in any calendar year shall be limited in the manner prescribed below. For the calendar year 2016, the number of permits shall be half of the total listed.
 - a) No more than 26 development permits total for new single family detached dwelling units, two-family dwelling units or manufactured housing dwelling units combined.
 - b) No more than 8 development permits for new accessory dwelling units.
- f. **Periodic review** -This section shall be reviewed by the Town Council periodically (but not less frequently than once every three years), to ensure that the annual maximum growth rate has not become inconsistent with the Town's capital improvement capability to establish or enlarge needed public facilities and services, and to be in compliance with Title 30-A M.R.S.A §4360.
- g. **Issuance procedure** - Development permits shall be issued in conjunction with a building permit.

- h. **Transferability** - A development permit shall be valid for construction of the associated dwelling unit at the time the permit is issued. The development permit may be transferred to new owners of the unit if conveyed.

Effective on: 7/11/2016

Sec. 19-70 Preservation, Maintenance, and Inspection of Plant Materials [Adopted 7/23/01]

Sec. 19-70.1 Purpose

The purpose of these requirements is to ensure that existing and new plant materials that are incorporated into new development achieve optimal growth, overall health, and their intended environmental and aesthetic function in spite of the often harsh conditions created by development.

Effective on: 12/9/2013

Sec. 19-70.2 Applicability

The requirements of this section apply to plant materials regulated by Shoreland Zoning Permits, Phosphorus Control Permits, Site Plans, and Subdivision Plans prepared in accordance with the following Town ordinances:

1. Buffers in Section 19-18 (Resource Conservation Overlay District)
2. Section 19-15(6) (Landscaped Border Strips)
3. Phosphorus control buffers in Section 19-22.4 (Highland Lake Conservation Overlay District)
4. Clearing of Vegetation for Approved Construction and Other Uses in Section 19-96 (Shoreland Zoning)
5. Section 19-150 (General Buffer Standards)
6. Section 19-151 (Special Landscape and Buffer Requirements in the BP District)
7. Section 19-11.5.1 (Performance Standards for the VC Districts) [Amended 5/13/13]
8. Section 19-153 (Special Landscape and Buffer Requirements in the CO District)
9. Section 19-154 (Other Landscaping Requirements)
10. Appendix 7-1 H. of the Subdivision Ordinance (Landscape Requirements)
11. Section III, Landscape Design (Village Center Design Guidelines)
12. Section IV, Landscape Design (West Falmouth Crossing Design Guidelines)

Effective on: 12/9/2013

Sec. 19-70.3 Landscape Architect Required

The owner of the project shall retain the services of a landscape architect registered in Maine and familiar with local growing conditions, in order to consult with the Town on design issues, prepare landscape plans and specifications, and perform inspections of newly installed plant material. The Town may waive this requirement on projects that are small or lacking in complexity.

Effective on: 12/9/2013

Sec. 19-70.4 Preservation of Existing Plant Materials

- A. Trees that are to be preserved under the terms of the ordinances listed in Section 19-70.2 shall be protected from the adverse impacts of new development due to the following causes:
1. Cutting or removal of trees;
 2. Damage to trunks, branches, leaves, and bark;
 3. Excavation of soil, changes of grade, or the cutting of roots;

4. Storage of soil, building materials, construction equipment, or any other materials of any kind on the ground surface; and,
 5. Soil erosion and sedimentation.
- B. The protected tree and root zone area shall include the following:
1. For individual trees: the area defined by the drip line of the crown, or, one and a half feet radius from the tree trunk for every one inch of caliper, whichever is greater;
 2. For groups of trees, hedges, and forestland: the area defined by the drip line of all the trees in the group.
- C. In order to allow the efficient layout of buildings, utilities, and other structures, the protected tree and root zone area for an individual tree may be reduced to a radius of one foot for every one inch of caliper, so long as the preserved area is reduced by no more than 30%, and means are taken to compensate for the loss of roots through fertilizing, proper root pruning, and other means as necessary. Root pruning shall result in clean cuts without tearing, splitting, or cracking of remaining root tissues. The Town may require that root pruning be performed by a licensed arborist.
- D. A tree and root zone protective barrier shall be installed around the perimeter of all groups of trees and individual trees to be preserved prior to site clearing and the commencement of construction. The protective barrier shall consist of snow fencing attached to posts no less than 10 feet apart, unless an alternative barrier is approved by the Town. The Town shall approve the location and type of all tree and root zone protective barriers prior to site clearing. The tree and root protective barriers shall be maintained until construction is complete. Tree and root protective barriers shall not be removed until approved by the Town.
- E. If, during site clearing or the construction period, trees within a protected area are removed, or if they are damaged to such an extent that they must be removed for safety reasons or because they have a poor chance of recovery, then the trees shall be replaced according to a restoration plan as determined by the Town. The restoration plan shall attempt to restore the environmental and visual benefits of the trees that have been removed to the greatest extent practicable, while taking into account the following factors:
1. The need to protect sites with that are environmentally sensitive, such as steep slopes and buffers next to wetlands, streams, and waterbodies;
 2. The visual impact of the planting relative to the intent of the Town design standards for screening between different land uses, definition of space, and complementing architectural elements in the landscape;
 3. The environmental benefit of the plantings relative to ameliorating dust, noise, glare, heat, wind and other harsh conditions created by development;
 4. The need for shade;
 5. The space available for new plantings;
 6. The quality of the soil and drainage conditions.

The owner shall pay for all costs associated with the site analysis, planning, and restoration of the damaged area.

- F. On plans submitted for approval, groups of trees and individual trees to be preserved shall be identified with lines and shading that clearly distinguishes these areas from other information appearing on the documents. The plans shall indicate in bold text that the group of trees or the individual tree is not to be disturbed.

Sec. 19-70.5 Consultations Regarding the Use of Plant Materials in Design

- A. The owner's landscape architect shall consult with the Town in order to properly interpret the design intent of the ordinances. The consultation process shall consist of one or all of the following steps, depending on the size and complexity of the project:
 - 1. A meeting prior to submission of sketch plans, in order to determine the potential impact of the project on existing plant materials and to discuss the role of new plant materials in landscape design according ordinance standards;
 - 2. One or more meetings during the submission of preliminary and final plans, in order to refine issues of potential misunderstanding and conflict between Town standards and the plans submitted for approval;
 - 3. A meeting on site prior to site clearing and construction in order to approve the protection of existing plant materials;
 - 4. One or more meetings during or after construction to ensure that plant materials are installed according to approved plans.
- B. The Town may waive the consultation requirement on projects that are small, that lack complexity, or in instances where the Town has waived the requirement that the owner retain the services of a landscape architect.

Sec. 19-70.6 Plant Maintenance

- A. The owner's landscape architect shall prepare a written narrative that describes who shall maintain the plant materials and what their maintenance responsibilities are according to the following schedule:
 - 1. During the installation period until acceptance by the owner;
 - 2. During the guarantee period that begins from the date of acceptance by the owner;
 - 3. After the guarantee period.
- B. The responsibilities to be assigned during each of the phases described in Paragraph A shall include, but are not limited to, the following:
 - 1. Protection of trees and shrubs from physical damage due to activities on the site, such as construction, storage of building materials, snow storage, and parking;
 - 2. Watering, fertilizing, and mulching of trees and shrubs;
 - 3. Removal of staking and guy wires;
 - 4. Erosion and sedimentation control;
 - 5. Mowing, aerating, fertilizing, liming, and raking leaves on lawns;
 - 6. Insect control;
 - 7. Replacement of dead, diseased, or damaged trees, shrubs, and lawns.
- C. The plant materials shown on approved plans are a permanent part of plan approval. If plants die, or they do not provide the proper level of screening specified in the ordinance, then they must be replaced or reinforced with additional material. This responsibility continues after the construction period is complete and passes on to new owners of the property.

- D. The Town may waive the requirement for a written narrative on projects that are small or lacking in complexity, but it shall not waive the requirement that plant materials be maintained.

Effective on: 12/9/2013

Sec. 19-70.7 Inspections and Reports

- A. The owner's landscape architect shall perform inspections and submit reports that verify that the work conforms to approved plans and specifications. The following reports are required:
 - 1. Verification that trees, shrubs, and lawns and their installation conform to approved plans and specifications;
 - 2. Notification that the owner has accepted plant materials and landscaped areas, and copies of the field reports that were used by the owner to justify acceptance;
 - 3. Description of any changes in the design of plant materials or landscape elements that are significantly different from those shown on approved plans and specifications.
- B. The Town's inspection shall be based on satisfactory reports submitted by the owner's landscape architect.
- C. The Town may waive the requirement for inspections and reports on projects that are small, that lack complexity, or in instances where the Town has waived the requirement that the owner retain the services of a landscape architect.

Effective on: 12/9/2013

Sec. 19-71 Buffers and Setbacks Adjacent to Streams, Ponds and Wetlands

[Adopted 12/18/01] [Amended 7/11/2011]

Sec. 19-71.1 Purpose

The purpose of these requirements is to protect water quality, aquatic life, and wildlife habitat in and adjacent to streams, ponds and wetlands town-wide, and, to protect private and public property from flooding and poor drainage conditions caused by locating buildings in or close to these areas. The regulations are intended to protect natural resource areas that are not currently covered by Shoreland Zoning and the Highland Lake Conservation Overlay District.

The regulations distinguish between high and low value wetlands. High value wetlands generally have surface water for a prolonged period during the growing season, or, they are located in close proximity to other wetlands, ponds and streams. These are the two most important factors in determining how well a wetland functions in terms of providing benefits to the community. Although the absence of surface water or their location makes low value wetlands less beneficial, the Town is interested in these areas because their poor drainage conditions pose a hazard for development.

Effective on: 12/9/2013

Sec. 19-71.2 Applicability

- A. The requirements of this section 19-71 apply only to the construction of: 1) new single family dwellings and their accessory structures and lawns, when constructed upon lots created after the effective date of this section, whether by subdivision or otherwise; and 2) private ways which are subject to review under section 19-60. For purposes of this subsection 19-71.2, subdivision and private way applications that have had at least one substantive review before the effective date of this section shall not be subject to the requirements of this section. Alterations and enlargements of single family dwellings and their accessory buildings existing on the effective date of this section are not subject to the requirements of this section. The

requirements apply to the construction of new single family dwellings and their accessory buildings, private ways, and subdivision plans in residential districts.

- B. In the event that the requirements of this section overlap the requirements of Shoreland Zoning or the Highland Lake Conservation Overlay District, the requirements of Shoreland Zoning or the Highland Lake Conservation Overlay District shall apply.
- C. Notwithstanding subsections a and b above, lots created prior to December 18, 2001 and altered in either of the following ways shall not be considered new lots for purposes of this section:[Added 7/11/11]
 - 1. subsequently divided if the division is for purposes of conveyance to a governmental or non-profit agency for the sole purpose of protecting natural resources in perpetuity or providing public access to protected natural resource areas; or
 - 2. encumbered with an easement or other legal instrument held by a governmental or non-profit agency for the purposes of protecting natural resources in perpetuity or providing public access to protected natural resource areas.

Effective on: 12/9/2013

Sec. 19-71.3 Protected Resources

- A. **Stream.** A “river, stream, or brook” as defined by the Maine Natural Resources Protection Act.
- B. **Pond.** A naturally occurring inland body of water, but not including great ponds as defined by the Maine Natural Resources Protection Act.
- C. **Vernal Pool.** A naturally occurring temporary to permanent inland body of water that forms in a shallow depression and typically fills during the spring or fall and may dry during the summer. The vernal pool contains no viable populations of predatory fish, and it provides the primary breeding habitat for wood frogs, spotted salamanders, blue-spotted salamanders and fairy shrimp. The presence of any one or more of these species is usually conclusive evidence of a vernal pool. Only vernal pools that have been mapped or identified by a governmental agency prior to project approval shall be considered as being within this definition.
- D. **Floodplain.** The area adjacent to a stream or pond that is inundated during a 100-year flood event, as indicated on flood insurance maps of the Federal Emergency Management Agency, or by field indicators such alluvial deposits, scoured soils, silt-covered leaves and vegetation, water-borne debris, topography, and other site-specific evidence, or by a flood elevation analysis of a qualified professional.
- E. **High Value Wetland.** A freshwater wetland, as defined by the Maine Natural Resources Protection Act, which meets one or more of the following criteria:
 - 1. Contains a pond or a vernal pool;
 - 2. Lies within the floodplain of a stream or a pond;
 - 3. The soils are very poorly drained as defined by the USDA Natural Resources Conservation Service;
 - 4. More than 50% of the dominant species in all strata of the vegetation consist of facultative wetland (FACW) or obligate wetland (OBL) plant species, as listed in the National List of Plant Species that Occur in Wetlands, by the U.S. Fish and Wildlife Service, latest edition.
- F. **Low Value Wetland.** A freshwater wetland, as defined by the Maine Natural Resources Protection Act, which does not meet the criteria of a high value wetland.

Effective on: 12/9/2013

Sec. 19-71.4 Buffers and Setbacks Required

- A. A buffer consisting of natural forestland not less than 50 feet wide shall be left undisturbed between streams, floodplains, ponds, vernal pools, and high value wetlands and all areas cleared for development, including, but not limited to, lawns, gardens, landscaped plant beds, driveways, parking lots, buildings, and other structures.
- B. No structure shall be located closer than 75 feet from streams, floodplains, ponds, vernal pools, and high value wetlands.
- C. No structure shall be located closer than 50 feet from low value wetlands greater than 4,000 square feet in total area.
- D. Buffers and setbacks shall be measured as follows:
 - 1. Streams: from the edge of the stream channel, or from the edge of the floodplain adjacent to the stream if one is present;
 - 2. Floodplains: from the limit of the area inundated by floodwater;
 - 3. Ponds and vernal pools: from the high water mark, or from the upland edge of the wetland adjacent to the pond or pool is one is present;
 - 4. Wetlands: from the upland edge of the wetland.
 - 5. Where uncertainty exists as to the precise boundaries of protected resources for the purposes of establishing buffers and setbacks, the Planning Board shall be the final authority as to location. In making determinations, the Planning Board may require applicants to file plans drawn and approved by qualified professionals and may consider the advice of state and federal agencies and peer reviewers.

Effective on: 12/9/2013

Sec. 19-71.5 Exemptions

- A. Buffers and setbacks are not required adjacent to the following areas:
 - 1. Swales, ditches, and impoundments created for drainage purposes;
 - 2. Artificial impoundments of streams constructed prior to the enactment of this amendment;
 - 3. Low value wetlands, averaging thirty (30') feet or less in width, as determined by measuring the width of five (5) evenly spaced sections, that function primarily as drainage swales in upland areas.
- B. Subject to the following qualification, buffers and setbacks do not apply to the following improvements: [Amended 12-17-07]
 - 1. Stormwater management facilities;
 - 2. Road crossings, bridges, culverts, and the installation of utilities needed to access property on the other side of wetlands and water bodies; and
 - 3. Docks, boat ramps, and other structures necessary for direct access to water bodies.

In order to qualify for the exemptions in this paragraph B, the design and location of the improvements must:

- 1. Be integrated with the natural topographic condition and minimize the need for cuts and fills;
- 2. Minimize impacts on protected resources and their respective buffers and setbacks as defined in subsection [19-71.3](#);
- 3. Incorporate accepted best management practices; and

4. Be determined by the permitting authority to be the best alternative.

Effective on: 12/9/2013

Sec. 19-71.6 Non-forested Areas

Buffer areas that consist of fields, orchards, or cutover land shall comply with the requirements of this section by allowing the buffer area to regenerate to forest cover naturally. The Town may, however, require that the buffer area be replanted and the site stabilized if the soils on the site are exposed or eroding.

Effective on: 12/9/2013

Sec. 19-71.7 Maintenance of Forested Buffers

- A. Buffers shall remain undisturbed, except for the removal of trees that pose a safety hazard. No tree cutting or clearing of vegetation can be done within the buffer without prior approval of the Code Enforcement Officer.
- B. No trash, building materials, compost piles, buildings, automobiles, equipment, machinery, car parts, gravel, rocks, soil, or debris of any kind shall be placed or stored in the buffer area.
- C. Stormwater runoff shall enter the buffer area as sheet flow only. Channeling stormwater runoff through the buffer area is not permitted.

Effective on: 12/9/2013

Sec. 19-71.8 Enforcement of Buffers

- A. For building permits where a buffer is required, a written notice that the property contains a buffer shall be filed at the Cumberland County Registry of Deeds within ten days of plan approval. A copy of the notice filed at the Registry shall be submitted to the Code Enforcement Office within the same time period as proof of the filing.
- B. On subdivision plans, the location of buffers and setbacks shall be shown using bold lines, shading, and other techniques to ensure that the buffer areas and the setbacks stand out clearly from background information. The buffers and setbacks shall be labeled and text shall indicate that the buffers are not to be disturbed.
- C. The boundaries of buffer areas shall be marked on site with snow fencing or equivalent measures and approved by the Code Enforcement Officer prior to site clearing.

Effective on: 12/9/2013

Sec. 19-72 Erosion and Sedimentation Control

[Adopted 9/22/03]

Sec. 19-72.1 Purpose

The exposing of soils due to construction activities or the removing and placement of fill materials increases the risk of water pollution, uncontrolled stormwater runoff, and the degradation of the filtering benefits of naturally forested buffers and other vegetated areas. Exposed soils also increase the risk of damage to private and public property, such as stormwater control facilities, roads, water supplies, and buildings. The frequency and severity of these problems can be reduced by requiring the implementation of standard erosion and sedimentation control practices.

Effective on: 12/9/2013

Sec. 19-72.2 Applicability

The provisions of this section apply to the erosion and sedimentation control plans and procedures required by Building Permits, Phosphorus Control Permits, Private Way Permits, Fill Permits, Shoreland Zoning Permits, Site Plans, and Subdivision Plans.

Effective on: 12/9/2013

Sec. 19-72.3 Definitions

- a. *Best Management Practices*: Standardized techniques for designing, installing, and maintaining erosion and sedimentation control measures as explained in the manual identified in Section 19-72.5(a).
- b. *Disturbed area*: That part of the land surface on which fill material has been placed, or from which vegetation, pavement, or structures have been removed, exposing bare soil.

Effective on: 12/9/2013

Sec. 19-72.4 General Standards

Erosion and sedimentation control measures shall protect the following resources to the greatest practical extent given current best management practices:

- a. Water quality and wildlife habitat values of streams, waterbodies, wetlands, and buffer areas;
- b. Stormwater management facilities, buildings, roadways, and water supplies;
- c. Existing vegetation that is to be retained in conformance to approved plans and specifications;
- d. Public and private property adjacent to or in close proximity to the disturbed area.

Effective on: 12/9/2013

Sec. 19-72.5 Requirements

- a. Erosion and sedimentation control measures shall be designed and implemented according to the *Maine Erosion and Sedimentation Control Handbook for Construction: Best Management Practices*, by the Cumberland County Soil and Water Conservation District and the "Maine Erosion and Sediment Control BMPs", by the Maine Department of Environmental Protection, March 2003, or its most recent revision; except to the extent a specific provision in this Ordinance is different from or more restrictive than the provision in these reference manuals.
- b. The boundaries of natural and manmade vegetated buffers and other designated clearing limit lines required under Town ordinances and State law shall be marked with construction fencing, snow fencing, or other temporary barriers acceptable to the Code Enforcement Officer prior to site clearing, grading, placing or removing fill materials, and other forms of soil disturbance. Site clearing or soil disturbance activities may not begin until the Town has inspected and approved the boundaries of the buffer areas.
- c. Temporary erosion and sedimentation control measures shall be in place throughout the period that soils are exposed on the site. Soils are considered to be exposed as soon as trees, shrubs, grass and other vegetation are removed from the ground surface as a result of land clearing operations prior to development. The measures shall include, but are not limited, to the following activities, as applicable:
 - 1. Interception of stormwater runoff and containment of sediment originating from disturbed areas;
 - 2. Diversion of runoff away from disturbed areas;
 - 3. Protection of existing stormwater management facilities, roadways, buildings, and vegetation adjacent to or in close proximity to disturbed areas;
 - 4. Proper placement and compaction of fill materials, in order to ensure their structural stability;
 - 5. Temporary stabilization of exposed soil areas before major storms or a prolonged period of wet weather.

- d. Temporary erosion and sedimentation control measures shall be maintained throughout the construction period and shall include, but are not limited to, the following activities:
 - 1. Repair or replacement of sediment filtering devices, such as silt fences, hay bales, and sediment control berms.
 - 2. Cleaning of sediment trapping devices such as sediment basins and check dams.
 - 3. Cleaning of permanent stormwater management facilities, such inlets, catch basins, storm drains, detention ponds, drainageways, and plunge pools.
 - 4. Restoration of areas that have been damaged by erosion or sedimentation. Cleanup shall include sediment that has escaped into streams, waterbodies, wetlands, buffer areas, roadways, water supplies and stormwater management facilities, unless attempts at restoration would cause more harm than benefit to the resource, as determined by the Town.
- e. Permanent erosion and sedimentation control measures shall be implemented that keep the site permanently stabilized as soon as reasonably possible after completion of soil disturbance activities. These measures shall include, but are not limited to, the following measures, as applicable:
 - 1. Revegetation of all exposed areas that are not covered by buildings, pavement, or other structural surfaces;
 - 2. Stabilization of steep slope surfaces through one or more techniques, such as rip rap, diversion ditches, benches, and vegetation;
 - 3. Hardening of areas subject to concentrated or increased runoff, such as drainageways, inlets, and outlets, with riprap, concrete wing walls, stone plunge pools and other means.
- f. After complete site stabilization, silt fences and hay bales shall be removed from the project site. Sediment control berms shall be removed or smoothed over in order to blend with the landscape. Litter, building materials, and building debris shall be removed from the project site as well as buffer areas, streams, and wetlands.

Effective on: 12/9/2013

Sec. 19-72.6 Plans

- a. Erosion and sedimentation control plans shall be submitted in writing. In areas outside of the Shoreland Zone and the Highland Lake Conservation Overlay District, the Town may waive the requirement for a written erosion and sedimentation control plan on projects that are deemed to pose little risk to sensitive natural and cultural resources due to their small size, simplicity, and location.
- b. The level of detail shown on the plans shall be based on the size and complexity of the project. The Town may require the plans to be prepared by a professional engineer if warranted by the size or complexity of the project, or by the potential impacts of the project on natural resources or public and private property.
- c. The Town may require that previously approved erosion and sedimentation control plans be modified if, during the performance of the project, the measures indicated in the plan do not appear to be adequate or are failing in their intended purpose.

Effective on: 12/9/2013

Sec. 19-72.7 Inspections

- a. The minimum inspections required are the following, except that the Town may waive Inspections Number 2 and 3 if the project is small or lacking in complexity:

1. Prior to site clearing or soil disturbance to confirm location of naturally vegetated or manmade buffers required by Town ordinances and State law;
 2. During the construction phase to determine if temporary erosion and sedimentation controls have been installed correctly and are working properly;
 3. After completion of soil disturbance activities to determine that the site is permanently stabilized and temporary measures can be removed.
- b. It is the responsibility of the developer to notify the Town that an inspection is due, under subsection a. The lack of an inspection by the Town shall not absolve the developer of the responsibility to install and maintain erosion and sedimentation controls as required under this ordinance and State law.
- c. The Town may require that the developer hire a professional engineer, landscape architect, or other licensed professional with expertise in the erosion control measures specified in the plans to conduct inspections and prepare reports for consideration by the Town.
- d. The Town or its representatives may inspect the project at any time and require corrective action.
- e. Temporary control measures shall not be removed until the site has been permanently stabilized and approval from the Town has been obtained.

Effective on: 12/9/2013

Sec. 19-72.8 Enforcement

Erosion and sedimentation controls shall be maintained throughout the construction period. Failure to maintain these devices may result in a stop work order, revocation of permits, or other disciplinary measures allowed by law. Fines may be imposed pursuant to 30-A M.R.S.A. §4452 at a rate of \$100.00 to \$2,500.00 per day per violation. The cost of clean up operations in the event that erosion and sedimentation controls fail shall be borne by the developer.

Effective on: 12/9/2013

Sec. 19-72A Post-Construction Stormwater Management

[Adopted 09/14/09]

Sec. 19-72A.1 Purpose

It is recognized that development activity poses potential impacts of flooding, adds pollution to water resources, and increases erosion and sedimentation. The purpose of this section is to ensure adequate long-term operation and maintenance of post-construction stormwater facilities.

This section is intended to protect town-wide stormwater infrastructure and water quality and ensure the Town's compliance with the Maine General Discharge Permit, which falls under the rules of NPDES Phase II and the EPA clean water act.

Effective on: 12/9/2013

Sec. 19-72A.2 Applicability

A Post Construction Stormwater Management Plan is required for any site development or redevelopment activity involving one acre (43,560 square feet) or more of disturbed land area that discharges to the Town's Municipal Separated Storm Sewer System (MS4) including but not limited to impervious surface, paving, clearing, filling or alteration of vegetative cover, etc..

In any instance where the standards or other provisions of State or Federal stormwater rules conflict with Town ordinances, the stricter standard shall apply.

Effective on: 12/9/2013

Sec. 19-72A.3 Submission Requirements

- a. The plan shall be submitted to the permitting authority in conjunction with other required permit applications.
- b. The plan shall conform to the applicable submission requirements of Section 8 of DEP Chapter 500 Rules available at www.maine.gov/dep/stormwater.
- c. The plan preparer shall be a professional qualified in stormwater management.

Effective on: 12/9/2013

Sec. 19-72A.4 Permitting Requirements- Prior to any site disturbance involving any property governed by the Plan, the following conditions shall be met:

- a. The plan shall be approved by Parks and Public Works Department
- b. A stormwater maintenance agreement shall be recorded at the Registry of Deeds.
- c. The stormwater management plan shall be approved by the permitting authority and referenced in a plan note on any other related plan approved in conjunction with the stormwater management plan.
- d. If an offer of dedication or Town acceptance is proposed, the applicant shall be responsible for the maintenance of these Stormwater Management Facilities until such time (if ever) as they are accepted by the Town.

Effective on: 12/9/2013

Sec. 19-72A.5 Standards for the Post-Construction Stormwater Management Plan- The application shall include a plan which shall:

- a. specify the property owner, responsible party for post-construction monitoring, and plan preparer.
- b. identify the qualified third party inspector who will perform the inspections.
- c. reference the stormwater maintenance agreement. Perpetual easements will be provided to the Town allowing access for secondary maintenance, repair, replacement and improvement of the Stormwater Management Facilities.
- d. include a note documenting that the responsible party, his/her/its successors, heirs and assigns, shall have the legal obligation to operate, repair, maintain and replace the Stormwater Management Facilities.

Effective on: 12/9/2013

Sec. 19-72A.6 Requirements for Compliance

Any party responsible for Stormwater Management Facilities required by a Post-Construction Stormwater Management Plan shall demonstrate compliance with the Plan as follows:

- a. The responsible party shall provide the Public Works and the Community Development Departments with an annual report documenting that the stormwater management facilities are adequately maintained and are functioning as intended. If the facilities are not adequately maintained or functioning as intended, the qualified third party inspector shall provide a record of the deficiency and the responsible party will take corrective actions to remediate the deficiency within the time frame established by the Public Works Department.
- b. The responsible party shall at least annually, inspect, clean and/or maintain the Stormwater Management Facilities, including, but not limited to, any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures. This shall be in accordance with the cleaning and maintenance requirements set forth in the approved Post-Construction Stormwater Management Plan.

- c. The responsible party shall repair any deficiencies found during inspection of the Stormwater Management Facilities in a timeframe as established by the Public Works Department.
- d. The responsible party shall, on or by July 1 of each year, provide a completed and signed certification to the Director of Public Works, in a format acceptable to the Department. The certification shall describe any deficiencies found during inspection of the Stormwater Management Facilities and certify that the deficiencies of any Stormwater Management Facilities have been remediated.
- e. The required inspection(s) must be conducted by a qualified third-party inspector if the property is subject to a DEP stormwater permit. The third-party inspector shall perform an initial inspection to determine the status of the Stormwater Management Facilities. If the initial inspection identifies any deficiencies with the facilities, the same third-party inspector shall re-inspect the facilities after they have been maintained or repaired to determine if they are performing as intended and certify the same to the Director of Public Works
- f. The qualified third party inspector must meet the following criteria:
 - 1. Have a college degree in an environmental science or civil engineering, or comparable expertise;
 - 2. Have a practical knowledge of stormwater hydrology and stormwater management techniques, including the maintenance requirements for Stormwater Management Facilities; and
 - 3. Have the ability to determine if stormwater facilities are performing as intended
- g. In order to determine compliance with this section and with the Post-Construction Stormwater Management Plan, the Director of Public Works, Community Development Director, or their designee, may request to enter upon a property at reasonable hours after making a good faith effort to contact the owner, occupant or agent to inspect the Stormwater Management Facilities.
- h. Non-compliance with the plan that is not resolved within a reasonable time frame shall be referred to the Maine Department of Environmental Protection (MDEP).

Effective on: 12/9/2013

Sec. 19-73 Diverse Housing in Mixed Use Developments [Adopted 5/24/04][Repealed 5/13/13]

Effective on: 12/9/2013

Sec. 19-74 Personal Use Airstrip [Adopted, 9/26/05]

Personal Use Airstrips shall meet the following standards and limitations:

- a. The airstrip surface shall be limited to grass only and there shall be no exposed gravel or paving.
- b. The maximum length shall be two thousand three hundred feet (2300').
- c. The edges of the airstrip shall be located at least two hundred and fifty feet (250') from any abutting property line.
- d. Planes using the airstrip shall be limited to visual flight operations and shall only operate between 7 a.m. and 9 p.m.
- e. There shall be no lighting of the landing strip or any control tower, except for low-intensity landscape lighting utilized to identify the perimeter of the landing strip, and which is activated only for approach and take-off.

- f. The airstrip shall not be used for any commercial purposes such as, without limitation, sky-diving, flying lessons, rental of landing rights, or commercial maintenance or repair of aircraft. The airstrip shall not be permitted to be used as a base for sky-diving, either personal or commercial.
- g. There shall be no more than one airstrip per property. The airstrip may not serve more than one lot nor shall deeded rights be granted in that airstrip to others.
- h. The personal use airstrip may be used for “fly-ins” only with the approval of the Town Council and with such reasonable conditions as the Town Council may impose.

Effective on: 12/9/2013

Sec. 19-75 Private Access Drives For Country Estates Lots [Adopted 12/22/05]

The Planning Board may approve the use of a private access drive to provide access to Country Estate lots in the Resource Conservation Zoning Overlay District in accordance with the following provisions:

- a. A private access drive may be used to provide access to not more than three (3) Country Estate lots in the Resource Conservation Zoning Overlay District.
- b. The private access drive shall be located in a deeded right-of-way or easement with a width of not less than twenty-five (25) feet. The right-of-way or easement may be part of one or more of the lots but the area within the right-of-way or easement shall not be counted toward meeting the minimum lot area or minimum net residential area requirement for the lot(s).
- c. The private access drive shall meet the design and construction requirements for private ways set forth in Section 19-60, except that private access drives serving Country Estate lots shall not be subject to the dead end length limitations and no sewer easement will be required by the Town. The width of the right of way shall be as indicated in subsection b. above.

Effective on: 12/9/2013

Div. II-19-1-6. NONCONFORMING STRUCTURES, USES AND LOTS

Sec. 19-76 Generally.

A nonconforming structure, use, or lot is permitted to continue as it existed prior to the date such structure, use, or lot became nonconforming under the provisions of this Ordinance, as amended.

Effective on: 12/9/2013

Sec. 19-77 Alterations.

Except as provided in this subsection, a nonconforming structure or use shall not be extended or enlarged in any manner except as may be permitted as a variance. The following requirements shall apply to expansion or enlargement of structures which are nonconforming solely due to lot size, lot width, lot frontage, lot coverage, height, or setback requirements. Any lot located in RA that is not located in the WVOD and is at least 5,000 square feet in area shall be considered conforming with regard to lot size for the purposes of this section.[Amended 1/24/00; 7/11/2016]

- a. Except for lots located in the Water View Overlay District the extension, enlargement, or construction of a single family detached dwelling or residential detached accessory structure which is nonconforming solely due to lot size, lot width, lot frontage, lot coverage, height, or setback requirements, is permitted provided the extension, enlargement, or construction is not located between the lot lines and the required setback lines and does not compound nor create a lot coverage or height violation. [Amended 10/25/04; 7/24/06; 5/30/12; 7/22/13]

- b. The Board of Zoning Appeals may permit: the extension or enlargement of a single family detached dwelling; the extension or enlargement of a residential accessory structure located ten (10) feet or greater from a property line; or the development of a residential accessory structure as a conditional use in accordance with Section 19-119 and 19-123 where a lot size, lot width, lot frontage, lot coverage, height or setback nonconformity exists provided the following criteria are met [Amended 10/25/04; 7/22/13]:
 1. Shall not increase lot coverage above 50%; and,
 2. If the existing structure is nonconforming in relation to setbacks, the new structure shall not extend closer to the lot lines than the existing structure; and shall not create or compound a violation of the height restrictions in Section 19-53. [Amended 7/24/06; 7/22/13], and
 3. No part of the extension or enlargement of the structure may be closer than ten (10) feet from any lot line [Amended 7/22/13].
- c. The Board of Zoning Appeals may permit as a conditional use in accordance with Section 19-119 and 19-123, the extension or enlargement of a multiplex dwelling unit subject to the following requirements [Amended, 10/25/04]:
 1. No part of the extension or enlargement of a multiplex dwelling unit may be closer than twenty (20) feet from all property lines and thirty (30) feet from buildings on any adjoining lot.
 2. If the multiplex dwelling to be enlarged is in the condominium or unit owner form of ownership, the Board of Zoning Appeals may approve the extension or enlargement only of a limited common element or area and only after such extension or enlargement has been approved by the condominium association or association of unit owners in accordance with the provisions of the Maine Condominium Act or Unit Ownership Act, as the case may be, and with applicable bylaws of the association.
 3. The applicant for the extension or enlargement of a multiplex dwelling unit shall provide notice of the application and the Board of Zoning Appeals' hearing thereon to the owners of dwelling units which are attached to the unit proposed to be extended or enlarged. [Amended 1/24/00]
- d. A structure other than a single family detached dwelling or a multiplex dwelling unit which is nonconforming due to lot size, lot width, lot frontage, lot coverage, height or setback requirements, may be expanded or enlarged subject to Site Plan Review under Div. II-19-1-9, provided that the extension or enlargement is not located between the lot lines and the required setback lines, and does not compound nor create a lot coverage or height violation. [Amended 1/24/00][Amended 8/26/13]
 Any single family detached dwelling located in the BP, MUC, or VC Districts, which is nonconforming solely because of its use, may be expanded or enlarged in accordance with the preceding requirements. [Amended, 12/22/86; 5/13/13; 7/22/13]

Effective on: 7/11/2016

Sec. 19-78 Conversion to Conforming Structure, Use, or Lot

Once converted to a conforming structure, use, or lot, no structure, use, or lot shall revert to a nonconforming status.

Effective on: 12/9/2013

Sec. 19-79 Change of Use.

The change of a use, which is nonconforming because it is not allowed either as a permitted or conditional use in the district in which it is located, to another nonconforming use may be permitted by the Board of Zoning Appeals as a conditional use subject to the requirements of subsection 19-119 and 19-123, and after finding by the Board that the proposed use will be an improvement over the prior use in terms of the standards set forth in subsections 19-119 and 19-123.

Effective on: 12/9/2013

Sec. 19-80 Replacement of Destroyed or Damaged Nonconforming Structures [Amended, 10/25/04]

- a. Any nonconforming structure or portion thereof that is unintentionally damaged or destroyed by accident or by malicious acts of persons other than the property owner shall only be rebuilt or replaced subject to the requirements of this subsection:
 1. For nonconforming structures located outside of the Shoreland Zone, the destroyed or damaged structure may be replaced or rebuilt with approval of the Zoning Board of Appeals, provided that the exterior dimensions of the reconstruction are no larger than the dimensions of the structure prior to the destruction or damage. Damaged or destroyed structures that are rebuilt under this subsection shall not be subject to the provisions of the Zoning Ordinance for lot size, lot width, lot frontage, lot coverage, or height limitations, but the new structure shall be placed on the lot such that the setback requirements are met to the greatest extent practical, even if this means that a new foundation must be installed.
 2. As required by state law, for nonconforming structures located in the Shoreland Zone a determination of the extent of damage shall be made to ascertain that the structure has been damaged to the extent of more than fifty (50%) percent of its value prior to the destruction or damage, and in making the determination of moving the building to meet setbacks to a water body, tributary stream or wetland to the greatest practical extent, the Board shall consider the following factors [Amended 5/26/09]:
 - i. The size of the lot;
 - ii. The slope of the land;
 - iii. The potential for soil erosion;
 - iv. The location of other structures on the property or on adjacent properties;
 - v. The location of the septic system, if any, and other on-site soils suitable for septic system replacement;
 - vi. The type and amount of vegetation to be removed to accomplish the relocation; and,
 - vii. The type and condition of any foundation which may have been part of the original structure.
 3. When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Board of Zoning Appeals or its designee 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 [Adopted 5/26/09]:
 - i. Trees removed in order to relocate a structure must be replanted with at least one native tree, minimum 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. [Adopted 5/26/09]

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. [Adopted 5/26/09]

- ii. 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. [Adopted 5/26/09]
4. Any non-conforming 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 permit is obtained from the Code Enforcement Officer within one year of such damage, destruction, or removal. [Adopted 5/26/09]
- b. Nothing in this provision shall prevent a property owner from taking temporary measures to protect a nonconforming structure or portion thereof, which is unintentionally damaged or destroyed, from further damage.
- c. If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to Section 19-86.a, 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 Section 19-80.a.3 above. [Adopted 5/26/09]

Effective on: 12/9/2013

Sec. 19-81 Discontinuance.

If a nonconforming use or the use of a nonconforming structure or lot is discontinued for twelve (12) consecutive months, such use shall no longer be permitted.

Effective on: 12/9/2013

Sec. 19-82 Vacant Lots.

A nonconforming single vacant lot outside of the WVOD, and not adjoined by another vacant lot in common ownership, may be built upon subject to the lot coverage and setback requirements of this Ordinance for the district where located, provided that the owner can demonstrate that there is reasonable access to the site by emergency vehicles. For purposes of this Section 19-82, the term "vacant lot" shall mean a nonconforming lot that was vacant on and has remained vacant since the effective date of this Zoning Ordinance in 1965. [Amended 10/25/04; 7/24/06; 5/30/12]

Within the WVOD, a nonconforming single vacant lot not adjoined by another vacant lot in common ownership, may be built upon subject to the lot coverage and setback requirements of this Ordinance for the district where located, provided that the owner can demonstrate that there is reasonable access to the site by emergency vehicles and provided that that owner has conditional use approval from the Board of Zoning Appeals. For purposes of this Section 19-82, the term "vacant lot" shall mean a nonconforming lot that was vacant on and has remained vacant since the effective date of this Zoning Ordinance in 1965. [Adopted 5/30/12]

Effective on: 12/9/2013

Sec. 19-83 Vacant Adjoining Lots in Common Ownership.

Two or more nonconforming vacant adjoining lots in common ownership shall be consolidated to form one or more lots conforming so far as possible to the lot area and width requirements of this Ordinance. If possible, the lots shall be consolidated so that no nonconforming lot or lots are formed. The lot or lots so formed may be built upon as a matter of right, subject to the lot coverage and setback requirements of this Ordinance for the district where located, provided that the owner can demonstrate that there is reasonable access to the site by emergency vehicle.

Effective on: 12/9/2013

Sec. 19-84 Relocation or Teardown of Residential Structures [Amended 5/27/92; 7/24/06; 7/22/13]

Sec. 19-84.1 Except for lots located in the Water View Overlay District the relocation or tear down either wholly or partially of a dwelling, dwellings or residential detached accessory structure which is nonconforming solely due to lot size, lot width, lot frontage, lot coverage, height, or setback requirements, is permitted provided the resulting structure(s) is not located between the lot lines and the required setback lines and does not compound nor create a lot coverage or height violation.

Effective on: 12/9/2013

Sec. 19-84.2 The Board of Zoning Appeals may allow by conditional use in accordance with Section 19-119 and 19-123, the relocation or replacement either wholly or in part of a dwelling, dwellings, or residential accessory structure located on a nonconforming lot. As a condition of the approval, the lot shall be consolidated with any adjoining lot or lots in common ownership and not occupied by a dwelling, to form one or more conforming lots so far as possible with regard to the lot area and width requirements of this Ordinance. The following additional criteria shall be met:

- a. Shall not increase lot coverage above 50%; and,
- b. If the structure(s) is nonconforming in relation to setbacks, the new structure(s) shall not extend closer to the lot lines than the existing structure(s) to be replaced; and
- c. Shall not create or compound a violation of the height restrictions in Section 19-53. [Amended 7/24/06] ,and
- d. No part of the extension or enlargement of the structure(s) may be closer than ten (10) feet from any property line, and
- e. Two off-street parking spaces for each dwelling unit shall be provided.

Effective on: 12/9/2013

Sec. 19-85 Relocation or Replacement of Nonconforming Residential Accessory Structures.

A non-conforming residential accessory structure less than ten (10) feet from a property line may be replaced or relocated provided that a conditional use approval is obtained from the Board of Zoning Appeals in accordance with Sections 19-119 and 19-123 and the following additional criteria are met: [Adopted 5/27/93] [Amended 7/24/06; 7/22/13]

1. The structure is not extended or enlarged in any manner; and,
2. The structure, as rebuilt, complies with all applicable fire safety codes; and,
3. The new structure shall be placed on the lot such that the setback requirements are met to the greatest extent practical as determined by the Board using the criteria set forth in section 19-80(a)(2).

Effective on: 12/9/2013

Sec. 19-86 Expansion of Nonconforming Structures in the Shoreland Zone.

In addition to the prior sections dealing with non conforming structures, the following provisions shall apply to the expansion of nonconforming structures located in the Shoreland Zone subject to conditional use approval by the Board of Appeals [Adopted, 5/27/92]:

- a. If any portion of a structure or an attached accessory structure is less than the required setback from the normal high-water line of a water body or tributary stream or upland edge of a designated wetland, that portion of the structure shall not be expanded in floor area or volume, by 30% or more, during its lifetime. If a replacement structure conforms with the requirements of Section 19-80, 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. [Amended 5/28/96; Amended 5/26/09]
Construction or enlargement of a foundation beneath an existing structure need not be considered in the area or volume of expansion provided that the space within that foundation meets the definition of a cellar.
- b. 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 Board of Zoning Appeals or its designee, basing its decision on the criteria specified in Section 19-80.a.2. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with Section 19-86.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. [Adopted 5/26/09]
- c. Notwithstanding the height restriction of Section 19-77 b.(3), in the Residential "B" portions of the Shoreland Zone around Highland Lake, a foundation may be constructed under an existing structure [Amended, 5/27/93].
- d. No structure which is less than the required setback from the normal high-water line of a water body or the upland edge of a designated wetland shall be expanded toward the water body or wetland.

Effective on: 12/9/2013

Div. II-19-1-7. SHORELAND ZONING

Sec. 19-87 Purposes

The purposes of this Ordinance are to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; 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, and 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 impacts of development in shoreland areas.

Effective on: 12/9/2013

Sec. 19-88 Authority

This Ordinance has been prepared in accordance with the provisions of Title 38 sections 435-449 of the Maine Revised Statutes Annotated (M.R.S.A.).

Effective on: 12/9/2013

Sec. 19-89 Applicability [Amended 5/26/09]

- a. The Shoreland Zone includes and applies only to those land areas:
 1. Within two hundred and fifty (250) feet, horizontal distance, of the normal high water line of any designated great pond, river, or salt water body; or,
 2. Within two hundred and fifty (250) feet, horizontal distance, of the upland edge of a coastal wetland, or of a non-forested, fresh water wetland of ten (10) or more contiguous acres; or,
 3. Within one hundred (100) feet, horizontal distance, of the normal high water line of any designated stream or brook.
 4. Flood plains along rivers, as defined by the 100 year flood plain as designated 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 flood plain soils, or other site-specific information. [Amended 5/26/09]
- b. The provisions of the zone also apply to any structure built on, over, or abutting a dock, wharf, pier, or other structure extending below the normal high-water line of a water body. [Amended 5/26/09]
- c. The provisions of the shoreland zone shall apply where applicable, in addition to any other provisions of this ordinance.

Effective on: 12/9/2013

Sec. 19-90 Conflicting Regulations [Adopted 5/26/09]

The shoreland districts shall overlay the districts described in Div. II-19-1-3, and notwithstanding any other provision of the Ordinance, no use shall be allowed in a shoreland district which is not allowed as a permitted use or approved as a conditional use in the applicable underlying zone. Where a Shoreland Zone regulation appears to be in conflict with any other state or local rule, regulation, statute or restriction, the more restrictive requirement shall have precedence.

Effective on: 12/9/2013

Sec. 19-91 Permits Required [Adopted 5/26/09]

No person shall engage in any use of land requiring a permit in the district in which it would occur, or expand or change an existing nonconforming use, or renew a discontinued use or convert a seasonal dwelling to a year-round dwelling occupied on a year-round basis as the principal dwelling place of the occupant, without first obtaining a permit.

Effective on: 12/9/2013

Sec. 19-92 Permit Application [Adopted 5/26/09] [Amended 3/14/11]

Applications for permits shall be submitted in accordance with requirements of the Community Development Department. Submissions of approved plans shall also meet the requirements of Section 19-128.a.5, Geographic Information System (GIS) Plan Submissions and Specifications.

Effective on: 12/9/2013

Sec. 19-93 Plumbing Permit Required [Adopted 5/26/09]

No building permit shall be issued for any structure or use involving the construction, installation or alteration of plumbing facilities unless a permit for such facilities has been secured by the applicant, or his authorized agent, in accordance with the requirements of this Ordinance.

Effective on: 12/9/2013

Sec. 19-94 Permits Issued by Planning Board [Adopted 5/26/09]

After the submission of a complete application to the Planning Board, the Board shall approve an application or approve it with conditions if it makes a positive finding based on the information presented that the proposed use:

- a. will not result in unsafe and unhealthful conditions;
- b. will not result in water pollution, erosion, or sedimentation to surface waters;
- c. will adequately provide for the disposal of all wastewater;
- d. will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
- e. will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
- f. will protect archaeological and historic resources as designated in the Comprehensive Plan;
- g. will avoid problems associated with flood plain development and use; and
- h. is in conformance with the Land Use Standards of Div. [II-19-1-7](#).

Effective on: 12/9/2013

Sec. 19-95 Special Exceptions [Adopted 5/26/09]

In addition to the criteria specified in Section [19-94](#) above, excepting structure setback requirements, the Planning Board may approve a permit for a single family residential structure in a Resource Protection District provided that the applicant demonstrates that all of the following conditions are met:

1. There is no location on the property, other than a location within the Resource Protection District, where the structure can be built.
2. The lot on which the structure is proposed is undeveloped and was established and recorded in the registry of deeds of the county in which the lot is located before the adoption of the Resource Protection District.
3. All proposed buildings, sewage disposal systems and other improvements are:
 - a. Located on natural ground slopes of less than 20%; and
 - b. Located outside the floodway of the 100-year flood-plain along rivers and artificially formed great ponds along rivers and outside the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps; all buildings, including basements, are elevated at least one foot above the 100-year flood-plain elevation; and the development is otherwise in compliance with any applicable municipal flood-plain ordinance.If the floodway is not shown on the Federal Emergency Management Agency Maps, it is deemed to be 1/2 the width of the 100-year flood-plain.

4. The total ground-floor area, including cantilevered or similar overhanging extensions, of all principal and accessory structures is limited to a maximum of 1,500 square feet. This limitation shall not be altered by variance.
5. All structures, except functionally water-dependent structures, are set back from the normal high-water line of a water body, tributary stream or upland edge of a wetland to the greatest practical extent, but not less than 100 feet, horizontal distance. In determining the greatest practical extent, the Planning Board or its designee shall consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed building site's elevation in regard to the flood-plain, and its proximity to wetlands.

Effective on: 12/9/2013

Sec. 19-96 Expiration of Permit [Adopted 5/26/09]

Following the issuance of a permit, if no substantial start is made in construction or in the use of the property within one year of the date of the permit, the permit shall lapse and become void.

Effective on: 12/9/2013

Sec. 19-97 Districts and Zoning Map

Official Shoreland Zoning Map - The areas to which this Ordinance is applicable are hereby divided into the following districts as shown on the Official Shoreland Zoning Map which is made a part of this Ordinance:

1. Resource Protection
2. Limited Residential
3. Limited Commercial
4. Stream Protection

Effective on: 12/9/2013

Sec. 19-98 Interpretation of District Boundaries [Amended 5/26/09]

The Boundaries of the Shoreland Zone exist by reference to the definition set forth in Section 19-89. The Official Zoning Map is intended to be as precise as reasonably may be determined with respect to showing the Shoreland Districts referred to in Section 19-97 herein. Where uncertainty exists as to exact location of District boundary lines, the Planning Board shall be the final authority as to location.

Effective on: 12/9/2013

Sec. 19-99 Establishment of Districts [Amended 5/26/09]

a. Resource Protection District

The Resource Protection District includes areas in which development would adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values. This district shall include the following areas when they occur within the limits of the shoreland zone, exclusive of the Stream Protection District, except that areas which are currently developed need not be included within the Resource Protection District.

1. Areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands, salt marshes and salt meadows, and wetlands associated with great ponds and rivers, which are rated "moderate" or "high" value waterfowl and wading bird habitat, including nesting and feeding areas, by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) that are

depicted on a Geographic Information System (GIS) data layer maintained by either MDIF&W or the Department as of May 1, 2006. [Amended 5/26/09]

2. Flood plains along rivers, as defined by the 100 year flood plain as designated 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 flood plain soils. This district shall also include 100 year flood plains adjacent to tidal waters as shown on FEMA's Flood Insurance Rate Maps or Flood Hazard Boundary Maps.
 3. Areas of two (2) or more contiguous acres with sustained slopes of twenty (20%) percent or greater. In such areas, the boundary of the Resource Protection District shall extend a distance of fifty (50) feet, horizontal distance, beyond the top of slope moving away from the water body. Small areas of slopes less than twenty (20%) percent may be included where there is a consistent and well defined top of bank, or where such areas are completely surrounded by steeper slopes.
 4. Any forested or non-forested wetland area of two (2) or more contiguous acres falling within the 250 foot limit of the shoreland zone, which is not surficially connected to a water body during normal spring high water.
 5. 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.
- b. Limited Residential District
The Limited Residential District includes those areas suitable for residential and recreational development. It includes areas other than those in the Resource Protection District, or Stream Protection District, and areas which are used less intensively than those in the Limited Commercial District.
- c. Limited Commercial District
The Limited Commercial District includes areas of mixed, light commercial and residential uses, exclusive of the Stream Protection District. This district includes areas of two (2) or more contiguous acres in size devoted to, or appropriate for, a mix of residential and low intensity business and commercial uses. Industrial uses are prohibited.
- d. Stream Protection District
The Stream Protection District includes all land areas within one hundred (100) feet, horizontal distance, of the normal high water line of a designated stream.

Effective on: 12/9/2013

Sec. 19-100 Table of Land Uses [Amended 5/26/09]

All land use activities, as indicated in Table 1, Land Uses in the Shoreland Zone, shall conform with all of the applicable land use standards in Div. II-19-1-7. The district designation for a particular site shall be determined from the Official Shoreland Zoning Map.

Yes: Allowed (no permit required)

No: Prohibited

PB - Planning Board

CEO - Code Enforcement Officer

BZA - Board of Zoning Appeals

SP: Stream Protection

RP: Resource Protection

LR: Limited Residential

LC: Limited Commercial

TABLE 1 - LAND USES IN THE SHORELAND ZONE				
LAND USES (see note 1) [Amended 5/26/09]	SP	RP	LR	LC
1. Forest management activities except for timber harvesting	yes	yes	yes	yes
2. Timber harvesting	yes	CEO	yes	yes
3. Clearing of vegetation for approved construction and other allowed uses	CEO	CEO	yes	yes
4. Mineral exploration	no	CEO	yes	yes
5. Emergency operations	yes	yes	yes	yes
6. Agriculture	yes	CEO	yes	yes
7. Aquaculture	yes	PB	PB	yes
8. Principal structures and uses: A. One and two family residential B. Multi-unit residential C. Commercial D. Industrial E. Governmental and Institutional F. Small non-residential facilities for educational, scientific, or nature interpretation purposes	BZA no no no no BZA	PB(2) no no no no PB	CEO PB no no PB CEO	CEO PB PB no PB CEO
9. Structures accessory to allowed uses	BZA	PB	CEO	CEO
10. Piers, docks, wharves, bridges, and other structures and uses extending over or below the normal high-water line or within a wetland A. Temporary B. Permanent	PB PB	PB PB	CEO PB	CEO PB
11. Conversions of seasonal residences to year-round residences	CEO	no	CEO	CEO
12. Private sewage disposal systems for allowed uses	CEO	CEO	CEO	CEO
13. Essential services				
a. all improvements, including wastewater pump stations, with the exception of those listed in b. below, [Added 7/28/14]	PB	PB	PB	PB
b. underground distribution or collection pipes or lines [Added 7/28/14]	CEO	CEO	CEO	CEO
14. Public and private recreational areas involving minimal structural development	PB	PB	CEO	CEO
15. Individual, private campsites	CEO	CEO	CEO	CEO
16. Campgrounds	no	no	PB	PB
17. Road construction	PB	PB	PB	PB
18. Driveway construction	PB	PB	CEO	CEO
19. Parking facilities	no	no(3)	CEO	CEO
20. Marinas	no	no	PB	PB
21. [Repealed, 07/28/2014]				
22. Filling and earthmoving of < 10 cubic yards	CEO	CEO	yes	yes
23. Filling and earthmoving of > 10 cubic yards	PB	PB	PB	PB
24. Uses similar to allowed uses	CEO	CEO	CEO	CEO
25. Uses similar to uses requiring a CEO permit	CEO	CEO	CEO	CEO
26. Uses similar to uses requiring a PB permit	PB	PB	PB	PB

Note 1: Uses not specifically listed and not similar to listed uses require an interpretation from the Board of Zoning Appeals.

Note 2: Single family structures may be allowed by special exception only according to the provisions of Section 19-95 Special Exceptions. Two-family residential structures are prohibited.

Note 3: Except when area is zoned for resource protection due to floodplain criteria in which case a permit is required from the Planning Board. [Adopted 5/26/09]

Effective on: 7/28/2014

Sec. 19-101 Land Use Standards [Amended 5/26/09]

All land use activities within the shoreland zone shall conform to the land use standards contained in Sections 19-101 through 19-116.

A. Minimum Lot Standards

	Minimum Lot Area (sq. ft.)	Minimum Shore Frontage (ft.)
(1) (a) Residential		
(i) Within the Shoreland Zone	30,000 sq.ft./dwelling unit	150
Adjacent to Tidal Areas	40,000 sq.ft./dwelling unit	200
(ii) Within the Shoreland Zone		
Adjacent to Non-Tidal Areas		
(b) Commercial per principal structure		
(i) Within the Shoreland Zone	40,000 sq.ft./dwelling unit	200
Adjacent to Tidal Areas	60,000 sq.ft./dwelling unit	300
(ii) Within the Shoreland Zone		
Adjacent to Non-tidal Areas		
(c) Public and Private Outdoor Recreational Facilities		
(i) Within the Shoreland Zone	40,000 sq.ft./dwelling unit	200
Adjacent to Tidal and Non-Tidal Areas		
(2) Lots located on opposite sides of a public or private road shall be considered each 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.		
(3) The minimum width of any portion of any lot within two hundred (200) feet, horizontal distance, of the normal high-water line of a water body or upland edge of a wetland shall be equal to or greater than the shore frontage requirement for a lot with the proposed use.		
(4) If more than one 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, principal structure, or use.		

Effective on: 12/9/2013

Sec. 19-102 Agriculture [Amended 5/26/09]

- a. All spreading or disposal 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 (7 M.R.S.A. sections 4201-4209).
- b. Manure shall not be stored or stockpiled within seventy-five (75) feet, horizontal distance, of the normal high water line of a water body or the upland edge of designated wetlands.
- c. Agricultural activities involving tillage of soil greater than forty thousand (40,000) square feet in surface area, or the spreading, disposal or storage of manure within the shoreland zone shall require a Soil and Water Conservation Plan to be filed with the Planning Board. Non conformance with the provisions of said plan shall be considered to be a violation of this Ordinance.
- d. There shall be no new tilling of soil within seventy-five (75) feet, horizontal distance, of the normal high water line of a water body or the upland edge of designated wetlands. Operations, including farmland that is fallow due to crop rotation normal to those operations, in existence on the effective date of this Ordinance and not in conformance with this provision may be maintained.
- e. Newly established livestock grazing areas shall not be permitted within seventy-five (75) feet, horizontal distance, of the normal high water line of a water body or the upland edge of designated 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 Soil and Water Conservation Plan.

Effective on: 12/9/2013

Sec. 19-103 Campgrounds

Campgrounds shall conform to the minimum requirements imposed under State licensing procedures and the following:

- a. Campgrounds shall contain a minimum of five thousand (5,000) square feet of land, not including roads and driveways, for each site. Land below the normal high-water line of a water body or the upland edge of a designated wetland shall not be included in calculating land area per site.
- b. The areas intended for placement of a recreational vehicle, tent or shelter, and utility and service buildings shall be set back a minimum of one hundred (100) feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a designated wetland.

Effective on: 12/9/2013

Sec. 19-104 Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting

[AMENDED 5/26/09]

The upland area immediately adjacent to a water body is known as the "riparian zone." It functions to protect the water quality and wildlife values of the water body. Vegetation within riparian zones: 1) provides essential habitat for a diversity of wildlife species, 2) serves as a natural filtration system for nutrients, sediments, and other pollutants, 3) maintains suitable water temperatures for aquatic life, and 4) provides food for a variety of fish and aquatic wildlife. Vegetative cover also stabilizes shorelines preventing erosion damage to property and deterioration of water quality. Finally, vegetation provides a visual screen between water uses and development. For all of these reasons, restrictions must be placed on the removal of vegetation on properties adjacent to waterbodies.

- a. The cutting or removal of vegetation in the Resource Protection District shall be limited to that which is necessary for uses expressly authorized in that district.

- b. In other shoreland districts, within a strip of land extending one hundred (100) feet, horizontal distance, of the normal high-water line of Great Ponds and seventy-five (75) feet, horizontal distance, of the normal high water line of a water body or the upland edge of a designated wetland, a buffer strip of vegetation shall be preserved as follows:
1. There shall be no cleared opening greater than 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.
 2. Selective cutting of trees within the buffer strip is permitted provided that a well distributed stand of trees and other vegetation is maintained. For the purposes of this section a "well distributed stand of trees" adjacent to a great pond classified Great Pond Act or a river or stream flowing to a great pond classified Great Pond Act, shall be defined as maintaining a rating score of 24 or more in each 25-foot by 50-foot rectangular (1250 square feet) area as determined by the following rating system:

Diameter of Tree at 4 ½ feet above ground level (inches)	Points
2 – 4 inches	1
>4 – 8 inches	2
>8 – 12 inches	4
>12 inches	8

Adjacent to other water bodies, tributary streams, and wetlands, a "well-distributed stand of trees" is defined as maintaining a minimum rating score of 16 per 25-foot by 50-foot rectangular area.

Notwithstanding the above provisions, no more than forty (40) percent of the total volume of trees four (4) inches or more in diameter, measured at four and one-half (4 1/2) feet above ground level may be removed in any ten (10) year period.

NOTE: As an example, adjacent to a great pond, if a 25-foot x 50-foot plot contains four (4) trees between 2 and 4 inches in diameter, two trees between 4 and 8 inches in diameter, three trees between 8 and 12 inches in diameter, and two trees over 12 inches in diameter, the rating score is:

$$(4 \times 1) + (2 \times 2) + (3 \times 4) + (2 \times 8) = 36 \text{ points}$$

Thus, the 25-foot by 50-foot plot contains trees worth 36 points. Trees totaling 12 points (36- 24 =12) may be removed from the plot provided that no cleared openings are created.

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 is 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 Section 19-104.2.b “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 planted into the plot.

3. In order to protect water quality and wildlife habitat, existing vegetation under three (3) feet in height and other ground cover, including the forest duff layer, shall not be cut, covered, or removed, except to provide for a footpath as described in subsection 1) above.
4. Pruning of tree branches on the bottom 1/3 of the tree is allowed.
5. 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. Plantings must be sufficient to create a new forest canopy that will meet the requirements of Section 19-104.b.2 within ten (10) years.

The provisions contained in this subsection b shall not apply to structures or uses which require direct access to the water as an operational necessity, such as public beaches, piers, docks, and retaining walls, nor to other functionally water dependent uses. Clearing of vegetation for structures or uses that require direct access to the water as an operational necessity shall be limited to the minimum amount necessary. Areas disturbed beyond these limits shall be replanted according to the requirements of this subsection.

- c. At distances greater than one hundred (100) feet, horizontal distance, of the normal high-water line of Great Ponds and seventy-five (75) feet, horizontal distance, of the normal high water line of a water body or the upland edge of a designated wetland, cleared openings for development, including but not limited to, principal and accessory structures, driveways and sewage disposal areas, shall not exceed in the aggregate, twenty-five (25) percent of the lot area or ten thousand (10,000) square feet, whichever is greater, including land previously cleared.
- d. At distances greater than one hundred (100) feet, horizontal distance, of the normal high-water line of Great Ponds and seventy-five (75) feet, horizontal distance, of the normal high water line of a water body or the upland edge of a designated wetland, removal of trees within areas not cleared for development shall be limited to forty (40) percent of the volume of trees four (4) inches or more in diameter, measured four and one-half (4 1/2) feet above ground level, in any ten (10) year period. For the purposes of these standards, volume may be considered equivalent to basal area.
- e. Legally existing nonconforming cleared openings may be maintained, but shall not be enlarged, except to remove safety hazards or as allowed by this Ordinance.
- f. Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of this section.

Effective on: 12/9/2013

Sec. 19-105 Erosion and Sedimentation Control [Amended 9/22/03]

- a. All activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and which require a permit shall require a written soil erosion and sedimentation control plan according to Section 19-72.
- b. Natural and man-made drainage ways and drainage outlets shall be protected from erosion by 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.

Effective on: 12/9/2013

Sec. 19-106 Mineral Exploration and Extraction [Amended 5/26/09]

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 per acre. 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 to restore disturbed areas and to protect the public health and safety.

Mineral extraction may be permitted under the following conditions:

1. A reclamation plan shall be filed with, and approved, by the Planning Board before a permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of this section.
2. No part of any extraction operation, including drainage and runoff control features, shall be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified Great Pond Act or a river flowing to a great pond classified Great Pond Act, or within seventy-five (75) feet, horizontal distance, of the normal high-water line of any other water body, or the upland edge of a wetland. Extraction operations shall not be permitted within fifty (50) feet, horizontal distance, of any property line without written permission of the owner of such adjacent property.
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:
 - 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 two and one-half to one (2 1/2:1) slope or flatter.
 - c. Top soil or loam shall be retained to cover all disturbed land 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.
4. In keeping with the purposes of this Ordinance, the Planning Board may impose such conditions as are necessary to minimize the adverse impacts associated with mineral extraction operations on surrounding uses and resources.

Effective on: 12/9/2013

Sec. 19-107 Piers, Docks, Wharfs, Bridges and Other Structures and Uses Extending Over or Below the Normal High-Water Line of a Water Body or Within a Wetland

[AMENDED 5/26/09]

- a. Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.
- b. The location shall not interfere with existing developed or natural beach areas.
- c. The facility shall be located so as to minimize adverse effects on fisheries.

- d. The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with existing conditions, use, and character of the area. A temporary pier, dock or wharf in non-tidal waters shall not be wider than six feet for non-commercial uses.
- e. 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.
- f. 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.
- g. 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 any district.

NOTE: New permanent structures, and expansions thereof, projecting into or over water bodies shall require a permit from the Department of Environmental Protection pursuant to the Natural Resources Protection Act, Title 38 M.R.S.A., Section 480 C.

Effective on: 12/9/2013

Sec. 19-108 Roads and Driveways [Amended 5/26/09]

The following standards shall apply to the construction of roads and/or driveways and drainage systems, culverts and other related features.

- a. Roads and driveways shall be set back at least one-hundred (100) feet, horizontal distance, from the normal high-water line of a great pond classified Great Pond Act or a river that flows to a great pond classified Great Pond Act, and one hundred (100) feet, horizontal distance, from the normal high water line of a waterbody or the upland edge of a designated wetland 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, horizontal distance, upon clear demonstration by the applicant that appropriate techniques will be used to prevent sedimentation of the water body. 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, stream, or wetland.

On slopes of greater than twenty (20) percent the road and/or driveway setback shall be increased by ten (10) feet, horizontal distance, for each five (5) percent increase in slope above twenty (20) percent.

This paragraph shall neither apply to approaches to water crossings nor to roads nor driveways that provide access to permitted structures, nor to facilities located nearer to the shoreline 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.

- b. Existing public roads may be expanded within the legal road right of way regardless of its setback from a water body.
- c. New roads and driveways are prohibited in a Resource Protection District except to provide access to permitted uses within the district, or as approved by the Planning Board upon a finding that no reasonable alternative route or location is available outside the district, in which case the road and/or driveway shall be set back as far as practicable from the normal high water line of a designated water body, stream, or upland edge of a wetland.

- d. Road and driveway banks shall be no steeper than a slope of three (3) horizontal to one (1) vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Section 19-97.
- e. Road and driveway grades shall be no greater than ten (10) percent except for short segments of less than two hundred (200) feet, which shall be no greater than twelve (12) percent, unless the Planning Board approves a higher percentage if it finds that that is needed to minimize cuts and fills and maximize erosion control.
- f. 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 (50) feet plus two times the average slope in width between the outflow point of the ditch or culvert and the normal high water line of a designated water body, stream, or upland edge of a wetland. 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.
- g. 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:
 1. 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:

Grade (Percent)	Spacing (Feet)
0-2	250
3-5	200-135
6-10	100-80
11-15	80-60

2. Drainage dips may be used in place of ditch relief culverts only where the road or driveway grade is ten (10) percent or less.
 3. On sections having slopes greater than ten (10) percent, ditch relief culverts shall be placed across the road at approximately a thirty (30) degree angle downslope from a line perpendicular to the centerline of the road or driveway.
 4. Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning and their inlet and outlet ends shall be stabilized with appropriate materials.
- h. Ditches, culverts, bridges, dips, water turnouts and other storm water runoff control installations associated with roads and driveways shall be maintained on a regular basis to assure effective functioning.

Effective on: 12/9/2013

Sec. 19-109 Septic Waste Disposal [Amended 5/26/09]

- a. All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules ("Rules"), and the following:
 1. 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

2. a holding tank is not allowed for a first-time residential use in the shoreland zone.

NOTE: The Rules, among other requirements, include:

1. The minimum setback for new subsurface sewage disposal systems, excluding fill extensions, shall be no less than one hundred (100) feet, horizontal distance, from the normal high water line of a perennial water body. The minimum setback distances from water bodies for new subsurface sewage disposal systems shall not be reduced by variance on vacant lots.
 2. Replacement systems shall meet the standards for replacement systems as contained in the Rules.
- b. Prior to the conversion of a seasonal dwelling to a year-round dwelling, the Code Enforcement Officer must determine that the existing septic system is capable of properly disposing of all wastes which would be generated by year-round use. If the Code Enforcement Officer determines that the existing septic facilities are not adequate, a new septic system shall be installed prior to, or in connection with, the proposed conversion.

Effective on: 12/9/2013

Sec. 19-110 Soils [Amended 5/26/09]

All land uses shall be located on soils in or upon which the proposed uses or structures can be established or 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, or commercial development and other similar intensive land uses, shall require a soils report based on an on-site investigation and be prepared by state-certified professionals.

Certified persons may include Maine Certified Soil Scientists, Maine Licensed Professional Engineers, Maine 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 on: 12/9/2013

Sec. 19-111 Structures and Lots, Principal and Accessory [Amended 5/26/09]

- a. Unless otherwise provided for in Section 19-101, no dwelling or other structure shall be erected except on a lot which meets the minimum lot size and other dimensional requirements established under Div. II-19-1-3 for the underlying district over which the applicable shoreland district is located.
- b. Land below the normal high-water line of a water body or upland edge of a designated wetland shall not be included toward calculating minimum lot area.
- c. Any lot abutting a great pond, river, designated stream, or tidal water shall have a minimum width at all points of two hundred (200) feet measured in a straight line between, or parallel to, a line between the points of the intersection of the side lot lines at the normal high water line.
- d. All structures shall be set back at least one hundred (100) feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a designated wetland. The water body or wetland setback provision shall neither 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. In the Resource Protection District the setback

requirement shall be 250 feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district in which case the setback requirements specified above shall apply.

- e. For principal structures adjacent to coastal bluffs, water and wetland setback measurements shall be taken 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 Licensed Professional Engineer, a Maine Certified Soil Scientist, a Maine Certified Geologist, or other qualified individual to make a determination. If agreement is still not reached, the applicant may appeal the matter to the Board of Zoning Appeals.
- f. The lowest floor elevation or openings of all buildings and structures including basements shall be elevated at least one foot above the elevation of the 100 year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent flood plain soils. Accessory structures may be placed in accordance with the standards of the Floodplain Management Ordinance and need not meet the elevation requirements of this paragraph.
- g. The total footprint area of all structures, parking lots, and other non-vegetated surfaces within the shoreland zone shall not exceed twenty (20) percent of the lot or a portion thereof, as located within the shoreland zone, including land area previously developed.
- h. Retaining walls that are not necessary for erosion control shall meet the structure setback requirement, except for low retaining walls and associated fill provided all of the following conditions are met:
 - 1. The site has been previously altered and an effective vegetated buffer does not exist;
 - 2. The wall(s) is(are) at least 25 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland;
 - 3. The site where the retaining wall will be constructed is legally existing lawn or is a site eroding from lack of naturally occurring vegetation, and which cannot be stabilized with vegetative plantings;
 - 4. The total height of the wall(s), in the aggregate, are no more than 24 inches, unless the Planning Board approves a greater height if it makes a positive finding that such is required in order to minimize erosion control, maximize slope stability, and is of an appropriate esthetic nature;
 - 5. Retaining walls are located outside of the 100-year floodplain on rivers, streams, coastal wetlands, and tributary streams, as designated 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 flood plain soils.
 - 6. The area behind the wall is revegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the setback area, including patios and decks; and
 - 7. A vegetated buffer area is established within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland when a natural buffer area does not exist. The buffer area must meet the following characteristics:
 - i. The buffer must include shrubs and other woody and herbaceous vegetation. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch;

- ii. Vegetation plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of stormwater runoff;
 - iii. Only native species may be used to establish the buffer area;
 - iv. A minimum buffer width of 15 feet, horizontal distance, is required, measured perpendicularly to the normal high-water line or upland edge of a wetland;
 - v. A footpath not to exceed the standards in Sec. 19-104 b. may traverse the buffer;
- i. Notwithstanding the requirements stated above, stairways or similar structures may be allowed, with a permit from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils, 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 upland edge of a wetland, (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, Title 38, Section 480-C); and that the applicant demonstrates that no reasonable access alternative exists on the property.

Effective on: 12/9/2013

Sec. 19-112 Timber Harvesting [Amended 5/26/09]

In accordance with 38 M.R.S.A. section 438-B (5), the Town of Falmouth has chosen to have the statewide standards apply to timber harvesting and timber harvesting activities by authorizing the repeal of all provisions within the municipal shoreland zoning ordinance that regulate timber harvesting and timber harvesting activities in shoreland areas as stated in this section. It has notified the Director of the Bureau of Forestry within the Department of Conservation of this repeal. This authorization shall take effect on the date that is consistent with the effective date of the statewide timber harvesting standards. Then, beginning on the effective date of the statewide standards, the Bureau of Forestry will administer and enforce those standards within that municipality and section 19-112 shall be deleted.

- a. Within the shoreland area along the Presumpscot River zoned Resource Protection due to the presence of steep slopes or multiple natural resources, a buffer strip meeting the standards set forth in Section 19-104.b. shall be maintained between the normal high water line of the waterbody and a line extending fifty (50) feet, horizontal distance, inland from the top of slope. Within the Resource Protection District along Mill Creek, a buffer strip meeting the standards set forth in Section 19-104.b. shall be maintained within one hundred and fifty (150) feet, horizontal distance, of the upland edge of the coastal wetland or the normal high-water line if no wetland is present.
- b. Except in areas as described in subsection a. above, timber harvesting shall conform with the following provisions:
 - 1. Selective cutting of no more than forty (40) percent of the total volume of trees four (4) inches or more in diameter measured at four and one-half (4 1/2) feet above ground level on any lot in any ten (10) year period is permitted. In addition:
 - a. Within seventy-five (75) feet, horizontal distance, of the normal high water line of a water body or the upland edge of a designated wetland, there shall be no clearcut openings, and a well distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.
 - b. At distances greater than seventy-five (75) feet, horizontal distance, from the normal high water line of a water body or the upland edge of a designated wetland, harvesting operations shall not create single clearcut openings greater than ten thousand (10,000) square feet in the forest canopy. Where such openings exceed five thousand (5,000)

square feet they shall be at least one hundred (100) feet, horizontal distance, apart. Such clearcut openings shall be included in the calculation of total volume removal. For the purposes of these standards, volume may be considered to be equivalent to basal area.

2. No accumulation of slash shall be left within fifty (50) feet, horizontal distance, of the normal high water line of a water body. In all other areas slash shall either be removed or disposed of in such a manner that it lies on the ground and no part thereof extends more than four (4) feet above the ground. Any debris that falls below the normal high water line of a water body shall be removed.
3. Timber harvesting equipment shall not use designated stream channels as travel routes except when:
 - a. Surface waters are frozen; and
 - b. The activity will not result in any ground disturbance.
4. All crossings of flowing water shall require a bridge or culvert, except in areas with low banks and channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged.
5. Skid trail approaches to water crossings shall be located and designed so as to prevent water runoff from directly entering the water body or stream. Upon completion of timber harvesting, temporary bridges and culverts shall be removed and areas of exposed soil revegetated.
6. Except for water crossings, skid trails and other sites where the operation of machinery used in timber harvesting results in the exposure of mineral soil shall be located such that an unscarified strip of vegetation of at least seventy five (75) feet in width for slopes up to ten (10) percent shall be retained between the exposed mineral soil and the normal high water line of a water body or upland edge of a wetland. For each ten (10) percent increase in slope, the unscarified strip shall be increased by twenty (20) feet. The provisions of this paragraph apply only to a face sloping toward the water body or wetland, provided, however, that no portion of such exposed mineral soil on a back face shall be closer than twenty five (25) feet from the normal high water line of a water body or upland edge of a designated wetland.

Effective on: 12/9/2013

Sec. 19-113 Water Quality

No activity shall deposit on or into the ground or discharge to the waters of the State any pollutant that, by itself or in combination with other activities or substances, will impair designated uses or the water classification of the water body..

Effective on: 12/9/2013

Sec. 19-114 Individual Private Campsites [Adopted 5/26/09]

Individual private campsites not associated with campgrounds are allowed provided the following conditions are met:

1. One campsite per lot existing on the effective date of this Ordinance may be permitted within the shoreland zone. New lots within the shoreland zone are required to have a minimum lot area of thirty thousand (30,000) square feet.

2. Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be set back one hundred (100) feet, horizontal distance, from the normal high-water line of a great pond classified Great Pond Act or river flowing to a great pond classified Great Pond Act, and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.
3. Only one recreational vehicle shall be allowed on a campsite. The recreational vehicle shall not be located on any type of permanent foundation except for a gravel pad, and no structure except a canopy shall be attached to the recreational vehicle.
4. The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter in a Resource Protection District shall be limited to one thousand (1000) square feet.
5. A written sewage disposal plan describing the proposed method and location of sewage disposal shall be required for each campsite and shall be approved by the Local Plumbing Inspector. Where disposal is off-site, written authorization from the receiving facility or land owner is required.
6. When a recreational vehicle, 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 on: 12/9/2013

Sec. 19-115 Essential Services [Adopted 5/26/09; Amended 7/28/14]

1. Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.
2. Wastewater pump stations shall be exempt from structural setbacks in Section 19-111.
3. The installation of essential services, other than road-side distribution lines and wastewater pump stations, are 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.
4. Damaged or destroyed public utility transmission and distribution lines, towers, culverts, pipes, drains, lines, wastewater pump stations and related equipment may be replaced or reconstructed without a permit.

Effective on: 7/28/2014

Sec. 19-116 Archaeological Sites

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, 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 Town Planning Board, Board of Zoning Appeals, or Code Enforcement Officer. The Town shall consider comments received from the Commission prior to rendering a decision on the application.

Note: The Maine Historic Preservation Commission maintains listings and locations of Historic Places in Falmouth.

Effective on: 12/9/2013

Div. II-19-1-8. BOARD OF ZONING APPEALS

Sec. 19-117 Appointment and Composition

- a. There shall be a Board of Zoning Appeals consisting of five (5) members and one or two associate members, all of whom shall be residents of the Town of Falmouth. The members of the Board shall be appointed by the Municipal Officers of the Town of Falmouth. Terms of members shall be for three (3) years. The associate members shall be appointed for a term of three (3) years and shall act on the Board in place of members who may be unable to act due to a conflict of interest, absence, or physical incapacity. The Chairman shall designate which associate member shall serve in the stead of an absent member. The members of the Board shall annually elect one of their number chairmen to preside at all meetings of the Board. The members of the Board shall annually elect a secretary who shall provide for the keeping of the minutes of the proceedings of the Board, which shall show the vote of each member upon each question.
- b. Neither a municipal officer nor his spouse may be a member or associate member of the Board.
- c. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon shall be decided by a majority vote of the members, except the member who is being challenged.
- d. A member of the Board may be dismissed for cause by the municipal officers before the expiration of his term.

Effective on: 12/9/2013

Sec. 19-118 Appeals

Appeals shall lie from the decision of the Building Inspector to the Board of Zoning Appeals and from the Board of Zoning Appeals to the Superior Court according to the provisions of Maine Revised Statutes.

The Board of Zoning Appeals shall have the authority to hear and decide administrative appeals where it is alleged there is an error in any order, requirements, decision, or determination made by the Building Inspector in the enforcement of this Ordinance. The action of the Building Inspector may be modified or reversed by the Board, by majority vote.

Sec. 19-118.1 Mislocated Single Family Dwelling Appeal [Adopted 11/24/08]

In addition to other powers conferred by this section 19-118, the Board of Zoning Appeals shall have authority to hear and decide appeals taken from decisions made by the Code Enforcement Officer that an existing single family dwelling or its attached garage violates the setbacks for the zoning district in which it is located and that the violation must be remedied by removal or relocation of the portion of the structure which encroaches into the setback or by the acquisition of abutting property. If the Board finds that the violation exists, as found by the Code Enforcement Officer, it may nevertheless grant the appeal and render a decision that permits the existing structure to remain but shall not authorize any expansion, enlargement or relocation of the structure within the required setback area provided that the Board finds that the following criteria are met:

- a. It would not serve the public interest to require the removal or relocation of the structure or the acquisition of abutting property;
- b. Allowing the structure to remain in its existing location would not be contrary to the public health, safety or welfare and would not unreasonably detrimentally affect the use or market value of abutting properties;

- c. The setback violation is not the result of a willful, premeditated act or of gross negligence on the part of the petitioner, a predecessor in title or agent of either;
- d. The petitioner has no reasonably available alternative to this appeal.

The appeal application must be accompanied by a survey, stamped by a Maine professional licensed land surveyor, showing the property boundaries and the location of the offending structure.

Any appeal granted under this section shall be conditioned upon the petitioner's entering into a Consent Agreement with the Town, acting through the Town Council, which provides that the Town will not bring an enforcement action with respect to the violation if the petitioner pays a civil penalty to the Town stated in the Consent Agreement. The Consent Agreement shall reference the action of the Board and shall become effective upon signing by the petitioner and the Code Enforcement Officer and payment of the civil penalty. The Consent Agreement shall be recorded at the Cumberland County Registry of Deeds by the Town.

Effective on: 12/9/2013

Sec. 19-119 Conditional Uses

Conditional uses may be granted by the Board of Appeals after considering the characteristics and location of the proposed use and of other properties in the surrounding neighborhood, provided that the petitioner shall submit to the Board statements in writing, which may be accompanied by diagrams or photographs which shall become part of the record of such petitions, demonstrating that the proposed use:

- a. will meet the definition and specific requirements set forth in this Ordinance for such particular use;
- b. will be compatible with the general character of the neighborhood with regard to design, scale, and bulk of proposed structures;
- c. will not have a significant detrimental effect on the use and peaceful enjoyment of abutting property as a result of noise, vibrations, fumes, odor, dust, light or glare.
- d. will not have a significant adverse effect on adjacent or nearby property values;
- e. will not have a significant adverse impact on water views from adjacent and nearby properties and public right of ways; [Adopted 7/24/06]
- f. will not result in significant hazards to pedestrian or vehicular traffic or significant traffic congestion;
- g. will not result in significant fire danger;
- h. will not result in significant flood hazards or flood damage, drainage problems, ground or surface water contamination, or soil erosion;
- i. will be served adequately by, but will not overburden, existing public services and facilities, including fire protection services, sanitary sewers, roads, water and storm drainage systems.
- j. upon a showing that a proposed use is a conditional use in the district where it is to be located, a conditional use permit shall be granted unless the Board determines that the proposed use will not meet one of the standards set forth in paragraphs a. through i. of this subsection, or paragraphs a. through g. of subsection 19-123, due to unique or distinctive characteristics or effects associated with the proposed use or its location which differ substantially from the characteristics or effects which would normally occur from such a use in that district. [Adopted, 4/27/87.]

Effective on: 12/9/2013

Sec. 19-120 Variances

- a. Variances may be granted by the Board from the restrictions imposed by this Ordinance on height, lot size, lot coverage and setback, only where strict application of this Ordinance, or a provision thereof, would cause undue hardship to the petitioner and his property.
- b. The words "undue hardship" as used in this subsection mean:
 1. that the land in question cannot yield a reasonable return unless a variance is granted;
 2. that the need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood;
 3. that the granting of a variance will not alter the essential character of the locality; and
 4. that the hardship is not the result of action taken by the applicant or a prior owner.
- c. Each petitioner for a variance shall submit to the Board statements in writing, which may be accompanied by diagrams or photographs, which shall become part of the record of such petition demonstrating the following:
 1. The nature of the hardship to the property under appeal; and the physical circumstances that allegedly would occasion such undue hardship.
 2. That such physical circumstances are peculiar to the property under appeal, and are not substantially duplicated on other property adjoining or nearly in the same neighborhood or the same zoning district.
 3. That the relief sought would not adversely affect property adjoining or nearby in the same neighborhood or the same zoning district and would not endanger the public health, safety or convenience and would not impair the integrity of this Ordinance or of the Falmouth Town Comprehensive Plan.

Effective on: 12/9/2013

Sec. 19-121 Set-back Variance For Single-Family Dwellings [Adopted, 5/27/93]

Notwithstanding subsection 19-120, the Board may grant a set-back variance for a single-family dwelling when strict application of this Ordinance to the petitioner and the petitioner's property would cause undue hardship. The term "undue hardship" as used in this subsection means:

- 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 alter the essential character of the locality;
- c. The hardship is not the result of action taken by the applicant or a prior owner;
- d. The granting of the variance will not substantially reduce or impair the use of abutting property; and
- e. The granting of a variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.

This subsection is strictly limited to permitting a variance from a set-back requirement for a single-family dwelling that is the primary year-round residence of the petitioner. A variance under this subsection may not exceed 20% of a set-back requirement and may not be granted if the variance would cause the area of the dwelling to exceed the maximum permissible lot coverage.

Effective on: 12/9/2013

Sec. 19-122 Disability Variance

The Board may grant a variance to a property owner for the purpose of making that dwelling accessible to a person with a disability who is living on the property. The Board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person 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 person with the disability lives on the property. For the purposes of this subsection, a disability has the same meaning as a physical or mental handicap under Title 5, section 4553 and the term "structures necessary for access to or egress from the dwelling " is defined to include railing, wall or roof systems necessary for the safety or effectiveness of the structure. [Amended 5/26/09]

Effective on: 12/9/2013

Sec. 19-123 Conditions

In hearing appeals under this Div. **II-19-1-8**, the Board shall determine whether the appellant's proposal will satisfy the following criteria, and in granting any appeal it may impose such conditions as it deems necessary to assure compliance with the applicable requirements set forth in subsection **19-119** and **19-120** and with the following criteria:

- a. The proposal must include any special screening, fencing, or other buffer necessary to set off the subject property from abutting uses or to assure the continued enjoyment of abutting uses;
- b. The proposal must adequately provide for drainage through and for preservation of existing topography within its location, particularly in minimizing any cut, fill, or paving intended;
- c. The proposal must not create or increase any fire hazard or any hazards to safe, convenient pedestrian or vehicular flow;
- d. The proposal must prevent or avoid the creation of any nuisance affecting adjacent properties;
- e. The proposal must include provision for adequate, lawful sewage disposal and healthful domestic water supplies;
- f. The proposal should not have a significantly adverse effect on adjacent or nearby property values.
- g. The appellant must be found to have adequate financial and technical capacity to satisfy the foregoing criteria and to develop and thereafter maintain the proposed project or use in accordance with all applicable requirements.

Effective on: 12/9/2013

Sec. 19-124 Appeal Procedures

- a. In all cases, a person aggrieved by a decision of the Building Inspector shall file his appeal within thirty (30) days after receipt of a written decision from the Building Inspector. The appeal shall be filed with the Town Clerk on forms to be approved by the Board, and the aggrieved person shall specifically set forth on the forms the grounds for appeal. At the time of filing of the appeal, the appellant shall pay fees as established by the Town Council. [Amended 8/27/07]. The Town Clerk shall promptly forward the appeal to the Board. [Amended,12/22/86]
- b. The Board shall initially review any appeal filed to determine whether to entertain the appeal. The Board may refuse to entertain an appeal if it is clearly frivolous or improperly filed, or for other sufficient reason fails to present an appealable issue. The Board shall cause the appellant, or his agent or attorney if so represented, to be notified of its rejection of the appeal and its reasons therefore. If the stated deficiencies of the appeal can be cured, the appellant may re-appeal at any time.

- c. The Board shall hold a public hearing on all appeals to be entertained. In appeals involving the use of buildings or lots, the Board shall notify by mail the owners of all property within five hundred (500) feet of the lots involved of the nature of the appeal and of the time and place of the public hearing thereon.
- d. In the case of appeals involving lot size, lot coverage, setback, height, or other space and bulk regulations or interpretation, the following shall apply: [Amended 5/14/18]
 - 1. For properties located in the Water View Overlay District, the Board shall notify by mail the owners of all property within 250 feet of the property for which an appeal has been filed of the nature of the appeal and of the time and place of the public hearing thereon.
 - 2. For properties not located in the Water View Overlay District, the Board shall notify by mail the owners of all property abutting the property for which an appeal has been filed of the nature of the appeal and of the time and place of the public hearing thereon.
- e. For the purposes of this section, the owners of property shall be considered to be the parties listed by the Assessor of Taxes for the Town of Falmouth as those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action by the Board.
- f. A copy of each variance request in the shoreland zone, 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 Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Zoning Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals. [Amended 5/26/09]
- g. The appeal shall be in order for hearing at the next meeting of the Board following by at least ten (10) days the mailing of notices, including weekends and holidays, but in no event sooner than twenty-one (21) days after submission of a completed application, with all supporting documentation. A hearing shall not be continued to other times except for good cause. [Amended 12/22/86.]
- h. At any hearing a party may be represented by agent or attorney.
- i. The Building Inspector or his designated assistant shall attend all hearings and may present to the Board all plans, photographs, or other material he deems appropriate for an understanding of the appeal.
- j. The appellant's case shall be heard first. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked through the Chair. All persons at the hearing shall abide by the order of the Chairman.
- k. If the Board grants an appeal, the appellant's legal right, duties or privileges determined thereby shall expire if the construction or alteration involved is either not commenced within one (1) year or not substantially completed within two (2) years of the date on which the appeal was granted. The Board of Zoning Appeals may extend these time limits by not more than one (1) year upon a showing that additional time is needed due to required local, state, or federal permits or approvals.
- l. If the Board denies an appeal, a second appeal of a similar nature shall not be brought before the Board within one (1) year from the date of the denial of the first appeal, unless a majority of the Board finds that substantial new evidence exists, or that it committed an error or mistake of law or misunderstood the facts.
- m. The Board shall keep a record of each appeal filed, noting the date of filing, the date when received from the Town Clerk, the date of hearing, and the person by whom such appeal was formally presented at the hearing. The Board shall record in writing the reasons for its actions

and the final disposition of each appeal entertained, and may similarly record its rejection and reasons for rejection of any request for an appeal not entertained by the Board.

Effective on: 5/14/2018

Sec. 19-125 Meeting Procedures

- a. The Chairman shall call meetings of the Board as required. The Chairman shall also call meetings of the Board when requested to do so by a majority of the members or by the municipal officers. A quorum of the Board necessary to conduct an official Board meeting shall consist of at least four (4) members. The Chairman shall preside at all meetings of the Board and be the official spokesman of the Board.
- b. The secretary shall maintain a permanent record of all Board meetings and all correspondence of the Board. The secretary shall be responsible for maintaining those records which are required as part of the various proceedings which may be brought before the Board. All records to be maintained or prepared by the secretary are deemed public, shall be filed in the municipal clerk's office, and may be inspected at reasonable times.
- c. The Board may provide by rule, which shall be recorded by the secretary, for any matter relating to the conduct of any hearing, provided that any rule may be waived by the Chairman upon good cause shown.

Effective on: 12/9/2013

Sec. 19-126 Order of Applications

Whenever a proposed structure or use requires both approval as a conditional use by the Board of Zoning Appeals, and subdivision or site plan review by the Planning Board, the application shall first be submitted to and approved by the Board of Zoning Appeals. Applications that are under review by the Board of Zoning Appeals under this provision shall be considered to be pending before the Planning Board.

Effective on: 12/9/2013

Div. II-19-1-9. PLANNING BOARD SITE PLAN REVIEW

Sec. 19-127 Site Plan Approval Required [Amended 4/28/03; 8/26/13]

Sec. 19-127.1 Exemptions- The following activities are specifically exempt from site plan review:

- a. Detached single-family dwellings and their accessory buildings and parking access areas; and
- b. Any site alterations that occur in conjunction with the Town's implementation of the 2013 Route One South Infrastructure Plan are exempt from this section and further, shall be considered part of and in compliance with previously approved site plans. [Added 5/13/13]

Effective on: 5/13/2013

Sec. 19-127.2 Minor Site Plan Approval- The following expansions, additions, replacements, alterations and improvements to previously developed commercial or multi-family residential properties meeting the following thresholds may be approved under the Minor Site Plan Approval procedure in Section 19-128.1 below. Projects submitted under this section shall require approval by the Community Development Director and the Senior Planner.[Added 8/26/13][Amended 2/27/17]

- a. Utility or support structures such as mechanical systems and coolers.
- b. Lighting stanchions and fixtures and changes of location of the same.

- c. Landscaping and screening.
- d. Minor alterations to grading, drainage and stormwater improvements provided they do not have any negative impact on water quality standards or downstream properties. Any improvements under this paragraph require approval by the Town Engineer.
- e. Increase in impervious surfaces of no greater than 4,000 square feet in a ten year period.
- f. Building additions limited to no more than a 50% expansion of the total gross square footage of the existing building or 1,000 gross square feet, whichever is less. Additions shall not exceed a total of 1,000 gross square feet in a ten year period.
- g. New accessory buildings or structures not to exceed 500 gross square feet in any ten year period.
- h. Directional signs on private property. [Adopted 7/24/17]

Effective on: 7/24/2017

Sec. 19-127.3 Planning Board Site Plan Approval Required.

Planning Board site plan approval under the procedures, submission requirements, and performance standards of this Div. [II-19-1-9](#). shall be required for the following activities:

- a. The construction or enlargement of any nonresidential building or multi-family dwelling;
- b. The construction or enlargement of any municipal building;
- c. The establishment or substantial change of any area for parking, loading, or vehicular service associated with non-residential or multi-family residential uses;
- d. The alteration, renovation, or change in use of more than ten thousand (10,000 sq. ft.) square feet of gross floor area of any non-residential building, including, without limitation, the alteration, renovation, or change in use of adjacent non-residential spaces that cumulatively consist of more than 10,000 sq. ft. of gross floor area.
- e. Outdoor Sales and Storage of Equipment and Outdoor Retail Display when proposed as part of a new or redevelopment of a property otherwise requiring site review under this section or requiring an amendment to an existing site plan approval. [Added 5/13/13]

Effective on: 7/11/2016

Sec. 19-128 Site Plan Review Procedure [Amended 3/14/11]

The following procedure shall govern the submission and review of building and site plans. Projects approved under [19-127.2](#), Minor Site Plan Review above shall meet all requirements and procedures in this section unless otherwise noted.

- a. The property owner shall submit to the permitting authority building and site plans in a number and format as determined by the Community Development Department, and such submissions shall include: [Amended 8/27/07; 8/26/13]
 - 1. Building plans showing, as a minimum, the first floor plan or other outside access plan and all elevations, with indication of proposed buildings and structures and all accessory buildings and structures.
 - 2. A site plan, drawn to scale of not less than one (1) inch equals forty (40) feet, or a scale acceptable to the Senior Planner, and prepared by a licensed land surveyor, showing the dimensions and area of each lot or plot to be built upon or otherwise used; the size, shape and location of existing and proposed buildings; the location and layout of parking areas, all parking spaces and driveways, proposed grades and drainage, proposed sewer and water facilities and connections; a landscaping plan including locations of proposed plantings and screenings and buffer areas; proposed locations of fences, signs and advertising features;

and a key map showing the entire project, and its relation to surrounding properties and the existing building thereof. The preparation of the plan by a licensed land surveyor may be waived by the Senior Planner if they determine that there is adequate dimensional information submitted. [Amended 8/26/13]

3. Information requested by the permitting authority for determining whether the proposed structure and uses of the site conform to the requirements and objectives of this section, including but not limited to sketch plans or renderings of proposed structures. [Amended 8/26/13]
4. A signage plan, drawn to scale of one (1) inch equals one (1) foot, or a scale acceptable to the Senior Planner, showing the elevations, dimensions, color, materials, lettering and other graphics, type of illumination, mounting details, and area of all free standing and wall mounted signs proposed for the site. [Adopted, 4/27/87; 8/26/13]
5. **Geographic Information System (GIS) Plan Submissions and Specifications:** [Adopted 3/14/11]
 1. Purpose: This subsection sets forth the required procedures and GIS specifications for submittal of subdivision and site plan information required by other sections of this ordinance in an acceptable GIS format to the Town.
 2. Applicability: This subsection applies to submissions required under this section where an electronically prepared boundary survey by a licensed land surveyor is submitted or required.
 3. Procedure: The submission of this information shall be considered a condition of final approval and shall be submitted to the Assessing Department prior to any site work or the issuance of any town permits. The submission may occur by email or on compact disc (CD) or usb drive, using the following GIS format specifications:
 - a. All files shall be submitted in AutoCAD .DWG or .DXF or shapefile formats.
 - b. All files shall be geo-referenced to Maine State Plane Coordinates, NAD 83 feet with positional accuracies of three to five feet.
 - c. All features of a common type, regardless of whether they are points, lines, polygons or annotation, should be distinguished by layering and not by color, line type or symbols. Layers should also be distinguished by whether they show proposed or existing features. These display attributes are added in the plotting process of the GIS.
- b. Projects shall be designed by a multidisciplinary team of professionals that includes surveyors, architects, engineers, and landscape architects, among other professionals, as needed and appropriate.
 1. The owner shall retain a landscape architect in order to ensure that the many elements of the site plan are designed and built according to a coordinated and efficient development concept.
 2. The owner's landscape architect, or other professionals as needed, shall consult with Town staff or with the Town's peer review consultant in order to ensure compliance with the Town's design standards. The consultation process shall occur throughout the design, approval, and construction phases of the project. [Amended 8/26/13]
 3. The permitting authority may waive the requirement for a landscape architect or for the consultation process, if, in the opinion of the permitting authority, the project does not require these services due to its small size or lack of complexity. [Amended 7/23/01; 8/26/13]

- c. At the time of the filing of the application, a fee shall be paid in accordance with the following schedule:
 1. Application fees as established by the Town Council. [Amended 8/27/07]
 2. Review Escrow [Adopted 9/24/90] - Escrow fees as established by the Town Council shall be submitted and deposited in an escrow account established by the Town, which monies may be used by the Town to pay for professional reviews and advice related to the developer's application as it deems necessary. The Community Development Department shall provide the applicant with notice of its intent to spend any portion of this account, which notice shall specify the purpose for the proposed expenditures. If the Town expends the review escrow account prior to completing its review, the applicant shall replenish the review escrow to the original amount. Those monies deposited by the developer and not spent by the Town in the course of its review shall be returned to the developer within thirty days after the Board renders its final decision on the application. [Amended 1/25/99; 9/24/01; 8/27/07; 8/26/13]
 3. Negotiated Exactions Fees: In accordance with Section 19-135, exaction fees may be assessed against projects requiring site plan approval per the administrative procedures of Sec. 7-12, Land Subdivision. [Adopted, 1/22/90]
 4. If an application is subject to site plan review and subdivision review, the applicant shall pay the larger of the subdivision review fee or the site plan review fee.
 5. At least five (5) days prior to commencing construction, the owner shall pay an inspection fee as established by the Town Council. The amount deposited shall be based upon the total estimated cost of construction for all site improvements shown on the approved plans, including, but not limited to, roads, parking lots, storm water management facilities, utilities and lighting and landscaping. [Amended 8/27/07] [Amended 11/10/08; Effective 01/01/09]
- d. Planning Board Applications.[replaced 8/26/13]
 1. The applicant may request a Preapplication Sketch Plan Review under Sec. 7-7.A., Land Subdivision.
 2. Within forty-five (45) days but not sooner than twenty-one (21) days of the submission of a completed application, with all supporting documentation, the Board shall hold a public hearing.
 3. At least ten (10) days prior to the hearing date, the Community Development Department shall notify by mail the owners of all property abutting the property for which application is made. For the purposes of this section, the owners of property shall be considered to be the parties listed by the tax assessor for the Town of Falmouth as those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action of the Board. [Amended 12/22/86;8/26/13]
 4. At any hearing, a party may be represented by agent or attorney. Hearings may be continued to other times for good cause as determined by the Planning Board.
 5. The Senior Planner or his designated assistant may attend all hearings and may present to the Planning Board plans, photographs or other material deemed appropriate for an understanding of the application.
 6. The applicant's case shall be heard first. To maintain orderly procedure, each side shall proceed without interruption. All persons at the hearing shall abide by the order of the Chairman.

7. Subsequent to the public hearing, the Planning Board shall reach a decision and inform, in writing, the applicant and the Senior Planner of its decision and its reasons therefore.
 8. If the Board denies an application, a second application of a similar nature shall not be brought before the Board within one (1) year from the date of the denial of the first application, unless a majority of the Board finds that substantial new evidence exists or that it committed an error or mistake of law or misunderstood the facts.
 9. The Board shall keep a record of each application filed, noting the date of filing, the date of hearing, and the person by whom such application was formally presented at the hearing. The Board shall record in writing the reasons for its actions and the final disposition of each application.
 10. An appeal from a decision rendered by the Planning Board under this Ordinance shall be taken directly to Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure and no appeal shall lie from a decision of the Planning Board to the Board of Zoning Appeals
- e. Minor Site Review Applications [added 8/26/13]
1. Applicants may voluntarily file applications under this section for review by the Planning Board. If filed with the Planning Board, all submittal requirements, including fees associated with Planning Board applications, will be applied and abutter notice will be required.
 2. Any application also requiring Board of Zoning Appeals approval shall receive the BZA approval prior to being approved under this section.
 3. It shall be at the sole discretion of the staff to refer an application to the Planning Board due to the complexity or nature of the application. The staff shall notify the applicant within one week of receipt if the application will be refereed. Examples of reasons why an application may be referred are:
 - a. Subjective criteria in Design Guidelines or Ordinance
 - b. Application of architectural standards
 - c. Request for waivers to ordinance requirements
 - d. Nature of a Conditional Use needed
 - e. Potential impacts to abutting residential properties or districts.
 - f. Need for amendments to state or federal permits.
 - g. Cumulative impact of improvements requested.
 4. The Community Development Department shall keep a record of all applications. If an application is denied, the staff shall prepare a written report detailing the reason for denial.
 5. An appeal of any decision made under this section shall be to the Planning Board. It shall be submitted in the same manner as a regular application.

Effective on: 12/9/2013

Sec. 19-129 Action by the Permitting Authority [Amended 8/26/13]

The permitting authority shall ensure that the following requirements are met prior to site plan approval with or without conditions:

- a. The detailed drawings and specifications meet all applicable codes and ordinances. Applications for Minor Site Plan Review shall meet all applicable requirements for only those alterations, additions and improvements being made.[Amended 8/26/13]
- b. Bonds, letters of credit or other security acceptable to the Town are posted to insure the installation of improvements or other requirements of the town. All bonds shall be drawn in accordance with town procedures. [Amended 11/10/08; Effective 01/01/09]
- c. The applicant agrees in writing to all conditions of final approval.
- d. Proof has been submitted that all taxes and assessments for local improvements on the property have been paid.
- e. The applicant has the financial capability to complete the project.

Effective on: 12/9/2013

Sec. 19-130 Effect of Final Approval

Final approval shall be effective for the time periods established in Section 19-132, notwithstanding any revisions of or amendments to this or other Ordinances.

Effective on: 12/9/2013

Sec. 19-131 Transfer of Approval

Approval is not transferable without permitting authority approval. [Amended 8/26/13]

Effective on: 12/9/2013

Sec. 19-132 Duration of Final Approval

If the permitting authority grants final approval, the applicant's legal rights, duties or privileges determined hereby, shall expire if the construction or alteration is either not commenced within one (1) year or not substantially completed within two (2) years of the date on which final approval was granted. The permitting authority may extend these time limits by not more than one (1) year, upon showing by the applicant that additional time is needed due to required local, state, or federal permits or approvals. [Amended 8/26/13]

Effective on: 12/9/2013

Sec. 19-133 General Site Plan Review Standards

The following standards shall be utilized by the permitting authority in reviewing proposed site plans including all accessory buildings, structures, signs, and other site features.[Amended 8/26/13]

- a. Preservation of the Landscape: the landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal, and any grade changes shall be in keeping with the general appearance of neighboring developed areas.
- b. Relation of Proposed Buildings to Environment: Proposed structures shall be related harmoniously to the terrain and to existing buildings in the vicinity that have a visual relationship to the proposed structures, so as to have a minimally adverse effect on the environmental and aesthetic qualities of the developed and neighboring areas.
- c. Drives, Parking and Circulation: With respect to vehicular and pedestrian circulation, including walkways, interior drives and parking, special attention shall be given to location, number of access points and increased traffic to the public streets, width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic, an arrangement of parking areas that are safe and convenient, and, insofar as practicable, do not

detract from or have a minimally adverse effect on the design, appearance, and environmental and aesthetic qualities of proposed buildings and structures and the neighboring properties.

- d. **Utility Service:** The Planning Board may require electric, cable television, and telephone lines to be underground. Any utility installations remaining above ground shall be located so as to have a harmonious relation to neighboring properties and the site.
Within the VC, BP, and CO districts, all individual electrical and telecommunication services shall be placed underground from the building(s) to the main utility lines unless the cost of doing so would exceed twenty (20 %) percent of the total estimated project construction cost. This section shall not apply to projects submitted for Minor Site Plan Approval.[Amended 10/25/99; 5/13/13; 8/26/13]
- e. **Advertising Features:** The size, number, location, design, color, texture, lighting and materials of all permanent signs and outdoor advertising structures or features shall not detract from or adversely affect the design, appearance, and environmental and aesthetic qualities of proposed buildings and structures and the surrounding properties.
- f. **Special Features:** Exposed storage areas, exposed machinery installations, service areas, truck loading areas, utility buildings and structures, and similar accessory areas and structures shall be subject to setbacks, screen plantings or other screening methods as shall reasonably be required to prevent their being adverse to or incongruous with the design, appearance, environment and the surrounding properties.
- g. All Site Plan Review applications within the VC Districts are subject to Section 19-11. Site Plans shall include those portions of the public right of way necessary to demonstrate how the standards have been incorporated into the site plan under review. [Amended 5/13/13]
- h. [deleted 8/26/13]
- i. **Route 100:** All Site Plan Review applications within the Corridor Overlay District shall meet the requirements of Section 19-15 of the Zoning and Site Plan Review Ordinance and, wherever possible, follow the recommendations contained in the Exit 10 Design Guidelines dated January 5, 1998. [Adopted 6/28/1999]
- j. **Business Professional District:** All site plan review applications within the Business Professional District shall meet the requirements of the Route One Design Guidelines dated October 27, 1997. [Adopted 12/13/1999]

Effective on: 12/9/2013

Sec. 19-134 Specific Performance Standards and Guidelines

The guidelines and required minimum performance standards in subsections 19-136 through 19-156 shall apply to all site plans. If the permitting authority finds that, due to special circumstances of a particular plan, the application of certain required performance standards are not requisite in the interest of public health, safety, and general welfare, the Planning Board may waive the required standards, subject to appropriate conditions.[Amended 8/26/13]

Effective on: 12/9/2013

Sec. 19-135 Subdivision Standards

The design standards and administrative provisions of Ch. II-7, Land Subdivision shall apply to site plans covered by this section.

Effective on: 12/9/2013

Sec. 19-136 Parking Area Design Standards

- a. Access. There shall be adequate provisions for ingress and egress to all parking spaces. The width of access drives or driveways shall be determined as part of site plan review depending on use, topography and similar consideration.
- b. Size of aisles. The width of all aisles providing direct access to individual parking stalls shall be in accordance with the requirements set forth below. Only one-way traffic shall be permitted in aisles serving single-row parking spaces placed at an angle other than ninety degrees (90).

Parking Angle (degrees)	Minimum Aisle Width (feet)
0 (parallel parking)	12
30	12
45	13
60	18
90 (perpendicular parking)	25

- c. Location of Parking, general.[Adopted 4/27/87] [Amended 5/13/13; 11/10/14]
 1. VC Districts - No off-street parking or loading shall be located within the required front setback except as permitted in VC2 (refer to Section 19-11.5.10).
 2. All other Zoning Districts - No off-street parking or loading shall be located within the required front setback except along Route One where off-street parking may be permitted twenty (20) feet or further from the public right-of-way within the front setback. (Refer to Section 19-12 for additional restrictions in the BP District)
- d. Sidewalk and curbing. Sidewalks between parking areas and principal structure along aisles and driveways and wherever pedestrian traffic shall occur, shall be provided with a minimum width of four (4) feet of passable area and shall be raised six (6) inches or more above the parking area except where the sidewalks cross streets or driveways. Guardrails or wheel stops permanently anchored to the ground shall be provided in appropriate locations. Parked vehicles shall not overhang or extend over sidewalk areas unless an additional sidewalk width of two and one-half (2 1/2) feet is provided to accommodate such overhang.
- e. Within each parking lot up to 50% of the spaces may be 8 feet in width and 15 feet in depth, with a 22 foot aisle width. Parking spaces utilizing this reduced standard shall be clearly labeled "For Compact Cars Only," and shall be distinctly separate from the standard sized parking spaces. In consideration of the maneuvering requirements of shopping carts, those parking lots serving grocery stores shall not have more than 25% of the spaces designated for compact car use. [Adopted 4/27/87.]
- f. Plans for parking areas shall show how snow removal shall be accommodated. If snow storage areas are required within the parking area consideration shall be given to automobile and pedestrian safety, runoff patterns from snowmelt, and maintaining visibility. [Adopted 4/27/87.]

Effective on: 12/9/2013

Sec. 19-137 Marking and Delineation of Parking Areas

Parking stalls, driveway and aisles shall be clearly marked and delineated. The permitting authority may require that certain areas be maintained for fire-fighting or other emergency purposes, and such areas shall be appropriately designated. [Amended 8/26/13]

Effective on: 12/9/2013

Sec. 19-138 General Circulation and Parking Design Guidelines

The following guidelines shall apply to parking area designs, except where they differ from Section 19-11, in which case Section 19-11 shall govern circulation and parking design in the VC Districts.

- a. Parking space allocations should be oriented to specific buildings.
- b. Parking areas should be designed to focus on major walkways, which should be fenced or marked.
- c. Where pedestrians must cross service roads or access roads to reach parking areas, crosswalks should be clearly designed by pavement markings or signs and lighted. Crosswalk surfaces should be raised slightly to designate them to drivers, unless drainage problems would result. A one-way car movement (to the left or counterclockwise) should be developed around the parking areas, and parking bays should run perpendicular off the road.
- d. Driveways should approach from the right to permit passengers to alight to or from the sidewalk.
- e. Whenever possible, one-way traffic should be established at building entrances, except for buildings located on a street in the VC Districts where two-way traffic is permitted. [Amended 5/13/13].
- f. Where buses are a factor, bus shelters and bus indentation slots off the roadway should be provided.

Effective on: 12/9/2013

Sec. 19-139 Waiver of Parking or Loading Requirements

In the instance where the Planning Board, under Section 19-38 waives parking, it shall have the power to approve a site plan showing less paved parking or unloading area than is required. If parking is waived a landscaped area of sufficient size to meet the deficiency shall be set aside and reserved for the purpose of meeting future off-street parking or unloading requirements in the event that a change of use of the premises shall make such additional off-street facilities necessary. The requirement for reservation of waived spaces shall not apply to required parking in the VC Districts or to projects submitted for Minor Site plan Review. [Amended 5/13/13; 8/26/13]

Effective on: 12/9/2013

Sec. 19-140 Entrances Location and Design

- a. As used in this Section, driveway includes any private local or collector streets, as well as entrance roads to any use other than single-family dwelling units.
 1. All entrance and exit driveways shall be located to afford maximum safety for vehicular, pedestrian and cycling traffic, provide for safe and convenient ingress and egress to and from the site, and to minimize conflict with the flow of traffic. [Adopted 4/27/87] [Amended 5/13/13]
 2. Any exit driveway shall be so designed in profile and grading and so located as to provide the following minimum sight distance measured in each direction. The measurements shall be from a point at the driveway entrance at least fifteen (15) feet from the edge of the roadway pavement and measured from a height of eye of three and one-half (3.5) feet to the top of an object on the roadway four and one quarter (4.25) feet above the pavement. [Amended 9/24/90]

Allowable Speed (miles per hour)	Required Sight Distance (feet)
20	200

25	250
30	300
35	350
40	400
45	450
50	500

3. Where a site occupies a corner of two (2) intersecting roads, no driveway entrance or exit shall be located within fifty (50) feet of the point of tangency of the existing or proposed curb radius of that site.
 4. No part of any driveway shall be located within a minimum of ten (10) feet of a side property line. However, the permitting authority 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 between the adjacent sites. Driveways and internal streets in the VC Districts are exempt from this section. [Amended 5/13/13; 8/26/13]
 5. Where two (2) or more two-way driveways connect a single site to any one (1) road, a minimum clear distance of one hundred (100) feet measured along the right-of-way line shall separate the closest edges of any two (2) such driveways. If one driveway is two-way and one is a one-way driveway, the minimum distance shall be seventy-five (75) feet.
- b. Curb cuts within the BP and CO Districts: It is the policy of this Ordinance to reduce and consolidate, for safety purposes, the number of driveways and curb cuts on the portion of Route One located within the BP district and along the entire length of Route 100. Wherever possible, excess driveways and curb cut areas should be eliminated or consolidated in accordance with the driveway standards outlined in Section II-19-1-9 of this Ordinance. [Effective 1/25/88] [Amended 5/13/13]
- Only one curb cut per lot shall be allowed for lots with less than 200 running feet of frontage along Route 1 or Route 100. For lots with more than 200' of running frontage along Routes 1 or 100, a maximum of one curb cut per 200' shall be permitted. Curb cuts shall be located at least 200' from other curb cuts on the same lot or on adjoining premises. [Adopted 4/27/87; 1/25/88]

Effective on: 12/9/2013

Sec. 19-141 Driveway Angles

Driveways used for two-way operation shall intersect the road at an angle of as near ninety (90) degrees as site conditions will permit and in no case less than sixty (60) degrees. Driveways used by vehicles in one (1) direction of travel (right turn only) shall not form an angle smaller than forty-five degrees (45) with a road unless acceleration and deceleration lanes are provided.

Effective on: 12/9/2013

Sec. 19-142 Driveway Dimensions

The dimensions of driveways shall be designed to accommodate adequately the volume and character of vehicles anticipated to be attracted daily to the development for which a site plan is prepared. The required maximum and minimum dimensions for driveways are indicated below. Driveways serving large volumes of daily traffic or traffic of over fifteen percent (15%) truck traffic shall be required to utilize high-to-maximum dimensions.

	One-Way Operation Driveways*Width (feet)	Two-Way Operation Driveways*Width (feet)
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3 to 10 dwelling units	10-15	15-25
10 dwelling units or over	15-25	20-35
Commercial and Industrial	15-30	25-35

*All driveways shall be five (5) feet wider at the curbline, and this additional width shall be maintained for a distance of twenty (20) feet into the site.

Effective on: 12/9/2013

Sec. 19-143 Driveway Surfacing

Any driveway shall be constructed with the surface approved by the permitting authority. Such surface shall extend to the paved portion of the road and shall extend throughout the area defined by the required driveway dimensions specified above. [Amended 8/26/13]

Effective on: 12/9/2013

Sec. 19-144 Driveway Profile

Any vertical curve on a driveway shall be flat enough to prevent the dragging of any vehicle undercarriage. Should the sidewalk be so close to the curb at a depressed curb driveway as to cause the ramp to be too steep and be likely to cause undercarriage drag, the sidewalk shall be appropriately lowered to provide a suitable ramp gradient.

Effective on: 12/9/2013

Sec. 19-145 Driveway Grades

Driveway grades shall not have a grade in excess of fifteen percent (15%) over the entire length. On arterials and collectors the grade shall not be more than five percent (5%) for the first twenty-five (25) feet from the road unless otherwise approved by the permitting authority. Driveways shall not be located where visibility is limited because of curves or topography. [Amended 8/26/13]

Effective on: 12/9/2013

Sec. 19-146 Acceleration Lanes

Where a driveway serves right-turning traffic from a parking area providing two hundred (200) or more parking spaces and the road has an average daily traffic (A.D.T.) volume exceeding seven thousand five hundred (7,500) vehicles, an acceleration lane shall be provided which is at least two hundred (200) feet long and at least ten (10) feet wide measured from the road curb line. A minimum thirty-five (35) foot curb return radius shall be used from the driveway to the acceleration lane. Acceleration lanes are prohibited in the VC Districts. [Amended 5/13/13]

Effective on: 12/9/2013

Sec. 19-147 Deceleration Lanes

Where the same conditions exist as in the previous paragraph Sec. 19-146 and a driveway serves as an entrance to a development, a deceleration lane shall be provided for traffic turning right into the driveway from the road. The deceleration lane shall be at least two hundred (200) feet long and at least ten (10) feet wide measured from the road curb line. A minimum thirty-five (35) foot curb return radius shall be used from the deceleration lane into the driveway. Deceleration lanes are prohibited in the VC Districts. [Amended 5/13/13]

Effective on: 12/9/2013

Sec. 19-148 Drive-Through Facilities

All drive-through facilities other than gasoline service station shall conform to the following performance standards:

- a. **Queuing and Circulation:** Each drive-through or queuing lane shall be separated from the general circulation lanes necessary either for entering or exiting the property or for providing interior circulation within the property. Preferably, this separation shall be done by means of an island. At a minimum, the drive-through and queuing lanes shall be distinctly marked by special striping, pavement markings, or signs. Additionally, special striping, pavement markings, or signs shall be provided at the point where traffic from the drive-through lanes enters the general circulation lanes.
- b. **Pedestrian Safety:** Pedestrian safety shall be an important consideration in the design of drive-through facilities. Drive-through facilities shall create minimum conflict with pedestrian access to the building from adjacent sites, parking lots, or from the road. Drive-through lanes shall not cross a business's principal pedestrian access route. Pavement markings, signage, speed bumps, and internal walkways should be used to help insure pedestrian safety.
- c. **Stacking and Queuing Requirements:** The following stacking standards shall apply for drive-through businesses:
 - Banks, automated teller machines (ATMs) or other commercial uses: Five cars per window.
 - A minimum distance of 65' shall be provided from drive-through window to the exit point of the business or facility.
- d. **Circulation:** Drive-through facilities shall be designed to provide a counter-clockwise circulation around the main building.
- e. **Separation Distances from Intersections:** No vehicular entrance or exit to a drive-through facility shall be located within 60' of a street intersection. Wherever possible, especially in the case of drive-through facilities located within shopping center parking lots, entrances to drive-through facilities should be located off of interior roadways, rather than off of a local street.

Effective on: 12/9/2013

Sec. 19-149 Lighting Design Standards

In connection with every site plan, the applicant shall submit plans for all proposed exterior lighting. These plans shall include the location, type of light, radius of illumination, manufacturer's specification sheet and the intensity in footcandles. The following design standards shall be followed:

- a. The style of the light and light standard shall be consistent with the architectural style of the principal building.
- b. The maximum height of freestanding lights shall be the same as the principal building but not exceeding twenty-five (25) feet, except as restricted in Section 19-11 for lights in the VC Districts.
- c. All lights shall be shielded to restrict the maximum apex angle of the cone of illumination to one hundred fifty (150) degrees.
- d. Where lights along property lines will be visible to adjacent residents, the lights shall be appropriately shielded.
- e. Spotlight-type fixtures attached to buildings shall be avoided.
- f. Freestanding lights shall be located and protected to avoid being easily damaged by vehicles.

- g. Lighting shall be located along streets, parking areas, at intersections and crosswalks and where various types of circulation systems merge, intersect or split.
- h. Stairways and sloping or rising paths, building entrances and exits require illumination.
- i. Pathways, sidewalks and trails shall be lighted with pedestrian scaled lighting. The maximum height of pedestrian freestanding lights is 12 feet.
- j. Light posts shall be installed so that the pillar bases are flush with the ground except for lighting located without a landscaping island in parking lots, where pillar bases may be a maximum of one foot in height.
- k. Lighting shall be provided where buildings are set back or offset.
- l. Illumination levels shall meet the following intensity in footcandles:
 - 1. Parking lots: an average of one and one-half (1.5) footcandles throughout.
 - 2. Intersections: three (3) footcandles.
 - 3. Maximum at property lines: one (1.0) footcandle.
 - 4. In residential areas: average of six-tenths (0.6) footcandle.
- m. Display lighting shall be shielded and located and maintained so as not to create or constitute a hazard or nuisance to the traveling public or to neighbors. String lights shall not be permitted.
- n. Parking area lighting shall be shielded and located and maintained so as not to create or constitute a hazard or nuisance to the traveling public or to neighbors.
- o. Fuel Pumps and Canopies
 - 1. Lighting levels for canopies shall be adequate only to facilitate the activities taking place in such locations and shall not be used to attract attention to the business. Under canopy lighting shall be designed to provide an average level of illumination not to exceed 20 foot candles with a maximum foot-candle reading beneath the canopy not exceeding 30 foot-candles, with a uniformity ratio of 1.25 (average to minimum).
 - 2. Light fixtures mounted on canopies shall be recessed so that the lens cover is recessed or flush with the bottom surface (ceiling) of the canopy and are shielded by the fixture or the edge of the canopy so that light is restrained to no more than 85 degrees from vertical.
 - 3. Lights shall not be mounted on the sides (fascia) or top of the canopy and the sides (fascia) shall not be illuminated except as permitted in conjunction with permitted signs.

Effective on: 12/9/2013

Sec. 19-150 General Buffer Standards

Buffers are fences, landscaping, berms and mounds used to minimize any adverse impacts or nuisances on the site or from adjacent areas. Development in the VC Districts is exempt from this section. The following guidelines apply:

- a. Evergreens can be used as buffers, provided they are planted properly. An evergreen buffer requires six to eight (6-8) foot evergreen trees planted in an alternate pattern, five (5) feet on center.
- b. Buffers shall be considered in or for the following areas and purposes:
 - 1. Along property lines, to shield various uses from each other.
 - 2. Along interior roads running parallel to roads exterior to the site, to prevent confusion, particularly at night.

3. To totally screen garbage collection areas, loading and unloading areas, electrical transformers, air conditioning units, utility service areas, outdoor storage areas, and similar functions from public area. [Adopted 4/27/87]
 4. To block prevailing wind patterns and to stop wind-borne debris from leaving the site.
 5. To screen parking areas, car lots, auto storage facilities, and other outdoor storage of motor vehicles from the public view with berms four (4) feet in height. A lower height, not less than three (3) feet, may be used as necessary to ensure that berms and/or plantings do not obstruct the visibility required for traffic safety. Additional screening shall be provided with plantings which shall be located so as not to obstruct the visibility required for traffic safety. [Adopted 4/27/87]
- c. Natural features shall be maintained wherever possible to provide a buffer between the proposed development and non-compatible abutting properties and public roadways. When natural features such as topography, gullies, stands of trees, shrubbery, rock outcrops do not exist or are insufficient to provide a buffer, other kinds of buffers shall be considered.
 - d. Buffers shall be sufficient to shield structures and uses from the view of non-compatible abutting properties and public roadways, and to otherwise prevent any nuisances including but not limited to all loading and unloading operations, storage areas, commercial vehicle parking, waste disposal and collection areas.
 - e. Fencing and screening shall be durable and properly maintained at all times by the owner.
 - f. Fencing and screening shall be so located within the property line to allow access for maintenance on both sides without intruding upon abutting properties.
 - g. All buffer areas shall be maintained in a neat and sanitary condition by the owner.

Effective on: 12/9/2013

Sec. 19-151 Special Landscape and Buffer Requirements in the BP District

- a. Buffer area landscaping: All areas located within the minimum setbacks required in the BP District shall be used as buffer areas. Within these buffer areas, the following minimum plantings and buffers shall be required:

Buffer Area Location	Width	Structure	Buffer Area (per 100 Linear feet)			
			CT*	UT*	SH*	ET*
Side/rear yard screening	10'	-	2	3	5	-
Screening along all roadways, whether on or off premises, with respect to one-story buildings	40'	-	5	8	15	-
Screening along all roadways, whether on or off premises, with respect to buildings of two stories or more	40'	-	8	8	15	10
Screening of Route One for all one-story buildings	60'	-	10	15	30	10
Screening of Route One for all buildings of two stories or more	60'	-	15	15	30	20
Screening of all abutting residential district for all buildings of any height	75'	-	15	15	20	20
Screening of all parking areas which are visible from any roadways bounding or bordering the premises	-	Berm	-	-	-	-
Total screening, where required by board of Zoning Appeals or Planning Board	-	Fencing or Berm Wall	-	-	-	-

* **CT: Canopy Trees UT: Understory Trees SH: Shrubs ET: Evergreen Trees**

Effective on: 12/9/2013

Sec. 19-152 Special Landscaping and Buffer Requirements in the SB District

[Amended 9/24/90][Repealed 5/13/13]

Effective on: 12/9/2013

Sec. 19-153 Special Landscape and Buffer Requirements in the CO District [Amended 7/22/91]

- a. Buffer Area landscaping. All border strips required in the CO District shall be used as landscaped buffer areas, except those areas required for access. Within these buffer areas the following plantings and buffers are required. Numbers given are for one hundred (100) linear feet of buffer area.

Where berms are recommended, they shall be designed to fit the specific site conditions with regards to height, visibility, and form. Maximum height shall be four (4) feet. Maximum side slopes shall be 3:1.

Variations from these requirements may be allowed, provided that the applicant demonstrates that the landscaping is in compliance with the intent of these provisions.

<u>Buffer Area Location</u>	<u>S</u> Berm	<u>CT</u> 2-4	<u>UT</u> 1-3	<u>ET</u> 1-2	<u>SH</u> 5-10
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Abbreviations: Canopy Trees (CT), Understory Tree (UT), Shrubs (SH), Evergreen Trees (ET), Structures (S).

- b. All uses shall be required to maintain a landscaped border strip along the street right-of-way of Route 100. The width of the border strip shall be related to the setback of the building as shown on the following table:

<u>Width of Border Strip</u>	<u>Building Setback</u>
10 ft.	less than 25 ft.
15 ft.	25 to 49 ft.
20 ft.	50 to 74 ft.
25 ft.	75 to 99 ft.
30 ft.	100 ft. or more

Effective on: 12/9/2013

Sec. 19-154 Other Landscaping Requirements

- a. Parking Area Landscaping. In addition to all other requirements, landscaping shall be required in all districts on any site where the aggregate required off-street parking or storage of motor vehicles exceeds ten (10) parking spaces. For each twenty-four (24) parking spaces there shall be required, adjacent to the parking spaces or within the parking lot, three (3) canopy trees, two (2) understory trees, and ten (10) shrubs.
- b. Minimum Plant Sizes. Unless otherwise specifically indicated by the Planning Board, all plant materials shall meet the following minimum size standards:

Minimum Size

Plant Material Type	Planting in buffer area abutting vacant land	All other Plantings
Canopy Tree, Single Stem	1 1/2 inch caliper	2 1/2 inch caliper
Multi-Stem Clump	6 feet (height)	10 feet (height)
Understory Tree	4 feet (height)	1 1/2 inch caliper
Evergreen Tree	3 feet (height)	5-7 feet (height)
Shrub, Deciduous	15 inches (height)	24 inches (height)
Evergreen	12 inches (height)	18 inches (height)

- c. Required Plant Types. All plantings required under this Ordinance shall be of a type and species appropriate for the soil types and climatic conditions in Falmouth as determined by the permitting authority. Invasive species of plants are prohibited. [Amended 5/13/13; 8/26/13]
- d. Plant Maintenance Requirements. The owner of any premises approved by the permitting authority under any section of this Ordinance shall have a continuing obligation to maintain required plantings in accordance with the terms of the site plan approval and in a good and healthy condition. [Amended 11/10/08; Effective 01/01/09][Amended 8/26/13]

Effective on: 12/9/2013

Sec. 19-155 Standards for Residential Planned Developments

The intent of the residential planned development provisions is to allow creativity and flexibility in the development of innovative housing projects. The following standards are set forth as a guide to developers in preparing proposals for residential planned developments. The Planning Board shall use these standards as the minimum acceptable unless the applicant demonstrates to the Board's satisfaction that alternate arrangements will meet or exceed the level of service and safety provided by the standard. [Effective 1/25/88]

- a. Road Layout - 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, and delivery and collection services.
- b. Road Construction Standards - Roads within a residential development may either be public streets or private ways. All public streets shall meet the street construction standards of the Town. Private ways shall be constructed to the standards set forth in subsection 19-60.
- c. Utilities - All utilities shall be placed underground. The Planning Board may waive this requirement if this is not possible due to unique topographic or geological features of the site. Transformer boxes, meters, pumping stations and other components of the utility system which must be located above ground shall be located so as not to be unsightly or hazardous to the public and shall be landscaped or otherwise buffered so as to screen the components from public view. Water distribution, sewerage and stormwater drainage systems shall meet the requirements of the Town.
- d. Utilization of the Parcel - The plan for the development shall reflect the natural capabilities of the site to support development. Buildings and support facilities shall be clustered in those portions of the site that have the most suitable conditions for development.
- e. Environmentally sensitive areas such as wetlands, steep slopes, flood plains and unique natural features should be included in open space areas. Natural drainage areas shall be preserved to the maximum extent.
- f. Relationship of Residences and Open Spaces - The dwelling units and other improvements shall be located so that each unit has access to the open space and/or recreational facilities. The

open space should be located to enhance the living environment of each unit in the development.

- g. Buffering - The plan for development shall provide for the buffering of adjacent properties. To this end, no building, structure or other facility shall be located within any required setback area. Within this setback area, a combination of landscaping, natural vegetation, fencing and grading shall be used to minimize the impact on abutting property owners. No parking, roads or service facilities shall be located in this strip.
- h. Open Space - At least twenty-five (25%) percent of the total lot area shall be set aside as open space. Areas of the site with significant development constraints or outstanding natural features shall be included in the open space. If the site contains soils which are identified as prime farmland soils, consideration should be given to including these areas in the open space.
- i. Recreation Facilities - An area equal to five hundred (500) square feet per dwelling unit shall be set aside as recreation areas and shall be developed with recreational facilities suitable for the anticipated occupants of the development. Recreation areas shall not count as open space.
- j. Private Outdoor Space - The design of the development shall provide each dwelling unit with a private outdoor space immediately adjacent to the unit where the architectural style of the buildings makes this possible.
- k. Storage - Each dwelling unit shall have access to and use of a minimum of four hundred (400) cubic feet of private lockable storage space either within the individual dwelling unit or in common storage facilities.
- l. The development plan shall also make provisions for the safe storage of such items as recreational vehicles and boats for dwellings other than detached single-family homes. The storage area shall be screened and landscaped.
- m. Pedestrian Circulation - The development plan shall provide for a system of pedestrian circulation within the development. This system shall connect with the existing sidewalks if they exist 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 residential units with recreational facilities, other common facilities, school bus stops and existing sidewalks in the neighborhood.
- n. Shoreline Relationship - The development plan shall provide for access to abutting navigable water bodies for the use of residents of the development.

Effective on: 12/9/2013

Sec. 19-156 Minimum Five Acre Site Plan in the BP District.

In addition to all other requirements of Div. II-19-1-9, the following minimum five acre site plan requirement shall also apply in the BP District.

- a. In the BP District, a site plan encompassing at least five acres of land must be approved by the Planning Board under this Section before any building shall be erected or externally enlarged and before any area for parking, loading, or vehicular service shall be established or substantially changed. If the entire area owned by a landowner in the BP District on the effective date of this subsection is less than five (5) acres, that area may be developed under an approved site plan encompassing less than five (5) acres provided that the entire area owned by that landowner is included in the site plan.

Within the site plans required under this subsection, no lots of less than forty thousand (40,000) square feet in size shall be approved and there shall be no more than one entrance and one exit for motor vehicles located on Route 1. All site plans submitted and approved under this subsection shall include a landscape plan prepared and signed by a registered landscape architect showing the location, type and size of all plantings.

- b. A site plan shall be prepared and submitted to the Planning Board as a comprehensive plan for the entire site. In cases where the applicant only plans to develop a portion of the planned site immediately, the site plan shall nonetheless include the boundaries, dimensions and area of each proposed lot, the location of proposed buildings, the location and layout of proposed driveways, the location and layout of proposed sewer and water utilities and proposed grades and drainage for the entire site. In such cases, the Planning Board may defer final approval as to building plans, landscaping plans, exterior lighting, location of parking areas, fences, signs and advertising features for the portions of the site not to be developed immediately.
- c. A site plan approved by the Planning Board shall set forth the requirements for access, roadways, parking, setbacks, buffer areas, plantings, and other requirements. In cases where the Planning Board has deferred final approval as to portions of the site not to be immediately developed, the site plan shall define the portions of the site which have not received final site plan approval. Within such portions of the site, no building shall be erected or externally enlarged and no unapproved areas for parking, loading or vehicular access shall be established until final site plan approval has been obtained.

Effective on: 12/9/2013

Sec. 19-157 Environmental Considerations [Amended 9/22/03]

- a. The site plan shall be designed in accordance with applicable Town regulations designed to protect the environment.
- b. All activities which involve filling, grading, excavation or other similar activities which result in un-stabilized soil conditions and which require a permit shall implement soil erosion and sedimentation control measures as required by Section 19-72. The following measures relating to conservation, erosion and sediment control shall also be included where applicable as part of any site plan review and approval:
 - 1. Development shall preserve salient natural features, keep cut-fill operations to a minimum and ensure conformity with topography so as to create the least erosion potential and adequately handle the volume and velocity of surface water runoff;
 - 2. The development shall not unreasonably increase the rate or volume of surface water runoff from the proposed site and shall meet the requirements of [Appendix 7-7.](#), Land Subdivision.
 - 3. Whenever feasible, natural vegetation shall be retained, protected and supplemented;
 - 4. The disturbed area and the duration of exposure shall be kept to a practical minimum;
 - 5. It is the responsibility of any person doing any act on or across a communal stream, watercourse, or swale, or upon the floodway or right-of-way thereof, to maintain as nearly as possible in its present state the stream, watercourse, swale, floodway, or right-of-way during the duration of such activity and to return it to its original or equal condition after such activity is completed;
 - 6. Maintenance of drainage facilities or watercourses originating and completely on private property is the responsibility of the owner to the point of open discharge at the property line or at a communal watercourse within the property.

Effective on: 12/9/2013

Sec. 19-158 Site Conditions [Amended 8/26/13]

- a. During construction, the site shall be maintained and left each day in a safe and sanitary manner and any condition which could lead to personal injury or property damage shall be immediately corrected by the developer upon an order by the Town Engineer, Building

Inspector, Senior Planner, or other authorized personnel. The developer shall make provision for disposal of oil and grease from equipment and the site area should be regularly sprayed to control dust from construction activity.

- b. No change shall be made in the elevation or contour of any lot or site by the removal of earth to another lot or site other than as shown on an approved site plan. Minimal changes in elevations or contours necessitated by field conditions may be made only after approval by the Town Engineer, Senior Planner, or Building Inspector. All the changes necessitated by field conditions shall be shown on the final plan and indicated as a change from the preliminary, or if final approval has been granted, the changes shall be shown on the as-built plans.
- c. Temporary improvements: Prior to or during construction, the Town Engineer, Senior Planner, or Building Inspector may require the installation or construction of improvements to prevent or correct temporary conditions on the site which could cause personal injury, damage to property or erosion and landslide, flooding, heavy construction traffic, creation of steep grades and pollution. Improvements may include berms, mulching, sediment traps, detention and retention basins, grading, plantings, retaining walls, culverts, pipes, guardrails, temporary roads and others appropriate to the specific condition. All temporary improvements shall remain in place and in operation until otherwise directed by the Town Engineer, Senior Planner or Building Inspector

Effective on: 12/9/2013

Div. II-19-1-10. ADMINISTRATION

Sec. 19-159 Permit Required

Unless otherwise provided, no building shall be erected, altered, enlarged, moved or demolished in Falmouth without a written permit issued by the Building Inspector. Such a permit shall be issued only if the building plans and intended use fulfilled the requirements of this Ordinance. The Building Inspector shall be notified of any change in use of building or premises and a permit shall be secured for such change. No building permit shall be required for a free-standing ancillary residential structure not more than one hundred (100) square feet in area and not exceeding ten (10) feet in height, at its highest point. [Amended, 2/28/05]

Effective on: 12/9/2013

Sec. 19-160 Issuance and Time Limits of Permits

Each permit by the Building Inspector shall be issued in writing in duplicate with one copy to applicant and one copy, including any conditions or exceptions attached thereto, kept on file in the office of the Building Inspector. Failure of the Building Inspector to issue written notice of his decision on any application for a building permit within thirty (30) days from the date of filing of such application shall constitute denial of such application.

If no start is made on the construction for which a building permit was issued within one year of the date of the permit, the permit shall lapse and become void. A building permit shall expire if the construction for which the building permit was issued is not substantially completed within two (2) years of the date of issuance of the permit. The Building Inspector may issue a temporary certificate of occupancy or a permit extension for one additional year if, in his judgment, reasonable progress is being made and nuisance conditions do not exist. Permit extensions beyond one (1) year require approval from the Zoning Board of Appeals using the review criteria in Section 19-123." [Amended, 5/27/93] [Amended, 7/24/00]

Effective on: 12/9/2013

Sec. 19-161 Access to Properties for Inspections

The Building Inspector shall have the right of access to buildings and structures for inspection purposes as provided under 30 M.R.S.A. §2151(4)(C)(3) and other applicable provisions of state law.

Effective on: 12/9/2013

Sec. 19-162 Required Application Submissions

Each application for permit to build, alter, enlarge, demolish or move a building shall be filed in duplicate and shall be accompanied by a plot plan in duplicate drawn to scale showing and stating the dimensions in feet of the lot to contain such building, and the locations and ground coverage dimensions thereon of the building proposed to be erected, altered, enlarged, moved or demolished on such lot. The applications shall state the use intended to be made of such building and of its lot, even after a demolition. Such plot plan shall also show each street, alley or right of way on or adjacent to the lot in question. One copy of each such application and plot plan shall be kept on file in the office of the Building Inspector.

Effective on: 12/9/2013

Sec. 19-163 Investigation of Complaints

The Building Inspector, upon being informed in writing of a possible violation of this Ordinance, or on his own initiative, shall make or cause to be made an investigation of facts and an inspection of the premises where such violation may exist. After investigation, on evidence of any violation, the Building Inspector shall give written notice of the violation to the owner and the occupant of the premises. The Building Inspector shall demand in the notice that the violation be abated within some designated reasonable time.

Effective on: 12/9/2013

Sec. 19-164 Revocation of Permits

- a. A permit may be suspended or revoked, if:
 1. The permit was issued on incomplete or false information, and/or continuation of the work authorized would result in a violation of Federal or State statutes or local ordinances.
 2. A violation has been created during the completion of work initially authorized by the permit.
 3. The continuation of the work authorized is endangering or may endanger the safety or general welfare of the community during the construction or work for which the permit was issued.
 4. The applicant or his agent is exceeding the scope of the work for which the permit was issued.
 5. The Code Enforcement Officer determines that he is unable to rule on the continued validity of a permit, in which case he shall suspend the permit, without penalty, and require the holder to file an appeal.
- b. A notice of suspension shall be in writing, stating:
 1. The reason for the suspension.
 2. The corrective measures to be taken.
 3. The period of time given to the applicant to correct the violation.

- c. The suspension of a permit shall apply only to that segment of the work authorized which is, or will create, a violation. Such suspension shall cease when the Code Enforcement Officer certifies that the violation or potential violation ceases to exist. When a cause for suspension has been removed or corrected, the Code Enforcement Officer shall so certify, in writing, and state:
 - 1. The reason for the suspension.
 - 2. The corrective measures taken.
 - 3. The period of time which the applicant had to correct the violation.
- d. If, within the time specified for correction, the violation has not been corrected or removed, the suspension may be continued, or the Code Enforcement Officer may then revoke the permit.
- e. When a permit is revoked, the Code Enforcement Officer shall prepare a statement stating the reasons for revocation, and the corrective measures, if any, that may be taken to correct the violation. Such revocation shall include a time period given to correct the violation and shall remain in force until:
 - 1. The Code Enforcement Officer determines that the applicant can and will pursue the work (for which the permit was issued) without extending or creating a violation.
 - 2. The permit application has been corrected to provide complete or corrected information, as required, and continuance of work will not result in violation.
 - 3. The violation has been removed or otherwise discontinued.
 - 4. A new permit has been issued.
- f. During the period of revocation, no work shall continue on a project for which a permit was issued except in the interests of public safety and protection of the property in place at the time of revocation, such work having the written approval of the Code Enforcement Officer.

Effective on: 12/9/2013

Sec. 19-165 Legal Prosecution of Violations

If, after notice and demand, the violation has not been abated within the time specified, the Building Inspector shall refer the matter to the Town Manager for appropriate legal action in the name of the Town of Falmouth to prevent, correct, restrain or abate any violation of this Ordinance.

Effective on: 12/9/2013

Sec. 19-166 Certificates of Occupancy

After a building, structure, or part thereof has been erected, altered, enlarged, or moved, pursuant to a building permit, a certificate of occupancy shall be obtained from the Building Inspector for the proposed use before the same may be occupied or used. A certificate of occupancy also is required for the following:

- a. Any increase in the number of dwelling units in a building.
- b. Establishment of any home occupation.
- c. Change in the use of a nonconforming structure or lot.
- d. Occupancy and use, or change of use, of vacant land, except for the raising of crops.

Effective on: 12/9/2013

Sec. 19-167 Violations and Penalties

Any violation of this Ordinance shall be deemed to be a nuisance subject to all available legal and equitable remedies. In addition, any violation of any provisions of this Ordinance shall be punishable by a fine of not more than one hundred (\$100) dollars. Any person who violates any provisions of this Ordinance shall be subject to a fine of not more than \$100.00 for each violation or such greater penalty as may be provided by state law. Each violation shall constitute a separate offense. [Adopted 4/27/87]

Effective on: 12/9/2013

Sec. 19-168 Amendments to the Zoning & Site Plan Review Ordinance

The Town Council may amend this Ordinance, or any provision thereof, including changes of district boundaries and classifications in accordance with the provisions of the Charter of the Town of Falmouth.

Effective on: 12/9/2013

ART. II-19-2. FLOODPLAIN MANAGEMENT

Sec. 19-170. Purpose and establishment.

Certain areas of the Town of Falmouth, 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 Falmouth, 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 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 has the legal authority to adopt land use and control measures to reduce future flood losses pursuant to Title 30-A MRSA §§ 3001-3007, 4352, 4401-4407, and Title 38 MRSA § 440.

The National Flood Insurance Program, established in the aforesaid Act, provides that areas of the town 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 article establishes a flood hazard development permit system and review procedure for development activities in the designated flood hazard areas of the town.

The areas of special flood hazard, zones A, A1-30, AE, and V1-30, are identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study - Town of Falmouth, Maine, Cumberland County," dated April 16, 1984 with accompanying "Flood Insurance Rate Map" dated October 16, 1984 and "Flood Boundary and Floodway Map" dated October 16, 1984, which are hereby adopted by reference and declared to be a part of this article.

(Ord. of 9-24-2007, Art. I)

Sec. 19-171. Permit required.

Before any construction or other development (as defined in Sec. 19-183), including the placement of manufactured homes, begins within any areas of special flood hazard established in Sec. 19-170, a flood hazard development permit shall be obtained from the code enforcement officer except as provided in Sec. 19-176. This permit shall be in addition to any other permits which may be required pursuant to the codes and ordinances of the town.

(Ord. of 9-24-2007, Art. II)

Sec. 19-172. 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), 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, AE, and V1-30 from data contained in the "Flood Insurance Study - Town of Falmouth, Maine," as described in Sec. 19-170; 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 Sec. 19-175(k) and Sec. 19-178(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.
 2. Highest and lowest grades at the site adjacent to the walls of the proposed building;
 3. Lowest floor, including basement; and whether or not such structures contain a basement; and,
 4. Level, in the case of non-residential structures only, to which the structure will be floodproofed;

- i. A description of an elevation reference point established on the site of all developments for which elevation standards apply as required in Sec. 19-175.
- j. 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;
- k. The following certifications as required in Sec. 19-175 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 Sec. 19-172(h)(4); Sec. 19-175(g); and other applicable standards in Sec. 19-175
 - 2. A V-Zone certificate to verify that the construction in coastal high hazard areas, zones V1-30, will meet the criteria of Sec. 19-175(p); and other applicable standards in Sec. 19-175
 - 3. A hydraulic openings certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of Sec. 19-175(l)(2)a.;
 - 4. A certified statement that bridges will meet the standards of Sec. 19-175(m);
 - 5. A certified statement that containment walls will meet the standards of Sec. 19-175(n);
- l. A description of the extent to which any water course will be altered or relocated as a result of the proposed development; and,
- m. A statement of construction plans describing in detail how each applicable development standard in Sec. 19-175 will be met.

(Ord. of 9-24-2007, Art. III)

Sec. 19-173. Application fee and expert's fee.

A non-refundable application fee of twenty-five dollars (\$25.00) for all minor development and fifty dollars (\$50.00) for all new construction or substantial improvements shall be paid to the town clerk 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 ten (10) days after the town submits a bill to the applicant. Failure to pay the bill shall constitute a violation of the article 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.

(Ord. of 9-24-2007, Art. IV)

Sec. 19-174. Review standards for flood hazard development permit applications.

The code enforcement officer shall:

- a. 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 Sec. 19-175 (Development standards) have been, or will be met;
- b. 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 Falmouth, Maine," as described in Sec. 19-170
 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 Sec. 19-172(h)(1)b.; Sec. 19-175(k); and Sec. 19-178(d), in order to administer Sec. 19-175 of this article; and,
 3. When the community establishes a base flood elevation in a zone A by methods outlined in Sec. 19-172(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 Sec. 19-170 of this article;
 - 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 article, 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 an 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 Sec. 19-175(f), (g), (h), or (p). Following review of the elevation certificate data, which shall take place within seventy-two (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 subsection Sec. 19-175 (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 fifty (50) percent of the market value of the structure. Minor development also includes, but is not limited to: accessory structures as provided for in Sec. 19-175(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 article, the flood hazard development permit application shall be acted upon by the planning board as required in Sec. 19-176.

- 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 Sec. 19-179 of this article, and copies of elevation certificates, floodproofing certificates, certificates of compliance and certifications of design standards required under the provisions of Sec. 19-172, Sec. 19-175, and Sec. 19-177 of this article.

(Ord. of 9-24-2007, Art. V)

Sec. 19-175. 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 so as 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, and AE shall have the lowest floor (including basement) elevated to at least one (1) foot above the base flood elevation.
 - 2. Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to Sec. 19-172(h)(1)b.; Sec. 19-174(b); or Sec. 19-178(d).
 - 3. Zones V1-30 shall meet the requirements of Sec. 19-175(p).
- g. *Non-residential.* New construction or substantial improvement of any non-residential structure located within:
 - 1. Zones A1-30, and AE shall have the lowest floor (including basement) elevated to at least one (1) foot above the base flood elevation, or together with attendant utility and sanitary facilities shall:

- a. Be floodproofed to at least one (1) foot 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 Sec. 19-172(k) and shall include a record of the elevation above mean sea level to which the structure is floodproofed.
2. Zone A shall have the lowest floor (including basement) elevated to at least one (1) foot above the base flood elevation utilizing information obtained pursuant to Sec. 19-172(h)(1)b.; Sec. 19-174(b); or Sec. 19-178(d), or
 - a. Together with attendant utility and sanitary facilities meet the floodproofing standards of Sec. 19-175(g)(1).
3. Zones V1-30 shall meet the requirements of Sec. 19-175(p).
- h. *Manufactured homes.* New or substantially improved manufactured homes located within:
 1. Zones A1-30, and AE shall:
 - a. Be elevated such that the lowest floor (including basement) of the manufactured home is at least one (1) foot 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 (4) corners of the manufactured home, plus two (2) additional ties per side at intermediate points (manufactured homes less than fifty (50) feet long require one (1) additional tie per side); or by,
 2. Frame ties at each corner of the home, plus five (5) additional ties along each side at intermediate points (manufactured homes less than fifty (50) feet long require four (4) additional ties per side).
 3. All components of the anchoring system described in subsection (h)(1)c.1. and 2. shall be capable of carrying a force of forty-eight hundred (4,800) pounds.
 2. Zone A shall:
 - a. Be elevated on a permanent foundation, as described in Sec. 19-175(h)(1) b., such that the lowest floor (including basement) of the manufactured home is at least one (1) foot above the base flood elevation utilizing information obtained pursuant to subsections Sec. 19-172(h)(1)b.; Sec. 19-174(b); or Sec. 19-178(d); and
 - b. Meet the anchoring requirements of Sec. 19-175(h)(1)c.

3. Zones V1-30 VE shall meet the requirements of subsection (p).
- i. *Recreational vehicles.* Recreational vehicles located within:
 1. Zones A1-30, and AE shall either:
 - a. Be on the site for fewer than one hundred eighty (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 Sec. 19-175(h)(1).
 2. Zones V1-30 shall meet the requirements of either Sec. 19-175(i)(1)a. or b., or Sec. 19-175(p).
- j. *Accessory structures.* Accessory structures, as defined in Sec. 19-183, located within zones A1-30, AE, and A, shall be exempt from the elevation criteria required in Sec. 19-175(f) and (g) above, if all other requirements of Sec. 19-175 and all the following requirements are met. Accessory structures shall:
 1. Be five hundred (500) square feet or less and have a value less than three thousand dollars (\$3,000);
 2. Have unfinished interiors and not be used for human habitation;
 3. Have hydraulic openings, as specified in Sec. 19-175(l)(2), in at least two (2) 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 and AE 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 insurance rate map" or "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, AE, 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 Sec. 19-175(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 (1) 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, AE, 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 ($\frac{1}{2}$) 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, AE, and A that meets the development standards of Sec. 19-175, including the elevation requirements of Sec. 19-175(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 Sec. 19-183
 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 (2) openings having a total net area of not less than one (1) 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 (1) 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, AE, A, V1-30 shall be designed such that:
 1. When possible, the lowest horizontal member (excluding the pilings, or columns) is elevated to at least one (1) foot 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 (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, AE, A, and V1-30 shall:
 - a. Have the containment wall elevated to at least one (1) foot 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 Sec. 19-172(k).
- o. *Wharves, piers and docks.* New construction or substantial improvement of wharves, piers, and docks are permitted in zones A1-30, AE, 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, AE, A, and V1-30 shall be located landward of the reach of mean high tide except as provided in subsection (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 one (1) foot 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 which have a design safe loading resistance of not less than ten (10) or more than twenty (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 subsection (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 (g). Only if permitted as a conditional use following review and approval by the planning board, as provided in Sec. 19-176, and if all the following requirements and those of (a), (k), and (l) are met:
 - a. The conditional use shall be limited to low value structures such as metal or wood sheds two hundred (200) square feet or less and shall not exceed more than one (1) 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 (1) 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.

(Ord. of 9-24-2007, Art. VI)

Sec. 19-176. Conditional use review.

The planning board shall hear and decide upon applications for conditional uses provided for in this article. 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 article 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 (30) days of their receipt of the application.

3. If the planning board finds that the application satisfies all relevant requirements of the article, the planning board must approve the application or approve with conditions within forty-five (45) days of the date of the public hearing.
4. A conditional use permit issued under the provisions of this article shall expire if the work or change involved is not commenced within one hundred eighty (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 article.

(Ord. of 9-24-2007, Art. VII)

Sec. 19-177. 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 Sec. 19-175(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 Sec. 19-175(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 article.
- c. Within ten (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 with the provisions of this article, shall issue a certificate of compliance.

(Ord. of 9-24-2007, Art. VIII)

Sec. 19-178. 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 or local ordinances or regulations and all projects on five (5) or more disturbed acres, or in the case of manufactured home parks divided into two (2) 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 so as 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 Sec. 19-175. 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.

(Ord. of 9-24-2007, Art. IX)

Sec. 19-179. Appeals and variances.

The board of appeals of the town 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 or planning board in the administration or enforcement of the provisions of this article.

The board of appeals may grant a variance from the requirements of this article 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 subsection 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 it deems 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 Sec. 19-174 and [subsection] Sec. 19-175(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 Sec. 19-174(a)—(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 Sec. 19-174(a)—(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 twenty-five dollars (\$25.00) per one hundred dollars (\$100.00) 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 shall be taken to the board of appeals by an aggrieved party within thirty (30) days after receipt of a written decision of the code enforcement officer or planning board.
 - 2. Upon being notified of an appeal, the code enforcement officer or planning board, as appropriate, 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 (35) 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 (35) 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 shall take an appeal to superior court in accordance with state laws within forty-five (45) days from the date of any decision of the board of appeals.

(Ord. of 9-24-2007, Art. X)

Sec. 19-180. Enforcement and penalties.

- a. It shall be the duty of the code enforcement officer to enforce the provisions of this article pursuant to Title 30-A MRSA § 4452.
- b. The penalties contained in Title 30-A MRSA § 4452 shall apply to any violation of this article.
- c. In addition to any other actions, the code enforcement officer, upon determination that a violation exists, shall submit a declaration to the administrator of the federal insurance administration requesting a denial of flood insurance. 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.

(Ord. of 9-24-2007, Art. XI)

Sec. 19-181. Validity and severability.

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

(Ord. of 9-24-2007, Art. XII)

Sec. 19-182. Conflict with other ordinances.

This article 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 article imposes a greater restriction upon the use of land, buildings, or structures, the provisions of this article shall control.

(Ord. of 9-24-2007, Art. XIII)

Sec. 19-183. Definitions.

Unless specifically defined below, words and phrases used in this article shall have the same meaning as they have at common law and to give this article 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 means a small detached structure that is incidental and subordinate to the principal structure.

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

Area of special flood hazard means the land in the floodplain having a one (1) percent or greater chance of flooding in any given year, as specifically identified in the flood insurance study cited in section 19-170.

Base flood means the flood having a one (1) percent chance of being equaled or exceeded in any given year, commonly called the one hundred-year flood.

Basement means any area of the building having its floor subgrade (below ground level) on all sides.

Breakaway wall means 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 means a document signed by the code enforcement officer stating that a structure is in compliance with all of the provisions of this article.

Code enforcement officer means a person certified under Title 30-A MRSA § 4451 (including exceptions in subsection 4451, paragraph 1) and employed by a municipality to enforce all applicable comprehensive planning and land use laws and ordinances.

Conditional use means 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 Sec. 19-176.

Development means any man made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials.

Elevated building means a non-basement building:

- a. Built, in the case of a building in zones A1-30, AE, or A, to have 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 so as not to impair the structural integrity of the building during a flood of up to one (1) foot above the magnitude of the base flood.

In the case of zones A1-30, AE, or A, 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 Sec. 19-175(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 Sec. 19-175(p)(2)b. 3.

Elevation certificate means 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 means:

- 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 subsection (a)(1) of this definition.

Flood elevation study means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

Flood insurance rate map (FIRM) means 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 flood-prone area means any 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 means 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 means 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 mean the lines marking the limits of floodways on federal, state, and local floodplain maps.

Freeboard means 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, that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions.

Functionally dependent use means a use which 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 means, for purposes of this article, 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 means 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 Sec. 19-175(l) of this article.

Manufactured home means 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 one hundred eighty (180) consecutive days.

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

Mean sea level means, for purposes of 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 fifty (50) percent of the market value of the structure. It also includes, but is not limited to: accessory structures as provided for in Sec. 19-175(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) means the national vertical datum, whose standard was established in 1929, which is used by the National Flood Insurance Program (NFIP). NGVD was based upon mean sea level in 1929 and also has been called "1929 Mean Sea Level (MSL)".

New construction means 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 means a vehicle which is:

- a. Built on a single chassis;
- b. Four hundred (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 (1) 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 ($\frac{1}{2}$) the width of the floodplain, as measured from the normal high water mark to the upland limit of the floodplain.

Riverine means 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 means 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 one hundred eighty (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 fifty (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 fifty (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.

(Ord. of 9-24-2007, Art. XIV)

Sec. 19-184. Abrogation.

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

(Ord. of 9-24-2007, Art. XV)

CH. II-20 STORMWATER AND NON-STORMWATER DISCHARGE ORDINANCE

ART. II-20-1. IN GENERAL

Sec. 20-1. Purposes/objectives.

- a. *Purpose.* The purpose of the non-stormwater discharge ordinance (the "ordinance") is to promote the health, comfort, public convenience and general welfare of the citizens of Falmouth through the regulation of non-stormwater discharges to Falmouth's Storm Drainage System as required by federal and state law. This chapter establishes methods for controlling the introduction of pollutants into the town's storm drainage system in order to comply with requirements of the federal Clean Water Act and state law.
- b. *Objectives.* The objectives of this chapter are:
 1. To regulate non-stormwater discharges to the storm drainage 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 chapter.

(Ord. of 4-25-2005, § 1)

Sec. 20-2. Basis.

The Town of Falmouth enacts this non-stormwater discharge 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 Stormwater from Small Municipal Separate Storm Sewer Systems" dated June 3, 2003, has listed the Town of Falmouth 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 chapter as part of the municipality's stormwater management program.

(Ord. of 4-25-2005, § 1)

Sec. 20-3. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Terms not defined shall have the customary dictionary meaning.

Clean Water Act.

"Clean Water Act" means 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.

Discharge.

"Discharge" means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of pollutants to waters of the state. "Direct discharge" or "point source" means 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.

Enforcement authority.

"Enforcement authority" means the person(s) or department authorized under Sec. 20-5 of this chapter to administer and enforce this chapter.

Exempt person or discharge.

"Exempt person or discharge" means any person who is subject to a multi-sector general permit for industrial activities, a general permit for construction activity, a general permit for the discharge of stormwater from the Maine Department of Transportation and the Maine Turnpike Authority Municipal Separate Storm Sewer Systems, or a general permit for the discharge of stormwater from state or federally owned authority municipal separate storm sewer system facilities; and any non-stormwater discharge permitted under a NPDES permit, waiver, or waste discharge license or order issued to the discharger and administered under the authority of the U.S. Environmental Protection Agency ("EPA") or the Maine Department of Environmental Protection ("DEP").

Industrial activity.

"Industrial activity" means activity or activities subject to NPDES industrial permits as defined in 40 CFR, Section 122.26 (b)(14).

Municipality.

"Municipality" means the Town of Falmouth.

Municipal separate storm sewer system, or MS4.

"Municipal separate storm sewer system" or "MS4," means conveyances for stormwater, 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 surface waters of the state.

National pollutant discharge elimination system (NPDES) stormwater discharge permit.

"National pollutant discharge elimination system (NPDES) stormwater discharge permit" means a permit issued by the EPA or by the 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.

Non-stormwater discharge.

"Non-stormwater discharge" means any discharge to an MS4 that is not composed entirely of stormwater.

Person.

"Person" means any individual, firm, corporation, municipality, quasi-municipal corporation, state agency or federal agency or other legal entity which creates, initiates, originates or maintains a discharge of stormwater or a non-stormwater discharge.

Pollutant.

"Pollutant" means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

Premises.

"Premises" means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within the municipality from which discharges into the storm drainage system are or may be created, initiated, originated or maintained.

Regulated small MS4.

"Regulated small MS4" means any small MS4 regulated by the State of Maine "General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems" dated June 3, 2003 ("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.

"Small Municipal separate storm sewer system," or "small MS4," means any MS4 that is not already covered by the phase I MS4 stormwater 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 drainage system.

"Storm drainage system" means Falmouth's Regulated Small MS4 and all premises.

Stormwater.

"Stormwater" means any stormwater runoff, snowmelt runoff, and surface runoff and drainage; "Stormwater" has the same meaning as "storm water."

Superintendent.

"Superintendent" shall mean the superintendent of the sewer department of the town or the superintendent's authorized representative.

Urbanized area ("UA").

"Urbanized area" or "UA" means the areas of the State of Maine so defined by the latest decennial (2000) census by the U.S. Bureau of the Census.

(Ord. of 4-25-2005, § 1)

Sec. 20-4. Applicability.

This chapter shall apply to all persons discharging stormwater and/or non-stormwater from any premises into the storm drainage system.

(Ord. of 4-25-2005, § 1)

Sec. 20-5. Responsibility for administration.

The code enforcement officer is the enforcement authority who shall administer, implement, and enforce the provisions of this chapter.

(Ord. of 4-25-2005, § 1)

ART. II-20-2. NON-STORMWATER DISCHARGES

Sec. 20-6. Restrictions on non-stormwater discharges.

- a. *General prohibition.* Except as allowed or exempted herein, no person shall create, initiate, originate or maintain a non-stormwater discharge to the storm drainage system. Such non-stormwater discharges are prohibited notwithstanding the fact that the municipality may have approved the connections, drains or conveyances by which a person discharges unallowed non-stormwater discharges to the storm drainage system.
- b. *Allowed non-stormwater discharges.* The creation, initiation, origination and maintenance of the following non-stormwater discharges to the storm drainage system are allowed:
 - 1. Landscape irrigation; diverted stream flows; rising ground waters; uncontaminated groundwater infiltration (as defined at 40 CFR 35.2005(20)); uncontaminated pumped groundwater; 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; lawn watering runoff; 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); hydrant flushing and fire fighting activity runoff; water line flushing and discharges from potable water sources; and individual residential car washing;
 - 2. Discharges specified in writing by the enforcement authority as being necessary to protect public health and safety; and
 - 3. Dye testing, with verbal notification to the enforcement authority prior to the time of the test.
- c. *Exempt person or discharge.* This chapter shall not apply to an exempt person or discharge, except that the enforcement authority may request from exempt persons and persons with exempt discharges copies of permits, notices of intent, licenses and orders from the EPA or DEP that authorize the discharge(s).

(Ord. of 4-25-2005, § 1)

Sec. 20-7. Suspension of access to the municipality's small MS4.

The enforcement authority may, without prior notice, physically suspend discharge access to the storm drainage system to a person when such suspension is necessary to stop an actual or threatened non-stormwater discharge to the storm drainage system which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the storm drainage system, or which may cause the municipality 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-stormwater discharges to the storm drainage system. If the person fails to comply with a suspension order issued in an emergency, the enforcement authority may take such steps as deemed necessary to prevent or minimize damage to the storm drainage 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-stormwater discharge to the storm drainage system only with the consent of the premises' owner, occupant or agent.

(Ord. of 4-25-2005, § 1)

Sec. 20-8. Monitoring of discharges.

In order to determine compliance with this chapter, the enforcement authority may enter upon premises subject to this chapter at reasonable hours with the consent of the premises' owner, occupant or agent for the following reasons: 1) to inspect the premises and connections thereon to the storm drainage system; and 2) to conduct monitoring, sampling and testing of the discharge to the storm drainage system.

(Ord. of 4-25-2005, § 1)

Sec. 20-9. 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 chapter. Whenever the enforcement authority believes that a person has violated this chapter, the enforcement authority may enforce this chapter in accordance with 30-A M.R.S.A. § 4452.

- a. *Notice of violation.* Whenever the enforcement authority believes that a person has violated this chapter, the enforcement authority may order compliance with this chapter 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-stormwater discharges to the storm drainage system, including, but not limited to, disconnection of the premises from the MS4;
 2. The cessation of discharges, practices, or operations in violation of this chapter;
 3. At the person's expense, the abatement or remediation (in accordance with best management practices in DEP rules and regulations) of non-stormwater discharges to the storm drainage system and the restoration of any affected property; and/or
 4. The payment of fines, of the municipality's remediation costs and of the municipality's reasonable administrative costs and attorneys' fees and costs.
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 chapter shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the municipality'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 chapter 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 municipality for violation of federal and state environmental laws and regulations caused by or related to that person's violation of this chapter; this responsibility shall be in addition to any 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 chapter for the purposes of eliminating violations of this chapter 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 enforcement authority to the board of sewer appeals in accordance with the provision of Ch. II-18, Sec. 18-93 of Falmouth's Code of Ordinances.
- 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 forty-five (45) days of a decision of the board of appeals affirming the enforcement authority's decision, then the enforcement authority may recommend to the municipal officers that the

municipality's attorney 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 herein are minimum standards; therefore this chapter does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants into waters of the United States caused by said person. This chapter shall not create liability on the part of the municipality, or any officer, agent, or employee thereof for any damages that result from any person's reliance on this chapter or any administrative decision lawfully made hereunder.

(Ord. of 4-25-2005, § 1)

Sec. 20-10. Severability.

The provisions of this chapter are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this chapter or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, paragraphs, or application of this chapter.

(Ord. of 4-25-2005, § 1)