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<https://www.whitingmaine.com/mill-pond-water-level-ordinance/>

MILL POND WATER LEVEL ORDINANCE

ARTICLE — “Whiting Mill Pond Water Level and Minimum Flow Ordinance”

Section I. Title

This ordinance shall be known and may be cited as the “Whiting Mill Pond Dam Ordinance” (hereinafter referred to as the “Ordinance”).

Section II. Authority

In accordance with 30-A M.R.S. §§ 4454-4457 and the Town’s home rule authority, the Town hereby ordains that the Town shall, upon approval of the Maine DEP, have authority to regulate water levels and minimum flows for the Mill Pond in Whiting and, in conjunction therewith, to enter upon that property necessary for the purpose of maintaining, repairing, reconstructing, and operating an existing dam. Specifically, the Town or authorized contractors, together with personnel and equipment, may enter onto property under the authority of any enforcement order or easement secured for the purpose of maintenance and repair (and other authorized activities) of a dam that impounds the Mill Pond and that affects the water levels or minimum flow of the Mill Pond.

Section III. Findings and Purpose

The Mill Pond (the “Pond”) is a high value fire safety watershed in the Town of Whiting. The Mill Pond is also highly valued by the people of the Town of Whiting for its economic, historical, cultural, and aesthetic importance. Currently, a privately owned dam controls the water levels of the Pond (the “Mill Pond Dam”). The Mill Pond Dam is currently owned by the Downeast Salmon Federation (“DESF”). It has been determined that disrepair, discontinuance or a breach of the Mill Pond Dam would result in critical economic, cultural, and fire safety impacts to the residents and their properties in the Town of Whiting. It is critical for the Town to have the ability to maintain water levels in the Pond, and in conjunction therewith, to monitor and maintain this Mill Pond Dam.

Title 30-A M.R.S. § 4455 provides that any municipal ordinance to regulate water levels and flows must include (1) all substantive provisions of 38 M.R.S., Ch. 5, Subchapter 1, Article 3-A, under which the DEP establishes water level regimes and minimum flow requirements; and (2) provisions allowing the Commissioner of Environmental Protection and any municipality downstream of the impoundment to petition for a water level hearing.

Section IV. Substantive Law Provisions relating to Water Levels and Flow Requirements Adopted by Reference

The Town Meeting of the Town of Whiting hereby adopts the following

requirements consistent with the requirements of 38 M.R.S., Ch. 5, Subchapter 1, Article 3-A:

Power. The Board of Selectmen may on the Board's own motion and shall, at the request of the owner, lessee or person in control of a dam on the Pond (e.g., the Mill Pond Dam, currently owned by DESF), the Commissioner of Inland Fisheries and Wildlife, the Commissioner of Environmental Protection, any municipality downstream of the Pond, or upon receipt of petitions from the lesser of at least 25% or 50 of the littoral or riparian proprietors of the Pond, conduct a public hearing for the purpose of establishing a water level regime and, if applicable, minimum flow requirements for the Pond.

Notwithstanding the provisions of this subsection, after an order establishing a water level regime or minimum flow requirement has been issued pursuant to this subsection, the Board of Selectmen is not required to hold a hearing to establish a new water level regime or minimum flow requirement for the Pond in response to a petition from littoral or riparian proprietors unless the Board of Selectmen determines that there has been a substantial change in conditions or other circumstances materially affecting the impact of water levels and minimum flows on the public and private resources identified in subsection 4 since the order was issued.

Notice. The Board of Selectmen shall provide written notice of any hearing held pursuant to this section to the owner, lessee or person in control, if known, of any dam on the Pond and to any petitioner who has petitioned for a hearing with respect to this body of water. The Board of Selectmen shall give public notice of the hearing under Title 5, section 9052 and shall also file notice of the hearing in the Whiting municipal office and in the county clerk's office of Washington County, the county in which the Pond is located.

Conduct of hearing. The hearing shall follow the procedures for a public hearing specified in any applicable Whiting Ordinance, and applicable Maine law, as well as the procedures specified in this section.

Evidence. At the hearing, the Board of Selectmen shall solicit and receive testimony for the purpose of establishing a water level regime and, if applicable, minimum flow requirements for the Pond. The testimony is limited to:

The water levels necessary to maintain the public rights of access to and use of the water for navigation, fishing, fowling, recreation and other lawful public uses;

The water levels necessary to protect the safety of the littoral or riparian proprietors and the public;

The water levels and minimum flow requirements necessary for the maintenance of fish and wildlife habitat and water quality;

The water levels necessary to prevent the excessive erosion of shorelines;

The water levels necessary to accommodate precipitation and run off of waters;

The water levels necessary to maintain public and private water supplies;

The water levels and flows necessary for any ongoing use of the dam to generate or to enhance the downstream generation of hydroelectric or hydromechanical power; and

The water levels necessary to provide flows from any dam on the Pond to maintain public access and use, fish propagation and fish passage facilities, fish and wildlife habitat and water quality downstream of the body of water.

Order. Based on the evidence solicited at the hearing, the Board of Selectmen shall make written findings and issue an order to the owner, lessee or person in control of a dam establishing a water level regime for the Pond and, if applicable, minimum flow requirements for such dam. The order must, insofar as practical, require the maintenance of a stable water level, but must include provision for variations in water level to permit sufficient drawdown of the body to accommodate precipitation and runoff of surface waters, minimum flow requirements and to otherwise permit seasonal and other necessary fluctuations in the water level of the Pond in order to protect public health, safety and welfare and the public and private resources identified in subsection 4. The Board of Selectmen shall deliver a copy of the order to the owner, lessee or person in control of the dam, the municipal office of the Town of Whiting and each petitioner, if any, and shall also file a copy of the order in the Washington Registry of Deeds.

Appeal. The Board of Selectmen's order may only be appealed within thirty (30) days of the issuance of the Board's written Order to the Maine Superior Court pursuant to Rule 80B of the Maine Rules of Civil Procedure.

Section V. Maintenance of the Dam after Order Issued

Prohibition. After issuance of an order under Section IV, subsection 5, establishing a water level regime for the Pond, no owner, lessee or person in control of the dam impounding the Pond, nor any subsequent transferee, may operate or maintain the dam or cause or permit the dam to be operated or maintained in any manner that will cause the level of water to be higher or lower than that permitted by order of the Board of Selectmen or to otherwise violate the terms of the order of the Board of Selectmen.

Exception. An owner, lessee or person in control of a dam on the Pond may not be in violation of subsection 1 when the water level fluctuation not permitted by the order was caused by unforeseeable and unpredictable meteorological conditions or operating failures of such dam or any associated equipment or by valid order of federal, state or local authorities, including an order issued pursuant to Title 37-B, section 1114, subsection 2, and when the person could not have avoided the fluctuation by promptly undertaking all reasonably available steps to regulate water flow through or over any dam under the person's control. The burden of proof is on the owner, lessee or person in control of the dam to demonstrate the applicability of this subsection.

Enforcement. The Town may commence an action to enjoin the violation of any provision of this Section V. The Town may enforce any order issued under Section IV by any other appropriate remedy, including, but not limited to, entering the dam premises to carry out the terms of the order, and shall be entitled to all costs incurred by the Town for the purposes of carrying out the terms of such order.

The violation of any order issued under Section IV, is punishable by a forfeiture of not less than \$100 and not more than \$10,000. Each day of violation is considered a separate offense.

Appeal. Any person aggrieved by an order of the Board of Selectmen under Section V may appeal to the Superior Court under Rule 80B of the Maine Rules of Civil Procedure.

Section VI. Monitoring of Water Levels and Oversight of Dams

The monitoring of the Pond water levels above any dam (e.g., the Mill Pond Dam), and associated minimum flows below any dam, as well as oversight of operation of any dam (and any other future dam on the Pond) shall be accomplished in the following manner by the Town of Whiting:

Dam Steward: As a designee of the Board of Selectmen, a Steward shall be appointed by the Board of Selectmen annually in the month of May for each year following the adoption of this Ordinance. Nominees for Steward shall be by recommendation brought forward by the Town at their annual meeting subject to the approval by the Board of Selectmen. If no nominees are recommended, then the Board of Selectmen may proceed and appoint a Dam Steward. The Steward's responsibility shall include monitoring the Pond water levels and minimum flows for the Pond, and dam condition and maintenance issues. The Steward will work in cooperation with the owner, lessee or person in control of a dam, Maine Department of Inland Fisheries and Wildlife, and the Maine Emergency Management Agency to maintain water levels that are safe and desirable to maintain the fish and wildlife species using the Pond. The Steward will notify the Town of Whiting of any events promptly and also provide a regular report to the Town as regularly as the Town may request.

Section VII. Additional Dam Maintenance Procedures

Applicability. This section shall apply to dam maintenance and repair activities conducted by the Town that are not performed pursuant to an enforcement order in accordance with Section V of this Ordinance.

Notification. Notification by the Steward of any required repairs will be given to the Town, and any designee of the Town.

Authorization to repair. The Board of Selectmen, upon notice of required maintenance or repair work, will be the sole authorizing body.

Scope of repairs. The scope of repairs, design specifications, and permit requirements shall be itemized and developed as a bid specification by a qualified engineer.

Approval of repairs. Approval of repairs shall be conducted pursuant to the Town's customary approval processes for repairs of this scope and nature.

Section VIII. Funding of repairs

TIF or Reserve Funds. The Town's costs to carry out activities pursuant to this Ordinance shall be funded through approved TIF Funds, Economic Development Reserve Funds, Unappropriated Fund Balance, or a combination of these sources, as approved by the Board of Selectmen.

Section IX. Required Reviews of Dam Repairs

The Board of Selectmen or its designee and/or the Dam Steward shall review and verify that all dam repairs have been done in accordance with acceptable engineering standards and workmanship. In doing so, the Town may consult with Maine Emergency Management Agency, Maine Department of Inland Fisheries & Wildlife, the Maine Department of Environmental Protection, and any other governmental agency or third party consultant/engineer.

Section X. Severability

Should any section or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, such decision shall not invalidate or affect the enforcement of any other section or provision of this Ordinance.

Section XI. Definitions

As used in this Ordinance, unless the context indicates otherwise, the following terms have the following meanings:

Dam. "Dam" means any man-made artificial barrier, including appurtenant works, the site on which it is located and appurtenant rights of flowage and access, which impounds or diverts a river, stream or great pond and which is 2 feet or more in height and has an impounding capacity at maximum water storage elevation of 15 acre-feet or more. Any such artificial barrier constructed solely for the purpose of impounding water to allow timber to be floated downstream in a logging operation shall not be considered a dam for the purposes of this article, unless it has been repaired, modified or maintained by or with the knowledge of the owner, lessee or person in control since the discontinuance of its use in connection with logging operations. Any adjacent property, easements, roads, bridges or works not necessary for the operation or maintenance of a dam or access to the dam shall not be included under the provisions of this article.

Height. "Height" means, in reference to a dam, the vertical distance in feet from the natural bed of the stream or watercourse measured at the downstream toe of the barrier, or from the lowest elevation of the outside limit of the barrier, if it is not across a stream channel or watercourse, to the maximum capable water storage elevation.

Littoral proprietor. "Littoral proprietor" means an owner or lessee of property on the shore of a lake impounded by a particular dam.

Person. "Person" means any individual, firm, partnership, corporation, trust, municipality, quasi-municipal corporation, state agency, federal agency or other legal entity.

Riparian proprietor. "Riparian proprietor" means an owner or lessee of property on the bank of a river or stream or shore of a pond or other small body of water impounded by a particular dam.

Board of Selectmen Certification:

We the undersigned members of the Whiting Board of Selectmen hereby certify this ordinance entitled "Whiting Mill Pond Water Level and Minimum Flow Ordinance."

Dated: November 22, 2016.

First Selectman

Second Selectman

Third Selectman



<https://www.whitingmaine.com/town-ordinances/wind-energy-ordinances/wind-energy-ordinance/>

WIND ENERGY ORDINANCE

Town of Whiting

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Town of Whiting
Wind Energy Facility Ordinance

Enacted: May 24, 2010

Amended: April 11, 2016

Section I. Purpose and Intent

The purpose of this Ordinance, consonant with M.R.S.A. 30-A Sec.3001, is to provide for the construction and operation of Wind Energy Facilities in the Town of Whiting, Maine, subject to conditions and requirements that will protect the public's safety, health, and welfare.

Section II. Essentials

(a). It shall be unlawful and a violation of this Ordinance to begin construction, operation, or modification of a Wind Energy Facility without a Site Permit and Operation License. Similarly, it shall be unlawful to undertake actions which violate or fail to comply with an approved permit or license including conditions that may have accompanied issuance of a license.

(b). Wind Energy facilities shall be constructed only at locations which afford five thousand two hundred eighty (5,280) feet of separation from the nearest Protected Location.

(c). WHITING: FIRE PROTECTION

The Applicant shall prepare a plan in consultation with the Town of Whiting Fire Department as part of the permitting process. The plan shall address all activities at the Wind Turbine Generator from the start of construction through the end of power generation and the final removal and restoration of the site, and shall discuss a response plan to address all identified potential fire, rescue, and hazardous material scenarios. The Owner/Operator shall ensure that the Wind Turbine Generator complies with the following control and prevention measures and assumes responsibility for all associated incremental costs:

- Use of fireproof or fire resistant building materials and buffers or fire retardant landscaping around Wind turbine Generator as appropriate.

- Incorporation of a self-contained fire protection system to address nacelle fires,

including but not limited to redundant fire quenching systems in the nacelle.

- Maintenance of firebreak areas as appropriate, cleared of vegetation and maintained as a fire/fuel break as long as the wind turbine is in operation.

- Provision for any additional fire fighting or rescue personnel, services, training, materials, or vehicles as may be required to address any emergency related to Wind Turbine Generator that is beyond the current capabilities and duties of the local fire department..

(d). The Whiting Planning Board shall from time-to-time define fees for Permits and Licenses required by this Ordinance. Fees will be listed in an attachment.

1.

(e). The burden of compliance with all aspects of this Ordinance is on the Applicant; e.g., the prospective Owner-Operator of a Wind Energy Facility. Approval of a Site Permit or Operation License by the Planning Board does not relieve the applicant from compliance with Ordinance demands that may be un-mentioned in the Permit or License.

(f). For a specific property, one or more provisions of this Ordinance may be waived at the land owner's discretion. Waivers shall be memorialized at the Washington County Registry of Deeds with an addendum to or modification of the owner's deed. Whiting officials shall not waive Ordinance requirements except in the circumstances cited in the Ordinance.

(g). If there is a conflict between provisions of this Ordinance, the more stringent shall apply. Conflicts between this Ordinance and other Whiting ordinances shall be resolved in favor of this Ordinance. Should a Court declare invalidity of any part of this Ordinance such declaration shall not invalidate other parts of the Ordinance or the Ordinance as a whole.

(h). The name, address, and telephone number of the individual or firm proposing to apply for a turbine site permit or an operation permit shall be filed with the Whiting

Planning Board. The individual who will direct or manage a proposed facility shall also be identified. The applicant or his designee shall publicize a telephone number and name an individual to respond to citizen inquires and complaints throughout the life of a Wind Energy Facility. Complaints shall be identified to the Planning Board and resolved within three (3) days thereafter.

(i). Construction and operation of a Wind Energy Facility shall be undertaken only when the applicant has submitted estimated costs of the project, and the cost of removing the obsolete, unused, or defective Facility. A demonstration in the form of a performance bond, surety bond, letter of credit or other financial instrument, acceptable to the Whiting Planning Board, has been created to assure that the Applicant will have the funds necessary to complete the project and to remove the Wind Energy Facility at the end of its useful life. At the discretion of the Planning Board, an Independent Engineering Agency may be hired to assist the Planning Board in developing this section of the Ordinance as relates to removal of the Tower.

(j). Wind Turbine Generators that have a taxable property value of greater than \$10 million dollars; or, if the project will be qualified as a "designated business" for the purposes of state tax incremental financing as defined in Title 30-A M.R.S.A. § 5241, are required to have a written agreement between the Town of Whiting and the Owner/operator designating the financial methodology that will be used for tax purposes (Tax Valuation Agreement")

The Tax Valuation Agreement must be in a format approved by the Town attorney and comply with all applicable state and federal tax codes and laws.

The Tax Valuation Agreement must include a financial projection of the tax valuation for the useful life of the project and be prepared by a qualified CPA and reviewed by a qualified tax attorney selected by the Town and paid for by the Applicant.

2.

A Tax Impact statement must be prepared and presented to the Town. It will contain year-by-year for 10 years estimates of Whiting resident's tax burden using the following data: 1) re-appraised values for all residents within 2 miles of the Wind Turbine Generators, 2) State re-assessment for school tax amounts (assume constant school budget and constant contributions from Towns other than Whiting), 3) other resident's properties are presumed to stay at their same value. This Tax Impact Statement will be prepared by an Accountant hired by the Town at Owner/operators expense. The Tax Impact Statement will be presented to the Town for information.

(k) .Each Wind turbine shall be equipped with an over speed control system that includes both an aerodynamic control such as stall regulation, variable blade pitch, or similar system, and a mechanical brake that operates in fail-safe mode.

(l). Permit application shall be submitted to the Code Enforcement Officer who may perform an initial review of application completeness. Within thirty (30) days after application submission and in consultation with the Whiting Planning Board and staff, the Code Enforcement Officer shall notify the Applicant that his material is complete or that it is incomplete. The Code Enforcement Officer shall document the applicant deficiencies inspiring a rejection without implying that all problems are listed.

(m). Permit review authority lies with the Code Enforcement Officer and the Planning Board as indicated in the table below (Section IV). With assistance of existing staff and/or consultants, the review authority shall determine completeness of the application within thirty (30) days after submission. Upon acceptance of a complete application, its approval or rejection shall occur within ninety (90) days after the associated public hearing.

(n). In reviewing an application for compliance with this Ordinance, the Whiting Planning Board and Code Enforcement Officer may retain professional services including but not limited to attorneys and technical consultants to verify data presented.

A professional fees escrow shall be established by applicant: one half of one percent of the estimated cost of the project with a minimum balance of \$25,000.00 at all times. The fees escrow shall be maintained for 2 years after the project completion. The fees escrow may be returned to the applicant at this time.

(o).Ten (10) days prior to any meeting at which a Wind Energy Facility permit application is to be considered, the Whiting Planning Board shall notify the Applicant and owners of property abutting the proposed Facility site of the intent to consider a permit application and shall post a similar notice for the general public. The notice shall state the proposed Facility location, type of permit, and the date, time, and place where consideration will take place.

During the hearing, the Planning Board shall list and describe Ordinance provisions which the Board proposes to modify.

(p). If the Applicant proposes changes to a pending application after a public hearing has occurred, the Whiting Planning Board may continue the review process without a renewed public hearing if it determines that the proposed changes do not materially affect the application.

3.

Should the Planning Board determine that the proposed changes involve potential adverse effects in addition to or distinct from those addressed in the initial application, another public hearing shall be scheduled within thirty (30) days of that determination.

(q). Permits shall expire: 1) two years after the date of approval unless a substantial start on construction has occurred and: 2) three years after the date of approval if construction incomplete. If a permit for a Type 2 or Type 3 Wind Energy facility expires, the applicant shall implement pertinent provisions of the approved decommissioning plan. Upon the Applicant's written request, the Town reviewing authority may extend either or both expiration time limits by one year.

(r). The Code Enforcement Officer and hired technical consultants shall have access to a Wind Energy Facility site at all times to review pertinent records and documents and physical construction of the facility.

(s). Any person aggrieved by a decision of the Code Enforcement Officer or the Whiting Planning Board may appeal to the Whiting Board of Appeals for modification or reversal of an aggravating requirement.

Section III. Effective Date

This Ordinance is effective as of May 24, 2010 and amended as of April 11, 2016.

4.

Section IV. Classification of Wind Turbines and Meteorological Towers

For the purpose of classification, Wind Turbine Generators are classified according to the following definitions:

(a). Type 1 – Small Wind Turbine means a single wind turbine with a nameplate capacity less than 10kW, and turbine height less than 100 feet. This ordinance does not apply to these. (See Small Wind Ordinance)

(b). Type 2 – Intermediate Wind Turbine means a single wind turbine with a nameplate capacity less than 100kW, and a turbine height less than 100 feet, and not requiring a Site Location of Development permit from the Maine Department of Environmental Protection (DEP) pursuant to Title 35-A M.R.S.A. §3456. This ordinance does not apply to these.

(c). Type 3 – Large Wind Turbine means up to three wind turbines with a nameplate capacity less than 1MW, and a turbine height less than 300'. A Location of Development permit from the Maine Department of Environmental Protection (DEP) pursuant to Title 35-A M.R.S.A. §3451, Title 35-A M.R.S.A. §3456 and Title 38 M.R.S.A. §482 is normally required unless the Wind Turbine: 1) does not sell

or convert electricity for off site use including net metering; and, 2) does not qualify as a Structure with a total land area in excess of 3 acres for the entire Wind Turbine Generator.

For the purpose of this Ordinance, included in the Type 3- Large Wind Turbine shall be any turbine(s) of nameplate capacity equal to or greater than 100kW and a turbine height greater than 150 feet if the energy generated is for sale or use by a Person other than the generator.

(d). Type 4 – Industrial Wind Turbine means one or more wind turbines each with a nameplate capacity of greater than or equal to 1MW, or a turbine height greater than or equal to 300'; or more than three Type 3 Wind Turbines. A Location of Development permit from the Maine Department of Environmental Protection (DEP) pursuant to Title 35-A M.R.S.A. §3451, Title 35-A M.R.S.A. §3456 and Title 38M.R.S.A. §482 is normally required unless the Wind Turbine: 1) does not sell or convert electricity for off site use including net metering; and,

2) does not qualify as a Structure with a total land area in excess of 3 acres for the entire Wind Turbine Generator.

(e). Meteorological Towers (MET Towers) MET towers shall be permitted at the discretion of the Whiting Planning Board, with no height limitations, other than those imposed under State or Federal law. A permit for a temporary MET tower shall be valid for a maximum of five years. The site shall be restored to its original condition within 30 days following removal of the tower.

5.

Section V. General Requirements

Context and Narrative

An application shall include a narrative describing a proposed Wind Energy Facility, or modification, that includes the number and aggregate generating capacity of all Wind Turbines, the Turbine height and manufacturer's specification for each Turbine (including but not limited to the make, model, maximum generating capacity, sound emission levels and type of over speed controls) and a description of Associated Facilities. Location maps shall be provided showing boundaries of the proposed facility site and all contiguous property under total or partial control by the Applicant and Participating land owners. Historic and Scenic sites within five thousand two hundred eighty feet 5280 feet of the proposed site shall be identified.

Safety Setback

Wind Turbines shall be setback a horizontal distance equal to 200% of the Turbine Height from Facility property boundaries, public and private rights-of-way, and overhead utility lines that are not part of the Proposed Facility; except, the Town review and approval authority may allow a reduced setback if the Applicant submits in writing 1) a waiver of the property setback requirement signed by the pertinent abutting land owner or, 2) evidence such as operating protocols, safety programs, or recommendations from the equipment manufacturer or a licensed professional engineer having relevant experience with Wind Turbines, that demonstrates that the reduced setback does not compromise safety of adjacent Protected Locations existing at the time of application.

Building Standards

All components of the Wind Energy Facility shall conform to relevant local and State building codes.

Access

All ground-mounted electrical and control equipment and all access doors to a Wind Turbine shall be labeled and secured to prevent unauthorized access. A wind tower shall not be climbable up to a minimum of fifteen (15) feet above the ground surface.

Danger warning signs shall be posted on all Associated Facilities at ground level where voltages greater than 120 volts may be encountered.

Natural Resources

A Wind Energy Facility shall not have an unreasonable adverse effect on rare, threatened, or endangered wildlife, significant wildlife habitat, threatened or endangered plants, and rare and exemplary plant communities. The Whiting authority reviewing the permit application shall seek the written comments or recommendations of the Maine Department of Inland Fisheries and Wildlife Environmental Coordinator and Maine Natural Areas Program.

Erosion Control

Erosion of soil and sedimentation shall be minimized by employing “best management practices” as found in the Maine Erosion Control Handbook for Construction: Best Management Practices”, March 2003.

6.

Signal Interference

To the extent practical, Wind Turbines should be positioned to avoid and mitigate disruption or loss of radio, television, telephone, cell phone transmitter, and similar signals.

Structure Type

Wind turbine towers shall be monopoles with no guy wires unless, to the satisfaction of the reviewing authority, it is demonstrated that a guy-wired tower is the most practical and economical alternative. Bird flight diverters must be installed on permitted guy wires.

Building-mounted Wind Turbines are not permitted.

Blade Clearance

The minimum clear distance between ground and Turbine blades shall be twenty-five (25) feet to the lowest position of the blade arc.

Appearance and Visibility

A Wind Turbine shall be a non-obtrusive color such as white, off-white or gray, or as otherwise may be required by another governmental agency with jurisdiction over the Wind Energy facility.

A Wind Turbine shall not exceed 400' to the highest point.

A Wind Turbine shall not be lighted artificially except to the extent consistent with the Federal Aviation Administration recommendations using an ADLS System (Air Craft Detection Lighting System) for safety lighting.

A Wind Turbine tower shall not be used to support advertising signs apart from reasonable and incidental identification of the turbine manufacturer, facility owner and operator, and safety warnings.

To the extent that doing so does not inhibit adequate access to the wind resource, each Wind Turbine shall be located to maximize effectiveness of existing vegetation, structures, and topographic features in screening views of a Wind Turbine from Protected Locations and Scenic Resources.

When existing features do not screen views of a Wind Turbine from Protected Locations and Scenic Resources screening may be feasible via planting of trees and shrubs. Plantings should be native varieties placed as close as possible to the point from which the Turbine is viewed.

Electrical Components

All electrical components of a Wind Energy Facility shall be installed to comply with applicable local, state, and national codes.

7.

Discontinued Use

A Wind Energy Facility that has not generated electric power for twelve (12) consecutive months shall be deemed discontinued and shall be removed from the property within one hundred twenty (120) days after receipt of notice from the Code Enforcement Officer; this requirement may be waived if the Applicant provides the reviewing authority with information demonstrating that the facility has continuing value. Upon removal of a facility, the owner shall pay all costs including for the site reclamation deemed reasonable; i.e., road removal, vegetation and tree restoration, etc.

Standards for Type 3 and Type 4 Wind Energy Facilities

Sound Level Prediction

The level of sound that may emanate from a proposed Wind Energy Facility shall be estimated using the best available mathematical model of sound distribution from the Facility. The model theoretical basis and structure shall be documented and shall include effects of topology, wind speeds and directions, likely meteorological conditions, and such physical elements (forested areas, large buildings, pond areas, etc.) as may be significant in the model. The computer code and operating instructions shall be provided to the review authority upon request.

(a). Pertinent Locations

Wind Energy Facility sound levels shall be estimated at each Protected Location within one mile (5280 feet) of the Facility. The side or region of the Protected Location that is nearest or otherwise most likely to receive the highest sound level should be the subject of estimation

(b). Acceptable Sound Levels

For any Protected Location in an area that is, or will be, predominantly residential, the sound limit shall be 45 dbA at all times. Short Duration Repetitive Sounds, at all times, shall not exceed 48dbA.

For any Protected Location in an area that is, or will be, predominantly commercial, transportation, or commercial the limit shall be 50 dbA at all times. Short Repetitive Sounds, at all times, shall not exceed 56 dbA.

At any property line of the facility site or contiguous participating property, the acceptable sound level shall be 65 dbA or less at all times of the day.

Sound Level Management

Prior to facility construction and as part of the data submitted when a Site Permit is sought, ambient sound levels shall be measured at all Protected Locations within one mile (5,280 feet) of a proposed facility location. The time or times of measurement shall be those when ambient levels are expected to be least and when they are greatest. The seasons of the year and possible meteorological effects shall be considered when choosing measurement times.

8.

When facility construction is complete and the Wind Turbine is ostensibly in normal operation, sound measurements shall be made and recorded for all Protected Locations where predicted sound levels are within five (5) dbA of required values. The time or times of measurement shall be those when the Wind Turbine noise is greatest, again with consideration of seasons and meteorological effects.

Measurements shall be supervised by personnel who are well-qualified by training and experience in the measurement and evaluation of environmental sound. Costs associated with measurements shall be assumed by the Wind Turbine Facility owner.

Based upon neighbor complaints or on the initiative of the Code Enforcement Officer, after a Wind Turbine is operational, sound level measurement shall be conducted at Protected Locations. If measured levels are 3 dbA or greater than mandated levels for one hour or more, the mill shall be shut down. During a subsequent year, the mill may be operated only to test effectiveness of noise abatement modifications made to the mill. If the mandated sound levels are achieved, the mill may be put into full operation.

Should no satisfactory noise abatement be achieved during the year, the mill shall be removed. If the turbine operator can demonstrate that an impending modification will silence the turbine, removal of the mill may be postponed at the discretion of the Planning Board.

Sound measurement procedures and apparatus shall be as defined in American National Standards Institute S12.9, Quantities and Procedures for Description and Measurement of Environmental Sound.

Flicker

Shadow flicker, caused by moving Wind Turbine blades and the sun, shall be estimated for all Protected Locations within one mile (5280 feet) distance from a proposed facility. Estimations shall derive from assumed duration of worst positions of the sun and

screening effects of trees in leaf and without leaves.

Worst case estimation flicker duration shall be less than thirty (30) hours per year at all Protected Locations.

Reflections (glint) from Wind Turbine blades shall be minimized with non-reflective coatings on the blades.

Public Hearing

Unless the Code Enforcement Officer details unique circumstances associated with a Type 1A permit application, a public hearing is not required. Type 2 1B permit applications will be subject to public hearing.

Required Application Data

(a). A receipt attesting to payment of the application fee together with the applicant's affirmation that the proposed Facility will be designed and in compliance with this Ordinance and if the application is approved, the Facility will be constructed and sited in accord with this Ordinance and conditions of approval.

9.

(b). An estimate of total cost for Facility construction together with a description of the financial arrangement that will assure availability of necessary funds. The cost of removing an obsolete or defective Wind Turbine and Tower shall be included in the estimate.

(c). Certificates of design compliance obtained by the equipment manufacture from underwriters Laboratories, Det Norske Veritas, or other similar certifying organization.

(d). Standard boundary survey of subject property stamped by a Maine-Licensed surveyor.

(e). A stormwater management plan stamped by a Maine-Licensed surveyor.

(f). Foundation and Tower anchoring system drawings that are stamped by a Maine-Licensed professional engineer.

(g). A copy of a deed, easement, purchase option, or comparable documentation demonstrating the Applicant's rights on the proposed Facility site. The address, tax map and number of the proposed facility location together with identification of contiguous parcels owned by Participating Landowners shall be reported. Owner names and addresses of the contiguous Participants shall be documented.

(h). The names and addresses of non-participants owning parcels (identified by map and lot number, and current usage) which are adjacent to the proposed facility and Participating land owner properties shall be listed and notified by certified mail by the applicant

(i). Facility site plans shall be provided showing the proposed location of each Wind

Turbine and Associated Facilities. The plans shall encompass all area within one mile (5280 feet) of the proposed facility. It shall indicate parcel boundaries, required setbacks, topographic contour lines (maximum 20- foot interval), public and private roads and rights-of-way, overhead utility lines apart

from those integral to the Facility, forested areas, streams, wetlands, water bodies, and areas proposed to be graded or cleared of vegetation.

The plan's documentation shall include structural drawings of the Tower foundation and anchoring system: a) prepared by the Wind Turbine or Tower manufacturer, b) prepared in accord with the manufacturer's specifications or, c) prepared and stamped by a Maine-licensed professional engineer.

(j). The minimum and maximum ambient sound levels measured at each Protected Location.

(k). Photographs of existing conditions at the site shall be provided. Insofar as the site may be visible from Protected Locations within one mile (5280 feet), photographs and Sight Line Representations from those locations shall also be provided.

10.

(l). Written notice that the Environmental Coordinator of the Maine Department Inland Fisheries and Wildlife and Maine Natural Areas Program have been notified of the pending application. The notification shall include the number, location, and height to the proposed Wind Turbines.

(m). A statement, signed by the Applicant, that certifies that the proposed facility is designed to meet applicable noise standards and acknowledges the Applicant's obligation to take remedial action when informed of a noise violation by the Code Enforcement Officer.

(n). Normal and emergency shutdown procedures shall be described as well as the means for slowing braking, and stopping a Turbine.

(o). Such additional data which the Applicant believes will support the request for a permit.

Public Roads

The Applicant shall identify all state and local public roads to be used within the Town of Whiting to transport equipment and parts for construction, operation, and maintenance of a Wind Energy Facility. A qualified third-party engineer acceptable to the Applicant and the Whiting Planning Board, and paid by the Applicant, shall document road conditions prior to facility construction. The engineer shall similarly document road conditions thirty (30) days after construction is complete.

Any road damage caused by the Applicant's activity during construction and operation of a Wind Energy Facility shall promptly be repaired at the Applicant's expense.

The Applicant shall demonstrate to the Whiting Planning Board the necessary funds are available.

Scenic Resources

The Whiting Planning Board shall determine, based on the following criteria, whether a Type 3 or Type 4 Wind Energy Facility significantly compromises views from a Scenic Resource that is within five (5) miles of a proposed Facility.

(a). The significance of the potentially affected resource;

(b). The existing character of the surrounding area;

(c). The expectations of the typical viewer;

(d). The extent, nature, and duration of potentially affected public uses of the Scenic Resource including but not limited to issues related to the number and extent of Wind turbines visible from the resource, the distance from the resource, and the effect of prominent Facility features on the viewscape.

A finding by the Whiting Planning Board that a Type 3 or Type 4 Wind Energy Facility is a highly visible feature in the landscape is not a solely sufficient basis for concluding that the Facility will have an unreasonable effect on the character and existing uses of the Scenic Resource.

11.

DEP Certification

A Site Application for a Type 3 Wind Energy Facility that will generate power for sale or use by persons other than the Applicant shall include certification from the Maine Department of Environmental Protection relative to 35-A.M.R.S.A. Sec.481 that the Wind Energy Facility:

(a). Will meet requirements of the noise control rules adopted by the Board of Environmental Protection pursuant to the Site Location of Development Act.

(b). Will be designed and sited to avoid unreasonable Shadow Flicker effects.

(c). Will be constructed with setbacks adequate to protect public safety.

If such certification has not been issued at the time of application, the Applicant shall include evidence that DEP certification has been applied for.

Liability Insurance

The applicant or his designee shall maintain a current liability policy, acceptable to the Whiting Planning Board, that covers bodily injury and property damage with limits in an amount commensurate with the scope and scale of the Facility.

12.

Appendix A. Definitions

Ambient Sound is at a specified time, the all-encompassing sound associated with a given environment. It is usually a composite of sounds from many sources and directions.

Applicant is the legal entity, including successors and assigns, that files an application under this Ordinance.

Approved Residential Subdivision means a residential subdivision for which all applicable permits have been issued providing that at the time of Facility construction such permits have not expired.

Associated Facilities means those elements of a Wind Energy Facility, other than its Generating Facilities, that are necessary to the proper operation and maintenance of the Wind Energy Facility including, but not limited to, buildings, access roads, electrical substations, and conductors carrying electric power from a Facility.

Construction is the activity and operations associated with implementation of a facility or its expansion.

DEP Certification means a certificate issued by the Maine Department of Environmental Protection pursuant to 35-AM.R.S.A. Sec.3456 for a Wind Energy Development.

Emergency is an unforeseen combination of circumstances requiring immediate action.

Emergency Maintenance and Repairs is the work done in response to an emergency.

Existing Sound Level is the hourly sound level resulting from routine operation of an existing facility prior to the first facility expansion that is subject to this ordinance.

Equivalent Sound Level is the mean-square of the A-weighted sound pressure during a one-hour interval with measurement values recorded at five minute intervals; equivalently for short time intervals, it is the measured level divided by the duration of the sound.

Generating Facilities means Wind Turbines and electrical connections that are immediately associated with a Wind Turbine, and excluding Generator Lead Lines as defined in 35-A.M.R.S.A. Sec 3132(1-B).

Historic Area means any site, structure, district or archeological site which has been officially included on the National Register of Historic Places, the Maine Historic Inventory, administered by the Bureau of Parks and Lands, or which is established by qualified testimony as being of historic significance.

Hourly Sound Level is the average value reported, during a one-hour period, by and integrating/averaging sound meter meeting Type1 or Type 2 performance requirements of the American National Standards Institute specifications for Sound Level Meters, ANSI 1.4-1993.

1A.

Locally-designated Passive Recreation Area means any site designated by a municipality for passive recreation that is open and maintained for public use and which: a) has fixed boundaries, b) is owned in fee simple by a municipality or is accessible by virtue of a public easement, c) is identified and described in Whiting's comprehensive plan at least nine months prior to submission of an Applicant's Wind Energy Facility permit application.

Maximum Sound Level in decibels, is ten times the common logarithm of the square of the ratio of the maximum sound pressure to the reference pressure of 20 micropascals.

Municipal Reviewing Authority means the Whiting Planning Board or Code Enforcement Officer.

Nacelle is the frame or housing at the top of a Wind Tower that encloses the gearbox and generator.

Non-Participating Landowner means any landowner with property within 500 feet of a proposed facility who chooses not to participate in siting and operation of a Wind Energy Facility.

Occupied Building means a residence, school, hospital, house of worship, public library, or similar building that is in use as a primary residence or is customarily frequented by the public during daylight and early evening hours; for consideration as such the building must be occupied at the time of facility permit application.

Participating Landowner means one or more persons that hold title in fee or a leasehold interest with sublease rights to property on which a Wind Turbine, or Turbines, and Associated Facilities are proposed to be located pursuant to an agreement with the Applicant or an entity that has entered into an agreement with the Applicant allowing the Applicant to demonstrate the requisite right, title, and interest in such property.

Person means an individual, corporation, partnership, firm, organization or other legal entity.

Planned Residence means a Residence building for which all applicable building and land use permits have been issued provided that at the time of Facility construction such permits have not expired.

Protected Location means any location that is:

1) accessible by foot, on a parcel of land owned by a Non-Participating Landowner containing a residence or planned residence, and approved residential subdivision, house of worship, academic school, college, library, duly licensed hospital or nursing home, etc. near the Facility site at the time a Wind Energy Facility permit application is submitted under this Ordinance;

2) within a State Park, Baxter State Park, a National Park, a nature preserve owned by a land trust, the Maine Audubon Society or the Maine chapter of the Nature Conservancy, the Appalachian Trail, the Moosehorn National Wildlife Refuge, a federally designated wilderness area, a state wilderness area designated

2A. by statute, a municipal park or a locally-designated passive recreation area, or any location within consolidated public reserve lands designated by rule by the Bureau of Public Lands as a Protected Location;

3) a hotel, motel, campsite or duly licensed campground that the Planning Board

Has designated a Protected Location after determination that the health and welfare of guests or the economic viability of the establishment will be unreasonably affected by the noise in excess of the limit mandated for the type of Wind Energy Facility. The term does not include buildings and structures located on leased camp lots owned by the Applicant for seasonal purposes.

Residence means a building or structure, including manufactured housing, maintained for permanent or seasonal residential occupancy providing living, cooking, and sleeping facilities and having a permanent indoor sanitary facility. Recreational vehicles, and tents, and watercraft are excluded from this definition.

For purposes of this ordinance, (1) a Residence is considered planned when the owner of a parcel of land on which the residence is to be located has received all applicable land use permits and the time for beginning construction under such permits has not expired, and (2) a residential subdivision is considered approved when the developer has received all applicable land use permits for the subdivision and the time for beginning construction has not expired.

Routine Operation is regular and current operation of regulated sounds sources associated with the purpose of the facility

Scenic Resource means either a Scenic Resource of state or national significance, as defined in 35-AM.R.S.A. Sec 3451(9) or a Scenic Resource of local significance located within the Town of Whiting and identified as such in the town comprehensive plan, and open space plan, or a scenic inventory adopted by Town Meeting.

Shadow Flicker means alternating changes in light intensity caused by the movement of Wind Turbine blades casting shadows on the ground or other stationary objects.

Short Duration Repetitive Sounds means a sequence of sounds which occur more than once within one hour, each clearly discernable as an event and causing a significant sound level increase, on the fast meter response, above the sound level immediately before and after each event.

Sight Line Representation means a profile drawing or photograph showing prominent features, including but not limited to topography, buildings, and trees along a line of sight extending from an observer's eye to the lowest point visible on a proposed or existing Turbine Tower.

Significant Wildlife Habitat means Significant Wildlife Habitat as defined in 38M.R.S.

Sec. 480-B(10).

3A.

Sound Level is ten times the common logarithm of the square of the ratio of a frequency-weighted and time-exponentially averaged sound pressure to the reference level of 20 micropascals. For the purpose of this Ordinance, sound level measurements are obtained using the A-weighted frequency band and fast dynamic response of the measuring system unless otherwise noted.

Sound Pressure is the root-mean-square of the instantaneous sound pressures in a frequency band and during a specified time interval; expressed in pascals.

Sound Pressure Level in decibels is ten times the common logarithm of the square of the ratio of the sound pressure to the reference pressure of 20 micropascals.

Substantial Start means that construction shall be considered substantially underway when work beyond excavation including but not limited to the pouring of a slab or footings, the installation of piles, the construction of columns, or the placement of Tower on a foundation has begun.

Tonal Sound is, for the purpose of this Ordinance, a tonal sound exists if the one-third octave band containing a tone has a sound pressure exceeding the arithmetic average of the sound pressure levels in the two contiguous one-third octave bands by 5dB for frequencies between 500Hz and 10,000Hz, by 8dB for frequencies at or between 160 and 400Hz, and by 15dB for Frequencies between 25Hz 125Hz.

Tower means the free-standing structure on which a wind conversion system is or will be mounted.

Turbine Height means the distance measured from the surface of the Tower foundation to the highest point of any turbine blade measured at the highest arc of the blade.

Wind Energy Facility means a facility that uses one or more Wind Turbines to convert wind energy to electrical energy. A Wind Energy Facility includes Generating Facilities and Associated Facilities.

Wind Turbine means an apparatus for the conversation of wind energy into electrical energy; a Wind Turbine is conventionally mounted on a Tower.

(Additional acoustic terms used in association with this Ordinance shall be interpreted in accord with the following American National Standard: Quantities and Procedures for Description and Measurements of Environmental Sound, Part 1;

NASI S12.-1998 – American National Standard: Quantities and Procedures for Description and Measurements of Environmental Sound, Part 1;

ANSI S3.20-1973 – American National Standard Psychoacoustical Terminology;

ANSI S1.1-1960 – American National Standard Acoustical Terminology.)

4A.

Appendix B. Construction and Maintenance Noise

All equipment used in construction and maintenance of a Wind Energy Facility shall comply with federal noise regulations and shall include environmental noise control devices in proper working order as provided by the manufacturer.

Sound from construction and maintenance activities between 7:00AM and 7:00PM shall not exceed the following limits at any Protected Location:

Duration of Activity	Hourly Sound Level Limited
12 hours	87 dbA
8 hours	90 dbA
6 hours	92 dbA
4 hours	95 dbA
3 hours	97 dbA
2 hours	100 dbA
1 hour or less	105 dbA

1B.



<https://www.whitingmaine.com/town-ordinances/wind-energy-ordinances/small-wind-energy-systems-ordinance/>

SMALL WIND ENERGY SYSTEMS ORDINANCE

For the Town of Whiting, Maine

Section 1. Purpose

The purpose of this Ordinance is to regulate the placement, construction, and modification of small, fixed wind energy systems while allowing the safe, effective, and efficient use of this technology.

Section 2. Authority

This ordinance is adopted pursuant to the "home rule" provisions of the Maine State Constitution, Article VIII, Part Second, and 30A MRSA #111 and 141.

Section 3. Applicability

This Ordinance applies to the construction of small wind energy systems in all areas of Whiting, including those governed by the Shoreland Zoning Ordinance.

Section 4. Effective Date

This Ordinance shall take effect upon approval by majority vote of the Town meeting.

Section 5. Validity and Severability

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

Section 6. Conflict With Other Ordinances

Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or any other Ordinance, regulation, or statute, the more restrictive provision shall apply.

Section 7. Amendments

This Ordinance may be amended by a majority vote of the Town Meeting.

Section 8. General Requirements for Small Wind Energy Systems

The following general requirements shall apply to all small wind energy systems:

- a. Each minimum size build able lot shall be limited to one small wind energy system.
- b. Small wind energy system towers shall not exceed a maximum system height of 100 ft. This is an allowed exception to the structure height limitations set forth in the Building Permit and Shoreland Zoning ordinances.
- c. Wind turbines and their support structures, if painted, shall be painted a non-reflective, non-obtrusive color.
- d. Small wind energy system towers shall not be lighted unless required by the Federal Aviation Administration (FAA) or other public authority.
- e. Wind turbines shall not be used to display any advertising except for reasonable identification of the manufacturer.
- f. Prior to commencing any construction, the applicant must obtain a Building Permit in accordance with the
Building Permit or Shoreland Zoning ordinances.

Section 9. Setback Requirements

The following setback and separation requirements shall apply to all small wind energy systems:

- a. Property Lines: Each small wind energy system shall be set back a distance equal to one hundred and ten percent of its total height from adjoining property lines.
- b. Structures on an abutter's property: Each small wind energy system shall be set back a distance equal to one hundred and fifty percent of its total height from any structure on adjoining properties.
- c. Roads: Each small wind energy system shall be set back from the nearest public or private road a distance of no less than one hundred ten percent of its total height, as determined from the nearest boundary of the underlying right of way for such road.
- d. Communication and electrical lines: Each small wind energy system shall be set back from the nearest above-ground public electric power line or telephone line a distance of no less than one hundred and ten percent its total height, as determined from the existing power line or telephone line.

Section 10. Noise Limitation Requirements

All small wind energy systems shall meet the following requirements:

- a. An automatic braking, governing, or feathering system shall be required to prevent uncontrolled rotation.
- b. Prior to approval, the applicant shall provide documentation from the manufacturer that the wind energy system will not produce noise levels in excess of the following standards, as measured at any residence, business, school, church, or public library.

Ambient reading without wind tower	Maximum permitted reading with wind tower
45 dBA	55 dBA
50dBA	56 dBA
55dBA	61 dBA
60dBA	62 dBA
65dBA	66 dBA

c. After approval but prior to installation of the small wind energy system, the owner shall have sound level measurements taken at the closest residence, business, school, church, or public library to determine ambient decibels levels. After installation of the small wind energy system, the owner shall have sound level measurements taken at the closest residence, business, school, church or public library to determine operating decibel levels. Noise limit requirements shall be waived if the closest residence, business, school, church, or public library is more than 500 feet away. Copies of all readings taken shall be provided to the Code Enforcement Officer to append to the original building permit application.

d. Upon complaint of an abutter, ambient and maximum permitted decibel measurements shall be performed by an agent designated by the Code Enforcement Officer. The report shall be submitted to the Code Enforcement Officer for review. The fee for this service shall be paid by the complainant unless the maximum permitted decibel level has been exceeded, in which case the owner of the system shall pay the fee.

e. If the maximum decibel readings are exceeded, the installation shall be considered a nuisance.

f. The nuisance violation must be corrected within 90 days from notification of the violation. If the violation cannot be corrected, the small wind energy system shall be removed or relocated.

Section 11. Minimum Ground Clearance

The blade tip of any wind turbine shall have a ground clearance at its lowest point of no less than twenty feet.

Section 12. Signal Interference

The applicant shall minimize or mitigate any interference with electromagnetic communications, such as radio, telephone, or television signals caused by any small energy system.

Section 13. Safety

The following safety requirements shall be adhered to:

- All wiring between the wind turbine and the residence/facility served shall be underground.
- Wind turbine towers shall not be climbable up to fifteen feet above ground level.
- All access doors to wind turbine towers and electrical equipment shall be locked.

d. Appropriate warning signage shall be placed on wind turbine towers, electrical equipment and wind energy facility entrances.

Section 14. Permitting Requirements

In addition to the application and supporting documentation required by the Building Permit or Shoreland Zoning ordinances, the applicant for a small wind energy system shall provide the following information to the Whiting Planning Board.

a. Structural drawings of the wind tower, base pad, footings, and guy wires prepared by the manufacturer or a professional engineer.

b. Drawings and specifications of the generator, hub, and blade prepared by the manufacturer or a professional engineer.

c. Photographs of the proposed site and the specific small wind energy system to be installed.

Section 15. Fees:

An application fee shall accompany each application and a permit fee shall be paid before a permit is issued. The fee schedule shall be set by the Planning Board, subject to the approval of the Board of Selectmen. All fees collected will be used to pay the Planning and Appeals Boards' expenses.

Section 16. Definitions

This Ordinance shall be enforced by the Code Enforcement Officer. The Selectmen may take actions necessary to restrain, correct, remove, or punish violations of this Ordinance in accordance with 30A MRS #4452.

Section 17. Definitions

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

a. Hub Height: The distance measured from ground level to the center of the turbine hub.

b. Small Wind Energy System: A wind energy conversion system consisting of a tower, wind turbine, and associated control conversion electronics which will be used primarily to produce electrical power.

c. System Height: The hub height plus the length of the blade extended to its highest point.

d. Tower: The structure on which the wind energy system is mounted.

e. Tower Height: The height above grade of the fixed portion of a tower, excluding the wind turbine.

f. Wind Turbine: The parts of the wind system including the blades, generator, and tail.

Enacted: Annual Town Meeting, September 29, 2008

/s/ Steven C. Pressley I, Selectman

/s/ Mary Alice Look, Selectman

/s/ Janice Bronson, Selectman

/s/ Caron Kilton, Town Clerk



<https://www.whitingmaine.com/town-ordinances/real-estateproperty-ordinances/subdivision-regulations-town-of-whiting/>

SUBDIVISION REGULATIONS TOWN OF WHITING

TOWN OF WHITING

Section 1- AUTHORITY

This Ordinance is adopted pursuant to the provisions of Section 4956, Title 30 of the Revised Statutes of Maine as amended.

Section 2- TITLE

This Ordinance shall be known and cited as “Subdivision Regulations of the Town of Whiting, Maine.”

Section 3 – PURPOSE

The purpose of this Ordinance shall be to promote the general health and welfare of the Town of Whiting; to assure, in general, the wise development of areas in harmony with the comprehensive plan of the community; to assure proper arrangement and coordination of streets and ways within a subdivision in relation to other or planned streets; to assure provision of adequate streets and utilities by the sub-divider; to prevent unsound or unsafe development of land by reason of the lack of water supply, drainage, sewage, disposal, transportation or other public services and to promote the amenities of the Town through provisions for parks , playgrounds, and other recreation areas, preservation of trees and natural features in the Town of Whiting.

Section 4- DEFINITIONS

For the purpose of this Ordinance, certain terms used herein are defined as follows:

Subdivision: The division of a tract or parcel of land into three or more lots within any 5-year period, which period begins after November 2, 1987, whether accomplished by sale, lease, development, buildings use or otherwise, provided that a division accomplished by devise, condemnation, order of court, gift to a person related to the donor by blood, marriage, or adoption, unless the intent of such gift is to avoid the objectives of this section, or by transfer of any interest in land to the owner of land abutting thereon, shall not be considered to create a lot or lots for the purpose of this section.

In determining whether a tract or parcel of land is divided into 3 or more lots, the first dividing of such tract or parcel , unless otherwise exempted herein, shall be considered to create the first 2 lots and the next dividing of either of said first 2 lots, by whomever accomplished unless other wise exempted herein, shall be considered to create a 3rd lot, unless both such dividing are accomplished by a sub-

divider who shall have retained one of such lots for his own use as a single family residence for a period of a least five years prior to such 2nd dividing.

A tract or parcel of land is all contiguous land in the same ownership, provided that lands located on the opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof.

Street shall mean and include any street, avenue, boulevard, road, alley and any other right-of-way excluding driveways serving more than one lot.

Reserve Strip shall mean and include any area for which future public use is intended for street connections or for pedestrian ways.

Re-subdivision shall mean the division of an existing subdivision or any change of lot size therein or the relocation of any street or lot line in a subdivision after adoption of a final plan.

Section 5- JURISDICTION

1. This Ordinance shall pertain to all land within the boundaries of the Town of Whiting.
2. This Ordinance shall be in effect from the time of its adoption by the vote of a majority of the members present at a Town Meeting.
3. In any case where a provision of this ordinance is found to be in conflict with a provision of any other ordinance, regulation, code or covenant in effect in the Town of Whiting the provision which imposes the higher standard or the more restrictive shall apply.
4. The invalidity of any section, sub-section, paragraph, sentence, clause, phrase or word of this ordinance shall not be held to invalidate any other section, sub-section, paragraph, sentence, clause, phrase or word of this Ordinance.

Section 6 – ADMINISTRATIVE REGULATIONS

1. The Planning Board of the Town of Whiting, hereinafter called the Board, shall administer this Ordinance.
2. Whenever any subdivision is proposed or before any contract for the sale of or offer to sell such subdivision or any part thereof shall have been negotiated and before any permit for the erection of a structure shall be granted, the subdividing owner or his agent shall apply in writing to the Board for approval of such subdivision.
3. No transfer of ownership shall be made of any land in a proposed subdivision until a final plan of such Subdivision has been approved by the Board nor until a duly approved copy of such final plan has been filed with the Town Clerk.
4. Where strict conformity to the Subdivision Regulations would cause undue hardship or injustice to the owner of land and a subdivision plan is substantially in conformity with the requirements of this Ordinance, the Board may consider waiver of some aspects of this Ordinance provided that the spirit of the regulations and public convenience, health, and welfare will not be adversely affected.

5. The Register of Deeds shall not record any plat of a proposed subdivision until it has been approved by the Board and approval is attested by the signatures of a majority of the members of the Board on the original tracing of the Final Plan of such subdivision.

Section 7-PENALTIES

It shall be the duty of the Code Enforcement Officer to enforce the Provisions of the Ordinance. If the Code Enforcement Officer shall find that any provision of the Ordinance is being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings, structures or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be maintained as a permanent record.

When the above action does not result in the correction or abatement of the violation or nuisance condition or the measures required to be taken toward correction or abatement have not been continued with reasonable diligence, the Selectmen, upon notice from the Code Enforcement Officer or the Planning Board are hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of the Ordinance in the name of the Municipality.

The Attorney General or the Town through its Selectmen or Planning Board, or any seven of its registered voters or taxpayers may institute proceedings to enjoin the violation of the Ordinance.

Any person who violates any provision of the Ordinance shall be guilty of a misdemeanor subject to a minimum fine of \$100.00 or up to a maximum of \$2,500 for each violation. Each day a violation is continued may be considered a separate offense.

All provisions and requirements of the Ordinance, related laws and ordinances shall be administered and enforced as uniformly and as fully as practicable. The failure to do so, other than failure arising from willful refusal or neglect on the part of an official, shall not constitute grounds for stopping such administration and enforcement in a particular case. Such officials are hereby granted reasonable discretion to administer and enforce these provisions, including the selection of priorities and imposition of terms and conditions

Section 8- PRELIMINARY PLAN

1. A tentative request for approval of a subdivision shall be accompanied by a Preliminary Plan which shall show existing streets and boundary lines and shall be at a scale of not more than 100 feet to the inch (100'/"), except that any supplementary maps showing the relationship of the parcel of land to be subdivided to other properties and roads may be at a scale of not more than 500 feet to the inch (500'/"). If, in the opinion of the Board, a topographic map is necessary for determining the most suitable layout of the tract to be subdivided, such a topographic map may be required by the Board.

2. An application for approval of a Preliminary Plan shall be considered at a regular meeting of the Board within 35 days of receipt of such application by the Board. The Board shall after such consideration and within 35 days of receipt of an application and Preliminary Plan issue a written statement informing the subdivider or his agent of approval, disapproval or conditional approval and of any changes required and the character and extent of required public improvements.

3. Preliminary approval shall expire 12 months after it is issued. A new preliminary plan must then be submitted for processing in accordance with this Ordinance.

4. The tentative request for approval shall be accompanied by the following fee(s):

A. Application fee, \$100.00

B. Review fee, \$80.00 per lot, or living unit for multiplex development.

C. Any additional fees required by the Board to review a subdivision plan shall be at the applicant's expense.

Section 9-FINAL PLAN

1. A request for final approval of a subdivision shall be accompanied by a Final Plan of such subdivision legibly and clearly drawn in ink at a scale of one hundred feet to the inch(100'/") on stable base translucent material suitable for reproduction and three dark line copies. Size of sheets shall not measure more than two feet by three feet (2' x 3'). A Final Plan shall show:

A. The name of the subdivision, location and boundaries of the land to be subdivided, scale, north arrow, name and address of the record owner, sub-divider and designer;

B. street lines, lot lines and reservations for public purposes including public utilities and drainage easements;

C. all dimensions in feet and decimals of feet;

D. lot numbers and lot letters in accordance with prevailing policy on existing tax maps;

E. prominent reference monuments on all street corners and angles and street lines wherever, in the opinion of the Board such monuments are necessary to properly determine the location on the ground;

F. designation of the location, size, planting and landscaping of such parks, esplanades and open spaces as are required by the Board. In-lieu-of land dedication the Developer may make payment into a Town Public Fund;

G. the seal of a licensed designer or certification by a land surveyor attesting that such Final Plan is substantially correct.

2. A Final Plan shall be accompanied by certification by a duly authorized engineer as required by the Board, that the design of sewer and water facilities and streets and utilities in the proposed subdivision conform to the requirements of this Ordinance. The costs of inspection shall be borne by the developer or subdivider.

3. The subdivider shall file with the Board at the time of submission of the Final Plan a bond in an amount sufficient to cover the cost of the construction of streets, approved as to form and surety by the Board and conditioned upon the completion of such streets within two years of the date of such bond.

The Board may, at its discretion, waive the requirement to post bond and grant conditional approval providing that no lots shall be sold until specified streets together with the necessary sanitary improvements are satisfactorily constructed within three years of the date of such conditional approval. A release of conditions shall be executed and delivered to the subdivider following satisfactory completion of the specified streets and other required improvements.

4. The Board shall consider a Final Plan at a regular meeting within thirty-five (35) days of submission of such Final Plan.

5. The Board may, before final approval or disapproval of a Final Plan, hold a public hearing on such a plan.

6. the approval of a Final Plan shall be attested on the original tracing and three copies by the signature of a majority of the members of the Board.

7. Failure of the Board to issue approval or conditional approval within thirty five (35) days constitutes disapproval.

8. The original tracing of a Final Plan as amended shall be retained by the Board, two copies shall be delivered to the subdivider and one copy shall be delivered to the County Registry of Deeds.

9. If the Board shall have approved the Preliminary Plan of the entire area of subdivision, the developer may improve the streets in a portion of the subdivision and the Board may approve only that portion so improved as shown on the Final Plan.

Section 10-GENERAL REGULATIONS

1. The minimum lot size is 40,000 square feet per single family house lot, with 200 feet frontage on all brooks, streams, rivers, ponds and lakes measured in a straight line between the points of intersection of the side lot line with the shoreline at a normal high water elevation. If more than one residential dwelling unit is constructed on a single parcel, all dimensional requirements shall be met for each additional dwelling unit. Structures shall not cover more than 10% of any lot. Nothing shall prevent the plumbing Inspector or Planning Board from requiring a larger lot size under the circumstances essential to maintain the health and safety of persons and the sanitary conditions of a water body or the property of another. NO PRINCIPAL STRUCTURE MAYBE ESTABLISHED ON ANY LOT WITHIN A RESOURCE PROTECTION DISTRICT.

2. Any proposed subdivision shall, in the opinion of the Board, be suitably located with respect to community facilities such as schools, playgrounds and parks.

3. Land susceptible to flooding, and land not suitable for housing or street development, and land which may be hazardous to life, health, or property, shall not be accepted as part of a subdivision for

residential purposes but may be used, with approval of the Board, for playgrounds, parks or other open-space purposes.

4. Any subdivision shall be so designed that every lot has access to the public street system. If such access is via a private road, it shall, nevertheless, conform to Section 11 of this Ordinance.

5. Any natural drainage ways and their easements shall be so incorporated that no flooding occurs and all storm water can properly be disposed of.

6. The Planning Board may require that a proposed subdivision layout show respect for such natural features as trees, streams, water courses and scenic assets. Extensive land grading and filing shall be incorporated in the Final Plan and executed by the subdivider as construction of the subdivision progresses.

Section 11 STREETS

1. All streets in a future subdivision shall meet minimum standards as follows:

		Arteria Streets	Collector Streets	Minor Streets
A. Minimum Right-of-Way Width		100'	66'	50'
B. Minimum Travel-Way Width:	Urban	48'	40'	28'
	Rural	28'	26'	18'
C. Maximum Grade		4%-5%	7%-10%	7%-10%
D. Minimum Gravel Base		18"	15"	12"
E. Minimum Bituminous Paving		4"	3"	2"
				(if used)*

*Other surface treatment may be used on minor streets

2. New streets shall be so laid out as to accommodate the continuation of the principal streets in adjoining subdivisions or for their proper protection when adjoining property is not subdivided.

3. Dead-end streets shall not exceed one thousand (1,000) feet in length and shall be equipped at the closed end with a turn-around roadway of which the minimum diameter for the outside curb shall not be less than one hundred and twenty (120) feet.

4. A block shall be not less than six hundred (600) feet, nor more than fifteen hundred (1,500) feet in length and no block shall be less than two hundred and thirty (230) feet in width except that this restriction shall not apply to any single block in the rural area provided that each lot in such block measures not less than two (2) acres in area.

5. To assure proper drainage, street grades shall not be less than 1% nor more than 10% unless specifically approved by the Board.

6. Street intersections and Curves shall be so designed as to permit adequate visibility for both pedestrians and vehicle traffic. Curves, in general, shall have a minimum radius of one hundred (100) feet and no interchange shall be acceptable at less than sixty (600) degrees. Property lines on corners shall reserve a twenty (20) foot curve radius.

7. Whenever the Board finds need for the reservation of one or more reserve strips, such reservations by the Board shall be made before the final approval of a subdivision plan.

8. No street shall be recommended for acceptance until it has been properly graded and approved by the Board in accordance with this Ordinance.

Section 12 – AMENDMENTS

This Ordinance or any part thereof may be amended by a majority of legal voters present and voting at a Town Meeting. Any proposed amendment shall be presented for adoption at a Town Meeting. Any proposed amendment shall be presented for adoption at a Town Meeting only upon petition by no less than five percent (5%) of the legal voters of the Town of Whiting, except that the Selectmen may propose amendment without a petition. Any amendment proposed by the Selectmen may be reviewed by the Planning Board prior to submission to a Town Meeting for a vote.

Section 13 – NEW SUBDIVISIONS

A prospective subdivider shall show proposed road names and numbers in the permit application data submitted to the Planning Board. Approval by the Planning Board after consultation with the Selectmen, shall constitute approval of the proposed names and numbers. On the final subdivision plan, the applicant shall note fifty (50) foot intervals along each way and label origin, terminal and intermediate points to permit ready interpretation of assigned property numbers.

Selectmen of Whiting

/s/ Steven C. Pressley I

/s/ Mary-Alice Look

/s/ Janice Bronson

/s/ Caron Kilton, Town Clerk

03/26/2007



<https://www.whitingmaine.com/town-ordinances/real-estateproperty-ordinances/real-estate-addressing-ordinance/>

REAL ESTATE ADDRESSING ORDINANCE

Town of Whiting

Adopted: March 24, 1997

Section 1. Purpose

The purpose of this ordinance is to enhance the easy and rapid location of real properties by fire, rescue, emergency medical service and law enforcement personnel in the Town of Whiting.

Section 2. Authority

This ordinance is adopted pursuant to and consistent with the Municipal Home Rule Powers as provided for in Article VIII, Part 2, Section 1 of the Constitution of the State of Maine and Title 30-A M.R.S.A. Section 3001.

Section 3. Administration

This Ordinance shall be administered by the Whiting Board of Selectmen. The Selectmen shall assign road names and numbers to all real properties on existing and proposed roads in accord with the criteria in Sections 4 and 5.

The Selectmen shall maintain the following official records established by this ordinance:

3a. A map of Whiting showing officially approved road names, property numbers and the means of access to real property (private and public roads, lanes, etc.)

3b. An alphabetical list of all property owners as identified by current assessment records, by last name, showing the assigned names and numbers,

3c. An alphabetical list of all roads with property owners listed in order of their assigned property numbers.

Section 4. Naming system

All roads which serve two or more structures, or are occupied by independent families or businesses, shall be named regardless of public or private ownership. A "road" refers to any highway, road, street,

avenue, lane, private way or similar paved, gravel or dirt thoroughfare. "Property" refers to any real property on which a more or less permanent structure has been erected, and may include real property which does not have a permanent structure, but whatever merits naming for emergency services.

Assignment of a name by the Whiting Selectmen shall in no way constitute or imply acceptance of the road as a public way.

The following criteria shall govern the naming system:

4a. No two roads shall be given the same or closely similar name (e.g., no Pine Road and Pine Lane).

4b. No two roads shall have similar sounding names (e.g., no Beach Street and Peach Street).

4c. Each road shall have the same name throughout its entire length.

Section 5. Numbering System

Numbers shall generally be assigned to each fifty (50) foot interval along both sides of each way with even numbers on the left and odd numbers on the right when moving from the number origin toward higher numbers. In some areas the numbering interval may be adjusted as needed.

The following criteria shall govern numbering assignment:

5a. All number origins shall begin at U. S. Route 1. or that end of the road closest to U.S. Route 1. For dead end roads, numbering shall originate at the intersection with the adjacent road and terminate at the dead end. The number origin for properties on U.S. Route 1 runs consecutively from east to west ascending.

5b. The number assigned to each structure shall be that of the numbered interval falling closest to the front door. If the structure's front door is invisible from the road, the number shall be that of the interval falling closest to the driveway serving said structure.

5c. Every structure with more than one residence shall have the same number for each residence and assigned letters for the secondary address unit (i.e./ in a mobile home park, an individual home may be identified as 235 Maple Street, Lot D).

Section 6. Compliance

All owners of structures should display conspicuously and maintain the assigned property number in the following manner:

6a. Property number display should best assist emergency vehicle personnel, and be displayed in such a manner permitting clear visibility from the street or road. Preferably the property number sign shall be fully visible regardless of the direction of approach on the road. Number signs should be mounted on a post or other structure, at least four (4) feet off the ground.

6b. Number display surfaces should have dark, legible numbers, a minimum of six (6) inches high on a contrasting background.

6c. For emergency use by children and strangers, structure residents should post the assigned number and road name next to their telephones.

Section 7. New Structures and Subdivisions

All new structures and subdivision roads shall be named and numbered in accordance with the provisions of this ordinance and the following:

7a. New Structures. Whenever a new residence or other structure is to be constructed on an existing road, it shall be the duty of the property owner to obtain the assigned number upon receipt of a building permit for the structure. An auxiliary structure (barn, garage etc.) need not bear a separate number when it is obviously associated with an existing numbered building or residence.

7.b New Subdivisions. A prospective subdivider shall show proposed road names and numbers in the permit application data submitted to the Planning Board. Approval by the Planning Board after consultation with the Selectmen, shall constitute approval of the proposed names and numbers. On the final subdivision plan, the applicant shall note fifty (50) foot intervals along each way and label origin, terminal and intermediate points to permit ready interpretations of assigned property numbers.

Section 8. Effective Date

This ordinance shall become effective as of March 24, 1997. The Selectmen shall notify, by mail, each property owner and the Post Office of the new address names and numbers at least thirty (30) days prior to the effective date.

It shall be the duty of the property owners to post their property address numbers within thirty (30) days following notification or initial use of a new structure.

Town of Whiting Selectmen:

/s/ John A. Pope

/s/ Timothy J. Mallar

/s/ Carroll C. Gilpatrick

/s/ Alan D. Brooks, Town Clerk



<https://www.whitingmaine.com/town-ordinances/real-estateproperty-ordinances/sludge-and-residual-materials-ordinance/>

SLUDGE AND RESIDUAL MATERIALS CONTROL ORDINANCE

Town of Whiting

I. TITLE

This ordinance shall be known and may be cited as the "Sludge and Residual Materials Control Ordinance of the Town of Whiting".

II. AUTHORITY

This ordinance is adopted pursuant to Article VIII of the Maine constitution and Maine Revised Statutes Title 30-A Section 3001.

III. The purpose of this ordinance is to promote the health, safety, and general welfare of the residents of the Town of Whiting by regulating effects of commercial practices in conversion or utilization of sewage sludge, lumbering and lumber-mill wastes, fish by-products, and similar materials.

IV. LIMITATIONS

Judicial or statutory rejection of any aspect of this ordinance shall not invalidate the ordinance as a whole.

V. SPECIFIC REQUIREMENTS

A. PERMIT

An owner or operator of a proposed residuals conversion operation shall obtain from the Selectmen or Code Enforcement Officer the required application for a permit to establish or operate a materials conversion or utilization facility.

Within seven working days after submitting a completed permit application to the Selectmen, the applicant shall notify each owner of property abutting the location of the proposed facility. The notice shall include a summary description of the proposed facility and magnitude of the proposed operation (i.e., tons of material to be processed per month, or similar quantitative description) and be delivered to abutters by certified mail.

Prior to issuance of a permit, the Selectmen shall hold a hearing to inform Whiting residents of the proposed operation if, in the Selectmen's judgment, there are significant questions to be addressed or there is substantial public interest in such a hearing.

The Selectmen shall act on a permit application for construction or operation of a materials conversion facility within ninety days from the date the application is submitted. Within this period, the selectmen shall complete necessary technical evaluations and paperwork required for proper consideration of the proposed activity. Technical evaluations may be performed by personnel of the Washington County Soil and Water Conservation District or professional consultants skilled in design and management of materials conversion facilities.

Each permit shall clearly state the quantity of materials to be processed per year and list the months during which processed quantity will exceed three times one-twelfth of the annual quantity; i.e., those months in which one-quarter of the annual total will be processed.

The administrative fee for a permit to operate a materials conversion facility shall be \$50.00 for the first year with an annual fee of \$30.00 subsequently regardless of processing quantity. A permit shall be valid for five years and may be renewed upon submission of evidence that continued operation will not deviate from that described prior to initial permit issuance.

A lapsed operation permit may be re-instated upon demonstration that the renewed operation will meet all requirements applicable to a new construction or operation.

B. SETBACK

The perimeter of a permitted materials conversion facility shall be set back a minimum of 1500 feet from any adjacent residence, church, place of business, domestic water source, public gathering area (parks, ball fields, etc.), and documented sand and gravel aquifers or aquifer recharge areas.

The perimeter of the materials conversion facility bounds the area within which buildings, material storage piles, active materials conversion(open or enclosed), equipment and supplies storage areas, pollution control features, etc. are contained.

C. BOND

Prior to approval by the Selectmen of a permit for a materials conversion facility or operation, the applicant shall provide proof of a bond or insurance to remedy detriment to potable water sources and real estate devaluation in the amount of the current market value of land and replacement costs of any and all structures for each abutter within two thousand feet of the facility perimeter.

D. LIABILITY

The applicant shall be responsible to the Town of Whiting and liable for any and all reasonable debts or fees that the Town of Whiting may incur for necessary technical evaluation of the proposed construction or operation. The applicant shall sign any contract for necessary technical services and be alone liable for costs of the services.

E. REVOCATION

Any violation of the requirements of this ordinance may be cause for refusal of an initial or renewal permit or revocation of an existing permit in accord with Title 30-A MRSA Section 4452 et seq.

F. PROPERTY INSPECTION

Upon and by acceptance of an approved permit, the operator or landowner shall authorize the Selectmen or Code Enforcement Officer of the Town of Whiting, or their representatives, to inspect the conversion facility at reasonable times including sampling of soil, raw and converted materials, run-off water and fluids, etc. as considered necessary.

Property inspection includes examination of shipping records for materials delivered to and removed from the facility as the means to assure Whiting officials that material quantities (per unit time) are equal to or less than the permitted rates.

VI. EXEMPTIONS

Notwithstanding the language of Section V., the use of fish scales and similar materials, applied at the agronomic rate, for soil improvement of agricultural fields is exempt from this ordinance.

VII. VIOLATIONS

The Board of Selectmen, upon notification of potential violation of this ordinance, shall institute or cause to be instituted, in the name of the Town of Whiting, such inspections and technical evaluations as are necessary and appropriate for the enforcement of this ordinance in accord with Title 30-A MRSA Section 4452 et seq.

VIII. PENALTIES

Any person, firm, or corporation shown to be violating terms of this ordinance by competent evidence shall be fined in accord with provisions of Title 30-A Section 4452 et seq. Each day that such violation remains unabated after notification of the permit-holder by the Code Enforcement or Board of Selectmen shall constitute a separate offense.

IX. DEFINITIONS

Abutter – an abutter is any person owning property contiguous to the property boundary of a proposed of actual conversion facility as well as the owners of property directly across a public or private way from the property containing a conversion facility.

Agronomic rate – an application rate of plant nutrients per unit soil area calculated to be utilized by an agricultural crop and to provide optimum plant growth.

Composting – composting is the biological and chemical decomposition and stabilization of organic matter under controlled aerobic conditions at elevated temperatures.

Materials conversion facility – a materials conversion facility comprises the buildings, equipment, raw, in-process, and finished materials containment areas, air and water pollution control equipment and areas, etc. constructed or operated to convert bulk materials from a lesser to a more desirable state, The bulk materials are typically organic(see residual material).

Operator – any person charged with the care and management of a materials conversion facility, and controls day-to-day operation of the facility or site.

Owner – any person who alone or in conjunction with others owns the real property upon and within which is located a materials conversion facility.

Residual material – residual material is any organic by- product, waste product, unused component, etc. of municipal, commercial, or industrial operations that may be suitable for composting or other conversion to a product useful in agriculture or other commercial usage. Residual materials are typified by wood scrap, sawdust, pulp and paper mill sludge, food and fiber processing wastes, vegetable and fish processing wastes, ash from wood-fired furnaces, etc.

Septage – sludge-like substances, liquids, and refuse materials obtained from septic tanks, cesspools, and similar smaller-scale sewage and waste-water treatment facilities.

Sludge – sludge is any solid, semi-solid, or liquid waste generated by a municipal, commercial, or industrial waste water treatment plant, water supply treatment plant, wet process air pollution control facility, or any such material having similar characteristics and potential effects on soil and ground water. Sludge does not include septage.

X. AMENDMENTS

Amendments, variations, or revisions of this ordinance shall be adopted in accord with provisions of Title 30-A MRSA Section 3001 et seq.

XI. EFFECTIVE DATE

The effective date of this ordinance is May 21, 1997. This ordinance applies to all material conversion facilities and operations which have not actually and substantially commenced materials conversion by May 21, 1997.

Copies of this ordinance and all amendments, exemptions, and revisions shall be filed with the Town of Whiting Clerk.

Selectmen:

/s/ John A. Pope

/s/ Timothy Mallar

/s/ Carroll E. Gilpatrick

/s/ Alan D. Brooks, Town Clerk

/s/ 05/14/1997



<https://www.whitingmaine.com/town-ordinances/real-estateproperty-ordinances/junkyard-ordinance/>

JUNKYARD ORDINANCE

Town of Whiting

Section 1. Purpose

The purpose of this ordinance is to provide adequate controls to ensure that junkyards, automobile graveyards, and automobile recycling businesses do not have a deleterious impact on the public's health, safety, and general welfare and to further ensure that persons who meet the definition of owner or operator of junkyards, automobile graveyards, and automobile recycling businesses without intent also comply with the requirements of this ordinance and in compliance with Comprehensive Plan.

Section 2. Authority

This ordinance is enacted pursuant to Title 30-A MRSA, Section 3001 et seq., and Section 3751 et seq.

Section 3. Applicability

This ordinance shall apply to all junkyards, automobile graveyards, and automobile recycling businesses as defined in Title 30-A MRSA, Section 3752. It is not limited to commercial operations and also applies to any parcel of land or other property that meet the definition of junkyard, automobile graveyard, and automobile recycling businesses contained herein regardless of the intent of the owner or operator of said parcel to operate a junkyard, automobile graveyard, or automobile recycling businesses.

Section 4. Administration

4.1 This ordinance shall be administered by the Planning Board.

4.2 No person or entity may establish, operate, or maintain a junkyard, automobile graveyard, or automobile recycling business without first obtaining a permit from the Planning Board. No such permit shall be issued unless the provisions of this ordinance are met.

4.3 Upon receipt of an application for a permit, the Planning Board shall hold a hearing in accordance to the provisions of Title 30-A MRSA, Section 3754

4.5 Permits shall be non-transferable. To remain valid, permits shall be renewed annually following an inspection of the premises by the Planning Board, or their agent, to assert continued compliance with the provisions of this ordinance.

4.5 The permit fee shall be determined by Title 30-A MRSA, Section 3756

Section 5. Permit

5.1 Any permit application for a junkyard, automobile graveyard, or automobile recycling business shall be addressed to the Planning Board and contain the following information:

A. The name and address of the property owner and the name and address of the person or entity who will operate the site.

B. The applicant shall submit a standard boundary survey and a site plan drawn to scale not to exceed 1" = 100'. Prepared and certified by a licensed surveyor on which is shown:

- * the boundary lines of the property
- * a description of the soils on the property
- * the location of any aquifer or aquifer recharge area, as mapped by the Maine Geological Survey or a licensed geologist
- * the location of any residence or school within 500 feet of the area where vehicles, appliances, and other equipment will be stored
- * the location of any water body on the property or within 200 feet of the property lines
- * the boundaries of the 100-year flood plain
- * the location of all roads within 1,000 feet of the site
- * a plan for containment of fluids, containment and disposal of batteries, and storage or disposal of tires
- * the location within the property boundary lines where vehicles, appliances, and other equipment will be drained, dismantled, or stored.

5.2 The Planning Board may issue a permit to a junkyard, an automobile graveyard, or an automobile recycling business if the applicant demonstrates that the business meets the operations standards set forth in Section 6 of this ordinance.

Section 6. Site and Performance Standards

The following site and performance standards are required of all junkyards, automobile graveyards, and automobile recycling businesses including those not holding a valid license issued by the Town of Whiting as of the date of adoption of this ordinance.

6.1 Unless it is located at least 600 feet from any highway (Title 30-A MRSA, Section 3755) the site must be screened to ordinary view from the highway at all times by natural objects, plantings, or fences. If used a fence or visual screen at least 6 feet in height must be built in accordance with the Maine Department of Transportation rules issued pursuant to Title 30-A MRSA, Section 3759. The height of the screen shall be adequate to hide all materials located inside the fence. At no time can the materials located inside the fence be placed in a manner that would make them visible from outside the fence.

6.2 Upon reception on site of any vehicle, appliance, or equipment

- * no discharge of any fluid from any vehicle, appliance, or equipment shall be permitted into or onto the ground
- * the battery, Freon, and parts containing mercury shall be removed, recycled, or disposed of according to all applicable Federal and State laws, rules, and regulations
- * the engine lubricant, transmission fluid, brake fluid, engine coolant, and other fluids shall be drained into watertight, covered containers. Those fluids shall be stored on a concrete base in a sheltered area and shall be recycled or disposed of according to all applicable Federal and State laws, rules, and regulations
- * proof of where the materials are being recycled or disposed of must be provided to the Planning Board.

6.3 No vehicle, motor, transmission, or equipment containing fluids or parts containing mercury shall be stored or dismantled within 200 feet of any body of water or freshwater wetland, as defined by Title 38, Section 436-A, Subsection 5.

6.4 No vehicle, motor, transmission, or equipment containing fluids or parts containing mercury shall be stored or dismantled within 500 feet of any school, church, public playground, or public park that existed on the date that the permit was issued.

6.5 No vehicle, motor, transmission, or equipment containing fluids or parts containing mercury shall be stored or dismantled over a sand and gravel aquifer or aquifer recharge area as mapped by the Maine Geological Survey or by a licensed geologist.

6.6 No vehicle, motor, transmission, or equipment containing fluids or parts containing mercury shall be stored or dismantled within the 100-year flood plain.

6.7 No vehicle, motor, transmission, or equipment containing fluids or parts containing mercury shall be stored or dismantled within 100 feet of a well that serves as a public or private water supply, excluding a private well that serves only the business or the owner or the operator's abutting residence.

6.8 No vehicle, motor, transmission, or equipment containing fluids or parts containing mercury shall be stored or dismantled within 200 feet from any lot line unless the operator has notarized written permission from the abutting property owner.

6.9 To reduce noise, all dismantling of motor vehicles shall be done after 7am and before 6pm Mondays through Saturdays. The crushing of motor vehicles is subject to the above schedule though temporary suspension of the rule can be obtained from the Planning Board for good cause,

Section 7. Enforcement and Permit Revocation

7.1 This ordinance shall be enforced by the Planning Board, the Whiting CEO, the county law officers, and the State Police as provided in Title 30-A MRSA, Section 3758. Any violation of this ordinance shall also be deemed a nuisance within the meaning of Title 17MRSA, Section 2802 and the violator shall be subject to the penalties set forth in Title 30-A MRSA, Section 4452 and any other remedy available by law.

7.2 The Planning Board may suspend or revoke a license upon cause, notice, and hearing for any violation of this ordinance.

Section 8. Effective Date and Amendment

This ordinance shall become effective on the date of adoption and may be amended by a vote of the legislative body.

Section 9. Severability and Conflict

In the event that any provision of this ordinance is ruled to be invalid by a court of competent jurisdiction the remaining provisions shall continue in full force and effect. In the event that any provision of this ordinance conflicts with State statute, the local ordinance shall govern.

Section 10. Definitions

10.1 Junkyard: "Junkyard" means a yard, field, other area, or property used to store:

- * discarded, worn out, or junked plumbing, heating supplies, household appliances and furniture
- * discarded, scrap, and junked lumber
- * old or scrap metals, rope, batteries, paper trash, rubber debris, waste, and other scrap of ferrous or non ferrous material
- * garbage dump, waste dump, and sanitary fill
- * old, worn out, discarded furniture, tires, and other material items that may reasonably be considered to be of insignificant market value. The mere declaration that items are for sale do not make those items something other than junk.

10.2 Automobile Graveyard: "Automobile graveyard" means a yard, field, other area, or property used to store 3 or more unserviceable, unregistered, worn out, or junked:

- * motor vehicles as defined in Title 29-A MRSA, Section 101, Subsection 42
- * snowmobiles as defined in Title 12 MRSA, Section 7821
- * all terrain vehicles and defined in Title 12 MRSA, Section 7851
- * or parts of such vehicles

A. "Automobile graveyard" includes an area used for automobile dismantling, salvage, and recycling operations.

B. "Automobile graveyard" does not include any area used for the temporary storage by an establishment or place of business that is primarily engaged in doing automobile repair work or auto body repair work to render a motor vehicle serviceable.

C. "Automobile graveyard" does not include:

- * an area where used cars that are for sale are being displayed
- * an area where unregistered farm or business equipment is stored

- * an area where casual sale of personal vehicles take place.

10.3 Automobile Recycling Business: "Automobile recycling business" means the business premises of a person or entity who acquires salvage vehicles for the purpose of:

- * reselling the vehicles or their component parts
- * repairing or rebuilding the vehicles for resale
- * selling the basic materials in the salvage vehicle provided that 80% of the business premises specified in the permit application's site plan is used for automobile recycling operations.

10.4 Recycling or Recycling Operations: "Recycling or recycling operations" means the dismantling of motor vehicles, appliances, and other pieces of equipment for the purposes of:

- * reselling their component parts or basic materials
- * repairing or rebuilding these vehicles, appliances, and other pieces of equipment for resale.

10.5 Dismantling: "Dismantling" shall mean the removal of multiple parts from a motor vehicle, appliance, or other equipment for the purpose of salvaging those parts and disposing of the remains.

10.6 Non-transferable Permit: "Non-transferable permit" means that a permit issued under this ordinance may not be transferred to another individual or entity. In the event of the sale of a Junkyard, Automobile Graveyard, or Automobile Recycling Business, the new owner must apply for a new permit.

10.7 Temporary Storage: "Temporary storage" under this ordinance means the storage of any material of vehicle for a period of time not exceeding 90 days.

10.8 Other Property: "Other property" under this ordinance means a property other than real estate property (derelict storage trailer, barge, etc.) used to store items normally found in a junkyard as defined in Section 10.1 of this ordinance.

Section 11. Disputes

Written appeals to provisions of this ordinance shall be addressed to the Board of Appeals of the Town of Whiting.

Enacted: September 20, 2010

Whiting Selectmen:

/s/ Steven C. Pressley I

/s/ Mary Alice Look

/s/ Janice Bronson

/s/ Caron Kilton, Town Clerk



<https://www.whitingmaine.com/town-ordinances/shellfish-conservation-ordinance/>

SHELLFISH CONSERVATION ORDINANCE TOWN OF WHITING

Authority: This ordinance is enacted in accordance with 12 M.R.S.A. Section 6671

Purpose: To establish a shellfish conservation program for the Town of Whiting which will ensure the protection and optimum utilization of shellfish resources within its limits. These goals will be achieved by means which may include:

- A. Licensing
- B. Limiting the number of shellfish harvesters.
- C. Restricting the time and area where harvesting is permitted.
- D. Limiting the minimum size of clams taken.
- E. Limiting the amount of clams taken daily by a harvester.

Shellfish Conservation Committee: The Shellfish Conservation Program for the Town of Whiting will be administered by the Shellfish Conservation Committee consisting of three members to be appointed by the selectmen for three years, serving staggered terms.

The Committee's responsibilities include:

- A. Establishing annually in conjunction with the department of marine Resources the number of shellfish harvesting licenses to be issued;
- B. Submitting proposals for the expenditures of funds for the purpose of shellfish conservation;
- C. Keeping this ordinance under review and making recommendations for its amendments;
- D. Securing and maintaining records of shellfish harvest from the Town's managed Shellfish areas and closed areas that are conditionally opened by the Department of Marine Resources
- E. Recommending conservation closures and openings in conjunction with the area Biologists of the Department of Marine Resources;
- F. Submitting an annual report to the Town and the Department of Marine Resources covering the above topics and all other committee activities.

4. Definitions:

A. Resident: The term “resident” refers to a person who owns or rents residential real estate and has been domiciled in this municipality for at least three months (90 days) prior to the time their claim of residency is made for the purpose of applying for a shellfish license. To prove they are a resident, a person must provide documentation of real estate ownership in the form of a deed or property tax bill, or if rented real estate, rent receipts or a lease agreement signed by the property owner that provides residency for the three months (90 days) prior to applying for the shellfish license. In addition to the above domicile requirements, the applicant must show documentation of at least one of the additional residence criteria from:

1. Motor vehicle license registration
2. Motor vehicle registration address
3. Voter registration address
4. Hunting licenses
5. Utility service address

B. Non-resident: The term “non-resident” means anyone not qualified as a resident under this ordinance.

C. Shellfish, Clams, and Intertidal shellfish resources: When used in the context of this ordinance, the words “shellfish,” “clams,” and “intertidal shellfish resources” mean soft shell clams (*Mya arenaria*).

D. Municipality: Refers to the Town of Whiting, Maine.

5. Licensing: Municipal Shellfish Digging License is required. It is unlawful for any person to dig or take shellfish from the shores and flats of this municipality without having a current license issued by this municipality as provided by this ordinance. No person shall be issued a Municipal Shellfish License who, has failed to pay outstanding shellfish violation fines.

(A.) Designation, Scope and Qualifications:

(1). Resident Commercial Shellfish License: The license is available to residents Town of Whiting and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality.

(2). Non-resident Commercial Shellfish License: The license is available to non- residents of this municipality and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality.

(3). Resident Junior Commercial License: This license is available to residents of this municipality who have attained his or her 16th birthday but has not yet attained his or her 18th birthday as of June 1st of the year of application. The student applicant shall be enrolled fulltime in a primary or secondary school or educational program. The student must remain enrolled, or had graduated, for the period of issuance. This license entitles the student to dig and take any amount of shellfish to sell from the shores and flats of this municipality.

(4). Non-Resident Junior Commercial License: This license is available to non-residents of the Town of Whiting who have attained his or her 16th birthday but has not yet attained his or her 18th birthday as of June 1st of the year of application. The applicant shall be enrolled fulltime in a primary, secondary, or educational program. The student must remain enrolled, or had graduated, for the period of issuance. This license entitles the student to dig and take any amount of shellfish from the shores, flats of this municipality.

(5). Senior Commercial License: This license is available to residents of this municipality who have attained his or her 60th birthday as of June 1st of the year of application. This license entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality.

(6). Senior Non-resident Commercial License: This license is available to non-residents of the Town of Whiting who have attained his or her 60th birthday as of June 1 of the year of application. This license entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality

(7). Residents Recreational Shellfish License: The license is available to residents and real estate taxpayers of this municipality and entitles the holder to dig and take no more than one peck of shellfish in any one day for personal use only.

(8). Non-Resident Recreational Shellfish License: The license is available to non-residents and entitles the holder to dig and take no more than one peck of shellfish in any one day for personal use only.

(9). Restrictions on Recreational License:

a. Any person who is issued a Commercial Shellfish License by the Maine Department of Marine Resources will not be eligible for issuance of a Whiting Recreational Shellfish License

b. Any person who is issued a Whiting Recreational License and subsequently obtains a Commercial Shellfish License from either the Maine Department of Marine Resources or the Town of Whiting will have his or her Whiting Recreational License revoked immediately.

(10). License must be signed: The licensee must sign the license to make it valid. The license must be in your possession when engaged in harvesting. By signing the license, the harvester acknowledges that they must submit to inspection by the municipal shellfish warden.

(11). Change of Residence: A person holding a commercial shellfish license under this ordinance shall notify the town clerk within 30 days of an address change. Failure to do so will be considered and treated as misrepresentation.

B. Application Procedures: Any person may apply to the Town Clerk for the licenses required by this ordinance on forms provided by the municipality.

(1). Contents of Application: The application must be in the form of an affidavit and must contain the applicant's name, current address, birth date, height, weight, signature and

whatever information the municipality may require. An application for a junior shellfish license shall also be in the form of an affidavit, which shall include:

- a. Proof that the applicant has attained his or her 16th birthday but has not yet attained his or her 18th birthday as of June 1st of the license year.
- b. Proof of residency.
- c. Proof of enrollment in a school or state approved educational program.

(2). Misrepresentation: Any person who gives false information on a license application will cause said license to become invalid and void.

C. Fees: The number of licenses and fees for the licenses will be determined annually by the Shellfish Conservation Committee. Fees for the licenses must be received when the license is issued. The Town Clerk shall pay all fees received to the Town Treasurer. Fees received for shellfish licenses shall be used by the Town for shellfish management, conservation, and enforcement.

D. Limited Licenses Sales Clam resources vary in density and size distribution from year to year and over the limited soft shell clam producing area of the Town. It is essential that the town carefully husband its shellfish resources. Following the annual review of the Town's clam resources, its size distribution, abundance, and the warden's reports, the Shellfish Conservation Committee in consultation with the DMR area biologist will determine whether limiting commercial or recreational shellfish licenses is appropriate shell fish conservation management option for the following year.

(1).The Town Shellfish Conservation Committee with the approval of the Commissioner of Marine Resources will establish the number of commercial and noncommercial licenses to be permitted following the requirements of 12 M.R.S.A. Section 6671(3).

(2) The Shellfish Conservation Committee shall notify the Town Clerk in writing of the number of licenses to be issued.

(3) Notice of the number of licenses to be issued and the procedure for application shall be published in a trade or industry publication, or in a newspaper or combination of newspapers with the general circulation, which the Board of Selectmen consider effective in reaching persons affected, not less than 10 days prior to the period of issuance and shall be posted in the Town Office until the period concludes.

(4) The Town Clerk shall issue licenses to residents and non-residents as allocated (paragraph

5C) from June 1 and until September 1 after which licenses shall be issued to residents and non-residents on a first come first serve basis or by lottery.

(5) Licenses may be returned to the Town voluntarily and reissued to another person at the current fee according the priorities established in this section.

Open License Sales: When the Shellfish Conservation Committee determines limiting shellfish licenses is not an appropriate shellfish management option for one or more license categories for the following year;

(1).

Notice of dates, places, times and procedures for the license sales shall be published in a trade or industry publication, or in a newspaper or combination of newspapers with general circulation which the municipal officers consider effective in reaching persons affected, not less than 10 days prior to the initial sale date and shall be posted in the municipal offices.

(2).

The town clerk shall issue licenses as allocated. On the first day of license sales, the total number of nonresident licenses shall be issued in accordance with DMR Regulations Chapter 7.4 section 1. Thereafter, nonresident licenses will be issued in accordance with the 10% rule as described in 12

M.R.S.A. §6671(3-E) and DMR Regulations Chapter 7.4, Section 2, Table1.

1. License Expiration Date: Each license issued under authority of this ordinance expires at midnight on the 31st of May next following date of issue.
2. Reciprocal Harvesting Privileges: Licenses from any other municipality cooperating with Whiting on a joint shellfish management program may harvest shellfish according to the terms of their license.
3. Suspensions: Any shellfish licensee having been convicted for violation of this ordinance or in a Municipal closed Conservation Area shall have his shellfish license automatically suspended.

(1) A licensee whose shellfish license has been suspended pursuant to this ordinance may reapply for a license only after the suspension period has expired.

(2) The suspension shall be effective from the date of mailing of a Notice of Suspension by the Town Clerk to the licensee.

(3) Any licensee whose shellfish license has automatically been suspended pursuant to this section shall be entitled to a hearing before the Shellfish Conservation committee upon filing of a written Request for Hearing with the Town Clerk within thirty (30) days following the effective date of suspension. The licensee may appeal the decision of the Shellfish Conservation Committee before the Board of Appeals by filing a written Request for Appeal with the Town Clerk within (7) days of the decision of the Shellfish Conservation Committee.

(4) Length of Suspension: The suspension of a license may not exceed the following:

a. 30 days from the date of the first conviction.

b. 365 days(one year) from the date of the second conviction

6. Opening and Closing of Flats: The Board of Selectmen, upon the approval of the Commissioner of Marine Resources, may open and close areas for shellfish harvest. Upon recommendations of the Shellfish Conservation Committee and concurrence of the Department of Marine Resources area biologist that the status of shellfish resources and other factors bearing on sound management indicate that an area should be opened or closed, the Board of Selectmen may call a public hearing, and shall send a copy of the notice to the Department of Marine Resources. The decision of the Board of Selectmen made after the hearing shall be based on findings of fact.

A. Closed Areas: It shall be unlawful for any person to harvest, take or possess shellfish from any areas closed by the Town of Whiting in accordance with DMR Regulation, chapter 7. Harvesting shellfish in a closed area is a violation of this municipality's ordinance and is punishable under MSRA Title 12§ 6671.

Boundaries of conservation closures are explicitly defined in the conservation closure application submitted by the Town of Whiting to DMR and are part of the resulting permit issued by DMR. These permits are posted at the town office and online.

Public notice of municipal conservation closures or openings shall be provided in accordance with DMR Regulations Chapter 7.50(1)9c).

7. Minimum Legal Size of Soft Shell Clams: It is unlawful for any person to possess soft shell clams within the Town of Whiting, County of Washington, which are less than two (2) inches in the longest diameter except as provided by Subsection B of this section.

A. Definitions:

(1). Lot: The word "lot" as used in this ordinance means the total number of soft shell clams in any bulk pile. Where soft shell clams are in a box, barrel, or other container, the contents of each box, barrel, or other container constitutes a separate lot.

(2). Possess: For the purpose of this section, the word "possess" means dig, take, harvest, ship, transport, hold, buy, and sell retail and wholesale soft shell clam shell stock.

B. Tolerance: Any person may possess soft shell clams that are less than two (2) inches if they comprise less than 10% of any lot. The tolerance shall be determined by numerical count of not less than one peck nor more than four pecks taken at random from various parts of the lot or by count of the entire lot if it contains less than one peck.

C. Penalty: A person who violates any provision of this section shall be punished as provided in 12 M.R.S.A. Section 6681.

8. Penalty: A person who violates this ordinance shall be punished as provided by 12 M.R.S.A. Section 6671(10).

9. Effective Date: This ordinance, which has been approved by the Commissioner of Marine Resources, shall become effective after its adoption by the Town of Whiting provided a certified copy of this ordinance is filed with the Commissioner within twenty (20) days of its adoption.

10. Period of Ordinance: This Ordinance shall remain in effect for from the effective date until repealed by the municipality or rescinded by the commission.

11. Separability: If any section, subsection, sentence or part of this ordinance is for any reason held to be invalid or unconstitutional, such as decisions shall not affect the validity of the remaining portions of the ordinance.

12. Repeal: Any ordinance regulating the harvesting or conservation of shellfish in the Town and any provisions of any other Town ordinance which is inconsistent with this ordinance is hereby repealed.

As amended September 18, 2017.

Attest _____

Caron Kilton, Administrative Assistant



<https://www.whitingmaine.com/town-ordinances/ordinance-restricting-vehicle-weight-on-posted-ways/>

ORDINANCE RESTRICTING VEHICLE WEIGHT ON POSTED WAYS

Town of Whiting

Section 1. Purpose and Authority

The purpose of this ordinance is to prevent damage to town ways and bridges in the Town of Whiting which may be caused by vehicle of excessive weight, to lessen safety hazards and the risk of injury to the traveling public, to extend the life expectancy of town ways and bridges, and to reduce the public expense of their maintenance and repair.

This ordinance is adopted pursuant to 30-A.M.R.S.A. § 3009 and 29-A.M.R.S.A. §§ 2395 and 2388 and additions and amendments thereto.

Section 2. Definitions

The definitions contained in Title 29-A.M.R.S.A. and additions and amendments thereto shall govern the construction of words contained in this ordinance. Any words not defined therein shall be given their common and ordinary meaning.

Section 3. Restrictions and Notices

All town ways and bridges are closed to any vehicle or combination of vehicles registered for a gross weight in excess of 23,000 pounds, traveling with a load other than tools or equipment necessary for the proper operation of the vehicle, from November 1 to May 1 yearly.

The municipal officers may, in addition, either permanently or seasonally, impose such restrictions on the gross registered weight of vehicles as may, in their judgment, be necessary to protect the traveling public and prevent abuse of the highways, and designate the town ways and bridges to which the restrictions shall apply.

Whenever notice has been posted as provided herein, no person may thereafter operate any vehicle with a gross registered weight in excess of the restriction during any applicable time period on any way or bridge so posted unless other wise exempt as provided herein.

The notice shall contain, at a minimum, the following information: the name of the way or bridge, the gross registered weight limit, the time period during which the restriction applies, the date on which the notice was posted, and the signatures of the municipal officers or their authorized designee.

The notice shall be conspicuously posted at each end of the restricted portion of the way or bridge in a location clearly visible from the travel way. Whenever a restriction expires or is lifted, the notices shall be removed wherever posted. Whenever a restriction is revised or extended, existing notices shall be removed and replaced with new notices.

No person may remove, obscure or otherwise tamper with any notice so posted except as provided therein.

Section 4. Exemptions

The following vehicles are exempt from this ordinance:

- a. any two-axle vehicle while delivering home heating fuel;
- b. any vehicle awhile engaged in highway maintenance or repair under the direction of the State or Town;
- c. any emergency vehicle (such as firefighting apparatus or ambulances) while responding to an emergency;
- d. any school transportation vehicle while transporting students;
- e. any public utility vehicle while providing emergency service or repairs; and
- f. any vehicle whose owner or operator holds a valid permit from the municipal officers as provided herein.

Section 5. Permits

The owner or operator of each vehicle not other wise exempt as provided herein may apply in writing to the municipal officers for a permit to operate on a posted way or bridge notwithstanding the restriction. The municipal officers or their designee may issue a permit only upon all of the following findings:

- a. no other route is reasonably available to the applicant;
- b. it is a matter of economic necessity and not mere convenience that the applicant use the way or bridge;
- c. the applicant has tendered cash, a bond or other suitable security running to the Town in an amount sufficient, in their judgment, to repair any damage to the way or bridge which may reasonably result from the applicant's use of same;
- d. the registration and license number of each vehicle, tractor or trailer;
- e. a description of each vehicle, tractor or trailer with at least: make, model, color, and any lettering thereon;
- f. the name of the owner of the vehicle, tractor or trailer, together with:
 - (1) the name of the licensee, if applicable;
- g. the registered weight of the vehicle, tractor or trailer.

Even if the municipal officers or their authorized designee make the foregoing findings, they need not issue a permit if they determine the applicant's use of the way or bridge could reasonably be expected to create or aggravate a safety hazard or cause substantial damage. They may also limit the number of permits issued or outstanding as may, in their judgment, be necessary to preserve and protect the highways.

In determining whether to issue a permit, the municipal officers or their authorized designee shall consider the following factors:

- a. the gross registered weight of the vehicle or combination of vehicles;
- b. the current and anticipated condition of the way or bridge;
- c. the number and frequency of vehicle or combination trips proposed;
- d. the cost and availability of materials and equipment for repairs;
- e. the extent of use by other exempt vehicles; and
- f. such other circumstances as may, in their judgment, be relevant.

The municipal officers or their authorized designee may issue permits subject to reasonable conditions, including but not limited to restrictions on the actual load weight and the number or frequency of vehicle trips, the temperature, the time that the temperature has constantly remained below 32° Fahrenheit, whether or not the road is solidly frozen, which shall be clearly noted on the permit.

Section 6. Revocation

Any permit may be revoked by the municipal officers at any time they in their sole discretion determine that the licensee's use is causing damage, may cause an exacerbation of damage, or is unsafe.

Section 7. Administration and Enforcement

This ordinance shall be administered and may be enforced by the municipal officers or their duly authorized designee (such as road commissioner, code enforcement officer) or municipal, state or county law enforcement officer.

Section 8. Penalties

Any violation of this ordinance shall be a civil infraction subject to a fine of not less than \$250.00 nor more than \$1,000.00. Each violation shall be deemed a separate offense. In addition to any fine, the Town may seek restitution for the cost of repairs to any damaged way or bridge and reasonable attorney fees and costs.

Prosecution of the infraction shall be in the name of the Town and shall be brought in the Maine District Court.

An action for damage to any way or bridge may be brought in any court of competent jurisdiction.

Section 9. Amendments

This ordinance may be amended by the municipal officers at any properly noticed meeting.

Section 10. Severability; Effective Date

In the event any portion of this ordinance is declared invalid by a court of competent jurisdiction, the remaining portions shall continue in full force and effect.

This ordinance shall take effect immediately upon enactment by the municipal officers at any properly noticed meeting.

Enacted: October 16, 1996

By:

/s/ John A. Pope

/s/ Timothy J. Mallar

/s/ Carroll C. Gilpatrick

Selectmen of the Town of Whiting



<https://www.whitingmaine.com/town-ordinances/nuisance-control-ordinance/>

NUISANCE CONTROL ORDINANCE TOWN OF WHITING

I. TITLE

This ordinance shall be known and may be cited as the “Nuisance Control Ordinance of the Town of Whiting”.

II. AUTHORITY

This ordinance is adopted pursuant to Article VIII of the Maine Constitution and Maine Revised Statutes Title 30-A Section 3001.

III. PURPOSE

The purpose of this ordinance is to promote the health, safety, and general welfare of the residents of the Town of Whiting by regulating nuisances such as sources of odors which may cause or exacerbate citizen breathing problems, excessive noise, detrimental vermin and bird congregations, etc.

IV. LIMITATIONS

Judicial or statutory rejection of any aspect of this ordinance shall not invalidate the ordinance as a whole.

V. SPECIFIC REQUIREMENTS

A. Odor Nuisance

It shall be a violation of this ordinance to create or permit dissemination of an odor nuisance as defined below.

1. Nuisance Defined: An odor nuisance shall exist when three (3) odor complaints arise from a given area or neighborhood during a forty-eight (48) hour interval. The three (3) complaints must originate from three (3) different households in an area considered residential and may be communicated by telephone to the Code Enforcement Officer (CEO) or the Town Clerk. Complainants shall be prepared to formalize their concern by written statement to the Board of Selectmen.

2. Nuisance Confirmation: When the number of complaints received equals three, the Whiting Code Enforcement Officer, or other designated official, shall visit the affected area to determine existence of a detectable odor. The CEO or other official shall interview two or more complainants to verify that the

detected odor is the source of complaint. The complainants verifying the odor nuisance shall confirm that fact by submitting a completed copy of the attached sample complaint form.

3. Action Upon Confirmation: The CEO or other official shall attempt to identify the odor source and shall notify the operator of the alleged odor source immediately by telephone, when the odor nuisance is confirmed and its apparent source discovered, and shall confirm the telephone message by letter within five (5) working days. The CEO, or other certified odor evaluator, shall estimate the odor intensity on a twelve-point n-butanol static-scale as prescribed in ASTM E44-75 Sections 6, 7, 8; a three—member odor panel, including the CEO, shall be employed. The odor level estimate shall be reported to the operator of the alleged source and the Whiting Board of Selectmen.

4. Excessive Odor Level: When the CEO or certified odor evaluator finds an odor level greater than four (4) on the twelve-point scale, the odor level shall be considered excessive and he shall immediately notify the operator of the alleged source with a follow-up letter confirming the notification.

Upon receipt of the written notice of excessive odor level, the owner or operator of the odor source shall :

1. Implement Odor Reduction: The odor source owner-operator shall put into effect those odor reduction procedures that the owner-operator believes will best abate the nuisance.

2. Describe Odor Reduction Methods: The owner-operator of the odor source shall, within thirty (30) days of notification, submit to the Whiting Board of Selectmen an odor reduction plan which is designed to reduce ambient odor to Level 4 or less.

The plan shall include a summary of the measures that the owner-operator will take to mitigate odors and the completion date if those measures cannot implemented immediately.

In the event that odor reduction measures cannot be put in place for thirty (30) days or more, the owner-operator shall curtail operations or describe other means for mitigating odors in the interim.

CONTINUING VIOLATIONS

In the event that excessive odor violations occur after an initial citation and implementation of a mitigation plan, the owner or operator of the odor source shall be subject to the penalties prescribed in 30A M.R.S.A. Sec. 4452, which section is incorporated by reference, for each day that the excessive level persists. Persistence will be deemed to occur daily if the CEO or odor evaluator finds an excessive level in evaluations carried out at seven-day (7) intervals.

B. Animal Nuisance

It shall be a violation of this ordinance to create or encourage populations of animals that become a nuisance by feeding on or fouling agricultural crops, polluting streams or lakes, etc., or a health hazard as vectors for disease, etc.

1. Definition of Animal Nuisance: An animal nuisance will exist when the population of animals becomes three (3) times greater than normal as the result of a human action or activity, and there is evidence of a health threat or property damage from the increase in population. Insects, birds, and mammals are included in the term “animals”.

2. Nuisance Confirmation: An animal nuisance shall be confirmed by the independent observation records of three different individuals. Observers shall be residents of the area and prepared to attest to the accuracy of their observation data. Observation records shall represent data from time periods when an excessive population did not exist and records of the excessive population in a defined observation area and time interval.

Observers need not address precisely the same area, but the observed areas must obviously be contiguous or representative of the area said to be over-populated.

A rebuttable presumption of physical damage or threat to health will exist when the animal populations on sensitive areas (water bodies, agricultural lands, etc.) equal; three times normal population.

Residents may report their observations to the Code Enforcement Officer or Town clerk. When three reports arise for a given area, the CEO or another Town official shall interview the complainants and review their data.

3. Action Upon Confirmation: When the CEO or official deems the observation data to be valid, he shall notify the owner or operator of the alleged cause for the animal increase. A telephoned notification shall be confirmed by a letter including a summary of observation data from the three complainants.

Upon receipt of the written notice of animal population nuisance, the owner-operator shall:

1. Argue Another Cause: If the owner-operator of the alleged cause of the animal nuisance believes that his operation does not cause the nuisance, he shall submit observation data or other physical evidence vindicating his belief. The Whiting Board of Selectmen shall judge the validity of the owner-operator's evidence versus complainant observations, and relieve the owner-operator when his evidence is persuasive.

The Board of Selectmen shall document the argument leading to their conclusion in letters to the owner – operator and the complainants.

2. Implement Animal Control: In the event that the owner-operator agrees that his activity has caused an animal nuisance, or the Board of Selectmen make such a judgment, the owner-operator shall implement those animal control procedures that the owner-operator believes will best abate the nuisance.

3. Describe Animal Control Methods: The owner-operator of the activity causing the animal nuisance shall, within thirty (30) days of notification, submit to the Whiting Board of Selectmen an animal control plan which is designed to reduce animal populations to two (2) times normal level. The plan shall include a summary of the measures that the owner-operator will take to mitigate the animal nuisance and the completion date if those measures cannot be taken immediately.

In the event that animal control measures cannot be put into place for thirty (30) days or more, the owner-operator shall curtail operations or describe other means for the controlling animal population.

CONTINUING VIOLATIONS

In the event that excessive animal populations occur after an initial citation and implementation of a mitigation plan, the owner or operator of the activity shall be subject to the penalties prescribed in 30-A M.R.S.A. Sec. 4452 for each day that the excessive population persists. Persistence will be deemed to occur if observations by original complainants (or their neighbors) confirm the excessive numbers.

VI. EFFECTIVE DATE

The effective date of this ordinance is May 21st, 1997

Reference : ASTM Standard E544-75

Standard Recommended Practices for

REFERENCING SUPRATHRESHOLD ODOR INTENSITY

Current Edition published July 1975.

/s/ John A. Pope

A true copy.

Attest: /s/ Alan D. Brooks

/s/ Timothy Mallar

Alan D. Brooks, Clerk

/s/ Carroll C. Gilpatrick

Town of Whiting

Dated: 05/14/97



<https://www.whitingmaine.com/town-ordinances/communication-facility-ordinance/>

COMMUNICATION FACILITY ORDINANCE

Town of Whiting

Section 1. Title

This ordinance shall be known as the “Communication Facility Ordinance of the Town of Whiting, Maine”, and referred to within as the “ordinance”.

Section 2. Authority

This ordinance is adopted pursuant to the enabling provisions of Article VIII, Part 2 Section 1 of the Maine Constitution, the provisions of Title 30-A M.R.S.A. Section 3001 (Home Rule), and the provisions of the Planning and Land Use Regulation Act, Title 30-A M.R.S.A. Section 4312 et seq.

Section 3. Purpose

The purpose of this ordinance is to provide a set of standards and a process to regulate siting, construction, and operation of wireless communication facilities in the Town of Whiting in order to:

Implement Whiting Town policy concerning wireless communications services, and

Establish standards, guidelines and time frames for the exercise of Town authority.

Section 4. Applicability

This ordinance applies to all construction, expansion, and operation of communication facilities except as provided below.

Exemptions

The following apparatus of facilities are exempt from provisions of this ordinance:

- A. Emergency Wireless Communication – temporary wireless communication facilities for emergency use by public officials;
- B. Amateur Radio Stations – amateur (ham) radio stations licensed by the Federal Communication Commission;
- C. Parabolic Antennas – parabolic antennas less than seven (7) feet in diameter that are an accessory use on a property;

D. Maintenance of Repair – maintenance, repair, of reconstruction of a wireless communication facility and related equipment provided there is no change in height of the facility, nor substantial increase in other facility dimensions;

E. Temporary Communication Facility – a communication facility installed for operation during a maximum period of one hundred eighty (180) days at the conclusion of which it is removed;

F. Antennas as Accessory Uses – an antenna that is an accessory use to a residential dwelling unit with a height less than thirty-five (35) feet greater than the dwelling unit.

Section 5. Review and Approval Authority

No person shall construct, expand, or operate a wireless communication facility before the Town of Whiting Planning Board has reviewed plans for and approved issuance of a permit for the communication facility as follows.

No person shall construct a new tower or wireless communication facility in Town without first utilizing all existing tower structures.

Approval is required for a new wireless communication facility and any expansion of an existing facility that increases facility height.

Approval is required for adaptation of existing antenna structures for a new service, collocating of equipment to be operated by and entity other than the existing operator, and similar accessory uses of an existing communication facility.

Section 6. Approval Process

All persons seeking approval of the Planning Board under this ordinance shall meet with the Planning Board no less than thirty (30) days before filing a permit application. At this meeting, the board shall discuss and explain ordinance provisions with the applicant as well as the applications forms and data submissions required under the ordinance.

6.1 Applications

An application for permission to construct a proposed wireless communication facility must include the following information;

A. Documentation of the applicant's right, title, or interest in the property where the facility is to be located including the name and address of the property owner when the applicant does not hold full rights and title to the property;

B. A copy of the Federal Commission license for the proposed facility or a signed statement from the owner or intended operator of the facility attesting that the facility will comply with current FCC regulations;

C. A U.S. Geodetic Survey 7.5 minute topographic map showing the location of all structures and wireless communication facilities with a height greater than 450 feet above mean sea level and within thirty (30) miles of the proposed facility location. This requirement may be met by submitting current information (i.e., including data arising within thirty days of application date) from the FCC Tower Registration data base.

D. A site plan:

1. height of proposed facility structured, antenna tower capacity for additional equipments, on-site and abutting off-site land uses, means access, electrical power supply transmission lines, setbacks from property lines, and all applicable American National Standards (ANSI) technical and structural codes together with a boundary survey of the site prepared by a Maine licensed land surveyor.

2. the plan shall be accompanied by a rationale and certification that the facility will comply with all Federal Communication Commission radio frequency energy emission standards.

E. A scenic assessment including the following:

1. elevation drawings of all proposed placement of the facility showing height above mean sea level and local ground level;

2. a landscaping plan indicating the proposed placement of the facility on the site, location of existing structures, trees, and other visually significant features; the type and location of plants proposed to screen the facility; the method of fencing; the color of visible structures; and the plan of lighting other than that required by the Federal Communication Commission. The number, brightness, and proposed schedule for FCC-required lighting shall be described.

3. photo simulations of the proposed facility as it might be seen from locations designated by the Planning Board at a preliminary meeting with the applicant. Each simulated photo (or actual photo with proposed facility structures sketched in) shall be labeled with the location, line of sight, angular elevation, and date taken. The photos must show the color of the facility and presence or method of screening.

F. A written description of how and why the proposed facility is part of the applicant's communication system or network of communication facilities. This requirement does not envision disclosure of confidential business information.

G. Evidence and rationale demonstrating that no existing building, communication facility, or structure can accommodate the applicant's radio frequency energy radiating of receiving elements. Relevant data and information includes:

Evidence that no existing suitable facility can reach the targeted market coverage area as required by the applicant's technical requirements.

Suitability and lack thereof shall be described in terms of:

planned and necessary equipment would exceed structural capacity of existing facilities considering the existing and planned use of the facilities, and existing facilities cannot be economically reinforced or reconstructed to accommodate new equipment;

the applicant's proposed emissions would cause irremediable electromagnetic interference with the applicant's proposed service:

engineering and cost estimates for modification of existing facilities to be practical for the applicant's purposes.

H. Evidence that the applicant has made diligent good faith efforts to negotiate collocation of his equipment on an existing, facility, building, or other structure and has been denied use of the facility, building, or structure.

I. Identification of districts, sites, buildings, structures, or objects significant in American history, architecture, archeology, engineering, or culture that are listed or eligible for listing in the National Register of Historic Places (see 16 U.S.C. 470w(5); 36 CFR 60 and 800).

J. A formal statement from the existing or proposed owner of the wireless communication facility and his or her successors and assign agreeing to:

1. respond in a timely, comprehensive, manner to a request for information from an applicant for location of equipment on the proposed facility in exchange for a reasonable fee not in excess of the actual cost of preparing a response;
2. negotiate in good faith with a third party for shared use of the community facility;
3. allow shared use of the wireless communication facility if a subsequent applicant agrees to pay reasonable charges for collocation;
4. require no more than a reasonable charge for shared use based on community rates and accepted accounting principles. Such charge may include, but is not limited to, a pro rata share of the cost of site planning and preparation, land costs, site design and construction, depreciation, return of equity, and all other costs of adapting the facility to accommodate shared usage without causing electromagnetic interference with one party or another. Amortization of costs by the facility owner shall occur at a reasonable rate over the useful life of the facility.

K. A form of surety approved by the Planning Board to cover costs of facility removal and site renewal in the event the facility is abandoned.

L. Evidence that a notice of intent to apply has been published in a local newspaper of general circulation no later than fourteen (14) days prior to submission of the application.

6.2 Submission of Waiver

Upon written request by the applicant, the Planning Board may waive any submission requirement. A waiver of submission requirements shall be granted only when the Planning Board documents the fact and argument that, due to special circumstances of the application, the data or information is not required to determine compliance with standards of this ordinance.

6.3 Fees

A. Application Fee

Upon submission of an application for permission to construct or expand a wireless communication facility, the applicant shall pay a fee, for structures exceeding thirty (30) feet in height, of one dollar (\$1.00) per foot of structure height. Structures with height less than thirty (30) feet height are regulated by the Town of Whiting Building Permits ordinance. The application shall be incomplete until these fees are paid. An applicant shall be entitled to fee refunds if the application is withdrawn

within fifteen (15) days of filing less any Town expenses incurred in handling the application during the interval.

B. Review Fee

The applicant shall pay all reasonable and customary costs incurred by the Town of Whiting Planning Board that are a necessary part of the application review. The review fee shall be paid in full before start of construction on an approved facility and within sixty (60) days after permit is denied.

6.4 Notice of Complete Application

Upon receipt of an application, the Town Clerk shall provide the applicant with a dated receipt. The Planning Board shall review any waiver requests and act upon these requests within forty-five (45) days prior to determining completeness of the application.

If the application is complete, the Planning Board shall formally notify the applicant within forty-five (45) days of application submission and request five (5) additional application copies to be used for review purposes. When the application is considered incomplete, the Planning Board shall immediately notify the applicant specifying additional information or data required to complete the application. Upon submission of the requested materials, the Planning Board shall determine application completeness within thirty (30) days.

When an application is deemed complete, the Planning Board shall notify, by first-class mail, owners of land abutting the proposed facility site that a completed application has been accepted. The notice shall contain a brief description of the proposed facility, the name of the applicant, and the location of an application copy that is available for public inspection. Failure on the part of any abutter to receive such notice shall not be grounds for delaying consideration of the application nor denial of the proposed construction.

6.5 Public Hearing

A hearing to inform the general public in Whiting shall be scheduled within thirty (30) days of notice of complete application.

6.6 Approval and Permit Issuance

Within ninety (90) days of receiving a complete application for construction, installation, or modification of a wireless communication facility, the Planning Board shall approve, approve with conditions, or deny the application. The basis and rationale for Planning Board action shall be documented.

Should the Planning Board be confronted with several essentially simultaneous applications, it shall confer with the applicants to establish an agreeable schedule for completing reviews of each application.

Under no circumstance shall a permit be issued before the Planning Board, in its sole discretion, has determined that its review is complete.

Section 7. Standards of Review

To meet approval and issuance of a building permit, a wireless communication facility application shall meet the following standards:

A. Location Priority

A new wireless communication facility must be located according to the priorities below. The applicant shall provide factual evidence when a facility cannot reasonably be placed on higher priority

1. Collocation on an existing wireless communication facility of other existing structure.
2. Location on municipal property of property devoted to and existing public utility (pipeline right-of-way, transmission line corridor, etc.).
3. A new facility on municipal or private property other than as above and not in a Shoreland district.
 4. A Shore land district as defined in Town of Whiting ordinances.

B. Sites on Municipal Property

If an applicant proposes to locate a new wireless communication facility or expand an existing facility on municipal property, the applicant must show the following;

1. The proposed facility will not interfere with the original or existing use of the
2. The applicant has adequate liability insurance and a lease agreement with the Town of Whiting that includes reasonable compensation for use of the property and other provisions to safeguard the public rights and interests in the property.

C. Design for Collocation

A new wireless communication facility shall be designed and constructed to accommodate future collocation of at least three (3) additional provider equipments (antennas) similar to that proposed by the applicant. The Planning Board may waive or modify this standard where height limits of other physical factors cannot be satisfied; the Planning Board shall document the rationale for the waiver.

D. Height of new wireless communication facility shall be no more than one hundred fifty (150) feet above the highest terrain in Whiting. {{ Pughole Mountain, highest, is 386 feet above MSL.}}

E. Setbacks

A new or expanded wireless communication facility must comply with the Town of Whiting Building Permit ordinance. Additionally, any structure (tower, pylon, building, etc.) with a height greater than thirty (30) feet shall be set back one hundred ten (110) feet from property lines of abutting land owners. The setback requirement may be satisfied by including area beyond the applicant's property when the area owner has signed an easement for such purpose.

F. Landscaping

A new wireless communication facility, ancillary buildings, and equipment shall be screened by shrubbery, trees, or similar plants to be obscured from view on adjacent properties. Existing plants and land forms on the site should be used to the extent practicable.

G. Fencing

A new wireless communication facility shall be fenced to discourage trespass on the facility and prevent unauthorized climbing on towers and similar structures.

Insofar as it may be practical, fences may satisfy the demand for facility screening.

H. Lighting

A new wireless communication facility shall be illuminated only as necessary to comply with Federal Aviation Administration and other federal and state requirements. However, security lighting may be used so long as it is shielded to be down-directed to confine illumination to areas within facility boundaries.

I. Color and Materials

A new wireless communication facility must be constructed with materials and colors that match or blend with the surrounding natural or constructed environment to the maximum extent practicable. Unless otherwise required, muted earth tones and subdued hues shall be used.

J. Structural Standards

A new wireless communication facility must comply with the current Electronic Industries Association and Telecommunication Industries Association (EIA/TIA) 222 Revision Standard titled "Structural Standards for Steel Antenna Towers and Supporting Structures".

K. Visual Impact

A proposed wireless communication facility shall have no unreasonable adverse impact upon designated scenic resources in and adjacent to the Town of Whiting.

In determining visual impact of a proposed facility, the Planning Board shall consider the following factors;

1. The extent to which the proposed facility will be visible above the tree line from affected scenic resources.
2. The type, number, height, and proximity of existing structures and features, and background features, within the same line of sight to the proposed facility.
3. The extent or proportion of the proposed facility which would be visible from the designated viewpoints.

L. Noise

During construction, repair or replacement, and testing of power generating equipment, operation of a noise-producing machine shall occur only during the hours of 8:00AM to 9:00PM. Operation of a power generator during a failure of commercial electric power is exempt from this restriction. Preferably, noise from a back-up generator will be muffled by appropriate vegetation and not reflected from building walls onto adjacent properties.

M. Historic and Archeological Properties

The proposed communication facility, to greatest degree practicable, will have no adverse impact upon historic district, site, of structure which is currently on or eligible for listing on the National Register of Historic Places.

Section 8. Standard Conditions of Approval

In addition to satisfying the requirements of Section 7, the following conditions shall be part of an approval of conditional approval of a permit for construction or alteration of a wireless communication facility. Where necessary to assure that an approved project meets criteria of this ordinance, the Planning Board may impose additional conditions of approval. Reference to and the rationale for conditions of approval shall be documented by the Planning Board. When those conditions affect physical dimensions of the proposed facility, they shall be noted on the final site plan.

A. Certification of the applicant's intent to comply with all Federal Communication Commission emission regulations for radio frequency energy.

B. Declaration of intent to negotiate in good faith with applicants for shared use of the facility.

Section 9. Amendment of an Approved Application

Any changes to an approved application shall be reviewed for approval by the Planning Board in accord with Section 5.

Section 10. Abandonment

A wireless communication facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned. The Code Enforcement Officer shall notify the owner of an abandoned facility by certified mail to order removal of the facility within ninety (90) days of written notice receipt. The owner shall have thirty (30) day period within which to demonstrate to the CEO of the Planning Board that the facility has not been abandoned.

If the abandoned facility is not removed in the allotted time period, the Town of Whiting may remove the facility and bill the owner for costs incurred. Site reclamation costs are those deemed necessary to restore the site to its pre-construction status including removal of roads and re-establishments of vegetation. If a surety had been given to the Town for facility removal, the owner shall apply to the Planning Board for return of that surety, or its residual value, after the facility and related artifacts are removed.

Section 11. Appeals

Any person aggrieved by a decision of the CEO or the Planning Board relative to this ordinance may appeal the decision to the Whiting Board of Appeals or, in the absence or refusal by the Board of

Appeals, to the Superior Courts of Washington County. Written notice of appeal must be filed with the Town Clerk within thirty (30) days of the questioned decision. The notice of appeal shall clearly state the reasons for appeal.

Section 12. Administration and Enforcement

The Whiting Code Enforcement Officer, as appointed by the Whiting Selectmen, shall enforce this ordinance. When the CEO believes that any provision of the ordinance has been violated, he shall notify in writing the person presumed responsible for the alleged violation indicating its nature and necessary actions to correct it.

The communication facility owner or operator shall appeal, as above, when he questions a CEO action.

The Whiting Selectmen may enter into administrative consent agreements for the purpose of eliminating violations of this ordinance and recovering penalties without necessity of court action. Such agreements shall not allow a violation to continue unless there is clear evidence that the violation occurred as the direct result of erroneous advice given by an authorized Town official, upon which the owner-operator reasonably relied, and there is no evidence that the owner-operator acted in bad faith, or removal of the violation will result in substantial threat to public health or safety or substantial environmental damage.

Section 13. Penalties

Any person who owns or controls any building, structure, or property that violates this ordinance shall be fined in accord with Title 30-A.M.R.S.A. Sec. 4452. Each day such violation continues, after notification by the CEO, shall constitute a separate offense.

Section 14. Conflict and Severability

When a provision of this ordinance conflicts with or is inconsistent with another provision of this ordinance or any other ordinance, regulation, or statute, the more restrictive provision shall apply.

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

Section 15. Definitions

Words used in this ordinance shall carry their customary meaning with the following terms to be interpreted according to these definitions:

“Antenna” means any system of poles, panels, rods, energy reflecting surfaces, and similar devices used for the reception or emission of electromagnetic energy.

“Antenna height” means the vertical distance measured from a defined reference (local ground level, mean sea level, etc.) to the highest point of an antenna supporting structure including the radiating or receiving structure itself. If the antenna support is on a sloped grade, then the average between the highest and lowest grade shall be used in calculating antenna height above local ground level.

“Collocation” means the placement of equipment from more than one wireless communication service provider on a communication facility (area, tower, building, etc.).

“Communication facility” means the land area, buildings, towers, power supply, etc. described by documents associated with a communication facility construction permit issued by the Whiting Planning Board.

“Expansion” means the addition of antennas, ancillary equipment, towers, or other artifacts to an existing wireless communication facility.

“Line of sight” means the direct view of an object from a designated scenic resource.

“Parabolic antenna” (also known as a satellite dish antenna) means an antenna, which is bowl-shaped, designed for reception or transmission of electromagnetic energy.

“Principal use” means that purpose or use which motivated construction or installation of a structure as opposed to those incidental uses which are neither necessary nor ancillary to a principal use.

“Targeted market coverage area” means the geographic area to be served by a proposed

“Unreasonable adverse impact” means a facility construction result which is:

- 1.) excessively out-of-character with a designated scenic resource;
- 2.) would significantly diminish the scenic value of a designated resource.

“Viewpoint” means a location which is identified in the Town comprehensive plan or by federal or state Agency and is associated with a designated scenic resource.

Enacted: March 25, 2002

Selectmen:

/s/ Steven C. Pressley I

/s/ Mary- Alice Look

/s/ Caron Kilton, Town Clerk

05/12/2003



<https://www.whitingmaine.com/town-ordinances/retail-marijuana-establishments/>

RETAIL MARIJUANA ESTABLISHMENTS

Ordinance Prohibiting Retail Marijuana Establishments and Retail Marijuana Social Clubs In the Town of Whiting

Section 1. Authority:

This ordinance is enacted pursuant to the Marijuana Legalization Act, 7 M.R.S.A ch.417

Municipal Home Rule Authority, ME. Const., Art. V111, pt. 2; and 30-A §3001.

Section 2. Definitions:

For purposes of this ordinance, retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities, retail marijuana testing facilities, and retail marijuana social clubs are defined as set forth in 7 M.R.S.A, §2442.

Section 3. Prohibition: on Retail Marijuana Establishments and Retail Marijuana Social Clubs:

Retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities, retail marijuana test facilities, and retail marijuana social clubs, are expressly prohibited in this municipality.

No person or organization shall develop or operate a business that engages in retail or wholesale sales of a retail marijuana product, as defined by 7 M.R.S.A, §2442.

Nothing in this ordinance is intended to prohibit any lawful use, possession or conduct pursuant to the Maine Medical Use of Marijuana Act, 22 M.R.S.A. ch. 558-C.

Section 4. Effective Date; Duration:

This ordinance shall take effect immediately upon enactment by the municipal legislative body unless otherwise provided and shall remain in effect until it is amended or repealed.

Section 5. Penalties:

This ordinance shall be enforced by the municipal officers or their designee. Violation of this ordinance shall be subject to the enforcement and penalty provisions of 30-A M.R.S.A. §4452, as may be amended.