

2017

Town of Pembroke Maine Ordinances

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TOWN OF PEMBROKE, MAINE
Amended building Permit Ordinance

An ordinance of the Town of Pembroke, Maine, enacted by the Town on July 19, 1999

PURPOSE: to avoid or mitigate the significant impact which new building can have upon the cost and efficiency of town services and upon the environment of the town and its neighborhoods; including schools, sewers, water supply, and other utilities, recreation facilities, liquid and solid waste disposal, police and first protection, traffic and road, property values, aesthetic and visual characteristics of the neighborhood and the town, to protect the general health, safety, and welfare of the town.

1-A. BUILDING PERMITS: No building or other structure shall be erected, moved, or added to without a permit therefore issued by the Code Enforcement Officer (CEO) or Planning Board. No change of use or resumption of nonconforming use may occur without a permit issued by the CEO or Planning Board. No permit shall be issued except in conformity with the provisions of the Ordinance, except after written order from the Board of Appeals.

1-B. EXEMPTIONS: Dog houses, playhouses, tool shed and similar storage buildings not greater than 144 square feet in floor area, and not greater than 10 feet tall, shall not require a permit. These exemptions cannot be attached in common to defeat the purpose of this Ordinance. In addition, temporary structures, campers, trailers, and motor homes which are to be occupied, can be placed on a legal lot for up to 120 days without a building permit providing that the owner obtain a plumbing permit from the plumbing inspector prior to placing the structure on the lot, and that all other regulations are adhered to.

1-C. APPLICATIONS: All applications for building permits shall include the location, showing at least one right of way to the property, distance from any body of water, the dimensions of the proposed building or alteration – side, front and rear setbacks, and the proposed sewage disposal system as certified by a registered civil engineer or a plumbing inspector appointed by the town. The application shall include such other information as lawfully may be required by the CEO or Planning Board in order to determine conformance with and provide for the enforcement of this Ordinance. The applicant shall have the burden of proof that the proposed building will meet the impact statement included in the Ordinance.

1-D. Approval of building permit applications shall be subject to all applicable State and local codes for health, plumbing, sanitation, conservation, and pollution abatement. Upon receipt of a completed application with fee paid, the CEO or Planning Board shall within 30 days approve, approve with conditions, or deny the application in writing to the applicant.

1-E. The permit must be exercised within two years and shall expire after 24 months if 30% of the construction or alteration is not completed.

1-F. All applications to be considered at a monthly meeting of the Planning Board must be submitted no later than 5 days prior to the monthly meeting. The Planning board meets once a month and all meetings are posted. Each application shall be paid for at the rate of \$15.00 for residential and \$15.00 for commercial and Industrial building. A copy of this Ordinance shall be given to each successful

applicant along with the permit. If a building's usage changes from residential to commercial within 6 months from the time of permit issue, then the permit must be amended with Planning Board approval of usage changes, and adjustments to the application rate will include the commercial rate of 1% of construction cost.

2. IMPACT STANDARDS

2-A. Lot size, building setback, and height: All dwellings shall be on lots of at least 1.5 acres (66,000 Sq. Feet). All dwellings shall have a minimum front yard setback of at least 30 feet from the edge of the road right of way and setbacks from side and rear lots of at least 25 feet, and no building shall exceed 35 feet in height. Multiple dwelling units will comply with state laws in regards to minimum lot size.

2-B. Vehicular Access: The proposed site layout will provide for safe access and egress from public and private roads. Provision shall also be made for providing convenient and safe emergency vehicle access to all buildings and structures.

2-C. Parking: Off street parking will be provided in accordance with the following standards:
Dwelling: 2 spaces per unit
Hotels, Motels, Boarding Houses: 1 space per guest room
Restaurants, Churches, Clubs Recreation Facilities: 1 spacer per every 4 seats
Stores and Offices: 1 space per 300 square feet of floor area
Buildings not listed: Spaces shall be provided as for the most similar building listed

2-D. Soils: The soils of the site are indicated as generally suitable for the proposed building on the medium intensity soil survey or in the report of a soil scientist.

2-E. Sewage Disposal: There will be adequate provision for sewage waste disposal. For buildings requiring septic systems, a report by a licensed soils Evaluator must be submitted showing septic system design. If a closed vault, a plumbing permit is necessary.

2-F. Air Pollution: The proposal will meet all Department or Environmental Protection requirements regarding air quality.

2-G. Soil Erosion: the proposal will not cause unreasonable soil erosion or reduce the capacity of the land to hold water so that a dangerous or unhealthy condition will result.

2-H. Noise: the proposal will not result in undue noise pollution. If it is likely that the proposal will result in noise in excess of that which is normal for the area, it shall be designed and landscaped to minimize noise interference with neighboring uses. Excessive noise at unreasonable hours shall be required to be muffled so as not to be objectionable beyond the property lines. The following uses and activities shall be exempt from the noise level regulations: 1) noises created by construction and temporary maintenance activities between 6:30 AM and 8:00PM.,2) traffic noise on public roads.

2-I. Surface Water Drainage: there will be adequate provision for surface water drainage so that removal of surface waters will not adversely affect neighboring properties, downstream water quality, or streets and roads. Whenever possible, on site absorption of run off waters shall be utilized to minimize off site discharge.

2-J. Exterior Lighting: there will be no flashing lights or strong lights shining beyond the lot lines onto neighboring properties, or onto any town way so as to impair the vision of the driver of any vehicle upon that town way.

2-K. Preserve and Enhance the Landscape: During construction, the landscape will be preserved in its natural state insofar as is practicable by minimizing tree removal, disturbance of soil, and retaining existing vegetation, in order to minimize the impact of the proposed use on neighboring land use.

2-L. Road Access: The building will be placed on a lot which is either on a town or private road, or which has a deeded access.

3. CERTIFICATE OF OCCUPANCY: It shall be unlawful to use or occupy, or permit the use or occupancy, of any new building or premises which is hereafter constructed, or charged in its use or structure, and which requires site plan review and approval under this Ordinance, until a certificate of occupancy shall have been issued therefore by the CEO and endorsed to the effect that the proposed use of the building conforms with the requirements of this Ordinance. (For occupancy, the CEO will have to assure that all water, septic, electrical, and fire safety codes are met).

4-A. CODE ENFORCEMENT OFFICER. It shall be the duty of the CEO of the Town of Pembroke to enforce the provisions of this Ordinance. If the CEO shall find that any of the provisions of this Ordinance are being violated, he shall notify, in writing, the person(s) responsible for such violations, indicating the nature of the violations and specifying the action necessary to correct it. He shall order discontinuance of illegal use of land, 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.

4-B. LEGAL ACTIONS AND VIOLATIONS: When any violation of any provision of this Ordinance shall be found to exist, the Selectmen, on their own initiative or upon notice from the CEO, or from the Planning Board, are hereby authorized and directed to institute any and all actions and proceedings, either legal or equitable including seeking injunctions of violations and impositions of penalties, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the Town of Pembroke.

4-C. PENALTIES: The penalties for violations of this Ordinance shall be as follows:

1. The minimum penalty for starting construction or undertaking a land use activity without the required permit shall be \$100.00 and the maximum penalty shall be \$2500.00.
2. The minimum penalty for any other specific violations shall be \$100.00 and the maximum penalty shall be \$2500.00.
3. In addition, violators may still be ordered to correct or abate the violation.

In all other respects, assessment of penalties under this Ordinance shall be in accordance with Title 30 MRSA, Section 4452. Each day a violation continues may be counted as a separate offense. CEO and or selectmen to the person or party in violation of this Ordinance. Return of the receipt shall not in any respect invalidate enforcement of this Ordinance or any penalties for violation thereof. In addition to the penalties provided herein, the Town may bring action in Superior Court to enjoin violation of the Ordinance and for such other relief as the law may provide.

5. PUBLIC HEARINGS: The Planning Board may hold a public hearing on any matter before it. Meetings shall be advertised with 7 days notice in a paper of local circulation at the applicants' expense. In addition, abutting landowners shall be notified by mail of the hearing date, place, and times.

6. POWERS AND DUTIES OF THE BOARD OF APPEALS: To interpret provisions of this Ordinance which are called into question to hear appeals, and to grant variances if the criteria is met. Pembroke has an appeals process to the Board of Appeals with State law 30-A ss 4353, and further appeals to the Superior Court, in accordance with State law 30A 2691.

7. MEANING OF WORDS: All words not defined herein shall carry their customary and usual meanings. Words used in the present tense shall include the future. Words used in the singular shall include the plural and vice versa. The word "lot" shall include "parcel and plot". The word "shall" is used to indicate the mandatory and the word "may" is used to indicate the permissive. The words "occupied or used" shall be considered as though followed by the words "or intended, arranged, or designed to be used or occupied".

8. DEFINITIONS

8-A. Accessory Building or Structure- A subordinate building or structure or a portion of the main building, the use of which is incidental to that of the main or principal building.

8-B. Accessory Use- A use clearly incidental and subordinate to the principal building or use and located on the same lot with such principal building or use.

8-C. Building- Any structure having a roof supported by columns or walls and intended for the shelter, housing or enclosure of persons, animals, or chattel.

8-D. CEO- MRSA Title 30 Section 4953 building inspector.

8-E. Height of Building- The vertical distance between the highest point of the roof and average grade of the ground adjoining the building. Projections such as TV antennae, chimneys, windmills, ventilators, and solar collectors may exceed allowable building height, but shall be set back from all lot lines a distance not less than the height (from the grade) of such feature or structure.

8-F. Lot- A parcel of land occupied or capable of being occupied, by one building and the accessory buildings or uses customarily incidental to it, including such open space as is required by the Ordinance, and having frontage upon an approved street, or private right-of-way. Lots located on opposite sides of public or private road shall be considered each separate lot.

8-G. Nonconforming Lot- A single lot of record which at the effective date of adoption or amendment of this Ordinance, does not meet the minimum lot area, lot area per unit, lot coverage, or frontage requirements of the Zone in which it is located. It is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendment took effect.

8-H. Nonconforming Structure- A structure that does not meet the setback, height, or if applicable, unit size standards of the Zone in which it is located. It is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.

8-I. Nonconforming Use- A use of building, structure, or area of land which does not conform to the regulations of the district or Zone in which it is situated, but is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.

8-J. Setback, Front- The distance measured from the street easement or right-of-way to the nearest part of any principal or accessory structure.

8-K. Setback, Rear- An open unoccupied space, on the same lot with the building, situated between the rear line of the building and the rear line of the lot and extending the full width of the lot.

8-L. Setback, Side- An open unoccupied space, on the same lot with the building, situated between the building and side lot line of the lot and extending from the front yard to the rear yard.

8-M. Structure- Any constructed or erected material or combination of materials in or upon the ground, including, but not limited to, buildings, mobile homes, radio towers, satellite dishes, sheds, signs, decks, and storage bins, but excluding motor vehicles, boats, fences, sidewalks, and paving in the following items: streets, driveways, parking areas or patios.

8-N. Subdivision- The division of land in single ownership into three or more parcels or lots.

8-O. Variance- A variance is a relaxation of the terms of this Ordinance.

TOWN OF PEMBROKE
EMERGENCY MANAGEMENT
POLICY

Adopted: May 14, 2007

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EMERGENCY MANAGEMENT POLICY

TOWN OF PEMBROKE

Purpose

It is the intent and purpose of this policy to establish and Emergency Management Agency in compliance and in conformity with the provisions of Title 37-B, MRSA, Section 781 st seq., to ensure the complete and efficient utilization of the Town's facilities and resources to combat disaster as defined herein.

Establishment. The Pembroke Emergency Management Office (OEM) and the position of Emergency Management Director for the Town of Pembroke are hereby created. The Selectmen may appoint additional OEM staff members, as needed.

Definitions

The following definitions shall apply in the interpretation of the ordinance:

Emergency Management Director (EMD). "Emergency Management Director" shall mean the appointed town official responsible for performing the four phases of Emergency Management (preparedness, response, recovery, and mitigation) and for liaison with the Washington County Emergency Management Agency.

Emergency Management Agency. " Emergency Management Agency" means the agency created under this policy for the preparation for and the carrying out of all emergency functions, other than functions for which military forces are primarily responsible, in order to minimize and repair injury and damage resulting from disasters or catastrophes caused by enemy or terrorist attacks, sabotage, riots or other hostile action, or by fire, flood, earthquake or other natural or man-made causes. These functions include, without limitation, firefighting, police, medical and health, emergency welfare, rescue, engineering, public warning and communications services; evacuation of persons from stricken areas; allocation of critical materials in short supply; emergency transportation; other activities related to civilian protection and other activities necessary to the preparation for the carrying out of these functions.

Emergency Management Agency Forces. "Emergency Management Agency Forces" shall mean the employees, equipment and facilities of all town departments, boards, institutions and commissions; and in addition, it shall include all volunteer persons, equipment and facilities contributed by or obtained from volunteer persons or agencies.

When directed by the Chairman of the Board of Selectmen or by the Emergency Management Director, the Emergency Operations Center will be established and manned. At the discretion of the Selectmen or the EMD, the following town officials may be included on the Emergency Operations Center Staff:

- A. Selectmen
- B. Town Manager
- C. Town Clerk
- D. Comptroller
- E. Code Enforcement Officer
- F. Police Chief
- G. Fire Chief or Deputy
- H. Ambulance Chief
- I. Road Commissioner

Director. "Director" means the director of the Town of Pembroke Emergency Management Agency, appointed as prescribed in this policy.

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

Organization

The Selectmen/Town Manager shall be responsible for the agency's organization, administration and operation. The Selectmen/Town Manager may employ such permanent or temporary employees, as he/she deems necessary and prescribe their duties.

The Pembroke Selectmen shall review the operational organization, to ascertain the agency's ability to cope with its responsibilities and shall also approve the Town's Emergency Operations Plan.

Appointment of Director, Duties, and Responsibilities

Appointment, Term and Removal: The Pembroke Selectmen shall appoint an Emergency Management Director, who shall coordinate the activities of all town departments, organizations and agencies for civil emergency preparedness within the town and maintain a liaison with other emergency management agencies, public safety agencies, and have such additional duties as prescribed by the Selectmen. This appointment shall be annual and made by July 30th of each year. The Selectmen may remove the Emergency Management Director for just cause.

Duties and Responsibilities: The Emergency Management Director's duties shall include, but not be limited to the following:

- A. Prepare and update a Hazard Risk and Vulnerability Assessment.
- B. Prepare and maintain the Pembroke emergency Operations Plan.
- C. Organize, activate and operate the Pembroke Emergency Operations Center.
- D. Prepare and maintain a list of disaster resources.
- E. Develop procedures for the operation of the Pembroke Emergency Operations Center.
- F. Coordinate and maintain written disaster Mutual Aid Agreements with the approval of the Selectmen.
- G. Provide Emergency Management training to town officials and responders.
- H. Develop and implement a Disaster Exercise Program.
- I. Attend County Local Emergency Manager meeting.
- J. Provide disaster preparedness information to town residents.
- K. Complete and report damage assessments to the Washington County Emergency Management Agency.
- L. Complete and submit applications for FEMA disaster funds and grants.

The Emergency Management Director may take necessary training as provided by the Washington County Emergency Management Agency, Maine Emergency Management Agency (MEMA, and FEMA).

Rules and Regulations

The Emergency Management Director shall prepare, under the direction of the Selectmen, such policies as may be deemed necessary for the administration and operational requirements of the agency, whose policies must be approved by the Pembroke Selectmen prior to becoming effective.

Emergency Proclamation

The Selectmen/Town Manager shall have the power and authority, after consultation with the Chairperson of the Pembroke Selectmen, Emergency Management Director, and the Fire Chief, to issue a proclamation that an emergency exists whenever a disaster or civil emergency exists or appears imminent. The proclamation may declare that an emergency exists in any or all sections of the town. If the Selectmen/Town Manager is temporarily absent from the town or otherwise unavailable, the person designated by the Selectmen may issue the proclamation that an emergency exists. If neither the Selectmen or the person designated by them to act in their absence is available, then the following persons shall have the power and authority to issue a proclamation that an emergency exists, in the following order of succession, the Police and the Public Works Director. A copy of the proclamation shall be filed within twenty-four (24) hour in the office of the Town Clerk.

Notwithstanding the above, when consultation with the Chairperson of the Pembroke Selectmen would result in a substantial delay in an effective response in alleviating or preventing an emergency or disaster, the Selectmen/Town Manager, or his successor as outlined above, is authorized to take whatever actions are necessary to prevent the loss of life and property in the town.

The Selectmen/Town Manager and the Emergency Management Director shall be responsible for submitting a full report to the Machias Selectmen of all actions taken as a result of the declared emergency as soon as the Board of Selectmen can be convened.

Termination of Emergency

When the Selectmen/Town Manager or his/her successor as outlined above is satisfied that a disaster or civil emergency no longer exists, he/she shall terminate the emergency proclamation by another proclamation affecting the sections of the Town covered by the original proclamation, or any part thereof. Said termination of emergency shall be filed in the office of the Town Clerk.

No state of emergency may continue for longer than five (5) days unless renewed by the Pembroke Selectmen.

Selectman/Town Manager's Duties and Emergency Powers

During any period when an emergency proclamation is in effect, the Selectmen/Town Manager may promulgate such regulations, as he/she deems necessary to protect life and property and to preserve critical resources within the purposes of this ordinance. Such regulations may include, but not limited to, the following:

1. Regulations prohibiting or restricting the movement of vehicles in areas within or without the town;
2. Regulations facilitating or restricting the movement of persons within the town;
3. Regulations pertaining to the movement of persons from hazardous areas within the town;
4. Such other regulations necessary to preserve public peace, health and safety.

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

The Selectmen/Town Manager or his/her designee may order the evacuation of persons from hazardous areas within the town.

The Selectmen/Town Manager or his/her designee shall be authorized to request aid or assistance from the state or any political subdivision of the state and may render assistance to other political subdivision under the provisions of Title 37-B, M.R.S.A.

The Selectmen/Town Manager may obtain vital supplies; equipment and other items found lacking and needed for the protection of health, life and property during an emergency without following normal purchasing or formal bid procedures.

The provisions of this section will terminate at the end of the declared emergency.

Emergency Operational Plans

The Emergency Management Director shall prepare an all hazard emergency operational plan for the town, which shall be submitted to the Pembroke Selectmen for approval.

It shall be the responsibility of all municipal departments and agencies to perform the functions and assigned and to maintain their portions of the plan in a current state of readiness. The Selectmen/Town Manager, in conjunction with all the town department heads and the Emergency Management Director, shall review the town plan periodically.

Establishment of the National Incident Management System: The Town of Pembroke hereby establishes the National Incident Management System (NIMS) as the municipal standard for incident management. This system provides a consistent approach for Federal, State and municipal governments to work together more effectively and efficiently to prevent, prepare for, respond to, and recover from domestic incidents, regardless of cause, size or complexity. NIMS will utilize standardized terminology, standardized organizational structures, interoperable communications, consolidate action plan, unified command structures, uniform personnel qualification standards, uniform standards for planning, training, and exercising, comprehensive resource management, and designated incident facilities during emergencies or disasters. All Pembroke emergency and disaster responders for incident management will utilize the MIMS Incident Command System (ICS).

Immunity form Liability

All Emergency Management Agency Forces, while engaged in Emergency Management Agency activities, shall be immune from liability, as set forth in Title 37-B, Section 822 M.R.S.A.

Compensation for Injuries

All of Emergency Management Agency Forces shall be deemed to be employees of the state when engaged in training or on duty and shall have all of the rights of state employees under the workmen's Compensation Act, as set forth in Title 37-B, Section 823 M.R.S.A.

Violation of Regulations

It shall be unlawful for any person to violate any provisions of this policy or of the regulations or plans issued pursuant to the authority contained herein, or to obstruct, hinder or delay any Emergency Management Agency Forces as herein defined in the enforcement of the provisions of this ordinance or any regulation or plan issued hereunder.

Penalty

Any person, firm or corporation violating any provision of this policy or any rule or regulation promulgated hereunder, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars (\$100.00) and not more than five hundred dollars (\$500.00) and the costs of prosecution.

Severability

Should any provisions of this policy be declared invalid for any reason, such declaration shall not affect the validity of other provisions or of this policy as a whole, it being the legislative intent that the provisions of this policy shall be severable and remain valid notwithstanding such declaration.

Conflicting Policies, Orders, Rules and Regulations Suspended

At all times when an emergency proclamation is in effect, the orders, rules, and regulations made and promulgated pursuant to this policy shall supersede all existing policies, ordinances, orders, rules and regulations, insofar as the latter may be inconsistent herewith.

**PEMBROKE and PERRY
REGIONAL SHELLFISH CONSERVATION
ORDINANCE**

**For the Communities of
Pembroke and Perry**

Mission Statement: These communities shall act collaboratively as stewards to preserve, protect, manage and enhance the shellfish resources and ecological well being of the region and to insure a sustainable harvest of shellfish and opportunity for those who make their living on the tide.

Management Partnership Team

**Pembroke and Perry Regional Shellfish Conservation Committee
&
Pembroke and Perry Regional Shellfish Municipal Joint Board**

**PEMBROKE AND PERRY REGIONAL SHELLFISH
CONSERVATION ORDINANCE**

Communities of Pembroke and Perry

Mission Statement: These communities shall act collaboratively as stewards to preserve, protect, manage and enhance the shellfish resources and ecological well being of the northern reaches of Cobscook Bay and parts of Passamaquoddy Bay surrounding Pembroke and Perry and to insure a sustainable harvest of shellfish and opportunity for those who make their living on the tide.

1. **Authority:** This ordinance is enacted in accordance with 12 M.R.S.A. Section 6671.
2. **Purpose:** To establish a shellfish conservation program for the participating communities, which shall insure the protection and optimum utilization of shellfish resources within its limits. These goals shall be achieved by means, which may include:
 - A. Licensing.
 - B. Limiting the number of shellfish harvesters.
 - C. Restricting the time and area where digging is permitted.
 - D. Limiting the minimum size of clams taken.
 - E. Limiting the amount of shellfish taken daily by a harvester.

3. **Administration**

3.1 The Regional Shellfish Conservation Committee: The Regional Shellfish Management Program for the participating communities shall be administered jointly by the Pembroke and Perry Regional Shellfish Municipal Joint Board and the Pembroke and Perry Regional Shellfish Conservation Committee. The Conservation Committee shall consist of two members and one alternate from each participating town. Committee Members shall be commercial harvesters licensed under this Ordinance if they are available and willing to serve and shall be appointed by the municipal officers of the participating communities and in accordance with the procedures outlined in this document for terms of up to three (3) years, except the initial appointment which shall be for 1, 2 or 3 years. A quorum shall consist of a majority of the members.

A. Selection of Regional Shellfish Conservation Committee Members: Selectmen from each of the participating communities shall appoint Regional Shellfish Conservation Committee members according to their own policies and procedures.

B. Regional Shellfish Conservation Committee's Responsibilities shall include:

i. Submitting to the Municipal Joint Board annually proposals for the expenditure of funds for the purpose of shellfish management.

ii. Keeping this Ordinance under review and making recommendations for its amendments.

iii. Recommending management actions to the Municipal Joint Board in conjunction with the Area Biologist of the Department of Marine Resources. Such actions may include, but are not limited to, re-seeding of defined shellfish flats, establishing conservation closures, shoreline cleanup, and limiting and/or expanding harvesting activities.

iv. Recommending to the Municipal Joint Board enforcement actions for the protection of the resource.

v. Submitting an annual report to the participating communities and the Department of Marine Resources covering the aforementioned topics and other Committee activities.

vi. Assist in identifying possible sources of pollution harmful to the intertidal habitat and the shellfish resources.

vii. Yearly submit an Annual Shellfish Management Plan to the Municipal Joint Board for their approval and the approval of the Department of Marine Resources. The plan shall outline in detail the number of licenses to be issued annually, license fees, the amount of shellfish allowed to be harvested per tide, restrictions on the times and days harvesting shall be allowed, and other relevant resource management tools. The plan shall be submitted to the Commissioner of Marine Resources for approval.

viii. Yearly submit an Annual License Allocation Procedure Plan for approval by the Municipal Joint Board. This plan shall outline in detail how licenses are to be allocated on an annual basis and shall be consistent with 12 M.R.S.A Section 6671 (3-A)(C). After receiving approval for license allocations from the Commissioner of Marine Resources, the Regional Shellfish Conservation Committee shall notify the Administrative Community, in writing, the number of shellfish licenses to be issued.

C. Attendance: Regional Shellfish Conservation Committee members shall make every effort to regularly attend Committee meetings. Any Committee member who misses more than two consecutive unexcused absences shall lose their seat on the Committee.

D. Convictions: Anyone convicted of violating this ordinance shall be removed from the committee.

3.2. MUNICIPAL JOINT BOARD: Each of the participating communities shall appoint one municipal officer as a member of a Joint Board to act as the town's representative for all issues concerning this agreement and they will jointly appoint a third person from either town. The person so appointed shall serve at the pleasure of the body that made the appointment.

A. Meetings: The Chairman of the Joint Board shall be elected at the first meeting following the approval of this agreement. After that, the Chairman will be elected at the first meeting of each calendar year by the members of the Joint Board. A quorum shall consist of a majority of the members of the Board. Notice of all meetings of the Joint Board shall be given to each member of the Board and the Chairman of the Regional Shellfish Conservation Committee, shall be published in accordance with each town's policies, and shall be open to the public.

B. Powers: The Joint Board is authorized to approve the number of shellfish licenses to be issued, approve license fees, open and close the flats, set times when digging is allowed, set permitted quantities that may be harvested, and to take such actions as authorized by each of the participating community's Board of Selectmen/Council, and subject to the Department of Marine Resources approval as noted in Section 6, based upon the recommendations of the Regional Shellfish Conservation Committee. These actions shall be described in an Annual Shellfish Management Plan submitted by the Regional Shellfish Conservation Committee. Unanimous recommendations of the Regional Shellfish Conservation Committee regarding the management of the shellfish resources (i.e., those issues related to the sustainable harvest of the resource and not related to personnel, fiscal expenditures or legal matters) shall be approved by the Joint Board unless a unanimous vote of the Joint Board decides otherwise.

4. Definitions

A. Resident: The term "resident" refers to a person being a Maine resident who has proof of being domiciled in at least one of the participating communities continuously for a minimum of one year prior to the time his claim of such residence is made and/or whom has paid real

estate taxes in at least one of these participating communities continuously for at least five years. In order to determine resident eligibility new residents shall provide two forms of proof of residency from the lists below. At least one shall be from Section 3 in chart below. All licensed harvesters will provide proof of residency on an annual basis.

Section 1	Section 2	Section 3
<p>*Copy of deed AND record of most recent mortgage payment</p> <p>*Copy of Lease AND record of most recent legal affidavit from landlord affirming tenancy.</p> <p>*Legal affidavit from landlord affirming tenancy AND record of most recent rent payment.</p>	<p>A utility bill or other work order dated within the past 60 days including:</p> <ul style="list-style-type: none"> *Gas Bill *Oil Bill *Electric Bill *Telephone Bill *Cable or Satellite Bill <p>Dated within the past year:</p> <ul style="list-style-type: none"> *W-2 Form *Excise (vehicle) tax bill *Property tax bill <p>*Dated within the past 60 days:</p> <ul style="list-style-type: none"> *Letter from approved *Government agency *Payroll Stub *Bank or credit card statement 	<p>*Valid Drivers License displaying physical address</p> <p>*Valid Maine photo ID card displaying physical address</p> <p>*Valid Passport displaying physical address</p> <p>*Current vehicle registration displaying physical address</p>

- B. Nonresident:** The term "nonresident" means anyone not qualified as a resident under this ordinance.
- C. Shellfish, Clams and Intertidal Shellfish Resources:** When used in the context of this ordinance the words "shellfish", "clams", and "intertidal shellfish resources" mean soft shell clams (*Mya arenaria*), quahogs (*Mercenaria mercenaria*), razor clams (*Ensis directus*), hen clams (*Spisula solidissima*), eastern oysters (*Crassostrea virginica*) and European Oysters (*Ostrea edulis*).
- D. Municipality:** Refers to the Communities of Pembroke and Perry, Maine.
- E. Administrative Municipality:** The community that administers this Ordinance and the directives of the Municipal Joint Board
- F. Annual License Allocation Procedure Plan:** A plan written by the Regional Shellfish Conservation Committee and submitted to the Municipal Joint Board for approval. This plan shall outline in detail how licenses are to be allocated on an annual basis and shall establish priority status for the allocation of licenses as referred to in Section 5.3.
- G. Annual Shellfish Management Plan:** A detailed shellfish resource management plan written on an annual basis by the Regional Shellfish Conservation Committee and submitted to, and approved by, the Municipal Joint Board for submission to, and approval by, the Maine Department of Marine Resources. Said plan shall define actions to be taken regarding the number of licenses to be issued, re-seeding activities, conservation closures, limits on allowable harvest and harvesting days and times, and other measures taken to ensure a sustainable harvest of the resource.

H. Conservation Time: Those measures and activities approved by the Regional Shellfish Conservation Committee for the purposes of resource enhancement and the support of the Pembroke and Perry Regional Shellfish Management Program. Said activities shall be outlined in the Annual Shellfish Management Plan. Conservation time must be completed prior to the issuance of a municipal commercial shellfish license in accordance with the Annual License Allocation Plan and Conservation Regulations.

5. LICENSING:

A Pembroke and Perry Regional Shellfish License is required to harvest shellfish in the jurisdiction of this Ordinance. It is unlawful for any person to dig or take shellfish from the shores and flats of the participating communities for the purpose of selling the clams without having a current commercial license issued by a participating town as provided by this Ordinance. Additionally, a commercial digger must have a valid State of Maine Commercial Shellfish License issued by the Department of Marine Resources prior to harvesting clams for commercial purposes. It shall be unlawful for any individual whose state license or right to harvest has been suspended by the state to harvest or possess shellfish without proof of purchase. Also, if such individual currently holds a municipal license such license shall be suspended for the same period of time. Restrictions on licenses regarding the harvest of shellfish as defined in this ordinance shall be outlined in the Annual Shellfish Management Plan proposed by the Regional Shellfish Conservation Committee.

Start Up Licensing and Requirements: Those who have already purchased licenses in the communities of Pembroke and Perry will remain. Following action of the Municipal Joint Board, license fees will be set and take effect immediately thereafter. Following that action, all new license sales will be for a Pembroke and Perry Regional Shellfish License. Assuming the new fees will be different following approval of this ordinance and interlocal agreement, all current license holders licenses will become a Pembroke and Perry Regional Shellfish License. No refunds will be given.

5.1 Designation, Scope and Qualifications:

A. Resident Commercial Shellfish License: The license is available to residents of a participating municipality and State of Maine Resident real estate tax payers of at least one of the participating municipalities and entitles the holder to dig and take any amount of shellfish from the shores and flats of these municipalities and reciprocating municipalities.

B. Nonresident Commercial Shellfish License: The license is available to nonresidents of the region and entitles the holder to dig and take any amount of shellfish from the shores and flats of this region.

C. Resident Junior Commercial Shellfish License: This license is available to residents of the municipality who are in high school or 18 years or less at the time of issuance of the license. A resident junior license shall be half the cost of, and require only half of the conservation time necessary for, a regular commercial resident license.

D. Nonresident Junior Commercial Shellfish License: This license is available to nonresidents who are in high school or 18 years or less at the time of the issuance of the license. A nonresident junior license shall be half the cost of, and require only half of the conservation time necessary for, a regular commercial nonresident license.

E. Resident Senior Commercial License: This license is available to resident seniors over the age of 60. Fees for this license shall be half the cost of, and require only half of the conservation time necessary for, a regular commercial resident license.

F. Non-Resident Senior Commercial License: This license is available to nonresident seniors over the age of 60. Fees for this license shall be half the cost of, and require only half of the conservation time necessary for, a regular commercial non-resident license.

G. Residential Family Recreational Shellfish License: The license is available to Residents and Maine resident real estate taxpayers of participating municipalities who do not hold a valid Maine State Commercial Shellfish License and entitles the family to dig and take no more than one peck of shellfish or 3 bushels of “hen” or “surf” clams in any one day for the use of himself and his family. Residents with an Aquaculture lease permits shall be exempt and eligible for a recreational license.

H. Nonresident Family Recreational Shellfish License: The license is available to any person not a resident of this region who does not hold a valid Maine State Commercial Shellfish License and entitles the family (same domicile) to dig and take not more than one peck of shellfish or 3 bushels of “hen” or “surf” clams in any one day for the use of himself and his family. Non residents with an Aquaculture Lease Permit shall be exempt and eligible for a recreational license.

I. Senior Recreational Resident/Non-Resident License: Recreational shellfish license fees will be waived for residents or non-residents 60 years or older.

J. License must be signed: The licensee must sign the license to make it valid. License must be in possession when engaged in harvesting. By signing the license the harvester acknowledges that they must submit to inspection by the Municipal Shellfish Warden.

5.2 **Fees:** A schedule of fees shall be available at the Town Offices of all participating communities. The fees for the licenses shall be determined annually by the Regional Shellfish Committee and Municipal Joint Board. Licensees shall submit fees, in full upon issuance of license. Fees received for shellfish licensing shall be used by the Administrative Municipality to support the Regional Shellfish Management Ordinance. Sale of recreational licenses shall be the responsibility of each participating town. Any and all fees and license sales information for recreational licenses shall be collected by the participating municipalities and sent to the Administrative Municipality monthly.

5.3 **Application Procedure:** Any person may apply to the Town Clerk for the licenses required by this ordinance on forms provided by the Administrative Municipality. Notice of available commercial licenses shall be published in a trade or industry publication, or in a newspaper, or newspapers, or combination of newspapers with general circulation which the Municipal Joint Board consider effective in reaching person affected, not less than ten (10) days prior to the period of issuance and shall be posted in the municipal offices of the participating communities until the period expires. Applications for commercial licenses must be received at the Town Office of the Administrative Municipality as required by the Allocation Plan. No Shellfish licenses may be reserved and licenses cannot be transferred.

A. Contents of Application: The application must be in the form of an affidavit and must contain the applicant's name, current address, birth date, height, weight, signature and any additional information the municipality may require.

B. Misrepresentation: Any person who intentionally gives false information on a license application shall cause the application to be removed from consideration, if a license is issued as a result of the false information, said license to become invalid and void.

C. Address change: A person holding a commercial shellfish license under this ordinance shall notify the town clerk of the Administrative Town within ninety (90) days of address change outside of the participating municipalities.

5.4. License Allocation Procedures: License sales procedures shall be determined by the Shellfish Management Committee, approved by the Municipal Joint Board, and submitted to the Department of Marine Resources for their approval at least thirty (30) days prior to the licenses going on sale. Notice of the number of licenses to be issued and the procedure for application shall be defined by an Annual License Allocation Plan.

A. The Town Clerk of the Administrative Municipality shall issue licenses to those residents and non residents who have met the requirements of obtaining a commercial license. The Town Clerk shall issue licenses allocated starting June 1st or the next business day. A lottery for non resident commercial licenses may be held June 15th or the next business day.

B. Conservation time may be completed prior to the issuance of a municipal commercial shellfish licenses in accordance with the Annual License Allocation Plan and Annual Management Plan.

C. Any license holder convicted of any violation of this ordinance shall forfeit seniority. Those who have held commercial licenses uninterrupted, from the first year of the Ordinance shall maintain seniority.

Details explaining how licenses will be issued will be described in the Annual License Allocation Procedures Plan.

5.5 Limitation of Diggers: The number of commercial licenses may be limited and will be issued according to the Annual License Allocation Plan.

A. If it is determined that Limited Licenses are necessary the Administrative Community shall issue licenses to residents and nonresidents as allocated from June 1st or the first business day following and then for 90 days, after which licenses shall be sold without regard to residency on a first come first serve basis or lottery.

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

A. The number of recreational licenses will not be limited. Recreational licenses shall be issued to residents or non residents without restriction.

5.7 License Expiration Date: Each license issued under authority of this ordinance expires June 30th of each year

5.8 **Fee Waivers:** Recreational shellfish license fees shall be waived for individuals 60 years or older and 12 years or younger.

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

7. **Minimum Legal Size of Soft Shell Clams:** It is unlawful for any person to possess soft shell clams within the municipality which are less than two (2) inches in the longest diameter except as provided by Subsection 7.2 of this section.

7.1 **Definitions:**

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

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

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

7.3 **Penalty:** Whoever violates any provision of this section shall be punished as provided by 12 M.R.S.A. Section 6681.

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

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

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

11. **Repeal:** Any ordinance regulating the harvesting or conservation of shellfish in the member communities and any provisions of any other town ordinance, which is inconsistent with this ordinance, is hereby repealed.

12. **Use of Fees and Fines, Funding:** Fees for shellfish licenses shall be set forth in the Annual Shellfish Management plan and shall accompany the application for the respective license. Fees and fines received shall be used for costs incurred in the enforcement and management of this ordinance.

12.1 Non-lapse Provision: Monies in the Municipal Shellfish Account shall not lapse at the end of the year but shall be carried over to the next year in that account.

12.2 Funding: The Municipal Shellfish Program shall be self-supporting as much as possible. Funds for operating the Program may be generated by license fees, fines, and financial support from the participating communities.

13. VIOLATIONS, SUSPENSION OF LICENSES, AND FINES:

Any person who violates this Ordinance or the policies adopted in the Annual Shellfish Management Plan shall be punished as provided by 12 M.R.S.A. Section 6671 and/or Section 6681. A licensee whose shellfish license has been suspended pursuant to this Ordinance may request return of their license only after the suspension period has expired. A suspended license is not to be returned until the fine is paid in accordance to the court's decree. The suspension of a commercial license shall begin following conviction. Any violation of this Ordinance and/or the Management Plan may result in a license suspension. All suspensions of licenses shall be authorized by the Municipal Joint Board. Any licensee whose license has been suspended pursuant to this Ordinance shall be entitled to a hearing before the Municipal Joint Board upon the filing of a written request for a hearing with the Town Clerk of the Administrative Town within thirty (30) days of the effective date of the suspension. Classifications of, and penalties for, violations are categorized as follows:

13.1 Stopping for inspection: A person shall produce their license on demand of any Certified Municipal Shellfish Conservation Warden with a Warden identification and having "probable cause" to take such action. It is unlawful for the operator of a motor vehicle, boat, vessel, or conveyance or any kind, or any person:

- A. To deliberately fail or refuse to stop immediately upon request or signal of any Certified Municipal Shellfish Conservation Warden.
- B. After the person has stopped, to fail to remain stopped until the said Warden has reached his immediate vicinity and makes known to the operator the reason for his request or signal.
- C. To fail or refuse to stand by immediately for inspection on request of said Warden.
- D. To throw or dump into any coastal waters or flats after having been requested or signaled to stop by a Certified Municipal Shellfish Conservation Warden any shellfish, or any pail, bag, hod or container before said Warden has inspected the same.
- E. To attempt to elude, disobey, or assault any Certified Municipal Shellfish Conservation Warden.

Penalties: The first violation of Section 13.1 of this Ordinance shall result in a one (1) month suspension of the license and a three hundred dollar (\$300) fine. The second and subsequent violations of Section 13.1 of this Ordinance shall result in a twelve (12) month suspension of the license and a one thousand dollar (\$1000.00) fine.

13.2 Management Plan: It is unlawful for any person to violate the Annual Shellfish Management Plan.

Penalties: The first violation of the Annual Shellfish Management Plan shall result in a fine of not less than three hundred dollars (\$300.00) and not more than fifteen hundred dollars (\$1500.00). The second and subsequent violations of the Annual Shellfish Management Plan

shall result in a fine of not less than five hundred dollars (\$500.00) and not more than fifteen hundred dollars (\$ 1500.00).

- 13.3 Harvesting Clams in any Closed Area:** It is unlawful for any person to harvest clams in a closed area.

Penalties: Any person found guilty of harvesting clams in a closed area shall be subject to a fine of not less than three hundred dollars (\$300.00) and not more than fifteen hundred dollars (\$1500.00). The second and subsequent violations of harvesting clams in a closed area shall result in a fine of not less than five hundred dollars (\$500.00) and not more than fifteen hundred dollars (\$1500.00). The second violation of this section of this Ordinance shall result in a thirty (30) day license suspension and the third and subsequent violations shall result in a one hundred and twenty (120) day suspension of the person's license.

- 13.4 Minimum Legal Size of Shellfish:** It is unlawful for any person to violate minimum shellfish size regulation set forth in this Ordinance:

Penalties: The first violation of Section 7 of this Ordinance shall result in a fine of not less than three hundred dollars (\$300.00) and not more than fifteen hundred dollars (\$1500.00). The second and subsequent violations of Section 7 of this Ordinance shall result in a fine of not less than five hundred dollars (\$500.00) and not more than fifteen hundred dollars (\$1500.00). If a person exceeds a fifty percent (50%) threshold of undersized clams as described in Section 7.2 at any time, their license shall be suspended for twelve (12) months and they shall receive a one thousand dollar (\$1000.00) fine

Penalties: If a person holding a commercial license uses it to aid and abet the illegal harvest of clams their license shall be suspended for three (3) months and they shall receive a one thousand dollar (\$1000) fine upon conviction. Any second and subsequent convictions under this section of the Ordinance shall result in a twelve (12) months suspension and a one thousand dollar (\$1000) fine. If a person holding a recreational license uses it to harvest clams commercially, their license shall be suspended for twelve (12) months and they shall receive a one thousand dollar (\$1000) fine upon conviction.

- 13.5** A regional licensee who has had their Maine State license suspended shall forfeit their regional license for the duration of the State suspension. Such a person in possession of shellfish must carry a receipt of purchase for said shellfish.

- 13.6 Harvesting without a license:** It is unlawful to harvest shellfish without a license.

Penalties: Any person convicted of harvesting shellfish within any of the participating municipalities without a municipal license issued by authority of the Pembroke and Perry Regional Shellfish Ordinance shall be ineligible to apply for any municipal shellfish license for a period of (3) three years from the date of the conviction.

- 13.7 Tagging:** The holder of a commercial shellfish license shall identify shellstock the license holder has taken by means of a harvester tag. The tag shall be in accordance with Maine Department of Marine Resources (DMR) rules. Penalties shall be in accordance with DMR regulation.

13.8 Suspension: Any shellfish licensee having three convictions for a violation of this ordinance within a three year period shall have their shellfish license suspended for a period of thirty (30) days.

14. ENFORCEMENT: This ordinance shall be enforced by the Certified Municipal Shellfish Conservation Warden or any Municipal Shellfish Conservation Warden appointed by the Municipal Joint Board who, within one year of appointment, must be certified by the Commissioner of the Maine DMR.

15. AMENDMENTS

15.1 Initiation: A proposal for an amendment to this Ordinance may be initiated by the following:

- A. A written petition submitted with the number of voters in the participating municipalities equal to at least ten percent of the voters in the last gubernatorial election;
- B. A recommendation of the Regional Shellfish Conservation Committee; or
- C. A recommendation of the Municipal Joint Board.

15.2 Procedure:

A. Any proposal for an amendment shall be made to the Municipal Joint Board, in writing, stating the specific changes requested. All such proposals shall be transmitted to the Regional Shellfish Conservation Committee for their review and recommendation.

B. Within thirty (30) days of receiving a properly initiated amendment, the Municipal Joint Board shall hold a public hearing on the proposal. Notice of the hearing shall be posted and advertised in a newspaper of general circulation within the participating communities at least seven (7) days prior to the hearing. The notice shall contain the time, date and place of the hearing and sufficient detail about the proposed changes as to give adequate notice of their content. If the proposed changes are extensive, a brief summary of the changes, together with an indication that a full text is available at the Town Clerk's office shall be adequate notice.

15.3 Adoption: This agreement may be amended after proposed changes have been reviewed by the Department of Marine Resources by a majority vote of the Municipal Joint Board and approved by the legislative bodies of the parties to the agreement (if they choose). Note: Ellsworth's charter requires Council action.

15.4 Statute Law Changes: Any changes to referenced Statute Laws in this Ordinance shall automatically update in this Ordinance upon enactment.

Attest: A true copy of an Ordinance entitled "Pembroke and Perry Regional Shellfish Conservation Ordinance" for the Communities of Pembroke and Perry.

Adopted at the Annual Town Meeting in Perry, August 23, 2011
Adopted at a Special Town Meeting in Pembroke, September 22, 2011

Janice Scanlon
Town Clerk
Town of Pembroke and Perry