

2014

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ELECTED OFFICIALS COMPENSATION

Chapter 2

From the

CODE

of the

TOWN OF WINDHAM

COUNTY OF CUMBERLAND

STATE OF MAINE

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ELECTED OFFICIALS COMPENSATION

Chapter 2

Section	Description
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§ 2-1	Title
§ 2-2	Purpose
§ 2-3	Definitions
§ 2-4	Compensation
§ 2-5	Numbering System
§ 2-6	Effective Date

[HISTORY: Adopted by the Town Council of the Town of Windham 5-24-94
Amended 6-7-94 ,4-27-99 and 6-15-2010.]

§ 2-1. Title.

This Article shall be known and may be cited as the “Elected Officials Compensation Ordinance of the Town of Windham, Maine.

§ 2-2. Purpose.

The purpose of this chapter is to establish the compensation level for certain elected officials during their term of office.

§ 2-3. Definitions.

For the purpose of this chapter, the following words and terms, as used herein, shall have the meanings defined or explained as follows:

- A. Elected Official – Member of the Town Council.
- B. Compensation – Financial consideration provided to an elected official for service rendered to the Town.
- C. Meetings – Any public meeting attended by a quorum of members of either the Town Council.

§ 2-4. Compensation.

Elected officials shall be compensated \$35.00 per meeting; except that, for the period from and including July 1, 2010 to and including June 30, 2010, elected officials shall be compensated at the rate of one dollar (\$1.00) per meeting. Compensation shall be

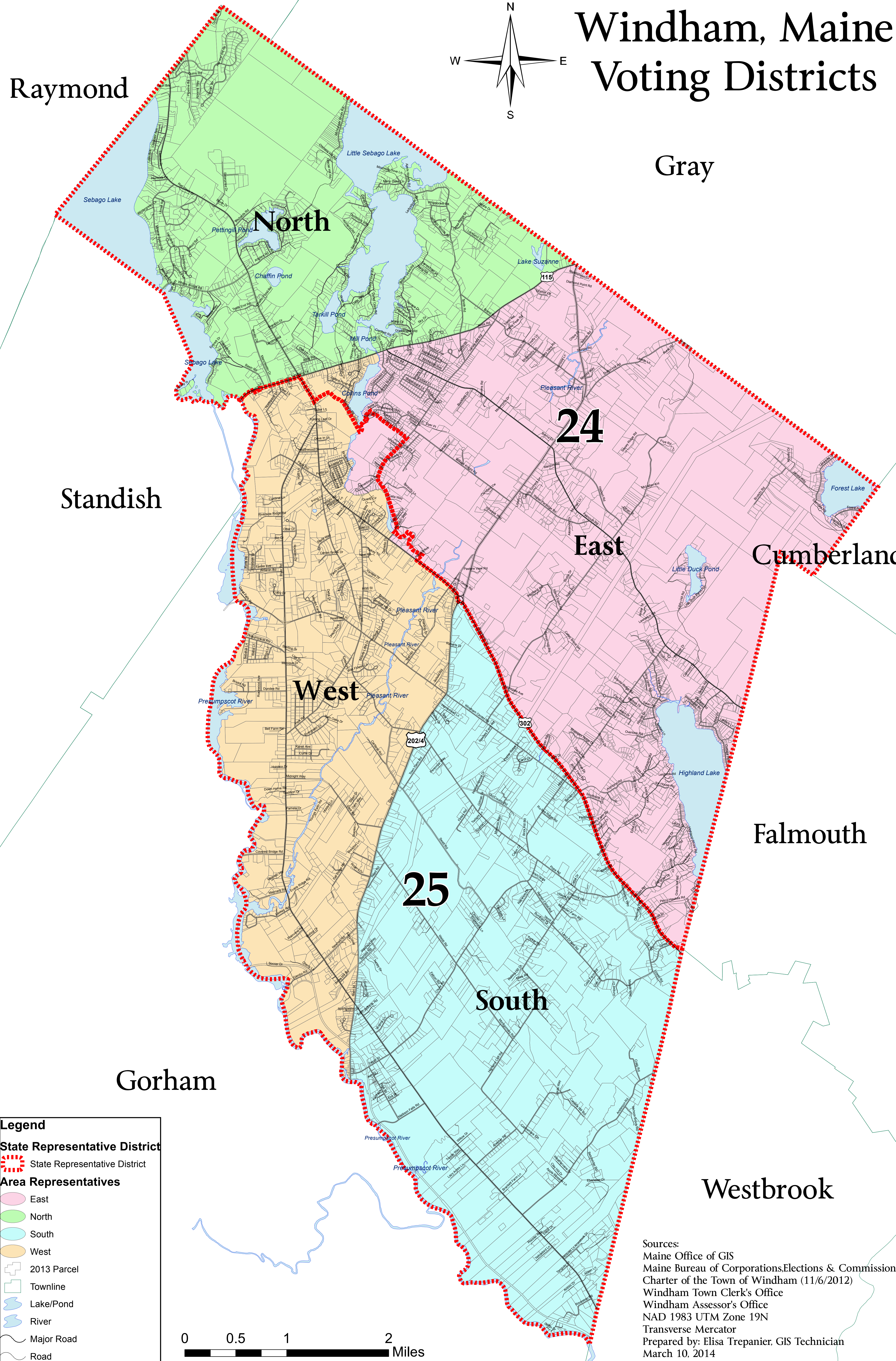
rendered every three months. [Change to \$35 per meeting and \$1,400 annually effective July 1, 1999.]

[Note: § 2-4 amended to remove annual compensation limit of \$1,400 effective July 20, 2000. Council article 00-155.]

[Note: § 2-4 amended to reduce compensation from \$35.00 to \$1.00 per meeting for period of July 1, 2010 to June 30, 2011 effective June 15, 2010 Council article 10-111.]

§ 2-5. Effective Date.

The provisions of this ordinance shall take effect as of July 1, 1994.



Sources:
Maine Office of GIS
Maine Bureau of Corporations, Elections & Commissions
Charter of the Town of Windham (11/6/2012)
Windham Town Clerk's Office
Windham Assessor's Office
NAD 1983 UTM Zone 19N
Transverse Mercator
Prepared by: Elisa Trepanier, GIS Technician
March 10, 2014

CEMETERY ORDINANCE

Chapter 15

From the

CODE

of the

TOWN OF WINDHAM

COUNTY OF CUMBERLAND

STATE OF MAINE

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CEMETERY ORDINANCE

Chapter 15

Section.....Description

§ 15-1	Title.
§ 15-2	Purpose.
§ 15-3	Hours of Operation.
§ 15-4	Restricted Activities.
§ 15-5	Cost of Burial Plots.
§ 15-6	Opening and Closing of Graves.
§ 15-7	Placement of Headstones, Lot Markers and Corner Markers.
§ 15-8	Cremains Garden Memorials.
§ 15-9	Adornment of Gravesites.
§ 15-10	Authority for Removal of Items Placed on Gravesites.
§ 15-11	Administration, Enforcement and Appeal.
§ 15-12	Effective Date.

§ 15-1. Title.

This Article shall be known and may be cited as the "Cemetery Ordinance of the Town of Windham, Maine."

§ 15-2. Purpose.

The purpose of this chapter is to set fees for cemetery burial plots; establish regulations and procedures to govern burials, placement of monuments and decorations; ensure the safety of employees; and provide a beautiful and dignified resting place for deceased loved ones.

§ 15-3. Hours of Operation.

All cemeteries operated by the Town of Windham shall be open to the public from dawn to dusk every day. Any person found in a cemetery between dusk and dawn may be charged with trespassing.

§ 15-4 Restricted Activities.

No dogs or other domestic animals shall be allowed in cemeteries. Picnics, horseplay, sports activities, or any gatherings not in keeping with the purpose and dignity of a cemetery are prohibited.

§ 15-5. Cost of Burial Plots.

The cost for one standard gravesite shall be \$200 for a resident of the Town of Windham and \$350 for a non-resident. The cost of one lot (four (4) adjoining gravesites) shall be \$800 for a resident of the Town of Windham and \$1,400 for a non-resident. The cost for one cremains site, which will accommodate two (2) cremains, shall be \$100 for a resident of the Town of Windham and \$175 for a non-resident. All proceeds from the sale of sites shall be deposited into the Cemetery Trust Account.

§ 15-6. Opening and Closing of Graves.

The Town of Windham does not provide excavation service for opening or closing graves, and will not bear any associated costs. Excavators and/or funeral directors must contact the Town of Windham's Building and Grounds Maintenance Supervisor at least 48 hours prior to any grave opening, interment or disinterment to locate and mark the correct burial space.

Following an interment or disinterment, excavators shall be responsible for restoring and leveling the gravesite. No sites shall be mounded, except where consistent with existing practice. Excavators shall remove all excess material from the site, repair damage to any other plots, and shall repair any settling of the site for one year following any excavation, grave opening or closing.

§ 15-7. Placement of Headstones, Lot Markers and Corner Markers.

The location of headstones, lot markers and corner markers shall be approved by the Town's Building and Grounds Maintenance Supervisor prior to placement. The supervisor shall be contacted at least 48 hours prior to placement of headstones, lot markers or corner markers.

§ 15-8. Cremains Garden Memorials.

Above ground memorials are prohibited in the Arlington Cemetery Cremains Garden. Markers must be installed flush to the ground and shall be no larger than 12" x 30". No more than two markers shall be placed on a single lot. All other planting and decoration restrictions apply to this section.

§ 15-9. Adornment of Gravesites.

In order to ensure the safety of the Town's grounds crew, artificial flowers must be placed in containers. Glass containers are prohibited.

The Town reserves the right to remove trees or shrubs planted on a gravesite which become dangerous, or detrimental to the adjacent grounds because of encroachment of

roots or branches. Such trees or shrubs may be removed only after reasonable attempts have been made to contact the lot owner or other responsible party.

No hedges, fencing, walls, curbing, railings, or similar structures or enclosures shall be erected around gravesites following adoption of this ordinance. Existing structures or enclosures may be maintained, but not expanded.

All winter decorations shall be removed prior to mowing season.

§ 15-10. Authority for Removal of Items Placed On Gravesites.

The Town reserves the right to trim or remove any items which are contrary to this ordinance, or which have become unsightly and no longer contribute to the beauty and dignity of the cemetery. The Town is not responsible for any items removed.

§ 15-11. Administration, Enforcement and Appeal.

This Ordinance shall be administered and enforced by the Town Manager or his/her designee.

Appeal of decisions made by the Town Manager's designee under the authority granted by this ordinance may be made in writing to the Town Manager. Appeal of decisions made by the Town Manager under the authority granted by this ordinance may be made in writing to the Town Council. The Town Council or Town Manager (whichever is appropriate) shall schedule a hearing as soon as possible and render a written decision on the appeal within fifteen (15) days.

§ 15-12. Effective Date.

The provisions of this ordinance shall take effect as of January 14, 2000.

State Law

Took effect August 11, 2000

LD 873 -An Act to Clarify Municipal Responsibility for the Maintenance of Veterans Gravesites

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 13 MRSA §1101, as amended by PL 1977 c. 255, § 1, is further amended to read:

§1101 Maintenance and repairs: municipality

In any ancient burying ground, as referenced in Title 30A, section 5723 or public burying ground in which any Revolutionary soldiers or sailors or veteran of the Armed Forces of the United States of America who served in any war is buried, the municipality in which said burying ground is located shall keep in good condition and repair all graves, headstones, monuments or markers designating the burial place of said Revolutionary soldiers or sailors or soldiers or sailors who served in the United States Army, Navy or Marine Corps in any war and shall keep the grass suitably cut and trimmed on those graves from May 1st to September 30th of each year.

§1101-A Definition

As used in this article, unless the context otherwise indicated, the following term has the following meaning:

1. Ancient burying ground. "Ancient burying ground" means a private cemetery established before 1880.

§1101-B Ancient burying grounds

1. Access to ancient burying grounds on privately owned land. The owner of a ancient burying ground shall provide municipalities access necessary to perform the duties referenced in section 1101 and in Title 30A, section 2901. Any unreasonable denial to provide municipalities access shall result in the owner being held responsible for any fines, court costs and attorney's fees incurred by municipalities in legally obtaining access or for failing to meet the requirements of section 1101.

2. Maintenance by landowner. A person who owns a parcel of land which contains an ancient burying ground and chooses to deny access to the municipality may assume the duties as described in section 1101 and Title 30A, section 2901. Maintenance of a ancient burying ground by the owner exempts the municipality from performing the duties referenced in section 1101.

§1101-C Notice of responsibility

When a municipality fails without good reason to maintain the good condition and repair of any grave, headstone, monument or marker referenced in section 1101 or fails to keep the grass suitably cut and trimmed on any such grave and at least one of the municipal officers has had 14

POLICE DEPARTMENT

Chapter 30

ARTICLE I

Special Police

Section	Description
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- | | |
|--------|--|
| § 30-1 | Appointment of officers. |
| § 30-2 | Powers and duties. |
| § 30-3 | Removal, suspension and appeal procedure |

ARTICLE II

General Provisions

- | | |
|---------|---|
| § 30-4 | Creation; appointment. |
| § 30-5 | Chief of police. |
| § 30-6 | Powers and duties. |
| § 30-7 | Chief of Police to promulgate rules and regulations |
| § 30-8 | Suspension |
| § 30-9 | Removal procedure. |
| § 30-10 | Suspension or removal of Chief |
| § 30-11 | Appeals |

[HISTORY: Adopted by the Town Council of the Town of Windham; Art. I, 4-22-1975; Art. II, 6-10-1975 Amendments noted where applicable.]

ARTICLE I

Special Police

[Adopted 4-22-1975]

§ 30-1. Appointment of officers.

Special police officers shall be appointed by the Town Manager to serve at will, but such appointment shall not exceed one (1) year.

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[illegible]

Journal of Management Education 30(6)p. 789-804

• *Journal of the American Academy of Child and Adolescent Psychiatry*, 40(12):1539-1546, 2001. doi:10.1097/00004583-200112000-00011

§ 30-2. Powers and duties.

Special police officers shall have the authority to aid and assist police officers but shall have none of the powers of police officers, unless such power has been specifically authorized in their appointment, and shall not wear, display or carry a firearm.

§ 30-3. Removal, suspension and appeal procedure.

The procedure for removal, suspension or appeal shall be the same as that which applies to regular police officers

Article II
General Provisions
[Adopted 6-10-1975]

§ 30-4 Creation; appointment.

- A. There is hereby created a Police Department for the Town of Windham, which shall consist of a Chief of Police and such other members as may be appointed by the Town Manager
- B All members, including the Chief, shall be appointed for not more than one (1) year

§ 30-5. Chief of Police.

- A. The Chief of the Police Department shall be appointed by the Town Manager, subject to confirmation by the Town Council
- B The Chief of Police shall be the head of the Department and have supervision over all officers and members thereof
- C The Chief shall be responsible for the performance by the Police Department of its functions subject to the direction and approval of the Town Manager. All persons who are members of the Police Department shall serve subject to the orders of the Chief of Police. The Chief shall maintain such records and make such reports concerning the activities of the Department as may be required, either by statute or by the Town Manager.

§ 30-6 Powers and duties.

Police officers shall have such powers and duties which either are presently or may hereafter be assigned to them by statute or ordinance. It shall be the duty of members of the Department to enforce the ordinances of the town and the laws of the state and the nation

1957年10月10日

1. 10月10日，星期日。上午，在“五一”劳动节纪念会上，
讲了话。下午，在“五一”劳动节纪念会上，讲了话。
2. 10月11日，星期一。上午，在“五一”劳动节纪念会上，
讲了话。下午，在“五一”劳动节纪念会上，讲了话。

1957年10月11日

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2. 10月12日，星期二。上午，在“五一”劳动节纪念会上，
讲了话。下午，在“五一”劳动节纪念会上，讲了话。

1957年10月12日

1. 10月12日，星期二。上午，在“五一”劳动节纪念会上，
讲了话。下午，在“五一”劳动节纪念会上，讲了话。

2. 10月13日，星期三。上午，在“五一”劳动节纪念会上，
讲了话。下午，在“五一”劳动节纪念会上，讲了话。

3. 10月14日，星期四。上午，在“五一”劳动节纪念会上，
讲了话。下午，在“五一”劳动节纪念会上，讲了话。
4. 10月15日，星期五。上午，在“五一”劳动节纪念会上，
讲了话。下午，在“五一”劳动节纪念会上，讲了话。
5. 10月16日，星期六。上午，在“五一”劳动节纪念会上，
讲了话。下午，在“五一”劳动节纪念会上，讲了话。

1957年10月16日

1. 10月16日，星期六。上午，在“五一”劳动节纪念会上，
讲了话。下午，在“五一”劳动节纪念会上，讲了话。

1957年10月17日

§ 30-7 Chief of Police to promulgate rules and regulations.

The Chief of the Police Department may make or prescribe such rules and regulations as he shall deem advisable. Such rules and regulations shall be binding on members of the Department when they are approved by the Town Manager

§ 30-8 Suspension.

- A The Chief may suspend any member of the Police Department, without pay, for disciplinary reasons for a period of not more than fifteen (15) consecutive days on account of violation of Department rules, inefficiency, incompetence, misconduct, negligence, insubordination disloyalty, conduct unbecoming a police officer or other sufficient cause.
- B. Notice of such suspension containing written reasons therefor shall be delivered to the individual suspended, and a copy thereof shall be filed with the Town Manager
- C Any suspension shall be appealed to the Town Manager within two (2) days after delivery of the notice of the suspension as provided herein
- D Any appeal from a suspension shall be filed with the Town Manager, and the Town Manager shall schedule a hearing on the appeal within a reasonable time after its receipt. After the hearing, the Town Manager may sustain the suspension reduce it or order reinstatement
- E. The suspension shall remain in effect pending the hearing by the Town Manager provided herein.

§ 30-9 Removal procedure.

- A The Town Manager shall have the power to remove members of the Police Department, except the Chief, for cause, after notice and hearing.
- B Pending a hearing before the Town Manager for the removal of any member of the Department, except the Chief, the Town Manager may suspend such member without pay
- C. The suspension provided herein shall not be effective until the member of the Department to be suspended has had notice describing the charges against him and establishing a time and place for a hearing on said charges delivered to him
- D. After the hearing, the Town Manager may order the removal of such member, suspend him or provide for his reinstatement.

[illegible]

1. *Phragmites australis* (Cav.) Trin. ex Steud.

• *Staphylococcus aureus* (Staph aureus)

[illegible][illegible]

§ 30-10 Suspension or removal of Chief.

- A. The Chief may be suspended by the Town Manager in the same manner and for the same reasons that he may suspend other members of his Department, except that any appeal of such suspension is directed to the Town Council.

§ 30-11 Appeals.

Appeal of any decision of either the Town Manager or Town Council is to the Superior Court, pursuant to the provisions of Rule 80B of the Maine Rules of Civil Procedure.

FIRE/RESCUE DEPARTMENT ORDINANCE

Chapter 31

From the

CODE

of the

TOWN OF WINDHAM

COUNTY OF CUMBERLAND

STATE OF MAINE

FIRE/RESCUE DEPARTMENT ORDINANCE

(Effective upon adoption by Town Council on 1/22/91)

Chapter 31

ARTICLE I

Section . . . 31-1 TITLE

This ordinance shall be known as the Town of Windham Fire/Rescue Department Ordinance.

§ 31-2 PURPOSE

The purpose of this ordinance is to establish, in the manner provided by Maine Statutes, a municipal fire/rescue department and to define the powers and duties of the Fire/Rescue Chief and department members. The further purpose of this ordinance is to provide the maximum legal protection available to the Fire/Rescue Officers, municipal firefighters and rescue personnel.

§ 31-3 . . . AUTHORITY

This ordinance is enacted pursuant to MRSA Title 30-A, Sections 2001-2004 (general provisions), 3001-3007 (ordinances) and 3151-3157 (municipal fire protection).

§ 31-4 . . . DEFINITIONS.

. A MUNICIPAL FIRE/RESCUE DEPARTMENT

A municipal fire/rescue department shall mean an organized unit established to provide fire suppression, fire prevention and emergency medical services pursuant to this ordinance.

. B. FIRE/RESCUE CHIEF

Fire/Rescue Chief shall mean the administrative head of the municipal fire/rescue department.

. C OFFICERS

Officers shall mean the Fire/Rescue Chief, Deputy Chiefs, Company Captains, and Lieutenants.

Application of the Scientific Method

Introduction

The scientific method is a systematic approach to investigating phenomena and acquiring new knowledge.

It involves making observations, formulating hypotheses, conducting experiments, and analyzing the results.

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..... D MUNICIPAL FIREFIGHTERS

A municipal firefighter shall mean an active member, whether full-time, part-time or on call, of a municipal fire/rescue department, who aids in the extinguishment of fires and/or an individual who receives compensation from the municipality for aiding in the extinguishment of fires and is at least 18 years of age

..... E. MUNICIPAL RESCUE PERSONNEL

Municipal rescue personnel shall mean an active member, whether full-time or on call, of a municipal rescue company, who aids in providing first aid, emergency treatment and rescue assistance and is qualified to render such aid under current Department of Human Services regulations governing rescue and ambulance personnel and/or an individual who receives compensation from the municipality for said services and is at least 18 years of age.

..... F JUNIOR MEMBERS

Junior Members shall mean an individual who is an active member of the municipal fire/rescue department between 16 and 18 years of age whether part-time or on call

ARTICLE II
MUNICIPAL FIRE/RESCUE DEPARTMENT

§ 31-5. ESTABLISHMENT

There shall be a municipal fire/rescue department which is hereby established by this ordinance. The Municipal Fire/Rescue Department shall consist of the following companies:

- The South Windham Fire Company (District 1)
- The North Windham Fire Company (District 2)
- The East Windham Fire Company (District 3)
- The Windham Center Fire Company (District 4)
- The Windham Rescue Company

As a whole, the municipal fire/rescue department shall be called the Windham Fire/Rescue Department

§ 31-6. DUTIES

The municipal fire/rescue department shall provide fire suppression, fire prevention and emergency medical services within the Town of Windham and elsewhere as provided by the Fire/Rescue Chief and Town Council.

§ 31-7. FIRE/RESCUE DUTIES

A APPOINTMENT

The head of the Windham Fire/Rescue Department shall be the Fire/Rescue Chief, who shall be selected by the Town Manager subject to the approval of the Town Council. The Fire/Rescue Chief shall be subject to the supervision of the Town Manager consistent with policies established by the Town Council.

B TERM, COMPENSATION

The appointment of the Fire/Rescue Chief shall be for an indefinite period. The Fire/Rescue Chief shall serve until removed by the Town Manager, with the consent of the Town Council, or by resignation or retirement. The compensation of the Fire/Rescue Chief shall be determined by the Town Council.

C. POWERS AND DUTIES

(a) The fire/Rescue Chief shall have the powers and duties established by MRSA Title 30-A, Section 3153, as it may be amended.

(b) The Fire/Rescue Chief shall be the administrative head of the fire/rescue department responsible for the supervision of all matters relating to the fire suppression, fire prevention and emergency medical services in the Town and shall promulgate, and from time to time amend, rules and regulations for the guidance, government, and conduct of the Officers and members of the fire/Rescue department.

(c) The Fire/Rescue Chief shall appoint Deputy Chiefs, Company Captains, and Lieutenants.

(d) The Fire Rescue Chief shall prepare and submit a personnel policy manual for departmental operations to the Town Manager for his or her approval.

(e) The Fire/Rescue Chief shall have the care and control of all vehicles and equipment assigned to the fire/rescue department.

(f) The Fire/Rescue Chief shall provide certain medical and transportation services through the Windham Rescue Company and shall work with the Deputy Chief-Emergency Medical Services to establish rules and regulations concerning activities of the Windham Rescue Company.

(g) The Fire/Rescue Chief shall submit an annual written report on the activities of the fire/rescue department and shall discharge such other duties as may be required by the Town Manager.

§31-8 DUTIES OF PERSONNEL

A MUNICIPAL FIREFIGHTERS

Municipal Firefighters shall have the duties and otherwise be controlled by the provisions of MRSA Title 30-A, Section 3154, as it may be amended.

B MUNICIPAL RESCUE PERSONNEL

Municipal rescue personnel shall provide emergency medical treatment and rescue assistance to persons in need of such assistance with the Town of Windham and elsewhere as provided by mutual aid or other contractual agreement approved by the Town Council. Such treatment and assistance shall be provided in accordance with State statutes, as they may be amended from time to time, and Emergency Medical Services protocol, as amended from time to time by the State of Maine Emergency Medical Services.

§31-9 PRIVILEGES, IMMUNITIES

Members of the municipal fire/rescue department shall enjoy the privileges and immunities provided by MRSA Title 30-A, Section 3155 and Title 14, Sections 8101-8118, as they may be amended.

ARTICLE III

SEVERABILITY, EFFECTIVE DATE

§31-10 SEVERABILITY

The invalidity of any portion of this ordinance shall not invalidate any other part thereof.

§31-11 EFFECTIVE DATE

This ordinance shall be effective upon its adoption by the Town Council.

Math 100, Lecture 10

Math 100, Lecture 10

Math 100, Lecture 10

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ALARM SYSTEMS

Chapter 53

Section	Description
§ 53-1.	Purpose.
§ 53-2	Definitions.
§ 53-3.	Fees for false alarms.
§ 53-4	Grace period for new systems.

[HISTORY: Adopted by the Town Council of the Town of Windham 3-19-1982 Amendments noted where applicable.]

§ 53-1. Purpose.

The purpose of this chapter is to encourage a reduction in the frequency of false alarms and to establish a service fee to compensate for the inappropriate use of municipal resources in response to false alarms

§ 53-2. Definitions.

For the purpose of this chapter, the following words and terms as used herein shall have the meanings defined or explained as follows:

ALARM SYSTEM - A system, including any mechanism, equipment or device designed to automatically transmit a signal, message or warning from private premises, including telephonic alarm systems designed to operate automatically through the use of public telephone facilities, to the Town of Windham Public Safety Dispatch Office or monitored by other private or public entity which, in turn, calls Windham Public Safety Dispatch.

FALSE ALARM - An alarm caused by malfunctioning of an alarm system, employee or resident error, inappropriate alarm equipment installation improperly monitored equipment or inappropriate use of the alarm, including but not limited to the use of a robbery alarm for shoplifting or other lesser offense.

§ 53-3. Fees for false alarms.

Any owner of an alarm system whose system causes the transmittal of a false alarm more than three (3) times per calendar year shall pay a fee of twenty-five dollars (\$25) for each false alarm in excess of three (3) such alarms per year. Alarms generated as a result of circumstances beyond the alarm owner's control (e.g., power outage, weather conditions, telephone transmission problems, motor vehicle accident, etc.) shall not result in a service fee, nor shall they be counted in the three (3) responses allowed per calendar year. The responding unit (police or fire) shall make the determination of the cause of the alarm as to whether it shall be considered a chargeable false alarm.

§ 53-4 Grace period for new systems.

For every new alarm system, the town shall allow a break-in period of two (2) months during which no service fees shall be levied, and the false alarms registered during this period shall not be counted toward the three (3) responses allowed under § 53-3 of this chapter.

AMUSEMENTS

Chapter 56

ARTICLE I Special Permits

Section	Description
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§56-1	Title
§56-2	Purpose
§56-3	Definitions
§56-4	Special Amusement Permit
§56-5	Rules and Regulations
§56-6	Penalty
§56-7	Severability

ARTICLE II Coin-Operated Devices

Section	Description
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§56-8	Definitions
§56-9	License required, application, issuance, fee
§56-10	Adult attendant
§56-11	Violations and penalties

[HISTORY: Adopted by the Town of Windham: Art I, 5-27-1978, amended in its entirety 10-27-1981, Art II, 1-31-1981. Sections 56-2 and 56-4D amended at time of adoption of Code; see Ch 1, General Provisions, Art I. Chapter 56 was repealed in its entirety and replaced as follows: 2-16-1993. Section 56 5 amended to include subsection (C) (2) 5-11-2010.]

§ 56-1 TITLE.

This Ordinance shall be known and may be cited as the Amusement Ordinance of the Town of Windham, Maine.

§ 56-2 PURPOSE.

The purpose of this Ordinance is to control the issuance of special permits as required by 28-A, MRSA § 1054 as amended from time to time, for music, dancing or entertainment in facilities licensed by the State of Maine to sell liquor and in Bottle Clubs.

§ 56-3 DEFINITIONS.**A. DANCER:**

For the purposes of this Ordinance, “dancer” means a person, male and female, other than a patron, under the licensee’s control and dancing on the licensee’s premises to entertain patrons.

B. ENTERTAINMENT:

For the purposes of this Ordinance, “entertainment” shall include any amusement, performance, exhibition or diversion for patrons or customers of the licensed premises whether provided by professional entertainers or by full-time or part-time employees of the licensed premises whose incidental duties include activities with an entertainment value.

C. EXOTIC DANCING:

For the purposes of this Ordinance, “Exotic Dancing” means the appearance of a person or persons, under the licensee’s control, other than a patron, and 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 there, or when any dance 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 prohibit, without limitation, clear, see-through or clothing which is otherwise non-opaque.

D. LICENSEE:

For the purposes of this Ordinance, “licensee” shall include any person, individual, partnership, firm, association, corporation, or other legal entity to whom a license of any kind is issued by the Maine State Liquor Commission or to whom a Bottle Club license has been issued by the Windham Town Council.

E. PREMISES:

For the purposes of this Ordinance, “premises” means all parts of the contiguous real estate occupied by a licensee over which the licensee has direct or indirect control or interest, which the licensee uses in the operation of the licensed business and which have been approved by the Maine State Liquor Commission and/or the Town of Windham as proper places for the exercise of the license privilege.

§ 56-4 SPECIAL AMUSEMENT PERMIT.**A. APPLICATION:**

1. No licensee for the sale of liquor to be consumed on his/her premises, or a Bottle Club licensee, shall permit on the 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 municipality in which the premises are situated a special amusement permit.

2. Applications for all special amusement permits shall be made in writing to the town council and shall state the name of the applicant; his/her business address, the nature of the business; the location to be used; whether the applicant has ever had a license to conduct the business therein described either denied or revoked and, if so, the applicant, shall describe specifically those circumstances; and any additional information as may be required by the town council prior to the issues of said permit, including but not limited to a copy of the applicant's current liquor license.
3. No permit shall be issued for anything or act, or premises, of the premise and building to be used do not fully comply with all ordinances, codes and regulations of the said Town.
4. The fee or fees for a special amusement permit shall be paid when application is made for said permit. If an application is withdrawn or denied, there shall be no refund except due to extraordinary circumstances on approval of Town Manager.
5. A licensee as defined in the Maine Revised Statutes or in the town's Food and Beverage Business Ordinance, Article I – Bottle Clubs, who has been issued a special amusement permit may charge admission in designated areas approved in said permit.
6. The application shall describe in detail the type of amusement or entertainment which the applicant intends to offer, the day or days such amusement or entertainment will be presented and the hours during which such proposed activities will take place. Any licenses granted will be limited as to the type of amusements, the day or days of operation set forth in the application, unless the municipal officers direct otherwise.

B. HEARING:

1. The Town Council shall, prior to granting a permit and after reasonable notice to the municipality and the applicant, yet within thirty (30) days of receipt of a completed application, hold a public hearing at which hearing the testimony of the applicant and that of any interested members of the public shall be taken.

2. The Town Council shall grant a permit unless they find that issuance of the permit would be detrimental to the public health, safety or welfare, or would violate municipal ordinances, codes and/or regulations. The permit may be granted subject to such conditions and restrictions as the Council may deem necessary
3. A permit shall be valid only for the license year of the applicant's existing liquor license.

C. DECISION:

Within forty-five (45) days of the Town Clerk's receipt of the permit application, the Town Council shall give the applicant written notice of its decision.

1. If the Town Council denies a licensee a permit, it shall provide the licensee with the reasons for the denial in writing.
2. The licensee may not reapply for a permit within thirty (30) days after denial of an application for a permit.

D. INSPECTIONS:

1. 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 provided for or required by ordinance or State law, or are reasonably necessary to secure compliance with any municipal 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 said Town authorized to make the inspection at any reasonable time that admission is requested.
2. In addition to any other penalty which may be provided, the Town council may revoke the special amusement permit of any licensee in the municipality who refuses to permit any such officer, official or employee which 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.

E. 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 Ordinance on the ground that the music, dancing, or

entertainment so permitted constitutes a detriment to the public health, safety, or welfare or violates any municipal ordinances or regulations.

F. APPEALS:

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 Superior Court.

§ 56.5 RULES AND REGULATIONS.

A. EXOTIC DANCING:

1. No special amusement permit shall be issued to conduct the activity of exotic dancing on the applicant's premises.
2. It shall be unlawful and a violation of this Ordinance for a licensee holding a special amusement permit hereunder to permit exotic dancing on the premises.

B. REGULATIONS FOR DANCING:

The following regulations apply to any and all entertainment for which a special amusement permit is sought or issued where such entertainment includes a "dancer" or "dancers" as defined in this Ordinance.

1. No dancer shall dance in the premises except on a raised platform intended for that purpose which is raised at least two (2) feet from the floor.
2. No dancer shall dance closer than ten (10) feet to any patron.
3. There shall be no fondling, mingling or caressing on the premises 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.
5. The licensee shall provide on the premises a separate dressing room and toilet facilities for use by dancers only.
6. Dancers on the premises who remove any outer garments shall not toss or throw those outer garments at or in the direction of patrons.

7. The licensee shall, at his/her own expense, post a licensed security guard or an individual authorized to act as a law enforcement officer (whether full-time or part-time and whether on-duty or off-duty) at each entrance and exit to the premises during each performance by dancers on the premises and for one hour after each such performance.
8. No one under twenty-one (21) years of age shall be permitted on the premises or portion of the premises where a performance by dancers is conducted during any such performance.
9. Any premises upon which entertainment including a dancer or dancers is proposed to be conducted shall be located at least five hundred (500) feet from any church; school; park; other facility holding a special amusement license under this Ordinance and which provides "dancers" as defined in this Ordinance; or any area for which residential uses are either a permitted use or a conditional use under the Zoning Ordinance of the Town of Windham (in each of the above instances, the distance shall be measured from property line to property line).
10. An applicant for a special amusement permit for entertainment including a dancer or dancers must demonstrate that at the time of permit application and during the duration of the permit, the applicant will have available during the hours that such entertainment is provided one (1) parking space for each three (3) persons on the premises is capable of accommodating plus two (2) parking spaces for each three (3) employees, including the dancer or dancers who are on the premises to provide such entertainment.
11. An applicant for a special amusement permit for entertainment including a dancer or dancers shall pay an application fee of Eight Hundred Dollars (\$800) to defray the administrative costs of such a permit.
12. There shall be no graphic evidence on the exterior of any facility licensed under this Ordinance of the dancers either live or simulated, requiring the licensee, if necessary, to black out windows or install curtains to prevent viewing of this dancers from the outside; provided, nothing in the paragraph shall prohibit the establishment from advertising by words the nature of the entertainment.

C. REGULATIONS GENERALLY APPLICABLE:

The following regulations apply to any and all music, dancing and entertainment for which a special amusement permit is sought or issued.

1. All music, dancing and/or entertainment subject to regulation under this Ordinance, on the premises, shall end no later than 12:00 midnight.
2.
 - a. The maximum permissible sound pressure level produced by any music, dancing and/or entertainment on the premises shall not exceed 50dB, measured four (4) feet above ground at the property boundary; this measurement shall be made by a meter set on the A-weighted response scale, slow response and the meter shall meet the "American Standard Specification for General Purpose Sound Level Meters."
 - b. For all establishments located within five hundred (500) feet of any church, school, park, other facility holding a special amusement license under this Ordinance and which provides music, dancing and/or entertainment as defined in this ordinance, or any area for which residential uses are either a permitted use or a conditional use under the Land use Ordinance of the Town of Windham, the Town may require a sound level survey by a certified sound engineer to determine the maximum sound level to be permitted in the live entertainment performance venue to ensure compliance with the required 50 dBA limit at the property line. Such survey shall document the conditions under which the survey is taken, to include the position of loud speakers, doors, windows, or other features of the building or space within which entertainment is to be performed. The survey shall include measurements at the nearest point of compliance to determine the maximum permissible sound level allowed within the live entertainment performance venue.
 - c. Based on the performance simulation and sound survey provided under subparagraph (b) the Town may require the installation, maintenance, and operation of an ANSI Type II data logging noise meter on the premises located within the live entertainment performance venue for the purpose of monitoring sound levels as experienced by the audience at all times while live entertainment is being conducted. Such meter shall be configured to take readings consistent with Section 56/5 (C)(2) of the Amusement Ordinance no less than once every sixty (60) seconds, shall record and maintain sound level data for a period of not less than seven (7) days, and shall check sound levels during each performance to ensure that the 50 dBA limit is not exceeded at the property line. Interior sound levels shall not exceed the level identified as part of the performance simulation and sound survey during any performance and shall be lowered if it is determined that the 50 dBA limit is being exceeded at the property line at the established

interior sound level. The establishment shall permit access to the meter by the Town or its agents and shall display or permit the downloading of data from the meter to the Town. Failure to install, maintain, operate, provide access to, provide data from, and/or tamper with the meter and/or data in any way shall constitute a violation of the Amusement Ordinance

- d. The Town Council shall have the authority to impose additional conditions upon any license issued under this Ordinance to ensure compliance with the noise limits established by this section. Failure to comply with any such condition may result in the suspension or revocation of the special amusement license.
3. The music, dancing and/or entertainment on the premises shall comply with all applicable law.
4. Except for where a special amusement permit is sought for entertainment including a dancer or dancers, the application for a special amusement permit shall be One Hundred Dollars (\$100), plus Thirty-Five Dollars (\$35) to cover advertising costs.
5. Must demonstrate that at the time of permit application and during the duration of the permit, the applicant will have available during the hours that such entertainment is provided one (1) parking space for each three (3) persons the premises is capable of accommodating plus two (2) parking spaces for each three (3) employees.

D. TOWN COUNCIL AUTHORITY:

The Town Council is hereby authorized, after public notice and hearing, to establish additional 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. The 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 Ordinance.

§ 56.6 PENALTY.

Anyone found guilty of violating any provision of this Ordinance shall be subject to a fine or not less than Five Hundred Dollars (\$500) nor more than Twenty-Five Hundred Dollars (\$2500) in addition to such equitable relief as is necessary to insure compliance

with the terms of this Ordinance. Each day such violation continues shall be deemed to be a new offense.

§ 56.7 SEVERABILITY.

If any provision of this ordinance is held invalid by a court of competent jurisdiction, such ruling shall not affect the remaining provisions which shall remain in full force and effect.

ARTICLE II
Coin-Operated Devices
[Adopted 1/31/1981]

§ 56.8 DEFINITIONS.

As used in this Article, the following terms shall have the meanings indicated:

A. COIN-OPERATED AMUSEMENT DEVICE:

Any vending machine, video game, miniature pool and bowling machine, pinball machine, foose-ball or any other device, mechanical or otherwise, which, upon payment of a fee or insertion of a coin, disk or other insertion piece, whether or not also manipulated by the operation, may be used by the public generally as a game, amusement or entertainment, whether or not registering a score, and which does not dispense any form of payoff, prize or reward other than an additional free use of the device itself.

§ 56.9 LICENSE REQUIRED; APPLICATION; ISSUANCE; FEE.

A. LICENSE REQUIRED:

No person shall either operate or permit the operation of pinball machines or other coin-operated amusement devices for the purpose of deriving revenue therefrom on premises occupied by such person without first obtaining a license.

B. APPLICATION:

Any person desiring to operate or to permit the operation of a pinball machine or other coin-operated amusement device for the purpose of deriving revenue therefrom shall make application, in proper form, to the Town Clerk and pay the appropriate license fee.

C. ISSUANCE:

The issuance of such license shall be authorized by the Council. The Council may approve such license after receiving a recommendation from the chief officer of the Police Department. Such recommendation shall be in writing.

and shall briefly set forth the reasons for any recommendation or lack thereof.

D. FEE:

The fee for each such device shall be fifty dollars (\$50.00), except for the initial year when the fee will be pro-rated based on the number of months remaining in the calendar year. Said license must be displayed on premises where coin-operated amusement devices are located. Said license shall expire on December 31 of the year in which it is issued. Said license shall designate the number of machines licensed.

§ 56.10 ADULT ATTENDANT.

An adult attendant must be present on the premises any time the coin operated amusement devices are available for use by the public.

§ 56.11 VIOLATIONS AND PENALTIES.

Anyone found guilty of violating any provisions of this article shall be subject to a fine of twenty-five dollars (\$25.00). Each day such violation continues shall be deemed a new offense.

BRIDGES

Chapter 62

Section	Description
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§ 62-1.....	Title.
§ 62-2.....	Purpose.
§ 62-3.....	Jumping, diving and swimming prohibited.
§ 62-4.....	Violations and penalties.
§ 62-5.....	Enforcement.
§ 62-6.....	Schedule of bridges.

[HISTORY: Adopted by the Town Council of the Town of Windham at time of adoption of Code; see Ch. 1, General Provisions, Art. I. Amendments noted where applicable.]

§ 62-1. Title.

This chapter shall be known as and may be cited as the "Ordinance Prohibiting Jumping, Diving or Swimming From Several Bridges in the Town of Windham, Maine, Providing Penalties for Violation Thereof" and shall be referred to herein as "this chapter."

§ 62-2. Purpose.

The purpose of this chapter is to protect the health, safety and well-being of the citizens of Windham by prohibiting the jumping, diving or swimming from several bridges in the town where shallow water, hidden obstructions and/or boat and vehicle traffic may endanger the safety of persons diving, jumping or swimming from the bridges or the safety of motorists or boaters.

§ 62-3. Jumping, diving and swimming prohibited.

No person shall be permitted to jump, dive or swim from any of the bridges listed in §62-6 of this chapter.

§ 62-4 Violations and penalties.

Any person who violates any of the provisions of this chapter shall be guilty of a civil violation and, upon conviction, shall be fined not less than fifty dollars(\$50.) and not more than five hundred dollars (\$500.), with each incident being considered a separate violation.

§ 62-5 Enforcement.

This chapter shall be enforced by the Windham Police Department or its designee.

§ 62-6 Schedule of bridges.

- A. North Gorham Bridge, spanning a portion of the Presumpscot River on the North Gorham Road.
- B. Whites Bridge, spanning a portion of Sebago Lake on Whites Bridge Road.
- C. Gambo Bridge, spanning a portion of the Presumpscot River on the Gambo Road.
- D. Babbs Bridge, spanning a portion of the Presumpscot River on the Covered Bridge Road.
- E. Mallison Falls Bridge, spanning a portion of the Presumpscot River on Mallison Street.
- F. South Windham/Little Falls Bridge, spanning a portion of the Presumpscot River on Route 202.

BUILDING CONSTRUCTION

Chapter 66

From the

CODE

of the

TOWN OF WINDHAM

COUNTY OF CUMBERLAND

STATE OF MAINE

Adopted November 18, 2014

§ 66-1. Purpose

The Town of Windham enforces the Maine Uniform Building and Energy Code ("M.U.B.E.C."), as authorized by 10 M.R.S.A. § 9724 (1-A). The Code Enforcement Officer of the Town of Windham shall serve as the building official as defined in 25 M.R.S.A. § 2371 and shall be responsible for issuing building permits and certificates of occupancy. The Code Enforcement Officer shall be responsible for inspecting all permitted construction for compliance with all components of M.U.B.E.C.; as such components may be revised from time to time by the Technical Building Codes and Standards Board.

State law reference— Uniform code defined, 10 M.R.S.A. § 9721; enforcement of uniform code required, 10 M.R.S.A. § 9724; certain fire and building related codes and standards unaffected by uniform code, 10 M.R.S.A. § 9725.

§ 66-2. Permits

Required. Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit where required by municipal ordinance.

Work exempt from permit. Permits shall not be required for the following. Exemption from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction. Structures exempt from permits shall be located in compliance with zoning and floodplain regulations.

Building:

1. One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed 200 square feet (18.58 m²).
2. Fences not over 6 feet (1829 mm) high.
3. Retaining walls that are not over 4 feet (1219 mm) in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge.
4. Water tanks supported directly upon grade if the capacity does not exceed 5,000 gallons (18 927 L) and the ratio of height to diameter or width does not exceed 2 to 1.
5. Sidewalks and driveways.
6. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.
7. Prefabricated swimming pools that are less than 24 inches (610 mm) deep.
8. Swings and other playground equipment.
9. Window awnings supported by an exterior wall which do not project more than 54 inches (1372 mm) from the exterior wall and do not require additional support.

10. Decks not exceeding 200 square feet (18.58m²) in area, that are not more than 30 inches (762 mm) above grade at any point, are not attached to a dwelling and do not serve the exit door required by Section R311.4.
11. Rockeries as defined in Section 300 of the Town of Windham Land Use Ordinance.

Emergency repairs. Where equipment replacements and repairs must be performed in an emergency situation, the permit application shall be submitted within the next working business day to the building official.

Repairs. Application or notice to the building official is not required for ordinary repairs to structures, replacement of lamps or the connection of approved portable electrical equipment to approved permanently installed receptacles. Such repairs shall not include the cutting away of any wall, partition or portion thereof, the removal or cutting of any structural beam or load-bearing support, or the removal or change of any required means of egress, or rearrangement of parts of a structure affecting the egress requirements; nor shall ordinary repairs include addition to, alteration of, replacement or relocation of any water supply, sewer, drainage, drain leader, gas, soil, waste, vent or similar piping, electric wiring or mechanical or other work affecting public health or general safety.

Public service agencies. A permit shall not be required for the installation, alteration or repair of generation, transmission, distribution, metering or other related equipment that is under the ownership and control of public service agencies by established right.

§66-3 Violation, Penalties

Any person who violates a provision of this Ordinance or fails to comply with any of the requirements thereof, or who erects, constructs, alters or repairs a building or structure in violation of the approved construction documents or directive of the building official, or of a permit or certificate issued under the provisions of the Ordinance, shall be subject to penalties shall be penalized in accordance with 30-A M.R.S.A. Section 4452. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

§66-4 Plumbing

The plumbing inspector shall issue plumbing permits, inspect all plumbing work as required by law, and perform such other duties as are required by 30-A M.R.S.A. § 4221(3).

State law reference— Local plumbing inspectors, 30-A M.R.S.A. § 4221 et seq.; plumbing regulations and permit fees, 30-A M.R.S.A. § 4211

§66-5 Electrical Installations

All wires and equipment in the interior of all buildings which are intended for transmission of electricity and to be connected with an outside circuit shall be made and

at all times kept safe, and shall be placed, arranged, attached, changed and maintained by the person owning or using the wires and equipment, to the specifications of the city electrician. The wiring shall comply with the requirements of the National Electrical Code.

State law reference— Adoption of technical codes by reference, 30-A M.R.S.A. § 3003.

§ 66-6 Appeals (See Section 1100 of the Town of Windham Land Use Ordinance)

§ 66-7 Fees (As adopted by the Windham Town Council)

FEE SCHEDULE

PERMIT APPLICATION FEE	RESIDENTIAL		COMMERCIAL	
Finished Area Per Sq. Ft.	\$0.25	per sq. ft.	\$0.35	per sq. ft.
Unfinished Area Per Sq. Ft.	\$0.10	per sq. ft.	\$0.15	per sq. ft.
Demolition	\$30.00		\$30.00	
Swimming Pool	\$30.00		\$30.00	
Re-Inspection Fee	\$20.00		\$20.00	
Building without permit	\$50.00		\$50.00	

RENOVATIONS/ ALTERATIONS (Commercial and Residential)				
Up to \$500.00	\$30.00			
\$501 - \$1000.00	\$40.00			
\$1001 - \$5000.00	\$50.00			
\$5001.00 - \$10000.00	\$60.00			
\$10001.00 +	\$7.00	per thousand		

ELECTRICAL PERMIT FEE				
Application Fee	\$30.00			

MECHANICAL SYSTEMS				
Application Fee	\$25.00			
AC System – Portable (window mounted) AC Not Included	\$0.05	Per 1,000 BTU		
Furnace Only	\$1.00	Per 1,000 BTU		
Complete HVAC System	\$1.25	Per 1,000 BTU		

ROAD CONSTRUCTION FEES				
Application Fee	\$100.00			
New Roadway Up to 2 Lanes Wide	\$1.50	Per foot for 0 – 100 ft		
New Roadway Up to 2 Lanes Wide	\$0.75	Per foot for 101 – 300 ft		
New Roadway Up to 2 Lanes Wide	\$0.50	Per foot for 301 – 1,000 ft		
New Roadway Up to 2 Lanes Wide	\$0.25	Per foot for over 1,000 ft		

MISCELLANEOUS PERMITS				
Accessory Apartment Permit (does not include building permit fees)	\$100.00			
Change of Use Permit (does not include building permit fees)	\$50.00			
Use Permit/ Events				
----Permanent	\$300.00			
----Temporary	\$100.00			
Outdoor Sales				
----Major	\$300.00			
----Minor	\$100.00			
Gas Hook-Up	\$30.00			
Moving	\$30.00			
Shipping Container	\$0.15	per sq. ft.		
Flood Hazard Development, non-refundable application fee	\$50.00			
Annual Stormwater Certification	\$50.00			
Chimney Only	\$30.00			
Soil and Erosion Control	\$30.00			
Shoreland Zoning				
---- Minor	\$50.00			
---- Major	\$100.00			
Zoning Board of Appeals	\$400.00			

HOME OCCUPATION FEES (Plus applicable permit fees)				
Home Occupation 2	\$50.00			
Home Occupation 1	\$30.00			

SIGNS				
Banner	\$30.00			
Construction Sign	\$30.00			

Permanent Free Standing	\$30.00		
Permanent Building Sign	\$30.00		
Subdivision/Construction	\$30.00		
Temporary Sign	\$30.00		

EXTERNAL/ INTERNAL PLUMBING			
Septic Permit Surcharge	\$20.00		
Internal Plumbing Permit Surcharge	\$20.00		
Minimum Lot Size Waiver	\$50.00		
Septic Fields for Commercial Wash Bays	\$75.00		
Holding Tanks - Commercial	\$100.00		
Fee for work without permits	\$50.00		
Re-inspection Fee	\$20.00		

CABLE TELEVISION FRANCHISE

Chapter 71

From the

CODE

of the

TOWN OF WINDHAM

[Amended Through June 28, 1994]

COUNTY OF CUMBERLAND

STATE OF MAINE

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CABLE TELEVISION FRANCHISE

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CABLE TELEVISION FRANCHISE

Chapter 71

BE IT HEREBY ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF WINDHAM that Chapter 71 of the Town of Windham Code of Ordinances is amended [6/28/94] to read as follows:

Section.....Description

- § 71-1 Purpose.
- § 71-2 Definitions.
- § 71-3 Franchise Required.
- § 71-4 Franchise Contract.
- § 71-5 Public Hearing Required..
- § 71-6 Bond.
- § 71-7 Rate Regulation.
- § 71-8 Consumer Protection.
- § 71-9 Complaint Procedure.
- § 71-10. Cable Television Committee.

[HISTORY: Adopted by the Town Council of the Town of Windham at the time of adoption of Code; see Ch. 1, General Provisions, Art. 1. Amended 6/28/94.]

§ 71-1. Purpose.

The purpose of this chapter is to provide for Town regulation and use of the community antenna television system, including its construction, operation and maintenance in, along, upon, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated, and all extensions thereof and additions thereto in the Town of Windham, including poles, wires, bales, underground conduits, manholes, conductors and fixtures necessary for the maintenance and operation in the Town of Windham of the community antenna television system, to provide conditions accompanying the grant of franchise and to provide for the Town regulation of CATV operation, including regulation of the rates charged by CATV owners and operators.

§ 71-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

CABLE TELEVISION COMPANY – Any person, firm or corporation owning, controlling, operating, managing or leasing a CATV system within the Town of Windham, sometimes hereinafter referred to as the “company”.

CATV – 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 signal or 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.

FRANCHISE – The nonexclusive revocable rights granted pursuant to this chapter to construct, operate, maintain, and reconstruct a CATV network along the public ways within all or a specified area in the Town. Any such authorization, in whatever form granted, shall not mean or include any license or permit required for the privilege of transacting or carrying on a business within the Town as required by other ordinances and laws of the Town.

PERSON – An individual, partnership, association, organization, corporation or any lawful successor transferee of said individual, partnership, association, organization or corporation.

PUBLIC ACCESS – Use of dedicated access channels by the general public or noncommercial organizations, but not to the exclusion of a CATV franchisee.

TOWN – The Town of Windham, Maine, organized and existing under the laws in the State of Maine and the area within its territorial limits.

§ 71-3. Franchise Required.

No person, firm or corporation shall install, maintain or operate within the Town or any of its public streets or other public areas any equipment or facilities for the operation of a CATV system unless a franchise authorizing the use of said public streets or areas has first been obtained pursuant to the provisions of this chapter and unless said franchise is in full force and effect.

§ 71-4 Franchise Contract.

- A. The Windham Town Council may contract, on such terms, conditions and fees as are in the best interests of the municipality and its residents, with one (1) or more cable television companies for the operation of a CATV system throughout the Town, including the granting of a franchise or franchises for the operation thereof for a period not to exceed fifteen (15) years.
- B. An applicant for a franchise shall pay a nonrefundable filing fee to the Town of twenty-five dollars (\$25) to defray the cost of public notice and advertising 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 a general description of the applicant's proposed operation, a schedule of proposed charges, a statement detailing its business or corporate organization with a financial statement for the two (2) previous fiscal years, an estimated fifteen-year financial projection of its proposed system and its proposed annual Town franchise fee or the basis for the same and 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. Said franchise contract may be revoked by the Windham 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 Cumberland County Superior Court under Rule 80-B of the Maine Rules of Civil Procedure.

§ 71-5. Public Hearing Required.

Before authorizing the issuance of any such franchise contract or contracts, the Windham Town Council shall review the applicant's character, financial and technical qualifications and the adequacy and feasibility of its qualifications to operate a CATV system throughout the Town and shall conduct a public hearing thereon with at least seven (7) days advertised notice prior to said public hearing; with such public hearing to follow a public hearing conducted by the Cable Television Committee for the same purpose.

§ 71-6. Bond.

- A. Upon the execution of any such franchise contract, the cable television company shall file a surety company performance bond in the amount of one hundred thousand dollars (\$100,000), conditioned upon the faithful performance of said contract and full compliance with any laws, ordinances or regulations governing said franchise, and also evidence of such public liability insurance coverage as the Windham Town Council may require. Said performance bond shall be reduced to fifty thousand dollars (\$50,000) upon the completion of the installation of said system as per said contract.
- B. When an applicant is granted a franchise to provide CATV to an area which is substantially less than the territorial limits of the Town, the Town Council, after notice and hearing, may either reduce or waive the performance bond required by this section.

§ 71-7. Rate Regulation.

- A. To the extent that federal or state law or regulation may now, or as the same may hereafter be amended to, authorize the Town to regulate the rates for any particular CATV service tiers, service packages, equipment or any other services

provided by CATV franchisees, the Town shall have the right to exercise rate regulation to the full extent authorized by the law.

- B. Pursuant to the foregoing, the Town hereby exercises its rate regulation authority to the full extent authorized by the 1992 Cable Television Consumer Protection and Competition Act (47 U.S.C. Section 521 et seq.) and implementing regulations adopted by the Federal Communications Commission pursuant to such act (47 C.F.R. Part 76, Subpart N). Such rate regulation provisions of the Act and of the Federal Communications Commission regulations are hereby adopted by the Town and incorporated herein by reference. The Cable Television Committee is hereby authorized to enforce such rate regulation in conformity with the act and regulations in effect, and as they may be amended from time to time. Any rate determination proceeding of the Committee shall be a public proceeding as defined in the Freedom of Access Act (1 M.R.S.A. § 401 et seq.) and shall be subject to the requirements of such act, including without limitation, the public notice provisions.
- C. In accordance with the foregoing, prior to any rate determination of the Committee including, without limitation, approval of an unopposed existing or proposed rate, the Committee shall provide an opportunity for a public hearing at which public comment from interested parties will be taken in person and in writing. The conduct of such hearing shall be in accordance with the procedural rules for public comment applicable to the Town Council. At least one (1) public hearing shall be held within thirty (30) days of submission of the CATV franchisees' existing or proposed rates or, in the event of any extension of the thirty-day time period for the Committee's rate determination, at least one (1) opportunity for public hearing and comment shall be provided by the Committee prior to the Committee's rate determination.

§ 71-8. Consumer Protection.

- A. In accordance with 47 U.S.C. Section 521 et seq., and implementing regulations in Title 47 C.F.R. Part 76, Subpart H, the Town hereby adopts and incorporates by reference the customer service regulations enacted at 47 C.F.R. Section 76.309 as the minimum customer services standards. Nothing herein shall prevent or prohibit the enforcement of any standard in excess of the minimum which is contained in a franchise agreement, nor from establishing or enforcing any consumer protection law which is not specifically preempted by state or federal law, nor from establishing or enforcing any customer service requirements that exceed or address matters not addressed by these minimum standards.
- B. Violation of the consumer protection requirements may be enforced as provided in section 71-9 below and as provided in the franchise agreement. Such remedies shall not be exclusive, and nothing herein is intended, nor shall it be deemed, to waive or modify another right or remedy which any person or the Town may have in law or equality.

§ 71-9. Complaint Procedure.

- A. Complaints, disputes and disagreements, which are not resolved by grantee to the subscribers' satisfaction, may be filed with the Town Manager, provided such filing complies with the time limits prescribed below.
- B. Any complaint, dispute or disagreement may be filed with the Town Manager provided it falls within the time limits set forth below:
 - 1) Within thirty (30) days after final action on the complaint, dispute or disagreement by the grantee; or
 - 2) Within thirty (30) days after notice of the complaint, dispute or disagreement has been given to the CATV franchisee and it has not resolved such complaint, dispute or disagreement.
- C. Within fourteen (14) days after receiving notice of such complaint, dispute or disagreement, the Town Manager shall cause an investigation of the same to be made. After completion of the investigation, the Town Manager shall issue a report either dismissing the complaint, or directing the CATV franchisee to take appropriate action to remedy the complaint, dispute or disagreement, and shall cause a copy of such report to be forwarded to each party. The report of the Town Manager shall be final unless either party appeals from it within fourteen (14) days after the hearing.
- D. If either party is aggrieved by the decision of the Town Manager, he or she may appeal to the Committee described in Section 71-10. The Committee will hold a hearing on the appeal from the decision of the Town Manager within fourteen (14) days after receiving the appeal and its decision will be rendered within fourteen (14) days after the hearing.
- E. The Committee shall provide reasonable advance notice of the time and place of hearings.

§ 15-10. Cable Television Committee.

- A. There is hereby established a Cable Television Committee hereinafter referred to as the Committee
- B. The Committee shall be composed of five (5) members and two (2) alternates appointed by the Town Council. For the initial Committee, two (2) members shall be appointed for a one-year term, two (2) members shall be appointed for a

two-year term, and one (1) member shall be appointed for a three year term; thereafter, all appointments to the Committee shall be for a three-year term. Two (2) alternates shall be appointed annually. Members shall continue to serve after expiration of their term until their successors are duly appointed and qualified; provided, however, that such service shall not exceed one hundred twenty (120) days after expiration of their term.

C. The duties of the Committee shall be:

- 1) Review appeals taken pursuant to section 71-9. Its decisions and findings shall be binding on all parties; however, nothing herein shall prohibit any party from appealing such findings or decisions to the appropriate court or agency;
- 2) Review and audit reports submitted to the Town as required by federal, state and local law, and such other correspondence as may be submitted to the Town concerning the operation of the CATV regulatory network so as to insure that the necessary reports are completed and fulfilled pursuant to the terms of this Chapter;
- 3) Work with the public and the media to assure that all records, rules and charges pertinent to the CATV network in the Town are made available for inspection at reasonable hours upon reasonable notice;
- 4) Solicit, review and provide recommendations to the Town Council for selection of applicants for franchise;
- 5) Initiate inquiry on requests for review of rates charged by the CATV franchisees;
- 6) Undertake such other duties as the Town Council may assign from time to time;
- 7) Make recommendations to the CATV franchisee concerning educational and local interest programming;
- 8) Coordinate and advise the educational, governmental and public users of the CATV network access channels in their programming efforts;
- 9) Monitor the procedural aspects and operation of the public access channel;
- 10) Perform such duties and functions relative to coordination with committees of similar networks to assure the mutually satisfactory interchange of programs between networks;

- 11) If requested by the Town Council, prepare and present an annual budget to the Town Council for administration and operation of the committee;
- 12) The Committee shall have the authority to conduct public hearings in the performance of its duties.

**Catch Basin Discharge
To Public Storm-Water Conveyance Systems**

Chapter 75

**From the Code
Of the
Town of Windham**

**County of Cumberland
State of Maine**

Adopted by Windham Town Council order 06-145 September 26, 2006
Effective date: October 26, 2006

October 2006

§75-1 Authority.

This ordinance is adopted pursuant to the Home Rule powers under the Maine Constitution and 30-A M.R.S.A. §3001.

§75-2 Purpose

The purpose of this ordinance is to require private owners of catch basins that discharge to public conveyance storm water systems to annually clean, inspect, maintain and report to the Public Works Director prior to October 1st of each year in order to protect the public storm-water infrastructure. *[Reference note The Town also has a Non-Storm Water Discharge Ordinance, Chapter 143, which prohibits non-storm water discharges into the public storm water system]*

§75-3 Definitions

- A. **Catch Basin** – An inlet designed to intercept and redirect surface waters.
- B. **Clean** – to remove all sediment, trash and any foreign object that is found.
- C. **Maintain** – to maintain the catch basin and conveyances to the public conveyance system, as designed and approved.
- D. **Private Owner/Person** – Any individual, firm, corporation, municipality, quasi-municipal corporation, State or Federal agency or other legal entity which creates, initiates, originates or maintains a Discharge of Storm Water or Non-Storm Water Discharge.
- E. **Discharge of Storm Water** – Any storm water runoff, snow melt runoff and discharge that is conveyed from private property through the use of a catch basins and piping to the municipal owned or maintained drainage systems.
- F. **Non-Storm Water Discharge** – Any discharge not composed entirely of storm water.

§75-4 Administration.

This ordinance shall be administered by the Public Works Department which shall administer, implement and enforce the provision of this ordinance and shall serve as the Enforcement Authority.

§75-5 Required Activities.

Any private owner or person who is responsible for the maintenance of a discharge of storm water or a non-storm water discharge shall be responsible for the following:

A. Compliance with any conditions of approval placed upon a site plan or subdivision approval and relating to maintenance of the storm water system for the property or for non-storm water discharge requirements.

B. Annual maintenance of a storm water system or non-storm water discharge system. Such maintenance shall include an inspection of the system to ensure that it is functioning as designed, removal of all sediment, trash and any foreign object found in the system and any other actions necessary to clean and maintain the system.

C. Submission of a written report substantially in the form required by the Enforcement Authority, a sample of which is attached as an exhibit, along with a sketch showing the location and identification of catch basins and other drainage structures. The report shall include the results of the inspection and a description of the maintenance work and any repairs undertaken. Such report shall be submitted no later than October 1 of each year.

D. Payment to the Town of a twenty-five dollar (\$25.00) filing fee plus twenty-five dollars (\$25.00) for each catch basin if the annual inspection under subparagraph B is performed by the Public Works Department; or payment of a twenty-five dollar (\$25.00) filing fee if the report is completed and signed by a certified professional engineer registered in the State of Maine.

§75-6 Violations; Penalties.

Penalties/Fines/Injunctive Relief. Any person who violates this Ordinance shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the Town's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any person who violates this Ordinance also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred by the Town for violation of federal and State environmental laws and regulations caused by or related to that person's violation of this Ordinance; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this Section.

§ 75-7 Consent Agreement.

Consent Agreement. The Enforcement Authority may, with the approval of the municipal officers, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this Ordinance for the purposes of eliminating violations of this Ordinance and of recovering fines, costs and fees without court action.

§75-8 Appeal

Any person receiving 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 Town Manager.

§ 75-9 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 Town Manager within 45 days of a decision of the Town Manager affirming the Enforcement Authority's decision, then the Enforcement Authority may recommend to the municipal officers that the Town Attorney file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.

§ 75-10 Severability.

The provisions of this Ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this Ordinance.

Catch Basin Cleaning Form

Date:	Precipitation in the last three days?	No	Yes
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Supervisor/Crew
Leader: _____

[illegible]

Animal Control Ordinance

Chapter 81

- 81-1 Title
- 81-2 Purpose
- 81-3 Licensing
- 81-4 Vaccination
- 81-5 Impoundment / Return of Animal
- 81-6 Dogs At Large
- 81-7 Stray Animals
- 81-8 Cemeteries
- 81-9 Nuisance Dogs
- 81-10 Nuisance Animals
- 81-11 Areas Covered by the State Animal Welfare Laws
- 81-12 Violations and Penalties
- 81-13 Administration & Enforcement
- 81-14 Effective Date

81-1 Title

This article shall be known as the "Animal Control Ordinance of the Town of Windham, Maine".

81-2 Purpose

The purpose of this ordinance is to preserve public peace and good order and to promote the public health, safety, and welfare of the people of Windham by establishing and enforcing regulations and restrictions on the activities of all domesticated animals which are to be consistent with the rights and privileges of the citizens of the Town of Windham. This ordinance also establishes all pertinent fees and penalties related to the violation of this ordinance.

In some cases, this ordinance is also designed to prevent the spread of the rabies virus to both the human and animal population of Windham as well to ensure the return of lost animals to their owners and to ensure appropriate emergency care if the animal is found injured.

81-3 Licensing

A. Dog license

All dogs over six months old or within 30 days of acquisition by the owner or keeper, must be properly licensed by the owner or keeper. Dogs are to be licensed at the Town Clerk's Office or at any veterinary office approved by the Department of Agriculture Animal Welfare Program to license dogs. License fees shall be those established by 7 M.R.S.A. Section 3923-A.

B. Kennel License

Kennel is defined under 7 M.R.S.A. section 3907 subsection 17 as one pack or collection of dogs or wolf hybrids kept in a single location under one ownership for breeding, hunting, show, training, field trials and exhibition purposes.

A kennel license shall be obtained from the town clerk's office after the Animal Control Officer has inspected the kennel as required by 7 M.R.S.A. section 3923-C subsection 5. The Animal Control Officer shall follow the sanitation and health rules established by the Department of Agriculture Animal Welfare Program.

Kennel license fees shall be those established by 7 M.R.S.A. section 3923-C. There will also be an inspection fee of \$20 for each kennel license payable to the Town of Windham. This inspection fee shall be placed in the town's Dog Licenses-Town revenue account.

This section shall not include boarding kennels as defined under 7 M.R.S.A. section 3907 subsection 8, which shall be subject to regulation by the Department of Agriculture Animal Welfare Program.

81-4 Vaccination

All dog owners must show proof of current vaccination against the rabies virus prior to being licensed. All cat owners are required to show proof of current vaccination against the rabies virus if the cat is picked up as a stray or the cat has bitten a person or other domesticated animal. A cat owner may show proof of exemption from the requirement for vaccination in accordance with the requirements of 7 M.R.S.A. section 3916 subsection 4.

81-5 Impoundment / Return of Animal

- A. Animals found to be at large and/or stray shall be impounded by the town at an animal shelter designated by the Town of Windham or may be returned to the animal's owner at the discretion of the Animal Control Officer, a Police Officer, or other person appointed by the Chief of Police. If the owner/keeper of the animal is known, the Animal Control Officer, a Police Officer, or other person appointed by the Chief of Police will attempt to contact such person.

- B. Animals impounded at the shelter may be reclaimed upon payment by the owner/keeper of the following fees:
1. An impoundment fee of twenty-five (\$25.00) dollars for each animal, except that upon the second impoundment within a year, the fee shall be fifty (\$50.00) dollars and upon the third and all subsequent impoundment within a year from the first impoundment, the fee shall be one hundred (\$100.00) dollars.
 2. Board in the amount charged by the contracted boarding facility per day for each animal impounded as allowed by state law.
 3. Owners of dogs that cannot show proof that the dog impounded is licensed will be issued a temporary license by the shelter. The temporary license is good for ten (10) days, at the end of which the dog is to be licensed as directed by state law. Copies of temporary licenses will be forwarded by the shelter to the Animal Control Officer.
- C. If the animal owner/keeper is contacted or comes forward before the animal is taken to the animal shelter, then they shall pay a fee of half the impoundment fee, section 8-5 B 1 of this Ordinance. This fee shall be paid to the Town of Windham before the animal is released to the owner/keeper. Payment must be made at the public safety dispatch center, which shall issue a receipt therefore.

81-6

Dogs At Large

- A. It is unlawful for any dog, licensed or unlicensed, to be at large. "At Large" means off the premise of the owner and not under the control of any person whose personal presence and attention would reasonably control the conduct of the animal.
- B. Dogs that are on public ways, sidewalks, public property (as defined in Subsection C of this section), private property to which the public has access and private ways in which the public has a deeded easement must be restrained unless otherwise posted. Restraint for the purpose of this ordinance shall mean being within a vehicle being driven or parked, controlled by a leash not longer than 8 feet in length, or held by a person or a tie down sufficient to prevent its escape.
- C. **Public property defined** --- Publicly owned property such as buildings, parks, boat launches, parking lots, rest areas, ball fields & playgrounds.
- D. Dogs being used for a hunting activity or in training for a hunting activity as well as working dogs, (including service dogs, herding dogs, police dogs, or any other dog determined by the Animal Control Officer to serve a similar function) will not be required to be leashed as long as the owner/keeper has control over the dog(s).
- E. The owner or keeper of any dog found at large or off leash in a leash-required area as described in Subsection B of this section shall be subject to the penalties provided in this Ordinance.

81-7

Stray Animals

Any domesticated animal, except livestock, that is found to be running at large on a public way, public property, or the property of someone other than the owner of the animal, may be seized by the Animal Control Officer, a Police Officer, or other person appointed by the Chief of Police.

81-8

Cemeteries

No dogs or other domestic animals shall be allowed in any town owned/maintained cemeteries (Chapter 15 Cemetery Ordinance section 15-4).

81-9

Nuisance Dogs

- A. Except as provided in subparagraph (B) below, no owner or keeper of a dog within the legal limits of the Town shall allow such dog to unnecessarily annoy or disturb any person by continued or repeated barking, howling, or other loud or unusual noises anytime day or night. Upon a signed, written complaint by the person disturbed, the Animal Control Officer, a Police Officer or any other person appointed by the Chief of Police may investigate and may give written notice to the owner or keeper of such dog that such annoyance or disturbance must cease. Thereafter, upon continuance of such annoyance or disturbance, such owner or keeper shall be guilty of a civil violation and shall be subject to the penalties established by Section 8-12 of this Ordinance.
- B. Section 8-9(A) shall not apply if any animal is provoked by trespassing people or animals on private property on which the animal is situated or by other legitimate cause for provocation.

81-10

Nuisance Animals

- A. Except as provided in Subsections B and C of this section, no owner or keeper shall permit or allow any animal to make sounds common to its species if such sounds recur in steady, rapid rate for any hour or more.
- B. Section 8-10(A) shall not apply to farm animals kept on a property located in an area that is allowed to have farm animals under the Town of Windham Zoning Ordinance.
- C. Section 8-10(A) shall not apply to dogs.

In order for the owner/keeper to be summonsed, the complainant must make a signed statement to the Animal Control Officer, a Police Officer, or other person appointed by the Chief of Police.

81-11

Effect of Ordinance upon Matters Covered by the State Animal Welfare Laws

Nothing in this Ordinance shall be construed as having any impact upon the State animal welfare laws prohibiting cruelty to animals, regulating dangerous dogs and prohibiting animal trespass or any other matter involving animals.

81-12

Violations and Penalties

Whoever violates the licensing requirements of this Ordinance shall be subject to those penalties established by 7 M.R.S.A. Section 3924. Whoever violates the at-large provisions of this Ordinance shall be subject to those penalties established by 7 M.R.S.A. Section 3915. Whoever violates any other section of this Ordinance shall be subject to a civil penalty of no less than fifty dollars (\$50.00) for a first violation, of no less than one hundred dollars (\$100.00) for a second violation, and no less than two hundred dollars (\$200.00) for a third or subsequent violation. Said fines may be recovered before the Portland District Court. In addition to the penalties set forth, the Town may seek any appropriate injunctive relief to prevent repeated violations of this Ordinance.

A person who is issued a civil violation citation for a violation of this Ordinance may elect to pay half the fine amount specified above for each violation alleged in the citation, in lieu of appearing in court to answer the citation. Such payment must be received in full at the Office of the Town Clerk within ten (10) days of receipt of the citation. Upon receipt of such payment by the Town Clerk, the Animal Control Officer shall notify the District Court that the violation has been resolved. However, the violations alleged in the citation shall be deemed admitted for the purposes of assessing any future penalties under this section.

81-13

Administration and Enforcement

This Ordinance shall be administered and enforced by the Animal Control Officer, a Police Officer, or other person appointed or contracted to do so by the Chief of Police.

81-14

Effective Date

The provisions of this Ordinance shall take effect as of February 28, 2003

Adopted Date: January 28, 2003

Town Council Act 03-18

DOMESTICATED CHICKEN ORDINANCE

CHAPTER 82

From the
CODE
of the
TOWN OF WINDHAM

Adopted 8/14/2012

COUNTY OF CUMBERLAND
STATE OF MAINE

DOMESTICATED CHICKENS

Chapter 82

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82-1 Purpose

The purpose of this Chapter is to provide standards for the keeping of domesticated chickens. It is intended to enable residents to keep a small number of female chickens on a non-commercial basis in residential zoning districts not governed by the standards of Chapter 140, Section 503 Agriculture, Poultry Facility. This Chapter is intended to ensure that domesticated chickens do not create nuisance conditions which include, but are not limited to noise, odor, unsanitary animal living conditions, unsanitary waste storage and removal, the attraction of rodents and parasites/insects, and non-confined animals leaving the owner's property.

82-2 Definitions

Chicken Pen – a wire enclosure connected to a Henhouse for the purpose of allowing chickens to leave the Henhouse while remaining in an enclosed, safe environment.

Henhouse – a structure for the sheltering of chickens.

82-3 Applicability

- A. This Chapter applies to the keeping of twelve (12) or fewer chickens that are six (6) months old or older. The keeping of thirteen (13) or more chickens that are more than six (6) months of age is governed by Chapter 140 Land Use Ordinance, Section 503 Agriculture, Poultry Facility.
- B. Chickens governed by the standards of this Chapter shall only be kept in residential zoning districts. These include the Farm (F), Farm Residential (FR), Light-Density Residential (RL), and Medium Density Residential (RM) Districts.

82-4 Number and Type of Chickens Allowed

- A. The maximum number of chickens allowed is twelve (12) per lot, regardless of how many dwelling units are on the lot.
- B. Only female chickens are allowed. There is no restriction on chicken species.

82-5 Standards

A. Structures

- 1. A Henhouse shall be provided to provide safe and healthy living conditions for the chickens while minimizing adverse impacts to other residents in the neighborhood. An existing shed or garage, or a portion of an existing building can be used as a henhouse if it meets the standards of this section.
- 2. A building permit is required for a new Henhouse.
- 3. Henhouses shall not be located in a front setback established in the applicable zoning district of Chapter 140.
- 4. Henhouses must meet the normal side or rear setbacks for the zoning district of Chapter 140 in which it is located.
- 5. Henhouses must be enclosed on all sides, and have a roof and doors. Access doors must be able to be shut and locked at night.
- 6. The types of roofing and siding materials must be uniform around the structure, and shall be in harmony with other structures in the surrounding area.
- 7. Henhouses shall provide a minimum of 4 square feet of floor area per chicken.

B. Fencing

- 1. An enclosed Chicken Pen must be provided consisting of sturdy wire fencing buried at least 12" in the ground. The Chicken Pen must be covered with wire, aviary netting, or solid roofing.
- 2. The Chicken Pen must enclose a minimum of 10 square feet of area per chicken, exclusive of the Henhouse.
- 3. If chickens are to be allowed out of the Chicken Pen during the day, fencing shall be erected to confine chickens to an established area of the property. The fencing shall be of a height that does not allow the chickens to leave the fenced in area without human assistance. Fencing shall take into account existing conditions of the neighborhood. Appropriate types of fencing include chicken wire, stockade, and picket.
 - a. Chickens are to be contained within a fenced area at all times.

C. Feed and Water

- 1. Chickens must be provided with access to feed and clean water at all times; such feed and water shall be unavailable to rodents, wild birds, and predators.
- 2. Feed shall be stored in rodent proof containers.

D. Waste Storage and Removal

1. Provisions 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 over the entire structure or a container with a lid. No more than three (3) cubic feet of manure shall be stored. All other manure not used for composting or fertilizing shall be removed.
2. The Henhouse, Chicken Pen, and surrounding areas must be kept free from trash and accumulated droppings. Uneaten feed shall be removed in a timely manner.

E. Rodents and Insects/Parasites

1. The property owner shall take necessary action to reduce the attraction of predators and rodents and the potential infestation of insects and parasites.
2. Chicken found to be infested with insects and parasites that may result in unhealthy conditions to human habitation shall be removed by the Animal Control Officer.

F. Lighting

1. Only motion-activated lighting may be used to light the exterior of the Henhouse.
2. Exterior lighting on the Henhouse shall be a 90 degree cut-off luminaire.

82-6 Removal of Chickens

Any violation of the provisions of this article shall be grounds for an order from the Code Enforcement Officer to remove the chickens and the chicken-related structures.

The Health Officer or Animal Control Officer may also order the removal of the chickens upon a determination that the chickens pose a health risk.

82-7 Severability

In the event that any section, subsection, or any portion of this chapter shall be declared by any court of competent jurisdiction to be invalid for any reason, such decision shall not be deemed to affect the validity of any other section, subsection or other portion of this chapter; to this end, the provision of this chapter are hereby declared to be severable.

Town of Windham Fire Prevention and Life Safety Code

Chapter 95



Submitted by the
Windham Fire-Rescue Department
in cooperation with the
Planning and Code Enforcement Departments

Adopted by Order 16-167, May 10, 2016; effective date June 10, 2016

95.1 Administration

95.1.1 Short Title

This chapter shall be known and may be cited as the “Fire Prevention and Life Safety Code for the Town of Windham, Maine.”

95.1.2 Purpose and Applicability

The purpose of this chapter is to prescribe minimum regulations governing life safety and hazardous conditions to life and property from fire or explosion.

The provisions of this chapter shall apply to all properties, buildings, and structures within the Town of Windham.

95.1.3 Administration and Enforcement

This chapter shall be administered and enforced by the Town of Windham Fire-Rescue Chief and/or any designee of the Fire/Rescue Chief.

95.1.4 Adoption of NFPA 1 Fire Code by Reference

That a certain document, three (3) copies of which are on file in the office of the Town of Windham, with one (1) copy being in the Town Clerk’s Office, marked and designated as the NFPA 1 Fire Code - as published by the National Fire Protection Association, as adopted and amended by the State of Maine, is hereby adopted as the Fire Code of the Town of Windham.

{ 25 M.R.S.A § 2361; 25 M.R.S.A § 2452; 25 M.R.S.A § 2465; 25 M.R.S.A § 8001 through 11008 }

95.1.5 Adoption of NFPA 101 Life Safety Code by Reference

That a certain document, three (3) copies of which are on file in the office of the Town of Windham, with one (1) copy being in the Town Clerk’s Office, marked and designated as the NFPA 101: Life Safety Code - including Appendices A and B as published by the National Fire Protection Association, as adopted and amended by the State of Maine, is hereby adopted as the Life Safety Code of the Town of Windham for control of buildings and structures as herein provided.

{ 25 M.R.S.A § 2361; 25 M.R.S.A § 2452; 25 M.R.S.A § 2465; 25 M.R.S.A § 8001 through 11008 }

95.1.6 Building Permit and Construction Plan Review

The Fire/Rescue Chief or his/her designee shall conduct a plan review under the provisions of the Land Use Ordinance of the Town of Windham for any non-residential structures including but not limited to structures that require site plan approval, building permit, occupancy

inspection or for a change of use.

The Fire/Rescue Chief or his/her designee shall review all road accesses in subdivisions and site plans and to review fire prevention measures and general layout of all developments or dwellings, boarding houses, dormitories, hotels, motels, multifamily dwellings, (including, but not limited to, town houses, condominiums, and any other building that houses three (3) or more dwelling units).

The Windham Fire/Rescue Chief or his/her designee shall review all required site plans and sprinkler plans; however, all sprinkler system plans shall also be subject to approval by the State Fire Marshal's Office.

95.1.7 Third Party Review

Due to the complexity of certain projects, buildings, or developments, the Fire/Rescue Chief may require third party review of the plans prior to approval. All costs associated with third party review under this section shall be the sole responsibility of the applicant, developer, or property owner.

95.1.8 Violations and Penalties

Any person, firm or corporation, being the owner or occupant of, having control of, or the use of, any building or premises, or part thereof, who violates any of the provisions of this chapter shall be subject to the laws and liability of 30-A M.R.S.A. § 4452.

The AHJ is authorized to, in writing, suspend or revoke a certificate of occupancy issued under provisions of the Town of Windham Land Use Ordinance wherever the certificate is issued in error, or on the basis of incorrect information supplied, or where it is determined that the building or structure or portion thereof is in violation of any of the provisions of this chapter.

95.1.9 Appeals

Any person aggrieved by a decision under this chapter may file an application with the Board of Appeals in accordance with Section 1100 of the Town of Windham Land Use Ordinance.

95.1.10 Enforcement

The AHJ, with advice and consent of the Town Manager, is authorized to institute or cause to be instituted by the Town Council, in the name of the Town of Windham, any and all actions, legal or equitable, that may be appropriate or necessary for the enforcement of this chapter.

95.2 Definitions

Wherever used in this chapter, the following terms used in this code shall have the meaning as given below.

Authority Having Jurisdiction

The Authority Having Jurisdiction (AHJ) shall be the Chief of the Windham Fire-Rescue Department or his/her designee.

Recreational Fire

An outdoor fire burning materials other than rubbish, trash, or other waste materials, where the fuel being burned is not contained in an incinerator, outdoor fireplace or barbeque pit or barrel and has a total fuel area of 3 feet or less in diameter or 2 feet or less in height and is prepared for pleasure, recreating, cooking, warmth, or similar purposes.

95.3 Alarm System

This article establishes requirements for alarm system installation and monitoring.

95.3.1

Any structure or building consisting of at least 2,000 gross square feet of enclosed area, with the exception of single- and two-family dwellings, shall have an approved, fully addressable fire alarm system that complies with NFPA 72: National Fire Alarm and Signaling Code.

- A. Exception: single- and two-family dwellings shall install a fully addressable alarm system if required under an approved subdivision plan.

95.3.2

Any existing buildings of at least 2,000 gross square feet of enclosed area that do not have an alarm system as of the effective date of this chapter shall not be required to install one, except as required by section 95.3.4 of this ordinance.

95.3.3

Any building that is required to have a sprinkler system shall have a supervised alarm, detection, and notification system that complies with NFPA 72. This shall be considered a fully addressable system.

95.3.4

Any proposed additions that bring the total gross square footage of the building to 2,000 square feet or more shall have an approved alarm system throughout the entire building (i.e., not only the new addition). Installation of the system in the existing portion(s) of the building may be phased, subject to the approval of the AHJ.

If said building is required under this section to have an alarm system, the alarm system shall be monitored.

95.3.5

At no time shall anyone besides a certified technician or fire department representative deactivate or restore an alarm for any reason.

95.3.6

In the event an alarm system installed under this article malfunctions or is rendered inoperable, it shall be repaired and returned to operation within thirty (30) calendar days. Any non-functioning alarm system shall cause notification to the Windham Fire/Rescue Department. Failure to remedy a non-functioning alarm system shall result in a suspension or revocation of the certificate of occupancy until such time that the corrections have been made and approved by the AHJ.

95.3.7

The AHJ reserves the right to grant an extension of time when extenuating circumstances beyond the control of the occupant have been outlined and brought forth by the occupant and a correction date has been accepted by the AHJ before the expiration of the 30-calendar-day time period set forth herein. This extension of time is intended to be used only for rare occasions and will not be granted for unsubstantiated reasons.

95.3.8

All buildings, structures, or dwellings subject to this chapter may be inspected annually for fire alarm code and ordinance compliance.

95.4 Fire Suppression

This article shall govern the installation and maintenance of sprinkler systems in buildings and structures subject to this article.

95.4.1

All new buildings, structures, or dwellings containing at least 7,500 gross square feet of enclosed area served by public water or within 1,000 linear feet of a hydrant serviced by the Portland Water District, or 4,000 gross square feet of enclosed area not served by public water or greater than 1,000 linear feet from a hydrant serviced by the Portland Water District, with the exception of single- and two-family dwellings, shall be required to have an approved automatic fire sprinkler system in all areas of the building that must comply with this article.

[Sprinkler systems for mixed-use buildings are required by Section 522 of the Windham Land Use Ordinance, Chapter 140]

95.4.2

For purposes of this article, an approved automatic sprinkler system shall mean a system installed in accordance with the National Fire Protection Association (NFPA) Standard 13, NFPA 13R or NFPA 13D and in accordance with the provisions of this article and approved by the State Fire Marshal's Office, and shall remain subject to the AHJ's approval

95.4.3

All automatic sprinkler systems shall be an approved system listed by Underwriters Laboratories (UL) or Factory Mutual (FM) fire insurance underwriters, an approved Maine Life Safety Sprinkler System, or otherwise deemed acceptable by the AHJ.

95.4.4

Any structure requiring the installation of an NFPA Standard 13, 13D, or 13R System shall have a fire department connection. The location and type of fire department connection shall be approved by the AHJ. The fire department connection shall be identified by a sign, plaque, or plate identifying it as a "Fire Department Sprinkler Connection."

95.4.5

The property owner shall keep the fire department connection clear of any obstructions and maintained in good, serviceable condition at all times.

95.4.6

All systems required to be installed under this article shall be reviewed and approved by the AHJ in accordance with this article.

95.4.7

No certificate of occupancy shall be issued until the automatic sprinkler system has been properly installed and tested by a State of Maine licensed installer and approved by the AHJ.

95.4.8

All automatic sprinkler systems installed under this article shall be required to comply with the following:

- A.** Installation, extension, modification, or alteration shall be done by a State of Maine licensed installer.
- B.** Plans for the installation of any system containing ten (10) or more sprinkler heads, or the modification of an existing sprinkler system containing ten (10) or more additional sprinkler heads, shall be approved by the State Fire Marshall's office and the AHJ.
- C.** A tamper switch alarm at the system shut off.
- D.** Any building that is required to be sprinkled by this article shall have an NFPA 72 compliant supervised alarm system installed, as set forth in Section 95.3 of this code.
- E.** An outside water flow alarm.
- F.** A butterfly valve will not be allowed on any NFPA Standard 13, 13D, or 13R systems.

95.4.9

The property owner shall maintain all sprinkler systems, standpipe systems, and component parts in good working condition at all times. It shall be unlawful to tamper with any system under this article, except that this shall not prohibit necessary testing, repairs, alterations, or additions, provided that the testing, repairs, alterations or additions are done in such a way as to avoid the creation of a safety hazard. The AHJ shall be notified before such testing, repairs, alterations, or additions are conducted.

Automatic sprinklers and standpipes may be shut down subject to the following conditions:

- A.** A letter stating that the sprinkler system and or standpipe have been shut down and rendered inoperable has been provided to the AHJ.
- B.** The building remains unoccupied during the shutdown, except for the property owner or their representative to conduct occasional walk-through inspections.
- C.** A licensed sprinkler contractor or inspector has properly shut down the sprinkler system.
- D.** The system is reactivated only by an installer or technician licensed by the State of Maine.

95.4.10

The AHJ may prohibit the continued occupancy of any structure or portion of a structure, and may post such structure against occupancy, if the AHJ determines that such occupancy presents an immediate life-threatening situation. If the AHJ prohibits continued occupancy of the structure, no further occupancy shall occur until the situation identified as life threatening has been corrected in a manner that removes the threat, as determined by the AHJ.

95.4.11

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

95.4.12

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

95.4.13

Any structure containing an automatic 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's office.

95.5 Plan Approval

This article shall govern the plan approval process as it pertains to gaining approval from the Windham Fire-Rescue Department.

95.5.1

Subdivisions and site plans subject to Planning Board approval shall be reviewed by the AHJ or his/her designee; findings and recommendations by the Windham Fire-Rescue Department regarding the proposed plan's compliance with this chapter may be given to the applicant prior to the plans being presented to the Planning Board.

95.6 Key Boxes

This article establishes requirements for the installation of key boxes on new buildings for fire department access.

95.6.1

Any non-residential structure that is constructed on or after the effective date of this chapter, and which is subject to the provisions contained in this chapter, shall be required to install a key box for fire department access. This box shall be as approved by the AHJ.

95.6.2

A key or set of keys that allows entrance into an occupancy and access to all fire alarm and suppression systems shall be provided and placed in the box.

95.6.3

Key boxes may be monitored by a security system.

95.6.4

Key boxes shall meet requirements set forth by the AHJ.

95.6.5

The AHJ must approve the location and style of box before installation.

95.6.6

All installation procedures shall be followed to ensure the security of building keys prior to keys being placed in the box.

95.7 Open Burning

This article establishes regulations for open burning. All open burning must comply with this article.

95.7.1

A permit shall be required for all open burning, except as allowed under section 95.7.5.

95.7.2

The AHJ shall have the authority to deny issuance of burning permits for the protection of public safety and health. A list of areas where open burning is prohibited is attached hereto as Appendix A. This list will reviewed and updated annually.

95.7.3

At no time does the AHJ authority supersede the State of Maine Forest Service's authority to ban burning. If the State of Maine determines that burning is unsafe for any period of time, the AHJ will automatically deny burning permits for that time period.

95.7.4

Outdoor fireplaces shall not be located:

- A. Within 25 ft. of a structure.
- B. Within 25 ft. of combustible materials, unless contained in an approved manner (including a UL or third party listed appliance).
- C. Where condition(s) are present that could cause a fire to spread to within 25 ft. of a structure.

95.7.5

Open burning permits are not required for recreational fires; provided, however, that if the recreational fire creates a nuisance, health, or fire hazard, the recreational fire shall be extinguished upon order of the Windham Fire-Rescue Department, which shall have the authority to extinguish any recreational fire if the property owner or other person responsible for the recreational fire fails to do so after such order.

Permanent barbecues, portable barbecues, outdoor fireplaces, grills or barrels shall not be used for the incineration of trash, rubbish, or any other combustible waste material.

All fires shall be constantly attended by a competent adult who shall have a garden hose connected to a water supply, or other fire extinguishing equipment, readily available for use.

Special Note:

All open burning shall be in conformity with existing laws and regulations of the State of Maine Forest Service, Department of Environmental Protection and local municipal ordinances. In accordance with Title 12 of the Maine Revised Statutes, the outdoor burning of plastic, rubber, Styrofoam, metals, food wastes, chemicals, treated wood, or other solid wastes, except for wood wastes, is prohibited in all areas of the State of Maine.

95.7 Occupancy Inspection

This article shall establish requirements for approval from the AHJ prior to the issuance of certificates of occupancy.

95.7.1

Any property inspection that is conducted by the Town of Windham Code Enforcement Department for any property that is required to conform to this chapter shall include the AHJ. The AHJ shall certify and make recommendation certifying that the building meets all conditions and regulations set forth by the Windham Fire-Rescue Department.

95.7.2

If the property under inspection does not conform to the requirements outlined during the plan approval process, the AHJ shall not approve the certificate of occupancy and shall make recommendations to the Code Enforcement Department for bringing the property into compliance with the requirements of this chapter.

95.7.3

All non-residential structures or dwellings that meet the requirements of this code may be inspected on a periodic basis for compliance with the fire safety requirements set forth in this chapter and all codes adopted hereunder. Inspections shall be documented and retained as part of the property record.

95.8 Water Supplies for Fire Fighting

This article shall establish requirements for the operation and maintenance of fire hydrants.

95.8.1

All fire hydrants, whether owned or leased by the town or privately owned, shall be maintained in proper operating condition at all times. Owners of private hydrants shall be responsible for all required maintenance including, but not limited to, removing accumulations of snow/ice from the hydrant and ensuring adequate access to the hydrant by the Windham Fire-Rescue Department.

95.8.2

No person or persons shall obstruct or permit to be obstructed by any means any fire hydrant located within the Town of Windham. Any person or persons causing snow to obstruct a fire hydrant shall immediately clear said fire hydrant. Failure to do so shall result in clearing of the fire hydrant by the Windham Fire-Rescue Department at the cost of the property owner. The cost of such violation shall be included on a fee schedule established by order of the Town Council.

Appendix A

Areas Where Open Burning is Prohibited

This appendix is a list of streets and locations where open burning is prohibited because of nuisance and health risks associated with the smoke conditions.

The list is current as of February 4, 2010.

Baxter Woods	Baxter Woods Trail	North District
Brookhaven	Arcadia Drive	North District
	Brookhaven Drive	North District
	Sylvan Avenue	North District
	Gromble Way	North District
	Peavey Avenue	North District
Collinwood Park	Collinwood Circle	North District
	Runningbrook Drive	North District
	Wedgewood Avenue	North District
Roosevelt Trail	Prairie Way	North District
	Roosevelt Trail (Northerly side of Roosevelt Trail from Dalten Pines to Commons Avenue)	North District
Pinewood Acres	Lucmick Avenue	North District
	Firwood Avenue	North District
	Redwood Drive	North District
	Chipmunk Drive	North District
	Elmwood Drive	North District
	Sprucewood Drive	North District
	Maplewood Drive	North District
	Birchwood Drive	North District
	Chestnut Drive	North District
Tall Pines	Misty Drive	North District
	Eric Road	North District
Varney Mill Estates	Forbes Lane	North District
	Shady Lane	North District
	Stagecoach Lane	North District
	Acorn Lane	North District

Cottage Road

Cottage Road (from Falmouth Road to
To Abbadabba Lane)
Brentwood Road
Upper Beach Road
Lower Beach Road
Orchard Road

East Windham
East Windham
East Windham
East Windham
East Windham

CONSUMER FIREWORKS

Chapter 96

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96-1 Definitions

As used in this Chapter, the following terms shall have the meanings:

- A. *Consumer Fireworks* has the same meaning as the term set forth in 27 Code of Federal Regulations, Section 555.11, as may be amended from time to time, but includes only products that are tested and certified by a third party testing laboratory as conforming with United States Consumer Product Safety Commission standards, in accordance with 15 United States Code, Chapter 47.
öConsumer fireworksö does not include the following products:
 - 1. Missile-type rockets, as defined by the State Fire Marshal by rule;
 - 2. Helicopters and aerial spinners, as defined by the State Fire Marshal by rule;
and
 - 3. Sky rockets and bottle rockets. For purposes of this paragraph, ösky rockets and bottle rocketsö mean cylindrical tubes containing not more than 20 grams of chemical composition, as defined by the State Fire Marshal by rule, with a wooden stick attached for guidance and stability that rise into the air upon ignition and that may produce a burst of color or sound at or near the height of flight.
 - a. Fireworks shall be as defined under Maine State law, 8 MRSA §221(a)(4) as may be amended from time to time.
- B. *Display* means an entertainment feature where the public or a private group is admitted or permitted to view the display or discharge of fireworks or special effects.

96-2 Permit Required

- A. No person shall use, display, discharge, fire, or cause to be exploded, consumer fireworks within the Town of Windham without a permit, except that this ordinance shall not apply to a person issued a fireworks display permit by the

Town and/or State of Maine pursuant to 8 M.R.S.A. 227-A, as may be amended from time to time. The Town of Windham shall be exempt from the provisions of this ordinance.

- B. Permits shall be issued by the Windham Fire-Rescue Department in the same manner as burning permits pursuant to Chapter 95, the Windham Fire Prevention and Life Safety Code.
- C. No permit shall be issued on any day with a Fire Danger Class of 3, 4, or 5.
- D. A person may use consumer fireworks only on that person's property or on the property of a person who has consented, in writing, to the use of consumer fireworks on that property.

96-3 Use Restricted

- A. No person shall use, display, discharge, fire, or cause to be exploded, consumer fireworks within the Town of Windham, or in or from any watercraft within the waters of the Town except on the following days and during the following times:
 - 1. July 3rd, from 12:00 p.m. (noon) to 10:00 p.m.;
 - 2. July 4th, from 12:00 p.m. (noon) to 11:00 p.m.;
 - 3. December 31st, from 12:00 p.m. (noon) to 12:30 a.m. the following day;
 - 4. January 1st, from 12:00 p.m. (noon) to 10:00 p.m.; and
- B. No person shall use, display, discharge, fire, or cause to be exploded, consumer fireworks within one hundred fifty (150) feet of any buildings or structures.

96-4 Enforcement and Penalties

- A. Any person who uses consumer fireworks in the Town of Windham shall be punished by a fine of not less than two hundred dollars (\$200.00) and not more than four hundred dollars (\$400.00) plus costs. For second and subsequent offenses, a fine of not less than three hundred dollars (\$300.00) and not more than six hundred dollars (\$600.00) per violation plus costs shall be imposed. Each incident shall constitute a separate violation.
- B. This ordinance shall be enforced by the Windham Police Department.
- C. In addition to any other remedies available at law or equity the Town of Windham, acting through its Town Manager, may apply to any court of competent jurisdiction to enjoin any planned, anticipated, or threatened violation of this ordinance.

96-5 Seizure and Disposal

The Town of Windham may seize fireworks or consumer fireworks that the Town has probable cause to believe are used in violation of this ordinance or in violation of State law and shall forfeit the seized consumer fireworks to the State of Maine for disposal.

Enacted by Order 16-168 on October 25, 2016

Effective November 26, 2016

FLOODPLAIN MANAGEMENT ORDINANCE

Chapter 98

From the

CODE

of the

TOWN OF WINDHAM

(As amended by FEMA 7/15/2013
and enacted by the Windham Town Council 8/13/2013
Effective date September 13, 2013)
Amended 4/22/2014

COUNTY of CUMBERLAND

STATE OF MAINE

FLOODPLAIN MANAGEMENT ORDINANCE

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ARTICLE I - PURPOSE AND ESTABLISHMENT

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

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

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

The National Flood Insurance Program, established in the aforesaid Act, provides that areas of the Town of Windham having a special flood hazard be identified by the Federal Emergency Management Agency and that floodplain management measures be applied in such flood hazard areas. This Ordinance establishes a Flood Hazard Development Permit system and review procedure for development activities in the designated flood hazard areas of the Town of Windham, Maine.

The areas of special flood hazard, Zones A and A1-30, for the Town of Windham, Cumberland County, Maine, identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study – Town of Windham, Maine" dated March 2, 1981 with accompanying "Flood Insurance Rate Map - Town of Windham, Maine", dated September 2, 1981, and "Flood Boundary and Floodway Map" dated September 2, 1981 are hereby adopted by reference and declared to be a part of this Ordinance.

ARTICLE II - PERMIT REQUIRED

Before any construction or other development (as defined in Article XIII), including the placement of manufactured homes, begins within any areas of special flood hazard established in Article I, a Flood Hazard Development Permit shall be obtained from the Code Enforcement Officer. This permit shall be in addition to any other permits which may be required pursuant to the codes and ordinances of the Town of Windham, Maine.

ARTICLE III - 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.2 apply only to new construction and substantial improvements.]

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

- 1. base flood at the proposed site of all new or substantially improved structures, which is determined:
 - a. in Zone A1-30, from data contained in the "Flood Insurance Study - Town of Windham, Maine," as described in Article I; 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 Article VI.K. and VIII.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 Article VI;
 - 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 Article VI by a registered professional engineer or architect:

1. a Floodproofing Certificate (FEMA Form 81-65, 03/09, as amended), to verify that the floodproofing methods for any non-residential structures will meet the floodproofing criteria of Article III.H.4.; Article VI.G.; and other applicable standards in Article VI;
 2. a Hydraulic Openings Certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of Article VI.L.2.a.;
 3. a certified statement that bridges will meet the standards of Article VI.M.;
 4. a certified statement that containment walls will meet the standards of Article VI.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 Article VI will be met.

ARTICLE IV - APPLICATION FEE AND EXPERT'S FEE

A non-refundable application fee of \$ 0 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 10 days after the town submits a bill to the applicant. Failure to pay the bill shall constitute a violation of the ordinance and be grounds for the issuance of a stop work order. An expert shall not be hired by the municipality at the expense of an applicant until the applicant has either consented to such hiring in writing or been given an opportunity to be heard on the subject. An applicant who is dissatisfied with a decision to hire expert assistance may appeal that decision to the Board of Appeals.

ARTICLE V - 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 Article VI (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 Windham, Maine," as described in Article I;
 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 Article III.H.1.b.; Article VI.K.; and Article VIII.D., in order to administer Article VI of this Ordinance; and,

3. when the community establishes a base flood elevation in a Zone A by methods outlined in Article III.H.1.b., the community shall submit that data to the Maine Floodplain Management Program.
- C. Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in Article I of this Ordinance;
 - D. In the review of Flood Hazard Development Permit applications, determine that all necessary permits have been obtained from those federal, state, and local government agencies from which prior approval is required by federal or state law, including but not limited to Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1344;
 - E. Notify adjacent municipalities, the Department of Environmental Protection, and the Maine Floodplain Management Program prior to any alteration or relocation of a water course and submit copies of such notifications to the Federal Emergency Management Agency;
 - F. If the application satisfies the requirements of this Ordinance, approve the issuance of one of the following Flood Hazard Development Permits based on the type of development:
 1. A two part Flood Hazard Development Permit for elevated structures. Part I shall authorize the applicant to build a structure to and including the first horizontal floor only above the base flood level. At that time the applicant shall provide the Code Enforcement Officer with 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 Article VI, paragraphs F, G, or H. Following review of the Elevation Certificate data, which shall take place within 72 hours of receipt of the application, the Code Enforcement Officer shall issue Part II of the Flood Hazard Development Permit. Part II shall authorize the applicant to complete the construction project; or,
 2. A Flood Hazard Development Permit for Floodproofing of Non-Residential Structures that are new construction or substantially improved non-residential structures that are not being elevated but that meet the floodproofing standards of Article VI.G.1.a.,b., and c. The application for this permit shall include a Floodproofing Certificate signed by a registered professional engineer or architect; or,
 3. A Flood Hazard Development Permit for Minor Development for all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. Minor development also includes, but is not limited to: accessory structures as provided for in Article VI.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.
 - 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 Article IX of this Ordinance, and copies of Elevation Certificates, Floodproofing Certificates, Certificates of Compliance and certifications of design standards required under the provisions of Articles III, VI, and VII of this Ordinance.

ARTICLE VI - 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, shall have the lowest floor (including basement) elevated to at least one 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 Article III.H.1.b.; Article V.B; or Article VIII.D.

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

1. Zones A1-30 shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation, or together with attendant utility and sanitary facilities shall:
 - a. be floodproofed to at least one 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 Article III.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 foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B; or Article VIII.D., or
- a. together with attendant utility and sanitary facilities meet the floodproofing standards of Article VI.G.1.

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

1. Zones A1-30 shall:
- a. be elevated such that the lowest floor (including basement) of the manufactured home is at least one 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 corners of the manufactured home, plus two additional ties per side at intermediate points (manufactured homes less than 50 feet long require one additional tie per side); or by,
 - (2) frame ties at each corner of the home, plus five additional ties along each side at intermediate points (manufactured homes less than 50 feet long require four additional ties per side).
 - (3) all components of the anchoring system described in Article VI.H.1.c.(1)&(2) shall be capable of carrying a force of 4800 pounds.
2. Zone A shall:
- a. be elevated on a permanent foundation, as described in Article VI.H.1.b., such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B; or Article VIII.D.; and
 - b. meet the anchoring requirements of Article VI.H.1.c.

I. Recreational Vehicles - Recreational Vehicles located within:

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

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

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

K. Floodways -

1. In Zones A1-30 riverine areas, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted within a regulatory floodway which is designated on the community's "Flood Insurance Rate Map" and "Flood Boundary and Floodway Map" unless a technical evaluation certified by a registered professional engineer is provided demonstrating that such encroachments will not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
2. In Zones A1-30 and A riverine areas for which no regulatory floodway is designated, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted in the floodway as determined in Article VI.K.3. unless a technical evaluation certified by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development:

- a. will not increase the water surface elevation of the base flood more than one foot at any point within the community; and,
 - b. is consistent with the technical criteria contained in Chapter 5 entitled "Hydraulic Analyses," *Flood Insurance Study - Guidelines and Specifications for Study Contractors*, (FEMA 37/ January 1995, as amended).
3. In Zones A and A1-30, riverine areas for which no regulatory floodway is designated, the regulatory floodway is determined to be the channel of the river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain as measured from the normal high water mark to the upland limit of the floodplain.

L. Enclosed Areas Below the Lowest Floor - New construction or substantial improvement of any structure in Zones A1-30 and A that meets the development standards of Article VI, including the elevation requirements of Article VI, paragraphs F, G, or H and is elevated on posts, columns, piers, piles, "stilts," or crawlspaces 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 Article XIII;
2. Enclosed areas shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood water. Designs for meeting this requirement must either:
 - a. be engineered and certified by a registered professional engineer or architect; or,
 - b. meet or exceed the following minimum criteria:
 - (1) a minimum of two openings having a total net area of not less than one square inch for every square foot of the enclosed area;
 - (2) the bottom of all openings shall be below the base flood elevation and no higher than one foot above the lowest grade; and,
 - (3) openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the entry and exit of flood waters automatically without any external influence or control such as human intervention, including the use of electrical and other non-automatic mechanical means;
3. The enclosed area shall not be used for human habitation; and,
4. The enclosed areas are usable solely for building access, parking of vehicles, or storage.

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

1. when possible, the lowest horizontal member (excluding the pilings, or columns) is elevated to at least one 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 Article VI.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 and A shall:
 - a. have the containment wall elevated to at least one 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 Article III.K.

O. Wharves, Piers and Docks - New construction or substantial improvement of wharves, piers, and docks are permitted in Zones A1-30 and A, in and over water and seaward of 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.

ARTICLE VII - 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, an Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer, or architect, for compliance with Article VI, paragraphs F, G, or H.
- B. The applicant shall submit written notification to the Code Enforcement Officer that the development is complete and complies with the provisions of this ordinance.
- C. Within 10 working days, the Code Enforcement Officer shall:

1. review the Elevation Certificate and the applicant's written notification; and,
2. upon determination that the development conforms with the provisions of this ordinance, shall issue a Certificate of Compliance.

ARTICLE VIII - 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 5 or more disturbed acres, or in the case of manufactured home parks divided into two or more lots, assure that:

- A. All such proposals are consistent with the need to minimize flood damage.
- B. All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damages.
- C. Adequate drainage is provided 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 Article VI of this ordinance. Such requirement will be included in any deed, lease, purchase and sale agreement, or document transferring or expressing an intent to transfer any interest in real estate or structure, including but not limited to a time-share interest. The condition shall clearly articulate that the municipality may enforce any violation of the construction requirement and that fact shall also be included in the deed or any other document previously described. The construction requirement shall also be clearly stated on any map, plat, or plan to be signed by the Planning Board or local reviewing authority as part of the approval process.

ARTICLE IX - APPEALS AND VARIANCES

The Board of Appeals of the Town of Windham 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 Ordinance.

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

- A. Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- B. Variances shall be granted only upon:
 1. a showing of good and sufficient cause; and,
 2. a determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or

create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances; and,

3. a showing that the issuance of the variance will not conflict with other state, federal or local laws or ordinances; and,
 4. a determination that failure to grant the variance would result in "undue hardship," which in this sub-section means:
 - a. that the land in question cannot yield a reasonable return unless a variance is granted; and,
 - b. that the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and,
 - c. that the granting of a variance will not alter the essential character of the locality; and,
 - d. that the hardship is not the result of action taken by the applicant or a prior owner.
- C. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and the Board of Appeals may impose such conditions to a variance as 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 Article IX and Article VI.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 Article IX, paragraphs A. through D. above; and,
 2. the proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as a Historic Structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- F. Any applicant who meets the criteria of Article IX, paragraphs A. through E. shall be notified by the Board of Appeals in writing over the signature of the Chairman of the Board of Appeals that:
1. the issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage;
 2. such construction below the base flood level increases risks to life and property; and,
 3. the applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use

land located in a floodplain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.

G. Appeal Procedure for Administrative and Variance Appeals

1. An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party within thirty days after receipt of a written decision of the Code Enforcement Officer 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 days of its receipt of an appeal request.
4. The person filing the appeal shall have the burden of proof.
5. The Board of Appeals shall decide all appeals within thirty-five days after the close of the hearing, and shall issue a written decision on all appeals.
6. The Board of Appeals shall submit to the Code Enforcement Officer a report of all variance actions, including justification for the granting of the variance and an authorization for the Code Enforcement Officer to issue a Flood Hazard Development Permit, which includes any conditions to be attached to said permit.
7. Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty-five days from the date of any decision of the Board of Appeals.

ARTICLE X - ENFORCEMENT AND PENALTIES

- A. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance pursuant to Title 30-A MRSA § 4452.
- B. The penalties contained in Title 30-A MRSA § 4452 shall apply to any violation of this Ordinance.
- C. In addition to any other actions, the Code Enforcement Officer, upon determination that a violation exists, may 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.

ARTICLE XI - VALIDITY AND SEVERABILITY

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

ARTICLE XII - CONFLICT WITH OTHER ORDINANCES

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

ARTICLE XIII - DEFINITIONS

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

Accessory Structure - 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 percent or greater chance of flooding in any given year, as specifically identified in the Flood Insurance Study cited in Article I of this Ordinance.

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

Basement - means any area of the building having its floor subgrade (below ground level) on all sides.

Building - see **Structure**.

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

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

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 or A, to have the top 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 foot above the magnitude of the base flood.

In the case of Zones A1-30 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 Article VI.L..

Elevation Certificate - An official form (FEMA Form 81-31, 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 paragraph 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 ordinance, an elevation established for a specific site to which all other elevations at the site are referenced. This elevation is generally not

referenced to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) 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 Article VI.L. of this ordinance.

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 180 consecutive days.

Manufactured Home Park or Subdivision - means a parcel (or contiguous parcels) of land divided into two 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, North American Vertical Datum (NAVD) or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

Minor Development - means all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. It also includes, but is not limited to: accessory structures as provided for in Article VI.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.

North American Vertical Datum (NAVD)- means the national datum whose standard was established in 1988, which is the new vertical datum used by the National Flood Insurance Program (NFIP) for all new Flood Insurance Rate Maps. NAVD is based upon vertical datum used by other North American countries such as Canada and Mexico and was established to replace NGVD because of constant movement of the earth's crust, glacial rebound, and subsidence and the increasing use of satellite technology.

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

Recreational Vehicle - means a vehicle which is:

- a. built on a single chassis;
- b. 400 square feet or less when measured at the largest horizontal projection, not including slideouts;

- c. designed to be self-propelled or permanently towable by a motor vehicle; and
- d. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory Floodway -

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

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

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

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

Substantial Improvement - means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

- b. Any alteration of a Historic Structure, provided that the alteration will not preclude the structure's continued designation as a historic structure, and a variance is obtained from the community's 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.

ARTICLE XIV - ABROGATION

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

FOOD AND BEVERAGE BUSINESS

CHAPTER 101

FOOD AND BEVERAGE BUSINESS

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Bottle Clubs

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(HISTORY: Adopted by the Town Council of the Town of Windham: Art I, at time of adoption of Code; see Ch.1, General Provisions, Art1, Art.II, 12-9-1986; Art.III, 2-28-1989; Art.IV, 2-28-1989. Amendments noted where applicable.)

GENERAL REFERENCES

Amusements- See Ch 56
Mobile food services--See Ch 176, Art II

FOOD AND BEVERAGE BUSINESS

ARTICLE I

Bottle Clubs

(Adopted at time of adoption of Code; see Ch I, General Provisions, Art I)

§101-1 License required.

No person other than a bona fide nonprofit corporation, shall keep, maintain, operate, lease or otherwise furnish, either to its members and guests or to the general public, any premises for use as a bottle club, without first having obtained a license and paying the fee thereof.

§101-2 Licensing authority.

Licenses shall be issued by the municipal officers after notice and hearing on the licensee's application.

§101-3 Word usage and definitions.

A. Unless otherwise defined herein or in the text, all words used will have their common meanings

B As used in the Article, the following terms shall have the meanings indicated:

BOTTLE CLUB An establishment where no alcoholic beverages are sold, but where members or guests provide their own alcoholic beverages, paying a fee or other consideration for admission to the bottle club and/or for setups

OFFICER Any officer, director, stockholder, owner, manager or person who either has a financial interest of any nature in a bottle club, or directs any policy of a bottle club

PERSON Any individual, person, firm, corporation, association, partnership or organization.

§101-4 Fees; expiration of licenses. (Amended 2-28-89)

A. Fees for a license for a bottle club shall be paid annually in the amount of one hundred dollars (\$100), plus the cost of advertising.

B Such licenses shall expire on December 31

§101-5 Application for license.

Every applicant for a bottle club license shall.

- A. Complete and file an application on a form prescribed by the Town Clerk
- B. Deposit the prescribed license fee in advance with the Town Clerk
- C. Submit the completed application to the Town Clerk, together with attested copies of the articles of incorporation and bylaws, if the applicant is a corporation, or articles of association and bylaws if the applicant is an association, as well as a list of all officers of the bottle club.
- D. File an affidavit which will identify all officers and their places of residency at the present time and for the immediately preceding three (3) years. Submission of false information in an application for a license shall be a violation of the Article, and such act shall be grounds for the denial of the application.

§101-6 Qualification of officers.

All officers of a bottle club shall meet the following qualifications: never have been convicted of a Class A, B or C crime nor of violating any of the gambling or prohibitive liquor laws either of the United States or of the State of Maine or any other state within five (5) years immediately preceding the date of the application. Each such officer shall file the release authorized by 16 MRSA §620 (6) (Criminal History Record Information Act) with the application. Failure to provide such a release shall be a ground for denial of the application.

§101-7 Description of premises.

Every applicant for a bottle club license shall include in the application a description of the premises for which a license is desired.

§101-8 Articles and bylaws.

Applicants for bottle club licenses shall possess written articles of incorporation or association and bylaws. The articles or bylaws shall provide for regular election of officers or directors. Membership shall be regulated by articles or bylaws.

§101-9 Investigation of applicant.

Upon receipt of a completed application and license fee, the Town Clerk shall request other town officials to submit written reports to the municipal officers, indicating whether the applicant is in compliance with all the applicable codes and ordinances of the town, including the requirements imposed by this Article.

§101-10 Notice of hearing.

After receipt of the written reports required by §101-9, the Town Clerk shall cause notice of a public hearing on the application to be given to abutters of the premises. Notice of the hearing shall also be published in a newspaper having general circulation in the town. The notices required by this section shall be given at least seven (7) days prior to the date of hearing.

§101-11 License nontransferable.

A separate license must be obtained for each branch or separate establishment of a bottle club. Every bottle club shall exhibit its license at all times in a conspicuous place on its premises.

§101-12. Proximity to schools and churches.

No new bottle club license shall be granted under this Article to premises situated within three hundred (300) feet of a public or private school, school dormitory, church chapel or parish house in existence as such at the time such new license is applied for, except such premises as were in use as bottle clubs on the effective date of this Article. The three hundred-foot distance shall be measured from the main entrance of the school, school dormitory, church, chapel or parish house by the ordinary course of travel.

§101-13 Age restriction.

No person under the age of twenty-one (21) years shall be permitted in or to remain within a bottle club (**Amended 11-10-1987**).

§101-14 Hours of operation.

The premises used as a bottle club shall be closed and vacated by members and guests each day from 1:00am to 8:00am, except that on January 1 the premises may remain open until 2:00am. During the hours that a bottle club must remain closed, no members, guests, or other persons, other than regular employees, may be on or remain therein, and the use by anyone of the premises or facilities of the bottle club for the drinking of alcoholic beverages during such hours when a bottle club must remain closed is prohibited.

§101-15 Inspection of premises.

The applicant or licensee, his agents and employees shall allow access by the Code Enforcement Office, Fire Chief or any law enforcement office for the purposes of inspecting the premises and ensuring that no violation of this Article or any law is taking place.

§101-16 Suspension or revocation of license.

A license to operate a bottle club may be denied, suspended or revoked by the municipal officers after notice and hearing for either violation of or failure to comply with any of the provisions of this Article.

§101-17 Appeals.

An appeal from any final decision of the municipal officers shall be taken by any party to the Superior Court in accordance with the provisions of Rule 80B of the Maine Rules of Civil Procedure

§101-18 Violations and penalties.

In addition to any action which the municipal officers may take, violation of any provision of this Article shall be a civil violation, and a fine not exceeding five hundred dollars (\$500.) may be imposed. Each day that a violation continues will be treated as a separate offense

**ARTICLE II
Victualer License Fees
(Adopted 12-9-1986)**

§101-19. Title.

This Article shall be known as and may be cited as the "Ordinance Setting Fees for Victualer's Licenses."

§101-20. Licensing board.

This licensing board shall be the Windham Town Council

§101-21. Term of license.

The term of a victualer's license shall run from May to May of the following year

§101-22. Fees.

Fees shall be as follows:

- A Victualer without on-site consumption of liquor: twenty-five dollars (\$25).
- B. Victualer with on-site consumption of liquor: fifty-five (\$55).
- C Nonprofit organization. one dollar (\$1.).

ARTICLE III
Liquor License Fees
(Adopted 2-28-1989)

§ 101-23. Title.

This Article shall be known as and may be cited as the "Ordinance Setting Fees for Liquor Licenses."

§ 101-24. Licensing Board.

The licensing board shall be the Windham Town Council.

§ 101-25. Term of License.

The term of a liquor license shall be one (1) year from the date of issuance.

§ 101-26. Fees.

A nonrefundable filing fee of ten dollars (\$10), plus the cost of advertising shall be paid to the town at the time of application for an original or renewal liquor license.

ARTICLE IV
Off-Premises Catering Licenses
(Adopted 2-28-1989)

§ 101-27. Title.

This Article shall be known as and may be cited as the "Ordinance Setting Fees for Off-Premises Catering."

§ 101-28. Licensing Authority.

The licensing authority for the issuance of off-premise catering licenses shall be the Town Clerk. [Amended 1-28-2003. Effective 2-28-2003.]

§ 101-29. Purpose.

This off-premises catering license authorizes a Class A restaurant, hotel or club licensed to sell spirits, wine and malt liquor at planned events or gatherings to be held at locations other than the licensee's premises.

§ 101-30. Term of License.

The term of an off-premises catering license shall be one (1) calendar day.

§ 101-31. Fees.

The fee shall be ten dollars (\$10) per calendar day.

§101-30. Term of license.

The term of an off-premises catering license shall be one (1) calendar day.

§101-31. Fees.

The fee shall be ten dollars (\$10) per calendar day