

2018

# Gardiner Maine Land Use Ordinance

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# CITY OF GARDINER



## LAND USE ORDINANCE

Effective May 21, 2010

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## **SECTION 1. GENERAL PROVISIONS**

### **1.1 Short Title**

This Ordinance shall be known and cited as the “Land Use Ordinance of the City of Gardiner Maine”, and will be referred to herein as this “Ordinance”.

### **1.2 Statutory Authority**

This Ordinance is enacted pursuant to Home Rule Authority granted in 30-A M.R.S.A. Section 3001 and Section 4352 and Article VIII, Part 2, of the Maine Constitution.

### **1.3 Purpose**

**1.3.1** To protect the public health and safety, environmental quality and economic well-being of the city while allowing a maximum diversity of uses by controlling building site, placement of structures and land uses, and by imposing minimum controls on those uses which, by virtue of their external effects, could otherwise create nuisances or unsafe or unhealthy conditions.

**1.3.2** To provide for residential development in locations compatible with existing development and in a manner appropriate to the economical provision of community services and utilities.

**1.3.3** To provide for a variety of commercial and industrial uses in locations suited to the economical provision of essential community services and utilities and to avoid blight, congestion and inconvenience.

**1.3.4** To prevent and control environmental pollution, to protect water quality, spawning grounds and wildlife habitat and to conserve shore cover and visual, as well as points of access to ponds, streams and rivers.

**1.3.5** This Ordinance does not grant any property rights; it does not authorize any person to trespass, infringe upon, or injure the property of another.

**1.3.6** This Ordinance does not excuse any person of the necessity of complying with other applicable laws and regulations.

### **1.4 Basic Requirements**

All buildings or structures hereinafter erected, reconstructed, altered, enlarged or moved, and uses of premises in the City of Gardiner shall be in conformity with the provisions of this Ordinance. No building, structure, land or water area shall be used for any purpose or in any manner except as permitted within the district in which such building, structure, land or water area is located.

### **1.5 Availability**

A certified copy of this Ordinance shall be filed with the Municipal Clerk and shall be accessible to any member of the public. Copies shall be made available to the public at reasonable cost at the expense of the person making the request. Notice of availability of this Ordinance shall be posted.

### **1.6 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.



### **1.7 Conflict with Other Ordinances**

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

### **1.8 Amendment**

**1.8.1** Amendments may be proposed by any individual or group, by the Ordinance Review Committee, Planning Board, the City Council, by any landowner or his authorized agent or by a person having a written agreement to purchase the property. Amendment proposals shall be placed on the City Council agenda within 90 days for prioritization.

**1.8.2** After drafting by the Ordinance Review Committee and before public hearing by the City Council, any proposed amendment or change shall be submitted to the Planning Board for public hearing and recommendations to the City Council; public notice of such hearing shall be given by publication in a newspaper of general circulation within the City at least 7 – 14 days prior to the date thereof. Advertising costs shall be borne by the initiating party at the Planning Board and City Council public hearings.

**1.8.3** Amendments to the text or the Zoning Map shall be consistent with the adopted Comprehensive Plan and shall be consistent with the purpose of this section as stated in paragraph 1.3.

**1.8.4** The Ordinance may be amended as follows:

**1.8.4.1** By a majority vote of the City Council.

### **1.9 Repetitive Petitions**

No proposed change in this Ordinance which has been unfavorably acted upon by the City Council shall be considered on its merits by the City Council until a new council is seated.

### **1.10 Effective Date**

The effective date of this Ordinance is May 21, 2010.

#### **1.10.1 Repeal of Municipal Timber Harvesting Regulation**

The municipal regulation of timber harvesting activities is repealed on (Council Date) and shall not be effective unless approved by the Commissioner of the Department of Environmental Protection, at which time the State of Maine Department of Conservation's Bureau of Forestry shall administer timber harvesting standards in all Shoreland Zoning Districts. *(Adopted August 29, 2015/Effective September 19, 2015) (The Commissioner of the Department of Environmental Protection approves this ordinance as amended Aug 19, 2015 - dated at Augusta, ME Oct 20, 2015)*

### **1.11 Review of Ordinances**

This Ordinance shall be reviewed by an Ordinance Review Committee to be established each January. The Ordinance Review Committee shall consist of at least two and no more than three

members of the Planning Board, at least two and no more than three members of the Board of Appeals and at least two members from the general public, to be appointed by the mayor, with the advice and consent of the City Council. The Code Enforcement Officer shall also be a member of the Committee. The mayor shall appoint the Chairperson of the Committee.

## **SECTION 2. ADMINISTRATION AND ENFORCEMENT**

### **2.1 Code Enforcement Officer**

**2.1.1** Unless otherwise provided in this Ordinance, the Code Enforcement Officer (CEO), as duly appointed by the City Manager and confirmed by the Gardiner City Council, shall administer and enforce this Ordinance. No building permit or certificate of occupancy shall be issued by the Code Enforcement Officer except in compliance with the provisions of this Ordinance. The Code Enforcement Officer shall have the following duties, among others, in enforcing this Ordinance:

Within fourteen days of the filing of an application for a building or use permit, the Code Enforcement Officer shall approve, deny or refer the applicant to the Planning Board or Board of Appeals for further review. The decision shall be in writing on a form designed for the purpose, and communicated directly to the applicant. One copy of the Code Enforcement Officer's decision shall be filed in the City Hall. In cases where the Code Enforcement Officer deems that other reviews are required, the CEO shall provide a copy of this decision to the appropriate board.  
*(Adopted December 3, 2014; Effective January 3, 2015)*

**2.1.1.1** Examine preliminary plans.

**2.1.1.2** Act upon all applications and collect any fees due; refer/process all applications as required.

**2.1.1.3** Act upon building, construction and use applications which are under the jurisdiction of the Code Enforcement Officer.

**2.1.1.4** Review site plan review applications, subdivision applications and other applications for completeness of submissions and refer such applications to the Planning Board.

**2.1.1.5** Refer requests for variances and administrative appeals to the Board of Appeals.

**2.1.1.6** Refer applications for certificates of appropriateness to the Historic Preservation Commission.

**2.1.1.7** Inspect sites where building permits have been issued to ensure compliance with all local, state and federal laws, codes and/or ordinances.

**2.1.1.8** Investigate complaints and reported violations.

**2.1.1.9** Keep written inspection reports and thorough records.

**2.1.1.10** Issue violation notices.

**2.1.1.11** Participate in appeals procedures.

**2.1.1.12** Process or act on consent agreements involving violations of this Ordinance and appear in court when necessary.

**2.1.1.13** Prepare an agenda for mailing before each meeting of the Planning Board and Board of Appeals, and attend meetings of the Planning Board and Board of Appeals.

**2.1.1.14** Revoke a permit after notice if it was issued in error or if it was based on erroneous information, or as may otherwise be provided in this Ordinance. (Amended November 29, 2017 / Effective December 29, 2017)

## **2.1.2 Administration**

When there is a question concerning the interpretation of this Ordinance, the Code Enforcement Officer may refer the matter to the Board of Appeals for interpretation.

## **2.2 Enforcement**

**2.2.1** It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance. If the Code Enforcement Officer shall find that any provision of this Ordinance is being violated, he/she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. He/she shall order discontinuance of illegal buildings, or structures, removal of illegal buildings, structures, additions, or work being done, or shall take any other action authorized by this Ordinance to insure compliance with or to prevent violation of its provisions, including but not limited to revocation of a permit. (Amended November 29, 2017 / Effective December 29, 2017)

**2.2.2** When any violation of any provision of this Ordinance shall be found to exist, the City Solicitor, as directed by the City Council, is hereby authorized and directed to institute any and all actions and proceedings, either legal or equitable, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the City of Gardiner.

**2.2.3** Any person, firm, or corporation, including, but not limited to, a landowner, his agent or contractor, who orders or conducts any activity in violation of this Ordinance shall be penalized in accordance with 30-A M.R.S.A. Section 4452.

## **2.2.4 Floodplain Management**

In addition to any other actions, the Code Enforcement Officer, upon determination that a violation of the Flood Plain Management section exists, shall submit a declaration to the Administrator of the Federal Insurance Administration requesting a denial of Flood Insurance. The valid declaration shall consist of 1) the name of the property owner and address or legal description of the property sufficient to confirm its identity or location; 2) a clear and unequivocal declaration that the property is in violation of a cited state or local law, regulation or ordinance; 3) a clear statement that the public body making the declaration has authority to do so and a citation to that authority; 4) evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and 5) a clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

## **2.2.5 Subdivisions**

**2.2.5.1** No plan of a division of land within the city which would constitute a subdivision shall be recorded in the Registry of Deeds until a final plan has been approved by the Planning Board in accordance with this Ordinance.

**2.2.5.2** A person shall not convey or offer to convey any land in a subdivision which has not been approved by the Planning Board and recorded in the Registry of Deeds.

**2.2.5.3** A person shall not sell, lease, offer or otherwise convey any land in an approved subdivision which is not shown on the plan as a separate lot.

**2.2.5.4** No public utility, water district, sanitary district, or any utility company of any kind shall serve any lot in a subdivision for which a final plan has not been approved by the Planning Board.

**2.2.5.5** Development of a subdivision without Planning Board approval shall be a violation of law. Development includes grading or construction of roads, grading of land, or lots, or construction of buildings which requires a plan approved as provided in this Ordinance and recorded in the Registry of Deeds.

**2.2.5.6** No lot in a subdivision may be sold, leased or otherwise conveyed before the road upon which the lot fronts is completed up to and including the entire frontage of the lot in accordance with this Ordinance.

## **2.2.6 Sludge Management**

**2.2.6.1** If the Code Enforcement Officer shall find that any provision of the Sludge Management section is being violated, the Code Enforcement Officer shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it. Said violation shall be corrected within 48 hours.

**2.2.6.2** After notification and the 48-hour correction period, any person who continues to violate any provision of the Sludge Management section shall be considered in violation of this Ordinance. After the second violation of the same provision within one growing season, the permit shall be immediately suspended upon notification from the Code Enforcement Officer.

**2.2.6.3** A copy of the notice of violation shall be sent to the Department of Environmental Protection. The DEP shall also be notified upon the correction of any violation and/or of any fines assessed by the city.

## **2.3 Planning Board**

### **2.3.1 Establishment**

Pursuant to Article VIII of the Maine Constitution and 30-A M.R.S.A. 3001, The City of Gardiner hereby establishes the Gardiner Planning Board.

### **2.3.2 Appointment, Term, Removal, Vacancy**

**2.3.2.1** Appointment to the Board shall be made by the Mayor with the advice and consent of the City Council.

**2.3.2.2** The Board shall consist of 7 members and 2 alternate members. An alternate member shall become a voting member when so designated by the Board Chairperson due to the absence of a primary member. *(Adopted December 3, 2014; Effective January 3, 2015)*

**2.3.2.3** The term of each member shall be 3 years, except that initial appointments shall be for one, one, one, two, two, three, and three years respectively, with the terms expiring August 1.

**2.3.2.4** When there is a vacancy, the Mayor with the advice and consent of the City Council shall appoint a person to serve for the unexpired term.

**2.3.2.5** Neither a municipal officer nor his or her spouse may be a member.

**2.3.2.6** All members shall be legal residents of the City of Gardiner through their entire tenure.

**2.3.2.7** A member may be removed by the Mayor with the consent of the City Council for cause upon written charges and after public hearing.

**2.3.2.8** A vacancy shall be created when any of the following occurs:

**2.3.2.8.1** Member moves his or her residence from the City.

**2.3.2.8.2** Member resigns.

**2.3.2.8.3** Member is removed for cause by City Council.

**2.3.2.8.4** Death of member.

### **2.3.3 Organization and Rules**

**2.3.3.1** The Board shall fill such other offices as it may determine. The term of all offices shall be one year with eligibility for re-election.

**2.3.3.2** Unless otherwise provided by law, the Mayor shall designate, with the advice and consent of the City Council, the Planning Board Chairman under Article VI, Section 1 of the City Charter.

**2.3.3.3** The Planning Board shall meet monthly unless there is no business.

**2.3.3.4** No meeting of the Board shall be held without a quorum consisting of at least four members.

**2.3.3.5** A legal vote shall consist of a majority of the members present and voting.

**2.3.3.6** The Board shall adopt rules for the transaction of business, and the recording clerk shall keep a record of its resolutions, transactions, correspondence, findings and determinations.

**2.3.3.7** The recording-clerk shall be provided and paid for by the municipality.

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

## **2.3.4 Powers and Duties**

**2.3.4.1** The Board shall assist in the preparation of a comprehensive plan as defined by 30-A M.R.S.A. 4326. A comprehensive plan in its final form shall be submitted to the City Council for adoption.

**2.3.4.2** The preparation of a comprehensive plan shall encompass every aspect of planning. It shall include the formulation of long-range policy objectives as well as the recommendation of specific ordinances to the City Council in order to accomplish those objectives.

**2.3.4.3** In the preparation stages of a comprehensive plan in accordance with 30-A M.R.S.A. 4326, a public hearing shall be held. The Board shall publish notice of the hearing not more than ten days or less than seven days in advance in a newspaper of general circulation in the area.

**2.3.4.4** The Board shall perform such duties and exercise such powers as are provided by the Code of the City of Gardiner and the laws of the State of Maine.

**2.3.4.5** The Board may obtain goods and services necessary to its proper function within the limits of appropriations made for the purpose.

## **2.4 Board of Appeals**

### **2.4.1 Establishment**

A Board of Appeals is hereby established in accordance with state law and the provisions of this Ordinance.

### **2.4.2 Appointments, Composition and Organization**

**2.4.2.1** Appointments to the Board shall be made by the Mayor with the advice and consent of the City Council.

**2.4.2.2** The Board shall consist of 7 primary members and 2 alternate members. An alternate member shall become a voting member when so designated by the Board Chairperson due to the absence of a primary member.

**2.4.2.3** The term of each member shall be 3 years, except that the initial appointments shall be for one, one, one, two, two, three and three years respectively, with the terms expiring August 1.

**2.4.2.4** When there is a vacancy, the Mayor with the advice and consent of the City Council shall appoint a person to serve for the unexpired term.

**2.4.2.5** Neither a municipal officer nor his or her spouse may be a member.

**2.4.2.6** All members shall be legal residents of the City of Gardiner through their entire tenure.

**2.4.2.7** A member may be removed by the Mayor with the consent of the City Council for cause upon written charges and after public hearing.

**2.4.2.8** A vacancy shall occur for any of the following reasons:

**2.4.2.8.1** Member moves his or her residency from the city.

**2.4.2.8.2** Member resigns.

**2.4.2.8.3** Member is removed for cause by City Council.

**2.4.2.8.4** Death of member.

**2.4.2.9** Unless otherwise provided by law, the Mayor shall designate, with the advice and consent of the City Council, the Board of Appeals Chairman under Article VI, Section 1 of the City Charter.

**2.4.2.10** No meeting of the Board shall be held without a quorum consisting of 4 members.

**2.4.2.11** A legal vote shall consist of a majority of the members present and voting unless otherwise prescribed in this section.

**2.4.2.12** The Board shall adopt rules for the transaction of business, and the recording clerk shall keep a record of its resolutions, transactions, correspondence, findings and determinations.

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

## **2.4.3 General**

**2.4.3.1** All appeals shall be based upon a written decision of the Code Enforcement Officer or Planning Board.



**2.4.3.2** Administrative appeals and variance appeals with the exception of disability variances shall be heard and decided upon by the Board of Appeals in accordance with the provisions of this Ordinance. Disability variances shall be reviewed and decided upon by the Code Enforcement Officer. *(Adopted August 19, 2015/Effective September 19, 2015)*

**2.4.3.3** Administrative and variance appeals shall lie from the decision of the Code Enforcement Officer to the Board of Appeals, and Planning Board review, site plan review and subdivision appeals shall lie from the decision of the Planning Board to the Board of Appeals. All appeals of the decisions from the Board of Appeals shall go to the Superior Court according to state law.

#### **2.4.4 Appeal Procedure (Amended November 29, 2017 / Effective December 29, 2017)**

**2.4.4.1** In all cases, a person aggrieved by a decision of the Code Enforcement Officer or Planning Board shall commence his/her appeal within 30 days after a final decision is made, unless any other provision of this Ordinance provides for a different appeal period. The appeal shall be filed with the Board of Appeals on forms approved by the Board, and the aggrieved person shall specifically set forth on the form the grounds for the appeal.

**2.4.4.2** Following the filing of an appeal, the Board of Appeals shall hold a public hearing on the appeal within 45 days. The standard of review of said hearing shall be determined as set forth below regarding the decision being appealed. The Board of Appeals shall notify the Municipal Officers, Code Enforcement Officer and the Planning Board, at least 14 days in advance, of the time and place of the hearing. The applicant shall publish notice of the hearing not less than 14 days in advance in a newspaper of general circulation in the area.

**2.4.4.3** The applicant shall notify the Code Enforcement Officer and by certified mail the owners of all property within 100 feet of the property involved if the property is in a Residential or Central Business district and within 200 feet of the property in all other districts, at least 14 days in advance of the hearing, of the nature of the appeal and of the time and place of the public hearing, and shall furnish proof of such notification.

**2.4.4.4** The owners of property shall be considered those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action by the Board of Appeals.

**2.4.4.5** At any hearing, a party may be represented by an agent or attorney. Hearings shall not be continued to other times except for good cause.

**2.4.4.6** The Code Enforcement Officer or designated assistant shall attend all hearings and, for hearings that involve a *de novo* standard of review, may present to the Board of Appeals all plans, photographs, or other material he/she deems appropriate for an understanding of the appeal. For hearings that involve a purely appellate standard of review (i.e., a hearing that is not *de novo*), the Code Enforcement Officer or designated assistant shall attend all hearings and may also present to the Board of Appeals all relevant record materials he/she deems appropriate for an

understanding of the appeal.

**2.4.4.7** The appellant's case shall be heard first. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked through the Chair. All persons at the hearing shall abide by the order of the Chairman.

**2.4.4.8** Within 20 days of the public hearing, the Board of Appeals shall reach a decision on an appeal by final vote and shall mail or hand deliver, in writing, the Board of Appeals' Notice of Decision to the appellant, any appellee, the Code Enforcement Officer, the City Manager, the Mayor and the Chairman of the Planning Board within 7 days of the Board of Appeals' final vote.

**2.4.4.9** Upon notification of the granting of an appeal by the Board of Appeals, the Code Enforcement Officer shall forthwith issue a building permit in accordance with the conditions of the approval.

**2.4.4.10** A variance under the provisions of this Ordinance secured by vote of the Board of Appeals shall expire if the work or change involved is not commenced within 1 year of the date on which the appeal is granted, and if the work or change is not substantially completed within 2 years of the date on which the appeal is granted.

**2.4.4.11** If a variance expires, to continue work in progress or to commence construction, a person shall apply for a new variance or the person shall be in violation of this Ordinance.

**2.4.4.12** A variance granted by the Board of Appeals shall be recorded in the Kennebec Register of Deeds within 90 days of the date of written approval of the variance pursuant to 30-A M.R.S.A. Section 4353, Subsection 5. The variance is not valid until it is recorded.

## **2.4.5 Powers and Duties**

### **2.4.5.1 Administrative Appeals (Amended November 29, 2017 / Effective December 29, 2017)**

The Board of Appeals shall hear and decide where it is alleged there is an error in any order, requirement, decision, or determination made by the Code Enforcement Officer in the enforcement of this Ordinance or in the City's adopted building code, which shall be a *de novo* hearing. The Board may waive any portion of the building code only if such waiver (s) fully complies with good, sound engineering practices. If a waiver is granted, the waiver shall only apply to that particular project. The action of the Code Enforcement Officer may be modified or reversed by the Board of Appeals, or a waiver granted from the building code, by a concurring vote of at least 4 members of the Board.

### **2.4.5.2 Planning Board and Historic Preservation Commission Appeals (Amended November 29, 2017 / Effective December 29, 2017)**

The Board of Appeals shall hear and decide the appeal of any person aggrieved by the final

action of the Planning Board or Historic Preservation Commission with respect to a Planning Board review, site review, subdivision review or certificate of appropriateness in accordance with the following procedure:

**2.4.5.2.1** The appeal shall be limited to a review of the action of the Planning Board or Historic Preservation Commission with respect to the record of the hearing before the Planning Board or the Historic Preservation Commission. Appeals under this subsection regarding Planning Board and Historic Preservation Commission decisions shall be purely appellate (i.e., they shall not be *de novo*). No new evidence may be introduced by any party except regarding relevant jurisdiction and jurisprudential issues (e.g., standing), such as those provided below.:

**2.4.5.2.1.1** The Board of Appeals may take evidence with respect to the standing of any party to maintain an application or appeal.

**2.4.5.2.1.2** By agreement of all parties, the Board of Appeals may receive additional materials necessary to complete the record of action taken by the Planning Board or Historic Preservation Commission, not included in the record as forwarded by the Planning Board or Commission, provided that these additional materials are properly part of the record under review.

**2.4.5.2.2** Conditions attached to approval of a Planning Board, site plan or Subdivision application or Certificate of Appropriateness may be appealed.

**2.4.5.2.3** The Board of Appeals may modify or reverse the action of the Planning Board or Historic Preservation Commission only where the Board of Appeals finds that the action of the Planning Board or Commission is clearly contrary to the applicable ordinance or is not supported by substantial evidence in the record. The parties appealing the action of the Planning Board or Historic Preservation Commission shall have the burden of persuasion as to all issues on appeal.

**2.4.5.2.4** In the event that the Board of Appeals finds that the action of the Planning Board or Historic Preservation Commission fails to address required issues under the applicable ordinance, or that the decision or record of proceedings before the Planning Board or Commission as forwarded to the Board of Appeals is incomplete, the Board of Appeals shall refer the matter back to the Planning Board or Commission for further proceedings or completion of the decision or record, as appropriate. Upon referral back by the Board of Appeals, the Planning Board or Commission shall complete necessary further proceedings within 60 days. No matter appealed to the Board of Appeals shall be referred back to the Planning Board or Commission more than twice, over the objection of any party.

### **2.4.5.3 Variance**

**2.4.5.3.1** The Board of Appeals shall hear and decide, upon appeal and conducting a *de novo* hearing for any variance request, in specific cases where a relaxation of the requirements of this Ordinance would not be contrary to the public interest and where a literal enforcement of this Ordinance would result in undue hardship. An undue hardship shall mean: (Amended November 29, 2017 / Effective December 29, 2017)

**2.4.5.3.1.1** That the land in question cannot yield a reasonable return unless a variance is granted; and

**2.4.5.3.1.2** That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and

**2.4.5.3.1.3** That the granting of a variance will not alter the essential character or the locality; and

**2.4.5.3.1.4** That the hardship is not the result of action taken by the applicant or a prior owner.

**2.4.5.3.2** A financial hardship shall not constitute grounds for granting a variance. A variance shall not be justified unless all four elements of an undue hardship are present in the case. As used in this Ordinance, a variance is authorized only for height, area, and size of structures or size of yards or open spaces. Establishment or expansion otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or uses in an adjoining zoning district. The Board of Appeals shall grant a variance only by concurring vote of at least 4 members and in so doing, may prescribe such conditions and safeguards as are appropriate under this Ordinance.

#### **2.4.5.4 Dimensional Requirements Variance**

**2.4.5.4.1** The Board of Appeals may grant a variance from the dimensional requirements of the zoning ordinance when strict application of the ordinance to the petitioner and petitioner's property would cause a practical difficulty and when the following conditions exist:

**2.4.5.4.1.1** The need for a variance is due to the unique circumstances of the property and not the general condition of the neighborhood;

**2.4.5.4.1.2** The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties;

**2.4.5.4.1.3** The practical difficulty is not the result of action taken by the petitioner or prior owner;

**2.4.5.4.1.4** No other feasible alternative to a variance is available to the petitioner;

**2.4.5.4.1.5** The granting of a variance will not unreasonably adversely affect the natural environment; and

**2.4.5.4.1.6** The property is not located in whole or in part within the shoreland areas as described in 38 M.R.S.A. Section 435.

**2.4.5.4.2** As used in this subsection only, "dimensional requirements" means and is limited to zoning ordinance provisions relating to lot area, lot coverage, frontage and setback requirements.

**2.4.5.4.3** As used in this subsection, “practical difficulty” means the strict application of the ordinance to the property precludes the ability of the petitioner to pursue a use permitted in the zoning district in which the property is located and results in significant economic injury to the petitioner.

**2.4.5.4.4** Existing, nonconforming buildings within the Cobbossee Corridor District shall not be required to meet the dimensional standards contained in this Ordinance due to change of use or other circumstances requiring review by the City or the Planning Board. Existing buildings cannot be made more nonconforming.

### **2.4.5.5 Disability Variance**

**2.4.5.5.1** The code enforcement officer may issue a permit to an owner of a dwelling for the purpose of making a dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. If the permit requires a variance, the permit is deemed to include that variance solely for the installation of equipment or the construction of structures necessary for access to or egress from the dwelling for the person with a disability. The code enforcement officer may impose conditions on the permit, including limiting the permit to the duration of the disability or to the time that the person with a disability lives in the dwelling. *(Adopted August 19, 2015/Effective September 19, 2015)*

For the purposes of this subsection, a disability has the same meaning as a physical or mental disability under 5 M.R.S.A. Section 4553-A, and the term “structures necessary for access to or egress from the dwelling” is defined to include railing, wall or roof systems necessary for the safety or effectiveness of the structure.

### **2.4.5.6 Floodplain Management Appeals and Variances**

**2.4.5.6.1** In addition to the above-mentioned provisions of 2.4.5.3, the following shall also apply in cases involving requests for variances from the requirements of the Floodplain Management section of this Ordinance.

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

**2.4.5.6.3** A variance shall be granted only upon:

**2.4.5.6.3.1** A showing of good and sufficient cause; and

**2.4.5.6.3.2** A determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety or public expense, or create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances; and

**2.4.5.6.3.3** A showing that the existence of the variance will not conflict with other state, federal or local laws or ordinances; and

**2.4.5.6.3.4** A determination that failure to grant the variance would result in "undue hardship."

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

**2.4.5.6.5** Variances may be issued for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that all criteria for a variance in 2.4.5.6.3 and 15.6.11 are met, and the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

**2.4.5.6.6** Variances may be issued for the repair, reconstruction, rehabilitation or restoration of historic structures upon determination that the development meets all the criteria for a variance as contained in 2.4.5.6.3 and the proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

**2.4.5.6.7** If a variance is granted, the Board of Appeals shall notify the applicant in writing over the signature of the Chairman of the Board of Appeals that:

**2.4.5.6.7.1** The issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage;

**2.4.5.6.7.2** Such construction below the base flood level increases risks to life and property; and

**2.4.5.6.7.3** The applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the city against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the city from any claims the applicant may have against the city that are related to the use of land located in a floodplain.

**2.4.5.6.8** The Board of Appeals shall submit to the Code Enforcement Officer and Planning Board a report of all variance actions, including justification for the granting of the variance and an authorization for the Code Enforcement Officer to issue a Flood Hazard Development Permit, which includes any conditions to be attached to said permit.

#### **2.4.5.7 Historic Preservation Appeals**

Variances may be issued for the reconstruction, the rehabilitation or restoration of structures listed on the National Register of Historic Places, or on the State Inventory of Historic Places without regard to the variance procedures set forth above.

#### **2.4.5.8 Shoreland Zoning Appeals**

**2.4.5.8.1** Variance requests for property located in a Shoreland, Resource Protection, or Shoreland Overlay District shall meet the following conditions:

**2.4.5.8.1.1** Variances may be granted only from dimensional requirements including, but not limited to, lot width, structure height, percent of lot coverage, and set back requirements.

**2.4.5.8.1.2** Variances shall not be granted for establishment of any uses otherwise prohibited by this Ordinance.

**2.4.5.8.1.3** The Board shall not grant a variance unless it finds that the strict application of the terms of this ordinance would result in undue hardship. The term “undue hardship” shall mean:

**2.4.5.8.1.3.1** That the land in question cannot yield a reasonable return unless a variance is granted:

**2.4.5.8.1.3.2** That the need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood; and

**2.4.5.8.1.3.3** That the granting of variance will not alter the essential character of the locality; and

**2.4.5.8.1.3.4** That the hardship is not the result of action taken by the applicant or prior owner.

**2.4.5.8.2** A copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least 20 days prior to the action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.

**2.4.5.8.3** A copy of all variances granted by the Board of Appeals shall be submitted to the Department of Environmental Protection within 7 days of the decision.

## **SECTION 3. NONCONFORMANCE**

### **3.1 Purpose**

It is the intent of this Section to promote land use conformities, except that nonconforming conditions that existed before the effective date of this Ordinance or amendments thereto shall be allowed to continue, subject to the requirements set forth in this Section. Except as otherwise provided in this Ordinance, a nonconforming condition shall not be permitted to become more nonconforming.

### **3.2 General Provisions**

**3.2.1** The use of land, building or structure lawful at the time of adoption or subsequent amendment of this Ordinance may continue although such use does not conform to the provisions of this Ordinance.

**3.2.2** Nonconforming structures, lots, and uses may be transferred and the new owner may continue the nonconforming structure, lot or use subject to the provisions of this Ordinance.

**3.2.3** This Ordinance allows the normal upkeep and maintenance of nonconforming uses and structures including repairs or renovations which do not involve expansion of nonconforming use or structure and such other changes in a nonconforming use or structure as federal, state or local building and safety codes may require.

**3.2.4** Nothing in this Ordinance shall prevent the strengthening or restoring to safe condition any part of any building or structure declared unsafe by the Code Enforcement Officer.

### **3.3 Nonconforming Uses**

**3.3.1** A nonconforming use which is discontinued for a period of one year may not be resumed, except for nonconforming uses in existing structures in the Cobbossee Corridor District with Shoreland Overlay where the discontinuance period is extended to five years. The uses of land, building or structure shall thereafter conform to the provisions of this Ordinance.

**3.3.2** Whenever a nonconforming use is superseded by a permitted use of a structure, or structure and land in combination, land and structure shall thereafter conform to the provisions of this Ordinance and the nonconforming use may not thereafter be resumed.

**3.3.3** A nonconforming use may be expanded by a total of no more than 25% of the size or area in nonconforming use. A nonconforming use shall not be expanded in a Resource Protection, Shoreland or Shoreland Overlay District.

**3.3.4** An existing non-conforming use in the Shoreland District may be changed to another non-conforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources, including water dependent uses in the district, than the former



use, as determined by the Planning Board. The determination of no greater adverse impact shall be made according to criteria listed in 3.3.4.1. *(Adopted August 19, 2015; Effective September 19, 2015) (The Commissioner of the Department of Environmental Protection approves this ordinance as amended Aug 19, 2015 - dated at Augusta, ME Oct 20, 2015)*

3.3.4.1 The use of a non-conforming structure may not be changed to another use unless the Planning Board, after receiving a written application, determines that the new use will have no greater adverse impact on the water body, tributary stream, or wetland, or on the subject or adjacent properties and resources than the existing use.

In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses. *(Adopted August 19, 2015; Effective September 19, 2015) (The Commissioner of the Department of Environmental Protection approves this ordinance as amended Aug 19, 2015 - dated at Augusta, ME Oct 20, 2015)*

### **3.4 Nonconforming Lots of Record**

**3.4.1** A structure or dwelling may be erected on any single nonconforming lot of record existing at the time of adoption or amendment of this Ordinance, provided that such lot shall have at least 48 feet frontage; shall not be contiguous with any other lot in the same ownership; and shall meet all other provisions of this Ordinance except for lot area, lot width, and shore frontage. Any variance relating to setback or other requirements not involving lot area, lot width or shore frontage shall be obtained by action of the Board of Appeals.

**3.4.2** If two or more contiguous lots of record are in single or joint ownership at the time of, or since adoption or amendment of this Ordinance, and if any of these lots do not individually meet the dimensional requirements of this Ordinance, and if one or more of the lots are vacant or contain no principal structure, the lots shall be combined to the extent necessary to meet the dimensional requirements. This provision shall not apply to city approved subdivision lots created after September 22, 1971.

**3.4.3** If two or more contiguous lots of record are in single or joint ownership at the time of adoption of this Ordinance, and if all or part of the lots do not meet the requirements of this Ordinance and if a principal structure exists on each lot, the nonconforming lots may be conveyed separately or together. Any such lots located within the Shoreland or Resource Protection District may be conveyed separately only if the lots comply with the State Minimum Lot Size Law (12 M.R.S.A. Sections 4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules.

**3.4.4** If two or more principal structures exist on a single lot of record as of the effective date of this Ordinance, each may be sold on a separate lot. When such lots are divided, each lot shall be

as conforming as possible to the dimensional requirements of this Ordinance and shall meet the laws referenced in 3.4.3.

**3.4.5** A nonconforming lot of record in existence as of the effective date of this Ordinance shall not be divided so as to create further nonconformity.

### **3.5 Nonconforming Structures not Located in Shoreland, Resource Protection or Shoreland Overlay Districts**

**3.5.1** Any nonconforming structure may be expanded in conformance with the provisions of this Ordinance and the following:

**3.5.1.1** A nonconforming building may be expanded to the side, rear or front of the property if the proposed expansion is no closer than the existing building setback and is a minimum of 5 feet from the property boundary line.

**3.5.1.2** The construction or enlargement of a foundation beneath an existing nonconforming building shall not be considered an expansion of the building provided that the new foundation does not extend beyond the exterior dimensions of the building.

**3.5.2** Any nonconforming structure may be replaced within 18 months when such structure is removed, damaged, or destroyed regardless of the cause. Any structure not replaced within 18 months shall conform to the provisions of this Ordinance.

### **3.6 Nonconforming Structures Located in a Shoreland, Resource Protection or Shoreland Overlay District**

#### **3.6.1 General**

**3.6.1.1** A nonconforming structure may be added to or expanded after obtaining a permit the same as that for a new structure, if such addition or expansion does not increase the nonconformity of the structure.

**3.6.1.2** No structure which is less than the required setback from the normal high-water line of a water body, tributary stream or upland edge of a wetland shall be expanded toward the water body, tributary stream or wetland.

#### **3.6.2 Expansion**

**3.6.2.1** After January 1, 1989, if any portion of a structure is less than the required setback from the normal high-water line of a water body or tributary stream or the upland edge of a wetland, that portion of the structure shall not be expanded, as measured in floor area or volume, by more than 30% during the lifetime of the structure. If a replacement structure conforms to the requirements for Reconstruction or Replacement and is less than the required setback from a water body, tributary stream or wetland, the replacement structure may not be expanded if the original

structure existing on January 1, 1989 has been expanded by 30% in floor area and volume since that date.

**3.6.2.2** Whenever a new, enlarged or replacement foundation is constructed under a nonconforming structure, the structure and new foundation shall be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria contained in 3.6.3.2. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with 3.6.2.1, and the foundation does not cause the structure to be elevated by more than 3 additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it shall not be considered to be an expansion of the structure.

### **3.6.3 Relocation**

**3.6.3.1** A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board and provided that the applicant demonstrates that the present subsurface wastewater disposal meets the requirements of State Land and Subsurface Wastewater Disposal Rules, or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be relocated in a manner that causes the structure to be more nonconforming.

**3.6.3.2** In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic systems and other on-site soils suitable for septic systems and the type and amount of vegetation to be removed to accomplish the relocation. When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

**3.6.3.2.1** Trees removed in order to relocate a structure must be replanted with at least one native tree, 3 feet in height, for every tree removed. If more than 5 trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replanted trees must be planted no further from the water or wetland than the trees that were removed.

**3.6.3.2.2** Other woody and herbaceous vegetation, and ground cover, that is removed or destroyed in order to relocate a structure must be re-established. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be re-established within the setback area. The vegetation and/or ground cover must consist of native vegetation and/or ground cover similar to what was disturbed, destroyed or removed.

**3.6.3.2.3** Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation, which may consist of grasses, shrubs, trees or a combination thereof.

### **3.6.4 Destruction**

**3.6.4.1** Any nonconforming structure which is located less than the required setback from the normal high-water line of a water body or upland edge of a wetland, and which is removed, damaged or destroyed, regardless of the cause, by more than 50% of the market value of the structure before such damage, destruction, or removal, may be reconstructed or replaced provided that a permit is obtained within 18 months of the date of said damage, destruction or removal and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Planning Board in accordance with the purpose of this Ordinance. In no case shall a structure be reconstructed or replaced to increase its nonconformity. If the reconstructed or replacement structure is located less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to 3.6.2 as determined by the nonconforming floor area and the volume of the reconstructed or replaced structure at its new location. If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with 3.6.3.

**3.6.4.2** In the Cobbossee Corridor District with Shoreland Overlay, reconstruction or replacement may take place within a five-year period. In no case shall a structure be reconstructed or replaced to increase its nonconformity.

**3.6.4.3** Any nonconforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed by 50% or less of the market value or damaged or destroyed by 50% or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place if a permit is obtained within one year of such damage, destruction, or removal, except in the Cobbossee Corridor District with Shoreland Overlay where a five-year period is allowed, if the floor area or volume after the repair or reconstruction is no greater than the floor area or volume before the removal, damage or destruction.

**3.6.4.4** In determining whether the building reconstruction or replacement meets the water setback to the greatest practical extent, the Planning Board shall consider in addition to the criteria in 3.6.3, the physical condition and type of foundation present, if any.

## **SECTION 4. PERMIT REQUIREMENTS**

### **4.1 Permit Requirements**

Permits shall be required for the following:

**4.1.1** All buildings or structures, or signs hereinafter erected, altered, enlarged or moved in the City of Gardiner.

**4.1.2** The installation or construction of a dwelling unit, mobile home or manufactured home.

**4.1.3** The installation or construction of any non-residential building or structure.

**4.1.4** An expansion of a nonconforming use or structure.

**4.1.5** Conversion of a single-family dwelling into a two-family or multi-family dwelling.

**4.1.6** A change of use to one that is allowed in a particular district.

**4.1.7** New or expanded land use activity as listed in the Land Use Table.

**4.1.8** Any activity listed in the Land Use Table that requires review.

**4.1.9** The installation of internal plumbing and subsurface wastewater systems.

**4.1.10** Any development within the regulated floodplain pursuant to this Ordinance.

**4.1.11** Any activities or development within the Shoreland Zone pursuant to this Ordinance.

**4.1.12** The construction or enlargement of a road, driveway, entrance way and associated drainage features such as culverts, basins and similar features.

**4.1.13** The construction, enlargement, repair and installation of public sewer and water pipes and structures.

**4.1.14** Sludge management activities pursuant to this Ordinance.

### **4.2 Permits Not Required**

Permits are not required for the following:

**4.2.1** An “allowed” use as indicated in the Land Use Table.

**4.2.2** The normal repair and maintenance of any structure. (See “Building Permits” Addendum end of this section)

### **4.3 Permits Required Prior to Development**

A permit shall be obtained for all activities listed in section 4.1, prior to the start of any development, construction, site work or commencement of a land use activity.

### **4.4 Permits Issued After Appropriate Review**

All permits shall be obtained from the Code Enforcement Officer after meeting the appropriate review requirements established in this Ordinance.

**4.4.1** The applicant shall obtain a permit from the Code Enforcement Officer within one year from the date the Planning Board approved a planning board review or site review application.

### **4.5 Plumbing and Subsurface Wastewater Permits**

An internal plumbing permit and a subsurface wastewater permit shall be obtained for all land use and construction activities or the applicant shall submit a statement to the Code Enforcement Officer indicating that the structure for which the application is made does not require an internal plumbing or subsurface waste water permit as per the ordinances and regulations of the City of Gardiner or state law or regulation. Activities served by city sewer are not required to obtain a subsurface wastewater permit.

### **4.6 Public Sewer and Water Permits**

Permits shall be obtained for the construction, enlargement, repair and installation of public sewer and water pipes and structures as per applicable city ordinances.

### **4.7 Expiration of Permit**

A permit secured under the provisions of this Ordinance shall expire if the work or change is not commenced within one year of the date on which the permit is granted, and if the work or change is not substantially completed within two years of the date of the permit. The applicant shall be required to obtain a new permit including any required review for any expired permit.

### **4.8 Permit Fees**

A non-refundable permit fee and review fee established by the Gardiner City Council shall be paid.

### **4.9 General Permit Requirements**

**4.9.1** Each permit shall be issued by the Code Enforcement Officer on the applicable forms provided by the city.

**4.9.2** All permit applications shall be signed by the owner (s) of the property, or a person with right, title, or interest in the property, or a duly authorized agent, and such signature shall certify that the information is complete and correct.

**4.9.3** The applicant shall have the burden of proving that the proposed activity is in conformity with the purposes and provisions of this Ordinance.

**4.9.4** A permit shall be issued only if the application is deemed complete and has been reviewed and fully complies with all the provisions of this Ordinance.

**4.9.5** A permit shall be issued only if the applicant demonstrates that any conditions of a Planning Board approval for the project have been met or that provisions for complying with any conditions of approval are incorporated into the permit.

**4.9.6** If a performance guarantee is required as part of the approval of the project, a permit shall be issued only when the applicant provides written evidence that the performance guarantee has been established and is acceptable in amount and form to the City Manager.

**4.9.7** All decisions and applicable permit conditions pertaining to a permit application shall be stated in writing.

**4.9.8** Applications for permits and all related plans and drawings shall be maintained as a permanent record by the City Manager or designee.

**4.9.9** A person issued a permit pursuant to this Ordinance shall have a copy of the permit posted in a visible location at the site while the work authorized by the permit is performed.

*(Adopted Secs 4.9.5 -9: October 7, 2015 / Effective: November 7, 2015)*

# Building Permits

The City has adopted the *International Building Code*, the *International Residential Building Code* as well as other various ordinances/codes which affect land use activities. *Property owners are responsible for complying with all city ordinances and codes.* The Code Enforcement Office is available to speak with you about any planned construction activities.

## **COMMERCIAL OR RENTAL PROPERTIES:**

Property owners/contractors of commercial or rental property shall contact the City Code Enforcement Officer for permits/information before undertaking any construction, replacement or repair projects.

## **RESIDENTIAL PROPERTIES:**

Property owners are encouraged to contact the City Code Enforcement Office with any questions about permits before beginning construction, replacement or repairs.

***Property owners considering construction, replacement or repairs to a building within the Shoreland Zone or Flood Plain, shall contact the CEO before beginning any construction, replacement or repairs, including those listed below.***

The structural components of a building include, but are not limited to interior/exterior walls, floor, roof, foundation and any materials permanently affixed to a structural component.

The following are a number of ***non-structural*** residential home building/improvement activities which **do not** require a building permit from the City:

- Above ground, inflatable swimming pools
- Air conditioning
- Caulking/weather stripping
- Decks- replacing/repairing a non-structural item, i.e. a deck board – minor repair
- Doors – replacements which do not involve the removal, enlargement or reduction in size of door frame
- Electrical/lighting
- Fencing
- Flooring – repairing or replacement
- Furnace or other heating sources and power vents installed by licensed professionals
- Insulation
- Painting/staining/wall paper/paneling - exterior/interior
- Patios
- Rain gutters
- Roof - non-structural repair – minor
- Roofing – Installing new roof covering over 1 layer of existing shingles
- Siding – Installing new vinyl siding over existing siding
- Steps- replacing treads
- Trim – repairing or replacing w/similar materials
- Walls – exterior/interior non-structural repair - minor
- Windows – replacement windows which do not require the removal, enlargement or reduction in size of window frame and are in non-sleeping areas

**FOR ALL OTHER CONSTRUCTION, REMOVAL, REPAIRS, REPLACEMENTS - CHECK WITH THE CODE ENFORCEMENT OFFICE TO DETERMINE IF A PERMIT IS NEEDED.**



## **SECTION 5. REVIEW REQUIREMENTS FOR PERMITS**

### **5.1 Purpose**

Activities listed in the Permit Requirement section that require a permit shall be reviewed according to the review classifications contained in this section.

### **5.2 Allowed Uses**

“Allowed” uses as indicated in the Land Use Table shall not require a permit. All “allowed” activities shall conform to the applicable provisions of this Ordinance.

### **5.3 Plumbing and Subsurface Wastewater Disposal**

All plumbing and subsurface wastewater disposal systems that require a permit according to the State of Maine Plumbing and Subsurface Wastewater Disposal Rules shall be reviewed by the Code Enforcement Officer. A permit shall be issued if the application conforms to all state laws and regulations.

### **5.4 Building Permit**

A building permit shall be required pursuant to the Building Code adopted by the City of Gardiner. Applications for a building permit shall be reviewed and issued by the Code Enforcement Officer.

### **5.5 Code Enforcement Officer Permit Review**

Land use activities that require Code Enforcement Officer Review in the Land Use Table or that are designated as Permitted with Review in the Land Use Table and are classified as requiring Code Enforcement Officer Review in accordance with Section 6 shall be reviewed by the Code Enforcement Officer.

### **5.6 Shoreland Zoning Activities**

All activities proposed in a Shoreland District as identified in Shoreland Zoning section of this Ordinance shall be reviewed according to the designation in the Land Use Table.

### **5.7 Floodplain Management**

All activities that require a floodplain management permit shall be reviewed by the Code Enforcement Officer pursuant to the requirements in the Floodplain Management section.

### **5.8 Planning Board Review**

Land use activities that are designated as Permitted with Review in the Land Use Table and are classified as requiring Planning Board Review in accordance with Section 6 shall be reviewed by the Planning Board.

### **5.9 Site Plan Review**

Land use activities that are designated as Permitted with Review in the Land Use Table and are classified as requiring Site Plan Review in accordance with Section 6 shall be reviewed by the Planning Board.

*(Amend Secs 5.5 – 9. Adopted: October 7, 2015 / Effective: November 7, 2015)*

### **5.10 Subdivision Review**

Land use activities which require subdivision review in the Land Use Table and according to this Ordinance shall be reviewed by the Planning Board according to the standards contained in the Subdivision section.

### **5.11 Expansions of Nonconforming Uses or Structures**

Any proposed expansion of a nonconforming use or structure shall be reviewed by the Planning Board as per the requirements of this Ordinance.

### **5.12 Special Exceptions**

A special exception shall be reviewed by the Planning Board according to the criteria contained in the Shoreland Zoning section.

### **5.13 Certificate of Appropriateness**

Activities requiring a certificate of appropriateness shall be reviewed by the Historic Preservation Commission according to Historic Preservation section.

### **5.14 Sludge Management**

Activities that involve the storage and land application of industrial wastewater treatment plant sludge and other residuals shall be reviewed by the Planning Board according to the Sludge Management section.

## **SECTION 6. PROCEDURES AND STANDARDS FOR CODE ENFORCEMENT OFFICER, PLANNING BOARD AND SITE PLAN REVIEW APPLICATIONS** *(Adopted: October 7, 2015 / Effective: November 7, 2015)*

### **6.1 Purpose**

The purpose of the review process established by this ordinance is to provide a level of municipal scrutiny that is proportionate to the anticipated impact upon the City of a particular proposed land use. The level of each review is to be determined by the potential impact of the proposal upon any district, its type, its land features, any existing long-term development plans for the area, and whether or not the proposed activity could exist harmoniously with the dominant environmental and man-made features of the area to be occupied or used.

### **6.2 Classification of Projects for Review**

The ordinance establishes three categories for the review of land use activities. This section establishes the process for determining which category of review shall apply to each proposed activity.

**6.2.1** Prior to submitting an application for review, the applicant and/or his/her representative is required to meet with the Code Enforcement Officer to discuss the project, the review process, and the potential classification of the project. This meeting shall be informational and no binding decisions shall be made at this meeting. At this meeting, the applicant shall provide the Code Enforcement Officer with information on the location of the project, the proposed use of the property, and proposed development activities.

**6.2.2** Upon receipt of an application, the Code Enforcement Officer shall review the application and shall classify the project as subject to:

1. Code Enforcement Officer Review
2. Planning Board Review
3. Site Plan Review

**6.2.3** In determining the classification of an application for review, the Code Enforcement Officer shall assign the project to the highest level of review based on the following criteria:

#### **6.2.3.1 Activities Subject to Code Enforcement Officer Review**

Land use activities that: 1) are designated as Code Enforcement Officer Review in the Land Use Table in Section 7.6, or 2) are designated as Permitted with Review in the Land Use Table in Section 7.6 and that do not meet the criteria for either Site Plan Review or Planning Board Review and that meet any of the following criteria when combined with any other development on the parcel in the previous five (5) years shall be reviewed in accordance with the Code Enforcement Officer Review procedures and approval criteria:

**6.2.3.1.1** The change of use of an existing building that does not increase the size of the building or the amount of impervious surface on the lot and that does not increase the intensity of use of the property; or

**6.2.3.1.2** An expansion of an existing building that does not increase the gross floor area of the building by more than 500 square feet or 10% of the pre-existing gross floor area whichever is greater; or

**6.2.3.1.3** An increase in the amount of impervious surface on a developed site that does not increase the amount of impervious surface by more than 1000 square feet or 10% of the pre-existing impervious surface area whichever is greater; or

**6.2.3.1.4** Any other activity that is designated as Permitted with Review in the Land Use Table that does not trigger Planning Board or Site Plan Review.

### **6.2.3.2 Activities Subject to Planning Board Review**

Land use activities that are designated as Permitted with Review in the Land Use Table in Section 7.6 that do not meet the criteria for Site Plan Review and that meet any of the following criteria when combined with any other development on the parcel in the previous five (5) years shall be reviewed in accordance with the Planning Board Review procedures and approval criteria:

**6.2.3.2.1** An expansion of an existing building that increases the gross floor area of the building by more than 500 square feet or 10% of the pre-existing gross floor area whichever is greater but not more than 5,000 square feet; or

**6.2.3.2.2** An increase in the amount of impervious surface on a developed site that increases the amount of impervious surface by more than 1000 square feet or 10% of the pre-existing impervious surface area whichever is greater but not more than 10,000 square feet; or

**6.2.3.2.3** The construction of more than 10,000 square feet of impervious surface; or

**6.2.3.2.4** The construction of a non-residential building with not more than 5,000 square feet of gross floor area; or

**6.2.3.2.5** The construction of multi-family or senior housing with fewer than five (5) dwelling units; or

**6.2.3.2.6** Any activity that disturbs more than 20,000 square feet of land; or

**6.2.3.2.7** Any activity subject to review that is located on a lot that abuts a lot that is used for a single-family or two-family dwelling as of the date the application is filed with the Code Enforcement Officer; or

**6.2.3.2.8** The change of use of an existing building that does not increase the size of the building or the amount of impervious surface on the lot if the new use will increase the intensity of use of the property based on any one of the following:

- a. An increase in the number of peak hour vehicle trips compared to the previous use
- b. An increase in the number of truck trips compared to the prior use
- c. An increase in levels of noise compared to the prior use
- d. Operation of the new use between 7:00 PM and 7:00 AM
- e. The installation of new exterior lighting

### **6.2.3.3 Activities Subject to Site Plan Review**

Land use activities that are designated as Permitted with Review in the Land Use Table in Section 7.6 and that meet any of the following criteria when combined with any other development on the parcel in the previous five (5) years shall be reviewed in accordance with the Site Plan Review procedures and approval criteria:

- 6.2.3.3.1** An expansion of an existing building that increases the gross floor area of the building by more than 5,000 square feet; or
- 6.2.3.3.2** An increase in the amount of impervious surface on a developed site that increases the amount of impervious surface by more than 10,000 square feet; or
- 6.2.3.3.3** The construction of more than 20,000 square feet of impervious surface; or
- 6.2.3.3.4** The construction of a non-residential building with more than 5,000 square feet of gross floor area; or
- 6.2.3.3.5** The construction of multi-family or senior housing with five (5) or more dwelling units; or
- 6.2.3.3.6** Any activity that disturbs more than 40,000 square feet of land.

### **6.3 Submission Requirements**

An applicant shall submit a completed application to the CEO. The application shall contain the following information based on the classification of the project unless the applicant is requesting that the CEO or Planning Board grant a waiver for the submission of specific items in accordance with 6.3.1.

#### **6.3.1 Waiver of Submission Requirements**

The CEO or Planning Board may, for good cause shown and only upon the written request of an applicant specifically stating the reasons therefor, waive any of the application requirements set forth in Sections 6.3.2, 6.3.3 and 6.3.4 provided such waiver will not unduly restrict the review process. The CEO or Planning Board may condition such a waiver on the applicant's compliance with alternative requirements. Good cause may include the CEO or Planning Board's finding that particular submissions are inapplicable, unnecessary, or inappropriate for a complete review. Notwithstanding the waiver of a submission requirement, the CEO or Planning Board may, at any later point in the review process, rescind such waiver if it appears that the submission previously waived is necessary for an adequate review. A request for a submission previously waived shall not affect the pending status of an application.

#### **6.3.2 Basic Information for All Applications**

An application for CEO Review, Planning Board Review, or Site Plan Review shall contain the following:

- 6.3.2.1** Name, address and telephone number of the applicant, applicant's agent, design professionals and contractors.
- 6.3.2.2** Property location, map and lot number, and a copy of the tax map showing the property and surrounding location.
- 6.3.2.3** Verification of the applicant's right, title, and interest in the property.
- 6.3.2.4** The appropriate application fee and other applicable fees.
- 6.3.2.5** Estimated cost of the proposal and a proposed construction schedule including beginning and completion dates.

**6.3.2.6** A complete written description of the proposed project including all other local, state and federal permits required for the project.

**6.3.2.7** One or more site maps drawn to scale showing the following:

**6.3.2.7.1** The existing conditions on the property including:

1. The property boundaries;
2. The zoning district and zoning district boundaries if the property is located in more than one zone;
3. The location of required setbacks, buffers and other restrictions;
4. The location of any easements or rights-of-way;
5. The locations of existing structures and other existing improvements on the property including a description of the current use of the property;
6. The locations of existing utilities on and adjacent to the property including sewers, water mains, stormwater facilities, gas mains, and electric and other telecommunication facilities;
7. The location of the nearest source of a fire protection water supply (hydrant, fire pond, etc.);
8. The general topography of the property indicating the general slope of the land and drainage patterns. The CEO and/or Planning Board may require a topographic survey of all or a portion of the property for projects involving the construction of new or expanded structures or site modifications.
9. The location, type and extent of any natural resources on the property including wetlands, vernal pools, floodplains, waterbodies, significant wildlife habitats, rare or endangered plants or animals, or similar resources; and
10. The location and type of any identified historic or archeological resource on the property.

**6.3.2.7.2** The proposed development activity for which approval is requested including:

1. The estimated demand for water supply and sewage disposal together with the proposed location and provisions for water supply and wastewater disposal including evidence of soil suitability if on-site sewage disposal is proposed;
2. The direction of proposed surface water drainage across the site and from the site together with the proposed location of all stormwater facilities and evidence of their adequacy;
3. The location, dimensions, and ground floor elevations of all proposed buildings and structures including expansions or modifications to existing buildings that change the footprint of the building;
4. The location, dimensions and materials to be used in the construction of drives, parking areas, sidewalks and similar facilities;
5. The proposed flow of vehicular and pedestrian traffic into and through the property;
6. The location and details for any signs proposed to be install or altered;
7. The location and details for any exterior lighting proposed to be installed or altered;
8. Provisions for landscaping and buffering; and
9. Any other information necessary to demonstrate compliance with the review criteria or other standards of the Land Use Ordinance.

**6.3.2.8** Evidence that the applicant has or can obtain all required permits necessary for the proposal.

### **6.3.3 Additional Information for Applications for Planning Board Review and Site Plan Review**

In addition to the information required for all applications in accordance with **6.3.2**, an application for a project that requires Planning Board Review or Site Plan Review shall contain the following additional information:

**6.3.3.1** Building and structure drawings showing the footprint, height, front, side and rear profiles and all design features necessary to show compliance with this Ordinance;

**6.3.3.2** An estimate of the peak hour and average daily traffic to be generated by the project and evidence that the additional traffic can be safely accommodated on the adjacent streets;

**6.3.3.3** An erosion and sedimentation control plan; and

**6.3.3.4** A stormwater management plan demonstrating how any increased runoff from the site will be handled if the project requires a stormwater permit from the Maine Department of Environmental Protection or if the Planning Board determines that such information is necessary based on the scale of the project and the existing conditions in the vicinity of the project.

### **6.3.4 Additional Information for Applications for Site Plan Review**

In addition to the information required for all applications in accordance with **6.3.2** and the additional information required by **6.3.3**, an application for a project that requires Site Plan Review shall contain the following additional information:

**6.3.4.1** The site map(s) required in 6.3.2.7 shall be prepared and sealed by a professional engineer or architect.

**6.3.4.2** Elevation drawings prepared by a professional engineer or architect showing the façade and roof of the side of all proposed structures facing the road, and the side facing the customer entrance. The drawings shall clearly illustrate the profile of the roof. All façade and roof materials shall be identified including color and texture.

**6.3.4.3** Photographs or similar photo representations or drawings showing the architectural design and context of the proposed structures and adjacent properties on the both sides of the road.

### **6.3.5 Survey Requirements**

The Code Enforcement Officer or the Planning Board may require the applicant to submit a survey of the perimeter of the tract, giving complete descriptive data by bearing and distances, made and certified by a Registered Land Surveyor. The survey may be required for the construction of new structures or any construction proposed on a undeveloped parcel or tract of land, whenever the Code Enforcement Officer or the Planning Board finds that a survey is necessary to show compliance with the requirements of this Ordinance due to the size of the lot, location of the lot or the placement of existing or proposed structures on the lot or neighboring properties.

### **6.3.6 Additional Studies**

The Code Enforcement Officer or the Planning Board may require the applicant to perform additional studies or may hire a consultant to review the application or portions thereof. The cost to perform additional studies or hire a consultant shall be borne by the applicant.

## **6.4 Review Procedures**

### **6.4.1 Rights Not Vested**

The submittal of an application to the CEO for review shall not constitute the start of the review process for the purpose of bringing an application under the provisions of 1 M.R.S.A. Section 302. The formal review process shall commence upon notification to an applicant that a complete application has been received.

### **6.4.2 Site Inspection**

The Code Enforcement Officer and/or the Planning Board may perform on-site inspections of any proposed project to learn more about the site and its surroundings.

### **6.4.3 Code Enforcement Officer Review**

This section shall apply to all land use activities that require a Code Enforcement Officer review and other activities as indicated in this Ordinance.

**6.4.3.1** Within 14 days of receiving an application, the Code Enforcement Officer shall determine if the application is complete and notify the applicant in writing that the application is complete, or if the application is incomplete, the specified additional material needed to make the application complete. The applicant shall be responsible for submitting any incomplete information to the Code Enforcement Officer.

**6.4.3.2** Within 14 days of determining that the application is complete, the Code Enforcement Officer shall render a final decision on the application and issue the appropriate permit.

### **6.4.4 Planning Board Review**

This section shall apply to all activities that require Planning Board Review.

**6.4.4.1** Within 14 days of receiving an application for Planning Board Review, the Code Enforcement Officer shall determine if the application is complete and notify the applicant that the application is complete, or if the application is incomplete, the specified additional material needed to make the application complete. The applicant shall be responsible for submitting any incomplete information to the Code Enforcement Officer.

**6.4.4.2** After determining that the application is complete, the Code Enforcement Officer shall place the application on the agenda of the next scheduled Planning Board meeting, subject to meeting all the public hearing notice and application submittal requirements. In no case shall a complete application take longer than 60 days to be placed on the Planning Board agenda.

**6.4.4.3** The applicant shall, at least 20 days before the scheduled public hearing, submit 12 copies of the application including all maps and attachments.



**6.4.4.4** Within 35 days of the public hearing or within another time as may be mutually agreed to by the Board and the applicant, the Planning Board shall make a decision on the application. The Planning Board may extend the review time period for the following: to conduct a site visit, to re-schedule a site visit to another time due to snow cover, for the processing of a performance guarantee, to request additional materials or to have additional reviews or studies conducted.

**6.4.4.5** The Code Enforcement Officer shall issue a permit upon approval of the application by the Planning Board.

#### **6.4.5 Site Plan Review**

This section shall apply to all activities that require Site Plan Review.

**6.4.5.1** An applicant for site plan review may request an informal sketch plan meeting with the Planning Board prior to submitting a formal application. The applicant requesting an informal meeting shall inform the Code Enforcement Officer at least 14 days prior to a scheduled meeting of the Planning Board and ask to be placed on the Board's agenda. The Code Enforcement Officer shall place the request on the Board's agenda for consideration. If the Planning Board agenda is extensive, the Code Enforcement Officer may schedule the sketch plan consideration for the following regularly scheduled meeting of the Planning Board. The applicant shall not be required to meet any submission requirements for the sketch plan meeting.

**6.4.5.2** An application for Site Plan Review shall follow the procedures for Planning Board Review (see **6.4.4**).

#### **6.4.6 Public Hearing Requirements**

**6.4.6.1** The Planning Board shall hold a public hearing on all Planning Board and Site Plan Review applications to receive public comment and information concerning the application.

**6.4.6.2** The Planning Board shall hold a public hearing within 60 days after the determination that the application is complete.

**6.4.6.3** The applicant shall be responsible for making all the public hearing notices.

**6.4.6.4** A notice of the public hearing shall be published in a newspaper having general circulation in the municipality. The notice shall be published 1 time, not more than 14 days before and not less than 7 days before the public hearing. The notice shall state the purpose of the hearing and give the date, time and place of the hearing. The applicant shall give a copy of the notice to the Planning Board at the public hearing.

**6.4.6.5** The applicant shall notify, by certified mail, the owners of all property within 200 feet of the proposed development at least 14 days, and no more than 30 days, in advance of the public hearing. The notice shall state the purpose of the hearing and give the date, time and place of the hearing. The applicant shall give copies of the letter and certified receipts to the Planning Board at the public hearing.

**6.4.6.6** The owners of property shall be considered those against whom taxes are assessed. Failure of an abutter to receive a notice shall not invalidate the public hearing, nor shall it require the Board to schedule a new public hearing.

**6.4.6.7** The Planning Board may vote to continue the public hearing to receive additional public comment or information concerning the application. The Board shall not be required to meet the notice requirements listed above for the continued public hearing.

#### **6.4.7 Decisions**

**6.4.7.1** After review of a complete application, the Code Enforcement Officer and/or the Planning Board shall determine whether the application meets the review criteria. The Code Enforcement Officer and/or the Planning Board shall vote to approve the application, approve the application with conditions or deny the application. A written decision shall be delivered to the applicant.

#### **6.4.8 Conditions of Approval**

**6.4.8.1** Upon consideration of the review criteria, the Planning Board or the Code Enforcement Officer may attach such conditions to the proposed application that it finds necessary to further the purposes of this Ordinance. Conditions are limited to further address items already contained in this Ordinance. A condition may not be imposed to regulate an item not specifically addressed in this Ordinance.

**6.4.8.2** In determining whether conditions are appropriate or necessary, the Planning Board or the Code Enforcement Officer shall consider the unique features of the site and surrounding conditions, proposed use, and the proposed structure. A written finding of fact shall be created stating the unique features of the proposal and how the conditions will further the purposes of this Ordinance.

**6.4.8.3** All conditions shall be listed in the permit and shall be enforceable under this Ordinance.

#### **6.4.9 Performance Guarantee**

**6.4.9.1** The Planning Board shall require a performance guarantee for the construction of any proposed road.

**6.4.9.2** The Planning Board may require a performance guarantee for other public improvements such as storm water control features, erosion control, essential services and utilities, buffers and screening, and parking, when it determines that the construction of such improvements will have an impact upon the development and/or the surrounding area.

#### **6.5 Review Criteria**

An applicant shall demonstrate that the proposed use or uses meet the review criteria listed below for the type of application. The Code Enforcement Officer and/or the Planning Board shall approve an application unless one or the other of them makes a written finding that one or more of the following criteria have not been met.

### **6.5.1 Review Criteria for All Applications**

**6.5.1.1** The application is complete and the review fee has been paid.

**6.5.1.2** The proposal conforms to all the applicable provisions of this Ordinance.

**6.5.1.3** The proposed activity will not result in water pollution, erosion or sedimentation to water bodies.

**6.5.1.4** The proposal will provide for the adequate disposal of all wastewater and solid waste.

**6.5.1.5** The proposal will not have an adverse impact upon wildlife habitat, unique natural areas, shoreline access or visual quality, scenic areas and archeological and historic resources.

**6.5.1.6** The proposal will not have an adverse impact upon waterbodies and wetlands.

**6.5.1.7** The proposal will provide for adequate storm water management.

**6.5.1.8** The proposal will conform to all applicable Shoreland Zoning requirements.

**6.5.1.9** The proposal will conform to all applicable Floodplain Management requirements.

**6.5.1.10** The proposal will have sufficient water available to meet the needs of the development.

**6.5.1.11** The proposal will not adversely affect groundwater quality or quantity.

**6.5.1.12** The proposal will provide for safe and adequate vehicle and pedestrian circulation in the development.

**6.5.1.13** The proposal will not result in a reduction of the quality of any municipal service due to an inability to serve the needs of the development.

**6.5.1.14** The applicant has the adequate financial and technical capacity to meet the provisions of this Ordinance.

### **6.5.2 Additional Site Plan Review Criteria**

All applications for Site Plan Review shall meet the Review Criteria contained in 6.5.1 and the additional criteria contained in this section.

**6.5.2.1.** The proposal will be sensitive to the character of the site, neighborhood and the district in which it is located including conformance to any zoning district specific design standards;

**6.5.2.2** The proposal will not have an adverse impact upon neighboring properties;

**6.5.2.3** The proposal contains landscaping, buffering, and screening elements which provide privacy to adjacent land uses in accordance with the appropriate performance standards;

**6.5.2.4** The building site and roadway design will harmonize with the existing topography and conserve natural surroundings and vegetation to the greatest practical extent such that filling, excavation and earth moving is kept to a minimum;

**6.5.2.5** The proposal will reflect the natural capabilities of the site to support the development. Buildings, structures, and other features should be located in the areas of the site most suitable for development. Environmentally sensitive areas including waterbodies, steep slopes, floodplains, wetlands, significant plant and wildlife habitats, scenic areas, aquifers and archeological and historic resources shall be preserved to the maximum extent;

**6.5.2.6** The proposal will provide for a system of pedestrian ways within the site appropriate to the development and the surrounding area. The system will connect building entrances/exits with the parking areas and with existing sidewalks, if they exist or are planned in the vicinity of the project;

**6.5.2.7** In urban and built-up areas, buildings will be placed closer to the road in conformance with setback requirements and parking areas shall be located at the side or rear of the building;

**6.5.2.8** Proposals with multiple buildings will be designed and placed to utilize common parking areas to the greatest practical extent;

**6.5.2.9** Building entrances will be oriented to the public road unless the layout or grouping of the buildings justifies another approach.

**6.5.2.10** Exterior building walls greater than 50 feet in length which can be viewed from the public road will be designed with a combination of architectural features with a variety of building materials and shall include landscaping abutting the wall for at least 50% of the length of the wall.

**6.5.2.11** Building materials will match the character of those commonly found in the City and surrounding area including brick, wood, native stone, tinted/textured concrete block or glass products. Materials such as smooth-faced concrete block or concrete panels and steel panels will only be used as accent features. Materials shall be of low reflectance, subtle, neutral or earth tone colors. High-intensity and bright colors shall be prohibited except when used as trim or accent. Building materials for industrial or commercial buildings located within an approved industrial park or subdivision are not be required to comply with this provision.

**6.5.2.12** Building entrances and points where the development intersects with the public road and sidewalk will be provided with amenities appropriate for the area such as benches, bike racks, bus stop locations and other similar landscape features.

**6.5.2.13** A proposal which includes drive-through service will be designed to minimize impact on the neighborhood. Drive-through lanes will be fully screened from adjacent residential properties and communication systems will not be audible on adjacent properties.

## **SECTION 7.      ZONING DISTRICTS**

### **7.1 Establishment of Districts**

For the purposes of this Ordinance, the City of Gardiner is divided into the following districts:

Resource Protection District  
Shoreland District  
Rural District  
Residential Growth District  
High Density Residential District  
Central Business District  
Planned Industrial/Commercial District  
Planned Development District  
Shoreland Overlay  
Professional/Residential  
Educational/Community Recreation District  
Cobbossee Corridor District  
Shoreland Overlay Limited Residential District

### **7.2 Location of Districts**

Said districts are located and bounded as shown on the Official Zoning Map, entitled “Zoning Map of the City of Gardiner, Maine,” dated July 1, 1986 or as most recently amended, and on file in the office of the City Clerk. The Official Map shall be signed by the City Clerk and Chairman of the Planning Board at the time of adoption or amendment of this Ordinance certifying the date of such adoption or amendment. Additional copies of this may be seen in the office of the City Clerk.

### **7.3 Uncertainty of Boundary Location**

Where uncertainty exists with respect to the boundaries of the various districts as shown on the Zoning Map, the following rules shall apply:

**7.3.1** Boundaries indicated as approximately following the centerlines of roads, highways, or alleys shall be construed to follow such centerlines;

**7.3.2** Boundaries indicated as approximately following well-established lot lines shall be construed as following such lot lines;

**7.3.3** Boundaries indicated as approximately following municipal limits shall be construed as following municipal limits;

**7.3.4** Boundaries indicated as following railroad lines shall be construed to follow such lines;

**7.3.5** Boundaries indicated as following shorelines shall be construed to follow such shorelines, and in the event of natural change in the shoreline shall be construed as moving

with the actual shoreline; boundaries indicated as approximately following the center line of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such center lines;

**7.3.6** Boundaries indicated as being parallel to or extensions of features indicated above shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map;

**7.3.7** Where natural or man-made features existing on the ground are at variance with those shown on the Official Zoning Map, or in other circumstances not covered above, the Board of Appeals shall interpret the district boundaries.

#### **7.4 Division of Lots by District Boundaries**

**7.4.1** Where a zoning district boundary line divides a lot or parcel of land of the same ownership of record at the time such line is established by adoption or amendment of this Ordinance, the regulations applicable to the less restricted portion of the lot may be extended not more than fifty feet into the more restricted portion of the lot.

**7.4.2** Extension of use shall be considered a variance, subject to approval of the Board of Appeals if such extension will not adversely affect the neighborhood and abutting property.

#### **7.5 District Purpose**

##### **7.5.1 Resource Protection District**

Encompasses the land areas least able to sustain development due to physical site conditions involving topography, slopes, soil types and susceptibility to erosion, drainage and proximity to surface waters. Development of these areas will adversely affect water quality, productive wildlife habitat, biological systems or scenic and natural features. Such areas include, but are not limited to, wetlands, swamps, marshes, bogs and significant wildlife habitat. The district protects such vulnerable areas by severely restricting development.

##### **7.5.2 Shoreland District**

Covers land areas within 250 feet of major waterbodies which are not heavily developed yet and are capable of supporting limited development. Development in these shoreland areas, due to their proximity to surface waters, require close scrutiny in order to prevent and control water pollution, protect drinking water supplies, minimize flood damage and conserve shore cover.

##### **7.5.3 Rural District**

Encompasses areas that have rural character and lack public water and sewer. This area is designed primarily for rural uses that include agriculture, timber operations, resource extraction activities, open space, undeveloped land, low density residential, and some typical rural-based commercial activities.

#### **7.5.4 Residential Growth District**

Includes those areas within the city where new residential growth will be encouraged to locate. Includes land adjacent to the high-density residential district, areas of newer residential development, and areas which can take advantage of the present or future extension of city services. It incorporates many of the same land uses as the higher density residential districts, including educational, institutional and governmental uses. This area is designed primarily for residential use and contains areas served by both municipal services and subsurface wastewater disposal systems.

#### **7.5.5 High Density Residential District**

Includes land areas which are already predominantly residential in character. It incorporates many of the older and developed residential areas of the city with a mix of single and multifamily homes, schools, hospitals, and some existing commercial uses.

#### **7.5.6 Central Business District**

Encompasses the more densely developed areas of the city. A wide variety of commercial, industrial, residential, governmental and institutional uses exist here, offering convenient access to many kinds of activities and benefiting from the provision of community services and utilities. The district boasts a unique historical and architectural character as well as a vital mix of land uses and services. It seeks to protect the existing character and to ensure that future development is compatible.

#### **7.5.7 Planned Industrial/Commercial District**

Includes land areas in the city which are the locations of existing businesses as well as areas suited to such development due to access to transportation routes or proximity to community services. The district seeks to encourage economic development by providing locations appropriate for business development while setting minimal standards to control the external effects of such activities (noise, dust, fumes, odors, traffic, waste, discharges, etc.).

#### **7.5.8 Planned Development District**

Encompasses land to be used for both commercial and residential use and requires that they occur on a planned basis according to performance standards. Planning Board or Site Review is required in many instances within this district to show the layout and use of the entire land holding.

#### **7.5.9 Shoreland Overlay District**

Covers land areas within 250 feet of major water bodies which are heavily developed. These areas are primarily devoted to commercial, industrial or intensive recreational activities, or a mix of activities, including, but not limited to, the following: manufacturing, fabricating, wholesaling, warehousing, retail trade, service activities, amusement parks, and fairgrounds. Portions of the Shoreland Overlay District also include existing, dense residential development. Development within this district must consider a combination of Shoreland Zoning Performance Standards and those standards of the underlying zoning district.

#### **7.5.10 Professional/Residential**

Includes land areas within the Downtown District that currently offer and are well suited to a combination of residential and professional business development. The district offers a unique opportunity to promote mixed-use development while maintaining the residential character of the existing neighborhood. The district seeks to maintain the existing neighborhood's residential appearance while allowing professional office development through creative planning, city oversight, and enhanced performance standards. This can result in livelier, more interesting and more convenient neighborhoods. The Professional/Residential Zoning District includes land uses such as multifamily residential, bed and breakfast, restaurant, retail, office, and service businesses.

#### **7.5.11 Educational/Community Recreation District**

Includes areas that are predominantly civic in character, including public educational institutions, non-profit community organizations and indoor and outdoor recreation facilities. Allowable uses are restricted to promote the long-term recreational and educational needs of the city while protecting the character and minimizing impacts on adjacent tight-knit neighborhoods. Dimensional standards allow for adequate buffering of new developments or expansions, while accommodating the space and bulk requirements of civic-scaled uses.

#### **7.5.12 Cobbossee Corridor**

The Cobbossee Corridor District includes areas suitable for development, redevelopment or open space preservation in a manner integrating the unique natural and cultural conditions of the area. The range of allowable uses and built forms should maximize the potential of each site, while providing for visual and physical connections to the Cobbossee Stream and a network of pedestrian trails. Development activities should not adversely impact the natural and visual resources, and should meet high standards for architectural quality, visual diversity and energy efficiency. Green stormwater and building technologies should be utilized to promote the Cobbossee Corridor as a place of innovation and sustainability. Dimensional standards allow for more dense developments, recognizing the restrictive natural conditions and the limited number of building sites. Parking should be carefully integrated into public and private streets, within buildings and shared arrangements, avoiding large surface lots that do not fit the character of the area. The Cobbossee Corridor District includes two overlay districts: the Shoreland Overlay District and the Shoreland Overlay Limited Residential District.

#### **7.5.13 Shoreland Overlay Limited Residential District**

Includes areas other than those in the Resource Protection District, Shoreland or Shoreland Overlay District. Development within this district must consider a combination of Shoreland Zoning Performance Standards and the uses and standards as required in the underlying district.



## 7.6 Land Use Table *(Adopted: 10/7/2015 / Effective: 11/7/2015)*

*(Adopted: 9/21/2016 / Effective: 10/21/2016) Agricultural Activities*

The following table establishes the uses that are allowed in each zoning district. For each use, its status in a particular zone is indicated by one of the following designations:

- N means the use is not allowed in that zone
- Y means that the use is allowed and does not need a permit
- C means that the use is allowed and that it needs review and approval by the Code Enforcement Officer in accordance with Section 6
- PwR means that the use is allowed and that it needs review and approval. Based on the criteria set out in Section 6 and the specifics of a project, the review could be Site Plan Review, Planning Board Review, or Code Enforcement Officer Review
- SD means that the use requires review and approval by the Planning Board under the standards for subdivisions

### Legend

The legend at the top of the columns identifies the various zoning districts as follows:

RP	Resource Protection	SLR	Shoreland Overlay Limited Residential
SL	Shoreland	RG	Residential Growth
R	Rural	HDR	High Density Residential
PR	Professional/Residential	CB	Central Business
PIC	Planned Industrial/Commercial	PD	Planned Development
CC	Cobbossee Corridor	ECR	Education/Community Recreation

#### Rural Uses

	RP	SLR	SL	R	RG	HDR	PR	CB	PIC	PD	ECR	CC
Accessory Agricultural Activities	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Accessory Animal Husbandry	C	C	C	Y	C	N	N	N	N	C	N	N
Accessory Beekeeping	C	C	C	C	C	C	C	N	C	C	N	C
Campgrounds	N	PwR	PwR	Sd	Sd	N	N	N	N	Sd	N	N
Chicken Keeping Residential	C	C	C	C	C	C	C	N	N	C	C	C
Commercial Agriculture	C	C	C	Y	PwR	PwR	PwR	PwR	PwR	C	N	PwR
Commercial Animal Husbandry	C	PwR	PwR	Y	PwR	N	N	N	N	PwR	N	N
Individual Private Campsite	C	C	C	C	C	N	N	N	N	C	N	C
Outdoor Recreation	PwR	PwR	PwR	PwR	PwR	N	N	PwR	N	PwR	PwR	PwR
Passive Recreation	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Resource Extraction	N	N	N	C	N	N	N	N	C	PwR	N	N

Roadside Stands/Farm Produce	N	N	N	Y	C	C	C	C	C	C	C	C
Timber Harvesting	*Y	*Y	*Y	Y	Y	Y	Y	Y	Y	Y	Y	Y

1. (Amended November 27, 2017 / Effective December 27, 2017)(Amended March 7, 2018 / Effective April 6, 2018)

*\*Administered by the State Forestry Bureau.(Adopted August 19, 2015;Effective September 19, 2015) (The Commissioner of the Department of Environmental Protection approves this ordinance as amended Aug 19, 2015 - dated at Augusta, ME Oct 20, 2015)*

## Legend

The legend at the top of the columns identifies the various zoning districts as follows:

RP	Resource Protection	SLR	Shoreland Overlay Limited Residential
SL	Shoreland	RG	Residential Growth
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PR	Professional/Residential	CB	Central Business
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CC	Cobbossee Corridor	ECR	Education/Community Recreation

Residential Uses												
	RP	SLR	SL	R	RG	HDR	PR	CB	PIC	PD	ECR	CC
Boarding Home	N	N	N	PwR	PwR	PwR	PwR	C	N	PwR	N	PwR
Community Living Facility	N	C	C	C	C	C	C	C	N	C	N	C
Congregate Care Facility	N	N	PwR	PwR	PwR	PwR	PwR	PwR	N	PwR	N	PwR
Home Child Care	C	C	C	C	C	C	C	C	N	C	N	C
Home Occupation	PwR	PwR	PwR	C	PwR	PwR	C	C	N	C	N	C
Home Occupation Minor	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	N	Y
Modular/Mobile less than 20 feet wide	N	N	C	C	C	N	N	N	N	C	N	N
Modular/Mobile 20 feet wide or more	N	N	C	C	C	C	C	C	N	C	N	C
Manufactured Home Park	N	N	N	Sd	Sd	N	N	N	N	Sd	N	N
Multi-Family Dwelling	N	PwR	PwR	PwR	PwR	PwR	PwR	PwR	N	PwR	N	PwR
Open Space Development	N	Sd	Sd	Sd	Sd	Sd	Sd	N	N	Sd	N	Sd
Senior Housing Development	N	N	N	PwR	PwR	PwR	PwR	PwR	N	PwR	N	PwR
Single & Two-Family Dwellings	N	C	C	C	C	C	C	C	N	C	N	C

# Key to Land Use Table

Y = “Allowed”

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PwR = Permitted with Review

SD = Subdivision Review

## Legend

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CB Central Business

PD Planned Development

ECR Education/Community Recreation

Commercial Uses												
	RP	SLR	SL	R	RG	HDR	PR	CB	PIC	PD	ECR	CC
Adult Businesses	N	N	N	N	N	N	N	N	PwR	N	<u>N</u>	<u>N</u>
Auction Barn	N	N	N	N	N	N	N	PwR	N	PwR	<u>N</u>	<u>N</u>
Automobile Repair	N	N	N	PwR	N	N	N	PwR	PwR	PwR	N	N
Automobile/Vehicle Sales & Service	N	N	N	N	N	N	N	PwR	PwR	PwR	N	N
Bank	N	N	N	N	N	N	PwR	PwR	PwR	PwR	N	PwR
Bed & Breakfast	N	PwR	PwR	PwR	PwR	PwR	PwR	PwR	PwR	PwR	N	PwR
Building Supply	N	N	N	N	N	N	N	PwR	N	PwR	N	N
Catering	N	N	N	PwR	N	N	PwR	C	N	PwR	N	PwR
Commercial Farm	N	N	N	PwR	N	N	N	N	N	N	N	N
Communication Facility exclusive of towers	N	N	N	PwR	N	N	N	PwR	PwR	PwR	N	N
Communication Facility in alternative tower structure	N	N	N	PwR	PwR	PwR	PwR	PwR	PwR	PwR	N	PwR
Communication Tower	N	N	N	PwR	N	N	N	N*	PwR	PwR	N	N
Construction Services	N	N	N	PwR	N	N	N	N	PwR	PwR	N	N
Convenience Store	N	N	N	N	N	N	N	PwR	PwR	PwR	N	PwR
Crematory	N	N	N	PwR	N	N**	N	N	PwR	N	N	N
Funeral Home	N	N	N	PwR	N	N	PwR	PwR	N	PwR	N	N
Indoor Recreation Facility	N	N	N	N	N	N	N	PwR	PwR	PwR	N	PwR
Junkyards & Auto Graveyards	N	N	N	PwR	N	N	N	N	N	N	N	N
Kennels	N	N	N	PwR	N	N	N	N	N	PwR	N	N

\*(Adopted 02/09/2011 / Effective 03/11/2011) \*\* (Adopted 08/11/2011 / Effective 09/11/2010)

Kiosks	N	N	N	N	N	N	PwR	PwR	PwR	PwR	N	PwR
Laboratories /Research Facilities	N	N	N	N	N	N	PwR	PwR	PwR	PwR	N	PwR
Laundromat	N	N	N	N	N	N	N	PwR	N	PwR	N	N
Marinas	N	N	PwR	PwR	N	N	N	PwR	N	PwR	N	PwR
Meeting Space Up to 2000 Sq Ft	N	N	N	N	N	N	PwR	PwR	PwR	PwR	N	PwR
Meeting Space over 2000 Sq Ft	N	N	N	N	N	N	PwR	PwR	PwR	PwR	N	PwR

	RP	SLR	SL	R	RG	HDR	PR	CB	PIC	PD	ECR	CC
Museum	N	N	PwR	PwR	PwR	PwR	PwR	PwR	N	PwR	PwR	PwR
Offices up to 2,000 sq. ft.	N	N	N	N	N	N	PwR	C	C	PwR	N	PwR
Offices 2,000 sq. ft or larger	N	N	N	N	N	N	PwR	PwR	PwR	PwR	N	PwR
Overnight Accommodation	N	N	N	N	N	N	N	PwR	PwR	PwR	N	PwR
Outdoor Storage Facility	N	N	N	N	N	N	N	N	PwR	PwR	N	N
Parking Garage	N	N	N	N	N	N	N	PwR	PwR	PwR	N	PwR
Parking Lots	N	N	N	N	N	N	N	PwR	PwR	PwR	N	PwR
Pet Services	N	N	N	PwR	N	N	N	PwR	N	PwR	N	PwR
Restaurant	N	N	N	N	N	N	PwR	C	PwR	PwR	N	PwR
Restaurant with drive-through	N	N	N	N	N	N	N	C	N	PwR	N	N
Retail up to 3,500 sq. ft.	N	N	N	PwR	N	N	PwR	PwR	PwR	PwR	N	PwR
Retail 3,500 sq. ft. or larger	N	N	N	N	N	N	N	PwR	PwR	PwR	N	PwR
Self-Storage Buildings	N	N	N	N	N	N	N	PwR	PwR	PwR	N	N
Service Business	N	N	N	N	N	N	PwR	PwR	PwR	PwR	N	PwR
Shopping Center	N	N	N	N	N	N	N	PwR	PwR	PwR	N	PwR
Theater	N	N	N	N	N	N	N	PwR	N	PwR	N	PwR
Veterinary Clinic	N	N	N	PwR	N	N	N	PwR	N	PwR	N	PwR
Detached Canopy	N	N	N	N	N	N	N	PwR	PwR	PwR	N	N

# Key to Land Use Table

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PR Professional/Residential

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SLR Shoreland Overlay Limited Residential

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HDR High Density Residential

CB Central Business

PD Planned Development

ECR Education/Community Recreation

## Industrial, Wholesale & Transportation Uses

	RP	SLR	SL	R	RG	HDR	PR	CB	PIC	PD	ECR	CC
Commercial Firewood	N	N	N	PwR	N	N	N	N	N	N	N	N
Composting Facility	N	N	N	PwR	N	N	N	N	N	PwR	N	N
Fuel Storage Facility	N	N	N	N	N	N	N	N	PwR	PwR	N	N
Manufacturing Heavy	N	N	N	N	N	N	N	N	PwR	N	N	N
Manufacturing Light	N	N	N	N	N	N	N	PwR	PwR	PwR	N	N
Passenger Transit Facility	N	N	N	N	N	N	N	PwR	PwR	PwR	N	N
Recycling Facility	N	N	N	PwR	N	N	N	PwR	PwR	PwR	N	N
Sawmill	N	N	N	PwR	N	N	N	N	C	PwR	N	N
Trucking & Freight Facility	N	N	N	N	N	N	N	N	C	PwR	N	N
Waste Processing Facility	N	N	N	N	N	N	N	N	PwR	N	N	N
Wholesale & Warehouse	N	N	N	N	N	N	N	PwR	C	PwR	N	N
Windmill Small	N	PwR	PwR	C	PwR	PwR	PwR	PwR	C	C	PwR	PwR
Windmill Mid-size	N	N	N	PwR	N	N	N	N	PwR	PwR	PwR	N
Windmill Large	N	N	N	PwR	N	N	N	N	PwR	PwR	PwR	N

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## Institutional, Educational & Governmental Uses

	RP	SLR	SL	R	RG	HDR	PR	CB	PIC	PD	ECR	CC
Cemetery	N	N	N	PwR	N	N	N	N	N	PwR	N	N
Civic Center	N	N	N	N	N	N	N	PwR	PwR	PwR	N	N
Community Nonprofit Facility	N	N	PwR	PwR	PwR	PwR	PwR	PwR	PwR	PwR	PwR	PwR
Day Care & Nursery School	N	N	PwR	PwR	PwR	PwR	PwR	PwR	PwR	PwR	PwR	PwR
Hospitals	N	N	N	N	PwR	PwR	PwR	PwR	PwR	PwR	N	PwR
Museums	N	N	PwR	PwR	PwR	PwR	PwR	PwR	N	PwR	PwR	PwR
Nursing Homes	N	N	N	PwR	PwR	PwR	PwR	PwR	N	PwR	N	PwR
Places of Worship	N	N	N	PwR	PwR	PwR	PwR	C	N	PwR	N	PwR
Public Buildings	N	N	PwR	PwR	PwR	PwR	PwR	PwR	N	PwR	PwR	PwR
Public Park & Playgrounds	N	PwR	PwR	PwR	PwR	PwR	PwR	PwR	N	PwR	PwR	PwR
Public Paths	PwR	PwR	PwR	PwR	PwR	PwR	PwR	PwR	PwR	PwR	PwR	PwR
Schools	N	N	N	PwR	PwR	PwR	PwR	PwR	PwR	PwR	PwR	PwR
Social & Fraternal Organizations	N	N	PwR	PwR	N	N	N	C	N	PwR	N	PwR

## Other Uses

Accessory Uses & Structures	PwR	PwR	C	C	C	C	C	C	C	C	C	C
Earth Moving < 50 cubic yards	C	C	C	Y	Y	Y	Y	Y	Y	Y	Y	Y
Earth Moving >50 cubic yards	C	C	C	C	C	C	C	C	C	C	C	C
Essential Services	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Flea Markets	N	N	N	C	N	N	N	C	N	C	N	N
Piers & Docks Permanent	PwR	PwR	PwR	PwR	PwR	PwR	PwR	PwR	PwR	PwR	PwR	PwR
Piers & Docks Temporary	C	C	C	C	C	C	C	C	C	C	C	C
Public Utility Facility less than 1,000 sq. Ft.	PwR	PwR	PwR	C	C	C	C	C	C	C	C	C

	RP	SLR	SL	R	RG	HDR	PR	CB	PIC	PD	ECR	CC
Public Utility Facility 1,000 sq. ft. or more	PwR	PwR	PwR	PwR	PwR	PwR	PwR	PwR	C	PwR	PwR	PwR
Signs	C	C	C	C	C	C	C	C	C	C	C	C
Temporary Activities if licensed by the city	C	C	C	Y	Y	Y	Y	Y	Y	Y	Y	Y
Uses and structures similar to uses and structures requiring C Review	C	C	C	C	C	C	C	C	C	C	C	C
Uses and structures similar to uses and structures permitted with review (PwR)	PwR	PwR	PwR	PwR	PwR	PwR	PwR	PwR	PwR	PwR	PwR	PwR



## 7.7 Minimum Dimensional Requirements

Lots in all districts shall meet or exceed the following minimum requirements:

### Legend

RP	Resource Protection	SLR	Shoreland Overlay Limited Residential
SL	Shoreland	RG	Residential Growth
R	Rural	HDR	High Density Residential
PR	Professional/Residential	CB	Central Business
PIC	Planned Industrial/Commercial	PD	Planned Development
CC	Cobbossee Corridor	ECR	Education/Community Recreation

District	Lot with Sewer Sq. Ft.	Lot w/o Sewer Sq. Ft.	Road Front Feet	Shore Front Feet	Road Set-Back Feet	Side Set-Back Feet	Rear Set-Back Feet	Shore Set-Back Feet	Max. Hght. Feet	Max. Lot Cov. %	Multi-Family Density Sq. Ft.
RP	40,000	40,000	100	200	50/75	20	20	100	35	5%	n/a
SLR	10,000	n/a	100	100	25/50	10	10	75	45	35%	5,000
SL	60,000	60,000	200	200	75/100	25	25	100	35	20%	n/a
R	60,000	80,000	200	200	75/100	30	30	100	35	20%	80,000
RG	15,000	40,000	100	125	25/50	15	15	100	35	25%	7,500
HDR	10,000	20,000	100	125	25/50	10	10	100	35	35%	10,000
PR	7,500	20,000	75	n/a	20/40	10	10	n/a	35	40%	7,500
CB	7,500	20,000	50	50	5/15	20	20	25	75	80%	1,200
PIC	40,000	80,000	200	125	50/75	15	15	100	150	80%	n/a
PD	30,000	60,000	150	125	75/100	25	25	100	75	50%	10,000
ECR	10,000	20,000	100	125	75/100	20	20	n/a	45	60%	n/a
CC	5,000	n/a	50	50	5/15	10	10	25	75	70%	1,200

(Adopted: November 18, 2015 / Effective: December 18, 2015)

### Notes:

2. Shore Frontage shall be measured in a straight line between points of intersection of the side lot lines with the shoreline at normal high-water elevation.
3. Setbacks from streets or roads shall be the greater of two distances X/Y where X is measured from the right-of-way line and Y is measured from the center line.
4. Features of buildings and structures such as chimneys, towers, ventilators and spires and windmills may exceed the minimum height, but shall be set back from the nearest lot line a distance of not less than the height of the feature or structure, unless a greater setback is required by other provisions of this Ordinance.
5. All structures located in the Central Business and the Cobbossee Corridor within 100 feet of a public parking lot may have 100% lot coverage provided setbacks from front and rear lot lines are no less than those of adjacent buildings.
6. The multi-family dwelling density in the High Density Residential District is 10,000 square feet for the first unit and 5,000 square feet for each additional unit.
7. The multi-family dwelling density in the Rural District is 80,000 square feet for the first unit and 40,000 square feet for each additional unit.
8. The multi-family dwelling density in the Professional Residential District is 7,500 square feet for the first unit and 2,500 square feet for each additional unit.
9. The multi-family dwelling density in the Shoreland Overlay Limited Residential District is 5,000 square feet for the first unit and 2,500 square feet for each additional unit.

## **7.8 District Performance Standards**

### **7.8.1 Applicability**

This Subsection contains specific performance standards which apply only in certain districts.

### **7.8.2 Central Business**

**7.8.2.1** Multi-family units may not be located on the ground floor of buildings.

**7.8.2.2** One and two-family dwellings are permitted provided the building is a minimum of 1 1/2 to 2 stories.

### **7.8.3. Rural District**

All subdivisions proposed in the Rural District shall be designed according to Open Space Standards.

### **7.8.4 High Density Residential District**

**7.8.4.1** Most developed areas within the High Density Residential District predate the City Zoning Ordinance, and often, existing structures are deemed nonconforming with respect to requirements for front, side and rear setbacks, and height. To provide a reasonable remedy to address an unintended consequence of creating nonconforming structures, the following method shall be used to determine a setback which will be deemed in compliance with this Ordinance.

**7.8.4.2** A conforming setback or height standard for an existing nonconforming structure may be determined as follows:

**7.8.4.2.1** Obtain the average setback (front, side or rear) found next to both sides of the property along the same side of the road, for a distance of at least 200 feet in each direction as measured from the edge of the property line along the road right-of-way. The setback for the property shall be deemed conforming if it is within 10% of the average. The property owner shall submit this evidence to the Code Enforcement Officer, which, subject to verification, will be filed in the Map and Lot Property File.

### **7.8.5 Cobbossee Corridor District**

**7.8.5.1** All proposed development in the district shall utilize public sewer and water.

### **7.8.5.2 Architectural Design Requirements**

**7.8.5.2.1** The architectural design of new or renovated structures shall reflect the character of the area, the innovative purpose of the district and the variety of forms, styles and scales

of adjacent districts. The scale, form and relationship between buildings, the site, pedestrian circulation and views are more critical than a particular historic style.

**7.8.5.2.2** Two and three-story buildings are encouraged to increase density and reduce building footprints.

**7.8.5.2.3** Buildings and sites are encouraged to utilize green technologies or Energy Star approved materials to minimize stormwater impacts and increase energy efficiency.

**7.8.5.2.4** Parking for residential and non-residential uses shall be shared and integrated with the terrain and buildings when feasible. Suburban style garages are discouraged, particularly in areas where streetscapes and civic environment are strongly defined by the adjacent building facades.

**7.8.5.2.5** Parking areas shall not be located between the building and the stream unless the applicant provides evidence acceptable to the Planning Board and/or the Code Enforcement Officer which shows that no other location is feasible.

**7.8.5.2.6** The required number of parking spaces may be reduced or modified by the Planning Board and/or Code Enforcement Officer without a need for a variance when an applicant provides evidence that a proposed activity can be served with a reduced number of spaces.

**7.8.5.2.7** Public paths are a critical component of the district and connectivity within the district shall include locating paths between structures and the stream, establishing easements for future paths, creating trailheads, providing overlooks and making connections to existing or proposed sidewalks.

**7.8.5.3** All proposed development requiring Planning Board review shall have a preliminary meeting with the Planning Board and the Development Department.

**7.8.5.4** Residential use shall not be permitted on the ground floor at the following locations: Corners of Summer and Bridge Street and the Corner (western) of Route 126 and Winter Street.

**7.8.5.5** The minimum lot size for single-family houses shall be 5,000 square feet, and the minimum lot size for single-family houses within the Shoreland Overlay Limited Residential District shall be 10,000 square feet.

**7.8.5.6** A legally nonconforming use has a five-year discontinuance period.

**7.8.5.7** Existing structures may expand up to 30%, if the expansion meets all applicable standards in this Ordinance.

**7.8.5.8** Self-storage buildings are permitted in existing buildings only. No new buildings for this use are permitted

## **7.8.6 Educational/Community Recreation District**

**7.8.6.1** The following activities are only permitted as an accessory to a primary land use: recreation buildings, day care centers and nursery schools, and outdoor recreation.

**7.8.6.2** Indoor entertainment and recreation facilities are permitted only if operated by a non-profit and/or the City of Gardiner.

**7.8.6.3** Community non-profit activities shall exclude inpatient and outpatient medical facilities/treatment centers.

## **7.9 Adaptive Reuse Overlay District** (Adopted: 10/07/2015 / Effective: 11/07/2015)

### **7.9.1 Purpose**

The older, built-up areas of the City contain a number of larger, older non-residential structures that may no longer be economically viable for their prior or historic use. The purpose of the Adaptive Reuse Overlay District (AROD) is to allow for the reasonable reuse of these buildings and properties. The update of the City's Comprehensive Plan recognizes it is desirable that these properties be reused in a manner that preserves the character of the neighborhoods where these buildings are located while allowing for creative reuse of the properties. The City recognizes that reasonable reuse of these buildings and properties may help stimulate new business investment, stabilize and enhance property values in the vicinity of these properties, and allow for the long-term maintenance and upkeep of these properties.

The intention of the City in authorizing the adoption of ARODs is that they will be utilized when traditional land use and zoning are inadequate. ARODs are intended to preserve existing buildings that, due to their design, size, or functional obsolescence, are not economically viable or physically suitable for uses allowed in the zoning district in which they are located in accordance with the standards of that district. ARODs shall not be used to rezone property or land for new commercial construction.

### **7.9.2 AROD Adoption and Amendments**

#### **7.9.2.1 Process for Adopting an AROD**

The general procedure to adopt an AROD involves a two-step process:

**7.9.2.1.1** Step 1: AROD Petition; Planning Board Review. A petition to amend the Land Use Ordinance designating a property or properties for inclusion in an AROD must be submitted to the Planning Board, which shall review said petition in accordance with this

Section and forward the petition, as may be amended by the petitioner, and its written recommendation(s) to the City Council for consideration (including any recommendations that vary from the petitioner's petition, if any). A petition for an AROD shall not require sponsorship of the Mayor or a member of the City Council. Prior to making a recommendation to the City Council, the Planning Board shall hold at least one public hearing on the petition.

The Planning Board's recommendation(s) to the City Council shall address, as applicable and in accordance with this Section, AROD eligibility criteria, the proposed use or use(s) for an AROD, modifications to standards of this Ordinance for an AROD, conditions for an AROD, and any other considerations the Planning Board deems necessary and proper to recommend to the City Council that are consistent with this Section.

The petition shall be submitted to the Gardiner Office of Planning and Development for processing, including an electronic copy if reasonably available, and shall include, at a minimum, information to address the following criteria:

1. The address or exact location of the request, including the Gardiner Assessor's map references for the property to be rezoned;
2. The name, address and telephone number of the property owner and of the petitioner, if the petitioner is not the owner;
3. Evidence of the petitioner's right, title or interest in the property;
4. A non-refundable application fee as specified in the Schedule of License, Permit and Application Fees established by order of the City Council;
5. A statement describing the existing and former uses of the property;
6. A detailed statement of the proposed use of the property;
7. A description of the property's unusual nature which requires the creation of an AROD;
8. A statement setting out the precise modifications to the Land Use Ordinance including the allowed uses and the zoning district and other standards requested to accommodate the proposed reuse;
9. A plot plan showing the boundaries of the parcel and its dimensions, as well as the existing buildings and structures;
10. A plan showing the location of existing streets and driveways within two hundred (200) feet of the property;
11. A development plan showing the layout of all buildings, structures, streets, driveways, parking areas, exterior lighting, signs, stormwater management provisions, and other significant improvements to be constructed on or above the surface of the ground plus any proposed open spaces, conservation areas, buffer areas or other features of the development which would be required for a site plan, and

12. A neighborhood compatibility plan detailing the potential impacts of the reuse on the adjacent neighborhood, the actions taken to reduce these potential impacts, and steps that will be taken to mitigate the remaining impacts on the neighborhood. At a minimum, this plan shall address traffic, noise, exterior lighting, hours of operation, material handling and storage, and stormwater. The plan shall address how the proposed reuse plan conforms to the standards for factors in the Land Use Ordinance.

**7.9.2.1.2 Step 2: AROD Petition; Consideration by City Council.** Upon receiving the petition, as may be amended by the petitioner, and the Planning Board's recommendation(s), the City Council shall, within 30 days of receipt or within a reasonable period of time, determine whether or not to adopt the petitioned AROD for the property or properties as an amendment to the Land Use Ordinance in a manner consistent with this Section and all applicable procedures of the Land Use Ordinance, City Charter, and state or federal laws. At any time prior to adoption by the City Council, the petitioner may elect to withdraw its petition for an AROD, which shall be in writing and duly executed by the petitioner or his or her duly authorized representative.

- (1) Council Order; AROD Ordinance. In adoption of any AROD as an amendment to the Land Use Ordinance, the City Council shall issue a written Council Order that contains the following:

- A. AROD Legislative Findings. The Council Order shall include legislative findings that adoption of the AROD:

- i. Is consistent with the Eligibility Criteria, Allowed Uses, Allowed Modifications, and Allowed Conditions for Adoption of an AROD as set forth in this Section;
- ii. Is consistent with the City of Gardiner Comprehensive Plan;
- iii. Is compatible with the existing uses and permitted uses within the adjacent neighborhood;
- iv. Provides for beneficial use and new investment in balance with protecting the essential character of the surrounding neighborhood;
- v. Is in the public interest; and
- vi. Will have beneficial effects on the city as a whole which would not result if the property were developed under the existing zoning district classification.

- B. AROD Ordinance. The Council Order shall also state the AROD ordinance adopted as an amendment to the Land Use Ordinance, which shall include, as applicable:

- i. Allowed Use(s). The use or use(s) allowed in the adopted AROD.

ii.AROD Modifications. Any modifications to the Land Use Ordinance standards applicable in the adopted AROD.

iii.AROD Conditions. Any conditions applicable to uses or activities in the adopted AROD.

- (2) Record of AROD Adoption. Upon the effective date of an AROD ordinance, the City Clerk or his or her designee shall cause the language of the AROD ordinance to be incorporated in this Ordinance, which may be by reference to the Council Order. The City Clerk shall also cause the Council Order to be recorded in the Kennebec County Registry of Deeds, and shall retain copies of the Council Order, as adopted and as recorded, for City records. Upon the effective date of an AROD ordinance, the Office of Planning and Development shall cause the location of the AROD to be designated on the Official Zoning Map of the City of Gardiner.

Upon the effective date of an AROD, the provisions of the AROD shall become the zoning requirements for the property in conjunction with the unmodified provisions of the zoning district in which it is located and the other unmodified provisions of the Land Use Ordinance. These provisions shall govern all future use of the property regardless of the future ownership of the property until and unless the AROD or this Ordinance is amended by the City Council to change the allowed use, uses, or activities.

#### **7.9.2.2 Adoption of AROD; Eligibility Criteria**

Property owners are not guaranteed any right to any of the additional allowed uses, variations in the development standards, or other provisions of an AROD. To be eligible for consideration of an AROD, a property or properties must meet all of the following:

1. The property or portion thereof is located within the High Density Residential (HDR) District,
2. The original structure on the property or portion thereof within the HDR District was constructed prior to 1964 for a non-residential use,
3. Since 2000, the aforescribed original structure has been used primarily for non-residential uses when it was occupied,
4. The aforescribed original structure and any subsequent additions contains not less than 3,500 square feet in existing habitable floor area, and
5. The property has its primary vehicular access from a street that is functionally classified as a minor arterial or major/urban collector by the Maine Department of Transportation's functional classification system or is on a lot to which vehicular access can be provided without disrupting the character of the adjacent neighborhood based on the projected type and volume of traffic.

### **7.9.2.3 Adoption of AROD; Allowed Modification of Requirements of the HDR District**

The AROD is intended to allow the City Council to modify the land use and zoning provisions that apply to the use and redevelopment of specified properties in the HDR District to allow the creative reuse of those properties. In adoption of any AROD to a property or properties, the City Council shall identify the specific uses of the property that will be permitted in addition to uses allowed in the HDR District, as well as any modifications to the development standards including maximum residential density (if applicable) that shall apply to the property or properties. The standards of the underlying HDR District and other performance standards and requirements of this Ordinance shall apply to the use and development of the property except as specifically modified by the City Council as part of its adoption of an AROD.

### **7.9.2.4 Adoption of AROD; Additional Uses Allowed in the HDR District**

The City Council may authorize the following additional nonresidential uses that are not otherwise permitted in the HDR District in conjunction with the approval of an AROD; however, there shall be no provisions for drive-through or drive-up services in conjunction with any additional allowed use permitted on the property. In approving the creation of an AROD, the City Council shall specifically identify the additional use or uses to be allowed on the property, which may include any of the following use or uses:

1. Bank
2. Catering
3. Funeral Home
4. Laboratories/Research Facilities
5. Meeting Space up to 2000 square feet
6. Offices up to 2000 square feet
7. Offices 2,000 square feet or larger
8. Restaurant
9. Retail up to 3500 square feet
10. Service Business
11. Facility for the processing, distribution, and/or sale of agricultural products
12. Light Manufacturing in which all activity including material storage occurs within a building
13. Studios of artists and craftsmen
14. Community Nonprofit Facility
- 15. A use or uses substantially similar to those enumerated in this subsection.**



#### **7.9.2.5 Adoption of AROD; Allowed Modification of Development Standards**

In approving the creation of an AROD, the City Council may modify the Minimum Dimensional Requirements for the HDR District as set out in Section 7.7 including the density or lot size standards, the District Performance Standards set out in Section 7.8.4, the General Performance Standards set forth in Section 8, the Specific Activity Performance Standards of Section 10, and the traffic and parking standards of Section 11. In approving the creation of an AROD, the City Council shall specify exactly which standards are being modified and to what extent. Any modification of the applicable standards is intended to be consistent with the following limitations, as applicable:

1. All modifications of the development standards to facilitate the reuse of the property must be to accommodate existing nonconforming conditions of the property and the building(s) on the property (such as lot size or setbacks) or to allow enhancements which are not designed to increase the building capacity, but are required to make the building functional for the intended new use (i.e. reconfiguration of the existing floor area and/or accessibility and safety enhancements such as lighting, elevator, railings, ramps, etc.);
2. The modifications will be the minimum necessary to allow reasonable reuse of the property;
3. The converted premises will be adequately landscaped in a way promotes conformity and harmony with the neighborhood;
4. The primary vehicular access to the lot on which the use is located shall be from a public street that is functionally classified as a minor arterial or major/urban collector street or from another street from which vehicular access can be provided without disrupting the character of the adjacent neighborhood based on the projected type and volume of traffic;
5. The primary activity shall occur within the building(s). Any outside storage of materials, equipment, dumpsters, or products must not be located within required yard setbacks and must be screened from abutting streets and residential properties by landscaping, fencing, and/or berms in accordance with Section 8. General Performance Standards including the provisions of Sections 8.9. Exterior Material Storage and Section 8.11 Buffer and Screening Standards;
6. Parking associated with the use shall not be located in any required setback. Parking associated with the use shall not be located in the front yard of a residential property. If a building is located within 50 feet of the front lot line, no parking shall be permitted between the front lot line and the front wall of the building extending the full width of the lot unless an existing driveway is already in use. Parking must be screened from abutting properties in residential use through landscaping, fencing, or topography in accordance with Section 8.11. Buffer and Screening

- Standards. Parking must be sufficiently buffered and landscaped to reduce distraction on any sides facing public streets;
7. The use shall not produce sustained noise, odors, fumes, vibrations, or electrical interference at the boundaries of the parcel that significantly exceed the levels produced by typical single-family residential uses even if those levels are lower than those established by the performance standards of Section 8. General Performance Standards; and
  8. The hours of operation of the use must be compatible with surrounding uses and may be limited by the Planning Board as part of any application review involving a property or properties subject to an AROD to assure compatibility.

#### **7.9.2.6 Adoption of AROD; Conditions of Approval**

The City Council may attach additional conditions and limitations to the approval of the AROD as may be necessary to protect the neighborhood and as may be necessary to encourage the most appropriate use of the land and building to be reused. Conditions and restrictions imposed under this section are intended to relate to the physical development and operation of the property and may include, by way of example:

1. Limitations on the number and types of uses permitted;
2. Conditions on the scale and density of development, including the height, lot coverage and other space and bulk provisions;
3. Specifications for the design and layout of buildings and other improvements;
4. Schedules for commencement and completion of construction;
5. Performance guarantees securing completion and maintenance of improvements, and guarantees against defects;
6. Preservation of open space and buffers, and protection of natural areas and historic sites;
7. Provision of municipal services required by the development;
8. Provisions for enforcement and remedies for breach of any condition or restriction, including the timing of the effective date of the change and its repeal should conditions not be met; and
9. The dedication or conveyance of property for public purposes, including but not limited to, streets, easements, parks and utility systems.

#### **7.9.2.7 Amendments to an Adopted AROD**

Subsequent to the adoption of an AROD by the City Council, the use of the property or properties shall be subject to the adopted AROD, including all modifications and conditions imposed by the City Council. The use of the property shall be limited to the allowed uses in the underlying zoning district and any additional uses specifically

permitted through the AROD. Any petitioner-initiated amendment to an AROD adopted by the City Council shall be adopted in same manner as a new AROD as set forth in this Section. The City Council, on its own initiative, may also amend an AROD subject to the general amendment procedures of this Ordinance, the City Charter, and any applicable state or federal laws.

#### **7.9.2.8 Reversion of the Property to the Underlying Zoning**

If the original structure is removed or destroyed by action of the owner or his or her agent or designee, the AROD will cease, the property will return to its underlying zoning classification, and any use not allowed by the Land Use Ordinance for that zone must cease immediately. If the building is ever damaged by more than 50 percent of market value by any cause other than that of the owner or his or her agent or designee, a building may be rebuilt and the allowed use under the AROD may be resumed within the pre-destruction or pre-damaged dimensions, within two (2) years. An owner who fails to meet this deadline will be required to submit a new petition for a new AROD. Any other replacement, reconstruction, or relocation of the building(s) must be in compliance with the space and bulk regulations of the underlying zoning district.

#### **7.9.3 General AROD Review Standards**

##### **7.9.3.1 General AROD Review Standards; Limitations on Expansion or Additional Structures**

The following additional restrictions shall apply to the reuse of property in an AROD approved by the City Council:

1. The reuse shall occur entirely within the building envelope of the existing buildings or structures except as provide for in the following sections.
2. Additions to the existing structure(s) may be allowed only for compliance with the Life Safety Code and the Americans with Disabilities Act, or as an operational necessity for the proposed reuse and then only after approval of the reuse plan by the Planning Board.
3. The total of all additions to the existing building(s) shall not exceed ten percent of the existing gross floor area of the building(s) or five hundred square feet whichever is less.
4. No additional buildings or structures may be constructed or located on the lot unless they are approved as part of the AROD proposal or as provided for in subparagraph 5 below.
5. Accessory structures may be placed on the lot subsequent to approval of the AROD by the City Council in accordance with an amended reuse plan approved by the Planning Board. All such structures must be consistent with the intent of the AROD

and shall meet the dimensional and setback requirements of the HDR District, and the applicable performance standards of Section 8.

### **7.9.3.2 General AROD Review Standards; Additional Requirements**

The following additional requirements shall apply to any reuse of a property subject to an AROD:

1. Signage – Signs shall conform to the following requirements:
  - a. Signage must meet the standards for signs in the underlying zoning district unless a change in the type, size, and/or number of signs is specifically approved by the Planning Board.
  - b. One free standing sign and/or one directory sign may be permitted as part of the reuse proposal and the proposed sign location and sizes must be shown in the submission materials.
  - c. Only externally illuminated signs are permitted. Internally lit signs, back-lit signs, neon sign, and electronic signs are prohibited.
  - d. Lighted signs may not be illuminated between 8:00 PM and 7:00 AM or at such other times established by the Planning Board in the approval of the site plan.
2. Lighting -- Any additional lighting beyond that which exists on the building and/or lot on the date of adoption of AROD by the City Council shall be allowed only after approval by the Planning Board as part of the site plan approval. All new or revised lighting shall conform to the requirements of Section 8.7. Exterior Lighting but the Planning Board may require the intensity, height or orientation of luminaires to be less than established by 8.7 if such restriction is necessary to assure compatibility with the surrounding neighborhood.
3. Parking -- The number and location of off-street parking spaces located on the property shall allow the reuse to be compatible with the adjacent neighborhood while meeting the City's parking requirements. The reuse proposal shall provide off-street parking spaces and loading/unloading spaces that conform to the provisions of Section 11 unless the Planning Board grants a waiver to reduce the parking requirements as part of the site plan approval. The Board shall grant such a waiver only if it determines that the parking provisions proposed in the site plan adequately meet the needs of the proposed use of the property and will not be detrimental to the adjoining neighborhood.
4. Commercial Vehicle Traffic – The type and size of commercial vehicles servicing the property and the number of daily commercial trips shall be appropriate to the means of vehicular access to the property to allow the reuse to be compatible with the adjacent

neighborhood. The Planning Board and/or the City Council may limit the types and size of vehicles servicing the site, the number of commercial trips per day, and the hours within which commercial vehicle movement occurs.

5. Open Space for Residential Uses – If the reuse involves a residential use, the plan shall provide for open space of an appropriate type and amount for the anticipated occupancy of the building. The open space shall be improved with facilities that are appropriate to the family-type and age of the intended occupants.

#### **7.9.4 Planning Board Review**

If an AROD is adopted for a property or properties, any new use or uses authorized in an AROD must be approved by the Planning Board in accordance with the Site Plan Review provisions of Section 6 and all other applicable sections of the Land Use Ordinance or other applicable City ordinances in which the Planning Board is the reviewing authority.

## **SECTION 8. GENERAL PERFORMANCE STANDARDS**

### **8.1 General Lot Requirements**

**8.1.1** If more than one principal building is constructed on a single lot, all dimensional requirements shall be met separately for each such principal building.

**8.1.2** No part of the yard or other open space required on any lot for any building shall be included as part of the yard or open space similarly required for another building or lot.

**8.1.3** Whenever possible, new lots shall have side lot-lines perpendicular to the road.

**8.1.4** Flag lots and other odd-shaped lots in which narrow strips are joined to other parcels to meet minimum lot-size requirements are prohibited.

**8.1.5** Only one road frontage of a corner lot shall be considered the front lot-line. The other road frontage shall be considered a side lot-line.

**8.1.6** Only one road frontage of a through-lot which has frontage on one or more roads shall be designated as the front yard. The other lot lines shall comprise the side and rear lot areas. Through-lots with adequate lot area may be divided if each lot division has frontage on a road.

### **8.2 Access to Lots**

All lots shall be provided with an access to the property by means of a driveway, common driveway or road. Refer to Section 11 of this Ordinance for road traffic and parking requirements.

### **8.3 Rear-Lot Access and Frontage**

**8.3.1** New rear lots proposed to be placed behind a legally conforming lot that has existing road frontage shall be deemed to comply with the minimum road frontage requirements if they meet all of the following:

**8.3.1.1** The lot conforms to all dimensional requirements for the district in which it is located except for road frontage.

**8.3.1.2** The lot has access which conforms to the applicable requirements of Section 11 of this Ordinance.

**8.3.1.3** The necessary right-of-way to access the rear lot does not reduce the road frontage of the existing road lot below the minimum established for the district in which it is located.

**8.3.1.4** The front yard for the purposes of conforming to the front structure setback requirements for the rear lot shall be measured from the rear lot-line of the existing road frontage lot.

## **8.4 Accessory Structures and Swimming Pools**

**8.4.1** No garage or other permanent accessory structure or in-ground swimming pool shall be located in the required front yard area except as provided below. When located to the side or rear of the principal structure the accessory structure shall be set back a minimum of 10 feet from the side and rear property lines. All accessory structures shall be set back 100 feet from the normal high-water line of a water body and upland edge of a wetland.

**8.4.2** Accessory structures, including above-ground swimming pools, may be located within a required front yard and may be closer than 5 feet to a side or rear lot-line if the following conditions are met:

**8.4.2.1** The principal use of the property is a single or two-family dwelling.

**8.4.2.2** The accessory structure does not exceed 15 feet in height or is greater than 144 square feet in floor area.

**8.4.2.3** The accessory structure or above-ground swimming pool is not permanently attached to the ground.

**8.4.3** A fence shall be erected and maintained around every swimming pool. A structure or building may be used as part of this enclosure. All gates or doors opening through the enclosure shall be capable of being securely fastened at all times when not in use. The term “fence” shall mean a good quality fence or wall not less than 4 feet in height above the ground surface and of a design to exclude children. The fence shall be constructed so as not to have openings, holes or gaps larger than 4 square inches, except for fences constructed of vertical posts or louvers, in which case the openings shall not be greater than 4 inches in width and shall have no horizontal members between the top and bottom plates. Doors and gates are excluded from the minimum dimensional requirements.

**8.4.4** A single building, for persons awaiting roadside pickup, less than 32 square feet in floor area, when located in the Rural District, is exempt from the road, side and rear setback and placement requirements of this Ordinance.

## **8.5 Temporary Structures**

**8.5.1** Temporary structures used in conjunction with construction work shall be permitted only during the period that the construction work is in progress. Permits for temporary structures shall be issued for a 6-month period.

**8.5.2** Temporary structures used as an accessory structure to a residential or commercial use may be used for a period not to exceed 7 months in any calendar year, if all setback and other dimensional requirements are met.

## **8.6 Essential Services and Utilities**

**8.6.1** Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.

**8.6.2** Whenever possible, water, sewer and other utility lines shall be laid outside of the paved surface and clear of any present or designated sidewalks. Utility poles shall be placed so that any present or designated sidewalks may be contained within the boundaries of the road right-of-way without obstruction by poles or appurtenances.

**8.6.3** Underground utilities shall be installed prior to the installation of the final gravel base of the road.

**8.6.4** The size, type and location of street lights, electric, water, sewer and telephone lines and other utilities shall be shown on the required permit application.

**8.6.5** All new proposed utilities shall be reviewed by the appropriate city official, including but not limited to Public Works Director, City Sanitary District, and Gardiner Water District.

**8.6.6** Damaged or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit.

**8.6.7** The installation of essential services other than roadside distribution lines is not allowed in a Resource Protection District except to provide services for a permitted use within said district, or except where the applicant demonstrates that no reasonable alternative exists. Where allowed, such structures and facilities shall be located to minimize any adverse impacts on surrounding uses and resources, including visual impacts.

## **8.7 Exterior Lighting**

### **8.7.1 General**

Any exterior luminaries with a lamp or lamps rated at a total of 1800 lumens or less and all flood or spot luminaries with a lamp or lamps rated at a total of 900 lumens or less may be used without restriction on light distribution or mounting height, except that if any spot or flood luminary rated 900 lumens or less is aimed, directed or focused such as to cause direct light from the luminary to be directed toward residential buildings on adjacent or nearby land or to create glare perceptible to persons operating motor vehicles on public ways, the luminary shall be redirected or its light output controlled as necessary to eliminate such conditions.

*NOTE: Some examples of luminaries that are less than 1800 lumens or flood luminaries with less than 900 lumens include 100-watt incandescent bulb, 13-watt compact fluorescent bulb and 120-watt incandescent flood bulb.*



## **8.7.2 Exterior Lighting Requirements**

**8.7.2.1** All exterior luminaries shall be shielded or hooded to avoid glare, adverse impact on neighboring properties and rights-of-way. No exterior lighting shall produce a strong dazzling light or reflection of that light beyond its lot lines onto neighboring properties. The light level at lot lines shall not exceed 0.5 foot-candles measured at ground level.

**8.7.2.2** All commercial, institutional and other similar activities shall provide adequate exterior lighting for occupants, customers and employees.

**8.7.2.3** The maximum height of all free-standing exterior lighting fixtures shall be 32 feet as measured from ground level.

**8.7.2.4** All exterior lighting except security lights shall turn off between 11 p.m. and 6 a.m. unless the activity is open for business.

## **8.8 Noise**

**8.8.1** All development activities shall comply with the following requirements so as not to create noise to the extent that abutting properties are adversely affected:

**8.8.1.1** The maximum permissible sound level of any continuous, regular, frequent or intermittent source of sound produced by an activity shall be limited according to the time of day and the land use which abuts it as listed in the following table:

Abutting Use	Sound Level Limits (dBA )	
	7:00 a.m. – 7:00 p.m.	7:00 p.m. – 7:00 a.m.
Residential	55	45
Commercial	65	55
Industrial	70	60
Institutional	55	45

**8.8.1.2** Where the abutting property is undeveloped, the sound level shall be equal to or less than the most restrictive abutting use allowed by this Ordinance.

**8.8.2** Sound levels shall be measured at least 4 feet above the ground at the property line of the development. Sound levels shall be measured by a meter set on the A-weighted response scale, fast response. The meter shall meet the latest version of the American National Standards Institute (ANSI S1.4.) “American Standard Specification for General Purpose Sound Level Meters” and shall have been calibrated at a recognized laboratory within the past calendar year.

**8.8.3** The applicant for a permit shall design the development as necessary to ensure that the noise emanating from the property conforms to the noise limits set forth in this subsection. Upon request from the Code Enforcement Officer or the Planning Board, the applicant shall provide a written certification from a professional engineer that the noise measurements are accurate and the noise from the completed development will conform to this subsection.

**8.8.4** The applicant for a permit is responsible for measuring sound levels and providing all necessary information to show that the proposal will conform to this Subsection.

**8.8.5** The following uses and activities shall be exempt from the requirements of this Subsection:

**8.8.5.1** Noises created by construction and temporary maintenance activities between 7:00 a.m. and 7:00 p.m.

**8.8.5.2** Single-family, two-family and multi-family housing.

**8.8.5.3** The noise from safety signals, warning devices, and emergency pressure relief valves and other emergency activities.

**8.8.5.4** Traffic noise on roads.

**8.8.5.5** Resource use in rural areas.

**8.8.5.6** Agricultural and forestry activities.

## **8.9 Exterior Material Storage**

**8.9.1** All dumpsters and similar large collection containers shall be completely screened from the view of all property lines.

**8.9.2** All outdoor storage areas, including areas used for the storage or collection of solid waste, junk automobiles or parts, building materials, machinery or other such items, shall be screened from view according to the screening requirements contained in this Ordinance.

**8.9.3** Where a potential safety hazard to children is identified by the Code Enforcement Officer, a physical barrier sufficient to deter children from entering the area shall be provided and maintained in good condition.

**8.9.4** All above-ground and below-ground tanks containing fuel, explosive liquids or solids, gases or chemicals shall be constructed and located according to applicable state and federal regulations.

## **8.10. Performance Guarantee**

**8.10.1** These standards for a performance guarantee shall be followed whenever required by this Ordinance. When required, the applicant shall submit the appropriate performance guarantee to the Code Enforcement Officer or the Planning Board as applicable. A permit application review shall not be conducted until the performance guarantee is submitted and conforms to these requirements.

**8.10.2** The performance guarantee shall include one of the following:

**8.10.2.1** A certified check, in an amount equal to the expense of installing the public improvements, made payable to the city.

**8.10.2.2** A performance bond, in an amount equal to the expense of installing the public improvements, made payable to the city, issued by a surety company.

**8.10.2.3** A conditional agreement with the city, whereby no lot in the subdivision may be sold or no building permit issued until the applicant installs all public improvements. A phased development plan may be incorporated into the conditional agreement.

**8.10.2.4** An irrevocable letter of credit from a bank or other lending institution that indicates that funds have been set aside for the construction of the subdivision and may not be used for any other project or loan.

**8.10.3** The Planning Board or the Code Enforcement Officer as applicable, prior to approval of the application, shall consult with the City Manager on the terms proposed by the applicant for the performance guarantee. The City Manager may determine that the amount of the certified check or performance bond or the terms of the performance guarantees be amended or revised. The Planning Board or the Code Enforcement Officer shall require that any determination made by the City Manager be incorporated into the performance guarantee.

**8.10.4** Prior to the release of the performance guarantee, the Code Enforcement Officer and the City Manager shall determine that the proposed improvements meet or exceed the design and construction requirements specified in this Ordinance and the development plans.

**8.10.5** If the Code Enforcement Officer or the City Manager finds that any of the public improvements have not been constructed in accordance with the plans and specifications filed as part of the application, they shall take any steps necessary to preserve the city's rights.

## **8.11 Buffer and Screening Standards**

### **8.11.1 Applicability**

The buffer and screening requirements shall apply to all non-residential structures and uses, multi-family structures, campgrounds, and parking areas.

### **8.11.2 Purposes**

The purposes of these requirements are to:

**8.11.2.1** Separate different land use activities from one another.

**8.11.2.2** Create visual barriers which obscure structures, dumpsters, headlights, lighting, glare, vehicles or other elements of a site.

**8.11.2.3** Reduce the impact of noise and odors.

**8.11.2.4** Reduce air pollution, wind, dust, and litter and contribute to healthy air and water quality.

**8.11.2.5** Respect the character of different places within the city.

### **8.11.3 General Requirements**

**8.11.3.1** A buffer area shall be the minimum required width and shall contain vegetation and screening materials. The buffer area shall not contain buildings, structures or other forms of development except for any necessary road, driveway or entrances, necessary traffic signs, and essential services.

**8.11.3.2** No portion of the road right-of-way may be used to satisfy buffer requirements.

**8.11.3.3** Whenever feasible, natural features such as trees, rocks, and shrubs shall be maintained within the buffer areas.

**8.11.3.4** All buffer areas and required screening shall be maintained by the property owner. The screen shall be maintained in such a manner as to provide an effective visual barrier as specified by these requirements.

**8.11.3.5** Any required vegetation including trees and shrubs shall be replaced by the property owner if the species dies or is damaged.

### **8.11.4 Buffer and Screening Requirements**

Buffer and screening for specific districts and activities are as follows:

#### **8.11.4.1 Planned Industrial/Commercial District**

A buffer strip at least 25 feet wide shall be placed along the side, rear and front property lines of the development. A full screen shall be installed along all side and rear property lines. A semi-full screen shall be installed along the front property line if the development is located on a public road. A partial screen shall be installed along the front property line if the development is located along a private road or public or private commercial/industrial subdivision road.

#### **8.11.4.2 Central Business District**

A buffer strip at least 5 feet wide shall be placed along the side, rear and front of any parking area. A semi-full screen shall be placed along the side and rear of the parking area. A partial screen shall be placed along the front property line of the parking area.

#### **8.11.4.3 Requirements for All Other Districts**

**8.11.4.3.1** A buffer strip at least 10 feet wide shall be placed along the side, rear and front property lines whenever the development abuts another non-residential building. A partial screen shall be placed along the side, rear and front property lines.

**8.11.4.3.2** A buffer strip at least 25 feet wide shall be placed along the side, rear and front property lines whenever the development abuts a residential building or open space. A full screen shall be placed along the side and rear property lines. A semi-full screen shall be placed along the front property lines.

#### **8.11.4.4 Buffer and Screening Adjustments**

The Planning Board may increase the width of any buffer or upgrade the screen category whenever the Board determines that the proposed development, due to its size, intensity, scale, hours of operation or type of activity, may create negative impacts upon neighboring properties.

The Planning Board and/or the Code Enforcement Officer may allow alternative designs for the buffer widths and screen requirements when designed by a landscape architect without the need for a variance when it determines that the alternative meets or exceeds the requirements of this Ordinance.

#### **8.11.4.5 Screen Categories**

The following tables show design options for a full screen, semi-full screen and a partial screen for placement along property lines and parking areas.

##### **8.11.4.5.1 Screen Category Table for Property Lines**

Full-Screen Options	
Option 1	An 8-foot-high fence, with solid face without opening
Option 2	A berm at least 4 feet high with the following: 3 canopy trees and 3 understory trees per 100 feet of length.
Option 3	6 canopy trees, 10 understory trees and 20 shrubs per 100 feet of length.
Option 4	A 4-foot-high fence with vertical or horizontal spacing of no more than 4 inches between members, and 6 canopy trees and 10 understory trees per 100 feet of length.
Semi-Full Screen Options	
Option 1	A 6-foot-high fence with a solid face without openings
Option 2	A berm at least 4 feet high with the following: 3 understory trees and 9 shrubs per 100 feet of length
Option 3	3 canopy trees, 6 understory trees and 12 shrubs per 100 feet of length
Option 4	A 4-foot-high fence with vertical or horizontal spacing of not more than 4 inches between members, and 3 canopy trees and 6 understory trees per 100 feet of length
Partial-Screen Options	
Option 1	A 3-foot-high fence with vertical or horizontal spacing of not more than 4 inches between members.
Option 2	A berm at least 3 feet in height with 9 shrubs per 100 feet of length
Option 3	6 understory trees and 6 shrubs per 100 feet of length

#### **8.11.4.5.2 Screen Category Table for Parking Areas**

Full-Screen Options	
Option 1	A 4-foot-high fence with a solid fence without openings
Option 2	A berm at least 4 feet high
Option 3	3 understory trees and 36 shrubs per 100 feet of length
Semi-Full Screen Options	
Option 1	A 4-foot-high fence with vertical or horizontal opening between members of no more than 4 inches
Option 2	A berm at least 3 feet high
Option 3	36 shrubs per 100 feet of length
Partial-Screen Options	
Option 1	A 3-foot-high fence
Option 2	A berm at least 2 feet high with 9 shrubs per 100 feet of length
Option 3	24 shrubs per 100 feet of length

#### **8.11.5 Parking Lot Landscaping Requirements.**

**8.11.5.1** Landscaped areas within parking areas containing more than 50 spaces, except for parking garages, are required to provide visual and climatic relief from broad expanses of pavement and reduce surface runoff, and separate areas for pedestrian and vehicular circulation.

The following standards shall be met:

**8.11.5.1.1** At least 5% of the gross area of all parking shall be landscaped. Where parking areas contain more than 100 spaces, landscape islands shall be located to break up parking areas into smaller cells of no more than 80 parking spaces.

**8.11.5.1.2** Internal landscaping shall include a minimum of 2 trees and 7 shrubs for every full increment of 25 parking spaces. Planting areas shall be sufficient to accommodate canopy and/or understory trees.

**8.11.5.1.3** Planting areas shall be located to demarcate the ends of parking rows, to avoid long rows of parked vehicles, and to channel pedestrian circulation. Where feasible, landscaped areas shall be oriented at right angles to the main entrance of the principal building.

**8.11.5.1.4** A portion of the required landscape area may be provided between parking areas and buildings to enhance the appearance of the site.

**8.11.5.1.5** All landscape areas shall be sufficient in size to accommodate healthy long-term plant growth.

**8.11.5.1.6** Alternative plans which differ from these requirements for the landscaped area, prepared by a registered landscape architect, may be approved by the Code Enforcement Officer and/or the Planning Board, as long as the total landscape area is not reduced.

### **8.11.6 Vegetation Requirements**

**8.11.6.1** Plant varieties shall be selected for the soil type at the site, appearance, durability, tolerance to air and water pollution and the climatic conditions of the area. Native species shall be selected whenever possible. Trees located beneath overhead utility lines shall be selected so their mature height will not reach the utility lines.

**8.11.6.2** Canopy and evergreen trees are those species which are expected to reach at least 35 feet or more in height at maturity. An understory tree will reach 15 to 20 feet at maturity. Shrubs have a mature height of 2 to 10 feet. Miscellaneous plantings include ground covers, vines, perennials, annuals, bulbs, and other herbaceous material.

**8.11.6.3** All plant materials shall meet the following minimum size standards at the time of planting:

**8.11.6.3.1** Canopy trees shall be 1 ½ inches diameter.

**8.11.6.3.2** Evergreen trees shall be 4 feet in height.

**8.11.6.3.3** Understory trees shall be 1 inch in diameter.

**8.11.6.3.4** Shrubs shall be between 10 and 24 inches in height.

**8.11.6.4** All required canopy trees, understory trees and shrubs shall be placed equally spaced along the length of the buffer to provide a continuous screen.

### **8.11.7 Requirements for Berms and Other Landscape Features**

**8.11.7.1** A maximum slope of three horizontal to one vertical shall be established for hills and berms. A flat area at least 3 feet in width shall separate the front and rear slopes.

**8.11.7.2** Fence material shall complement the architectural style of the buildings and surrounding area

## **8.12 Non-Residential Development Design Standards**

### **8.12.1 Purpose**

The purposes of this section are:

**8.12.1.1** To establish design criteria for all commercial, industrial and other non-residential uses.

**8.12.1.2** To integrate commercial and industrial uses into Gardiner's character as an urban riverfront and rural community.

**8.12.1.3** To enhance the streetscape visual appearance and to avoid incompatible and adverse impacts along the road.

**8.12.1.4** To encourage a diversity of architectural styles that draw their inspiration from traditional New England.

## **8.12.2 Applicability**

**8.12.2.1** These standards shall apply to all districts except the Planned Industrial/Commercial District.

**8.12.2.2** Whenever these standards conflict with the design requirements for site review, the site review standards shall be followed.

## **8.12.3 General Standards**

### **8.12.3.1 Visual Harmony with the Environment**

The proposed development shall be located and configured in a manner that is visually harmonious with the terrain and vegetation of the parcel and the surrounding area. Structures shall impede as little as reasonably practical, scenic views from the public road or from existing structures and the natural environment.

### **8.12.3.2 Visual Harmony with Gardiner**

The architectural design of structures and their materials and colors shall be visually harmonious with the overall appearance, history and cultural heritage of the city, with natural land forms and existing vegetation, and with other development plans already approved by the city.

### **8.12.3.3 Landscape Preservation**

The landscape, existing terrain, and any significant trees and vegetation shall be preserved in their natural state insofar as practicable. Tree and soil removal shall be minimized and grade changes shall be in keeping with the general appearance of neighboring developed areas. If natural features and existing landscaping are proposed to be removed, attention shall be accorded to plans to replace such features and landscaping.

### **8.12.3.4 Streetscape**

The arrangement and design of buildings and structures shall relate to the site access ways, parking and both vehicle and pedestrian circulation in a manner that respects the existing landscape, environmental features, and the existing streetscape.

### **8.12.3.5 Advertising Features**

The size, location, design, texture, lighting and materials of all exterior signs and advertising features shall respect the site and neighboring properties.

### **8.12.3.6 Height**

The height of a new or expanded structure shall be compatible with neighboring buildings. As a general guideline, structures shall be constructed to a height roughly equal to the average height of existing buildings on the same side of the road and across the road.



#### **8.12.3.7 Proportion and Articulation**

To reduce the apparent size of the buildings and to give them more visual interest, single monolithic forms that are not relieved by variations in the mass or bulk of the buildings shall be prohibited. Boxlike facades, forms and shapes placed near older buildings that have varied mass and façade articulation shall be prohibited.

#### **8.12.3.8 Setback**

The front line setback from the road shall be maintained whenever practical considering the use and design of the new development. New buildings are encouraged to be located in the same setback as the façade of neighboring buildings. Whenever the existing pattern cannot be followed, buildings shall be set back into the lot rather than closer to the road. New buildings shall not be placed at odd angles to the road unless the area already contains diverse building sites.

#### **8.12.3.9 Texture, Color and Type of Materials**

The materials, texture and color of the façade shall be visually compatible with the predominant materials and colors used for the buildings in the vicinity. Highly reflective surfaces or processed materials such as plastic panels, concrete block, grooved paneling and plywood are prohibited.

#### **8.12.3.10 Roof Shapes**

The roof shape, pitch and material shall be visually compatible with the buildings in the vicinity. A pitched roof or an appearance of a pitched roof with a minimum slope of 5/12 shall be required. The following roof types shall be prohibited: flat roofs, A-frame roofs and mansard roofs. Roof storage or equipment shall be screened from public view.

#### **8.12.3.11 Scale of Buildings**

The height, size or mass and proportion of the building shall be consistent with the scale of the neighboring buildings.

#### **8.12.3.12 Facing**

The vertical and horizontal exterior façade material of the building shall be the predominant directional exterior material facing of the neighboring buildings.

#### **8.12.3.13 Building Materials**

Exterior siding that is common to New England such as wood, brick, masonry veneers, wood shingles, aluminum and vinyl and other contemporary materials that have the same visual look as traditional materials shall be allowed.

**8.12.3.13.1** All sides of the building shall have a finished look with materials similar to those used on the front façade. Two compatible façade materials shall be allowed when one façade material is not normally visible from the road.

#### **8.12.3.14 Awnings and Canopies**

Awnings and canopies shall complement the design, materials, color and appearance of the building. Materials shall not be reflective materials such as metal or plastic. Backlit awnings and canopies shall be prohibited. Awnings and canopies may be used over windows and doors, except if they are not in keeping with the building's architecture.

#### **8.12.4 Renovations and Additions**

Renovations and additions shall be required to conform to these design standards to the greatest practical extent. Since some existing buildings do not already comply with these standards, the property owner is encouraged to upgrade the front façade of an existing building facing the road when renovating or adding to the building.

#### **8.12.5 Linear Commercial Structures**

**8.12.5.1** Linear commercial structures shall be designed with façade and roofline elements that reduce their scale and add architectural interest. No wall shall extend for a length of 25 feet without an architectural feature designed to break up the large mass of the wall.

**8.12.5.2** Buildings with multiple fronts shall be visually unified by a complementary architectural form, similar materials and colors, consistent details and uniform sign size and mounting system.

**8.12.5.3** The building shall be oriented whenever practical with the narrow side facing the road.

**8.12.5.4** Variations in the front setbacks shall be used to add visual interest and create space for common entries, outdoor spaces, gardens and similar landscape features.

**8.12.5.5** A focal point such as a raised entry, clock tower, or other architectural element shall be included to help reduce the scale of the building.

## **SECTION 9. ENVIRONMENTAL PERFORMANCE STANDARDS**

### **9.1 Air Quality**

No development shall be permitted which will cause emissions of dust, ash, smoke or other particulate matter likely to damage human or animal health, vegetation, or property, by reason of concentration or toxicity. Evidence that relevant state and federal regulatory requirements have been met shall be considered sufficient to meet this standard. This shall not be construed to regulate dust or odors generated by agricultural practices conducted using accepted Best Management Practices.

### **9.2 Water Quality**

No activity shall locate, store, discharge, or permit the discharge of any treated, untreated, or inadequately treated liquid, gaseous, or solid materials of such nature, quantity, obnoxiousness toxicity, or temperature that may run off, seep, percolate, or wash into surface or ground waters so as to contaminate, pollute or harm such waters or cause nuisances, such as objectionable shore deposits, floating or submerged debris, oil or scum, color, odor, taste, or unsightliness or be harmful to human, animal, plant or aquatic life.

### **9.3 Groundwater Protection**

#### **9.3.1 General Standard**

No activity shall adversely impact either the quality or quantity of groundwater available to abutting properties or to public water supply systems.

#### **9.3.2 Impact Assessment**

An assessment of the impact of a development on groundwater quality or quantity shall be required whenever the development is projected to generate demand of more than 2,000 gallons per day from groundwater sources or when a project involves an on-site wastewater disposal system with a capacity of 2,000 gallons per day or greater. The assessment shall demonstrate that the development will comply with the following standards:

**9.3.2.1** The development shall not increase any contaminant concentration in the groundwater to more than one-half of the primary Drinking Water Standards, nor to an amount to exceed the Secondary Drinking Water Standards as established by the Maine Department of Human Services at the time of the permit application.

**9.3.2.2** If existing groundwater contains contaminants in excess of the primary standards, the applicant shall demonstrate no significant further deterioration. If groundwater contains contaminants in excess of the Secondary standards, the development shall not cause the concentration of the contaminants in question to exceed 150 percent of the pre-existing concentration.

**9.3.2.3** Groundwater withdrawals or alteration of surface recharge characteristics by a proposed development shall not lower the water table beyond the boundaries of the development. No

proposed development shall result in a lowering of the water table at the development boundary by increasing runoff or decreasing infiltration.

**9.3.3** All facilities shall meet the wetland protection requirements of 38-A M.R.S.A Chapter 13-D, as applicable.

## **9.4 Water Bodies**

**9.4.1** The location of all rivers, streams, brooks, ponds, wetlands and drainage ways shall be identified on all permit applications.

**9.4.2** All structures and impervious areas shall be set back from all water bodies in conformance with applicable requirements of this Ordinance and state laws and regulations.

**9.4.3** Water bodies shall not be developed or disturbed unless the applicant obtains all necessary permits from state and federal agencies. The applicant shall include evidence with the city permit that all necessary state and federal permits have been obtained.

## **9.5 Solid Waste**

**9.5.1** All activities shall provide for the disposal of all solid wastes on a timely basis and in an environmentally safe manner.

**9.5.2** At the time of application, the applicant shall specify the amount and exact nature of all waste to be generated and indicate how the materials will be disposed. A plan to dispose of all industrial or chemical wastes shall also be submitted indicating how the materials will be stored, handled and disposed to an approved facility in conformance with all applicable state and federal regulations.

**9.5.3** All outdoor refuse containers shall be kept in such a manner as to prevent the breeding and harboring of insects, rats, or other vermin. This shall be accomplished by enclosures, raising materials above the ground, separation of material, prevention of standing water, extermination procedures or similar means.

## **9.6 Potable Water Supply**

**9.6.1** An adequate supply of potable water shall be supplied to all buildings and structures used for human habitation and whenever required by city or state requirements.

**9.6.2** Water may be supplied by the Gardiner Water District, community wells, or individual wells in conformance with all applicable city and state regulations.

**9.6.3** Water proposed to be used for structure fire protection/suppression shall be designed by appropriate professionals and shall be reviewed and approved by the City of Gardiner Fire Chief.

**9.6.4** All proposed subdivisions and developments which require site review and any development which contains a structure which exceeds 3,000 square feet in area shall provide written evidence from the Gardiner Water District, or if private wells are proposed, a hydrologist or well driller familiar with the area, that an adequate supply of water is available to serve the potable and fire suppression demands of the proposed development.

## **9.7 Public and Private Sewer Provisions**

### **9.7.1 General**

The installation of all water supply systems and subsurface wastewater disposal systems shall conform to the Maine State Plumbing Code and comply with all the provisions of the City of Gardiner's Sewer and Water Ordinances. All plumbing shall be connected to public collection and treatment facilities when such facilities are available.

### **9.7.2 Public Sewer**

**9.7.2.1** All sanitary sewage from new or expanded uses shall be discharged into a public sewage collection and treatment system when such facilities are currently available or can reasonably be made available at the lot line and have adequate capacity to handle projected waste generation.

**9.7.2.2** If the public collection system is not at the lot line, but can be extended in the public right-of-way, the collection system shall be extended by the owner and the new or expanded use connected to the public system.

**9.7.2.2.1** A sewer extension shall be required if the public system is within 100 feet of the property boundary of a new use with a design flow of less than 500 gallons per day.

**9.7.2.2.2** A sewer extension shall be required if the public system is within 300 feet of the property boundary of a new use with a design flow of 500 gallons or more per day.

**9.7.2.2.3** A sewer extension shall not be required if the property is already served by a properly functioning subsurface waste water system that is properly sized for the new projected design flow. The sewer extension shall be made to the public system when the existing subsurface waste water system needs replacement or expansion.

**9.7.2.3** A proposed subdivision shall connect to the public sewer system at the expense of the applicant when the public sanitary sewer line is located within 1,000 feet of the proposed subdivision at its nearest point. The sewer district shall certify that providing service to the proposed subdivision is within the capacity of the system's collection and treatment system. The sewer district and the public works director shall review and approve the construction drawings for the system.

**9.7.2.4** Industrial or commercial wastewater may be discharged to public sewers in such quantities and/or of such quality as to be compatible with sewage treatment operations. Such wastes may require pretreatment at the industrial or commercial site to render them amenable to public

treatment processes. The Sewer District shall specify the type of pretreatment required which shall be done at the expense of the applicant.

**9.7.2.5** If the public system cannot serve or be extended to serve a new or expanded use, the sewage shall be disposed of by a subsurface wastewater disposal system meeting the requirements of the Maine Subsurface Wastewater Disposal Rules.

### **9.7.3 Subsurface Wastewater Disposal**

**9.7.3.1** Whenever a subsurface wastewater system is proposed, the applicant shall submit a disposal permit application (form HHE-200 and any other applicable data) for any new lot or expansion of an existing system in order to obtain a permit.

**9.7.3.2** An application for a subdivision which requires subsurface wastewater disposal shall include evidence that each proposed lot has suitable soils to support the proposed development. A test pit location shall be shown for each lot and marked on the subdivision plan. Soil data for each test pit location shall include all the pertinent information contained on page one of the HHE-200 subsurface wastewater application form.

**9.7.3.3** Central subsurface wastewater collection systems may be used in conformance with the Maine Subsurface Wastewater Disposal Rules and the following:

**9.7.3.3.1** Provisions for the ownership, maintenance, future replacement and liability of the central collection system shall be developed.

**9.7.3.3.2** An ownership association shall be required whenever different owners use a common disposal system. Deed covenants for each lot or owner shall require mandatory membership in the association.

**9.7.3.3.3** A subdivision with a central collection system shall meet the lot size requirement for a sewer lot when open space equal to the difference in area between the sewer lot and an unsewered lot is dedicated as open space and prohibited from development. This open space shall be indicated on the final plan, along with the restrictions prohibiting development.

## **9.8 Phosphorus Control**

**9.8.1** These standards shall apply to all developments that contain structures with a footprint in excess of 3,000 square feet, more than 10,000 square feet of impervious area, campgrounds, subdivisions and developments that are wholly or in part located within the direct watershed of a Great Pond.

**9.8.2** A phosphorus control plan shall be developed in accordance with the design criteria contained in "Phosphorus Control in Lake Watersheds: A Technical Guide To Evaluating New Development" published by the Maine Department of Environmental Protection, revised January, 2008.

## **9.9 Erosion Control**

### **9.9.1 Purpose**

Erosion control measures are necessary to ensure that soil and sediment do not flow into waterbodies, city drainage structures, road drainage ditches and structures, and neighboring properties.

### **9.9.2 Applicability**

All activities which involve filling, grading, excavation, soil disturbance and other similar activities which result in unstable soil conditions shall conform to the requirements of this subsection. Any of the above listed activities which also require a permit according to this Ordinance shall include with the permit review application a written soil erosion control plan.

### **9.9.3 Plan**

The erosion control plan shall address the following:

**9.9.3.1** Mulching and revegetation of disturbed soil.

**9.9.3.2** Temporary runoff control features.

**9.9.3.3** Permanent stabilization structures.

### **9.9.4 Maintenance**

The applicant, property owner or agent shall be responsible for maintaining all erosion control features until the site is permanently stabilized. Any soil or sediment that flows into a water body, city drainage structure, road drainage ditches and structures or on neighboring property shall be removed by the applicant, property owner or agent.

### **9.9.5 Standards**

All erosion control measures shall conform to the “Maine Erosion and Sediment Control BMPS”, published by the Maine Department of Environmental Protection, March 2003.

### **9.9.6 Additional Standards**

**9.9.6.1** In order to create the least potential for erosion, development shall be designed to fit with the topography and soils of the site. Areas of steep slope where high cuts and fills may be required shall be avoided whenever possible, and natural contours shall be followed as closely as possible.

**9.9.6.2** Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance, and shall be in operation during all stages of the activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.

**9.9.6.3** Any exposed ground area shall be temporarily or permanently stabilized within one week from the time it was last actively worked, by use of riprap, sod, seed and mulch, or other effective

measures. In all cases, permanent stabilization shall occur within 9 months of the initial date of exposure. In addition, the following are required:

**9.9.6.3.1** Where mulch is used, it shall be applied at a rate of at least one bale per 500 square feet and shall be maintained until a catch of vegetation is established.

**9.9.6.3.2** Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.

**9.9.6.3.3** Additional measures shall be taken where necessary to avoid siltation.

**9.9.6.4** Natural and man-made drainage ways and drainage outlets shall be protected from erosion. Drainage ways shall be designed and constructed to carry water from a 25-year storm or greater, and shall be stabilized with vegetation or lined with riprap.

## **9.10 Storm Water Management Design Standards**

### **9.10.1 General**

All new construction and development shall be designed to minimize storm water runoff from the site in excess of natural predevelopment conditions. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas, shall be retained in order to reduce runoff and encourage infiltration of storm waters. When the storm water is directed off-site, adequate provision shall be made for disposal of all storm water and any drained ground water through a management system of swales, culverts, under-drains and storm drains.

### **9.10.2 Additional Standards**

The additional standards shall apply to all developments that exceed 3,000 square feet of structure footprint, contain more than 10,000 square feet of impervious area or are a subdivision.

**9.10.2.1** A storm water control plan shall be designed by a professional engineer. All storm water features shall be designed in conformance with Stormwater Management for Maine: Best Management Practices” Manual, Volumes 1 and 3, published by the Maine Department of Environmental Protection, January, 2006. A storm water control plan that is developed according to the requirements of the Department of Environmental Protection Regulations, Chapter 500, Stormwater Management and Chapter 502 Direct Watersheds of Waterbodies Most at Risk from New Development, shall be deemed to be a suitable equivalent to these standards with the approval of the Code Enforcement Officer.

**9.10.2.2** All components of the storm water management system shall be designed to limit peak discharge to predevelopment levels for every storm between the 2-year and 25-year, 24-hour duration frequencies based on rainfall data for Augusta, Maine.

**9.10.2.3** The storm water system shall be designed to accommodate upstream drainage, taking into account existing conditions and approved or planned developments not yet built and shall include a surplus design capacity factor of 25% for potential increases in upstream runoff.



**9.10.2.4** Downstream drainage requirements shall be studied to determine the effect of the proposed development. The storm drainage shall not overload existing or future planned storm drainage systems downstream from the development. The applicant shall be responsible for financing any improvements to existing drainage system required to handle the increased storm flows.

**9.10.2.5** The developer shall not increase or obstruct the flow of drainage into any ditch or drainage structure existing on any road or other location within the jurisdiction of the city by the construction of any development including a driveway, entrance, or road. Any storm water drainage directed into the city storm water drainage system shall be reviewed and approved by the Public Works Director.

**9.10.2.6** The minimum pipe size for any storm drainage pipe shall be 15". Maximum trench width at the pipe crown shall be the outside diameter of the pipe plus two feet. The pipe shall be bedded in a fine granular material, containing no stones larger than 3 inches, lumps of clay or organic matter, reaching a minimum of six inches below the bottom of the pipe and extending to six inches above the top of the pipe. The minimum culvert pipe length shall be 20 feet.

**9.10.2.7** Catch basins shall be installed where necessary and located at the curb line.

**9.10.2.8** Complete underground storm drain systems shall be installed on all curbed urban road sections.

**9.10.2.9** Where bridge structures or reinforced concrete box culverts are required to cross major streams, detailed design plans and drainage study shall be developed and submitted to the Maine Department of Transportation for review and approval. All bridge and reinforced concrete box culverts shall be designed to accommodate at least the anticipated 50-year flood level.

**9.10.2.10** Outlets shall be stabilized against soil erosion by riprap or other suitable materials to reduce storm water velocity. Whenever the storm drainage system is not within the right-of-way of a public street, perpetual easements shall be provided to the city allowing maintenance and improvement of the system.

**9.10.2.11** Where soils require a subsurface drainage system, the drains shall be installed and maintained separately from the storm water drainage system.

### **9.10.3 Storm Drainage Construction Standards**

#### **9.10.3.1 Reinforced Concrete Pipe**

Reinforced concrete pipe shall meet the requirements of ASTM Designation C-76 (AASHTO 170). Pipe classes shall be required to meet the soil and traffic loads with a Safety factor of 1.2 on the .01 inch crack strength with a Class B bedding. Joints shall be of the rubber gasket type meeting ASTM Designation C443-70, or of an approved preformed plastic jointing material such as "Ramnek" Perforated concrete pipe, and shall conform to the requirements of AASHTO 175 for the appropriate diameters.

#### **9.10.3.2 Corrugated Metal Pipe.**

Corrugated metal pipe shall meet the requirements of AASHTO Designation M 196 for aluminum alloy pipe for sectional dimensions. Pipe gauge shall be as required to meet the soil and traffic loads with a deflection of not more than 5%.

#### **9.10.3.3 ABS Pipe**

ABS (Acrylonitrile-butadiene-styrene) composite pipe and fittings shall conform to the requirements of AASHTO M 264 and AASHTO M 265. Perforated pipe shall conform to the requirements of AASHTO M 36, Type III.

#### **9.10.3.4 Corrugated Plastic Pipe**

Corrugated plastic pipe shall conform to the requirements of AASHTO M 252.

#### **9.10.3.5 Manholes**

Manholes shall be of precast concrete truncated-cone-section construction meeting the requirements of ASTM Designation C 478 or precast concrete manhole block construction meeting the requirements of ASTM Designation C 139, radial type. Bases may be cast in place, of 3,000 psi 28-day strength concrete or may be of precast concrete, placed on a compacted foundation of uniform density. Manholes shall have a minimum diameter of 30 inches.

#### **9.10.3.6 Catch Basins**

Catch basins shall be of precast concrete truncated cone section construction meeting the requirements of ASTM Designation C 478 or precast concrete manhole block construction meeting the requirements of ASTM Designation C 139, radial type. Castings shall be square cast iron, sized for the particular inlet condition with the gratings perpendicular to the curb line. Bases may be cast in place of 3,000 psi 28-day strength concrete or may be of precast concrete, placed on a compacted foundation of uniform density.

#### **9.10.3.7 Metal Frames and Traps**

Metal frames shall conform to the requirements of AASHTO M 103 for carbon steel castings, AASHTO M 105, Class 30 for gray iron castings or AASHTO M 10983 (ASTM A 283, Grade B or better) for structural steel.

**9.10.3.8** Drain inlet alignment shall be straight in both horizontal and vertical alignment unless specific approval of a curvilinear drain is obtained in writing from the Municipal Engineer or designee.

**9.10.3.9** Manholes shall be provided at all changes in vertical or horizontal alignment and at all junctions. On straight runs, manholes shall be placed at a maximum of 300-foot intervals.

**9.10.3.10** Upon completion, each catch basin or manhole shall be cleaned of all accumulation of silt, debris or foreign matter and shall be kept clean until final acceptance.

## **9.11 Historic, Archeological, Wildlife Habitat, Scenic Areas, and Rare and Natural Areas**

**9.11.1** All proposed new development shall show the locations of any historic and archeological sites, wildlife habitat, scenic areas and rare and natural areas. If any of these areas are on the site, a protection plan shall be developed according to the following.

**9.11.2** The applicant shall review the archeological predictive maps, and historic areas identified by the Maine State Historic Preservation Commission and the City of Gardiner, to determine the status of the development site. The applicant shall develop appropriate measures for the protection of these resources according to local, state and federal regulations, if any portion of the site is designated as a significant archeological or historic site by the Maine Historic Commission or the Comprehensive Plan, or listed on the National Register of Historic Places.

**9.11.3** The Natural Areas Program data and scenic areas identified by the City of Gardiner shall be reviewed to determine the status of the site. The applicant shall develop appropriate measures for the preservation of the values which qualify the site for such designation, if any portion of the site is within an area designated as a scenic area or a unique natural area by the Maine Natural Areas program or the City of Gardiner.

**9.11.4** The applicant shall review the wildlife data as identified by the Beginning with Habitat Maps for the City of Gardiner to check the status of the site and develop measures to protect these areas from environmental damage and habitat loss if any portion of the site is within a wildlife habitat area. The Code Enforcement Officer or the Planning Board may require the applicant to consult with the Maine Department of Inland Fisheries and Wildlife or a qualified wildlife biologist to further evaluate the site or to develop a habitat protection plan for the site.

**9.11.4.1** Wildlife habitat areas shall include the following:

**9.11.4.1.1** Habitat of endangered species appearing on the official state or federal list of endangered or threatened species.

**9.11.4.1.2** High or moderate-value waterfowl and wading bird habitats as defined by the Maine Department of Inland Fisheries and Wildlife.

**9.11.4.1.3** Deer wintering areas as identified by the Maine Department of Inland Fisheries and Wildlife.

## **9.12 Earth Moving Activity**

**9.12.1** These requirements shall apply to any activity involving the excavating, dredging, filling, grading or lagooning of earth which is not connected with another construction or land use activity.

**9.12.2** All activities shall conform to the erosion control, phosphorus control and storm water management standards contained in this Ordinance.

**9.12.3** All fill material shall be graded in a timely manner and shall not be allowed to accumulate in piles or mounds.

**9.12.4** The smallest amount of bare ground shall be exposed for the shortest time feasible. Stumps, slash, boulders and other material, except for soil, shall not be visible from any public road.

**9.12.5** All exposed ground shall have a temporary or permanent vegetative cover or mulch cover installed by November 1<sup>st</sup>.

**9.12.6** The applicant shall specify the amount and type of fill to be used.

**9.12.7** The applicant shall be responsible for cleaning and repairing and /or resurfacing any public road used in the activity and which is damaged.

**9.12.8** The hours of operation shall be limited to 7:00 a.m. to 6:00 p.m. and are subject to the noise standards contained in this Ordinance.

**9.12.9** For activities adjacent to residential properties which involve more than 500 cubic yards and which are expected to occur over a period to exceed 6 months, the applicant shall install a buffer of at least 10 feet along property lines. A temporary or permanent screen may be required by the Planning Board.

## **SECTION 10. SPECIAL ACTIVITY PERFORMANCE STANDARDS**

### **10.1 Campgrounds**

#### **10.1.1 Applicability**

The following standards shall apply to campgrounds in all districts except the Shoreland and Resource Protection Districts, where they shall conform to the applicable standards contained in the Shoreland Zoning Section of this Ordinance.

#### **10.1.2 Campground Standards**

**10.1.2.1** Campgrounds shall conform to the state regulations imposed under state licensing requirements.

**10.1.2.2** Recreational vehicle and tenting sites containing approved, water-carried sewage facilities shall contain a minimum of 5,000 square feet per site, not including roads and driveways.

**10.1.2.3** Recreational vehicle and tenting sites without water-carried sewage facilities shall contain a minimum of 10,000 square feet per site, not including roads and driveways. A minimum of two privies, one for each sex, shall be provided for every four campsites and be within 75 feet of each site.

**10.1.2.4** Land supporting wetland vegetation and land below the normal high-water line of a water body shall not be included in land area per site.

**10.1.2.5** A minimum of 200 square feet of off-street parking shall be provided for each site.

**10.1.2.6** Each site shall be provided with a stationary trash receptacle and stationary fireplace or fire pit.

**10.1.2.7** The area intended for placement of the recreational vehicle, tent or shelter and utility and service buildings shall be set back a minimum of 100 feet from the perimeter of the lot lines of the campground and the normal high-water line of a water body or upland edge of a wetland.

#### **10.1.3 Individual Private Campsites**

Individual private campsites not associated with a campground shall meet the following standards.

**10.1.3.1** The lot shall meet the lot size requirements for the district in which it is located unless it is a legally nonconforming lot of record. However, in no case shall a campsite be located on a parcel of land with less than 20,000 square feet of land area.

**10.1.3.2** Recreational vehicles, tents or other temporary structures shall not be located on any type of permanent foundation except for a gravel pad and no structures except canopies shall be attached to the recreational vehicle.

**10.1.3.3** The recreational vehicle, tent or other temporary structure shall not remain on a campsite for a period longer than 120 days per year.

**10.1.3.4** Any recreational vehicle, tent or other temporary structure which remains on a campsite for a period longer than 120 days per year shall meet all the provisions of this Ordinance for a permanent residential dwelling.

**10.1.3.5** A sewage disposal plan shall be submitted to the Code Enforcement Officer for review and approval.

## **10.2 Home Occupations**

### **10.2.1 Applicability**

A home occupation may be allowed in a residential dwelling if it does not change the essential overall residential character of the dwelling and the neighborhood in which it is located. The home occupation shall be incidental and secondary to the use of the dwelling as a residence and be carried on by a member of the family permanently residing in the dwelling. A home occupation may be any occupation or profession which can be carried on within the home and meet the requirements of this Ordinance.

### **10.2.2 Home Occupation Standards**

In order to protect the residential and/or rural character of the City of Gardiner, home occupations shall meet the following requirements:

**10.2.2.1** The home occupation shall be carried on wholly within the principal building or within a building or other structure accessory to it.

**10.2.2.2** The total area used for the home occupation shall not exceed 50% of the square footage of the principal dwelling.

**10.2.2.3** A home occupation permit shall be granted to an applicant for his/her sole use as long as the applicant permanently resides in the dwelling and shall not be transferable to another property owner or tenant.

**10.2.2.4** No more than two persons outside the immediate family shall work on the premises at one time in the home occupation. (Adopted 06/18/2014, Effective 07/18/2014)

**10.2.2.5** A home occupation shall not create greater traffic than normal for the area in which it is located or generate more than 20-vehicle trips per day.

**10.2.2.6** There shall be no exterior display of goods or materials. There shall be no exterior storage of goods or materials or any other exterior indications of the home occupation or variation from the residential character of the property.

**10.2.2.7** No nuisance, waste discharge not otherwise permitted, offensive noise, vibration, smoke, dust, odor, heat, glare or radiation shall be generated.

**10.2.2.8** There shall be no change in the residential appearance of the property.

**10.2.2.9** The on-site sale of products shall be limited to an area not to exceed 500 square feet in area.

**10.2.2.10** Any parking area for customers shall be off the street, and no parking shall be allowed in the front yard.

**10.2.2.11** The following uses are prohibited as home occupations: veterinary services, welding machine shops using industrial or heavy machinery, auto body repair, auto/truck/recreational vehicle service or repair and the repair of marine craft engines.

**10.2.3** Home Occupation uses which include building trades or similar fields that involve work or services performed away from the home are allowed under these conditions:

**10.2.3.1** The dwelling shall be used primarily as an office.

**10.2.3.2** More than two non-family persons working in the business shall be allowed, provided they work exclusively away from the premises.

**10.2.3.3** The premises shall not be used to store or park any vehicle or equipment for persons who work off the premises. (Adopted 06/18/2014, Effective 07/18/2014)

#### **10.2.4 Minor Home Occupations**

Certain home uses, because of their nature and scope, have a low impact on the residential nature of the dwelling and neighborhood. Such home occupation uses include but are not limited to artist, author, home crafts for off-site sale, office/typing, office tutoring, and off-site direct sales of goods and services and consulting.

**10.2.4.1** These home occupations shall be allowed without a permit provided they meet the following conditions:

**10.2.4.1.1** No more than one room of the dwelling or accessory structure shall be used exclusively for the home occupation.

**10.2.4.1.2** There shall be no advertising, display, or other indications of a home occupation on the premises.

**10.2.4.1.3** The home occupation shall not include any on-site sale of goods.

**10.2.4.1.4** No traffic shall be generated which is not otherwise normal for a residence.

**10.2.4.1.5** No deliveries shall be made other than package carrier services.

**10.2.4.1.6** Only family members permanently residing on the premises shall work in the home occupation.

### **10.3 Standards for Agricultural Activities (Adopted: 9/21/2016/Effective 10/21/2016)**

#### **10.3.1 Household Pets**

Unless their numbers qualify their keeping as a kennel, household pets such as dogs and cats may be kept in all zoning districts.

**10.3.2 Standards for Accessory Animal Husbandry** The keeping of animals other than household pets such as horses, cattle, sheep, goats, pigs, and fowl for personal purposes shall be subject to the following: (Amended November 27, 2017 / Effective December 27, 2017)

**10.3.2.1** The keeping and raising of large animals such as cattle, sheep, goats, horses, pigs and hogs, and llamas that typically weigh more than one hundred pounds at maturity shall require a minimum of eighty thousand (80,000) square feet of land.

**10.3.2.2** The keeping and raising of small animals such as sheep, goats, and fowl other than domestic chickens that typically weigh less than one hundred pounds at maturity, shall require a minimum of forty thousand (40,000) square feet of land. (Amended November 27, 2017 / Effective December 27, 2017)

**10.3.2.3** Buildings, sheds, feedlots and fenced pens used for the shelter of livestock (such as horses, cattle, sheep, goats and pigs) shall be located 50 feet from the property lines and 100 feet from any existing residences on an abutting lot.

**10.3.2.4** No manure shall be stored within 300 feet of the normal high-water line of a water body, wetland or wells used to supply water for human consumption.

**10.3.2.5** All accessory animal husbandry activities and structures including processing facilities and manure storage must be operated and maintained in accordance with Best Management Practices (BMPs) for agriculture including the general BMPs identified in the latest edition of the Maine Department of Agriculture, Forestry and Conservation's Manual of Best Management Practices for Maine Agriculture and any other general or site specific BMPs approved by the Commissioner of the Maine Department of Agriculture, Forestry and Conservation.

**10.3.3 Standards for Chicken Keeping Residential** - The small-scale keeping of chickens for personal use is subject to the following limitations: (Amended November 29, 2017 / Effective December 29, 2017)

#### **10.3.3.1 General Standards**

**10.3.3.1.1** The keeping of chickens is only allowed in conjunction with single-family and two-family dwellings after the issuance of a permit by the Code Enforcement Officer.

**10.3.3.1.2** The keeping of chickens shall be solely for the personal use of the household.

**10.3.3.2 Permit Required** - The keeping of chickens – residential shall be allowed only after the property owner or tenant with the written permission of the property owner has obtained a permit from the Code Enforcement Officer (CEO). The CEO shall issue a permit only if all of the



following standards are met. The property owner or tenant shall be responsible for demonstrating compliance with the standards both initially and on an ongoing basis. As a condition of granting the permit, the CEO shall be granted reasonable access to the property for the purposes of determining ongoing compliance with the standards or to investigate a complaint.

**10.3.3.3 Revocation of a Permit** – The CEO may revoke a permit for the keeping of chickens – residential if she/he finds that the property is not in compliance with the standards of this section. Prior to the revocation of a permit, the CEO shall provide the owner/tenant with a notice of violation specifying the specific violations and giving the owner/tenant fifteen (15) days to correct the violations. If the owner/tenant does not correct the violations within this period or if three or more notices of violation have been issued in any twelve (12) month period, the CEO may revoke the permit. A revocation of a permit may be appealed to the Board of Appeals within fifteen (15) days as an administrative appeal. If a permit is revoked, the chickens and all feed and wastes shall be removed from the property within fifteen (15) days.

**10.3.3.4 Standard for the number and gender of chickens** – Each permit holder is entitled to keep not more than six (6) female chickens. No roosters shall be permitted.

**10.3.3.5 Standards for the chicken coop or house** – The chickens must be housed in a coop or chicken house meeting the following standards:

**10.3.3.5.1** The coop/house must be located in the side or rear yard.

**10.3.3.5.2** The coop must be located at least fifteen (15) feet from any property line and at least seventy-five (75) feet from any residential building on a neighboring lot.

**10.3.3.5.3** The coop/house must be screened from view from a public street or a neighboring residential use by the placement of structure on the lot or by vegetation or a fence at least four (4) feet in height.

**10.3.3.5.4** The coop/house must be weather tight and have a lockable door that is large enough to allow access to the inside of the coop to permit the coop to be cleaned and maintained.

**10.3.3.5.5** The coop/house must provide four (4) square feet of area for each chicken.

**10.3.3.5.6** All windows, vents and other openings other than the door(s) must be screened with wire mesh with openings no larger than one (1) inch.

**10.3.3.5.7** The coop/house must be designed and constructed to be rodent-proof by either elevating it on posts a minimum of two (2) feet or by other methods including the installation of a wire screen with openings no larger than one (1) inch that extends a minimum of 1 foot below the ground surface to prevent the entry of rodents.

**10.3.3.6 Standards for the pen or outside enclosure** – When the chickens are not confined to the chicken coop/house, they must be contained in an outdoor enclosure that is attached to the chicken coop/house or that encompasses the chicken coop/house meeting the following standards:

**10.3.3.6.1** The pen shall located in the side or rear yard.

**10.3.3.6.2** The pen must be located at least fifteen (15) feet from any property line and at least seventy-five (75) feet from any residential building on a neighboring lot.

**10.3.3.6.3** The pen shall be located in a yard space vegetated with grass or other ground cover and consisting of at least one thousand (1,000) square feet.

**10.3.3.6.4** The pen must be screened from view from a public street or a neighboring residential use by the placement of the enclosure on the lot or by vegetation or a fence at least four (4) feet in height.

**10.3.3.6.5** The pen or fenced enclosure shall provide a minimum of twenty (20) square feet of area per bird

**10.3.3.6.6** The perimeter fence for the pen or enclosed area must include a wire screen with openings no larger than one (1) inch that is 6' high and extends a minimum of one (1) foot below the ground surface. Pen or enclosed area must be covered to contain the birds.

**10.3.3.7 Control of Nuisances** – The keeping of chickens shall conform to the following standards:

**10.3.3.7.1** The coop and outside enclosure shall be maintained in a sanitary condition. Droppings, excess food, soiled bedding and other materials shall be removed from the coop and enclosure and shall not be permitted to accumulate.

**10.3.3.7.2** All waste materials shall be stored in rodent-proof containers and either disposed of off-site or composted.

**10.3.3.7.3** Food shall be stored in rodent-proof containers.

**10.3.3.7.4** The chickens shall be fed using feeding containers. Food shall not be spread on the ground. Any excess food on the ground shall be cleaned up.

**10.3.3.7.5** All birds shall be confined in the coop/house at night and the door(s) locked to prevent entry by predators.

**10.3.3.7.6** If the premise harbors rodents or vermin, the property owner or tenant shall be responsible for taking measures to eradicate the pests including on neighboring properties.

**10.3.4 Standards for Commercial Animal Husbandry** The keeping of animals such as horses, cattle, sheep, goats, pigs, bees, and fowl for commercial purposes shall be subject to the following:

**10.3.4.1** The keeping and raising of large animals such as cattle, horses, sheep, goats, pigs and hogs, and llamas that typically weigh more than one hundred (100) pounds at maturity shall require a minimum of eighty thousand (80,000) square feet of land. **10.3.4.2** The keeping and raising of small animals such as sheep, goats, and fowl that typically weigh less than one hundred (100)

pounds at maturity shall require a minimum of forty thousand (40,000) square feet of land. (Amended November 27, 2017 / Effective December 27, 2017)

**10.3.4.3** The processing of animal products to produce value-added products shall require a lot with a minimum area of two hundred thousand (200,000) square feet of land and shall comply with all applicable standards of the Maine Department of Agriculture, Forestry, and Conservation.

**10.3.4.4** Buildings, sheds, feedlots and fenced pens used for the shelter of livestock (such as horses, cattle, sheep, goats and pigs), bee hives, and facilities for the storage of manure or products containing manure shall conform to the setback requirements of the district in which they are located or a minimum of fifteen (15) feet whichever is greater. All facilities for the shelter of livestock or the storage of manure or products containing manure shall be located a minimum of seventy-five (75) feet from any existing residence on an abutting lot.

**10.3.4.5.** All commercial animal husbandry activities and structures including processing facilities and manure storage must be operated and maintained in accordance with Best Management Practices (BMPs) for agriculture including the general BMPs identified in the latest edition of the Maine Department of Agriculture, Forestry and Conservation's Manual of Best Management Practices for Maine Agriculture and any other general or site specific BMPs approved by the Commissioner of the Maine Department of Agriculture, Forestry and Conservation.

**10.3.4.6** The keeping of bees shall conform to the applicable standards of section 10.3.6. (Amended November 27, 2017 / Effective December 27, 2017)

### **10.3.5 Standards for Commercial Agriculture**

The raising of crops and other plants for commercial purposes shall be subject to the following:

**10.3.5.1** Commercial agricultural activities located in a zoning district other than the Rural District shall require a minimum of forty thousand (40,000) square feet of land.

**10.3.5.2** The processing of products to produce value-added products shall require a lot with a minimum area of forty thousand (40,000) square feet of land and shall comply with all applicable standards of the Maine Department of Agriculture, Forestry, and Conservation.

**10.3.5.3** Buildings, sheds, and other structures used for commercial agricultural activities shall conform to the setback requirements of the district in which they are located.

**10.3.5.4** All commercial agricultural activities and structures must be operated and maintained in accordance with Best Management Practices (BMPs) for agriculture including the general BMPs identified in the latest edition of the Maine Department of Agriculture, Forestry and Conservation's Manual of Best Management Practices for Maine Agriculture and any other general or site specific BMPs approved by the Commissioner of the Maine Department of Agriculture, Forestry and Conservation.

**10.3.5.5** All buildings and structures used for the indoor cultivation of plants in the CB, CC, and PIC Districts including greenhouses, indoor cultivation facilities and similar structures must be permanent structures designed and constructed to remain in place year-round. Temporary or seasonal structures for indoor cultivation are not permitted in the CB, CC, and PIC Districts. (Amended March 6, 2018 / Effective April 6, 2018)

**10.3.6 Standards for Beekeeping** The keeping of bees either as Commercial Animal Husbandry or as Accessory Beekeeping shall conform to the following standards: (Amended November 27, 2017 / Effective December 27, 2017)

**10.3.6.1 Permit Required** The keeping of bees shall be allowed only after the property owner or tenant with the written permission of the property owner has obtained a permit from the Code Enforcement Officer (CEO). The CEO shall issue a permit only if all of the following standards are met. The property owner or tenant shall be responsible for demonstrating compliance with the standards both initially and on an ongoing basis. As a condition of granting the permit, the CEO shall be granted reasonable access to the property for the purposes of determining ongoing compliance with the standards or to investigate a complaint.

**10.3.6.2 Revocation of a Permit** The CEO may revoke a permit for the keeping of bees if she/he finds that the property is not in compliance with the standards of this section. Prior to the revocation of a permit, the CEO shall provide the owner/tenant with a notice of violation specifying the specific violations and giving the owner/tenant fifteen (15) days to correct the violations. If the owner/tenant does not correct the violations within this period or if three or more notices of violation have been issued in any twelve month period, the CEO may revoke the permit. A revocation of a permit may be appealed to the Board of Appeals within fifteen (15) days as an administrative appeal. If a permit is revoked, the bees and all related facilities shall be removed from the property within fifteen (15) days.

**10.3.6.3 Number of Hives Permitted** The following limits on the number of hives located on a lot apply only to hives located within two hundred (200) feet of a property line. The lot on which the hives are located shall have a minimum lot area of five thousand (5,000) square feet per hive. Lots with less than ten thousand (10,000) square feet are permitted to have a maximum of two (2) hives provided that all of the standards of this section are met. Lots with more than forty-thousand (40,000) square feet are limited to a maximum of ten (10) hives unless all of the hives are more than two hundred (200) feet from a property line.

**10.3.6.4 Location of Hives on the Lot** All hives shall be located in a quiet area in the side or rear yard; no hives shall be located in the front yard. Each hive shall be located a minimum of ten (10) feet from any property line and a minimum of twenty-five (25) feet from any residential structure on an adjacent lot. No hive shall be located within one hundred fifty (150) feet of a property that has significant pedestrian or public activity such as but not limited to a park, playground, school, daycare center, or recreation center or where any animals are confined or tethered.

**10.3.6.5 Requirements for Hives** Hives shall be placed so that the entrance of the hive directs bees leaving the hive to fly over the lot on which the hive is located. If this is not possible, a flyway barrier at least six (6) feet in height consisting of a fence or dense hedge shall be installed

within five (5) feet of the hive entrance and shall extend at least five (5) feet in both directions. If any hive is located within twenty-five (25) feet of a property line of a lot in residential use, a fence or dense hedge at least six (6) feet high shall be installed or maintained along the property line and shall extend a minimum of twenty (20) feet beyond the hive in each direction.

**10.3.6.6 Water Supply** A supply of fresh water shall be provided and maintained in a location within fifty (50) feet that is accessible to all hives or group of hives.

**10.3.6.7 Disturbance of Hives** Hives shall not be opened, moved, or otherwise disturbed when there is human activity within one hundred fifty (150) feet of the hive on an adjacent lot or on public property.

## **10.4 Kennels and Pet Services**

### **10.4.1 Kennels**

**10.4.1.1** The permanent or temporary housing of dogs for any purpose, including but not limited to breeding, trials, or exhibition, training, grooming, or sheltering stray or lost dogs, shall be limited to enclosed structures constructed of masonry (to at least 4 feet above the finished floor level) to provide for cleanliness, ease of maintenance and noise control.

**10.4.1.2** If outdoor runs are provided, they shall be completely enclosed by a 6-foot fence and shall be paved with cement, asphalt or similar material to provide for cleanliness and ease of maintenance.

**10.4.1.3** Outdoor runs shall be located at least 100 feet from all property lines and at least 200 feet from the nearest dwelling existing or under construction on the date of the kennel's application. The setback shall not apply to the owner's own dwelling.

### **10.4.2 Animal Services**

Animal service care facilities shall comply with the following:

**10.4.2.1** The facility shall provide for the safe and sanitary storage, removal and disposal of solid waste generated on site.

**10.4.2.2** If outdoor runs are provided, they shall be completely enclosed by a 6-foot fence and shall be paved with cement, asphalt or similar material to provide for cleanliness and ease of maintenance. The outdoor run shall be completely screened from the view of abutting buildings.

## **10.5 Home Child Care and Day Care/Nursery Schools**

### **10.5.1 Home Child Care**

All home child care uses shall comply with applicable state regulations and the following:

**10.5.1.1** All outdoor play areas shall be enclosed by a fence of sufficient height and material to provide a safe barrier for children.

**10.5.1.2** An off-street parking area shall be provided for loading and unloading children. Sufficient off-street parking shall be provided for staff and customers.

**10.5.1.3** Any sign shall comply with the sign standards for a home occupation.

**10.5.1.4** Home child care shall be exempt from noise standards, non-residential standards and buffer and screening standards.

## **10.5.2 Child Care Facilities**

All child care facilities shall comply with applicable state regulations and the following:

**10.5.2.1** All outdoor play areas shall be enclosed by a fence of sufficient height and material to provide a safe barrier for children.

**10.5.2.2** Off-street parking and loading areas shall be provided for employees and customers.

## **10.6 Light Manufacturing**

Light manufacturing shall meet the following standards:

**10.6.1** All aspects of the industrial process shall be carried on within the structure.

**10.6.2** Exterior storage of materials shall be limited to an area of 2,000 square feet.

**10.6.3** There shall be no hazardous materials in quantities large enough to cause a public health hazard in case of accidental release.

## **10.7 Outdoor Recreation Facility Lighting**

### **10.7.1 Purpose**

The purpose of this subsection is to establish design and use criteria for all outdoor recreation facility lighting located within the city. This standard is designed to allow the placement of outdoor lighting for nighttime use and create performance requirements to reduce any lighting impacts upon neighboring properties.

### **10.7.2 General Lighting Requirements for Outdoor Recreation Facilities**

**10.7.2.1** All lighting installed for parking areas, buildings and security shall conform to the lighting standards contained in Section 8 of this Ordinance.

**10.7.2.2** All lighting installed to illuminate outdoor recreation facilities for nighttime use shall conform to the following requirements:

**10.7.2.2.1** The maximum height of exterior light fixtures shall be 40 feet, as measured from grade level to the top of the light fixture.

**10.7.2.2.2** All light fixtures shall be shielded and directed onto the recreation area.

### **10.7.3 Hoch Field Light Requirements**

The existing Hoch Field lights may be used and maintained in their present condition according to the following requirements:

**10.7.3.1** The Hoch Field lights shall have no more than 24 scheduled uses annually for Maine School Administrative District # 11 school events and activities or community youth sports activities. The lights shall be used only in the evening and shall be extinguished no later than 10:30 p.m. on Friday and Saturday evenings and shall not light later than 8:30 p.m. on other evenings of the week. Maine School Administrative District # 11 shall transmit an approved schedule of uses planned for the school year which shall be in compliance with Title 9 of the Code of the United States and which shall be transmitted to the City Manager for distribution to the City Council and Mayor during the month of August each year.

**10.7.3.2** Additional uses for a special community event shall be permitted annually on the request of the Superintendent of the Maine School Administrative District # 11 and the approval of at least 5 members of the City Council.

## **10.8 Resource Extraction and Exploration**

**10.8.1** Mineral exploration to determine the nature or extent of mineral resources shall be accomplished by hand sampling, test boring, or other methods which create minimal disturbance of less than 100 square feet of ground surface. All excavations, including test pits and holes, shall be immediately capped, filled or secured by other equally effective measures to restore disturbed areas and to protect the public health and safety.

**10.8.2** Mineral extraction shall comply with the following requirements:

**10.8.2.1** A reclamation plan shall be filed with and approved by the Planning Board/Code Enforcement Officer before a permit is granted. Such plan shall describe in detail, procedures to be undertaken to fulfill the requirements of this Ordinance.

**10.8.2.2** No part of any extraction operation, including drainage and runoff control features, shall be permitted within 100 feet, horizontal distance, of the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, or within 75 feet, horizontal distance, of the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland. Extraction operations shall not be permitted within 75 feet, horizontal distance, of any property line.

**10.8.2.3** The applicant for mineral extraction shall provide written evidence that all applicable state and federal permits have been obtained.

**10.8.2.4** The Planning Board/Code Enforcement Officer may impose conditions as necessary to minimize the adverse impacts associated with mineral extraction operations on surrounding uses and resources and to ensure that the area is adequately reclaimed.

**10.8.2.5** Within 12 months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than 100 cubic yards of materials are removed in any consecutive 12-month period, ground levels and grades shall be established in accordance with the following:

**10.8.2.5.1** All debris, stumps, and similar materials shall be removed for disposal into an approved location, or shall be buried on-site. Only materials generated on-site shall be buried or covered on site.

**10.8.2.5.2** The final graded slope shall be two and one-half to one slope or flatter.

**10.8.2.5.3** Top soil or loam shall be retained to cover all disturbed land areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.

## **10.9 Overnight Accommodations**

The following requirements shall apply to hotels, motels, rental cottages and inns:

**10.9.1** No part of any building shall be closer than 60 feet to a property line

**10.9.2** All required off-street parking shall be located in the side or rear yards.

**10.9.3** Each rental unit shall contain not less than 200 square feet of habitable floor space. Each unit shall include a private bathroom facility.

**10.9.4** Adequate space shall be provided for a resident owner, manager or other responsible staff person.

**10.9.5** The facility shall conform to the applicable requirements of the building and safety codes adopted by the city.

**10.9.6** Any units in motels, hotels, and cottage units with individual kitchens and private bathroom facilities and intended to be rented on a monthly or longer basis, shall be considered to be dwelling units for the purposes of this Ordinance.

## **10.10 Bed and Breakfast Facilities**



**10.10.1** The facility shall conform to the applicable requirements of the building and safety codes adopted by the city.

**10.10.2** Each rental room shall have at least 120 square feet of habitable space.

**10.10.3** There shall be at least one bathroom facility provided for rental rooms, separate from the bathroom for the dwelling unit.

**10.10.4** All required parking spaces shall be located on the side or rear yards. In addition to the parking spaces required by this Ordinance, two spaces shall be reserved for the owners or operators of the business.

### **10.11 Roadside Stand/Farm Produce**

Farm stands at which at least 50% of the produce comes from the property where the stand is located shall be allowed in all districts. Any structures associated with the stand shall meet the required front setback for the district. All parking shall be located no closer than 10 feet from the edge of the traveled way. All signs shall conform to this Ordinance and state regulations.

### **10.12 Adult Business Establishments**

**10.12.1** Adult business establishments shall meet the requirements contained in the City Code Title 5 Chapter 10 Sections 501 through 504, and the applicable requirements of this Ordinance.

**10.12.2** An applicant for an adult business establishment shall obtain approval from the Planning Board prior to obtaining a license from the City Council. The Planning Board may condition its approval upon obtaining a license from the City Council.

### **10.13 Windmills**

#### **10.13.1 Application Requirements**

Windmill applications shall contain all the applicable submissions required in this Ordinance and the following:

**10.13.1.1** Description of the project including specific information on the type, size, rotor material, rated power output, performance, safety and noise characteristics of the system.

**10.13.1.2** Scaled drawing showing the height of the windmill and all structures within 300 feet of the structure.

**10.13.1.3** Structural drawings from the manufacturer or engineer showing foundation and anchor design.

**10.13.1.4** Evidence that the provider of electrical service of the property has been notified of the intent to install an interconnected electricity generator.

### **10.13.2 Dimensional Requirements**

**10.13.2.1** The minimum site area for a small windmill shall be 20,000 square feet.

**10.13.2.2** The minimum site area for a mid-size windmill shall be 40,000 square feet.

**10.13.2.3** The minimum site area for a large windmill shall be 80,000 square feet.

**10.13.2.4** The maximum height of a windmill located in the Central Business District, High Density Residential District, Residential Growth District, and the Professional/Residential District shall be 40 feet.

**10.13.2.5** The windmill shall be set back a minimum of 110% of the system height from all adjoining property lines, and 150% of the system height from any structure on adjoining property.

### **10.13.3 Design Requirements**

**10.13.3.1** All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.

**10.13.3.2** The minimum distance between the ground and any wind turbine blades of a free standing windmill shall be 25 feet as measured at the lowest arc of the blades.

**10.13.3.3** All onsite electrical wires associated with the windmill shall be installed underground except for connections to the utility transmission poles, towers and lines.

**10.13.3.4** The windmill shall not exceed 55 dBA as measured at the property line, except during short-term events such as severe wind storms.

**10.13.3.5** The windmill shall be equipped with over-speed controls.

**10.13.3.6** The tower shall be a monopole without guy wires.

**10.13.3.7** No tower shall be lighted unless required by the FAA.

**10.13.3.8** A windmill which is not generating electricity for 18 consecutive months shall be deemed abandoned and shall be dismantled and removed from the property by the owner within 120 days of receipt of notice from the Code Enforcement Officer.

### **10.14 Free-Standing Commercial Kiosks**

**10.14.1** All free-standing commercial kiosks less than 100 square feet in area may be located in existing parking areas and on lots without having to meet the minimum lot-size requirements for a primary building or use.

**10.14.2** All free-standing commercial kiosks having more than 100 square feet of area shall conform to all the applicable dimensional requirements for a principal building or use.

**10.14.3** Kiosks shall be designed to safely accommodate traffic and be incorporated into the traffic flow pattern of the area. Traffic entering and exiting the kiosk shall be directed through the use of signs, striping, raised islands, or similar features.

**10.14.4** The area dedicated for the kiosk, including all queuing areas, shall not reduce the required parking spaces necessary for adjacent uses.

**10.14.5** The kiosk shall not have a separate entrance or exit from the road. The existing entrances and exits to the area shall be used.

## **10.15 Automobile, Truck and Equipment Sales and Service**

**10.15.1** This section shall apply to all businesses engaged in sales or service of vehicles including boats, recreational vehicles, trucks, and heavy equipment.

**10.15.2** All repair and body work shall occur within an enclosed building.

**10.15.3** No inoperable vehicles or vehicle parts shall be stored or displayed within the front yard.

**10.15.4** No permit shall be granted within 300 feet of a well that serves as a private drinking water supply, and in the case of a well that serves as a public drinking water supply, within the greater of:

**10.15.4.1** 1,000 feet; and

**10.15.4.2** The source water protection area of the well if mapped by the Department of Health and Human Services as described under 30-A M.R.S.A. Section 2001, Subsection 20-A.

## **10.16 Two/Multi-Family Dwelling Units**

### **10.16.1 New Two-Family Dwellings**

New two-family dwellings shall meet all the lot and dimensional requirements of the zone in which they are located and the following criteria:

**10.16.1.1** Except in the Downtown Area as defined, and the Cobbossee Corridor District with Shoreland Overlay, the minimum road frontage shall not be less than 150 feet.

**10.16.1.2** Any two-family dwellings located on anything other than a designated local road shall provide on-site vehicle turn-around.

**10.16.1.3** Except in the Downtown Area as defined, or the Cobbossee Corridor District, a minimum of 2 parking spaces shall be provided for each dwelling unit. In the Downtown Area as

defined and the Cobbossee Corridor District, the owner shall submit evidence that parking is available within a reasonable distance of the two-family dwelling.

**10.16.1.4** Except in the Downtown Area as defined and the Cobbossee Corridor District, no parking area shall be located in the front yard.

### **10.16.2 Two-Family Conversion**

Any existing structure to be converted or expanded into a two-family dwelling may be converted without meeting lot area or dimensional requirements for the zone in which they are located, but shall meet the following requirements:

**10.16.2.1** Except in the Downtown Area as defined, and the Cobbossee Corridor District with Shoreland Overlay, the minimum road frontage shall be 48 feet.

**10.16.2.2** Except in the Downtown Area as defined, and the Cobbossee Corridor District, a minimum of 2 parking spaces per dwelling unit shall be required. In the Downtown Area as defined and the Cobbossee Corridor District, the owner shall submit evidence that parking is available within a reasonable distance of the two-family dwelling.

**10.16.2.3** Except in the Downtown Area as defined, and the Cobbossee Corridor District, no parking shall be located in the front yard.

**10.16.2.4** Except in the Downtown Area as defined, and the Cobbossee Corridor District with Shoreland Overlay, a minimum of 20% of the lot shall remain as open space to be used as a yard or garden.

### **10.16.3 New Multi-Family Dwellings**

All new multi-family dwellings shall meet the lot, dimensional, and density requirements for the zone in which they are located and the following criteria:

**10.16.3.1** Except in the Downtown Area as defined and the Cobbossee Corridor District with Shoreland Overlay, the minimum road frontage shall not be less than 200 feet.

**10.16.3.2** The minimum side setback shall not be less than 30 feet except in the Cobbossee Corridor District. Refer to Section 7.7 for setback requirements.

**10.16.3.3** Except in the Downtown Area as defined, and the Cobbossee Corridor District with Shoreland Overlay, the minimum rear setback shall not be less than 30 feet.

**10.16.3.4** Multi-family developments involving more than one detached structure shall conform to the requirements for clusters except in the Cobbossee Corridor District.

**10.16.3.5** Except in the Downtown Area as defined, and the Cobbossee Corridor District, a minimum of 2 parking spaces shall be provided for each dwelling unit. In the Downtown Area as

defined, and the Cobbossee Corridor District, the owner shall submit evidence that parking is available within a reasonable distance of the multi-family dwelling.

**10.16.3.6** Except in the Downtown Area as defined and the Cobbossee Corridor District, no accessory building or parking area shall be located in the front yard.

**10.16.3.7** All parking spaces, driveways and access ways shall be paved, except in the Cobbossee Corridor District where alternative porous pavements and structural grass systems are allowed with the approval of the city.

**10.16.3.8** Common trash receptacles shall be provided.

**10.16.3.9** Except in the Downtown Area as defined and the Cobbossee Corridor District, a minimum open space area of 1,000 square feet per dwelling unit consisting of a yard, garden or playground area shall be provided.

#### **10.16.4 Multi-Family Conversion**

Any existing structure to be converted or expanded into a multi-family dwelling shall meet all the dimensional, density and performance standards for new multi-family dwellings.

#### **10.16.5 Conversion to Single-Family Use or Multi-family Structures With Fewer Units**

Any existing two-family or multi-family structure may be converted to single family use in any district allowing single-family uses, or to a multi-family structure with fewer units, subject to the following criteria:

**10.16.5.1** The structure, including any modifications proposed as part of the conversion application, meets all applicable dimensional requirements, performance standards, building code and life safety code requirements for the new use; and

**10.16.5.2** The actual use of the structure, as of the approval date or upon completion of any proposed modifications, will be for the new use.

**10.16.5.3** The Code Enforcement Officer shall issue a permit to the property owner reflecting the approved change to the new use. A certificate reflecting the change in use shall be prepared by the Code Enforcement Officer in a form suitable for recording, and shall be recorded at the Kennebec County Registry of Deeds within 30 days after approval. An approved application for conversion to the new use under this paragraph shall terminate the property owner's right to continue any existing nonconforming use of the property concerned for two-family or multi-family use. In districts allowing two-family or multi-family use, such uses may be resumed only upon approval of an application to the Code Enforcement Office or Planning Board under the provisions of this Section. A change in use to the new use under this paragraph shall constitute a change in use for purposes of the city's Land Use Ordinance, building codes and life safety codes only.

### **10.17 Manufactured Housing and Manufactured Housing Parks (Excluding Modular Housing)**

### **10.17.1 Manufactured Housing Not in a Manufactured Housing Park**

**10.17.1.1** Manufactured housing not in a manufactured housing park shall meet all of the requirements of this Ordinance for single-family dwellings.

**10.17.1.2** All manufactured housing shall be installed to the “Manufactured Home Installation Standard” developed by the State of Maine Manufactured Housing Board.

**10.17.1.3** All mobile homes shall comply with the safety standards in the National Manufactured Housing Construction and Safety Standards Act of 1974, United States Code, Title 42, Chapter 70.

**10.17.1.3.1** Units constructed prior to enactment of these standards shall be made to conform to the standard. A written statement shall be required from a professional engineer indicating that the mobile home has been upgraded and is in compliance with this standard.

**10.17.1.4** No manufactured housing shall be located within the flood plain.

**10.17.1.5** Manufactured housing shall have at least 750 square feet of enclosed year-round living area.

**10.17.1.6** Manufactured housing shall be a minimum of 14 feet wide.

**10.17.1.7** Manufactured housing shall have a minimum roof pitch of 3 in 12 and covered with asphalt or fiberglass shingles or other materials used for residential roofing.

**10.17.1.8** Manufactured housing shall have siding that is residential in appearance (including clapboard siding in wood or vinyl, shingles or shakes, board and batten and other sidings commonly found on site-built buildings).

### **10.17.2 Manufactured Housing Parks**

Manufactured housing parks shall meet state requirements for mobile home parks and all of the following criteria:

**10.17.2.1** Manufactured housing parks shall meet all requirements for a residential subdivision, shall conform to all applicable provisions of this Ordinance, and shall be considered residential districts subject to all the restrictions applicable in a residential district as stated in this Ordinance.

**10.17.2.2** The minimum area of land within the park shall be five acres.

**10.17.2.3** The manufactured housing lot size shall meet the minimum lot size as required by the Manufactured Housing Board by rule under 10 M.R.S.A. Section 9005-A.

**10.17.2.4** The minimum road frontage for each lot shall be 65 feet. This requirement may be met by road frontage within the manufactured housing park.

**10.17.2.5** The minimum setbacks for each unit shall be a 20-foot front setback and a 10-foot side and rear setback.

**10.17.2.6** Each manufactured housing unit in a park shall conform to the requirements of 10.17.1.

**10.17.2.7** All manufactured housing in a manufactured housing park shall be connected to a public sewer system, if available, or to a central collection and treatment system, in accordance with the Maine State Plumbing Code.

**10.17.2.8** A continuous landscaped area, not less than fifty feet in width containing evergreen shrubs, trees, fences, walls or any combination which forms an effective visual barrier of not less than six feet in height, shall be located in all exterior lot lines in the park, where the per-acre density of homes within the manufactured housing park is at least two times greater than:

**10.17.2.8.1** The density of residential development on immediately adjacent parcels of land, or

**10.17.2.8.2** If the immediately adjacent parcels of land are undeveloped, the maximum net residential density permitted by applicable municipal ordinances or State law.

**10.17.2.8.3** Driveways shall be kept open to provide visibility for vehicles entering and leaving the park.

**10.17.2.9** All permanent additions (decks, garages, storage areas, etc.) shall be compatible in design, appearance and materials with the manufactured housing unit.

**10.17.2.10** Each manufactured housing lot shall be marked with a lot number that is positioned so as to be easily seen year-round from the street.

**10.17.2.11** No manufactured housing park shall be located within the flood plain.

## **10.18 Automobile Junkyard or Recycling Facility**

**10.18.1** No person or landowner shall allow any junkyard or recycling facility to be established, operated, maintained or suffered to exist without first obtaining a permit pursuant to this Ordinance and a non-transferable land use permit issued by the City Council in accordance with State licensing and local requirements, and complying with the following provisions:

**10.18.2** Junkyards shall be located a minimum of 100 feet from the edge of the right-of-ways; and shall be set back 100 feet from all side and rear lot lines.

**10.18.3** Junkyards shall be located a minimum of 300 feet from any public park, facility, or grounds, public bathing beach, school, church, or cemetery.

**10.18.4** No motor vehicles shall be located on a sand and gravel aquifer or wetland, as shown in the Comprehensive Plan, or within the 100-year flood plain as mapped by the Federal Emergency Management Agency.

**10.18.5** A motor vehicle with an intact engine or motor shall not be stored within 100 feet of any body of water or freshwater wetland, as defined by 38 M.R.S.A. Section 436-A, Subsection 5.

**10.18.6** No permit shall be granted within 300 feet of a well that serves as a private water supply, and in the case of a well that serves as a public drinking water supply, within the greater of:

**10.18.6.1** 1,000 feet; and

**10.18.6.2** The source water protection area of the well if mapped by the Department of Health and Human Services as described under 30-A M.R.S.A. Section 2001, Subsection 20-A.

This prohibition shall not include a private well that serves only the facility or the owner's or operator's abutting residence. This prohibition shall not apply to wells installed after the effective date of this Subsection if the facility has already received a permit under these regulations.

**10.18.7** The facility shall be screened from ordinary view of the adjoining public and/or private property. Such screening may be accomplished by natural or manmade objects, plantings, or properly constructed fences, any of which shall completely screen the facility from ordinary view throughout the entire calendar year. Such screening shall complement the colors, textures, and tones found in the surrounding area. Certain facilities may be required to provide internal screening because of size and topography.

**10.18.7.1** Ordinary view shall be based on line-of-sight determination of the public and adjoining property owners' buildings. Line-of-sight views from adjoining property buildings shall be taken from the highest vantage point in normal, everyday use by occupants of such buildings, not to exceed 18 feet from ground level.

**10.18.7.2** Where buildings and/or fences are employed as screening for distances of one hundred lineal feet or more, native evergreen plantings shall be used, as specified by the Maine Forest Service, which attain a height of 6 feet or greater at maturity. Such plantings shall be a minimum of 3 feet high at planting, and planted at a rate of 4 per 100 lineal feet, approximately 25 feet on center (with an allowance of 10 feet so as to allow an element of randomness over the course of the plantings).

**10.18.8** No motor vehicles or major parts may be stacked or piled on top of each other so as to protrude above the screening. In any event, stacking shall not exceed twelve feet above ground level.

**10.18.9** Stacking and/or parking of motor vehicles shall be arranged in a grid fashion which employs, at maximum, either a 70-foot square pattern or a 25-foot by 200-foot block pattern. Fourteen-foot aisle spaces shall be provided for fire fighting apparatus access to such squares or blocks. Parking along screening in a continuous manner shall be permitted.

**10.18.10** Fluids from a vehicle may not be permitted to flow or be discharged into or onto the ground.



**10.18.11** All junk and salvage materials shall be stored within the screened/fenced areas and the operation shall be conducted in such a manner as to prevent unsightliness to the adjacent areas.

**10.18.12** No open burning of salvage material or junk shall be permitted on the premises. Waste fluids and unusable materials shall be disposed of in an environmentally sound manner.

**10.18.13** The facility shall be at all times maintained in a sanitary condition. No garbage or other waste liable to give off a foul odor or attract vermin shall be kept on the property; nor shall any refuse of any kind be kept in said premises.

**10.18.14** No junk shall be delivered to the facility on Sundays, legal holidays, or before the hour of 6:00 a.m. or after the hour of 9:00 p.m. on other days, except that special permission may be granted by a member of the Gardiner Police Department in the event of extenuating circumstances.

**10.18.15** Any equipment used to crush motor vehicles shall only be operated within the area enclosed by screening of junked motor vehicles. No such equipment shall be operated on Sundays, legal holidays, or before the hour of 6:00 a.m. or after the hour of 9:00 p.m. on other days, except that special permission may be granted by a member of the Gardiner Police Department in the event of extenuating circumstances.

## **10.19 Wireless Telecommunications Facilities**

**10.19.1** This subsection applies to all construction and expansion of wireless telecommunications facilities, including communication facilities and towers, except as provided in 10.19.2.

**10.19.2** The following are exempt from the provisions of this Ordinance:

**10.19.2.1** Wireless communication facilities for telecommunications by public officials.

**10.19.2.2** Amateur (ham) radio stations licensed by the Federal Communications Commission (FCC).

**10.19.2.3** Parabolic antennas less than 7 feet in diameter that are an accessory use of the property.

**10.19.2.4** Maintenance, repair or reconstruction of a wireless telecommunications facility and related equipment, provided that there is no change in the height or any other dimension of the facility.

**10.19.2.5** Temporary wireless telecommunications facilities, in operation for a maximum period of 180 days.

**10.19.2.6** An antenna that is an accessory use to a residential dwelling unit.

## **10.19.3 Review Application**

Wireless telecommunications facilities, including expansions of existing facilities, shall comply with the application requirements of this Ordinance and shall include the following additional information:

**10.19.3.1** A copy of the FCC license for the facility, or a signed statement from the owner or operator of the facility attesting that the facility will comply with FCC regulations.

**10.19.3.2** A USGS 7.5 minute topographic map showing the current location of all structures and wireless telecommunications facilities more than 150 feet in height above ground level, except antennas located on roof tops, within a 5-mile radius of the proposed facility. This requirement shall be deemed to have been met if the applicant submits current information (i.e., within thirty days of the date the application is filed) from the FCC Tower Registration Database.

**10.19.3.3** A site plan prepared and certified by a professional engineer registered in Maine indicating the location, type and height of the proposed facility, antenna capacity, on-site and abutting off-site land uses, means of access and setbacks from property lines. The site plan shall include certification by a professional engineer registered in Maine that the proposed facility complies with all American National Standards Institute (ANSI) and other applicable technical codes.

**10.19.3.4** Elevation drawings of the proposed facility, and any other proposed structures, showing height above ground level.

**10.19.3.5** A landscaping plan indicating the proposed placement of the facility on the site; location of existing structures, trees, and other significant site features; the type and location of plants proposed to screen the facility; the method of fencing; the color of the structure, and the proposed lighting method.

**10.19.3.6** Photo simulations of the proposed facility taken from perspectives determined by the Planning Board, or its designee, during the pre-application review. Each photo shall be labeled with the line of sight, elevation, and with the date taken imprinted on the photograph. The photos shall show the color of the facility and method of screening.

**10.19.3.7** A written description of how the proposed facility fits into the applicant's telecommunications network. This submission requirement shall not require disclosure of confidential business information.

**10.19.3.8** Evidence demonstrating that no existing building, site, or structure can accommodate the applicant's proposed facility, which may consist of any one or more of the following:

**10.19.3.8.1** Evidence that no existing facilities are located within the targeted market coverage area as required to meet applicant's engineering requirements.

**10.19.3.8.2** Evidence that existing facilities do not have sufficient height or cannot be increased in height at a reasonable cost to meet the applicant's engineering requirements.

**10.19.3.8.3** Evidence that existing facilities do not have sufficient structural strength to support applicant's proposed antenna and related equipment. Specifically:

**10.19.3.8.3.1** Planned, necessary equipment would exceed the structural capacity of the existing facility, considering the existing and planned use of those facilities, and these existing facilities cannot be reinforced to accommodate the new equipment.

**10.19.3.8.4** The applicant's proposed antenna or equipment would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna or equipment on the existing facility would cause interference with the applicant's proposed antenna.

**10.19.3.8.5** Existing or approved facilities do not have space on which planned equipment can be placed so it can function effectively.

**10.19.3.9** For facilities existing prior to the effective date of this Ordinance, evidence that the fees, costs, or contractual provisions required by the owner in order to share or adapt an existing facility are unreasonable. Costs exceeding the pro rata share of a new facility development are presumed to be unreasonable. This evidence shall also be satisfactory for a tower built after the passage of this Ordinance or amendment thereto.

**10.19.3.10** A signed statement stating that the owner of the wireless telecommunications facility and his or her successors and assigns agree to:

**10.19.3.10.1** Respond in a timely, comprehensive manner to a request for information from a potential co-location applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;

**10.19.3.10.2** Negotiate in good faith for shared use of the wireless telecommunications facility by third parties;

**10.19.3.10.3** Allow shared use of the wireless telecommunications facility if an applicant agrees in writing to pay reasonable charges for co-location;

**10.19.3.10.4** Require no more than a reasonable charge for shared use, based on community rates and generally accepted accounting principles. This charge may include but is not limited to a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction, financing, return on equity, depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of the above costs by the facility owner shall be accomplished at a reasonable rate, over the useful life span of the facility.

**10.19.3.11** A form of surety approved by the Planning Board to pay for the costs of removing the facility if it is abandoned.

## **10.19.4 Standards**

**10.19.4.1** If an applicant proposes to locate a new wireless telecommunications facility on municipal property, or expand an existing facility on municipal property, the applicant shall show the following:

**10.19.4.1.1** The proposed location complies with applicable municipal policies and ordinances.

**10.19.4.1.2** The proposed facility will not interfere with the intended purpose of the property.

**10.19.4.1.3** The applicant has adequate liability insurance and a lease agreement with the municipality that includes reasonable compensation for the use of the property and other provisions to safeguard the public rights and interests in the property.

**10.19.4.2** A new or expanded wireless telecommunications facility and related equipment shall be designed and constructed to accommodate future co-location of at least three additional wireless telecommunications facilities or providers. Co-location shall not be considered an expansion.

**10.19.4.3** The maximum height of new or expanded wireless telecommunications facilities shall be 195 feet. The facility shall be designed to collapse in a manner that does not harm other property.

**10.19.4.4** A new or expanded wireless telecommunications facility shall comply with the setback requirements set forth in the City of Gardiner Land Use Ordinance, or be set back 105% of its height from all property lines, whichever is greater. The setback may be satisfied by including the areas outside the property boundaries if secured by an easement. An antenna shall be exempt from the setback requirement if it extends no more than 5 feet horizontally from the edge of the structure to which it is attached, and it does not encroach upon an abutting property.

**10.19.4.5** The base of a new or expanded wireless telecommunications facility shall be screened, with plants, from view by abutting properties, to the maximum extent practicable. Existing plants and natural land forms on the site shall also be preserved to the maximum extent practicable.

**10.19.4.6** A new or expanded wireless telecommunications facility shall be fenced with a secured perimeter fence of a height of 8 feet to discourage trespass on the facility and to discourage climbing on any structure by trespassers.

**10.19.4.7** A new or expanded wireless telecommunications facility shall be illuminated as necessary to comply with FAA or other applicable state, federal and local requirements or Site Plan Review conditions. Security lighting may be used as long as it is shielded to be down-directional to retain light within the boundaries of the site, to the maximum extent practicable.

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

**10.19.4.9** A new or expanded wireless telecommunications facility shall comply with the current Electronic Industries Association/ Telecommunications Industries Association (EIA/TIA) 222

Revision Standard entitled "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures."

**10.19.4.10** Except during construction, repair, or replacement, operation of a backup power generator at any time during a power failure and testing of a back-up generator between 8 a.m. and 9 p.m. are exempt from existing municipal noise standards.

#### **10.19.5 Standard Conditions of Approval**

**10.19.5.1** The following standard conditions of approval shall be a part of any approval issued by the Planning Board. Reference to the conditions of approval shall be clearly noted on the final approved site plan. The owner of the wireless telecommunications facility and his or her successors and assigns agree to:

**10.19.5.1.1** Respond in a timely, comprehensive manner to a request for information from a potential co-location applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response.

**10.19.5.1.2** Negotiate in good faith for shared use of the wireless telecommunications facility by third parties.

**10.19.5.1.3** Allow shared use of the wireless telecommunications facility if an applicant agrees in writing to pay reasonable charges for co-location.

**10.19.5.1.4** Require no more than a reasonable charge for shared use of the wireless telecommunications facility, based on community rates and generally accepted accounting principles. This charge may include, but is not limited to, a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction and maintenance, financing, return on equity, depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of the above costs by the facility owner shall be accomplished at a reasonable rate, over the life span of the useful life of the wireless telecommunications facility.

#### **10.19.6 Abandonment**

**10.19.6.1** A wireless telecommunications facility that has not operated for a continuous period of 12 months shall be considered abandoned. The Code Enforcement Officer shall notify the owner of an abandoned facility in writing and order the removal of the facility within 90 days of receipt of a written notice. The owner of the facility shall have 30 days from the receipt of the notice to demonstrate to the Code Enforcement Officer that the facility has not been abandoned.

**10.19.6.2** If the Owner fails to show that the facility has not been abandoned, the owner shall have 60 days to remove the facility. If the facility is not removed within this time period, the municipality may remove the facility at the owner's expense. The owner of the facility shall pay all site reclamation costs deemed necessary and reasonable to return the site to its pre-construction condition, including the removal of roads, and reestablishment of vegetation.

**10.19.6.3** If a surety has been given to the municipality to ensure removal of the facility, the owner of the facility may apply to the Planning Board for release of the surety when the facility and related equipment are removed to the satisfaction of the Planning Board.

## **10.20 Public Paths/Trails**

**10.20.1** A public path shall not be considered a principal use of land. All public paths shall be reviewed and approved in conformance with this Ordinance.

### **10.20.2 Standards**

**10.20.2.1** Public paths shall be set back at least 75 feet from the normal high-water line of water bodies, tributary streams, or the upland edge of a wetland unless no reasonable alternative exists as determined by the Planning Board. If no reasonable alternative exists, the Planning Board may reduce the setback requirement to no less than 50 feet. Notwithstanding this paragraph, public paths may be located nearer than 50 feet to the normal high water line of a water body, tributary stream, or wetland in the following circumstances:

**10.20.2.1.1** A public path located within the Central Business District, Cobbossee Corridor District, Shoreland Overlay or Shoreland Overlay Limited Residential shall be located a minimum of 25 feet from the normal high-water line of a water body or the upland edge of a wetland except for water crossings, and/or existing bases, such as discontinued railway bed corridors, berms, dikes, parking lots or industrial sites, where paths can be located less than 25 feet from the normal high-water line or the upland edge of a wetland. In all other shoreland districts, paths shall be a minimum of 75 feet from the normal high-water line of a water body or the upland edge of a wetland except for water crossings and/or existing bases, such as discontinued railway bed corridors, berms dikes, parking lots or industrial sites, where paths can be located less than 75 feet from the normal high-water line or the upland edge of a wetland. Applicants for path construction projects shall be required to obtain all applicable state and, if necessary, federal permits.

**10.20.2.1.2** When a path is permitted within the setback area, any significant areas of exposed mineral soil present between the path and the water body or wetland shall be planted with native vegetation or be otherwise stabilized to prevent erosion and protect water quality.

**10.20.2.1.3** Path spurs, no greater than 6 feet in width, may be established at distances no less than 500 linear feet apart. Clearing of vegetation for a path spur shall not exceed 250 square feet per 25 feet of spur length. Path spurs that extend to the shoreline shall not include any structural development except that necessary for shoreline stabilization or path hardening, and except for the placement of a bench or similar object for sitting purposes. No path spur shall be permitted on sustained ground slopes of greater than 15%.

**10.20.2.1.4** Path surfaces shall be paved, graveled, mulched or otherwise stabilized/surfaced to prevent erosion of surface materials. Path banks and side slopes steeper than a 50% slope, and retaining walls greater than 4 feet in height, shall be designed by a professional engineer, and shall

be stabilized in accordance with the provisions for erosion and sedimentation control contained in state environmental regulations.

**10.20.2.2** Water access spurs from a public path shall be permitted, and may extend to boat ramps, docks, piers, marinas, or other water access facilities located within the setback area. No more than one such spur may be constructed per 500 linear feet of public path, as measured along the main route of the public path. No water access spur shall be constructed which requires clearing of more than 750 square feet of existing vegetation.

**10.20.2.3** All appurtenances and accessory structures to a public path shall be located outside of the setback area, provided that fences, benches, signs, waste receptacles and necessary lighting may be located on or adjacent to public path segments located within the setback area.

**10.20.2.4** Public paths shall not be constructed in a Resource Protection District established in order to protect high or moderate value waterfowl habitat, as identified by the Department of Inland Fisheries and Wildlife.

**10.20.2.5** Public paths shall not exceed 14 feet in width, provided that the Planning Board may approve a greater width based upon a demonstrated special need related to the intended use of the path.

**10.20.2.6** In constructing a public path, existing overhead tree canopies shall be maintained to the extent practicable.

**10.20.2.7** The grade of public paths shall not exceed 20% for more than 100 feet in length of continuous path. Within the setback area from a water body or wetland, the grade of public paths shall not exceed 10%.

**10.20.2.8** Public paths shall be constructed to prevent erosion and minimize sedimentation of water bodies and wetlands. The Planning Board may require planting and maintenance of vegetation that is necessary to prevent or minimize erosion or sedimentation.

**10.20.2.9** Earth-moving activities for construction, alteration or repair of public paths shall meet the requirements for earth moving activities of this Ordinance.

**10.20.2.10** Public paths shall be exempt from all off-street parking requirements.

**10.20.2.11** No motorized vehicles shall be permitted on public paths, except for wheelchairs, maintenance vehicles and emergency vehicles.

## **10.21 Ruins**

No owner or occupant of any land in any district shall permit ruins to be left. Within one year from the date of disaster, the owner or occupant shall remove the ruins to clear ground. However, subject to Planning Board approval, ruins within the Cobbossee Corridor District adding visual, historic and cultural value shall be exempt.

## **10.22 Nuclear Facilities**

The following uses shall be prohibited within all districts of the city: nuclear power generating facility, nuclear energy center, nuclear-powered facilities, nuclear fuel enrichment, reprocessing, waste storage or disposal facility, and use of recycled plutonium.

## **10.23 Open Space Design**

### **10.23.1 Purpose:**

The purpose of these provisions is to allow for new concepts of development where variations of design may be allowed, if the net residential density is no greater than is permitted in the area in which the development is proposed. Notwithstanding other provisions of this Ordinance relating to dimensional requirements, the Planning Board, in reviewing and approving proposed residential developments, may modify said provisions related to dimensional requirements to permit innovative approaches to housing and environmental design in accordance with the following standards:

### **10.23.2 Design Requirements**

**10.23.2.1** The open space design development shall meet all the requirements for a subdivision and other applicable provisions of this Ordinance.

**10.23.2.2** Each lot, proposed building site and building shall be an element of an overall plan for the site development. Only developments having a total site plan for structures shall be considered. The developer shall illustrate the placement of buildings and the treatment of spaces, roads, services, and parking and in so doing, shall take into consideration all requirements of this Subsection and of other applicable sections of this Ordinance.

**10.23.2.3** The minimum land area necessary for an open space design is 5 acres of suitable land.

**10.23.2.4** Any reduction in lot size, density, setbacks or standards which are part of meeting the design criteria of this Ordinance shall be approved by the Planning Board and shall not require a variance.

**10.23.2.5** The area suitable for development shall be calculated by subtracting the following: wetlands, rivers, streams, brooks, stormwater drainage features, resource protection district areas, areas within the 100-year floodplain and areas within roads and other rights-of-way.

**10.23.2.6** To determine the maximum number of dwelling units or structures permitted on a tract of land, the land suitable for development shall be divided by the minimum lot size required in the district in which it is located.

**10.23.2.7** Lots served by a public sewer system and lots served by an individual or cluster subsurface waste water system may be reduced to 20,000 square feet.



**10.23.2.8** The total area of common land within the development shall equal or exceed the sum of the areas by which any building lots are reduced below minimum lot size requirements.

**10.23.2.9** Every building lot reduced in size below the amount required shall be within 1,000 feet of common land.

**10.23.2.10** No individual lot or dwelling unit shall have direct vehicular access onto a public road existing at the time of the development.

**10.23.2.11** Shore frontage shall not be reduced below the minimum required in the applicable Shoreland Zoning District.

**10.23.2.12** Where the development abuts a body of water, a usable portion of the shoreline, and reasonable access to it, shall be part of the common land.

**10.23.2.13** Buildings shall be oriented with respect to scenic vistas, natural landscape features, topography and natural drainage areas, in accordance with an overall plan for the site development.

**10.23.2.14** The location of subsurface wastewater disposal systems and an equivalent reserve area for replacement systems shall be shown on the plan. The reserve area shall be restricted so as not to be built upon.

### **10.23.3 Requirements for Open Space Areas**

**10.23.3.1** The areas selected for open space shall be based upon the requirements of this subsection and the overall design plan for the development. Open space areas shall be selected based upon the following priorities:

**10.23.3.1.1** Existing recreational areas or trails.

**10.23.3.1.2** Scenic areas as identified by the city and the Comprehensive Plan.

**10.23.3.1.3** Existing agricultural fields, pastures, or orchards.

**10.23.3.1.4** Significant wildlife and plant habitat areas.

**10.23.3.1.5** Archeological or historic sites.

**10.23.3.1.6** Existing undeveloped forest areas.

**10.23.3.2** All open space areas shall be designed as continuous tracts of land. Narrow strips of land or collections of small tracts shall not be permitted unless designed as part of a trail system connecting larger parcels.

**10.23.3.3** The open space land may utilize or feature areas designated as unsuitable for development; however, in no case shall land unsuitable for development; be counted as the required open space area.

#### **10.23.4 Dedication and Maintenance of Common Open Spaces and Facilities**

**10.23.4.1** Common open space shall be dedicated upon approval of the project. There shall be no further subdivision of this land, which shall be used only for noncommercial recreation, agriculture or conservation. However, easements for public utilities or utility structures may be permitted.

**10.23.4.2** The common open space shall be shown on the development plan with the notation on the face thereof to indicate:

**10.23.4.2.1** The common open space shall not be used for future building lots.

**10.23.4.2.2** Any part or all of the common open space proposed to be dedicated for acceptance by the city.

**10.23.4.3** If any or all of the common open space is to be reserved for use by the residents, the by-laws of the homeowners association shall specify maintenance responsibilities, which shall be submitted to the Planning Board for approval.

**10.23.4.4** Covenants for mandatory membership in the association, setting forth the owners' rights and interest and privileges in the association and the common land, shall be reviewed by the Planning Board and included in the deed for each lot.

**10.23.4.5** The association may levy annual charges against all property owners to defray the expenses connected with the maintenance of open space, other common and recreational facilities and town assessments.

#### **10.23.5 Density Bonus**

**10.23.5.1** The number of dwelling units may be increased by 20% over the number of units allowed in the district in which the development is located provided that at least one of the following conditions is met:

**10.23.5.1.1** At least 10% of the dwelling units are affordable housing as defined by 30-A M.R.S.A. Section 4301.

**10.23.5.1.2** Common shoreland with access to the water is available for the use of the general public.

**10.23.5.1.3** Common land which includes at least one of the following: parks, trails, recreation facilities or ponds in excess of 5 acres, is available for use by the general public.

**10.23.5.2** The Planning Board shall incorporate the applicant's proposal for the density bonus as a condition of the subdivision plan. The proposal shall be reviewed by the City Manager and revisions incorporated into the proposal based upon the manager's review. The city may set conditions on the density bonus proposal to ensure that the intent of this Ordinance is followed.

## **10.24 Signs**

### **10.24.1 Purpose**

The purpose of the sign standards is to promote and protect the public health, welfare and safety by regulating existing and proposed outdoor advertising, outdoor advertising signs, and outdoor signs of all types; to protect property values, enhance and protect the physical appearance of the community, preserve the scenic and natural beauty and provide a more enjoyable and pleasing community; to reduce sign or advertising distractions and obstructions that may contribute to traffic accidents, reduce hazards that may be caused by signs overhanging or projecting over public rights of way, provide more open space and curb the deterioration of natural beauty and community environment; and to promote Gardiner as a distinctive community.

In addition to the above, the purpose of the sign standards is to encourage creative and distinctive designs that add value to the visual landscape of Gardiner, provided that such designs are consistent with the purposes above.

### **10.24.2 Definitions**

**10.24.2.1 Abandoned Sign:** A sign for a business that has been defunct for more than 30 days.

**10.24.2.2 Accessory Sign:** A secondary sign that provides on-site information concerning the business that is not indicated on the primary identification sign(s), such as store hours, accepted credit cards, quality ratings, affiliations, and vacancies.

**10.24.2.3 Advertising Sign:** A sign whose primary purpose is to attract attention to goods offered for sale or lease or services rendered upon property where the advertising is occurring.

**10.24.2.4 Animated Sign:** A sign employing actual motion or the illusion of motion. Animated signs, which are differentiated from readerboards or changeable signs, include the following types:

**10.24.2.4.1 Environmentally Activated:** Animated signs or devices motivated by wind, thermal changes, or other natural environmental input. These include spinners, pinwheels, pennant stings, and/or other devices or displays that respond to naturally occurring external motivation.

**10.24.2.4.2 Mechanically Activated:** Animated signs characterized by repetitive motion and/or rotation activated by a mechanical system powered by electric motors or other mechanically induced means.

**10.24.2.4.3 Electrically Activated:** Animated signs producing the illusion of movement by means of electronic, electrical, or electromechanical input and/or illumination capable of simulating movement through employment of the characteristics of one or both of the classifications noted below:

**10.24.2.4.3.1 Flashing:** An animated sign with an intermittent or flashing light source.

**10.24.2.4.3.2 Patterned Illusionary Movement:** Animated signs or animated portions of signs whose illumination is characterized by simulated movement through alternate or sequential activation of various illuminated elements for the purpose of producing repetitive light patterns designed to appear in some form of constant motion.

**10.24.2.5 Applied Sign:** An advertising sign containing words and/or images painted directly on the surface of a building.

**10.24.2.6 Awning Sign:** A sign on or attached to a canvas or other fabric shelter that is supported entirely from the exterior wall of a building.

**10.24.2.7 Banner:** A sign of temporary construction made of vinyl, canvas, or similar flexible material.

**10.24.2.7.1 Overhanging Banner:** a banner overhanging a public street or way. (Adopted 06/18/2014, Effective 07/18/2014)

**10.24.2.7.2 Banners Displayed in the Gardiner Common:** banners displayed in the Gardiner Common to announce community events or notices.  
(Adopted 06/18/2014, Effective 07/18/2014)

**10.24.2.8 Business Directory Sign:** A free-standing sign identifying names and/or uses, and/or locations, in a multi-business development.

**10.24.2.9 Canopy Sign:** A sign mounted on or integral to a permanent, horizontal cover over a free-standing structure.

**10.24.2.10 Construction/Maintenance Site Sign:** A temporary sign containing information such as the name of the contractor, development, developer, designers, and financing.

**10.24.2.11 Copy:** Any graphic, letter, number, symbol, insignia, text, sample, model, device, or combination thereof, which relates to advertising, identification, or notification.

**10.24.2.12 Directional Sign:** A sign that indicates ingress or egress to a property and does not contain either identification or advertising copy.

**10.24.2.13 Directory Board:** A wall sign erected on a building wall at the ground floor level and containing name identification for more than one activity or business located in a single building or a group of buildings.

**10.24.2.14 Electronic Message Sign:** An electronically activated changeable sign whose variable message capability can be electronically programmed, including liquid crystal display signs.

**10.24.2.15 Externally Illuminated Sign:** A sign with an exterior light source, either attached or detached from the sign, whose purpose is to illuminate the sign board.

**10.24.2.16 Farm Stand Sign:** A sign used seasonally to advertise a farm stand selling fruits, vegetables or other agricultural crops and products.

**10.24.2.17 Free-standing Sign:** A sign supported by not more than two upright poles permanently affixed into the ground and in no way attached to a building. [This term refers to self-supporting signs other than those otherwise specifically defined and regulated in this Subsection.]

**10.24.2.18 Grandfathered Sign:** Any sign that is legally non-conforming with applicable Sections of the City of Gardiner Land Use Ordinance prior to the effective date of Subsection 24 Signs.

**10.24.2.19 Gross Display Area:**

**10.24.2.19.1** The sign area includes all lettering, wording, and accompanying design symbols, together with the background whether open or enclosed, on which they are displayed, including sections between paneled signs. Minimal supporting bracing or framework is excluded, but any decorative structure is included.

**10.24.2.19.2** Painted or applied sign area includes any background color of a different color than the natural color of the building. Where lettering and/or symbols of an applied sign are painted or applied directly on the natural surface and coloring of a building, the area is considered to be that area within a line drawn around the outside of all letters and symbols, plus 20 percent of that enclosed area.

**10.24.2.19.3** The sign area of complex signs is that within a line connecting all major points of the sign's circumference.

**10.24.2.20 Historic Marker:** A permanent sign or plaque whose purpose is to indicate some significant facts about the building or its site.

**10.24.2.21 Home Occupation Sign:** A sign that indicates a home occupation land use as defined in the Ordinance.

**10.24.2.22 Household Sign:** A sign that displays street numbers, last name and personal name given to a residential structure.

**10.24.2.23 Iconic Sign:** Those signs which are traditionally accepted pictorial symbols conveying the nature of the business, such as barber poles, eyeglasses, boots, and mortar and pestle. They are normally constructed in heavy relief or are three-dimensional.

**10.24.2.24 Identification Sign:** A sign that includes, as copy, only the name of the business, place, organization, building, or person it identifies.

**10.24.2.25 Internally Illuminated Sign:** A sign with a light source incorporated into the body of the sign and where light emanates through the message of the sign.

**10.24.2.26 Interior Sign:** A sign that is visible from the building exterior with the intention of circumventing the intentions of this Ordinance.

**10.24.2.27** Legally Nonconforming Sign: An existing sign that was lawfully erected in compliance with applicable code requirements and maintained prior to the effective date of this Ordinance.

**10.24.2.28** Marquee Sign: A sign on or attached to a permanent overhanging shelter that projects from the face of the building, such as a theatre or business, and is supported entirely or partially by the building.

**10.24.2.29** Memorial Sign or Tablet: A sign containing the name of a building and date of erection when cut into masonry surface or when constructed of bronze or other incombustible materials.

**10.24.2.30** Multi-Business Development: One or more buildings under common ownership and containing multiple business tenants; or multiple buildings, each containing one or more businesses and sharing common vehicle ingress and egress.

**10.24.2.31** Municipal Sign: A sign that is part of a planned directional system to key locations or places of significance within the city.

**10.24.2.32** Mural: An image, with or without words, that is painted directly on a building and that has historic and community value and no commercial purpose.

**10.24.2.33** Neon Sign: Tubing using neon, another gas, or a technology simulating neon such as light emitting diodes (LED), to spell out the name of a business, promote a product or convey information.

**10.24.2.34** Official Business Directional Sign (OBDS): An off-premise directional sign allowed under Me. Dept. of Trans., 17 229 CMR 200.

**10.24.2.35** Off-Premise Sign: A sign located off the premises indicated by said sign.

**10.24.2.36** “Open” Flag: A flag that may include the word open. The flag may depict the business logo, a business organization logo, may be seasonal in nature; may reflect holidays or may depict a sports team.

*(Adopted March 25, 2015 Effective April 24, 2015)*

**10.24.2.37** Path/Trail Sign: A sign denoting a pedestrian/bicycle trail network.

**10.24.2.38** Pennant: An all-weather device constructed of lightweight plastic, fabric, or other material, which may or may not contain copy, suspended from a rope, wire, or string, usually in series, designed to move in the wind.

**10.24.2.39** Political Sign: A sign bearing a political message relating to an election, primary or referendum.

**10.24.2.40** Portable Sign: A sign not designed or intended to be permanently affixed into the ground or to a structure.

**10.24.2.41** Principal Sign: The main sign on a property.

**10.24.2.42 Projecting Sign:** A sign that is suspended from or supported by any building or structure and projects outward from the supporting structure. Building-mounted projecting signs extend perpendicular to the building surface.

**10.24.2.43 Readerboard:** A sign containing information directly related to the nature of the service provided, and on which the informational copy changes, or can be changed, by manual, electronic, or mechanical means.

**10.24.2.44 Real Estate Sign:** A sign, attached to a building or free-standing, advertising the sale, lease, or rental of the premises upon which the sign is located.

**10.24.2.45 Roof Sign:** A sign located upon or over a roof of a building.

**10.24.2.46 Sandwich Sign:** A two-sided sign, typically shaped like an “A” and hinged at the top, that is made of wood or materials that appear to be wood and is not attached to the ground.

**10.24.2.47 Sign:** An object, device, display or structure or part thereof that is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, project, service, event or location by any means, including words, letters, figures, designs, symbols, fixtures, colors, or projected image.

**10.24.2.48 Sign Giving Notice:** A sign of a temporary nature such as an advertisement of a charitable function, a notice of a meeting or festival, or other non-commercial sign of a similar nature displayed only on non-residential property.

**10.24.2.49 Special Sign:** Any sign or three-dimensional sign structure requiring special treatment, not included in other definitions.

**10.24.2.50 Temporary Advertising Sign:** A sign relating to a specific sale of products or other similar advertising announcements such as the opening of a new business. This includes signs mounted to the interior or exterior of windows.

**10.24.2.51 Temporary Sign:** A sign (such as a political poster or a yard sale sign) intended to be displayed for a short period of time.

**10.24.2.52 Vehicle Sign:** A vehicle, such as a van, with graphics acting as signage and parked in a visible manner on a regular basis so as to circumvent the intentions of this Ordinance.

**10.24.2.53 Vision Triangle:** The area at the four corners of an intersection that is to be kept free of shrubs, ground covers, berms, fences, signs, structures, or other materials or items greater than 30 inches in height.

**10.24.2.54 Wall Sign:** A sign attached to or supported by a building wall or part thereof, provided that the sign does not project more than 6 inches from the wall.

**10.24.2.55 Window Sign:** A sign placed, painted, or affixed to a window or the glazed portion of a door and that is visible from the exterior of the building.

**10.24.2.56** Portable Electronic Variable Message Sign: An electronic sign used by the City of Gardiner to provide information for public service, City business or emergencies. *(Adopted 06/18/2014, Effective 07/18/2014)*

**10.24.2.57** Nit: A photometric unit of measurement used to describe the luminance of a light source or of an illuminated surface that reflects light that is equal to one candela per square meter (cd/m<sup>2</sup>). *(Adopted 12/16, 2015, Effective 01/16/2016)*

### **10.24.3 General Provisions**

**10.24.3.1** No signs shall be erected prior to obtaining a permit except those exempt from these standards.

**10.24.3.2** Signs within Gardiner's Downtown Historic District shall receive a Certificate of Appropriateness in accordance with this Ordinance.

**10.24.3.2.1** The Code Enforcement Officer may grant a Certificate of Appropriateness for all interior and window signs, as well as for projecting signs and wall signs up to ten (10) square feet. Certificates granted by the Code Enforcement Officer may be reviewed by the Historic Preservation Commission. *(Adopted March 25, 2015 Effective April 24, 2015)*

**10.24.3.2.2** Certificates of Appropriateness for all awning signs, iconic signs, marquee signs, murals, and trail signs, as well as for projecting signs and wall signs that are larger than ten (10) square feet, shall be granted only by the Historic Preservation Commission. *(Adopted March 25, 2015 Effective April 24, 2015)*

**10.24.3.2.3** In the Downtown Historic District, signs shall be permitted only on the front and the rear of a building or structure. Signs shall not alter or obscure an architectural feature, component or detail of a structure or building. Interior and window signs shall not result in permanent alteration of any glass surface.

**10.24.3.2.4** In the Downtown Historic District, signs at the primary entrance of each business shall be limited to one projecting sign per business. There shall be one projecting sign for the business(es) above the ground floor. If more than one business above the ground floor, the businesses shall share a maximum of 6 square feet. One additional sign shall be permitted at the rear entrance of the building. Each business above the ground floor may have one window sign. *(Adopted 06/18/2014, Effective 07/18/2014)*

### **10.24.3.3 Loss of Grandfathered Status**

**10.24.3.3.1** A sign loses its legally nonconforming status and shall meet the requirements of a new sign if the business, establishment or institution to which the sign belongs is defunct for one one year. This shall not apply to seasonal farm stand signs or murals that receive approval from the Gardiner City Council and, if required, the Historic Preservation Commission.

**10.24.3.3.2** Except in the case of prohibited signs, changes in the content of nonconforming signs, including names, words, logos or similar information, shall not constitute an alteration requiring



conformance with this Subsection, as long as the changes do not make the sign more nonconforming and a permit is obtained for the changes from the Code Enforcement Officer.

**10.24.3.3.3** New signage may be proposed for a site that contains grandfathered signage, provided that all new signage is in compliance with this Subsection; that the total signage is in compliance with applicable gross display area limitations; and that the signage plan for the entire site furthers the spirit and intent of this Subsection by reducing visual clutter or otherwise improving the aesthetic appearance of the signage on the site.

**10.24.3.3.4** Any sign face that identifies or advertises a defunct business shall be removed within 30 days of the termination of that business from that site. After the business has been terminated for a period of one year, all mountings, brackets, poles, sign faces and other signage material shall be removed except for projecting signs, unless the sign is being reused by another business occupying the same site.

#### **10.24.3.4 Exempt Signs**

The following signs shall not require a permit from the Code Enforcement Officer, but shall meet all applicable standards of this Subsection: accessory signs, directional signs, farm stand signs, garage or yard sale signs, household signs, “open” flags, legal notices, memorial signs or tablets, political signs, public traffic and directional signs, real estate signs, sandwich signs, and trespassing and hunting signs.

#### **10.24.3.5 Prohibited Signs**

**10.24.3.5.1** Gasoline pump canopy and marquee signs are prohibited.

**10.24.3.5.2** Signs that flash, move, rotate, scintillate, blink, flicker, vary in intensity, vary in color, use intermittent electrical pulsations or are otherwise animated are prohibited, except for barber poles.

**10.24.3.5.3** No sign or part of a sign shall consist of a balloon or other inflatable component.

**10.24.3.5.4** No signage, other than approved traffic and directional signs, shall be placed within traffic islands.

**10.24.3.5.5** Signs in the Shoreland and the Resources Protection Districts are prohibited, except Path/Trail Signs.

**10.24.3.5.6** Signs attached to trees or utility poles, including temporary signs, are prohibited.

**10.24.3.5.7** Portable signs designed for and intended or originally intended to be moved from place to place and not be permanently affixed to land, buildings or other structures are prohibited. Portable signs used for the conveyance of traffic and other public safety information shall be exempt from the prohibition and shall not require a permit.

**10.24.3.5.8** No vehicle unregistered for operation in the State of Maine and/or incapable of operation without tow or other secondary assistance with directional or advertising signs painted

on or affixed shall be parked, unmoved, on, by or within view of a public way for any period of time greater than five consecutive calendar days in any month.

**10.24.3.5.9** Off-premise advertising signs are prohibited, unless the sign is an approved Official Business Directional Sign.

**10.24.3.5.10** Signs placed or painted on roofs or that extend wholly or in part above the exterior walls are prohibited.

**10.24.3.5.11** Signs which incorporate projected images, emit any sound that is intended to attract attention, or involve the use of live animals, are prohibited.

**10.24.3.5.12** Signs with chemical (fluorescent)-type colors are prohibited.

**10.24.3.5.13** Neon and illuminated tube signs are prohibited.

**10.24.3.5.14** Signs utilizing liquid crystal display or similar technology are prohibited.

**10.24.3.5.15** (Repealed) *(Adopted 12/16/2015, Effective 01/16/2016)*

**10.24.3.5.16** Signs that prevent free egress from any door, window, or fire escape, or that interfere with pedestrian or vehicular movement, are prohibited.

**10.24.3.5.17** Signs of any kind attached to a standpipe or fire escape are prohibited.

**10.24.3.5.18** Signs or other advertising structures are prohibited which obstruct free and clear vision, or which, at any location, by reason of the position, shape or color of the sign may interfere with, obstruct view of or be confused with any authorized traffic sign.

#### **10.24.3.6 Maintenance, Conformity and Fines**

**10.24.3.6.1** No sign shall be erected or altered except in conformity with the provisions herein. The sign shall be kept clean, neatly painted and free from all hazards such as, but not limited to, faulty wiring and loose fastenings, and shall be maintained at all times in such safe condition so as not to be detrimental to the public health or safety or detrimental to physical appearance or scenic or natural beauty of the community, or constitute a distraction or obstruction that may contribute to traffic accidents.

**10.25.3.6.2** The Code Enforcement Officer shall cause to be removed any sign that endangers public safety, including signs which are materially, electrically or structurally defective; signs abandoned by reason of vacancy for a period of 30 days or more except signs applicable to businesses temporarily suspended for less than 6 months due to a change of ownership; and signs for which no permit has been issued.

#### **10.24.4 General Sign Calculation Standards**

**10.24.4.1** The sign area shall include all lettering, wording, and accompanying design symbols, together with the background whether open or enclosed, on which they are displayed, including

sections between paneled signs. Minimal supporting bracing or framework shall be excluded, but any decorative structure shall be included.

**10.24.4.2** Applied sign area shall include any background color of a different color than the natural color of the building. Where lettering and/or symbols of an applied sign are painted or applied directly on the natural surface and coloring of a building, the area shall be considered to be that area within a line drawn around the outside of all letters and symbols, plus 20% of that enclosed area.

**10.24.4.3** The sign area of complex signs shall be that within a line connecting all major points of the sign's circumference.

**10.24.4.4** Two-sided signs: Only one side of a sign shall be counted when determining the size of such a sign.

**10.24.4.5** Gross display area of all allowed signs per business shall not exceed 200 square feet or the combined maximum square footage allowed elsewhere in this Subsection, whichever is less.

#### **10.24.5 Specific Sign Design Standards**

**10.24.5.1** Applied Sign: An applied sign shall contain lettering of one color painted directly on the building material or have a background consisting of only one color. Applied signs shall be limited in size to 20 % of the area of the wall on which they are applied.

**10.24.5.2** Awning Sign: No awning shall extend over two-thirds of the sidewalk or 8 feet from the building face, whichever is greater. This awning shall not extend beyond the streetlights or trees and shall maintain 8 feet of clearance from the sidewalk for pedestrian safety. Signage or logo on an awning shall be located only on the awning valance and shall be limited in size to 20% of the valance length. This area of information shall count towards the total allowable gross display area for the business.

**10.24.5.3** Business Directory Sign: Business directory signs shall be required for multi-business developments. The goal is promote an orderly appearance, reduce visual clutter and minimize disorientation.

**10.24.5.3.1** The maximum gross display area of a business directory sign shall be 150 square feet. At least 10% of the gross display area shall be devoted to identifying the multi-business development by name (or by generic description such as "office park" or "shopping center" if no name has been assigned) and by street address. The numbers of the street address shall be no less than 11 inches high. The remaining gross display area shall be used only to identify and advertise uses within the multi-business development and shall be located below the name and street address of the multi-business development. The maximum mounting height from the ground for a business directory sign shall be 16 feet.

**10.24.5.3.2** Before the Code Enforcement Officer issues a permit for a business directory sign, the Code Enforcement Officer shall determine that the name of the multi-business development is

identical to or likely to be confused with the name of any other development already existing in Gardiner.

**10.24.5.3.3** The individual uses within the multi-business development shall be listed in horizontal lines of uniform height no greater than 11 inches. The individual listing on the business directory sign shall not be included in the calculation for the gross display area for the individual businesses in the multi-business development.

**10.24.5.3.4** The listings of the individual businesses shall be in lettering of consistent size, color and style. The background color and material of each horizontal listing shall be the same.

**10.24.5.3.5** No free-standing signs other than a business directory sign shall be allowed in a multi-business development.

**10.24.5.3.6** A business directory sign shall be located on property within the multi-business development abutting the main public frontage, shall be visible from the main public frontage and shall be located at or near the driveway or street entrance(s) to the multi-business development in order to direct motorists to that entrance.

**10.24.5.3.7** When a multi-business development has more than one point of access, one business directory sign may be installed at each access point unless multiple signs would be visible from each location.

**10.24.5.3.8** Business directory signs shall comply with all applicable setback requirements.

**10.24.5.3.9** If provided, electrical service to a business directory sign shall be by underground wiring only.

**10.24.5.3.10** The individual businesses and the owner(s) of the multi-business development shall be responsible for any violations of this Subsection arising out of the erection or maintenance of signs within a multi-business development. The city may enforce the provisions of this Subsection against any or all such businesses and owners.

**10.24.5.4** Canopy Sign: A canopy sign shall be considered to be and shall meet the requirements of a wall sign.

**10.24.5.5** Directory Board: A directory board shall be considered to be one wall sign. Each listing shall be no larger than 2 square feet. The listing of the individual uses shall be in lettering of consistent size, color and style. The background color and material of each horizontal listing shall be the same. A directory board shall be permitted in the Downtown Historic District only if it is an interior sign or is incorporated into a projecting sign that otherwise meets the requirements for a directory board.

**10.24.5.6** Directional Sign: Directional signs shall be limited in size to 4 square feet and shall not be mounted higher than 6 feet from the ground.

**10.24.5.7 Free-standing Sign:** Free-standing signs shall be mounted to no more than 2 poles. The pole(s) shall be affixed or anchored to the ground.

**10.24.5.7.1** Locations that have multiple occupancies shall be subject to the standards for multi-business developments. Otherwise, only one permanent, free-standing advertising sign shall be allowed per premise.

**10.24.5.7.2** Free-standing signs shall be limited in size to 30 square feet in the Central Business and Cobbossee Corridor Districts; to 4 square feet in the Professional/Residential District; to 20 square feet in the Educational/Community Recreation District; to 20 square feet in the High Density Residential District (limited to public buildings only *(Adopted 10/27/2010, Effective 11/26/2010)*; and to 50 square feet in the Planned Development and Planned Industrial/Commercial Districts.

**10.24.5.7.3** The maximum mounting height from the ground for free-standing signs shall be 16 feet in the Central Business and Cobbossee Corridor Districts; 8 feet in the Professional/Residential and Educational/Community Recreation Districts; and 20 feet in the Planned Development and Planned Industrial/Commercial Districts.

**10.24.5.8 Historic Marker:** Historic markers are subject to review, as appropriate, in accordance with Historic Preservation Section of this Ordinance. A historic marker shall not be counted when calculating the maximum number of signs or the total gross display area of signs on the property.

**10.24.5.9 Home Occupation Sign:** In any District, a home occupation may display one sign relating to goods or services rendered on the premises. Signs shall be applied, wall-mounted, self-supporting, or projecting. They shall be limited in size to 3 square feet, and for self-supporting signs the maximum mounting height from the ground shall be 8 feet. A home occupation sign in Rural, Residential and High Density Residential Districts shall not be illuminated. In the Central Business District a home occupation sign above the first floor shall only be a window sign.

**10.24.5.10 Iconic Sign:** Iconic signs shall be limited in size to 44" x 18".

**10.24.5.11 Internally Illuminated Sign:** Internally illuminated signs shall conform to the following standards: *(Adopted 12/16/2015, Effective 01/16/2016)*

**10.24.5.11.1** Wall signs, including wall-mounted channel letter signs, and freestanding signs may be internally illuminated subject to the locational limitations of 10.24.5.11.2. No other type of sign may be internally illuminated

**24.5.11.2** Internally illuminated signs are permitted only in the following locations:

- a. Within the Planned Industrial Commercial (PIC) District
- b. On lots abutting Bridge Street north of the Cobbossee Stream
- c. On lots abutting Main Avenue north of the Cobbossee Stream

**10.24.5.11.3** Freestanding internally illuminated signs on lots abutting Bridge Street and/or Main Avenue are permitted only on the frontage of the lot adjacent to Bridge Street and/or Main Ave. No internally illuminated signs are permitted on these lots on the frontage adjacent to any other street.

**10.24.5.11.4** Wall signs including wall-mounted channel letter signs on lots abutting Bridge Street and/or Main Avenue may be internally illuminated only if the sign faces Bridge Street or Main Avenue. No internally lit signs on these lots are permitted to face any other street.

**10.24.5.11.5** Wall-mounted channel letter signs shall contain individually illuminated letters only. The internally illuminated text shall be no taller than 3 feet in height and no more than 10% of the area of the façade on which it is mounted.

**10.24.5.11.6** Internally illuminated signs shall only be lit between 6:00 AM or one-half hour before the use opens and 10:00 PM or one-half hour after the use closes whichever is less restrictive.

**10.24.5.11.7** Internally illuminated signs that are illuminated at night may not exceed a maximum luminance level of five hundred (500) Nits between one-half hour before sunset and one-half hour after sunrise. Any application for a permit to install an internally illuminated sign must include a certification from the manufacturer of the sign indicating compliance with this standard.

**10.24.5.12** Marquee Sign: A marquee sign shall be limited in size to 40 square feet.

**10.24.5.13** Mural: A mural shall be limited to the sides and back of the building. Murals shall require approval from the Gardiner City Council. If such a mural will be located within the Downtown Historic District, a Certificate of Appropriateness in accordance with this Ordinance also shall be required.

**10.24.5.14** Official Business Directional Sign: Official Business Directory Signs shall comply with Me. Dept. of Trans., 17 229 CMR 200, except that no such sign shall be placed in any right-of-way directly abutting the Gardiner Common.

**10.24.5.14.1** Home occupations shall be prohibited from having an official business directional sign.

**10.24.5.15** Open” Flag: Any retail business or service establishment (except home occupations) during the hours such business is open for customers may display one “Open” flag not exceeding 15 square feet. An “Open” flag shall not be displayed for businesses above the first floor. An “Open” flag shall not be counted when calculating the maximum number of signs or the total gross display area of signs on the property.

**10.24.5.15.1**

The open flag shall not obstruct pedestrian movement. The flag shall be removed during snow events and shall not interfere with snow removal. The City is not responsible for any loss of or damage to flags. *(Adopted March 25, 2015 Effective April 24, 2015)*

**10.24.5.16** Path/Trail Sign: Path/Trail signs shall be limited in size to 4 square feet

**10.24.5.17** Projecting Sign: Projecting signs shall not extend over a property line or sidewalk except in the Central Business District. No projecting sign shall overhang the public way beyond a line 3 feet from the building face, and its bottom shall not be mounted above the level of the second story windowsill. All signs overhanging the public way shall leave a minimum pedestrian

clearance of 8 feet. For buildings with adjacent entrances, projecting signs shall be placed on the side furthest from the adjacent door. Projecting signs for multiple businesses sharing the 6 square feet shall be attached with eye hooks. *(Adopted 06/18/2014, Effective 07/18/2014)*

**10.24.5.17.1** Projecting signs shall be limited in size to 3 square feet in the High Density Residential District; to 4 square feet in the Professional/Residential District; to 20 square feet in the Planned Development District; and to 10 square feet in all other Districts where they are allowed.

**10.24.5.17.2** The maximum mounting height from the ground for projecting signs shall be 8 feet in the High Density Residential and Professional/Residential Districts, and 20 feet in the Planned Development District. In the Central Business and Cobbossee Corridor Districts, the bottom of a projecting sign shall not be mounted above the second-floor windowsill.

**10.24.5.18** Readerboard: Readerboard area shall count toward the calculation of gross display area. Readerboards shall be allowed only in association with gasoline station pumps, theatres, banks, schools or churches, where such uses are allowed, and shall be incorporated into the principal sign on the property.

**10.24.5.19** Sandwich Sign: A sandwich sign shall be made of wood or materials that appear to be wood. A sandwich sign may be displayed only when the premises it advertises are open for business. Such signs shall not impede pedestrian, bicycle or vehicular access. Any sandwich sign that is found to impede the safe movement of pedestrians, bicycles or vehicles may be ordered removed or relocated by the Code Enforcement Officer.

#### **10.24.5.20 Temporary Signs**

**10.24.5.20.1** The Code Enforcement Officer may remove signs that have exceeded the temporary timeframes and/or the sizes set forth below. Temporary signs specified in this Subsection shall not be attached to fences, trees, utility poles, or the like, and shall not be placed in a position that will obstruct or impair vision or traffic or in any manner creating a hazard or disturbance to the health and welfare of the general public.

**10.24.5.20.2** Construction/Maintenance Site Sign: One construction/maintenance sign, attached to a building or fence or free-standing, may be erected and shall be removed within 30 days after completion of the project. The maximum mounting height from the ground for construction/maintenance site signs shall be 8 feet.

**10.24.5.20.3** Farm Stand Sign: Farm stand signs shall be limited in size to 10 square feet. They may have changeable copy not subject to review. Farm stand signs shall be displayed only during the season when the premises are open for business.

**10.24.5.20.4** Garage or Yard Sale Sign: Signs for one- or two-day sale events may be placed 48 hours before the sale and shall be removed within 2 days of the end of the sale event. Garage and yard sale signs shall be limited in size to 4 square feet.

**10.24.5.20.5** Political Sign: Signs bearing political messages relating to an election, primary or referendum may be placed in any district, except in a floodplain. Political signs may be placed in

a public right-of-way in such locations as will not create a safety hazard. Political signs shall not be placed within a right-of-way or elsewhere prior to 6 weeks before the election, primary or referendum to which they relate and shall be removed by the candidate or political committee no later than 2 days after Election Day. Political signs shall be limited in size to 20 square feet.

**10.24.5.20.6 Real Estate Sign:** One temporary real estate sign, attached to a building or free-standing, may be erected to advertise the sale, lease, or rental of the premises upon which the sign is located. The real estate sign shall be removed within 2 days following the sale, lease or rental of the premises. Real estate signs shall be limited in size to eight 8 square feet in the Central Business, Cobbossee Corridor and Educational/Community Recreation Districts; to 4 square feet in the Professional/Residential, Rural, Residential Growth, and High Density Residential Districts; and to 32 square feet in the Planned Development and Planned Industrial/Commercial Districts.

**10.24.5.20.7 Sign Giving Notice:** Signs giving notice shall be permitted for a period not to exceed 30 days before an event and shall be removed by the person(s) who posted the signs within 2 days following the event.

**10.24.5.20.8 Temporary Advertising Sign:** Temporary advertising signs shall be permitted for a period not to exceed 30 days. A 3-month interval is required between applications for temporary advertising signs.

**10.24.5.21 Wall Sign:** A wall sign shall project no more than 6 inches from the building surface. No wall sign shall extend beyond the side of the building or cross the party wall dividing attached buildings. Wall signs shall be limited in size to 20% of the area of the wall on which they are mounted, except that in the Downtown Historic District they shall be limited to 10 square feet. A business on the upper floors of the Downtown Historic District may have a wall sign if they do not have a projecting sign. Wall signs shall be limited to one per face of the building. *(Adopted 06/18/2014, Effective 07/18/2014)*

**10.24.5.22 Window Sign:** Window signs shall be limited in size to 25% of the window area or the District standard for projecting signs, whichever is smaller.

**10.24.5.23 Overhanging Banner:** A non-profit organization may place an overhanging banner over a public street or way. The non-profit must obtain approval the City before any banner is placed over any public street or way. As a condition of such approval, the applicant must provide the City with proof of liability insurance naming the City as a named insured in an amount not less than three hundred thousand dollars (\$300,000.00) to cover any claims for damages and/or injuries which might result from the placement of the banner over a public street or way. The applicant shall provide proof of status as a nonprofit organization. The City may also place an overhanging banner over a public street or way.

A fee for such a permit shall be set from time to time and a schedule of such fees shall be filed in the City Clerk's office. Banners shall be displayed no more than twenty-one (21) calendar days prior to an event and shall be removed no later than five (5) days after an event. The City may remove any overhanging banner left after five days.



There is limited space available within the City to hang a banner. Availability shall be on a first come first served basis. A non-profit may inform the City up to one year in advance of the wish to hang an overhanging banner. The banner shall be 34 inches by 20 feet with wind holes. The banner needs to conform to MDOT standards. If there is a product sponsor, the logo shall be no more than 10% of the banner. (Adopted 06/18/2014, Effective 07/18/2014)

**10.24.5.24 Banners on the Common:** A non-profit organization may apply for a permit to hang a banner on the banner-hanging location at the Gardiner Common for the purposes of announcing community events or notices. The non-profit must obtain approval and meet the conditions of this ordinance. As a condition of such approval, the applicant must provide the City with proof of liability insurance naming the City as a named insured in an amount not less than three hundred thousand dollars (\$300,000.00) to cover any claims for damages and/or injuries, which might result from the placement of the banner over a public street or way. The applicant shall provide proof of status as a nonprofit organization. The City may also place a banner at the banner-hanging location at the Gardiner Common.

The banner hanging location shall be established by the City on the Lincoln Ave side of the Common. The City shall place two posts behind the fence to hold and display the approved banners. The posts shall be at least 6 feet high and no more than 10 feet apart to support the banners.

A fee for such a permit shall be set from time to time and a schedule of such fees shall be filed in the City Clerk's office. Banners shall be displayed no more than twenty-one (21) calendar days prior to an event and shall be removed no later than five (5) days after an event. The City may remove any overhanging banner left after five days.

There is limited space available to hang a banner at the Gardiner Common. Availability shall be on a first come first served basis. A non-profit may inform the City up to one year in advance of the wish to hang a banner at the Common. The banner shall be 36 inches by 8 feet with wind holes. The banner needs to conform to MDOT standards. If there is a product sponsor(s), the logo(s) shall be no more than 30% of the banner. (Adopted 06/18/2014, Effective 07/18/2014)

## **10.24.6 Sign Location, Content, Illumination and Materials**

### **10.24.6.1 Location**

Notwithstanding other applicable criteria, signs shall meet the following location requirements:

**10.24.6.1.1** No sign shall be erected adjacent to any public way in such a manner as to obstruct clear and free vision or where, by reason of its position, shape, color, illumination or wording, the sign may interfere with, obstruct the view or be confused with any public traffic sign, signal or device or otherwise constitute a hazard to pedestrian or vehicular traffic.

**10.24.6.1.2** No sign or part thereof shall be located within 6 feet, horizontal distance, of a right-of-way or other lot line except in the Central Business District.

**10.24.6.1.3** No sign shall be placed so as to touch or otherwise interfere with overhead utilities, or so as to touch or interfere with such utilities in the event that the sign leans, falls, or otherwise becomes displaced.

## **10.24.6.2 Content**

**10.24.6.2.1** The word content of each sign shall be limited to the official business name and additional information which explains the nature of the business or profession. Signs shall have as few words as possible.

**10.24.6.2.2** No sign content shall interfere with, contradict or create a safety issue in relation to the city's enhanced 911 system.

## **10.24.6.3 Illumination**

**10.24.6.3.1** Externally illuminated signs shall be illuminated only by steady, stationary, shielded light sources that are directed solely on the sign and that do not cause glare in adjacent public ways or property for motorists, pedestrians, or neighboring premises.

**10.24.6.3.2** No illuminated signs shall be allowed in the Rural, Residential Growth and High Density Residential Districts.

**10.24.6.3.3** Internally illuminated signs shall conform to the standards of Section **10.24.5.11** (*Adopted 12/16/2015, Effective 01/16/2016*)

## **10.24.6.4 Materials and Appearance**

**10.24.6.4.1** Any sign that is made of material or treated as to cause glare that may impair the safe driving of vehicles or impact abutting properties shall be prohibited.

**10.24.6.4.2** In the Downtown Historic District, signs shall be made of traditional materials such as wood, brass, bronze, and slate, or of contemporary materials that have the appearance of traditional materials. In other districts, traditional materials, or contemporary materials that have the appearance of traditional materials, are encouraged. Signs constructed of exposed plywood shall be prohibited in all districts. Signs shall have a professional appearance and shall fit in with the architectural and other characteristics of the surrounding area.

**10.24.6.4.3** In the Downtown Historic District, projecting signs shall be mounted on black iron mounts using black iron fasteners. Wall signs shall be mounted with black iron fasteners only. Mounting shall be into mortar or other appropriate materials and shall not damage the surrounding brick, granite, or other building components.

## PROPOSED ORDINANCE

### 10.25 Sign Use Table

#### Legend

RP	Resource Protection	SLR	Shoreland Overlay Limited Residential
SL	Shoreland	RG	Residential Growth
R	Rural	HDR	High Density Residential
PR	Professional Residential	DHD	Downtown Historic District
PIC	Planned Industrial/Commercial	PD	Planned Development
CC	Cobbossee Corridor	ECR	Education/Community Recreation
CB	Central Business (Areas not located in the Downtown Historic District)		

	RP & SL	SLR	R	RG	HDR	PR	DHD	CB	PI C	PD	EC R	CC
Applied sign	N	N	N	N	N	N	N	Y	Y	Y	N	Y
Awning sign	N	N	N	N	N	N	Y	Y	Y	Y	N	Y
Business Directory	N	N	N	N	N	N	N	Y	Y	Y	N	Y
Directory Board	N	N	N	N	N	Y	#1	Y	Y	Y	Y	Y
Farm Stand sign	N	N	N	Y	Y	N	N	Y	N	Y	N	N
Free-standing sign	N	N	Y	N	Y#3 & * #6	Y	N	Y	Y	Y	Y	Y
<del>Internally Illuminated sign</del> *Note #5	<del>N</del>	<del>N</del>	<del>N</del>	<del>N</del>	<del>N</del>	<del>N</del>	<del>N</del>	<del>N</del>	<del>Y</del>	<del>N</del>	<del>N</del>	<del>N</del>
Gasoline pump canopy or marquee	N	N	N	N		N	N	N	N	N	N	N
Home Occupation sign	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y
Iconic sign	N	N	N	N	N	N	Y	Y	Y	Y	N	Y
Marquee sign	N	N	N	N	N	N	Y	Y	N	N	Y	Y
Mural	N	N	N	N	N	N	Y	Y	N	N	Y	Y
Path/Trail sign	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
* #4 Portable Electronic Variable Message Sign	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Projecting sign	N	N	Y	Y	Y	Y	Y	Y	Y	Y	N	Y
Wall sign	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Window sign	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y

**Note #1** A directory board shall be allowed in the DHD only if it is an interior sign that otherwise meets the requirements of a directory board.

**Note #2** Readerboards shall be regulated by property use, not district.

**\*Note #3** Free-Standing Signs shall be allowed in the HDR for public buildings only and shall be limited to a maximum of 20 square feet. *\*(Adopted 10/27/2010, Effective 11/26/2010) Order 10-66*

**\*Note #4** This sign applies only to the City. *(Adopted 06/18/2014, Effective 07/18/2014)*

**\*Note #5** *(Adopted 12/16/2015, Effective 01/16/2016)*

**\*Note #6** Free-Standing sign shall be allowed in the HDR for a farmers market and shall be limited to a maximum of 12 square feet. *(Adopted 05/04/2016, Effective 06/03/2016)*

Key to Sign Use Table

Y = Allowed with permit

N = Not Allowed

### 10.26 Fence Standards

No fence shall be erected, constructed or re-constructed to a height of more than 6 feet when located between a property boundary line and the required side, rear or front setback.

The fence owner shall be responsible for locating the fence on his/her property.

The fence owner shall place all structural framing and posts facing towards his/her property.

No fence shall be erected, constructed or re-constructed so as to obstruct the sight lines at a driveway entrance/exit, street intersection or corner.

**10.27 Use of Sidewalks by Private Parties in Accordance with State Statutes when Applicable**  
*(Adopted June 18, 2014, Effective July 18, 2014)*

**Temporary Retail Displays**

Retail displays, including temporary signage may be displayed on public sidewalks provided they meet the following conditions:

1. Temporary displays are limited to items for sale within the establishment directly adjacent to the frontage upon a sidewalk. This provision shall not apply to flower boxes, historic markers, or other decorative architectural items that are consistent with the historic character of surrounding buildings. Display of autos or parts for sale are prohibited on the sidewalk.
2. At all times, displays must allow for a minimum of 3' of unoccupied and unobstructed space on sidewalk to allow for adequate pedestrian and handicap access and shall not block an egress. The width of the sidewalk is measured from the property line to curbside obstacles, including but not limited to trees, sign posts, light poles, flag poles, utility poles, and fire hydrants.
3. Display must be kept in a neat, and orderly manner, and not create a nuisance or safety hazard.
4. The City of Gardiner will not be responsible for any damage to or loss of any items placed on the sidewalks.

**Sidewalk Cafés**

No person shall expand a food service establishment to the outside on any sidewalk in the City except under a duly authorized outdoor dining permit.

a) Regulations and Restrictions

1. Sidewalk cafés are only allowed for restaurants and food-serving establishments.
2. Sidewalk cafés shall be contiguous with the establishment with which they are associated.

3. Sidewalk cafes shall leave a minimum width of three (3) feet unoccupied and unobstructed in order to allow adequate pedestrian movement and handicap access. The width of the sidewalk is measured from the property line to curbside obstacles, including but not limited to trees, sign posts, light poles, flag poles, utility poles, and fire hydrants.
4. Sidewalk Café Permits are valid from June 1st to May 31st of each year. Chairs, tables and appurtenances may remain on the sidewalk area, and shall not interfere with snow removal and maintenance.
5. No permanent structure or device shall be erected or placed in, on, or about any public sidewalk.
6. Any damage done to the public right-of-way by the applicant or by its patrons shall be repaired at the expense of the applicant.
7. Litter emanating from the sidewalk café area, and from whatever area to which it may flow, shall be collected by the permittee as often as may be required to keep the sidewalk clear of litter and debris.
8. Sidewalks shall be swept and cleaned at the close of business each day.
9. Outdoor music associated with any eating establishment that is wholly or partially on municipal property shall abide by current noise standards.
10. There shall be no additional signage for the outdoor dining.
11. Aside from individual table lighting, such as candles, there shall be no additional exterior lighting installed.
12. These standards shall not apply to a restaurant, vendor, or other party participating in a duly approved event under the City of Gardiner's "Special Events" ordinance.
13. The City of Gardiner will not be responsible for any damage to or loss of any items placed on the sidewalks.

Failure to adhere to these standards shall result in the revocation of the permit until such time that the violation has been corrected.

#### b) Permit Procedures

1. The applicant shall apply for a Sidewalk Café Permit from the City Clerk on an annual basis.
2. The applicant shall provide a plan showing the area intended for outdoor dining, the proposed seating, the barrier fencing and the ingress and egress. In addition, the plan shall also include the dimensions of the seating area and the distance from the barrier fencing to any curbside

obstacles. The Plan will be reviewed and approved by the Code Enforcement Officer, Fire Chief, Police Chief and Public Works Director.

3. The applicant shall also provide a Certificate of Liability Insurance covering the effective dates of the permit in the amount of \$500,000. In addition, the City of Gardiner shall be named as an additional insured.

4. In the event alcoholic beverages are to be sold, a copy of a valid and current liquor permit from the State Liquor Commission shall be presented.

5. Sidewalk Café Permits are subject to an annual application fee as set by the City Council.

## **SECTION 11. ROADS, TRAFFIC ACCESS AND PARKING STANDARDS**

### **11.1 Access Management**

#### **11.1.1 Purpose**

The purpose of the traffic access standards is to control the design and placement of driveway entrances in order to maintain road safety and the traffic carrying capacity of the road.

#### **11.1.2 Applicability**

These traffic access standards shall apply to all new or expanded driveways, entrances and roads in the city. All driveways, entrances and roads that access onto a state road shall also comply with all applicable Maine Department of Transportation (MDOT) design requirements.

#### **11.1.3 General Standards**

**11.1.3.1** The road providing access to the development and any other road that can be expected to carry traffic for the development shall have adequate traffic carrying capacity to accommodate the proposed use. The road shall be improved as necessary to accommodate the traffic requirements of the development at the expense of the applicant.

**11.1.3.2** The number of access points shall be the minimum necessary to ensure safe and proper vehicular access to the site. A limit of two access points onto a single road shall be permitted unless a traffic study for the site recommends additional access points.

**11.1.3.3** When lots have frontage on two or more roads, vehicular access to the lot shall be located on the less traveled way unless a waiver is granted by the Code Enforcement Officer or the Planning Board as provided in this section.

##### **11.1.3.3.1 Waiver Standards**

The sight distance, corner clearance and turnaround area/parking standards cannot be waived. All other standards maybe waived in accordance with this subsection. Waivers requests may be granted if the applicant demonstrates to the satisfaction of the city that the waiver will not significantly detract from public safety and the proposed driveway meets the standards to the maximum extent possible. The burden is on the applicant to provide sufficient information.

In determining that the waiver will not significantly detract from public safety the Code Enforcement Officer or the Planning Board will consider such factors as crash rates, traffic volumes, road geometrics, types and frequency of traffic moving to and from existing uses within 1,000 feet of the proposed access point. In determining practicality the Code Enforcement Officer or the Planning Board will consider the availability and cost of alternative access locations and designs in relation to the proposed use.

##### **11.1.3.3.2 Alterations or Changes to Existing Accesses**

In cases involving alterations or changes of use of existing access(es), the Code Enforcement Officer or Planning Board may grant waiver requests if it determines that the alterations will likely result in a net gain to public safety or a reduction in non-conformity with these access management standards.

#### **11.1.3.3.3 Double Frontage Lots**

In cases involving double frontage lots, the Code Enforcement Officer or the Planning Board will consider the length of frontage on the regulated road, the intensity of traffic generated by the proposed use, the geography along the frontage of the other public way, and the distance to the other public way.

*(Adopted March 25, 2015 Effective April 24, 2015)*

**11.1.3.4** All access points shall be designed and have sufficient capacity to avoid the stopping or standing of vehicles attempting to enter the driveway, entrance or road.

**11.1.3.5** To provide adequate visibility, all access points shall be kept free from visual obstructions, including signs, higher than 3 feet above road level within a triangular area defined by legs of 25 feet measured along the access point and road lines.

**11.1.3.6** The applicant shall plan or install interconnections with adjoining properties wherever links will serve to reduce demand for vehicular movement on the road. The Code Enforcement Officer or the Planning Board may require an interconnection.

**11.1.3.7** The applicant shall provide an estimate of the vehicular trips generated by the proposed use.

**11.1.3.8** A traffic study shall be required whenever, in a one-hour period, traffic attributable to the development equals or exceeds 100 trips at the access point, or when in the opinion of the Code Enforcement Officer or Planning Board a traffic safety or road capacity deficiency exists in the vicinity of the development.

#### **11.1.4 Access Design Standards**

**11.1.4.1** Access design shall be based on the estimated volume using the access classification defined below:

Low-Volume Access: Less than 25 vehicle trips per day

Medium-Volume Access: Any access that is not a low-volume or high-volume access

High-Volume Access: Peak hour volume of 400 vehicles trips per day or greater

**11.1.4.2** Access shall be designed in profile and grading and located to provide the required sight distance measured in each direction. Sight distance shall be measured from the driver's seat of a vehicle standing on that portion of the exit with the front of the vehicle a minimum of 10 feet behind the curb line or edge of shoulder, with the height of the eye 3½ feet, to the top of an object



4 ½ feet above the pavement. The required sight distances are listed below for various posted speed limits:

**11.1.4.2.1 Two-Lane Roads** A sight distance of 10 feet for each mile per hour of posted speed limit shall be maintained or provided.

**11.1.4.2.2 Four-Lane Roads** The sight distances provided below are based on passenger cars exiting from accesses onto four-lane roads and are designed to enable exiting vehicles upon turning left or right to accelerate to the operating speed of the street without causing approaching vehicles to reduce speed by more than 10 miles per hour, and upon turning left to clear the near half of the street without conflicting with vehicles approaching from the left.

Operating Speed MPH	Safe Sight Distance Left (ft)	Safe Sight Distance Right (ft)
20	130	130
30	220	260
40	380	440
50	620	700

#### **11.1.4.3 Vertical Alignment**

Accesses shall be flat enough to prevent the dragging of any vehicle under-carriage. Low-volume accesses shall slope upward or downward from the gutter line on a straight slope of 2% or less for at least 25 feet followed by a slope of no greater than 10% for the next 50 feet. The maximum grade over the entire length shall not exceed 15%. Medium and high-volume accesses shall slope upward or downward from the gutter line on a straight slope of 2% or less for at least 25 feet. Following this landing area, the steepest grade on the access shall not exceed 8%.

#### **11.1.4.4 Low-Volume Accesses**

**11.1.4.4.1** Low-volume accesses shall be two-way operation and shall intersect the road at an angle as near to, 90 degrees as site conditions permit, but in no case less than 60 degrees.

**11.1.4.4.2** Curb radius shall be between 5 feet and 15 feet, with a preferred radius of 10 feet.

**11.1.4.4.3** The width of the access shall be between 12 feet and 16 feet, with a preferred width of 16 feet.

**11.1.4.4.4** Curb-cut width shall be between 22 feet and 46 feet, with a preferred width of 36 feet.

#### **11.1.4.5 Medium Volume Accesses**

**11.1.4.5.1** Medium-volume access shall be either one-way or two-way operation and shall intersect the road at an angle as near to 90 degrees as site conditions permit, but in no case less than 60 degrees.

**11.1.4.5.2** On a two-way access, the curb radii shall be between 25 feet and 40 feet, with a preferred radius of 30 feet. On one-way accesses, the curb radii shall be 30 feet for right turns into and out of the site.

**11.1.4.5.3** On a two-way access, the width shall be between 24 and 26 feet, with a preferred width of 26 feet; however, where truck traffic is anticipated, the width shall be no more than 30 feet. On a one-way access, the width shall be between 16 and 20 feet, with a preferred width of 16 feet.

**11.1.4.5.4** On a two-way access, the curb-cut width shall be between 74 feet and 100 feet with a preferred width of 86 feet. On a one-way access, the curb-cut width shall be between 46 feet and 70 feet with a preferred width of 51 feet.

#### **11.1.4.6 High-Volume Accesses**

**11.1.4.6.1** High-volume accesses shall intersect the road at an angle as near to 90 degrees as site conditions permit, but in no case less than 60 degrees.

**11.1.4.6.2** The curb radii shall be between 30 feet and 50 feet, without channelization islands for right turn movements into and out of the site. The curb-cut width radii shall be between 75 feet and 100 feet with channelization islands.

**11.1.4.6.3** Entering and exiting accesses shall be separated by a raised median which shall be between 6 feet and 10 feet in width. Medians separating traffic flows shall be no less than 25 feet in length, with a preferred length of 100 feet.

**11.1.4.6.4** Access widths shall be between 20 feet and 26 feet on each side of the median, with a preferred width of 24 feet. Right-turn-only lanes established by channelization islands shall be between 16 feet and 20 feet with a preferred width of 20 feet.

**11.1.4.6.5** Appropriate traffic control signage shall be erected at the intersection of the access and the street and on medians and channelization islands.

#### **11.1.4.7 Access Location and Spacing**

**11.1.4.7.1** Corner clearance shall be measured from the point of tangency for the corner to the point of tangency for the access. The minimum corner clearances in feet are:

Access Type	Intersection Signalized	Intersection Unsignalized
Low Volume	150	50

Medium Volume	150	50
High Volume	500	250

**11.1.4.7.2** Accesses and street intersections shall be separated from adjacent accesses, roads and property lines in order to allow major through routes to effectively serve their primary function of conducting through traffic.

**11.1.4.7.3** All accesses entering into a curbed road shall be curbed with materials matching the road curbing. Sloped curbing shall be required around all raised channelization islands or medians.

**11.1.4.7.4** All accesses shall be paved with bituminous concrete pavement within the road right-of-way.

**11.1.4.7.5** Accesses shall be either one-way or two-way operation and shall intersect the road at an angle as near to 90 degrees as site conditions permit, but in no case less than 75 degrees.

#### **11.1.4.8 Turnaround Areas**

**11.1.4.8.1** All driveway and entrance accesses shall be designed so that all maneuvering and parking of any vehicle shall take place outside the right-of-way of the road and such that vehicles may exit the premises without backing onto the shoulder of the road. If a turnaround provision is not designed into a parking area or other similar feature, then a turnaround shall be provided measuring at least 8 feet wide and 15 feet long or equal to the length of the design vehicle for the access way.

#### **11.1.4.9 Drainage**

Drainage for all access ways shall conform to the applicable requirements of this Ordinance and if required, MDOT standards.

#### **11.1.4.10 Throat Length**

The throat is a portion of a driveway or entrance access used to store a line of vehicles without impeding the vehicular circulation. The throat of any entrance or driveway shall be of sufficient length to prevent incoming vehicles from queuing back onto the road.

#### **11.1.4.11 Entrance Separator Strips**

Entrance separator strips shall be installed between the parking area and the road and along the entrance throat. The separator strip shall include curbing, walkways, ditching or vegetation. The property owner shall maintain any vegetation within the separator strip. The separator shall extend away from the road and the greater of:

**11.1.4.11.1** Five feet from the right-of-way limits;

**11.1.4.11.2** In areas where the right-of-way limits are defined, 7 feet from the edge of a clearly evident shoulder; or

**11.1.4.11.3** In such areas where a shoulder is not clearly evident, 9 feet from the edge of the traveled way.

#### **11.1.4.12 Other Requirements**

Where necessary to safeguard against hazards to traffic and pedestrians and to avoid traffic congestion, the applicant shall install turning lanes, traffic directional islands, frontage roads, signalization, or other traffic controls within the roadway. All such installations shall conform to the standards in the “Manual on Uniform Traffic Control Devices” published by the Federal Highway Administration in 23 CFR Part 655, Subpart F.

#### **11.1.5 Standards for Roads within Subdivisions**

**11.1.5.1** Provision shall be made for vehicular access to the subdivision and circulation within the subdivision in such a manner as to safeguard against hazards to traffic and pedestrians in existing roads and within the subdivision, to avoid traffic congestion on any street and to provide safe and convenient circulation on public roads within the subdivision.

**11.1.5.2** The vehicular access to the subdivision shall be arranged to avoid traffic use of existing local residential roads.

**11.1.5.3** Where a lot has frontage on two or more roads, the access to the lot shall be provided where there is lesser potential for traffic congestion and for hazards to traffic and pedestrians.

**11.1.5.4** The street giving access to the subdivision, and neighboring roads which can be expected to carry traffic to and from the subdivision, shall have traffic carrying capacity and be suitably improved to accommodate the amount and types of traffic generated by the proposed subdivision.

**11.1.5.5** Where necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, provisions shall be made for turning lanes, traffic directional islands, frontage roads and traffic controls within public roads.

**11.1.5.6** Any new or expanded subdivision entrance or curb cut on a designated state road shall first be approved by the Maine State Department of Transportation. The developer shall submit to the Board, evidence that the entrance or curb cut has been reviewed and approved by the Department of Transportation.

**11.1.5.7** Where topographic and other conditions allow, provisions shall be made for circulation access connections to adjoining lots of similar existing or potential use.

**11.1.5.8** All subdivisions consisting of 4 or more lots shall contain provisions for vehicular connections to future projects on adjacent properties or the same lot whenever feasible and to the maximum extent possible.

## **11.2 Residential Driveway Design Standards**

The residential driveway design standards may only be used for one, two and three dwelling units.

### **11.2.1 Single Driveway**

A driveway shall not serve more than one dwelling unit and shall have a minimum travel way of at least 10 feet. The driveway shall conform to the applicable traffic management standards.

### **11.2.2 Common Driveway**

A common driveway shall not serve more than 3 dwelling units and shall have a minimum travel way of at least 12 feet. The common driveway shall conform to the applicable traffic management standards.

## **11.3 Road Design and Construction Standards**

### **11.3.1 Applicability**

All roads, including private roads and those proposed to be accepted by the city, shall meet the design requirements contained in this Ordinance.

### **11.3.2 Plan Requirements**

The developer shall submit detailed construction drawings showing a plan view, profile and typical cross-section of the proposed roads. The plans shall include the following information:

**11.3.2.1** Date, scale and magnetic north

**11.3.2.2** Scale of one inch to 50 feet

**11.3.2.3** Intersections of the proposed road with existing roads

**11.3.2.4** Complete curve data for all horizontal and vertical curves

**11.3.2.5** Turning radii at all intersections

**11.3.2.6** Centerline gradients

**11.3.2.7** Typical cross-sections of all types of roadway sections to be constructed

**11.3.2.8** The starting and ending point with relation to established roads, streets and ways and any planned or anticipated future extensions. All terminal points and the centerline alignment shall be identified by survey stationing.

**11.3.2.9** Location, size and names of all existing and proposed roads

**11.3.2.10** Kind, size, location, material, profile and cross-section of all existing and proposed drainage structures and their location with respect to the existing natural waterways and proposed drainage ways

**11.3.2.11** Roadway and right-of-way limits, including edge of pavement, edge of shoulder, sidewalks and curbs

**11.3.2.12** Locations of all existing and proposed overhead and underground utilities, to include, but not be limited to, water, sewer, electricity, telephone, lighting and cable television.

**11.3.2.13** An estimate of the amount and type of vehicular traffic to be generated on a daily basis and at peak hours.

### **11.3.3 Road Design Standards**

**11.3.3.1** These design standards shall be met by all roads and shall control the roadway, shoulders, and curbs.

**11.3.3.2** Roads shall be designed to discourage through traffic on minor roads.

**11.3.3.3** Any road expected to generate average daily traffic of 400 trips per day or more shall have at least two road connections with existing public roads shown on the official City of Gardiner Zoning Map or streets on an approved subdivision plan.

**11.3.3.4** The following design standards shall apply according to road classification:

	Type of Road				
	Arterial	Collector	Minor	Private Right of Way	Industrial/ Commercial
Minimum right-of-way width	80'	50'	50'	50'	60'
Minimum pavement width	44'	24'	20'	18'	30'
Sidewalk width	8'	5'	5'	NA	8'
Minimum grade	0.5%	0.5%	0.5%	NA	0.5%
Maximum grade*	5%	6%	8%	10%	5%
Minimum centerline radius	500'	230'	150'	NA	400'
Minimum tangent between curves of reverse alignment	200'	100'	50'	NA	200'
Roadway crown	1/4 "/foot	1/4 "/foot	1/4 "/foot	NA	1/4 "/foot

Minimum angle of road intersection**	90'	90'	75'		
Maximum grade within 75 ft of intersection	2%	2%	2%	NA	2%
Minimum curb radii at intersections	30'	20'	15'	NA	30'***
Minimum r-o-w radii at intersections	20'	10'	10'	10'	20'
Minimum width of shoulders (each side)	5'	3'	3'	3'	9'

\*Maximum grade may be exceeded for a length of 100 feet or less.

\*\*Road intersection angles shall be as close to 90 degrees as feasible but no less than the listed angle.

\*\*\*Shall be based on turning radii of expected commercial vehicles but no less than 30 feet.

**11.3.3.5** The centerline of the roadway shall be the centerline of the right-of-way.

**11.3.3.6** Dead-end roads shall have an L-shaped or cul-de-sac turnaround. An L-shaped turnaround shall consist of a lot of land 50 feet square and set back from the end of the road by at least 50 feet and not more than 75 feet. A cul-de-sac shall have the following radii: 60 feet to the property line; 50 feet to the outer edge of the pavement; and 30 feet to the inner edge of the pavement. The construction of the turnaround area shall meet the same requirement for roads as contained in this Section.

**11.3.3.7** No trees or shrubs shall be planted within the right-of-way unless approved by the City of Gardiner Public Works Department.

**11.3.3.8** All proposed roads which abut lots not part of the proposed development shall have the minimum right-of-way width set back a minimum of 10 feet from the abutting property line.

**11.3.3.9** Grades of all roads shall conform to the terrain so that cut and fill are minimized.

**11.3.3.10** All changes in grade shall be connected by vertical curves in order to provide the following minimum stopping sight distances based on the road design.

Design Speed (MPH)	20	25	30	35
Stopping Sight Distance (Feet)	125	150	200	250

**11.3.3.11** A minimum of two hundred feet shall be maintained between centerlines of side roads.

**11.3.3.12** All road construction features not specifically covered by this Ordinance shall be designed and constructed in accordance with the requirements of the Maine Department of Transportation Standard Specifications.

### 11.3.4 Road Construction Standards

#### 11.3.4.1 Minimum Thickness of Material After Compaction

Road Material	Minimum Requirements				
	Arterial	Collector	Minor	Private Right-of-Way	Industrial/ Commercial
Aggregate sub-base course (max. sized stone 4")	18"	18"	18"	12"	18"
Crushed aggregate base course	4"	3"	3"	3"	4"
Hot bituminous pavement					
Total thickness	3 1/4"	2 1/2"	2 1/2"		3"
Surface course	1 1/2"	1"	1"		1 1/4"
Base course	1 3/4"	1 1/2"	1 1/2"		1 3/4"

**11.3.4.2** Before any clearing has started on the right-of-way, the centerline and side lines of the new road shall be staked or flagged at fifty-foot intervals.

**11.3.4.3** Before grading is started, the entire right-of-way shall be cleared of all stumps, roots, brush, and other objectionable material. All ledge, large boulders and tree stumps shall be removed from the right-of-way.

**11.3.4.4** All organic materials shall be removed to a depth of 2 feet below the subgrade of the roadway. Rocks and boulders shall also be removed to a depth of 2 feet below the subgrade of the roadway. On soils which have been identified as not suitable for roadways, the subsoil shall be removed from the street site to a depth of 2 feet below the subgrade and replaced with material meeting the specifications for gravel aggregate sub-base below.

**11.3.4.5** Except in a ledge cut, side slopes shall be no steeper than a slope of three feet horizontal to one foot vertical, and shall be graded, loamed, limed, fertilized, and seeded according to the specifications of the erosion and sedimentation control plan. Where a cut results in exposed ledge, a side slope no steeper than four feet vertical to one foot horizontal shall be permitted.

**11.3.4.6** All underground utilities shall be installed prior to paving to avoid cuts in the pavement. Building sewers and water service connections shall be installed to the edge of the right-of-way prior to paving.

**11.3.4.7** The aggregate sub-base course shall be sand or gravel of hard durable particles free from vegetative matter, lumps or balls of clay and other deleterious substances. The gradation of the part that passes a 3-inch square mesh sieve shall meet the following grading requirements.

Sieve Designation	Percentage by Weight Passing Square Mesh Sieves
1/4 inch	25-70%



No. 40	0-30%
No. 200	0-7%

**11.3.4.8** Aggregate for the sub-base shall contain no particles of rock exceeding four inches in any dimension.

**11.3.4.9** The aggregate base course shall be sand or gravel of hard durable particles free from vegetative matter, lumps or balls of clay and other deleterious substances. The gradation of the part that passes a 3-inch square mesh sieve shall meet the following grading requirements:

Sieve Designation	Percentage by Weight Passing Square Mesh Sieves
½ inch	45-70%
¼ inch	30-55%
No. 40	0-20%
No. 200	0-5%

**11.3.4.10** Aggregate for the base shall contain no particles of rock exceeding 2 inches in any dimension.

**11.3.4.11** Pavement Joints. Where pavement joins an existing pavement, the existing pavement shall be cut along a smooth line and form a neat, even, vertical joint.

**11.3.4.12** Curbs and Gutters. Curbs and gutters shall be installed within the urban compact area, or within any areas designated in the Capital Improvements Plan or Comprehensive Plan as areas of compact development.

**11.3.4.13** Pavements. Minimum standards for the base layer of pavement shall be the MDOT specifications for plant mix grade B with an aggregate size no more than one inch maximum. Minimum standards for the surface layer of pavement shall meet the MDOT specifications for plant mix grade C with an aggregate size no more than ¾ inch maximum.

### **11.3.5 Road Inspection Requirements**

**11.3.5.1** The applicant shall at his/her expense hire a professional engineer licensed in the State of Maine to inspect the road construction. The engineer shall inspect the road during construction and certify in writing that the road was installed according to the road plans and requirements of this Ordinance.

**11.3.5.2** The applicant shall submit to the Code Enforcement Officer the engineer's report certifying that the road meets or exceeds the road plans and ordinance requirements.

**11.3.5.3** The applicant shall notify the Director of Wastewater and Public Works to inspect the following:

**11.3.5.3.1** Installation of sewer lines prior to backfilling

**11.3.5.3.2** Installation of sewer pumping stations

**11.3.5.3.3** Installation of water lines

**11.3.5.3.4** Completion of the subgrade, ditches and grading of the road embankment

**11.3.5.3.5** Completion of the base gravel placement

**11.3.5.3.6** Completion of the final grading just prior to paving

**11.3.5.3.7** The installation of paving or final surface

**11.3.5.3.8** The installation of storm water features, sidewalks and curbs.

**11.3.5.4** The director shall make a written report of each inspection. The director shall inform the applicant of any road design or construction feature not conforming to the road plans or this Ordinance and the steps necessary to correct the deficiency. The failure to correct any deficiency shall be deemed a violation of this Ordinance. A road shall not be considered for acceptance unless all deficiencies are corrected.

## **11.4 Parking Standards**

### **11.4.1 Applicability**

In any district where permitted, no use of premises shall be authorized or extended, and no building or structure shall be constructed or enlarged, unless there is provided for such extension, construction or enlargement, off-road vehicle parking.

### **11.4.2 Location**

**11.4.2.1** Unless otherwise permitted in this Section all parking areas shall be located on the same lot as the principal structure or use of the premises.

**11.4.2.2** All parking spaces and aisles shall be at least 5 feet from any side or rear property line. Aisles and parking spaces shall not be located within the right-of-way of the road.

### **11.4.3 Interior Circulation**

**11.4.3.1** The entry lane(s) shall be designed to allow continuous and uninterrupted traffic movement on the road, through the provision of adequate throat length, deceleration lanes, or other measures. The entry lane shall not provide direct access to parking spaces.

**11.4.3.2** Islands containing guardrails, curbs, fences, walls, or landscaping shall be used to identify circulation patterns of parking areas and restrict driving movements diagonally across parking aisles, but shall be designed and placed so as not to impede views of pedestrians and vehicles.

**11.4.3.3** No parking spaces shall be directly accessible from the road, nor shall motorists be required to use the road to enter or exit a space. All spaces shall be accessible from an aisle without the necessity of moving other vehicles.

**11.4.3.4** Parking aisles shall be oriented perpendicular to stores or businesses for safer pedestrian access and visibility.

**11.4.3.5** Any layout that utilizes vehicular access service (drive-up) windows shall provide a minimum of 5 car lengths of queuing space on the incoming side of the first window. The required queuing space shall be designed so that it shall not interfere with parking and circulation on the remainder of the lot.

#### **11.4.4 Layout of Parking Stalls and Aisles**

**11.4.4.1** Parking stalls shall be a minimum of 9 feet in width by 18 feet in length. Stalls designed for handicapped spaces shall conform to applicable state and federal requirements. Stalls may be angled, provided aisles are designed one-way and each stall contains the minimum rectangular dimensions. Stalls for parallel parking shall be no less than 9 feet in width by 22 feet in length.

**11.4.4.2** Painted stripes delineating each space shall be required for all paved parking lots.

**11.4.4.3** Two-way aisles shall be a minimum of 22 feet in width. One-way aisles shall be a minimum of 18 feet in width.

**11.4.4.4** Bumper or wheel stops shall be provided where improperly parked cars might restrict traffic flow or pedestrian movement on adjacent walkways, or damage landscape materials.

**11.4.4.5** Oversized parking spaces may be designated in areas that ordinarily serve such vehicles as recreational vehicles, travel trailers, delivery trucks or tractor-trailer trucks.

#### **11.4.5 Standards for Number of Parking Spaces**

**11.4.5.1** Adequate spaces shall be provided by the developer. The list below shall be interpreted as a guide subject to the adjustments contained in Section 11.4.5.2. For uses not listed, the publication “Parking Generation” (Institute of Transportation Engineers, 2004) shall be consulted. The following table shall not apply to the Downtown Area as defined.

<b>Place of Residence or Accommodation (spaces per room or dwelling unit)</b>	
1/3 space	Dedicated Retirement Home, Nursing Care Facility
1 space	Overnight Accommodation

2 spaces	Single, Two and Multi-family Dwellings
1 ¼ spaces	Senior Housing
<b>Places of Public Assembly (spaces per seat, based on maximum seating capacity)</b>	
¼ space	Theater, with fixed seating
1/3 space	Church
½ space	Restaurant, Convention Center, Meeting Hall, Grange and Bottle Club
<b>Places of Commerce &amp; Industry (spaces per 1,000 square feet of gross floor area)</b>	
1 space	Warehouse, Inside Sale of Vehicles
1 ½ spaces	Industrial and Manufacturing Facilities, Wholesaling
3 spaces	Grocery Store over 5,000 square feet, Offices, Professional and Personal Services, except as noted.
4 spaces	Retail Sales except as noted
5 spaces	Banks, Medical & Dental Offices, Fitness Clubs, Child Care/Nursery Schools
<b>Public and Institutional Facilities (spaces per 1,000 square feet of gross floor area)</b>	
2 spaces	Elementary Schools
4 spaces	Secondary School, Community Center, Municipal Building
6 spaces	College, Hospital
<b>Miscellaneous (criteria as specified)</b>	
1 space per 1,000 sq ft	Indoor Sports Facility ( Tennis, Fitness etc with no spectators)
1 space per 4 seats max. seating capacity	Stadiums, Arenas, Racetracks, and other Spectator Sport Venues
30 spaces per acre	Mini-golf, Go-carts, and other Outdoor Amusements
2 spaces	Campground
5 spaces per lane	Bowling Alley
3 spaces per service bay plus 1 space per 10 vehicles displayed	Vehicle Sales and Service

#### 11.4.5.2 Standard Flexibility

**11.4.5.2.1** In the downtown area as defined, within 300 feet of the principal building, structure, or use of the premises, the requirements for providing parking spaces shall not be applicable.

**11.4.5.2.2** In the Cobbossee Corridor District as defined, within 500 feet of the principal building, structure or use of the premises, the requirements for providing parking spaces shall not be applicable.

**11.4.5.2.3** The parking requirements may be modified by up to 10%, based upon a showing that similar uses under similar circumstances generate greater or lesser demand.

**11.4.5.2.4** The following uses, because their peak hour/day varies from conventional parking demand, may meet up to 50% of their parking requirement through a shared-use agreement with another use: churches, clubs, restaurants, theaters, sports facilities.

**11.4.5.2.5** The provision of spaces for vehicles used in the ordinary conduct of business, such as construction vehicles, tractor-trailers, and vehicles displayed for sale, shall not be included in the above calculations.

**11.4.5.2.6** A development may include as a portion of its parking requirement the provision of parking spaces not located on the same lot provided that the spaces are located within 250 feet of the property, a written agreement is in place for long-term use of the spaces, and the spaces would not be among the minimum required for the use already existing on the lot.

#### **11.4.6 Parking Lot Limitations**

Parking lots shall not be excessively large, nor contain an area more than 25% greater than the minimum set by these standards.

#### **11.4.7 Mixed Uses**

Any portion of a building or lot with a use that is distinct from a principal use identified in the parking requirement list shall be considered as a separate use for the purpose of calculating spaces, if it exceeds in area or seating capacity 25% of the overall extent of the development. If mixed use consists of any residential use combined with any commercial use, the Code Enforcement Officer may waive or modify space requirements for the residential use unless it consists of more than 67% of the total floor space.

#### **11.4.8 Off-Road Loading**

In any district where permitted or allowed, commercial or industrial uses shall provide, as necessary, off-street loading facilities located entirely on the same lot as the building or use to be served so that trucks and containers shall not be located for loading, or unloading or storage upon any public way.

## **SECTION 12. HISTORIC PRESERVATION**

### **12.1 Purpose**

Gardiner possesses a unique and diverse cultural heritage as a riverfront community. The purpose of this Section is to promote the general welfare of the community by providing a mechanism to identify and preserve distinctive historic and architectural characteristics of Gardiner, while recognizing the need to allow repairs or alterations to buildings to promote energy efficiency and contemporary use of properties.

### **12.2 Historic Commission**

#### **12.2.1 Establishment and Organization**

**12.2.1.1** A Historic Preservation Commission shall be established consisting of 7 members and 2 alternate members, who shall be residents of Gardiner. An alternate member shall become a voting member when so designated by the Commission Chairperson due to the absence of a primary member. Members of the Commission shall demonstrate an interest in the historical and architectural development of the city and shall be appointed with due regard to the proper representation of such fields as history, architectural history, architecture, landscape architecture, planning, engineering, archeology, law and building construction to the extent that such professionals are available in the community. Consideration shall also be given to appointment of at least one member who is a resident of a designated historic district.

**12.2.1.2** The Historic Preservation Commission of the City of Gardiner, hereinafter called the Commission, shall administer this Section.

**12.2.1.3** Members shall be appointed by the Mayor for a term of 3 years, except that the initial appointments shall be staggered so that subsequent appointments shall not recur at the same time.

**12.2.1.4** The members shall annually choose a chairperson who shall preside at all meetings.

**12.2.1.5** All meetings of the Commission shall be open to the public and the Commission shall keep a record of its proceedings and actions.

**12.2.1.6** A quorum shall consist of a majority of the members.

**12.2.1.7** A legal vote shall consist of a majority of the members present and voting.

**12.2.1.8** The Mayor shall act within 60 days to fill a vacancy, including expired terms.

**12.2.1.9** A municipal officer may not be a member of the Commission.

**12.2.1.10** A member may be removed by the City Council for the following reasons:

**12.2.1.10.1** Unable to continue being an active member due to physical or mental incapacity.

**12.2.1.10.2** The violation of state or federal criminal statutes.

**12.2.1.11** A vacancy shall be created when any one of the following occurs:

**12.2.1.11.1** Member moves his/her residence from the city.

**12.2.1.11.2** Member resigns.

**12.2.1.11.3** Member is removed for cause by the City Council.

**12.2.1.11.4** Death of a member.

**12.2.1.11.5** A Commission member has 3 consecutive absences. Exception may be agreed to by the Commission.

## **12.2.2 Powers and Duties**

The Commission shall be authorized to:

**12.2.2.1** Conduct a survey of historic and archeological resources within Gardiner according to guidelines established by the Maine Historic Preservation Commission and maintain a record of such.

**12.2.2.2** Recommend methods and procedures to the City Council necessary to preserve, restore, maintain and operate historic sites and properties under the ownership or control of the city.

**12.2.2.3** Review alterations, relocation and demolition of the designated historic and prehistoric properties under its jurisdiction.

**12.2.2.4** Review all new construction affecting historic and prehistoric properties and/or districts within its jurisdiction to determine if a locally listed historic or prehistoric archeological site will be affected.

**12.2.2.5** Review all proposed National Register nominations for properties within its jurisdiction. When the Commission considers a National Register nomination or other actions which are normally evaluated by a professional in a specific discipline and that discipline is not represented on the Commission, the Commission shall seek expertise in that area before rendering its decision.

**12.2.2.6** Recommend ordinances to the City Council and otherwise provide information for the purposes of historic preservation in the city.

**12.2.2.7** Recommend to the City Council guidelines for the conservation of designated local landmarks and historic districts to be used in decisions for requests for permits for new construction, alterations, demolition, relocation or additions to listed historic landmarks, properties and buildings within historic districts.

**12.2.2.8** Act in an advisory role to other officials and departments of local government regarding the protection of local cultural preservation.

**12.2.2.9** Act as a liaison on behalf of the local government to individuals and organizations concerned with historic preservation.

**12.2.2.10** Promote and conduct an educational and interpretive program on historic preservation and historic properties and sites within the city.

**12.2.2.11** Cooperate with federal, state and local governments in the pursuance of the objectives of historic preservation.

**12.2.2.12** Participate in the conduct of land use and other planning processes undertaken by the city, state or the federal government and the agencies of these entities.

**12.2.2.13** Submit an annual report of the activities of the Commission to the Maine Historic Preservation Commission.

**12.2.2.14** Participate in at least one informational/ educational meeting per year sponsored by the Maine Historical Preservation Commission.

**12.2.2.15** Issue Certificates of Appropriateness pursuant to this Section.

### **12.3 Establishment of Historic Properties, Landmarks and Districts**

#### **12.3.1 Characteristics**

Any site, building, group of buildings, structure or object may be designated for preservation as an historic property, landmark or district if it meets one or more of the criteria established for inclusion in the National Register of Historic Places, which are as follows:

**12.3.1.1** The quality of significance in American history, architecture, archeology, engineering and culture on the local, state, and national levels is present in districts, sites buildings, structures and objects that possess integrity of location, design, setting, materials, workmanship, feeling and association, and

**12.3.1.1.1** That are associated with events that have made a significant contribution to the broad patterns of our history;

**12.3.1.1.2** Are associated with the lives of persons significant in our past;



**12.3.1.1.3** That embody the distinctive characteristics of a type, period or method of construction, or that represent the work of a master, or that represent a significant and distinguishable entity whose components may lack individual distinction;

**12.3.1.1.4** That have yielded, or may be likely to yield, information important in prehistory or history.

**12.3.1.2** Ordinarily, cemeteries, birthplaces or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible for the National Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within the following categories:

**12.3.1.2.1** A religious property deriving primary significance from architectural or artistic distinction of historic importance;

**12.3.1.2.2** A building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with a historic person or event;

**12.3.1.2.3** A birthplace or grave of an historical figure of outstanding importance if there is no other appropriate site or building directly associated with this productive life;

**12.3.1.2.4** A cemetery that derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events;

**12.3.1.2.5** A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived;

**12.3.1.2.6** A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own historic significance;

**12.3.1.2.7** A property achieving significance within the past 50 years if it is of exceptional importance.

## **12.4 Procedure**

**12.4.1** Any building, place, district, historic site, historic landmark or archeological site may be designated and added to this Section by the following procedures set forth herein:

**12.4.1.1** Designation may be initiated by resolution of the Commission or by a written request to the Commission from the City Council or the Planning Board or a resident or property owner of the City of Gardiner.

**12.4.1.2** The Commission shall consider each request and perform such studies, research and investigation, as it deems appropriate. The results of this study shall also be forwarded to the Maine Historic Preservation Commission for review and comment.

**12.4.1.3** The Commission, upon completion of the necessary research, shall submit its proposal to the Planning Board for a public hearing. The Commission shall notify all property owners included within the proposed designated area and all property owners within 100 feet of the proposed designated area of the date, time and place of the public hearing. A legal ad shall also be placed at least 10 days prior to the public hearing. The Planning Board shall follow its procedure for an amendment to this Ordinance.

**12.4.1.4** This Section and every addition shall contain a legal description of each affected geographical area. A copy shall be recorded in the Registry of Deeds and shall be added to all tax assessment records.

## **12.5 Gardiner Historic Register**

### **12.5.1 Downtown Historic District**

Beginning at the intersection of Brunswick, Water & Bridge at the Northwest corner of property line of the U.S. Post Office Building, thence heading in a Northeasterly direction down Water Street, encompassing the properties listed on the City of Gardiner Tax Map #34 Lots 119, 117, 116, 115, 113, 112, 111, 110, 109, 108, 107, 106, 105, 104, 103, 102, 154, 153, 150, 149, and 148, ending at the Southeastern boundary line of the Gardiner Public Library, then from this point, across Water Street in a Northeasterly direction to the Southeastern boundary of 151 Water Street, thence from this point heading up Water Street in a Northwesterly direction encompassing the properties on the City of Gardiner Tax Map #34 Lots 141, 140, 139, and 138 and Map 37 Lots 167, 166, 165, 164, 163, 162, 161, 160, 134, 133, 132, 131, 130, 129, 128, 127, 124, 123, 122, 121, 120, 119, 118, 117, 116, 115, 114, 113, 112, 111, 110, 109, and 108 ending at the Northwest boundary line of the Manson & Church Building, Map 37 Lot 108. Beginning at the Northeast boundary of the Manson & Church Building, heading in a Northeast direction on Bridge Street to the Northwest boundary line of the A-1 Diner, listed on the City of Gardiner Tax Map 37 Lot 107.

## **12.6 Certificate**

**12.6.1** A Certificate of Appropriateness shall be required from the Historic Preservation Commission, except as provided below, for the construction, alteration, demolition or relocation of any exterior architectural feature for a building, site, monument or structure which is designated a historic property or landmark or is within a historic district, as defined.

**12.6.2** The Code Enforcement Officer may grant a Certificate of Appropriateness for projecting, parallel and window or interior signs, as defined in the sign standards of this Ordinance.

**12.6.3** The sign standards in Section 10 of this Ordinance contain requirements for signs proposed in a Historic District.

**12.6.4** The ordinary maintenance or repair of any exterior architectural feature which does not involve a change in the appearance, material or design shall not require a Certificate of Appropriateness.

**12.6.5** The Commission may require additional information from the applicant in order to ensure that the intent of this Ordinance is met.

**12.6.6** Specifically excluded shall be the color of any substantially non-permanent exterior finish such as paint, which is applied to some underlying, substantially permanent material.

## **12.7 Application Procedure**

**12.7.1** A person informed by the Code Enforcement Officer that he/she requires a Certificate of Appropriateness shall file an application for a certificate with the Commission on forms provided for the purpose. If the person is informed that a variance and/or other plan review approval is also necessary, he/she shall first obtain the variance and/or Planning Board or site plan review approval as required.

**12.7.2** The applicant shall submit 8 copies of the application for Certificate of Appropriateness to the Commission a minimum of \* 21 days prior to the scheduled Commission meeting. *\*(Adopted June 18, 2014, Effective July 18, 2014)*

**12.7.3** The proposal for a Certificate of Appropriateness shall consist of an application with the submission requirements listed herein.

**12.7.3.1** The applicant's name and address;

**12.7.3.2** The name and address of the applicant's agent;

**12.7.3.3** Location of the property;

**12.7.3.4** Verification of right, title or interest in the property;

**12.7.3.5** The name and address of the property owner;

**12.7.3.6** Description of any federal, state or local permits or approvals required by the project;

**12.7.3.7** Photographs of the building, structure and/or property showing all exterior areas to be affected by the proposal;

**12.7.3.8** Materials list for all elements of the proposal, including landscaping component;

**12.7.3.9** Site plan of the proposed project showing the following:

**12.7.3.9.1** Structures existing and proposed;

**12.7.3.9.2** Lines and dimensions of the property;

**12.7.3.9.3** Streets and ways, existing and proposed;

**12.7.3.9.4** Landscaping, existing and proposed;

**12.7.3.9.5** Scale drawing of the proposed activity, if requested by the Commission.

**12.7.4** Exterior architectural feature shall mean that portion of the exterior of a building which is visible from a public street, place or way or would be visible but for the interpositioning of flora and/or other buildings, including (without limitation):

**12.7.4.1** The architectural style and general arrangement and setting thereof;

**12.7.4.2** The kind, finish and/or texture of exterior building materials, whether installed originally or as a replacement or as a change in or substitution for existing materials as by replacing a clear finish with a colored finish, or replacing a stained or natural finish with paint or replacing wood with brick or sandblasting or otherwise refacing an existing material;

**12.7.4.3** The visible inherent and substantially permanent color of materials used (e.g. brick, mortar, roofing, flashing, etc.);

**12.7.4.4** Other type and style windows, doors, lights, signs and other pertinent exterior fixtures.

**12.7.5** Following the filing of an application, the Commission shall hold a public meeting on the application within 40 days.

**12.7.6** At any meeting, an applicant may be represented by an agent or an attorney. During the public meeting and review of an application for a Certificate of Appropriateness, the applicant or his/her designated agent shall be present. Meetings and reviews of applications may be continued to other times.

**12.7.7** The Code Enforcement Officer or his/her designated assistant shall attend all meetings and may present to the Commission all plans, photographs or other material he/she deems appropriate for understanding of the application.

**12.7.8** Within 20 days of the public meeting, the Commission shall reach a decision on the application for a Certificate of Appropriateness. The Commission shall vote to deny, approve, or approve with conditions and shall inform the applicant in writing.

**12.7.9** Upon notification of the decision of the Commission, the Code Enforcement Officer, as instructed, shall forthwith issue, issue with conditions prescribed by the Commission or deny a building permit.

## **12.8 Standards of Evaluation**

**12.8.1** The Commission shall review an application for a Certificate of Appropriateness and shall use the U.S. Department of the Interior's Standards for the Treatment of Historic Properties, dated 1995, upon which to base its decision.

**12.8.2** Materials of a different composition which match the original material's visual quality in design, color, and texture may be used to replace missing and/or deteriorated architectural features.

## **SECTION 13. SHORELAND ZONING**

### **13.1 Purposes**

The purposes of this Section are to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources; to protect commercial fishing and maritime industries; to protect freshwater and coastal wetlands; to control building sites, placement of structures and land uses; to conserve shore cover, and visual as well as actual points of access to inland and coastal waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas.

### **13.2 Authority**

This Section has been prepared in accordance with the provisions of 38 M.R.S.A. Sections 435-449.

### **13.3 Applicability**

This Section applies to all land areas within 250 feet, horizontal distance, of the normal high-water line of any great pond or river, or upland edge of a wetland, and all land areas within 75 feet, horizontal distance, of the normal high-water line of a stream.

This Section also applies to any structure built on, over or abutting a dock, wharf or pier, or other structure extending or located below the normal high-water line of a water body or within a wetland.

### **13.4 Effective Date of Ordinance and Ordinance Amendments**

This Section, which was adopted by the City Council on May 21, 2010, shall not be effective unless approved by the Commissioner of the Department of Environmental Protection. A certified copy of this Section or Section amendment, attested and signed by the Municipal Clerk, shall be forwarded to the Commissioner for approval. If the Commissioner fails to act on this Section or Section amendment, within 45 days of his/her receipt of the Section, or Section amendment, it shall be automatically approved.

Any application for a permit submitted to the municipality within the 45-day period shall be governed by the terms of this Section, or Section amendment, if the Section, or Section amendment, is approved by the Commissioner.

### **13.5 Amendments**

Copies of amendments to this Section attested and signed by the Municipal Clerk shall be submitted to the Commissioner of the Department of Environmental Protection following adoption by the City Council and shall not be effective unless approved by the Commissioner. If the Commissioner fails to act on any amendment within 45 days of his/her receipt of the amendment, the amendment is automatically approved. Any application for a permit submitted to the

municipality within the 45-day period shall be governed by the terms of the amendment, if such amendment is approved by the Commissioner.

### **13.6 Districts and Zoning Map**

The area to which this Section is applicable is hereby divided into the following districts as shown on the Official Zoning Map.

1. Resource Protection
2. Shoreland District
3. Shoreland Overlay District
4. Shoreland Overlay Limited Residential District

### **13.7 Table of Land Uses**

All land use activities in the Resource Protection District, Shoreland District, Shoreland Overlay District and Shoreland Overlay Limited Residential District shall be governed by the uses set in the Land Use Table and the dimensional requirements in the Dimensional Requirements Table and shall conform to all of the applicable performance standards in this Ordinance.

All land use activities in the Central Business Shoreland Overlay District and the Cobbossee Corridor Shoreland Overlay District shall be governed by the uses set forth for the Central Business District in the Land Use Table and the dimensional requirements in the Dimensional Requirements Table and conform to all of the applicable performance standards in this Ordinance.

### **13.8 Land Use Standards**

All land use activities within the shoreland zone shall conform to the following provisions, if applicable.

**13.8.1** Land below the normal high-water line of a water body or upland edge of a wetland and land beneath roads serving more than 2 lots shall not be included toward calculating minimum lot area.

**13.8.2** Lots located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971.

**13.8.3** The minimum width of any portion of any lot within 100 feet, horizontal distance, of the normal high-water line of a water body or upland edge of a wetland shall be equal to or greater than the shore frontage requirement for a lot with the proposed use.

**13.8.4** If more than one residential dwelling unit, principal governmental, institutional, commercial or industrial structure or use, or combination thereof, is constructed or established on a single parcel, all dimensional requirements shall be met for each additional dwelling unit, principal structure, or use.

### **13.9 Principal and Accessory Structures**

**13.9.1.** All new principal and accessory structures shall be set back at least 100 feet, horizontal distance, from the normal high-water line of great ponds classified GPA and rivers that flow to great ponds classified GPA, and 75 feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland. In the Resource Protection District, the setback requirement shall be 250 feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district in which case the setback requirements specified above shall apply.

**13.9.2** The water body, tributary stream, or wetland setback provision shall not apply to structures which require direct access to the water body or wetland as an operational necessity, such as piers, docks and retaining walls, nor to other functionally water-dependent uses.

**13.9.3** All principal structures along Significant River Segments as listed in 38 M.R.S.A. Section 437 shall be set back a minimum of 125 feet, horizontal distance, from the normal high-water line and shall be screened from the river by existing vegetation. This provision does not apply to structures related to hydropower facilities.

**13.9.4** On a nonconforming lot of record on which only a residential structure exists, and where it is not possible to place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the Code Enforcement Officer may issue a permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structure shall not exceed 80 square feet in area or 8 feet in height, and shall be located as far from the shoreline or tributary stream as practical and shall meet all other applicable standards, including lot coverage and vegetation clearing limitations. In no case shall the structure be located closer to the shoreline or tributary stream than the principal structure.

**13.9.5** The lowest floor elevation or openings of all buildings and structures, including basements, shall be at least one foot above the elevation of the 100-year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent flood-plain soils. In those municipalities that participate in the National Flood Insurance Program and have adopted the April 2005 version, or later version, of the Floodplain Management Ordinance, accessory structures may be placed in accordance with the standards of that ordinance and need not meet the elevation requirements of this paragraph.

**13.9.6.** The total footprint area of all structures, parking lots and other non-vegetated surfaces within the shoreland zone shall not exceed 20% of the lot or a portion thereof.

**13.9.7** Notwithstanding the requirements stated above, stairways or similar structures may be allowed with a permit from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils, provided that the structure is limited to a maximum of 4 feet in width; that the structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A. Section 480-C); and that the applicant demonstrates that no reasonable access alternative exists on the property.



### **13.10. Piers, Docks, Wharves, Bridges and Other Structures and Uses Extending Over or Below the Normal High-Water Line of a Water Body or Within a Wetland.**

**13.10.1** Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.

**13.10.2** The location shall not interfere with existing developed or natural beach areas.

**13.10.3** The facility shall be located so as to minimize adverse effects on fisheries.

**13.10.4** The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with the surrounding character and uses of the area. A temporary pier, dock or wharf in non-tidal waters shall not be wider than 6 feet for non-commercial uses.

**13.10.5** No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water body or wetland as an operational necessity.

**13.10.6** New permanent piers and docks on non-tidal waters shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act.

**13.10.7** No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high-water line of a water body or within a wetland shall be converted to residential dwelling units in any district.

**13.10.8** Structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland shall not exceed 20 feet in height above the pier, wharf, dock or other structure.

### **13.11 Campgrounds**

Campgrounds shall conform to the minimum requirements imposed under State licensing procedures and the following:

**13.11.1** Campgrounds shall contain a minimum of 5,000 square feet of land, not including roads and driveways, for each site. Land supporting wetland vegetation, and land below the normal high-water line of a water body shall not be included in calculating land area per site.

**13.11.2** The areas intended for placement of a recreational vehicle, tent or shelter, and utility and service buildings shall be set back a minimum of 100 feet, horizontal distance, from the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and 75 feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.

### **13.12 Individual Private Campsites**

Individual private campsites not associated with campgrounds are allowed provided the following conditions are met:

**13.12.1** One campsite per lot existing on the effective date of this Ordinance, or 30,000 square feet of lot area within the shoreland zone, whichever is less, may be permitted.

**13.12.2** Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be set back 100 feet, horizontal distance, from the normal high-water line of a great pond classified GPA or river flowing to a great pond classified GPA, and 75 feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.

**13.12.3** Only one recreational vehicle shall be allowed on a campsite. The recreational vehicle shall not be located on any type of permanent foundation except for a gravel pad, and no structure except a canopy shall be attached to the recreational vehicle.

**13.12.4** The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter in a Resource Protection District shall be limited to 1000 square feet.

**13.12.5** A written sewage disposal plan describing the proposed method and location of sewage disposal shall be required for each campsite and shall be approved by the Local Plumbing Inspector. Where disposal is off-site, written authorization from the receiving facility or land owner shall be required.

**13.12.6** When a recreational vehicle, tent or similar shelter is placed on-site for more than 120 days per year, all requirements for residential structures shall be met, including the installation of a subsurface sewage disposal system in compliance with the State of Maine Subsurface Wastewater Disposal Rules unless served by public sewage facilities.

### **13.13 Commercial and Industrial Uses**

The following new commercial and industrial uses are prohibited within the shoreland zone adjacent to great ponds classified GPA, and rivers and streams which flow to great ponds classified GPA:

**13.13.1** Auto washing facilities

**13.13.2** Auto or other vehicle service and/or repair operations, including body shops

**13.13.3** Chemical and bacteriological laboratories

**13.13.4** Storage of chemicals, including herbicides, pesticides or fertilizers, other than amounts normally associated with individual households or farms

**13.13.5** Commercial painting, wood preserving, and furniture stripping

**13.13.6** Dry cleaning establishments

**13.13.7** Electronic circuit assembly

**13.13.8** Laundromats, unless connected to a sanitary sewer

**13.13.9** Metal plating, finishing, or polishing

**13.13.10** Petroleum or petroleum product storage and/or sale except storage on same property as use occurs and except for storage and sales associated with marinas

**13.13.11** Photographic processing

**13.13.12** Printing

### **13.14 Parking Areas**

**13.14.1** Parking areas shall meet the shoreline and tributary stream setback requirements for structures for the district in which such areas are located.

**13.14.2** Parking areas shall be adequately sized for the proposed use and shall be designed to prevent stormwater runoff from flowing directly into a water body, tributary stream or wetland and where feasible, to retain all runoff on-site.

**13.14.3** In determining the appropriate size of proposed parking facilities, the following shall apply:

**14.14.3.1** A parking space shall be a minimum of 10 feet wide and 20 feet long, except that parking spaces for a vehicle and boat trailer shall be 40 feet long.

**13.14.3.2** Internal travel aisles shall be 20 feet wide.

### **13.15 Roads and Driveways**

The following standards shall apply to the construction of roads and/or driveways and drainage systems, culverts and other related features.

**13.15.1** Roads and driveways shall be set back at least 100 feet, horizontal distance, from the normal high-water line of a great pond classified GPA or a river that flows to a great pond classified GPA, and 75 feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland unless no reasonable alternative exists as determined by the Planning Board. If no other reasonable alternative exists, the road and/or driveway setback requirement shall be no less than 50 feet, horizontal distance, upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the water body, tributary stream, or wetland.

**13.15.1.1** On slopes of greater than 20% the road and/or driveway setback shall be increased by 10 feet, horizontal distance, for each 5% increase in slope above 20%.

**13.15.1.2** These provisions shall not apply to approaches to water crossings or to roads or driveways that provide access to permitted structures and facilities located nearer to the shoreline or tributary stream due to an operational necessity, excluding temporary docks for recreational uses. Roads and driveways providing access to permitted structures within the setback area shall comply fully with these requirements except for that portion of the road or driveway necessary for direct access to the structure.

**13.15.2** Existing public roads may be expanded within the legal road right-of-way regardless of their setback from a water body, tributary stream or wetland.

**13.15.3** New permanent roads are not allowed within the shoreland zone along Significant River Segments except:

**13.15.3.1** To provide access to structures or facilities within the zone; or

**13.15.3.2** When the applicant demonstrates that no reasonable alternative route exists outside the shoreland zone. When roads must be located within the shoreland zone they shall be set back as far as practicable from the normal high-water line and screened from the river by existing vegetation.

**13.15.4** New roads and driveways are prohibited in a Resource Protection District except that the Planning Board may grant approval to construct a road or driveway to provide access to permitted uses within the district. A road or driveway may also be approved by the Planning Board in a Resource Protection District, upon a finding that no reasonable alternative route or location is available outside the district. When a road or driveway is permitted in a Resource Protection District the road and/or driveway shall be set back as far as practicable from the normal high-water line of a water body, tributary stream, or upland edge of a wetland.

**13.15.5** Road and driveway banks shall be no steeper than a slope of two horizontal to one vertical, and shall be graded and stabilized in accordance with the provisions for erosion control contained in this section.

**13.15.6** Road and driveway grades shall be no greater than 10% except for segments of less than 200 feet.

**13.15.7** In order to prevent road and driveway surface drainage from directly entering water bodies, tributary streams or wetlands, roads and driveways shall be designed, constructed, and maintained to empty onto an unscarified buffer strip at least 50 feet plus two times the average slope in width between the outflow point of the ditch or culvert and the normal high-water line of a water body, tributary stream, or upland edge of a wetland. Surface drainage which is directed to an unscarified buffer strip shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.

**13.15.8** Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow gains sufficient volume or head to erode the road, driveway, or ditch. To accomplish this, the following shall apply:

**13.15.8.1** Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road or driveway at intervals no greater than indicated in the following table:

Grade (Percent)	Spacing (Feet)
0-2	250
3-5	200-135
6-10	100-80
11-15	80-60
16-20	60-45
21 +	40

**13.15.8.2** Drainage dips may be used in place of ditch relief culverts only where the grade is 10% or less.

**13.15.8.3** On sections having slopes greater than 10%, ditch relief culverts shall be placed at approximately a 30-degree angle down slope from a line perpendicular to the centerline of the road or driveway.

**13.15.8.4** Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning and their inlet and outlet ends shall be stabilized with appropriate materials.

**13.15.9** Ditches, culverts, bridges, dips, water turnouts and other storm water runoff control installations associated with roads and driveways shall be maintained on a regular basis to assure effective functioning.

## **13.16 Septic Waste Disposal**

**13.16.1** All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules, and the following: a) clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions shall not extend closer than 75 feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a wetland; and b) a holding tank shall not be allowed for a first-time residential use in the shoreland zone.

## **13.17 Agriculture**

**13.17.1** All spreading of manure shall be accomplished in conformance with the *Manure Utilization Guidelines* published by the Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7 M.R.S.A. Sections 4201-4214).

**13.17.2** Manure shall not be stored or stockpiled within 100 feet, horizontal distance, of a great pond classified GPA or a river flowing to a great pond classified GPA, or within 75 feet horizontal distance, of other water bodies, tributary streams, or wetlands. All manure storage areas within the shoreland zone shall be constructed or modified such that the facility produces no discharge of effluent or contaminated storm water.

**13.17.3** Agricultural activities involving tillage of soil greater than 40,000 square feet in surface area within the shoreland zone shall require a Conservation Plan to be filed with the Planning Board. Nonconformance with the provisions of said plan shall be considered to be a violation of this Ordinance.

**13.17.4** There shall be no new tilling of soil within 100 feet, horizontal distance, of the normal high-water line of a great pond classified GPA; within 75 feet, horizontal distance, from other water bodies nor within 25 feet, horizontal distance, of tributary streams and wetlands. Operations in existence on the effective date of this Ordinance and not in conformance with this provision may be maintained.

**13.17.5** Newly established livestock grazing areas shall not be permitted within 100 feet, horizontal distance, of the normal high-water line of a great pond classified GPA; within 75 feet, horizontal distance, of other water bodies and coastal wetlands; nor within 25 feet, horizontal distance, of tributary streams and freshwater wetlands. Livestock grazing associated with ongoing farm activities, and which is not in conformance with the above setback provisions, may continue.

### **13.18 Timber Harvesting**

The Maine Forest Service will be responsible for enforcement of the rules for timber harvesting and related activities in Shoreland areas beginning October 20, 2015. (*Adopted August 19, 2015/Effective September 19, 2015*) (*The Commissioner of the Department of Environmental Protection approves this ordinance as amended Aug 19, 2015 - dated at Augusta, ME Oct 20, 2015*)

### **13.19 Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting**

**13.19.1** In a Resource Protection District abutting a great pond, there shall be no cutting of vegetation within the strip of land extending 75 feet, horizontal distance, inland from the normal high-water line, except to remove safety hazards.

Elsewhere, in any Resource Protection District the cutting or removal of vegetation shall be limited to that which is necessary for uses expressly authorized in that district.

**13.19.2** Except in areas as described above, and except to allow for the development of permitted uses, within a strip of land extending 100 feet, horizontal distance, inland from the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and 75 feet, horizontal distance, from any other water body, tributary stream, or the upland edge of a wetland, a buffer strip of vegetation shall be preserved as follows:

**13.19.2.1** There shall be no cleared opening greater than 250 square feet in the forest canopy (or other existing woody vegetation if a forested canopy is not present) as measured from the outer limits of the tree or shrub crown. However, a footpath not to exceed 6 feet in width as measured between tree trunks and/or shrub stems is allowed provided that a cleared line of sight to the water through the buffer strip is not created.

**13.19.2.2** Selective cutting of trees within the buffer strip is allowed provided that a well-distributed stand of trees and other natural vegetation is maintained. For the purposes of Section 13.19.2.2, a "well-distributed stand of trees" adjacent to a great pond classified GPA or a river or stream flowing to a great pond classified GPA, shall be defined as maintaining a rating score of 24 or more in each 25-foot by 50-foot rectangular area (1250 square feet) as determined by the following rating system.

Diameter of Tree at 4 ½ Feet Above Ground Level (inches)	Points
2 - < 4 in.	1
4 – <8 in.	2
8-< 12 in.	4
12 in. or greater	8

Adjacent to other water bodies, tributary streams, and wetlands, a "well-distributed stand of trees" is defined as maintaining a minimum rating score of 16 per 25-foot by 50-foot rectangular area.

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NOTE: As an example, adjacent to a great pond, if a 25-foot x 50-foot plot contains four (4) trees between 2 and 4 inches in diameter, two trees between 4 and 8 inches in diameter, three trees between 8 and 12 inches in diameter, and two trees over 12 inches in diameter, the rating score is:

$$(4 \times 1) + (2 \times 2) + (3 \times 4) + (2 \times 8) = 36 \text{ points}$$

Thus, the 25-foot by 50-foot plot contains trees worth 36 points. Trees totaling 12 points (36- 24 = 12) may be removed from the plot provided that no cleared openings are created.

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The following shall govern in applying this point system:

**13.19.2.2.1** The 25-foot by 50-foot rectangular plots shall be established where the landowner or lessee proposes clearing within the required buffer;

**13.19.2.2.2** Each successive plot shall be adjacent to, but not overlap a previous plot;

**13.19.2.2.3** Any plot not containing the required points shall have no vegetation removed except as otherwise allowed by this Section;

**13.19.2.2.4** Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by this Ordinance.

**13.19.2.2.5** Where conditions permit, no more than 50% of the points on any 25-foot by 50-foot rectangular area may consist of trees greater than 12 inches in diameter.

For the purposes of Section 13.19.2.2, “other natural vegetation” is defined as retaining existing vegetation under 3 feet in height and other ground cover, and retaining at least 5 saplings less than 2 inches in diameter at 4 ½ feet above ground level for each 25-foot by 50-foot rectangle area. If 5 saplings do not exist, no woody stems less than 2 inches in diameter shall be removed until 5 saplings have been recruited into the plot.

Notwithstanding the above provisions, no more than 40% of the total volume of trees 4 inches or more in diameter, measured at 4 ½ feet above ground level, shall be removed in any 10-year period.

**13.19.2.3** In order to protect water quality and wildlife habitat, existing vegetation under 3 feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered, or removed, except to provide for a footpath or other permitted uses.

**13.19.2.4** Pruning of tree branches on the bottom 1/3 of the tree shall be allowed.

**13.19.2.5** In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe, or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree species unless existing new tree growth is present.

Section 13.19.2 shall not apply to those portions of public recreational facilities adjacent to public swimming areas as long as cleared areas are limited to the minimum area necessary.

**13.19.3** At distances greater than 100 feet, horizontal distance, from a great pond classified GPA or a river flowing to a great pond classified GPA, and greater than 75 feet, horizontal distance, from the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland, there shall be allowed on any lot, in any 10-year period, selective cutting of not more than 40% of the volume of trees 4 inches or more in diameter, measured 4 ½ feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the 40% calculation. For the purposes of these standards, volume may be considered to be equivalent to basal area.

In no event shall cleared openings for any purpose, including but not limited to principal and accessory structures, driveways, lawns and sewage disposal areas, exceed in the aggregate, 25% of the lot area within the shoreland zone or 10,000 square feet, whichever is greater, including land previously cleared.

**13.19.4** Legally existing nonconforming cleared openings may be maintained, but shall not be enlarged, except as allowed by this Ordinance.

**13.19.5** Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of Section 13.19.

## **13.20 Soils**



All land uses shall be located on soils in or upon which the proposed uses or structures can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, improper drainage, and water pollution, whether during or after construction. Proposed uses requiring subsurface waste disposal, and commercial or industrial development and other similar intensive land uses, shall require a soils report based on an on-site investigation and be prepared by state-certified professionals. Certified persons may include Maine Certified Soil Scientists, Maine Registered Professional Engineers, Maine State Certified Geologists and other persons who have training and experience in the recognition and evaluation of soil properties. The report shall be based upon the analysis of the characteristics of the soil and surrounding land and water areas, maximum ground water elevation, presence of ledge, drainage conditions, and other pertinent data which the evaluator deems appropriate. The soils report shall include recommendations for a proposed use to counteract soil limitations where they exist.

### **13.21 Water Quality**

No activity shall deposit on or into the ground or discharge to the waters of the state any pollutant that, by itself or in combination with other activities or substances, will impair designated uses or the water classification of the water body, tributary stream or wetland.

### **13.22 Archaeological Site**

Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on, or eligible to be listed on the National Register of Historic Places, as determined by the permitting authority, shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least 20 days prior to action being taken by the permitting authority. The permitting authority shall consider comments received from the Commission prior to rendering a decision on the application.

### **13.23 Shoreland Overlay, Limited Residential Building Envelope, Access and Slope Standards**

**13.23.1.** Building envelope areas in the Shoreland Overlay Limited Residential District (not lot size) shall be a minimum of (100' x 100') square feet with sustained slopes of 20% or less. Building envelope area does not refer to building footprint or lot size. Access roads and drives to building envelopes shall not traverse terrain with sustained slopes of 20% or more. The Shoreland Overlay Limited Residential District includes areas other than those in the Resource Protection, Shoreland, or Shoreland Overlay Districts. Development within this district shall consider a combination of Shoreland Zoning Performance Standards in this Section of the Ordinance and the land use table and dimensional requirements of this Ordinance.

### **13.24 Special Exceptions**

In addition to the criteria specified in this Section, excepting structure setback requirements, the Planning Board may approve a permit for a single-family residential structure in a Resource Protection District provided that the applicant demonstrates that all of the following conditions are met:

**13.24.1** There is no location on the property, other than a location within the Resource Protection District, where the structure can be built.

**13.24.2** The lot on which the structure is proposed is undeveloped and was established and recorded in the registry of deeds of the county in which the lot is located before the adoption of the Resource Protection District.

**13.24.3** All proposed buildings, sewage disposal systems and other improvements are:

**13.24.3.1** Located on natural ground slopes of less than 20%; and

**13.24.3.2** Located outside the floodway of the 100-year floodplain along rivers and artificially formed great ponds along rivers and outside the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps.

**13.24.3.2.1** All buildings, including basements, are elevated at least one foot above the 100-year floodplain elevation; and the development is otherwise in compliance with the Floodplain Management Section.

**13.24.3.2.2** If the floodway is not shown on the Federal Emergency Management Agency Maps, it is deemed to be 1/2 the width of the 100-year floodplain.

**13.24.4** The total ground-floor area, including cantilevered or similar overhanging extensions, of all principal and accessory structures is limited to a maximum of 1,500 square feet. This limitation shall not be altered by variance.

**13.24.5** All structures, except functionally water-dependent structures, are set back from the normal high-water line of a water body, tributary stream or upland edge of a wetland to the greatest practical extent, but not less than 75 feet, horizontal distance. In determining the greatest practical extent, the Planning Board shall consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed building site's elevation in regard to the floodplain, and its proximity to moderate-value and high-value wetlands.

### **13.25 Installation of Public Utility Service**

A public utility, water district, sanitary district or any utility company of any kind shall not install services to any new structure located in the shoreland zone unless written authorization attesting to the validity and currency of all local permits required under this or any previous Ordinance has been issued by the appropriate municipal officials or other written arrangements have been made between the municipal officials and the utility.

## **SECTION 14. SUBDIVISION STANDARDS**

### **14.1 Authority**

This Section has been prepared in accordance with the provisions of 30-A M.R.S.A. Section 4403.

### **14.2 Purpose**

The purposes of this Section are:

**14.2.1** To provide for an expeditious and efficient process for the review of proposed subdivisions.

**14.2.2** To clarify the approval criteria of the State Subdivision Law, found in 30-A M.R.S.A. Section 4404.

**14.2.3** To preserve and enhance the character of the community.

**14.2.4** To assure the safety, health, and welfare of the people of the City of Gardiner.

**14.2.5** To protect the natural resources of the City of Gardiner.

**14.2.6** To assure that a minimal level of services and facilities are available to the residents of new subdivisions and that those lots in subdivisions can support the proposed uses and structures.

**14.2.7** To promote the development of an economically sound and stable community.

### **14.3 Applicability**

The provisions of this Section shall apply to all development considered a subdivision as defined by 30-A M.R.S.A Section 4401 and this Ordinance. All campgrounds and all multi-family housing projects consisting of more than one principal building shall conform to this Section.

### **14.4 Review Criteria**

The Planning Board shall consider the following criteria and before granting approval shall determine that:

**14.4.1** The proposed subdivision will not result in undue water or air pollution. In making this determination, it shall at least consider: the elevation of the land above sea level and its relation to the floodplain, nature of the soils and subsoils and their ability to adequately support waste disposal, slope of the land and its effect upon effluents, and the applicable state and local health and water resource rules and regulations.

**14.4.2** The proposed subdivision has sufficient water available for the reasonable needs of the subdivision.

**14.4.3** The proposed subdivision will not cause an unreasonable burden on an existing municipal or private water supply, if one is to be used.

**14.4.4** The proposed subdivision will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.

**14.4.5** The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed.

**14.4.6** The proposed subdivision will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are used.

**14.4.7** The proposed subdivision will not cause an unreasonable burden on the city's ability to dispose of solid waste, if municipal services are used.

**14.4.8** The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, archeological sites, significant wildlife habitat as identified by the Department of Inland Fisheries and Wildlife or the city, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.

**14.4.9** The proposed subdivision conforms to all the applicable standards and requirements of this Ordinance, the Comprehensive Plan, and other local ordinances. In making this determination, the Planning Board may interpret these ordinances and plans.

**14.4.10** The subdivider has adequate financial and technical capacity to meet all the review criteria, standards, and requirements contained in this Ordinance.

**14.4.11** Whenever situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in 38 M.R.S.A. Chapter 3, Subchapter 1, Article 2-B, the proposed subdivision will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.

**14.4.12** The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.

**14.4.13** Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant whether the subdivision is in a flood-prone area, if the subdivision, or any part of it, is in such an area, the subdivider shall determine the 100-year flood elevation and flood hazard boundary within the subdivision. The proposed subdivision plan shall require that principal structures in the subdivision will be constructed with the lowest floor, including the basement, at least one foot above the 100-year flood elevation.

**14.4.14** All wetlands within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands.

**14.4.15** Any river, stream, or brook within or abutting the proposed subdivision has been identified on any maps submitted as part of the application. All rivers, streams, or brooks shall be protected from any adverse development impacts.

**14.4.16** The proposed subdivision provides for adequate storm water management.

**14.4.17** The long-term cumulative effects of the proposed subdivision will not unreasonably increase a great pond's phosphorus concentration during the construction phase and life of the proposed subdivision.

**14.4.18** For any subdivision that crosses municipal boundaries, the proposed subdivision will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located.

**14.4.19** If any lots in the proposed subdivision have shore frontage on a river, stream, brook, great pond or wetland, as these features are defined in 38 M.R.S.A. Section 480-B, none of the lots created within the subdivision shall have a lot depth-to-shore frontage ratio greater than 5 to 1.

## **14.5 Administration and General Procedures**

### **14.5.1 Administration**

The Planning Board shall review all subdivision applications according to the applicable review criteria and standards.

### **14.5.2 Decisions**

**14.5.2.1** After review of a complete application the Planning Board shall determine whether the application meets the review criteria. The Planning Board shall make written findings of fact to support its decision and vote to approve the application, deny the application, or approve the application with conditions.

**14.5.2.2** If in its findings, the Planning Board determines that the application does not meet the review criteria, and that additional actions by the applicant will be sufficient to meet them, it may require such actions, as conditions of approval. The conditions may set forth requirements in addition to those set forth in the Ordinance only when the Planning Board finds it necessary to further the purposes of this Ordinance. All conditions approved by the Planning Board shall be listed along with the reasons for these conditions in the Planning Board's decision and on the final subdivision plan.

**14.5.2.3** The Planning Board shall list any waivers approved by the Board in its decision and on the final subdivision plan, and the reasons for such approval.

### **14.5.3 Burden of Proof**

The applicant shall have the burden of proof to show the proposed subdivision application meets the applicable review criteria and standards contained in this Ordinance.

### **14.5.4 Additional Studies**

The Planning Board may require the applicant to perform additional studies or hire a consultant to review the entire, or portions of, the subdivision application. The cost to perform additional studies or hire a consultant shall be borne by the applicant. The Planning Board may require the applicant

to deposit with the city the estimated cost of any consultant or additional study, which deposit shall be placed in a non-interest bearing account. The application shall be considered incomplete until evidence of payment of this fee is submitted. The city shall pay for the services rendered and reimburse the applicant, if funds remain after payments are completed. The applicant shall place additional funds into the escrow account to meet expenses.

#### **14.5.5 Rights Not Vested**

The submittal of a preliminary plan to the Code Enforcement Officer to review for a complete application shall not be considered the initiation of the review process for the purposes of bringing the application under the protection of 1 M.R.S.A. Section 302. The formal review process shall begin upon written notification to the applicant that a complete application has been received.

#### **14.5.6 Site Inspection**

**14.5.6.1** The Planning Board may vote to schedule an on-site inspection of the proposed project. The Planning Board shall schedule the date and time of the site inspection during the review process. The Planning Board shall post the date, time and place of the site inspection at City Hall.

**14.5.6.2** The Planning Board may vote to reschedule the site visit and delay its review of the subdivision application whenever it finds that snow cover prohibits viewing land features of the proposed site.

**14.5.6.3** The purpose of the site inspection is for the Planning Board to obtain knowledge about the site and surrounding area. The Planning Board shall not discuss the merits of the application or render any decision concerning the application during the site inspection.

#### **14.5.7 Waivers**

**14.5.7.1** The Planning Board may vote to waive any of the review criteria and/or ordinance performance standards when it finds one of the following:

**14.5.7.1.1** One or more of the review criteria and/or ordinance performance standards are not applicable to the proposal due to the size of the project, circumstances of the site, design of the project, or unique features of the proposal.

**14.5.7.1.2** The applicant has proposed an alternative design that meets or exceeds the requirements set forth in the performance standards.

**14.5.7.2** The applicant shall submit information and materials that support the waiver request with the application.

**14.5.7.3** The Planning Board shall only consider a waiver request when the applicant has submitted a written waiver request in the application. The first item of the application review shall be a consideration of any waiver request. The Planning Board shall review the request and if it meets the criteria for a waiver, shall approve the request. If the Planning Board finds that the request does not meet the waiver criteria, the Board shall deny the request. The applicant shall amend the application as required if the waiver is not approved by the Board. The Planning Board may vote

to suspend review of the application until the applicant provides any information necessary as a result of not obtaining the waiver. In no case shall the Planning Board make a final decision upon the application until the applicant supplies any additional information to the satisfaction of the Board.

#### **14.5.8 Subdivision Review Process**

**14.5.8.1** An applicant for subdivision review may request an informal sketch plan meeting with the Planning Board prior to submitting a formal application. The applicant requesting an informal meeting shall inform the Code Enforcement Officer at least 14 days prior to a scheduled meeting of the Planning Board and ask to be placed on the Board's agenda. The Code Enforcement Officer shall place the request on the Board's agenda for consideration. If the Planning Board agenda is extensive, the Code Enforcement Officer may schedule the sketch plan consideration for the following regularly scheduled meeting of the Planning Board. The applicant shall not be required to meet any submission requirements for the sketch plan meeting. *(Adopted December 3, 2014; Effective January 3, 2015)*

**14.5.8.2** All subdivision applicants shall be required to submit a preliminary plan and final plan application. *(Adopted December 3, 2014; Effective January 3, 2015)*

#### **14.5.9 Revisions to Approved Plans**

**14.5.9.1** An application for a revision to a previously approved plan which involves a modification to a condition imposed by the Planning Board; the addition of new units; the addition of new lots; or an expansion of the subdivision, shall follow the procedures for a new application.

**14.5.9.2.** For any other revision, the applicant shall submit a complete plan to the Code Enforcement Officer. *(Adopted March 25, 2015 Effective April 24, 2015)* The applicant shall also notify all property abutters including all property owners in the subdivision according to the requirements for abutter notification contained in the public hearing requirements. The Planning Board may vote to hold a public hearing on the proposed revision.

**14.5.9.3** The Planning Board's scope of review shall be limited to those portions of the plan which are proposed to be revised or that are adversely impacted by the proposed revision.

**14.5.9.4** The applicant shall submit a copy of the approved plans and 12 copies of the proposed revised portions of the plans. The application shall include enough supporting data to allow the Planning Board to make a decision that the proposed revision meets the review criteria.

**14.5.9.5** The Planning Board shall vote to approve the revision, deny the revision or approve the revision with conditions. The Planning Board may vote to require that additional information be submitted to ensure that the review criteria are met.

#### **14.5.10 As-Built Plans**

Upon completion of all the public improvements contained in the subdivision, the applicant shall submit a copy of as-built plans to the Planning Board.

**14.5.11 Performance Guarantee**

A performance guarantee meeting the requirements of this Ordinance shall be required for all public improvements.

**14.5.12 Public Hearing Requirements**

**14.5.12.1** The Planning Board shall hold a public hearing on all preliminary applications to receive public comment and information concerning the application. The Planning Board may also decide to hold a public hearing on the final plan application.

**14.5.12.2** The Planning Board shall hold a public hearing within 60 days after the determination that the application is complete.

**14.5.12.3** The applicant shall be responsible for providing all the public hearing notices.

**14.5.12.4** A notice of the public hearing shall be published in a newspaper having general circulation in the municipality. The notice shall be published 2 times, not more than 14 days before and not less than 7 days before the public hearing. The notice shall state the purpose of the hearing and give the date, time and place of the hearing. The applicant shall give a copy of the two notices to the Planning Board at the public hearing.

**14.5.12.5** The applicant shall notify, by certified mail, the owners of all property within 200 feet of the proposed subdivision at least 14 days and no more than 30 days in advance of the public hearing. The notice shall state the purpose of the hearing and give the date, time and place of the hearing. The applicant shall give copies of the letter and certified receipts to the Planning Board at the public hearing.

**14.5.12.6** The owners of property shall be considered those against whom taxes are assessed. Failure of an abutter to receive a notice shall not invalidate the public hearing, nor shall it require the Board to schedule a new public hearing.

**14.5.12.7** The Planning Board may vote to continue the public hearing to receive additional public comment or information concerning the application. Additional public notice shall not be required for a continued public hearing.

**14.5.13 Joint Meetings**

If any portion of a proposed subdivision crosses municipal boundaries, the Planning Board shall follow the notice, meeting, and review requirements specified in 30-A M.R.S.A. Sections 4401-4407.

**14.5.14 Inspection Requirements**

**14.5.14.1** The Code Enforcement Officer shall be responsible for conducting and/or coordinating all inspections with other municipal officials. The following municipal officials shall perform the following inspections:



**14.5.14.1.1** The Public Works Director or designee shall inspect all roads according to the road standards contained in this Ordinance.

**14.5.14.1.2** The Local Plumbing Inspector shall inspect the installation of all subsurface wastewater treatment systems.

**14.5.14.1.3** The Code Enforcement Officer or designee shall inspect all erosion control measures, stormwater management features, and all other site features.

**14.5.14.2** The applicant shall be responsible for scheduling all inspections with the Code Enforcement Officer. The Code Enforcement Officer and all other inspection officials shall keep a record of all inspections and all deficiencies. It shall be the responsibility of the Code Enforcement Officer to notify the applicant in writing that a deficiency exists and the steps necessary to remedy the situation. The Code Enforcement Officer shall notify the City Manager whenever the applicant fails to remedy a deficiency. The City shall take the appropriate enforcement action as authorized by this Ordinance.

#### **14.6 Preliminary Plan Review**

**14.6.1** The applicant shall submit a complete preliminary plan application to the Code Enforcement Officer. The applicant shall be issued a dated receipt.

**14.6.2** The Code Enforcement Officer shall within 14 days review the application to determine if it is complete. If the application is not complete, the Code Enforcement Officer shall in writing list all the items missing. The applicant shall re-submit the application with all the missing items which shall be reviewed within 14 days by the Code Enforcement Officer.

If the application is complete, the Code Enforcement Officer shall notify the applicant in writing and schedule a public hearing on the preliminary plan within 60 days of notifying the applicant of a complete application.

**14.6.3** As soon as possible after the receipt of a complete preliminary plan the city shall notify by first-class mail all abutters to the proposed subdivision that an application for a subdivision has been submitted to the Planning Board, specifying the location of the proposed subdivision and including a general description of the project. The notice shall also indicate that a copy of the application is available for public review at City Hall. The Planning Board shall maintain a list of all abutters notified by first-class mail, specifying the date the notice was mailed.

**14.6.4** The applicant shall at least 20 days before the public hearing submit 12 copies of the preliminary plan application including all maps and attachments. The maps may be reduced; however, at least two full-size map copies shall be submitted.

**14.6.5** Within 35 days of the public hearing or meeting, or within another time as may be mutually agreed to by the Board and the applicant, the Planning Board shall make a decision on the application.

**14.6.6** Upon approval of the preliminary plan, the applicant is eligible to submit a final plan to the Planning Board for consideration. The approval of the preliminary plan shall not constitute approval of the final plan or intent to approve the final plan, but rather it shall be deemed an expression of approval of the design of the preliminary plan as a guide to preparation of the final plan. The final plan shall be submitted for consideration upon fulfillment of the requirements of this Ordinance and conditions of preliminary approval, if any.

**14.6.7** Upon approval of the preliminary plan the Planning Board shall inform the applicant if it intends to hold a public hearing on the final plan.

#### **14.6.8 Preliminary Plan Submissions**

**14.6.8.1** The applicant shall be responsible for supplying all the necessary information to show that the proposed subdivision is in compliance with the review criteria and requirements and performance standards contained in this Ordinance. The preliminary plan submissions shall consist of the following:

**14.6.8.1.1** A receipt from the city indicating that the application fee has been paid.

**13.6.8.1.2** A preliminary plan application form and all required attachments and maps.

**14.6.8.1.3** Waiver request form, if applicable.

**14.6.8.1.4** A location map, drawn at an appropriate scale to show the relationship of the proposed subdivision to adjacent properties. The map shall show the following:

**14.6.8.1.4.1** Existing subdivisions in the proximity of the proposed subdivision.

**14.6.8.1.4.2** Locations and names of existing and proposed roads.

**14.6.8.1.4.3** Boundaries and designations of all shoreland zoning and other land use districts.

**14.6.8.1.4.4** An outline of the proposed subdivision and any remaining portion of the Owner's property if not included in the subdivision proposal.

**14.6.8.1.5** Name and address of the applicant and applicant's agent.

**14.6.8.1.6** Proof of right, title or interest in the property.

**14.6.8.1.7** A copy of all existing and proposed deed restrictions, rights-of-way, or other encumbrances affecting the property.

**14.6.8.1.8** The book, page, and tax map and lot information of the property.

**14.6.8.1.9** The names of all property owners abutting the property.

**14.6.8.1.10** Acreage of the proposed subdivision, acreage of roads, and acreage of any land not included in the subdivision.

**14.6.8.1.11** A copy of that portion of the county soil survey covering the subdivision.

**14.6.8.1.12** A subdivision plan consisting of one or more maps drawn to a scale of not more than 100 feet to the inch. The plan shall show the following:

**14.6.8.1.12.1** Name of the subdivision.

**14.6.8.1.12.2** Number of lots.

**14.6.8.1.12.3** Date, north point, graphic scale.

**14.6.8.1.12.4** Proposed lot lines with dimensions.

**14.6.8.1.12.5** A survey of the perimeter of the tract, giving complete descriptive data by bearing and distances, made and certified by a Registered Land Surveyor. The corner of the tract shall be located on the ground and marked by permanent markers. The plan shall indicate the type of permanent marker proposed to be set or found at each lot corner.

**14.6.8.1.12.6** Contour intervals of 10 feet when any land in the proposed subdivision falls outside of 10% grade.

**14.6.8.1.12.7** The location of all wetlands regardless of size.

**14.6.8.1.12.8** The location of all rivers, streams, brooks and ponds within or adjacent to the subdivision.

**14.6.8.1.12.9** The location of all slopes in excess of 10% slope.

**14.6.8.1.12.10** The number of acres within the subdivision, location of property lines, existing buildings, vegetative cover type, and other essential existing features.

**14.6.8.1.12.11** The location of any significant sand and gravel aquifers.

**14.6.8.1.12.12** The boundaries of any flood hazard areas and the 100-year flood elevation as depicted on the most recent FIRM Map.

**14.6.8.1.12.13** The location and boundaries of any significant wildlife habitat as identified by the Department of Inland Fisheries and Wildlife.

**14.6.8.1.12.14** The location of any site or structure listed on the National Register of Historic Places or any archeological site identified by the State Historic Preservation Commission.

**14.6.8.1.12.15** The location of all scenic areas and rare and endangered plants as identified by the City of Gardiner.

**14.6.8.1.12.16** The location of all subsurface wastewater disposal system test pits or borings and test data and appropriate documentation.

**14.6.8.1.12.17** The location of any open space, trails, and recreation features.

**14.6.8.1.12.18** The location, type, size and design of all proposed essential services and utilities.

**14.6.8.1.12.19** All erosion control features proposed for the site.

**14.6.8.1.12.20** All stormwater control features proposed for the site.

**14.6.8.1.12.21** All parcels of land proposed to be owned or held in common or joint ownership by the subdivision or individual lot owners. All land proposed to be offered for public acceptance to the city.

**14.6.8.1.12.22** The type and location of any proposed fire control features, and appropriate documentation.

**14.6.8.1.13** When connection to the public sewer is proposed, a letter from the City Manager indicating that there is adequate capacity.

**14.6.8.1.14** The location of all existing and proposed wells and appropriate documentation. If public water is proposed, a letter from the water district indicating that there is adequate supply and pressure.

**14.6.8.1.15** A written statement from the Police Chief approving all street traffic patterns, parking, curb cuts and traffic impacts.

**14.6.8.1.16** A written statement from the Fire Chief approving all hydrant locations and any other fire suppression measures proposed.

**14.6.8.1.17** Phosphorus control measures, if the subdivision is located within the direct watershed of a great pond.

**14.6.8.1.18** Road plans, specifications, and appropriate documentation.

**14.6.8.1.19** Traffic access data for the site including an estimate of the amount of vehicular traffic to be generated on a daily basis.

**14.6.8.1.20** A statement indicating how the solid waste from the subdivision will be handled.

**14.6.8.1.21** Documentation indicating that the applicant has the financial and technical capacity to meet the requirements of this Ordinance.

**14.6.8.1.22** Any other data necessary in order to meet the requirements of this Ordinance.

**14.6.8.1.23** A description of the anticipated types of land use that will be developed within the proposed subdivision.

**14.6.8.1.24** A description of how all roads and other public improvements will be maintained until the improvements are dedicated to the city or for private roads and improvements, how they will be maintained over their life span.

## **14.7 Final Plan Review**

**14.7.1** The applicant shall submit a complete final plan application to the Code Enforcement Officer. The applicant shall be issued a dated receipt.

**14.7.2** The Code Enforcement Officer shall within 14 days review the application to determine if it is complete. If the application is not complete, the Code Enforcement Officer shall in writing list all the items missing. The applicant shall re-submit the application with all the missing items which shall be reviewed within 14 days by the Code Enforcement Officer.

If the application is complete, the Code Enforcement Officer shall notify the applicant in writing and schedule a meeting or public hearing on the final plan within 60 days of notifying the applicant of a complete application.

**14.7.3** The applicant shall at least 20 days before the meeting or public hearing submit 12 copies of the final plan including all maps and attachments. The application shall also include an original and 3 Mylar copies.

**14.7.4** Within 60 days of the public hearing or meeting, or within another time as may be mutually agreed to by the Board and the applicant, the Planning Board shall make a decision on the application.

**14.7.5** Upon voting to approve the final plan, the Planning Board shall sign the original and 3 Mylar copies. The Planning Board shall retain one copy. The applicant shall file the approved final subdivision plan with the Register of Deeds, within 90 days of the date upon which the plan is approved. Failure to file the plan with the Register of Deeds, within 90 days, shall make the plan null and void. Final plans not filed within the required time shall be re-submitted to the Planning Board according to the requirements for a final plan.

**14.7.6** The Applicant shall provide the city proof that the subdivision plan was filed with the Register of Deeds, and shall submit to the Tax Assessor an electronic copy of the subdivision plan shown in a format acceptable to the Tax Assessor.

**14.7.7** No changes, erasures, modifications or revisions shall be made to a final plan after approval unless they have been approved according to the requirements of this Ordinance.

**14.7.8** The approval of the final plan shall not be deemed to constitute or be evidence of any acceptance by the city of any road, easement, recreation area or facility, trail, or other feature.

### **14.7.9 Final Plan Submissions**

**14.7.9.1** The applicant shall be responsible for supplying all the necessary information to show that the proposed subdivision is in compliance with the review criteria and requirements and performance standards contained in this Ordinance.

**14.7.9.2** The final plan submissions shall consist of the following:

**14.7.9.2.1** A receipt from the city indicating that the application fee has been paid.

**14.7.9.2.2** A final plan application form and all required attachments and maps.

**14.7.9.2.3** All the submission materials required for a preliminary plan.

**14.7.9.2.4** All conditions and modifications approved by the Planning Board for the preliminary plan, contained on the final plan.

**14.7.9.2.5** Any conditions placed on the final plan by the Planning Board shall be clearly listed on the plan. Planning Board-imposed conditions shall be listed separately from any conditions or restrictions placed on the subdivision by the applicant.

**14.7.9.2.6** All waivers approved by the Planning Board, shown on the final plan.

**14.7.9.2.7** All additional studies and/or materials required by the Planning Board, as applicable.

**14.7.9.2.8** A signature block, on the final plan.

**14.7.9.2.9** A performance guarantee, if applicable.

**14.7.9.2.10** The location and type of all permanent markers set at all lot corners.

**14.7.9.2.11** If the subdivision contains any private roads, a statement as follows: the subdivision roads are designed as private roads and are not eligible for acceptance by the City of Gardiner, unless the road is improved to meet the appropriate standards for road acceptance.

**14.7.9.2.12** Written copies of any documents of land dedication, and written evidence that the City Manager is satisfied with the legal sufficiency of any documents accomplishing such land dedication.

**14.7.9.2.13** Proof that all other applicable state and federal permits have been obtained.

**14.7.9.2.14** Any variances granted by the Board of Appeals, listed on the final plan.

## **14.8 Performance Standards**

**14.8.1** All proposed subdivisions shall conform to the applicable standards contained in this Ordinance and the following performance standards.

### **14.8.2 General Lot Requirements**

**14.8.2.1** Subdivisions shall conform to the city's minimum lot requirements. Subdivisions designed according to the Open Space Design Option may contain modified minimum lot requirements according to the standards contained in this Ordinance.

**14.8.2.2** Land in the following areas shall not be used to calculate the required minimum lot size: wetlands; rivers; streams; brooks; stormwater drainage features; resource protection areas as defined in the city's Shoreland Zoning Ordinance; areas within the floodway as defined in the city's Floodplain Management Ordinance; and areas within public and private rights-of-way.

### **14.8.3 Monuments**

**14.8.3.1** Monumentation as required by the Maine Board of Registration of Land Surveyors shall be installed at the following:

**14.8.3.1.1** At all road intersections and points of curvature, but no farther than 750 feet apart along road lines without intersections or curves.

**14.8.3.1.2** At all corners and angle points of the subdivision boundaries where the interior angle of the subdivision boundaries is 135 degrees or less.

**14.8.3.1.3** At all other subdivision boundary corners and angle points plus lot boundary corners and angle points.

**14.8.3.1.4** At a point 100 feet from the road at each side lot line if lot lines are not 90 degrees to the road.

### **14.8.4 Water Supply**

**14.8.4.1** The water supply for the subdivision and each lot shall be adequate to supply all the potable and other water requirements of the development. The applicant shall submit documentation from a hydrologist or a well driller familiar with the area, stating that adequate water is available to supply the subdivision.

#### **14.8.4.2 Municipal Water**

The applicant shall obtain documentation from the Gardiner Water District approving all proposed water lines and a statement indicating that an adequate supply of water is available to serve the requirements of the proposed development.

#### **14.8.4.3 Private or Community Wells**

The applicant shall locate and construct individual wells to prevent infiltration of surface water and contamination from subsurface wastewater disposal systems and other sources of pollution. The lot design shall permit the placement of wells, subsurface wastewater disposal systems and reserve areas in compliance with the Maine Subsurface Wastewater Disposal Rules and the Well Drillers and Pump Installers Rules.

#### **14.8.5 Fire Protection**

**14.8.5.1** The applicant shall design the subdivision so that the City of Gardiner Fire Department shall have unrestricted access to all developed areas within the subdivision. The applicant shall review the proposed subdivision with the Fire Chief and shall obtain a written statement from the Fire Chief approving any fire protection measures. This statement shall be submitted with the preliminary plan application.

**14.8.5.2** The Fire Chief in making his/her determination that adequate provisions are made for fire protection shall ensure the following:

The road is adequate for the passage of fire equipment.

An adequate water supply is available near or within the subdivision to serve the density of the development.

**14.8.5.3** The Fire Chief shall approve the fire protection measures proposed for the subdivision or shall make specific recommendations to improve the fire protection measures. In making recommendations, the Fire Chief may recommend the installation of fire ponds or other similar features.

#### **14.8.6 Sewer and Subsurface Wastewater Disposal Systems**

**14.8.6.1** When subsurface wastewater is proposed, the applicant shall submit evidence of site suitability for the subsurface wastewater disposal system prepared by a licensed site evaluator in compliance with the Subsurface Wastewater Disposal Rules of the State of Maine. All test pit or test boring locations shall be shown on the subdivision plan and be accompanied by a HHE-200 Form or other format which shows the appropriate soils data. In no instance shall a disposal area for a lot or structures require a new system variance from the Subsurface Wastewater Disposal Rules. Holding tank systems shall not be allowed to serve new lots or structures.

**14.8.6.2** When municipal sewer is proposed the applicant shall conform to the requirements for municipal systems contain in this Ordinance.

#### **14.8.7 Financial and Technical Capacity**



**14.8.7.1** The applicant shall submit evidence that he/she has adequate financial and technical capacity to design and construct the development in accordance with all applicable local, state and federal laws and regulations. Evidence of adequate financial and technical capacity shall consist of the following:

**14.8.7.1.1** A list of all technical and professional staff involved with the proposal and preparation of the application including their qualifications and past experience with projects of similar size and scale.

**14.8.7.1.2** A list of all persons with inspection and oversight responsibilities for the development and if available, the persons selected to construct the project, including their qualifications and past experience with projects of similar size and scale.

**14.8.7.1.3** A letter from a financial institution such as a bank or other lending institution that states that the applicant has the necessary funds available or a loan commitment from this institution to complete the proposed development within the time period specified by the applicant.

#### **14.8.8 Conformity With All Other Applicable Local Ordinances**

The applicant shall show that the subdivision meets all other applicable local ordinances.

#### **14.8.9 Recreational Access Standards**

**14.8.9.1** Outdoor recreational access is an important feature of the city and all subdivision proposals consisting of more than 4 lots shall provide for the continued enhancement and development of a variety of recreational opportunities. Since new subdivisions and the associated housing and other development they foster can compete with existing open space, scenic and other attributes of a rural community, it shall be the responsibility of each new subdivision to provide for outdoor recreation. A recreation plan designed to serve the subdivision shall be developed according to the requirements listed below.

**14.8.9.2** Since subdivision proposals vary in size, density, design, and location, a variety of options shall be offered for the development of the recreation plan. The subdivision shall be deemed to meet the recreation requirement if it conforms to one of the following:

**14.8.9.2.1** A minimum of 10% of the land within the subdivision is dedicated for open space. Suitable easements and/or deed restrictions shall be included to preserve the land dedicated from development. The land shall not include areas deemed unsuitable for development.

**14.8.9.2.2** A parcel of land consisting of at least 2 acres and having a minimum of 200 feet of shore frontage on a great pond is dedicated for recreation. At a minimum the parcel shall be suitable for boat access or swimming. Trails, easements or other instruments shall be provided so that residents can access the parcel.

**14.8.9.2.3** A multi-purpose trail system which can reasonably be accessed by each lot is constructed. The trail shall be designed to accommodate walkers, cross-country skiing and snowmobiles. The trail shall provide a link to existing trails or snowmobile routes.

**14.8.9.2.4** An active recreation area is provided consisting of at least two of the following: playground for children, baseball field, tennis court (minimum of 2 courts), full-size basketball court or a multi-purpose field.

**14.8.9.2.5** A combination of recreation options is provided. The applicant may propose to offer a combination of recreational sites consisting of a portion of some of the options listed above. The Planning Board shall review this proposal to ensure that the intent of this Subsection is met.

**14.8.9.3** Land for recreational sites may be offered to the city for public acceptance or may be owned in common by lot owners. The applicant may also propose to dedicate the recreation areas to a third party that is incorporated for maintaining land for conservation and preservation.

**14.8.9.4** All land proposed for recreation shall be protected by a suitable deed restriction that prohibits development and preserves the land for future inhabitants.

## SECTION 15. FLOODPLAIN MANAGEMENT

### 15.1 Purpose

Certain areas of the City of Gardiner, Maine, are subject to periodic flooding, causing serious damages to properties within these areas. Relief is available in the form of flood insurance as authorized by the National Flood Insurance Act of 1968.

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

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

The City of Gardiner has the legal authority to adopt land use and control measures to reduce future flood losses pursuant to 30-A M.R.S.A. Sections 3001-3007, 4352, 4401-4407, and 38 M.R.S.A. Section 440.

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

**The areas of special flood hazard, Zones A and AE, for the City of Gardiner, Kennebec County, Maine, identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study - Kennebec County," dated June 16, 2011 with accompanying "Flood Insurance Rate Map" dated June 16, 2011 with panels: 654, 656, 657, 658, 659, 661, 662, 666, 667, 669 derived from the county wide digital flood insurance rate map entitled "Digital Flood Insurance Rate Map, Kennebec County," are hereby adopted by reference and declared to be a part of this Ordinance.** *(Amendment adopted by the Gardiner City Council June 08, 2011, Effective July 08, 2011 Order #11-39)*

### 15.2 Permit Required

Before any construction or other development including the placement of manufactured homes, begins within any special flood hazard area, a flood hazard development permit shall be obtained from the Code Enforcement Officer. This permit shall be in addition to any other permits which may be required pursuant to the codes and ordinances of the City of Gardiner, Maine.

### 15.3 Application for a Permit

The application for a flood hazard development permit shall be submitted to the Code Enforcement Officer and shall include:

- 15.3.1** The name, address and phone number of the applicant, owner, and contractor;
- 15.3.2** An address and a map indicating the location of the construction site;
- 15.3.3** A site plan showing location of existing and/or proposed development, including but not limited to structures, sewage disposal facilities, water supply facilities, areas to be cut and filled, and lot dimensions;
- 15.3.4** A statement of the intended use of the structure and/or development;
- 15.3.5** A statement of the cost of the development including all materials and labor;
- 15.3.6** A statement as to the type of sewage system proposed;
- 15.3.7** Specification of dimensions of the proposed structure and/or development;
- 15.3.8** The elevation in relation to the National Geodetic Vertical Datum (NGVD), or to a locally established datum in Zone A only, of the:
- 15.3.8.1** Base flood at the proposed site of all new or substantially improved structures, which is determined:
- 15.3.8.1.1** In Zone AE, from data contained in the "Flood Insurance Study - City of Gardiner, Maine, or
- 15.3.8.1.2** In Zone A:
- 15.3.8.1.2.1** From any base flood elevation data from federal, state, or other technical sources (such as FEMA's Quick-2 model, FEMA 265/July 1995), including information obtained pursuant to section 15.6.11 and section 15.8.4;
- 15.3.8.1.2.2** From the contour elevation extrapolated from a best fit analysis of the floodplain boundary when overlaid onto a USGS Quadrangle Map or other topographic map prepared by a professional land surveyor or registered professional engineer, if the floodplain boundary has a significant correlation to the elevation contour line(s); or, in the absence of all other data,
- 15.3.8.1.2.3** To be the elevation of the ground at the intersection of the floodplain boundary and a line perpendicular to the shoreline which passes along the ground through the site of the proposed building.
- 15.3.8.2** The Highest and lowest grades at the site adjacent to the walls of the proposed building;
- 15.3.8.3** The lowest floor, including basement; and whether or not such structures contain a basement;
- 15.3.8.4** In the case of a non-residential structures only, the level to which the structure will be flood-proofed;

**15.3.9** A description of an elevation reference point established on the site of all developments for which elevation standards apply as required in section 15.6;

**15.3.10** A written certification by a professional land surveyor, registered professional engineer or architect that the base flood elevation and grade elevations shown on the application are accurate;

**15.3.11** The following certifications as required in section 15.6 by a registered professional engineer or architect:

**15.3.11.1** A flood-proofing certificate (FEMA Form 81-65, 03/09, as amended), to verify that the flood-proofing methods for any non-residential structures will meet the flood-proofing criteria of Section 15.3.8.4; Section 15.6.7; and other applicable standards in Section 15.6;

**15.3.11.2** A hydraulic openings certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of Section 15.6.12.2.1;

**15.3.11.3** A certified statement that bridges will meet the standards of Section 15.6.13;

**15.3.11.4** A certified statement that containment walls will meet the standards of Section 15.6.14;

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

**15.3.13** A statement of construction plans describing in detail how each applicable development standard in section 15.6 will be met.

#### **15.4 Application Fee and Expert's Fee**

A non-refundable application fee established by the Gardiner City Council shall be paid to the City Clerk and a copy of a receipt for the same shall accompany the application.

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

#### **15.5 Review Standards for Flood Hazard Development Permit Applications**

The Code Enforcement Officer shall:

**15.5.1** Review all applications for the flood hazard development permit to assure that proposed developments are reasonably safe from flooding and to determine that all pertinent standards of this Section are met.

**15.5.2** Utilize, in the review of all flood hazard development permit applications, the following:

**15.5.2.1** The base flood and floodway data contained in the "Flood Insurance Study - City of Gardiner, Maine," as described in Section 15.1;

**15.5.2.2** In special flood hazard areas where base flood elevation and floodway data are not provided, the Code Enforcement Officer shall obtain, review and reasonably utilize any base flood elevation and floodway data from federal, state, or other technical sources, including information obtained pursuant to Section 15.3.8.1.2; Section 15.6.11; and Section 15.8.4, in order to administer Section 15.6 of this Ordinance; and,

**15.5.2.3** When the community establishes a base flood elevation in a Zone A by methods outlined in Section 15.3.8.1.2, the community shall submit that data to the Maine Floodplain Management Program in the State Planning Office.

**15.5.3** Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in 15.1 of this Section;

**15.5.4** In the review of flood hazard development permit applications, determine that all necessary permits have been obtained from those federal, state, and local government agencies from which prior approval is required by federal or state law, including but not limited to Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1344;

**15.5.5** Notify adjacent municipalities, the Department of Environmental Protection, and the Maine Floodplain Management Program in the State Planning Office prior to any alteration or relocation of a water course and submit copies of such notifications to the Federal Emergency Management Agency;

**15.5.6** If the application satisfies the requirements of this Ordinance, approve the issuance of one of the following flood hazard development permits based on the type of development:

**15.5.6.1** A two-part flood hazard development permit for elevated structures. Part I shall authorize the applicant to build a structure to and including the first horizontal floor only above the base flood level. At that time the applicant shall provide the Code Enforcement Officer with an elevation certificate completed by a professional land surveyor, registered professional engineer or architect based on the Part I permit construction, "as built", for verifying compliance with the elevation requirements of Sections 15.6.6, 15.6.7 or 15.6.8. Following review of the elevation certificate data, which shall take place within 72 hours of receipt of the application, the Code Enforcement Officer shall issue Part II of the flood hazard development permit. Part II shall authorize the applicant to complete the construction project; or

**15.5.6.2** A flood hazard development permit for flood-proofing of non-residential structures that are new construction or substantially improved non-residential structures that are not being elevated but that meet the flood-proofing standards of section 15.6.7.1. The application for this permit shall include a flood-proofing certificate signed by a registered professional engineer or architect; or

**15.5.6.3** A flood hazard development permit for minor development for all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. Minor development

also includes, but is not limited to: accessory structures as provided for in Section 15.6.10., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves and piers.

**15.5.7** Maintain, as a permanent record, copies of all flood hazard development permit applications, corresponding permits issued, and data relevant thereto, including reports of the Board of Appeals on variances granted under the provisions of this Ordinance, and copies of elevation certificates, flood-proofing certificates, certificates of compliance and certifications of design standards required under the provisions of Sections 15.3, 15.6 and 15.7 of this Ordinance.

## **15.6 Development Standards**

All developments in areas of special flood hazard shall meet the following applicable standards:

### **15.6.1 All Development**

All development shall:

**15.6.1.1** Be designed or modified and adequately anchored to prevent flotation (excluding piers and docks), collapse or lateral movement of the development resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

**15.6.1.2** Use construction materials that are resistant to flood damage;

**15.6.1.3** Use construction methods and practices that will minimize flood damage; and

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

### **15.6.2 Water Supply**

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

### **15.6.3 Sanitary Sewage Systems**

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

### **15.6.4 Subsurface Wastewater Disposal Systems**

Subsurface wastewater disposal systems shall be located and constructed to avoid impairment to them or contamination from them during floods.

### **15.6.5 Watercourse Carrying Capacity**

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

### **15.6.6 Residential**

New construction or substantial improvement of any residential structure located within:

**15.6.6.1** Zone AE shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation.

**15.6.6.2** Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to Section 15.3.8.1.2; Section 15.5.2; or Section 15.8.4.

### **15.6.7 Non Residential**

New construction or substantial improvement of any non-residential structure located within:

**15.6.7.1** Zone AE shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation, or together with attendant utility and sanitary facilities shall:

**15.6.7.1.1** Be flood-proofed to at least one foot above the base flood elevation so that below that elevation the structure is watertight with walls substantially impermeable to the passage of water;

**15.6.7.1.2** Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and

**15.6.7.1.3** Be certified by a registered professional engineer or architect that the floodproofing design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this Section. Such certification shall be provided with the application for a flood hazard development permit, as required by section 15.3.11 and shall include a record of the elevation above mean sea level to which the structure is floodproofed.

**15.6.7.2** Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to Section 15.3.8.1.2; Section 15.5.2; or section 15.8.4, or

**15.6.7.2.1** Together with attendant utility and sanitary facilities meet the floodproofing standards of section 15.6.7.1.

### **15.6.8 Manufactured Homes**

**15.6.8.1** New or substantially improved manufactured homes located within Zone AE shall:

**15.6.8.1.1** Be elevated such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation;

**15.6.8.1.2** Be on a permanent foundation, which may be poured masonry slab or foundation walls, with hydraulic openings, or may be reinforced piers or block supports, any of which support the manufactured home so that no weight is supported by its wheels and axles; and

**15.6.8.1.3** Be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to:



**15.6.8.1.3.1** Over-the-top ties anchored to the ground at the four corners of the manufactured home, plus two additional ties per side at intermediate points (manufactured homes less than 50 feet long require one additional tie per side); or

**15.6.8.1.3.2** Frame ties at each corner of the home, plus five additional ties along each side at intermediate points (manufactured homes less than 50 feet long require four additional ties per side).

**15.6.8.1.3.3** All components of the anchoring system described in Sections 15.6.8.1.3.1 and 15.6.8.1.3.2 shall be capable of carrying a force of 4800 pounds.

**15.6.8.2** New or substantially improved manufactured homes in Zone A shall:

**15.6.8.2.1** Be elevated on a permanent foundation, as described in Section 15.6.8.1.2, such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation utilizing information obtained pursuant to Section 15.3.8.1.2; Section 15.5.2 or Section 15.8.4; and

**15.6.8.2.2** Meet the anchoring requirements of Section 15.6.8.1.3.

## **15.6.9 Recreational Vehicles**

**15.6.9.1** Recreational Vehicles located within Zones A and AE shall either:

**15.6.9.1.1** Be on the site for fewer than 180 consecutive days;

**15.6.9.1.2** Be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or

**15.6.9.1.3** Be permitted in accordance with the elevation and anchoring requirements for "manufactured homes" in Section 15.6.8.1.

## **15.6.10 Accessory Structures**

Accessory structures, as defined in this Ordinance, located within Zones AE and A shall be exempt from the elevation criteria required in Sections 15.6.6 and 15.6.7 above, if all other requirements of Section 15.6 and all the following requirements are met. Accessory structures shall:

**15.6.10.1** Be 500 square feet or less and have a value less than \$3000;

**15.6.10.2** Have unfinished interiors and not be used for human habitation;

**15.6.10.3** Have hydraulic openings, as specified in section 15.6.12.2, in at least two different walls of the accessory structure;

**15.6.10.4** Be located outside the floodway;

**15.6.10.5** When possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than is the primary structure; and

**15.6.10.6** Have only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and when possible outside the Special Flood Hazard Area.

### **15.6.11 Floodways**

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

**15.6.11.2** In Zone AE and A riverine areas for which no regulatory floodway is designated, encroachments, including fill, new construction, substantial improvement, and other development, shall not be permitted in the floodway as determined in Section 15.6.11.3 unless a technical evaluation certified by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development:

**15.6.11.2.1** Will not increase the water surface elevation of the base flood more than one foot at any point within the community; and

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

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

### **15.6.12 Enclosed Areas Below the Lowest Floor**

New construction or substantial improvement of any structure in Zones AE and A that meets the development standards of section 15.6, including the elevation requirements of Sections 15.6.6, 15.6.7 or 15.6.8 and is elevated on posts, columns, piers, piles, "stilts," or crawlspaces may be enclosed below the base flood elevation requirements provided all the following criteria are met or exceeded:

**15.6.12.1** Enclosed areas are not "basements" as defined in this Ordinance;

**15.6.12.2** Enclosed areas shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood water. Designs for meeting this requirement shall either:

**15.6.12.2.1** Be engineered and certified by a registered professional engineer or architect; or

**15.6.12.2.2** Meet or exceed the following minimum criteria:

**15.6.12.2.2.1** A minimum of two openings having a total net area of not less than one square inch for every square foot of the enclosed area;

**15.6.12.2.2.2** The bottom of all openings shall be below the base flood elevation and no higher than one foot above the lowest grade; and

**15.6.12.2.2.3** Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the entry and exit of flood waters automatically without any external influence or control such as human intervention, including the use of electrical and other non-automatic mechanical means.

**15.6.12.2.3** The enclosed area shall not be used for human habitation; and

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

### **15.6.13. Bridges**

New construction or substantial improvement of any bridge in Zones AE and A shall be designed such that:

**15.6.13.1** When possible, the lowest horizontal member (excluding the pilings, or columns) is elevated to at least one foot above the base flood elevation; and

**15.6.13.2** A registered professional engineer shall certify that:

**15.6.13.2.1** The structural design and methods of construction shall meet the elevation requirements of this Subsection and the floodway standards of Section 15.6.11; and

**15.6.13.2.2** The foundation and superstructure attached thereto are designed to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all structural components. Water loading values used shall be those associated with the base flood.

### **15.6.14 Containment Walls**

New construction or substantial improvement of any containment wall located within Zones AE and A shall:

**15.6.14.1.** Have the containment wall elevated to at least one foot above the base flood elevation;

**15.6.14.2** Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and

**15.6.14.3** Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this Section. Such certification shall be provided with the application for a flood hazard development permit, as required by section 15.3.11.

#### **15.6.15 Wharves, Piers and Docks**

New construction or substantial improvement of wharves, piers, and docks is permitted in Zones AE and A, in and over water and seaward of the mean high tide, if the following requirements are met:

**15.6.15.1** Wharves, piers, and docks shall comply with all applicable local, state, and federal regulations; and

**15.6.15.2** For commercial wharves, piers, and docks, a registered professional engineer shall develop or review the structural design, specifications, and plans for the construction.

#### **15.7 Certificate of Compliance**

No land in a special flood hazard area shall be occupied or used and no structure which is constructed or substantially improved shall be occupied until a certificate of compliance is issued by the Code Enforcement Officer, subject to the following provisions:

**15.7.1** For new construction or substantial improvement of any elevated structure the applicant shall submit to the Code Enforcement Officer, an elevation certificate completed by a professional land surveyor, registered professional engineer, or architect, for compliance with Sections 15.6.6, 15.6.7 or 15.6.8.

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

**15.7.3** Within 10 working days, the Code Enforcement Officer shall:

**15.7.3.1** Review the elevation certificate and the applicant's written notification; and

**15.7.3.2** Upon determination that the development conforms with the provisions of this Ordinance, shall issue a certificate of compliance.

#### **15.8 Review of Subdivision and Development Proposals**

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

**15.8.1** All such proposals are consistent with the need to minimize flood damage.

**15.8.2** All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damages.

**15.8.3** Adequate drainage is provided so as to reduce exposure to flood hazards.

**15.8.4** All proposals include base flood elevations, flood boundaries, and, in a riverine floodplain, floodway data. These determinations shall be based on engineering practices recognized by the Federal Emergency Management Agency.

**15.8.5** Any proposed development plan includes a condition of plan approval requiring that structures on any lot in the development having any portion of its land within a Special Flood Hazard Area are to be constructed in accordance with section 15.6 of this Ordinance. Such requirement will be included in any deed, lease, purchase and sale agreement, or document transferring or expressing an intent to transfer any interest in real estate or structure, including but not limited to a time-share interest. The condition shall clearly articulate that the city may enforce any violation of the construction requirement and that fact shall also be included in the deed or any other document previously described. The construction requirement shall also be clearly stated on any map, plat, or plan to be signed by the Planning Board or local reviewing authority as part of the approval process.

## **SECTION 16. SLUDGE MANAGEMENT**

### **16.1 Authority**

This Section is adopted pursuant to 30-A M.R.S.A. Section 3001.

### **16.2 Purpose**

The purpose of this Section is to protect the health and safety of the residents of the City of Gardiner, to enhance and maintain the quality of the environment and to conserve natural resources through regulation of storage and land application of industrial wastewater treatment plant sludge and other residuals.

This Section shall serve as a companion document to the State of Maine's Department of Environmental Protection Regulations for Land Application of Sludge and Residuals. The City of Gardiner desires to work in partnership with the Department of Environmental Protection in establishing a local procedure for the following activities: a public hearing process to review all land application sites, an inspection process to review all land spreading activities, a notification process to keep the city informed of all land spreading activities, and identification of environmental areas of local concern.

This Section also recognizes the agricultural value that sludge and other residuals can provide to the city's farms and forestland. The opportunity to use sludge and residuals on agricultural land enhances the ability of local farmers to improve the productivity of their land and further promotes the city's interest in preserving the agricultural heritage of the community. The application of sludge and residuals on agricultural lands shall be performed in a manner that also recognizes the other land use activities that share the city's rural landscape.

### **16.3 Continuance of Existing Uses**

**16.3.1** Any land spreading of sludge and residuals, storage of sludge and residuals, land spreading and storage of septic sludge, and composting operations that are legally existing and operating with a permit from the Department of Environmental Protection within the City of Gardiner prior to the adoption of this Section may continue, but shall be subject to the following requirements:

**16.3.1.1** The expansion or enlargement of any existing activity shall require a permit and conform to the provisions of this Section for the new expanded area.

**16.3.1.2** An annual renewal permit shall be obtained for the existing activity within 12 months of the effective date of this Section, and the activity shall conform to the requirements established for permit renewal.

#### **16.4 Regulated Activities**

The following activities shall be regulated by the City of Gardiner and shall require a permit from the Planning Board. The activities are land spreading of sludge and residuals, storage of sludge and residuals, land spreading and storage of septic sludge, and composting operations.

#### **16.5 Permit Requirements**

##### **16.5.1 Permit Required**

For all activities listed in this Section, a permit shall first be obtained a permit from the Code Enforcement Officer, who shall furnish an application form for obtaining all the required information from the applicant. The non-refundable fee for the permit shall be \$300.00 and shall be presented with the complete application to the City Clerk. The permit shall be issued for a period of one year and shall be subject to an annual renewal.

##### **16.5.2 Annual Renewal Permit**

For all regulated activities that plan to continue operations, an annual renewal permit from the Code Enforcement Officer shall be obtained within 15 days of the expiration of the existing permit. The non-refundable renewal permit fee shall be \$150.00. Failure to obtain the annual renewal permit shall require an application for a new permit. The renewal permit shall be obtained for any activity that plans to continue operations regardless of any temporary lapse in spreading, storage, composting, etc.

##### **16.5.3 Permit Modifications**

The expansion and/or enlargement of any regulated activity shall require a permit according to the requirements for a new permit. Minor changes or revisions to the original application shall be submitted to the Code Enforcement Officer for review and approval. The Code Enforcement Officer may request the Planning Board's input prior to making a decision about the proposed change. The applicant shall be responsible for making any permit modifications with the Department of Environmental Protection as required.

#### **16.6 Permit Submission Requirements**

##### **16.6.1 New Permits**

All new permits for any regulated activity shall be filed on the forms provided and shall include the following information:

**16.6.1.1** The complete application from the Department of Environmental Protection for the proposed activity. This shall include all the required permit attachments.

**16.6.1.2** The \$300.00 application filing fee.

**16.6.1.3** A list of names and addresses of all property abutters or property owners within 500 feet of the proposed activity. The abutters within 500 feet of the proposed activity shall

be determined using the City of Gardiner tax maps. Within 500 feet of proposed activity shall mean any property owner within 500 feet of the designated spreading area.

**16.6.1.4** A map of the proposed site showing any environmental areas of local concern within 1,000 feet of the designated spreading area.

**16.6.1.5** A report from the Code Enforcement Officer indicating that the site was inspected for compliance with the provisions of this Section.

#### **16.6.2 Renewal Permits**

All renewal permits for any regulated activities shall be submitted to the Code Enforcement Officer on the forms provided and shall include the following:

**16.6.2.1** All required testing data and/or reporting data that was required to be submitted to the DEP during the previous calendar year.

**16.6.2.2** The \$150.00 renewal fee.

**16.6.2.3** Any proposed changes or modifications to the permit.

#### **16.7 Application Procedure**

##### **16.7.1 New Permits**

The application procedure outlined below shall be followed for all new permit applications:

**16.7.1.1** The applicant shall obtain a copy of this Section and permit application from the Code Enforcement Officer.

**16.7.1.2** The applicant shall complete the application and arrange an inspection of the site with the Code Enforcement Officer or his/her designee who shall check the location for compliance with this Section.

**16.7.1.3** The Code Enforcement Officer shall complete an inspection report and submit a copy to the applicant to include with the application.

**16.7.1.4** The applicant shall submit a complete application to the Code Enforcement Officer and request to be placed on the Planning Board agenda for consideration of the proposal.

**16.7.1.5** The Planning Board shall hold a public hearing on the proposed completed application at the next regularly scheduled Planning Board meeting.

**16.7.1.6** The applicant shall notify all property abutters or property owners within 500 feet of the proposed designated spreading area of the date, time, place, and purpose of the hearing by certified mail. The applicant shall submit proof to the Planning Board that the letters were sent to each abutter. The letters shall be mailed at least 14 days prior to the



scheduled hearing. Failure of any party to receive a notice shall not invalidate the hearing proceedings, if the applicant can show proof that the letters were mailed.

**16.7.1.7** The applicant shall place one legal ad in a newspaper of general circulation in the area (The Kennebec Journal) indicating the date, time, place, and purpose of the hearing. The ad shall be placed not more than 14 days or less than 7 days in advance of the scheduled hearing. The applicant shall submit a copy of the ad to the Planning Board.

**16.7.1.8** The Planning Board shall review the proposed application for compliance with this Ordinance and shall hear testimony from the applicant, property abutters and other interested parties.

**16.7.1.9** The Code Enforcement Officer if required by the Planning Board may attend the hearing and provide information to the Planning Board concerning the site inspection.

**16.7.1.10** The Planning Board may decide to conduct a site visit prior to rendering its decision.

**16.7.1.11** The Planning Board shall review and decide upon the application based upon the following review standards:

**16.7.1.11.1** Whether or not the application is complete.

**16.7.1.11.2** Whether or not the applicant has complied with all hearing notification requirements.

**16.7.1.11.3** The Code Enforcement Officer has conducted a site visit and finds that the proposal complies with this Section.

**16.7.1.11.4** The proposed activity conforms to all the applicable provisions of this Section.

**16.7.1.12** The Planning Board may decide to approve the application, approve it with conditions, or deny the application.

**16.7.1.13** The Planning Board shall issue a written decision within 20 days after the close of the public hearing and shall indicate the reasons for its decision in findings of fact.

**16.7.1.14** The Code Enforcement Officer shall issue a permit to the applicant upon the issuance of the written decision letter from the Planning Board approving said application. The permit shall be issued for a specific period.

## **16.7.2 Renewal Permits**

The application procedure outlined below shall be followed for all renewal permits:

**16.7.2.1** The applicant shall within 60 days before the expiration of the existing permit submit a renewal application to the Code Enforcement Officer on the forms provided.

**16.7.2.2** The permittee shall provide to the Code Enforcement Officer all annual reporting data required by the DEP at the time of permit renewal.

**16.7.2.3** The Code Enforcement Officer shall review the permit request and shall issue the renewal permit if the application is complete and conforms to the provisions of this Section.

## **16.8 Performance Standards**

### **16.8.1 Notification Standards**

**16.8.1.1** The permittee shall notify the Code Enforcement Officer at least 7 days prior to any sludge, residuals or septage land spreading activity.

**16.8.1.2** The permittee shall notify the Code Enforcement Officer of any change or modification in the activity and request that the original permit be amended. Failure to notify the Code Enforcement Officer of any alteration to the original permit shall constitute a violation of this Section.

**16.8.1.3** The applicant shall notify the Code Enforcement Officer when the activity will permanently cease operation at the location. A temporary lapse in activity shall not constitute a closing of the activity.

### **16.8.2 Inspection**

**16.8.2.1** Upon notification that land spreading will occur at the site, the Code Enforcement Officer or his/her designee shall inspect the site within 48 hours after spreading has been completed. The Code Enforcement Officer shall maintain a record of each inspection.

**16.8.2.2** The Code Enforcement Officer shall inspect the site for compliance with this Ordinance and shall notify the permittee in writing of any violation along with the steps necessary to remedy the situation.

**16.8.2.3** The Code Enforcement Officer shall respond to all complaints concerning any activity regulated by this Section and determine if there are any violations of this Section. A copy of all complaints shall be provided to the permittee.

**16.8.2.4** The permittee shall allow the Code Enforcement Officer to inspect the activity during regular business hours of City Hall.

### **16.8.3 General Standards**

**16.8.3.1** All activities shall be performed in accordance with the regulations and provisions contained in this Section and the applicable DEP permit. Any activity not performed in accordance with this Section or the DEP permit shall constitute a violation of this Section.

**16.8.3.2** All activities shall conform to the following general standards as applicable:

**16.8.3.2.1** Land spreading shall not occur during the following period: October 15th to May 15th.

**16.8.3.2.2** Land spreading shall not occur on frozen ground or if the ground is saturated. Use the plastic limit test for fine textured soils (silt and clay); use depth to standing water of 12 inches in test pit for other soils.

**16.8.3.2.3** Whenever sludge, residuals or septage are planned to be tilled into the soil, this activity shall occur within 24 hours after application of sludge or the first dry day.

**16.8.3.2.4** Whenever possible, temporary sludge storage sites shall be left untouched until spreading occurs.

**16.8.3.2.5** All activities shall conform to the setback requirements established by DEP and for environmental areas of local concern designated pursuant to this Section.

**16.8.3.2.6** Any sludge to be spread in the City of Gardiner shall not contain ingredients that are not indigenous to the sludge processed by the City of Gardiner Waste Water Treatment Facility. Any sludge to be spread in the City of Gardiner shall not contain levels of contaminants that exceed those found in the sludge processed by the City of Gardiner Waste Water Treatment Facility.

#### **16.8.4 Transportation**

The permittee shall take all reasonable measures to transport sludge, residuals or septage to the activity site in a manner that reduces any odors or other nuisances to residents and businesses along the access route. The access route shall conform to the City's Truck Route Ordinance.

#### **16.8.5 Environmental Areas of Local Concern**

**16.8.5.1** The city may designate environmental areas of local concern which are deemed to require setback distances greater than those prescribed by DEP. The city shall identify and map all environmental areas of local concern and designate appropriate setbacks to protect these locations from the activities regulated by this Section. These locations shall be sensitive to one or more of the following features or conditions: phosphorus, stormwater run-off, erosion and contamination from nutrients and/or other compounds usually found in sludge and residuals.

**16.8.5.2** These areas may include any of the following: wetlands, rivers, streams, brooks, slopes greater than 15%, fishing areas, clam or other shellfish flats, ponds and lakes.



## SECTION 17. DEFINITIONS

### 17.1 Construction of Language

In this Ordinance, certain terms or words shall be interpreted as follows:

**17.1.1** The word "person" includes a firm, association, organization, partnership, trust, company or corporation as well as an individual; the present tense includes the future tense; the singular number includes the plural and the plural includes the singular; the word "used" or "occupied" includes the words "intended," "designed," or "arranged to be used or occupied"; the word "building" includes the word "residence"; and the word "lot" includes the words "plot" or "parcel".

**17.1.2** In case of any difference of meaning or implication between the text of this Ordinance and any map or illustration, the text shall control.

### 17.2 Definitions

**17.2.1** In this Ordinance the following terms shall have the following meanings unless a contrary meaning is required by the context or is specifically prescribed. Words not defined in this Section shall have their customary dictionary meanings.

**Abutter:** One whose property abuts, is contiguous to, or joins at a border or boundary, including the property across the street, road, public way or private way.

**Abutting Property:** Property that abuts, is contiguous to, or joins at a border or boundary, including the property across the street, road, public way or private way.

**Accessory Agricultural Activities:** The growing of plants including but not limited to forages and sod crops, grains and seed crops, fruits and vegetables, ornamental and nursery stock, and flowers that is incidental and subordinate to the primary use of the property for residential, commercial, institutional, educational or government use in which the agricultural products are primarily for use by the owner, lessor, or occupant of the property. *(Adopted: 9/21/2016 / Effective: 10/21/2016)*

**Accessory Animal Husbandry:** The raising or keeping of animals other than household pets that is incidental and subordinate to the primary use of the property for residential, commercial, institutional, educational or government use in which the animals or their products are primarily for use by the owner, lessor, or occupant of the property. Accessory Animal Husbandry is subject to performance standards contained in Section 10.3 of this Ordinance. *(Adopted: 9/21/2016 / Effective: 10/21/2016)*

**Accessory Beekeeping:** The keeping of honey bees on a lot that is accessory to a principal rural, residential, commercial, industrial, or institutional use of the property. *(Amended November 27, 2017 / Effective December 27, 2017)*

**Accessory Structure:** A small detached structure that is incidental and subordinate to the principal structure.

**Accessory Use or Building:** A use or building of a nature customarily incidental and subordinate to the principal use or structure.

**Addition:** A structure added to the original structure at some time after the completion of the original.

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

**Administrative Appeal:** An appeal to the Board of Appeals from a determination made by the Code Enforcement Officer, Planning Board or the Historic Preservation Commission, in enforcing this Ordinance. Such determinations may have involved an interpretation of the provisions of this Ordinance or a finding of fact.

**Affordable Housing:** Housing units which meet the sales price and/or rental targets established by the Gardiner Comprehensive Plan.

**Aggrieved Party:** A person whose land is directly or indirectly affected by the approval or denial of a permit or variance under this Ordinance; a person whose land abuts land for which a permit or variance has been granted, or another person or group of persons who have suffered particularized injury as a result of the granting or denial of such permit or variance.

**Alteration:** Any change, addition, or modification in construction, or any change in the structural members of a building, such as bearing walls, columns, beams, or girders.

**Alternate Tower Structure:** Clock towers, bell steeples, light poles, water towers, electrical transmission line towers, and similar alternative mounting structures that camouflage or conceal the presence of antennae or towers associated with a wireless communication facility.

**Amusement Center:** Any private, commercial premises which are maintained or operated primarily for the amusement, patronage, or recreation of the public, containing 4 or more table sports, pinball machines, video games, or similar mechanical or electronic games, whether activated by coins, tokens, or discs, or whether activated through remote control by the management.

**Antenna:** Any system of poles, panels, rods, reflecting discs or similar devices used for the transmission or reception of radio or electromagnetic frequency signals.

**Antenna Height:** The vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure. Measurement of tower height shall include antenna, base pad, and other appurtenances and shall be measured from the finished grade of the facility

site. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.

**Applicant:** For the purposes of sludge management, the owner/operator or authorized agent of the wastewater treatment plant or generator of the sludge or residual, or any person who alone or in conjunction with others owns real property upon which is located a land spreading site, compost operation or storage facility.

**Aquaculture:** The growing or propagation of harvestable freshwater, estuarine or marine plant or animal species.

**Aquifer:** Geologic deposits or structures from which useable quantities of ground water are available for households, municipalities, businesses or industries.

**Archaeological Site:** The geographical location of any remains of the prior presence of humans, including (without limitation) structures, artifacts, terrain features, graphics or remains of plants or animals associated with human habitation.

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

**Area of Special Flood Hazard:** The land in the floodplain having a one percent or greater chance of flooding in any given year, as specifically identified in the Flood Insurance Study cited in the Floodplain Management section of this Ordinance.

**Auction Barn:** A building or facility in which periodic or regular public sales of property to the highest bidder are held.

**Auditorium:** A building used for public gatherings. See Public Assembly, Theater.

**Automobile Graveyard:** A yard, field or other area used as a place of storage for three or more unserviceable, discarded, worn-out or junked motor vehicles, or parts thereof.

**Automobile Repair Shop:** A place where, with or without the sale of engine fuels, the following services may be carried out: general repair, engine rebuilding, rebuilding or reconditioning of motor vehicles; collision service, such as body frame or fender straightening and repair; overall painting and undercoating of automobiles.

**Automobile Vehicle Sales:** See vehicle sales.

**Awning:** A roof-like cover that is temporary in nature and that projects from the wall of a building for the purpose of shielding a doorway or window from the elements.

**Back Lot:** A lot with no frontage on a public road or street.

**Bank:** (See Financial Institution)

**Basal Area:** The area of cross-section of a tree stem at 4 ½ feet above ground level and inclusive of bark.

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

**Basement:** For purposes other than shoreland zoning or floodplain management, that portion of a building partly or completely below grade.

**Basement:** For shoreland zoning purposes, any portion of a structure with a floor-to-ceiling height of 6 feet or more and having more than 50% of its volume below the existing ground level.

**Basement:** For floodplain management purposes, any area of the building having its floor sub-grade (below ground level) on all sides.

**Bed and Breakfast:** An existing dwelling with a minimum of 2 and a maximum of 6 guest rooms offered for rent and with only a breakfast meal served only to persons renting rooms.

**Boarding Home:** A building where lodging or lodging and meals are provided for compensation for a period of at least 2 weeks, and where a person or family residing in the building acts as proprietor or owner. There is no provision for cooking in any individual room.

**Boat Launching Facility:** A facility designed primarily for the launching and landing of watercraft, and which may include an access ramp, docking area, and parking spaces for vehicles and trailers.

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

**Buffer:** A part of a property or an entire property which does not contain buildings, structures or vehicles and is specifically designed to separate and thus minimize the effects of a land use activity (e.g., noise, dust, visibility, glare, etc.) on adjacent properties or on sensitive natural resources.

**Building:** A structure built for the support, shelter or enclosure of persons, animals, goods or property of any kind.

**Building Envelope:** The area enclosed by fixed walls of a building.

**Building Footprint:** The total horizontal surface area of a building.



**Building Height:** The vertical distance between the highest point of the roof and the average grade of the ground adjoining the building.

**Building Supply:** A place where lumber and other building construction materials are sold.

**Campground:** Any area or tract of land to accommodate two or more parties in temporary living quarters, including, but not limited to, tents, recreational vehicles or shelters.

**Campsite Individual/Private:** (See Individual Private Campsite)

**Camper Trailer:** (See Recreational Vehicle)

**Canopy, Tree:** The more or less continuous cover formed by tree crowns in a wooded area.

**Catering:** A business involving the preparation of food for consumption off the premises.

**Cemetery:** Land used or intended to be used for the burial of dead human beings or animals and dedicated for such purposes, including mausoleums and mortuaries when operated as part of a cemetery and within its boundaries.

**Certificate of Appropriateness:** A written certification, issued according to the provisions of the Historic Preservation Section of this Ordinance, that a proposed activity within a district involving a building being built or altered or a place being altered or built upon is in conformance with the standards or evaluation and that may include conditions or qualifications, specified by the Commission, in order for the certificate to be valid.

**Certificate of Compliance:** For floodplain management purposes, a document signed by the Code Enforcement Officer stating that a structure is in compliance with all the provisions of this Ordinance.

**Channel:** A natural or artificial watercourse with definite bed and banks to confine and conduct continuously or periodically flowing water. Channel flow is water flowing within the limits of the defined channel.

**Chicken Keeping Residential:** The keeping of a limited number of chickens for personal use only.

**Church:** A building or structure, or group of buildings and structures, designed and used for the conduct of religious services, excluding schools. See Place of Worship and Other Religious Instruction.

**Code Enforcement Officer:** Any person or board responsible for performing the inspection, licensing and enforcement duties required by a particular statute or ordinance.

**Collector Road:** (See Road Classification)

**Commercial Agriculture:** The growing of plants including but not limited to forages and sod crops, grains and seed crops, fruits and vegetables, ornamental and nursery stock, and flowers primarily for use as animal feed on the premises or for sale to or use by someone other than the owner, lessor, or occupant of the property. Commercial Agriculture does not include Retail Marijuana Establishments, including Retail Marijuana Cultivation Facilities, as defined by state law. Commercial Agriculture includes leased or rented land used as part of an agricultural activity as well as the related processing and storage of these plants together with buildings and structures used in the agricultural activity such as barns, storage buildings and facilities, greenhouses and temporary shelters, indoor cultivation facilities, and accessory processing facilities. Outdoor recreational and entertainment activities that involve minimal structural development and that are accessory to the agricultural activity (such as hay rides, corn mazes, agritainment, and similar activities) and educational activities are allowed as part of a commercial agricultural use. Commercial Agriculture uses are subject to performance standards contained in Section 10.3 of this Ordinance. (Adopted: 9/21/2016 / Effective: 10/21/2016) (Amended March 7, 2018 / Effective April 6, 2018)

**Commercial Animal Husbandry:** The keeping, breeding, or raising of animals, other than household pets, primarily for sale of the animals or their products such as, but not limited to, milk, eggs, meat, wool, or fur to or for use by someone other than the owner, lessor, or occupant of the property. Commercial Animal Husbandry includes leased or rented land used as part of a commercial animal husbandry activity as well as the processing and storage of these animals and their products together with buildings and structures related to the agricultural activity such as barns, storage buildings and facilities, pens/enclosures, manure pits/storage, and processing facilities. Outdoor recreational and entertainment activities that involve minimal structural development and that are accessory to the agricultural activity (such as hay rides, petting zoos, agritainment, and similar activities) and educational activities are allowed as part of a commercial animal husbandry use. Commercial Animal Husbandry is subject to performance standards contained in Section 10.3 of this Ordinance including the separate standards for beekeeping. (Adopted: 9/21/2016 / Effective: 10/21/2016) (Amended November 27, 2017 / Effective December 27, 2017)

**Commercial Firewood Processing:** A place where firewood is delivered, cut or split, and from which it is sold for commercial purposes.

**Commercial Use:** The use of land, buildings, or structures, other than a “home occupation,” the intent and result of which activity is the production of income from the buying and selling of goods and/or services, exclusive of rental of residential buildings and/or dwelling units.

**Common Open Space:** Land within or related to a development, not individually owned, which is designed and intended for the common use or enjoyment of the residents of the development or the general public. It may include complementary structures and improvements, typically used for maintenance and operation of the open space, such as for outdoor recreation.

**Communications Facilities:** The offices, stations, substations and other structures used to transmit messages, as by radio, telephone and television.

**Communication Tower:** (See Wireless Telecommunications Facility)

**Community Non-profit Facility:** A building or complex of buildings that houses public or private non-profit facilities to provide educational, recreational or informational services to the general public. Medical treatment offices and centers, hospitals, and similar activities are not included in this definition.

**Community Living Facility:** A housing facility for eight or fewer persons with disabilities that is approved, authorized, certified or licensed by the state. A community living facility may include a group home, foster home or intermediate-care facility.

**Community Service Organization:** A non-profit charitable institution, not to include private clubs, the primary function of which is serving the public health or social welfare of the community.

**Complete Application:** An application form, including the required fee, and all information required by this Ordinance, determined to be complete by the Code Enforcement Officer.

**Composting Operation:** The depositing, spreading and storage of organic materials such as sludge, septage or other solid waste which is designed for the microbial degradation of organic matter into a useful product.

**Comprehensive Plan:** A document or interrelated documents adopted by City of Gardiner containing an inventory and analysis of existing conditions, a compilation of goals for the development of the community, an expression of policies for achieving these goals, and strategies for implementation of the policies.

**Conforming Structure:** A building or structure which complies with all applicable provisions of this Ordinance.

**Conforming Use:** A use of buildings, structures or land which complies with all applicable provisions of this Ordinance.

**Congregate Care Facility:** Residential housing consisting of private apartments and central dining facilities and within which a congregate housing supportive services program serves functionally impaired elderly occupants.

**Constructed:** Built, erected, altered, reconstructed, moved upon, or any physical operations on the premises which are required for construction.

**Construction Services:** Commercial activities involved in the building or construction trades, including but not limited to earth moving, road construction and building construction.

**Convenience Store:** A store of less than 2,000 square feet of floor space intended to serve the convenience of a residential neighborhood with items such as, but not limited to, basic foods, newspapers, emergency home repair articles, and other household items. A convenience store may include the sale of motor fuels.

**Corner Clearance:** The minimum distance, measured parallel to a road, between the nearest curb, pavement or shoulder line of an intersecting public way and the nearest edge of a driveway excluding its radii.

**Crematory:** A building or portion thereof designed for the cremation of a corpse and located in a cemetery having a minimum land area of 20 acres.

**Day Care Center/Nursery School:** Facilities offering daytime care for preschool or school-age children. Such facilities, for the purposes of this Ordinance, are classified as daycare center or nursery school when the number of children exceeds the definition of home child care. Day care facilities, with or without consideration for the services rendered, may be operated as a service business or within a church or community building.

**DBH:** Diameter at breast height.

**Deed:** A legal document conveying ownership of real property.

**Density:** The number of dwelling units per acre of land.

**Detached Canopy:** A rigid multi-sided freestanding structure covered with fabric, metal, or other material, supported by columns or posts embedded into the ground, and which shelters a vehicle service use (such as gas pump islands or car wash).

**Development:** Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials.

**Dimensional Requirements:** Numerical standards relating to spatial relationships, including but not limited to setback, lot area, shore frontage and height.

**District:** A specified portion of the municipality, delineated on the Official Zoning Map, within which certain regulations and requirements or various combinations thereof apply under the provisions of this Ordinance.

**Downtown Area:** Encompasses lands and buildings abutting both sides of Water Street from Winter Street to Vine Street, both sides of Brunswick Avenue from Filmore Place to Water Street, both sides of Bridge Street from Water Street to Cobbossee Stream, both sides of Church Street from Brunswick Avenue to Water Street, and both sides of Main Avenue from Water Street to Cobbossee Stream, both sides of Depot Street, both sides of Mechanic Street, and both sides of the city passageways leading from the Maine Central Railroad tracks and easterly to and along the Cobbossee Stream parking lot.

**Drainage/Surface Water Runoff:** The removal of surface water or ground water from land by rains, grading or other means which include runoff controls to minimize erosion and sedimentation during and after construction or development, the means for preserving the water supply and the prevention or alleviation of flooding.

**Driveway:** A vehicular access-way serving one of the following uses: residential uses up to five dwelling units, home occupations, forest management activities, farming, low-impact industrial uses such as utility substations, or other similar uses, unless the use generates 50 or more vehicle trips per day. Also see Entrance.

**Dwelling:** A fixed structure, containing one or more dwelling units.

**Dwelling, Attached:** A one-family dwelling attached to any other dwelling by any means.

**Dwelling, Detached:** A dwelling which is not attached to any other dwelling by any means. The detached dwelling does not have any roof, wall or floor in common with any other dwelling unit.

**Dwelling, Seasonal:** A building not used as principal or year-round residence and occupied for less than 6 months per year.

**Dwelling Unit:** A room or group of rooms designed and equipped for use as living quarters for only one family, including provisions for living, sleeping, cooking and eating. The term shall include mobile homes but shall not include trailers or recreational vehicles. In determining whether a room or group of rooms in an existing structure constitutes a separate dwelling unit under this Ordinance, the following factors shall be considered:

- (a) historic occupancy and use of the property concerned;
- (b) design and layout of the room or rooms concerned in relation to other rooms in the same structure; and
- (c) compliance of the property with applicable building and life safety code requirements for two-family or multi-family use.

**Earth:** Topsoil, sand, gravel, clay, peat, rock or other minerals.

**Earth-Moving Activity:** Any activity involving the excavating, dredging, filling, grading, or lagooning of earth which is not connected with another approved construction or land use activity.

**Educational Building:** (See School)

**Elevated Building:** For floodplain management purposes, a non-basement building built, in the case of a building in Zones AE or A, to have the top of the elevated floor elevated above the ground level by means of pilings, columns, posts, piers, or “stilts;” and adequately anchored so as not to

impair the structural integrity of the building during a flood of up to two feet above the magnitude of the base flood.

In the case of Zone AE or A, “elevated building” also includes a building elevated by means of fill or solid foundation perimeter walls with hydraulic openings sufficient to facilitate the unimpeded movement of waters, as required in this Ordinance.

**Elevation Certificate:** An official form (FEMA Form 81-31, 03/09, as amended) that is used to verify compliance with the Flood Plain Management Regulations of the National Flood Insurance Program and is required for purchasing flood insurance.

**Emergency Operations:** Operations conducted for the public health, safety or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings, property and livestock from the threat of destruction or injury.

**Entrance:** An access serving one of the following land uses: residential uses or developments serving six or more dwelling units, retail, office, or service business uses including department stores, strip malls, convenience stores, gas stations, auto repair shops, restaurants, or similar uses, unless the applicant demonstrates, in accordance with the Trip Generation, 8th edition, published by the Institute of Transportation Engineers (2008), that the use generates fewer than 50 vehicle trips per day.

**Erosion:** The detachment and movement of soil or rock fragments, or the wearing away of the land surface, by water, wind, ice and gravity.

**Essential Services:** Gas, electrical or communication facilities; steam, fuel, electric power or water transmission or distribution lines, towers and related equipment; telephone cables or lines, poles and related equipment; gas, oil, water, slurry or other similar pipelines; municipal sewage lines, collection or supply systems; and associated storage tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits cables, fire alarms and police call boxes, traffic signals, hydrants and similar accessories, but shall not include service drops or buildings which are necessary for the furnishing of such services.

**Excavation:** Any removal of earth or earth material from its original position.

**Expansion and/or Enlargement:** For sludge management purposes, the increase in the size or capacity of an operation regulated under this Ordinance and including new spreading sites and any increase in the size of the operation.

**Expansion of a Structure:** For shoreland zoning purposes, an increase in the floor area or volume of a structure, including all extensions such as, but not limited to: attached decks, garages, porches and greenhouses.

**Expansion of Use:** For shoreland zoning purposes, the addition of one or more months to a use’s operating season; or the use of more floor area or ground area devoted to a particular use.

**Façade:** The exterior wall of a building exposed to public view.

**Facility for the processing, distribution, and/or sale of agricultural products:** Buildings, structures, and equipment used for the commercial processing, storage, distribution, and/or sale of plant or animal products. *(Adopted 06/04/2014, Effective 07/04/2014)*

**Family:** One or more persons occupying a premise and living as a single housekeeping unit, as distinguished from a group occupying a boarding home, lodging house or hotel. Such unit shall not exceed five persons not related by blood or marriage.

**Farm Stand:** (See Roadside Stand)

**Fence:** An enclosed barrier consisting of wood, vinyl, recycled/composite materials, stone, metal, or similar materials intended to prevent ingress and egress.

**Filling:** Depositing or dumping any matter on or into the ground or water.

**Financial Services:** A bank, savings and loan institution, or credit union.

**Flag Lot:** A lot or parcel of land that is located to the rear of another lot or lots which front on an improved public road and that is not able to be developed solely because it lacks the necessary minimum frontage on said improved public road. A flag lot shall consist of an access strip providing access to the improved public road and a rear lot.

**Flea Market:** A shop or open market selling antiques, used household goods, curios and the like at a frequency of more than eight days in any six-month period. "Flea markets," as distinguished from yard or garage sales, shall be considered to be retail businesses.

**Flood or Flooding:** A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters;
2. The unusual and rapid accumulation of runoff of surface waters from any source.

The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined above.

**Flood Elevation Study:** An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

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

**Flood Insurance Study:** See Flood Elevation Study.

**Floodplain or Flood-Prone Area:** Any land area susceptible to being inundated by water from any source.

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

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

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

**Floodway:** (See Regulatory Floodway)

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

**Floor Area:** The sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls, including basements, plus the horizontal area of any unenclosed portions of a structure such as porches and decks.

**Forest Management Activities:** Timber cruising and other forest resource evaluation activities, pesticide or fertilizer applications, management planning activities, timber stand improvement, pruning, regeneration of forest stands, and other similar or associated activities, exclusive of timber harvesting and the construction, creation or maintenance of roads.

**Foundation:** The supporting substructure of a building or other structure, including but not limited to basements, slabs, sills, posts, frost walls or other base consisting of concrete, block, brick or similar material.

**Fraternal Organization:** (See Social, Fraternal Organization)

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



**Frontage, Road:** The horizontal distance between the intersections of the side lot lines with the front line. On corner lots, the frontage shall be one of the road lines.

**Frontage, Shore:** The horizontal distance, measured in a straight line, between the intersections of the side lot lines with the shoreline at normal high-water elevation.

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

**Functionally Water-Dependent Uses:** For shoreland zoning purposes, those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal and inland waters and which cannot be located away from these waters. The uses include but are not limited to commercial and recreational fishing and boating facilities (excluding recreational boat storage facilities), fin fish and shellfish processing, fish storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aids, basins and channels, retaining walls, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water and which cannot reasonably be located or operated at an inland site, and uses which primarily provide general public access to coastal or inland waters.

**Government Office:** Any building or land held, used or controlled exclusively for public purposes by any department or branch of government, federal, state, county or municipal, without reference to ownership of building or the real estate upon which it is situated. See Public Buildings.

**Grade:** The average of the finished ground level at the center of all walls of a building.

**Grading:** Any stripping, cutting, filling, or stockpiling of earth or land, including the land in its cut or filled condition.

**Great Pond Classified GPA:** Any great pond classified GPA, pursuant to 38 M.R.S.A. Section 465-A. This classification includes some, but not all, impoundments of rivers that are defined as great ponds.

**Ground Water:** The water present in the saturated zone of the ground.

**Heavy Manufacturing:** Industrial activity which involves the basic processing and manufacturing of materials or products predominantly from extracted or raw materials, or manufacturing processes using flammable or explosive processes that potentially involve hazardous materials.

**Height of a Structure:** The vertical distance between the mean original grade at the downhill side of a structure and the highest point of the structure, excluding chimneys, steeples, antennas and similar appurtenances which have no floor area.

**Historic District:** A delineated geographical area which includes one or more buildings and/or places of historical value and may include other buildings, structures and/or places which though not of historical value themselves, may be or become the site of anything being built which may be deemed not to be appropriate with regard to any of the rest of the district.

**Historic Landmark:** Any building of historic value.

**Historic Site:** Any parcel of land which is of historic value or upon which is positioned any historic landmark.

**Historic Structure:** For Flood Plain Management purposes, any structure that is:

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

**Home Child Care:** A home or establishment providing day care for up to 12 children under the age of 16 years.

**Home Occupation:** An occupation or profession which is carried on in a dwelling unit or in a building or other structure accessory to a dwelling unit; carried on by a member of the family permanently residing in the dwelling unit; clearly incidental and secondary to the use of the dwelling unit for residential purposes; and which does not change the essential residential character of the dwelling unit or neighborhood. *(See Section 10.2.1)*

**Home Occupation, Minor:** *(See Section 10.2.4)*

**Hospital:** A building or structure which is used for the housing and care of sick, hurt or incapacitated human beings. It may also include accessory uses which are directly associated with the housing and care of sick, hurt or incapacitated human beings such as kitchen facilities, solariums, dormitories, and physicians' offices.

**Hotel:** A building in which lodging or meals and lodging are offered to the general public for compensation and in which ingress and egress to and from the rooms are made primarily through

an inside lobby or office. The hotel may contain such accessory services and facilities as newsstands, personal grooming facilities and restaurants.

**Impervious Surface:** Any material which reduces or prevents absorption of storm water into previously undeveloped land.

**Increase in Nonconformity of a Structure:** For shoreland zoning purposes, any change in a structure or property which causes further deviation from the dimensional standard(s) creating the nonconformity such as, but not limited to, reduction in water body, tributary stream or wetland setback distance, increase in lot coverage, or increase in height of a structure. Property changes or structure expansions which either meet the dimensional standard or which cause no further increase in the linear extent of nonconformance of the existing structure shall not be considered to increase nonconformity. For example, there is no increase in nonconformity with the setback requirement for water bodies, wetlands, or tributary streams if the expansion extends no further into the required setback area than does any portion of the existing nonconforming structure. Hence, a structure may be expanded laterally provided that the expansion extends no closer to the water body or wetland than the closest portion of the existing structure from that water body or wetland. Included in this allowance are expansions which in-fill irregularly shaped structures.

**Individual Private Campsite:** An area of land which is not associated with a campground, but which is developed for repeated camping by only one group not to exceed 10 individuals and which involves site improvements which may include but not be limited to gravel pads, parking areas, fire places/pits, or tent platforms.

**Indoor Recreation Facility:** A recreation facility designed and equipped for the conduct of sports, leisure time activities, performances and other customary recreation activities which take place indoors. Activities include but are not limited to amusement center, arcades, gyms, health clubs and bowling alleys. Restaurants which are incidental to the primary recreational use of the structure are allowed.

**Industrial:** The assembling, fabrication, finishing, manufacturing, packaging or processing of goods, or the extraction of minerals.

**Infirmary:** (See Hospital)

**Inn:** A building, which contains a dwelling unit occupied by an owner or resident manager, in which up to 10 lodging rooms or lodging rooms and meals are offered to the general public for compensation, and in which entrance to bedrooms is made through a lobby or other common room. Inn includes such terms as guest house, lodging house and tourist house, but not bed and breakfast, hotel or motel.

**Institution:** A building devoted to some public, governmental, educational, charitable, religious, medical or similar purpose.

**Junkyard:** A yard, field, or other area used as a place of storage for discarded, worn-out or junked plumbing, heating supplies, household appliances and furniture; discarded, scrap and junked

lumber; and old or scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, waste and all scrap iron, steel and other scrap ferrous or non-ferrous material.

**Kennel:** Any place, building, tract of land, abode, enclosure, or vehicle where 3 or more dogs or 3 or more cats, owned singly or jointly, are kept for any purpose, including but not limited to breeding, hunting, show, field trials or exhibition, or where one or more dogs or other pets are kept for their owners in return for a fee. This definition shall not apply to dogs or cats under the age of 6 months.

**Kiosk:** A small detached building not more than 144 square feet in area used to sell goods or services including food.

**Lagoon:** An artificial enlargement of a water body, primarily by means of dredging and excavation.

**Larger Vehicle:** A vehicle that has a larger length, width or turning radius and/or lesser acceleration capability than standard passenger vehicles or pickup trucks, including buses, commercial trucks and recreational vehicles.

**Laundromat:** An establishment providing washing, drying or dry cleaning machines on the premises for rental use to the general public for family laundering or dry cleaning purposes.

**Light Manufacturing:** A use engaged in the manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales, and distribution of such products, but excluding basic industrial processing.

**Living Space:** As used in this Ordinance, actual enclosed space suitable for year-round occupancy and not porches, patios, and the like, whether or not enclosed.

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

**Lot:** A parcel of land described on a deed, plat, or similar legal document.

**Lot Area:** The area of land enclosed within the boundary lines of a lot, minus land below the normal high-water line of a water body or upland edge of a wetland and area beneath roads serving at least one other lot.

**Lot, Corner:** A lot with at least two contiguous sides abutting upon a road.

**Lot Coverage:** The percentage of the lot covered by all buildings. In Resource Protection, Shoreland and Shoreland Overlay Districts, lot coverage shall include all unvegetated surfaces.

**Lot, Interior:** Any lot other than a corner lot.

**Lot Lines:** The lines bounding a lot as defined below:

**Lot Line, Front:** On an interior lot, the line separating the lot from the road. On a corner or through lot, the line separating the lot from either road.

**Lot Line, Rear:** The lot line opposite the front lot line. On a lot pointed at the rear, the rear lot line shall be an imaginary line between the side lot lines parallel to the front lot line, not less than 10 feet long, lying farthest from the front lot line. On a corner lot, the rear lot line shall be opposite the front lot line of least dimension.

**Lot Line, Side:** A lot line other than the front lot line or the rear lot line.

**Lot of Record:** A parcel of land, a legal description of which or the dimensions of which are shown on a document or map on file with the County Register of Deeds or in common use by City or County Officials.

**Lot, Shorefront:** Any lot abutting a water body.

**Lot, Through:** Any interior lot having frontages on two more or less parallel roads, or between a road and a waterbody, or between two water bodies, as distinguished from a corner lot.

**Lot Width:** The horizontal distance between the side lot lines, measured at the front setback line.

**Lowest Floor:** The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements described in Section 15 of this Ordinance.

**Lumen:** A measure of light energy emitted by a light source.

**Luminaire:** The complete lighting fixture including the lamp, lens and the wiring.

**Manufactured Home Park or Subdivision:** A parcel (or contiguous parcels) of land under unified ownership and approved by the City of Gardiner for the placement of three or more manufactured homes.

**Manufactured Home Park or Subdivision:** For floodplain management purposes, a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**Manufactured Housing:** A structural unit or units designed for occupancy and constructed in a manufacturing facility and transported, by the use of its own chassis, or an independent chassis, to a building site. The term includes any type of building that is constructed at a manufacturing facility and transported to a building site where it is used for housing and may be purchased or

sold by a dealer in the interim. For purposes of this definition, two types of manufactured housing are included. These two types are:

- 1) Those units constructed after June 15, 1976, commonly called "newer mobile home," that the manufacturer certifies are constructed in compliance with the United States Department of Housing and Urban Development standards, meaning structures transportable in one or more sections, that in the traveling mode are 14 body feet or more in width and are 750 or more square feet, and that are built on a permanent chassis and designed to be used as dwellings, with or without permanent foundations, when connected to the required utilities, including the plumbing, heating, air conditioning or electrical systems contained in the unit. This term also includes any structure that meets all the requirements of this subparagraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the United States Department of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, United States Code, Title 42, Chapter 70.
- 2) Those units commonly called "modular homes," that the manufacturer certifies are constructed in compliance with 10 M.R.S.A. Chapter 951, and rules adopted under that chapter, meaning structures, transportable in one or more sections, that are not constructed on a permanent chassis and are designed to be used as dwellings on foundations when connected to required utilities, including the plumbing, heating, air conditioning or electrical systems contained in the unit.

**Marina:** A shorefront commercial facility with provisions for one or more of the following: boat storage, boat launching, or the sale of supplies and services for watercraft and their equipment and accessories.

**Market Value:** The estimated price a property will bring in the open market and under prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

**Mean Sea Level:** For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) or other datum, to which base flood elevations shown on a Gardiner's Flood Insurance Rate map are referenced.

**Medical Facility:** An establishment where patients are admitted for examination and treatment by one or more physicians, dentists, psychologists or social workers and where patients are not usually lodged overnight.

**Meeting Space:** A facility not to exceed 2,000 square feet in area to provide rented space for educational, business or social events, or meetings. Food preparation may be included but is limited to serving only meetings and events at the facility.

**Mineral Exploration:** Hand-sampling, test-boring, or other methods of determining the nature or extent of mineral resources which create minimal disturbance to the land and which include reasonable measures to restore the land to its original condition.

**Mineral Extraction:** Any operation within any 12 month period which removes more than 100 cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material from its natural location and that transports the product removed, away from the extraction site.

**Minimum Lot Width:** The closest distance between the side lot lines of a lot. When only two lot lines extend into the shoreland zone, both lot lines shall be considered to be side lot lines.

**Minor Development:** For floodplain management purposes, all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. It also includes, but is not limited to, accessory structures as provided for in Section 15, mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition of extraction materials, public or private sewage disposal systems or water supply facilities that do not involve structures, and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

**Minor Revision:** Any change in the activity that does not include an expansion and/or enlargement.

**Mobile Home:** (See Manufactured Housing)

**Mobile Home Park:** (See Manufactured Housing Park or Subdivision)

**Motel:** A building in which lodging is offered to the general public for compensation, and where entrance to rooms is made directly from the outside of the building.

**Multi-Family Dwelling:** A dwelling designed for occupancy by three or more families, each living in its own separate quarters.

**Multi-Unit Residential:** A residential structure containing 3 or more residential dwelling units.

**Museum:** A building area used to display and preserve historic, cultural, social, educational or similar artifacts and items.

**National Geodetic Vertical Datum (NGVD):** For floodplain management purposes, the national vertical datum, whose standard was established in 1929, which is used by the National Flood Insurance Program (NFIP). NGVD was based upon mean sea level in 1929 and also has been called "1929 Mean Sea Level (MSL)."

**Net Residential Acreage:** The gross acreage available for development, excluding the area for roads or access and the areas which are unsuitable for development.

**Net Residential Density:** The number of dwelling units per net residential acre.

**New Construction:** For floodplain management purposes, structures for which the "start of construction" commenced on or after the effective date of the initial Flood Plain Management Regulations adopted by the City of Gardiner, including any subsequent improvements to such structures.

**Nonconforming Building or Use:** A building, structure, use of land, or portion thereof, legally existing at the effective date of adoption or amendment of this Ordinance which does not conform to all applicable provisions of this Ordinance.

**Nonconforming Lot:** A single lot of record which, at the effective date of adoption or amendment of this Ordinance, does not meet the area, frontage or width requirements of the district in which it is located.

**Normal High-Water Line:** That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation and which distinguishes between predominantly aquatic and predominantly terrestrial land. In the case of wetlands adjacent to rivers and great ponds, the normal high-water line is the upland edge of the wetland, and not the edge of the open water.

**Normal Repair and Maintenance:** The reconstruction or renewal of any part of an existing building for the purpose of its maintenance. Normal repairs are nonstructural repairs and do not include additions or alterations.

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

**Nursery School:** (See Day Care Facility)

**Nursing Home:** Any building in which three or more aged, chronically ill or incurable persons are housed and furnished with meals and nursing care for compensation.

**Office:** A room or group of rooms used for conducting the affairs of a business, profession, service, industry, or government.

**Open Space Development:** A land development project comprehensively planned as a self-contained, integrated, unified development which exhibits flexibility in building siting, clustering, usable open space and the preservation of significant natural features, and which meets the Open Space Design Standards of this Ordinance..



**Outdoor Recreation:** A recreation facility designed and equipped for the conduct of sports, leisure time activities, and other customary and usual recreational activities which take place predominantly in the outdoors. Activities include, but are not limited to, golf driving ranges, miniature golf, parks and playgrounds, golf courses, amusements parks, and swimming pools. This includes any accessory structures such as rest rooms, storage, and other buildings necessary to operate the facility.

**Outdoor Storage:** A land area where goods and materials are stored in specific outdoor locations.

**Overnight Accommodations:** A building or group of buildings intended to accommodate for a fee travelers and other transient guests, who are staying for a limited duration, with sleeping rooms (with or without cooking facilities); may include restaurant facilities where food is prepared and meals served to its guests and other customers. Uses include hotels and motels.

**Owner:** An individual, firm, association, syndicate, partnership, or corporation having sufficient proprietary interest to seek development of land.

**Parcel:** All contiguous land in the same ownership, provided that lands 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.

**Parking Lot:** A premises used primarily for the parking or storage of vehicles.

**Parking Space:** A space for a vehicle, exclusive of drives, aisles and entrances, fully accessible for the storage or parking of vehicles.

**Party Wall:** A common shared wall between two separate structures, buildings, or dwelling units.

**Passive Recreation:** A use not involving a structure, earthmoving activity, or the removal or destruction of vegetation cover, spawning grounds or fish, aquatic life, bird and other wildlife habitat. Passive recreation uses are non-intensive uses of land such as hunting, fishing, hiking, picnicking, gardening, forest management, fire prevention, soil and water conservation practices, wildlife management, and harvesting of wild crops.

**Permitted Use:** Any use allowable in a zoning district and subject to the restrictions applicable to that zoning district.

**Personal Services:** A business which provides services but not goods, such as hairdressers, shoe repair, etc.

**Pet Services:** A commercial establishment for the care, grooming, cleaning or daycare of pets. It does not include the overnight keeping of animals on the premises.

**Physical or Mental Disability:**

A. Physical or mental impairment that:

1. Substantially limits one or more of a person's major life activities;
2. Significantly impairs physical or mental health; or
3. Requires special education, vocational rehabilitation or related services;

B. Without regard to severity unless otherwise indicated:

Absent, artificial or replacement limbs, hands, feet or vital organs; alcoholism; amyotrophic lateral sclerosis; bipolar disorder; blindness or abnormal vision loss; cancer; cerebral palsy; chronic obstructive pulmonary disease; Crohn's disease; cystic fibrosis; deafness or abnormal hearing loss; diabetes; substantial disfigurement; epilepsy; heart disease; HIV or AIDS; kidney or renal diseases; lupus; major depressive disorder; mastectomy; mental retardation; multiple sclerosis; muscular dystrophy; paralysis; Parkinson's disease; pervasive developmental disorders; rheumatoid arthritis; schizophrenia; and acquired brain injury;

C. With respect to an individual having a record of any of the conditions listed above; or

D. With respect to an individual being regarded as having or likely to develop any of the conditions listed above.

(For additional information, see 5 M.R.S.A. Section 4553-A.)

**Piers, docks, wharfs, bridges and other structures and uses extending over or beyond the normal high-water line or within a wetland:**

Temporary: Structures which remain in or over the water for less than 7 months in any period of 12 consecutive months.

Permanent: Structures which remain in or over the water for 7 months or more in any period of 12 consecutive months.

**Place of Worship and other Related Religious Structures:** A place or structure whose primary use is for public religious services or assembly by a person or organization with tax exempt status. (See Church)

**Premises:** A lot, parcel, tract or plot of land together with the buildings and structures thereon.

**Principal Structure:** A building or structure in which the primary use of the lot is conducted.

**Principal Use:** The primary use to which the premises are devoted and the main purpose for which the premises exist.

**Private Assembly:** A building which is owned and used as a meeting place for private or semiprivate social organizations and clubs such as grange halls, fraternal organizations and religious institutions, in which the principal use is exclusively for members. Rental of the facilities

to outside groups is clearly incidental to the principal use and shall not significantly increase the intensity of the use of the site, especially in regard to parking and traffic.

**Private Way:** (See Road Classification)

**Professional Business:** The place of business for professionals such as doctors, lawyers, accountants, architects, surveyors, psychiatrists and counselors, but not including financial institutions or service businesses.

**Prohibited Use:** A use that is not permitted in a zone or district.

**Public Assembly:** A building which is available to the public on a non-profit or a for-profit basis. Examples include auditoriums, meeting rooms and halls available for functions. See Auditorium, Theater.

**Public Building, Use:** Any building or land held, used or controlled exclusively for public purposes by any department or branch of government, federal, state, county or municipal, without reference to ownership of the building or the real estate upon which it is situated. See Governmental Office.

**Public Facility:** For shoreland zoning purposes, any facility, including but not limited to buildings, property, recreation areas, and roads, which is owned, leased or otherwise operated, or funded by a governmental body or public entity.

**Public Improvement:** All roads, fire protection structures and ponds, any structures or land proposed to be dedicated to the city, any land or structures offered as an easement to the city and all storm drainage structures which are designed to allow water to flow outside the development.

**Public Path/Trail:** A cleared way, constructed and suitable for public recreational use, together with necessary appurtenances and accessories such as benches or exercise stations, reasonably related to public recreational use. A public path that otherwise meets the requirements of this definition may be owned by a public or private entity or person.

**Public Utility:** Any person, firm or corporation, municipal department, board or commission authorized to furnish gas, steam, electricity, waste disposal, communication facilities, transportation or water to the public.

**Public Utility Facility:** A facility, whether publicly or privately owned, which provides direct or indirect utility service to the public, such as but not limited to sewage and water pumping stations and treatment facilities, telephone electronic structures, and major electrical power lines, pipelines or substations whose major purpose is transport through a community. Local utility transmission lines are excluded from this definition.

**Recent Flood Plain Soils:** The following soil series as described and identified by the National Cooperative Soil Survey:

Fryeburg, Haley, Limerick, Lovewell, Medomak, Ondawa, Alluvial, Cornish, Charles, Podunk, Rumney, Saco, Suncook, Sunday, and Winooski.

**Recharge Area:** Land area that adds to or replenishes water in an aquifer.

**Recreational Facility:** A place designed and equipped for the conduct of sports, leisure time activities, and other customary and usual recreational activities, excluding boat launching facilities. See Amusement Center.

**Recreational Vehicle:** For non-floodplain management purposes, a vehicle or vehicular attachment designed for temporary sleeping or living quarters for one or more persons, which is not a dwelling and which may include a pickup camper, travel trailer, tent trailer and motor home.

**Recreational Vehicle:** For floodplain management purposes, a vehicle which is built on a chassis; 400 square feet or less when measured at the largest horizontal projection, not including slideouts; designed to be self-propelled or permanently towable by a motor vehicle; and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

**Recycling:** The collection, separation, recovery and sale of metals, glass, paper, plastics, and other materials.

**Redemption Center:** A facility licensed by the Maine Department of Agriculture and whose principal use is to collect beverage containers and refund the statutory deposit pursuant to 32 M.R.S.A. Section 1861. The facility shall also store the beverage containers on-site for a period of time not to exceed 30 days, for the ultimate collection by the beverage distributor.

**Regional Flood:** The maximum flood on a water body; either the 100-year frequency flood, where calculated, or the flood of record.

**Regulatory Floodway:** The channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot, and

When not designated on the Flood Insurance Rate Map, it is considered to be the channel of a river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain, as measured from the normal high-water mark to the upland limit of the floodplain.

**Replacement system:** A system intended to replace:

- 1) An existing system which is either malfunctioning or being upgraded with no significant change of design flow or use of the structure, or
- 2) Any existing overboard wastewater discharge.

**Required Front Yard Area:** The area between the front lot line and front setback line.

**Residential Care Facility:** (See Congregate Care facility or Community Living Facility)

**Residential in Appearance:** Siding materials such as clapboards, shingles and shakes, including synthetic or metal siding manufactured to closely resemble clapboards, shingles and shakes. This term shall also include masonry, brick, stucco, and wood board-and-batten.

**Residential Dwelling Unit:** (See Dwelling Unit)

**Residential Siding:** Siding materials such as clapboards, shingles, and shakes, including synthetic or metal siding manufactured to closely resemble clapboards, shingles and shakes. This term shall also include masonry, wood board-and-batten, and "Texture 1-11" exterior plywood, but shall not include artificial masonry, or fake board-and-batten made from metal.

**Residual Basal Area:** The sum of the basal area of trees remaining on a harvested site.

**Residuals:** For sludge management purposes, those materials, including but not limited to pulp and paper mill wastewater treatment sludge, food and fiber processing wastes, municipal wastewater and sludges, vegetable and fish processing residuals, and ash from wood incinerators, generated from municipal, commercial or industrial facilities that are suitable for controlled land application and result in vegetative assimilation, attenuation of the components in the material or improved soil conditions.

**Resource/Mineral Extraction Activities:** Any operation within any twelve-month period which removes more than 100 cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat or other like material from its natural location and which transports the product removed, away from the extraction site.

**Restaurant:** An establishment where meals are prepared and served to the public for consumption for compensation.

Restaurant, Drive-Through : A business involving the preparation and serving of meals for consumption on the premises in a motor vehicle or off the premises, normally requiring short amounts of time between the period of ordering and serving of the meal which is served in edible or disposable containers.

Restaurant, Fast Food: A business involving the preparation and serving of meals for consumption on the premises or off the premises, normally requiring short amounts of time between the period of ordering and serving of the meal which is served in edible or disposable containers.

Restaurant, Sit-down: A business involving the preparation and serving of meals for consumption on the premises, requiring moderate amounts of time between the period of ordering and serving the meal.

**Re-Subdivision:** The further division of an existing subdivision or any changes of the lot size therein, or the relocation of any road or lot line in a subdivision.

**Retail:** Connected with the sale of goods to the ultimate consumer for direct use and consumption and not for trade.

**Right-of-way:** The area or strip of land over which the public has a right of passage in the case of a public way or road, or over which a private individual has the right of passage in the case of a private way, or over which the City of Gardiner or a utility has the right of passage for the installation, maintenance and repair of utility infrastructure.

**Riprap:** Rocks, irregularly shaped, and at least 6 inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes of two units horizontal to one unit vertical or less.

**River:** A free-flowing body of water including its associated flood plain wetlands from the point at which it provides drainage for a watershed of twenty-five square miles to its mouth.

**Riverine:** Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

**Road:** An existing state, county, or town way or a street dedicated for public use and shown upon a plan duly approved by the Planning Board and recorded in the County Registry of Deeds. The term "road" shall not include those ways which have been discontinued or abandoned.

**Road Classification:**

Arterial: A major continuous route serving substantial statewide and interstate travel, linking cities, larger towns, and other major traffic generators, as classified by the Maine Department of Transportation (MDOT) under the provisions of 23 M.R.S.A. Section 53 as amended.

Collector: A road that carries traffic between residential areas and arterials, and roads between smaller communities, as classified by Maine Department of Transportation, as cited above.

Industrial or Commercial Road: A road servicing only industrial or commercial uses.

Minor Road: A road providing access to adjacent land and primarily serving local traffic.

Private Road: A vehicular access way serving more than 2 dwelling units, which is not proposed to be dedicated to the city.

**Roadside Stand/Farm Produce:** A booth or stall located on property from which produce and farm products are sold to the general public.

**Sawmill:** A mill or machine for sawing logs for commercial purposes.

**School:**

Public and Private - including Parochial School: An institution for education or instruction where any branch or branches of knowledge are imparted and which satisfies either of the

following requirements: the school is not operated for a profit or a gainful business; or the school teaches courses of study which are sufficient to qualify attendance thereby in compliance with State compulsory education requirements.

**Commercial School:** An institution which is commercial or profit-oriented. Examples thereof are dancing, music, riding, correspondence, aquatic schools, driving or business.

**Self-Storage Building:** A building or group of buildings that contain individual compartmentalized and controlled separate storage spaces leased or rented on an individual basis and accessible through individual doors.

**Senior Housing:** A housing development designed for persons over the age of 55 years without residential care or similar services.

**Septage:** Waste, refuse, effluent, sludge, and other materials from septic tanks cesspools, or other similar facilities.

**Service Business:** Any business or establishment which provides a service of a non-retail nature for hire by others, conducted through the application of some specialized knowledge, training, skill or talent, or through the employment of some special action or work. A service business does not entail outside storage of goods or equipment and does not utilize vehicles larger than 9,000 pounds gross vehicle weight. A motor vehicle service station shall not be considered a service business.

**Service Drop:** Any utility line extension which does not cross or run beneath any portion of a water body provided that:

In the case of electric service, the placement of wires and/or the installation of utility poles is located entirely upon the premises of the customer requesting service or upon a roadway right-of-way and the total length of the extension is less than 1,000 feet.

In the case of telephone service, the extension, regardless of length, will be made by the installation of telephone wires to existing poles or the extension requiring the installation of new utility poles or placement underground is less than 1,000 feet in length.

**Setback:** The minimum horizontal distance from a lot line to the nearest part of a structure, road, parking space or other regulated object or area.

**Setback from Water:** The minimum horizontal distance from the normal high-water elevation to the nearest part of a structure.

**Shared Entrance or Driveway:** A single entrance or driveway serving two or more lots.

**Shopping Center:** A group of architecturally unified commercial establishments built on a site which is planned, developed, owned and managed as an operating unit related in its location, size and type of shops to one trade area that the unit serves. The unit provides on-site parking in definite relationship to the types and total size of the stores.

**Shore Frontage:** (See Frontage, Shore)

**Shoreland Zone:** The land area located within 250 feet, horizontal distance, of the normal high-water line of any great pond, river, stream, or saltwater body; within 250 feet of the upland edge of a coastal or freshwater wetland; or within 75 feet of the normal high-water line of a stream.

**Sight Distance:** The length of an unobstructed view from a particular access point to the farthest visible point of reference on a roadway.

**Sign:** (See Sign definitions contained in the Special Activity Performance Section of this Ordinance)

**Site Plan:** A plan, drawn to scale, showing uses and structures proposed for a parcel of land as required by municipal ordinance. It includes lot lines, building sites, reserved open spaces, buildings, and major landscape features, both natural and man-made.

**Site Plan Review:** A review of a proposed development conducted by the Planning Board using the standards contained in this Ordinance.

**Sit-Down Restaurant:** (See Restaurant)

**Sludge:** The semi-solid or liquid residual generated from a municipal, commercial or industrial wastewater treatment plant.

**Social, Fraternal Organization:** A group of people formally organized for a common interest, usually cultural, religious or entertainment, with regular meetings, rituals and formal membership requirements.

**Solid Waste:** Unwanted or discarded material, including garbage with insufficient liquid content to be free flowing.

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



**Stream:** A channel between defined banks created by the action of surface water, whether intermittent or perennial, and which is characterized by the lack of upland vegetation or presence of aquatic vegetation or by the presence of a bed devoid of topsoil containing waterborne deposits on exposed soil, parent material or bedrock.

**Stream:** For shoreland zoning purposes, a free-flowing body of water from the outlet of a great pond or the confluence of two perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5 minute series topographic map, to the point where the body of water becomes a river or flows to another water body or wetland within the shoreland area.

**Street:** A public or private right-of-way or private road. (See Road.)

**Structure:** Anything constructed or erected, except a boundary wall, fence or surface paving, the use of which requires location on the ground or attachment to something on the ground.

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

**Structure:** For shoreland zoning purposes, anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of fences, and poles, wiring and other aerial equipment normally associated with service drops as well as guying and guy anchors. The term includes structures temporarily or permanently located, such as decks and satellite dishes.

**Structure or Building Front:** That side of a structure closest to the street that serves it and contains the primary means of entrance. There shall be only one structure or building front per building.

**Studios of artists and craftsmen:** Buildings or structures (or portions thereof) used by an artist or craftsman for the production, display, and sale of works of art or crafts. Only works of art or crafts produced by artists or craftsmen who work in the studio shall be displayed or sold in the studio. (*Adopted 06/04/2014, Effective 07/04/2014*)

**Subdivider:** An individual, firm, association, syndicate, partnership, corporation, trust, or any other legal entity, or agent thereof, that proposes to build a subdivision. The term "subdivider" includes "developer" and "builder."

**Subdivision:** As defined in the Subdivision Law, 30-A M.R.S.A. Section 4401.

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

**Substantial Improvement:** For floodplain management purposes, any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds

50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

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

**Substantial Start:** Completion of 10% of a permitted structure (30% in a shoreland district) or use measured as a percentage of estimated total cost.

**Substantially Completed:** Completion of construction to the point where normal functioning, use, or occupancy can occur without concern for the general health, safety and welfare of the occupant and general public.

**Subsurface Sewage Disposal System:** A collection of treatment tank(s), disposal area(s), holding tank(s) and pond(s), surface spray system(s), cesspool(s), well(s), surface ditch(es), alternative toilet(s), or other devices and associated piping designed to function as a unit for the purpose of disposing of wastes or wastewater on or beneath the surface of the earth. The term shall not include any wastewater discharge system licensed under 38 M.R.S.A. Section 414, any surface wastewater disposal system licensed under 38 M.R.S.A. Section 413 Subsection 1A, or any public sewer. The term shall not include a wastewater disposal system designed to treat wastewater which is in whole or in part hazardous waste as defined in 38 M.R.S.A. Chapter 13, Subchapter 1.

**Sustained Slope:** A change in elevation where the referenced grade is substantially maintained or exceeded throughout the measured area.

**Swimming Pool:** Any structure intended for swimming or recreational bathing that contains water over 24 inches deep. This includes in-ground, above-ground and on-ground swimming pools, hot tubs and spas.

**Temporary Structure:** A structure without any foundation or footings and which is removed when the designated time period, activity, or use for which the temporary structure was erected has ceased.

**Temporary Use:** A use established for a fixed period of time with the intent to discontinue such use upon the expiration of the time period.

**Theater:** A building or part of a building devoted to showing motion pictures, or for dramatic, musical or live performances. (See Auditorium, Public Assembly.)

**Timber Harvesting:** The cutting and removal of trees from their growing site, and the attendant operation of cutting and skidding machinery, but not the construction or creation of roads. Timber harvesting does not include the clearing of land for approved construction.

**Tributary Stream:** For shoreland zoning purposes, a channel between defined banks created by the action of surface water, whether intermittent or perennial, and which is characterized by the lack of upland vegetation or presence of aquatic vegetation and by the presence of a bed devoid of topsoil containing waterborne deposits on exposed soil, parent material or bedrock, and which flows to a water body or wetland. This definition does not include the term stream and only applies to that portion of the tributary stream located within the Shoreland Zone of the receiving water body or wetland.

**Truck Facility:** Any building, premises or land in which or upon which a business, service or industry involving the maintenance, servicing, storage or repair of commercial vehicles is conducted or rendered, including the dispensing of motor fuel or other petroleum products directly into motor vehicles, and the sale of accessories or equipment for trucks and similar commercial vehicles.

**Upland Edge of a Wetland:** The boundary between upland and wetland. The upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation, or where the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems that are 6 meters (approximately 20 feet) tall or taller.

**Use:** The purpose for which land or a structure is arranged, designed, or intended, or for which land or a structure is or may be occupied.

**Vegetation:** All live trees, shrubs, ground cover and other plants, including without limitation, trees both over and under 4 inches in diameter, measured at 4 ½ feet above ground level.

**Vehicle Sales:** Any business which involves a parking or display area for the sale of new or used cars, trucks, motorcycles, campers, farm equipment, recreational vehicles, mobile homes, or similar products.

**Veterinary Clinic:** A building used for the diagnosis, care and treatment of ailing or injured animals which may include overnight accommodations. The overnight boarding of healthy animals shall be considered a kennel.

**Volume of a Structure:** The volume of all portions of a structure enclosed by a roof and fixed exterior walls as measured from the interior faces of these walls and roof.

**Waiver:** A relaxation of all or portions of the submission requirements if the information is not required to determine compliance with the standards of this Ordinance.

**Warehousing:** The storage or deposit of merchandise or commodities in a structure or room.

**Waste Processing and Disposal Facilities:** The office, plants, substations, other structures and sites used to treat, transport or dispose of wastes.

**Water Body/Water Course:** Any pond, lake, river, stream, wetland or tidal area.

**Water Crossing:** Any project extending from one bank to the opposite bank of a river or stream, whether under, through, or over the water or wetland. Such projects include but may not be limited to roads, fords, bridges, culverts, water lines, sewer lines, and cables as well as maintenance work on these crossings. The definition includes crossings for timber harvesting equipment and related structures.

**Watershed:** The land area that drains, via overland flow, natural or man-made drainage systems, water bodies, or wetlands to a given water body or wetland.

**Wetland:** An area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include swamps, marshes, bogs, certain forested areas, and similar areas. The parameters that characterize wetlands are:

- (a) The vegetation is predominantly wetland or aquatic;
- (b) The soils are predominantly undrained hydric or wetland soils; and
- (c) The substrate is non-soil (such as sand, gravel or rock) and the area is saturated with water or covered with water at least 2 months during each year.

**Wetland, Forested:** A wetland dominated by woody vegetation that is 6 meters tall or taller.

**Wetland, Freshwater:** For shoreland zoning purposes, freshwater swamps, marshes, bogs and similar areas, other than forested wetlands, which are:

- (a) Of ten or more contiguous acres; or of less than 10 contiguous acres and adjacent to a surface water body, excluding any river, stream or brook such that in a natural state, the combined surface area is in excess of 10 acres; and
- (b) Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.

Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition.

**Wetlands Associated with Great Ponds and Rivers:** For shoreland zoning purposes, wetlands associated with great ponds or rivers are considered to be part of that great pond or river when they are contiguous with or adjacent to the great pond or river and during normal high water are connected by surface water to the great pond or river or are separated from the great pond or river

by a berm, causeway, or similar feature less than 100 feet in width, and which have a surface elevation at or below the normal high-water line of the great pond or river. Wetlands associated with great ponds or rivers are considered to be part of that great pond or river.

**Wholesale:** Selling to retailers or jobbers rather than to consumers.

**Windmill:** A wind energy conversion system consisting of a wind turbine, a tower and associated control or conversion electronics.

**Windmill, Large:** A windmill which has a rated capacity of more than 10kw.

**Windmill, Mid-Size:** A windmill which has a rated capacity more than 2 kw and not more than 10kw.

**Windmill, Small:** A windmill which has a rated capacity of 2 kw or less.

**Wind Turbine:** Parts of a wind energy system including blades, generator and tail.

**Wind Turbine Height:** The distance measured from the surface of the tower foundation to the highest point of any turbine rotor blade measured at the highest arc of the blade.

**Wireless Communications Facility:** Any structure, antenna, tower, or other device which provides radio/television transmission, commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), common carrier wireless exchange phone services and personal communications service (PCS) or pager services.

**Yard:** The area of land on a lot not occupied by the principal building.

**Yard, Front:** The area of land between the front lot line and the nearest part of the principal building.

**Yard, Rear:** The area of land between the rear lot line and the nearest part of the principal building.

**Yard, Side:** The area of land between the side lot line and the nearest part of the principal building.

**Yard or Garage Sale:** A sale, conducted indoors or out of doors, of used household goods, curios and the like at a frequency of less than eight days in any six-month period. Yard or garage sales, as distinguished from flea markets, shall be considered to be accessory uses.

**Zone:** (See District)