

MUNICIPAL CODE OF ORDINANCES

Town of ELIOT, MAINE

Looseleaf Supplement

This Supplement contains all ordinances deemed advisable to be included at this time through:

Town Meeting of June 11, 2013.

See the Code Comparative Table for further information.

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MUNICIPAL CODE OF ORDINANCES

Town of ELIOT, MAINE

Looseleaf Supplement

This Supplement contains all ordinances deemed advisable to be included at this time through:

Town Meeting of June 16, 2012.

See the Code Comparative Table for further information.

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MUNICIPAL CODE OF ORDINANCES

Town of ELIOT, MAINE

Looseleaf Supplement

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MUNICIPAL CODE OF ORDINANCES

Town of ELIOT, MAINE

Looseleaf Supplement

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Town of

ELIOT, MAINE

Looseleaf Supplement

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Town of

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Looseleaf Supplement

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SUPPLEMENT NO. 6
October 2006

MUNICIPAL CODE OF ORDINANCES

Town of

ELIOT, MAINE

Looseleaf Supplement

This Supplement contains all ordinances deemed advisable to be included at this time through:

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SUPPLEMENT NO. 5, ADDITION
September 2005

MUNICIPAL CODE OF ORDINANCES

Town of

ELIOT, MAINE

Looseleaf Supplement

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MUNICIPAL CODE OF ORDINANCES

Town of

ELIOT, MAINE

Looseleaf Supplement

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SUPPLEMENT NO. 4, REVISION
July 2004

MUNICIPAL CODE OF ORDINANCES

Town of

ELIOT, MAINE

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Town of

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MUNICIPAL CODE OF ORDINANCES

Town of

ELIOT, MAINE

Looseleaf Supplement

This Supplement contains all ordinances deemed advisable to be included at this time through:

Town Meeting of March 23, 2002.

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MUNICIPAL CODE OF ORDINANCES

Town of

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Looseleaf Supplement

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SUPPLEMENT NO. 1
November 1999

MUNICIPAL CODE OF ORDINANCES

Town of

ELIOT, MAINE

Looseleaf Supplement

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Town Meeting of March 27, 1999(4).

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REPUBLICATION
August 1998

MUNICIPAL CODE

Town of

ELIOT, MAINE

Replacement Volume

This copy of the Eliot, Maine, Municipal Code of Ordinances, is issued as a "replacement" copy and contains all ordinances deemed advisable to be included at this time through Amendment of March 28, 1998. See the Code Comparative Table.

This copy replaces all existing copies of the Municipal Code of Ordinances, as published through Supplement No. 1, Revision. Future Supplements will commence with Supp. No. 1.

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MUNICIPAL CODE OF ORDINANCES

TOWN OF

ELIOT, MAINE

Published in 1998 by Order of the Board of Selectmen

Adopted: March 22, 1997



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PREFACE

This Code constitutes a codification of the certain general and permanent ordinances of the Town of Eliot, Maine.

Furthermore, the Code was republished in its entirety and the volume brought up-to-date with legislation enacted through March 23, 2003. The Code will be kept current by the use of change page supplements issued from time to time as various sections are updated. Readers are cautioned to be sure they have the latest supplement to the Code before use. Also, changes to this Code may have been approved by Town vote subsequent to the last update. Readers are cautioned to be aware of such changes. Copies of all changes are available from the Town Clerk.

Source materials used in the preparation of the Code were the ordinances adopted by the Board of Selectmen and the Town at the Town Meetings. The source of each section is included in the history note appearing in parentheses at the end thereof. The abbreviation T.M. in the history note indicates the section was adopted at a Town meeting. The absence of such a note indicates that the section was adopted for the first time with the adoption of the Code. By use of the comparative table appearing in the back of this Code, the reader can locate any section of any ordinance included herein.

The chapters of the Code have been conveniently arranged and the various sections within each chapter have been catchlined to facilitate usage. Notes which tie related sections of the Code together and which refer to relevant State law have been included. A table listing the State law citations and setting forth their location within the Code is included at the back of this Code.

Chapter and Section Numbering System

The chapter and section numbering system used in this Code is the same system used in many State and local government codes. Each section number consists of two parts separated by a dash. The figure before the dash refers to the chapter number, and the figure after the dash refers to the position of the section within the chapter. Thus, the second section of chapter 1 is numbered 1-2, and the first section of chapter 25 is 25-1. Under this system, each section is identified with its chapter, and at the same time new sections can be inserted in their proper place by using the decimal system for amendments. For example, if new material consisting of one section that would logically come between sections 25-1 and 25-2 is desired to be added, such new section would be numbered 25-1.5. New articles and new divisions may be included in the same way or, in the case of articles, may be placed at the end of the chapter embracing the subject, and, in the case of divisions, may be placed at the end of the article embracing the subject. New chapters may be included by using one of the reserved chapter numbers.

Page Numbering System

The page numbering system used in this Code is a prefix system. The letters to the left of the colon are an abbreviation which represents a certain portion of the volume. The number to the right of the colon represents the number of the page in that portion. In the case of a chapter of the Code, the number to the left of the colon indicates the number of the chapter. In the case of an appendix to the Code, the letter immediately to the left of the colon indicates the letter of the appendix.

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Index

The index has been prepared with the greatest of care. Each particular item has been placed under several headings, some of which are couched in lay phraseology, others in legal terminology, and still others in language generally used by local government officials and employees. There are numerous cross references within the index itself which stand as guideposts to direct the user to the particular item in which the user is interested.

Looseleaf Supplements

A special feature of this publication is the looseleaf system of binding and supplemental servicing of the publication. With this system, the publication will be kept up-to-date. Subsequent amendatory legislation will be properly edited, and the affected page or pages will be reprinted. These new pages will be distributed to holders of copies of the publication, with instructions for the manner of inserting the new pages and deleting the obsolete pages.

Keeping this publication up-to-date at all times will depend largely upon the holder of the publication. As revised pages are received, it will then become the responsibility of the holder to have the amendments inserted according to the attached instructions. It is strongly recommended by the publisher that all such amendments be inserted immediately upon receipt to avoid misplacing them and, in addition, that all deleted pages be saved and filed for historical reference purposes.

MUNICIPAL CODE CORPORATION
Tallahassee, Florida

Adopted at Town Meeting

Article Forty - The Town voted to adopt the ordinance entitled "An Ordinance to revise and codify Ordinances of the Town of Eliot, Maine," thereby superseding the separate current Zoning Ordinance, Site Review Ordinance, Subdivision Ordinance, Street Design Ordinance, Shoreland/Wetlands/Stream Protection Ordinance, and Flood Plain Ordinance. Copies are available at the Town Clerk's Office during regular business hours.

Attest: A true copy of the adoption of the ordinance entitled "An Ordinance to revise and codify Ordinances of the Town of Eliot, Maine" which was adopted at Town Meeting, March 22, 1997.

/s/ Patricia R. Cress

Town Clerk

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Checklist of Up-to-Date Pages

(This checklist will be updated with the
printing of each Supplement)

From our experience in publishing Looseleaf Supplements on a page-for-page substitution basis, it has become evident that through usage and supplementation many pages can be inserted and removed in error.

The following listing is included in this Code as a ready guide for the user to determine whether the Code volume properly reflects the latest printing of each page.

In the first column all page numbers are listed in sequence. The second column reflects the latest printing of the pages as they should appear in an up-to-date volume. The letters "OC" indicate the pages have not been reprinted in the Supplement Service and appear as published for the original Code. When a page has been reprinted or printed in the Supplement Service, this column reflects the identification number or Supplement Number printed on the bottom of the page.

In addition to assisting existing holders of the Code, this list may be used in compiling an up-to-date copy from the original Code and subsequent Supplements.

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SUPPLEMENT HISTORY TABLE

The table below allows users of this Code to quickly and accurately determine what ordinances have been considered for codification in each supplement. Ordinances that are of a general and permanent nature are codified in the Code Book and are considered "Includes." Ordinances that are not of a general and permanent nature are not codified in the Code Book and are considered "Omits."

In addition, by adding to this table with each supplement, users of this Code of Ordinances will be able to gain a more complete picture of the Code's historical evolution.

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6-11-2013(3)	Include	12

MUNICIPAL CODE OF ORDINANCES

Subpart A

GENERAL ORDINANCES

Chapter 1

GENERAL PROVISIONS

- Sec. 1-1. How Code designated and cited.
- Sec. 1-2. Definitions and rules of construction.
- Sec. 1-3. Catchlines of sections.
- Sec. 1-4. History notes.
- Sec. 1-5. References and editor's notes.
- Sec. 1-6. Code does not affect prior offenses, rights, etc.
- Sec. 1-7. Effect of repeals.
- Sec. 1-8. Certain ordinances not affected by Code.
- Sec. 1-9. Effect of amendments to Code.
- Sec. 1-10. Supplementation of Code.
- Sec. 1-11. Severability of parts of Code.
- Secs. 1-12—1-19. Reserved.
- Sec. 1-20. Effect of changes to this Code on existing applications.
- Secs. 1-21—1-24. Reserved.
- Sec. 1-25. Fee schedule.

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

The ordinances embraced in the following chapters and sections shall constitute and be designated the Municipal Code of Ordinances, Town of Eliot, Maine, and may be so cited.

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

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

In the construction of this Code, and of all ordinances, the following rules shall be observed:

100-year flood. See Base flood.

Abutters means owners of adjacent property, including property separated by a street, road, or stream, from the property under review.

Access way means an easement or a strip of land giving access to one or more back lots.

Accessory dwelling unit means a separated living area which is part of an existing or new single family owner occupied residence, and which is clearly secondary to the existing single family use of the home and that meets the requirements of section 45-459. *Accessory structure or use* means a use or detached structure that is incidental and subordinate to the principal use or structure. Accessory uses, when aggregated shall not subordinate the principal use of the lot. A deck or similar extension of the principal structure or a garage attached to the principal structure by a roof or a common wall is considered part of the principal structure.

Adjacent grade means the natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Affordable housing means decent, safe and sanitary dwelling units that can be afforded by households with annual incomes no greater than 80 percent of the median household income in non-metropolitan York County, as established by the U.S. Department of Housing and Urban Development (median household income shall be published in the Annual Report of the Municipal Officers of the Town of Eliot, Maine). A renter-occupied unit is affordable to such households if the unit's monthly housing costs, including rent and basic utility costs (the costs of heating and of supplying electricity to the unit plus the cost, if any, of supplying public water and public wastewater disposal service to the unit), do not exceed 30 percent of gross monthly income. An owner-occupied unit is affordable to such households if its price results in monthly housing costs that do not exceed 28 percent of gross monthly income for principal, interest, insurance and real estate taxes. Estimates of mortgage payments are to be based on down payments and rates of interest generally available in the area to low and moderate income households.

Aggrieved party means an owner of land whose property is directly or indirectly affected by the granting or denial of a permit or variance under this chapter; a person whose land abuts land for which a permit or variance has been granted; or any other person or group of persons who have suffered particularized injury as a result of the granting or denial of such permit or variance.

Agriculture means the production, keeping or maintenance for sale or lease, of plants and/or animals, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock; fruits and vegetables; and ornamental and green house products. Agriculture does not include forest management and timber harvesting activities.

Alternate tower structure means manmade or natural objects, clock towers, bell steeples, light poles, water towers, and similar alternative-design antenna mounting structures.

Alteration means 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.

Antenna means any exterior apparatus designed for telephonic, radio, television, personal communications service (PCS), pager network, or any other communications through the sending and/or receiving of electromagnetic waves of any bandwidth.

Applicant (chapter 35) means a person with requisite right, title or interest or an agent for such person who has filed an application for development that requires a post-construction stormwater management plan under this chapter.

Aquaculture means the growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species.

Area of shallow flooding means a designated AO and AH zone on community'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 means the land in the floodplain having a one percent or greater chance of flooding in any given year, as specifically identified in the flood insurance study cited in article I of chapter 25.

Arterial street means a major thoroughfare which serves as major trafficways for travel between and through town.

Assisted living facility means a housing facility, licensed by the state, which provides care in residential settings for elderly persons and persons with disabilities. This includes state licensed housing facilities known as congregate housing and residential care facilities.

Assisted living facility dwelling unit means a dwelling unit licensed by the state for assisted living facilities.

Auto graveyard means a yard, field, or other open area used as a place of storage for three or more unregistered or unserviceable, discarded, worn-out, or junked motor vehicles, including all vehicles which cannot pass the state inspection test in their existing condition or are otherwise inoperable.

Auto recycling business means the business office of a person who performs auto recycling.

Auto recycling operation means the dismantling of motor vehicles for the purpose of reselling the component parts of the vehicles or rebuilding or repairing salvage vehicles for the purpose of resale or for selling the basic materials in the salvage vehicles.

Auto recycling operation, limited means the incidental dismantling of motor vehicles for the purpose of reselling the component parts of the vehicles or rebuilding or repairing salvage vehicles for the purpose of resale or for selling the basic materials in the salvage vehicles subject to the following limitations:

- (1) Meets all state requirements for an auto recycling operation.
- (2) Conducted incidental to an approved (state and/or local) auto repair garage or auto service station.
- (3) No more than ten unregistered, unserviceable, discarded or worn-out automobiles (or parts which take up the same area as ten assembled automobiles) per acre allowed on lot.
- (4) All recycling operations must take place within the boundaries of the recycling enclosure or inside buildings on the lot.
- (5) Recycling enclosure must be a solid visual screen (fence, wall, etc.) at least six feet high which completely surrounds all outside recycling operations.
- (6) No vehicles or parts of vehicles are to be stored outside the recycling enclosure except those within buildings on the lot.
- (7) Size of the recycling enclosure is to be no larger than 25 percent of the lot size or 10,000 square feet, whichever is less.
- (8) The perimeter of the recycling enclosure should be located as far from the lot lines as practical and shall comply with setback requirements specified for front yard, side yard and rear yard dimensions from principle structures in section 45-405, dimensional standards (see information below for setbacks).
- (9) The recycling enclosure must be fitted with a visual screen gate, which is kept closed at all times except when entering or exiting with vehicles.
- (10) No portable or fixed crushing machinery is allowed on lot.
- (11) Application must identify how all fluids, batteries, tires and lubricants are going to be removed and/or stored in compliance with DEP requirements where applicable.
- (12) Hours of operation shall be limited to 8:00 a.m. through 5:00 p.m., five days a week, Monday through Friday.
- (13) Noise shall not exceed 50 dbA during hours of operation. Noise shall be measured at the property line, four feet above ground. Exemptions of section 45-407 of the Eliot Zoning Ordinance shall apply.
- (14) Minimum lot size shall be two acres in those districts where allowed.

Auto repair garage means a place where, with or without the attendant 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, and overall painting and undercoating of automobiles.

Auto service station means a place where gasoline, or any other automobile engine fuel (stored only in underground tanks), kerosene, or motor oil and lubricants or grease (for operation of motor vehicles) are retailed directly to the public on the premises, including the sale of minor accessories and the servicing and minor repair of automobiles, not including storage of unlicensed vehicles and not including body, frame, or fender straightening and repair.

Back lot. A lot which does not have the minimum street frontage required in the zoning district but which is accessed by an access way which either passes over or has been divided out of one or more other lots separating all or part of the back lot from the nearest qualifying street.

Back lot, first generation means a back lot separated from the nearest qualifying street by only one lot.

Back lot, second generation means a back lot separated from the nearest qualifying street by two lots.

Back lot, later generation means a back lot separated from the nearest qualifying street by three or more lots.

Back lot, new means a back lot created after June 14, 2005.

Basal area means the area of cross-section of a tree stem at four and one half feet above ground level and inclusive of bark.

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

Basement (cellar) means any portion of a structure with a floor-to-ceiling height of 6 feet or more and having more than 50 percent of its volume below the existing ground level.

Best management practices or "BMPs" (*chapter 35*) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Board of selectmen. The term board of selectmen shall mean the Board of Selectmen of the Town of Eliot, Maine.

Boarding home or boardinghouse means a building, having a common entrance, in which rooms are offered for accommodation, with or without meals, for compensation. The number of rooms allowed is to be limited by building size, adequacy of water, sewer, parking space and fire safety.

Note: 22 M.R.S.A. § 2501 states, in part, "Private homes shall not be deemed or considered lodging places and subject to a license where not more than three rooms are let . . . Cottages [for summer occupancy] shall not be deemed or considered lodging places and subject to a license where not more than three cottages are let."

Boarding house. See Boarding home or boardinghouse.

Boarding kennel or kennel means facilities for five or more dogs kept under care of one owner or one or more dogs kept for breeding or compensation.

Boat launching facility means 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.

Boats registered in landowners name means the burden of proof of boat ownership rests with the landowner (or person to whom water-dependent home occupation right has been transferred) and shall consist of either state registration or federal documentation in the landowner's (or person to whom water-dependent home occupation right has been transferred) name.

Breakaway wall means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

Building. See Structure.

Building inspector. See Code enforcement officer.

Bureau means, within chapter 44, Shoreland Zoning, the State of Maine Department of Conservation's Bureau of Forestry.

Camper means a single tent, tent trailer, camper body (for mounting upon an automobile or light truck), camper trailer, camper mobile home, or similar recreational vehicle, provided the same is used for temporary camping and not for permanent living or sleeping quarters.

Campground. See Campground or camper park.

Campground or camper park means 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 other shelters.

Camping, temporary means any camping use not exceeding six months out of a one-year period.

Canopy means the more or less continuous cover formed by tree crowns in a wooded area.

Certificate of compliance means a document signed by the code enforcement officer stating that a structure is in compliance with all of the provisions of this chapter.

Certified perimeter survey means the process of determining boundaries and areas of tracts of land. The perimeter survey shall be certified by a person licensed in the State of Maine as a professional land surveyor.

Clean Water Act (chapters 31 and 35) means the federal Water Pollution Control Act (33 U.S.C. § 1251 et seq., also known as the "Clean Water Act"), and any subsequent amendments thereto.

Coastal wetland means all tidal and subtidal lands; all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land which is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes. NOTE: All areas below the maximum spring tide level are coastal wetlands. These areas may consist of rocky ledges, sand and cobble beaches, mud flats, etc., in addition to salt marshes and salt meadows. Coastal wetlands, by definition, include all areas affected by tidal action, not just those areas where salt marshes and salt meadows exist. Cobble and sand beaches, mudflats, and rocky ledges, below the maximum spring tide are all considered to be coastal wetlands.

Code. The word Code shall mean the Municipal Code of Ordinances, Town of Eliot, Maine.

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

Collector street means a street providing access to 15 or more units of residential development, or to more than 2,500 square feet of retail commercial or industrial floorspace. It also includes streets which serve as connectors or feeders to arterial or other collector streets, or which collect traffic from a minor street or streets.

Commercial adult enterprise means any business a substantial or significant portion of which consists of selling, renting, leasing, exhibiting, displaying, or otherwise dealing in materials, of any kind which depict or describe any of the following:

- (1) Human genitals in a state of sexual stimulation or arousal;
- (2) Acts of human masturbation, sexual intercourse, or sodomy;
- (3) Fondling or other erotic touching of human genitals, pubic region, buttock or female breast;
- (4) Less than completely and opaquely covered:
 - a. Human genitals;

- b. Pubic region;
 - c. Buttock;
 - d. Female breast below a point immediately above the top of the areola; or
- (5) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Any business which devotes more than 20 percent of its floor space to exhibiting or displaying materials described in subparagraphs (a) through (e) above or derives more than 20 percent of its revenue from dealing in such materials shall be presumed to be a commercial adult enterprise unless the applicant presents clear and convincing evidence that dealing in such materials does not constitute a substantial or significant portion of the overall business enterprise being conducted on the premises.

Commercial establishment means any structure or land or combination used for the sale, purchase, or lease of any goods such as gas stations, restaurants, or grocery stores and services, but not home occupations.

Commercial/industrial street means a street servicing uses in the commercial/industrial zone. (Does not include Sunrise Street)

Commercial pier means a permanent structure extending over the water the principal use of which is the production of income from a water dependent business use such as supporting the buying or selling of goods and/or services to vessels, providing continuous access to commercial vessels used to generate income, the berthing and/or repair of transient vessels, access to rental slips and moorings, fishing, or harvesting of shellfish, conducting tours or sightseeing trips, or the operation of a limited or full service marina. A pier shall be treated as a commercial pier for all purposes and shall be subject to the requirements and limitations applicable to commercial piers under this section if it is designated as a commercial pier on the application for approval first filed with the town, is more than six feet in width, or has pilings that extend below mean low water. A pier, which meets the criteria of this definition, is a commercial pier even if it is not associated with or does not support a land based commercial use.

Commercial use means the use of lands, buildings, or structures, other than a "home occupation," defined below, 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.

Comprehensive plan or policy statement means any part or element of the overall plan or policy for development of the town as defined in 30-A M.R.S.A. § 4326.

Computation of time. In computing any period of time prescribed or allowed by this Code, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next

day which is neither a Saturday, Sunday or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

State law reference—Similar provisions, 1 M.R.S.A. § 71(12).

Conforming use means a use of buildings, structures, or land which complies with all applicable provisions of this chapter.

Construction or construction activities means any and all activity incidental to the erection, demolition, assembling, altering, installing or equipping of buildings, structures, roads or appurtenances, including land clearing, grading, excavating and filling.

Construction drawings means drawings showing the location, profile, grades, size and type of drains, sewers, water mains, underground fire alarm ducts, underground power ducts and underground telephone ducts, pavements, cross sections of streets, miscellaneous structures, etc.

Contour lines and elevations means contour lines, spaced at intervals of not more than five feet or at such intervals as the planning board may require, and elevations shall be based upon U.S. Geological Survey topographical map datum of existing grades.

Convey means to sell, lease, rent, give, or allow occupancy of a dwelling unit. Dwelling unit means a room or group of rooms designed and equipped exclusively for use as living quarters for only one family, including provisions for living, sleeping, cooking and eating. The term shall include mobile homes and apartments, but shall not include trailers or recreational vehicles.

County means the County of York, Maine.

Cross-sectional area means the cross-sectional area of a stream or tributary stream channel is determined by multiplying the stream or tributary stream channel width by the average stream or tributary stream channel depth. The stream or tributary stream channel width is the straight line distance from the normal high-water line on one side of the channel to the normal high-water line on the opposite side of the channel. The average stream or tributary stream channel depth is the average of the vertical distances from a straight line between the normal high-water lines of the stream or tributary stream channel to the bottom of the channel.

Day nurseries means a house or other place in which a person maintains or otherwise carries out, for consideration, a regular program which provides care for three or more children. This term includes day care centers.

DBH means the diameter of a standing tree measured 4.5 feet from ground level.

Dead-end street means a street or sections of a street that has only one connection to a nondead-end street and is closed at the other end.

Delegation of authority. Whenever a provision appears requiring the head of a department or some other town officer or employee to do some act or perform some duty, it shall be

construed to authorize the head of the department or other officer or employee to designate, delegate and authorize subordinates to perform the required act or perform the duty unless the terms of the provision or section specify otherwise.

Development means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures; the construction of additions or substantial improvements to buildings or other structures; mining, dredging, filling, grading, paving, excavation or drilling operations; or of equipment or materials. Within chapter 44, Shoreland Zoning, "development" means a change in land use involving alteration of the land, water or vegetation, or the addition or alteration of structures or other construction not naturally occurring.

Dimensional requirements means numerical standards relating to spatial relationships including but not limited to setback, lot area, shore frontage and height.

Dinghy means a vessel associated with a specific larger vessel and principally used for transportation from the larger vessel to a landing or other vessel. The intent is that unregistered, nonpowered boats such as canoes and kayaks that are not associated with the operation of the marina shall not be counted when determining the allowable number of permitted boats.

Direct discharge or point source (chapter 31) means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged.

Disability means any disability, infirmity, malformation, disfigurement, congenital defect or mental condition caused by bodily injury, accident, disease, birth defect, environmental conditions or illness; and also includes the physical or mental condition of a person which constitutes a substantial handicap as determined by a physician or in the case of mental handicap, by a psychiatrist or psychologist, as well as any other health or sensory impairment which requires special education, vocational rehabilitation or related services.

Discharge (chapters 31 and 35) means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of pollutants to "waters of the state."

Disruption of shoreline integrity means the alteration of the physical shape, properties, or condition of a shoreline at any location by timber harvesting and related activities. A shoreline where shoreline integrity has been disrupted is recognized by compacted, scarified and/or rutted soil, an abnormal channel or shoreline cross-section, and in the case of flowing waters, a profile and character altered from natural conditions.

Disturbed area means clearing, grading and excavation. Mere cutting of trees, without grubbing, stump removal, disturbance or exposure of soil is not considered "disturbed area." "Disturbed area" does not include routine maintenance but does include redevelopment.

Driveway means a vehicular access way less than 500 feet in length serving two single-family dwellings or one two-family dwelling, or less.

Dwelling means a fixed structure, containing one or more dwelling units.

Dwelling, multifamily. See Multifamily dwelling.

Dwelling unit means a room or group of rooms designed and equipped exclusively for use as living quarters for only one family, including provisions for living, sleeping, cooking and eating. The term shall include mobile homes and apartments, but shall not include trailers, recreational vehicles, or accessory dwelling units. An accessory dwelling unit is not considered an apartment for purposes of this [Code]. The provisions of this definition relating to accessory dwelling units are retroactive to January 1, 2003.

Earth material removal means operations whereby topsoil, sand, gravel, clay, peat, rock, or other materials are removed for sale or for use on another lot.

Easement means the authorization of a property owner for the use by another, and for a specified purpose, of any designated part of his property.

Elderly housing means housing units constructed or operated as part of a life care facility or housing units constructed, operated or financed wholly or partially with state or federal funds. Elderly persons or handicapped persons shall occupy the housing units. The state or federal funding program must have received the approval of the United States Department of Housing and Urban Development as one designed and operated to assist elderly persons.

Elderly housing dwelling unit means a dwelling unit specifically designed for elderly persons.

Elderly person means a person 55 years of age or older or a couple that constitutes a household and at least one of whom is 55 years or older at the time of entry into the facility.

Electrical inspector. See Code enforcement officer.

Elevated building means a nonbasement building:

- (1) Built, in the case of a building in zones AE and A to have the top of the elevated floor elevated above the ground level by means of pilings, columns, post, piers, or stilts, and
- (2) 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 zones AE and 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 floodwaters, as required in section 25-17.

Elevation certificate means an official form (FEMA Form 81-31, 02/06, as amended) that is used to verify compliance with the floodplain management regulations of the National Flood Insurance Program; and is required for purchasing flood insurance.

Emergency operations means work made necessary to restore property to a safe condition or work required to protect persons or property from an imminent exposure to danger or potential danger. Within chapter 44, Shoreland Zoning, "emergency operations" means 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.

Enforcement authority (chapter 31) means the person(s) or department authorized under section 31-4 to administer and enforce the chapter.

Engineer means a civil engineer licensed by the state.

Essential services means gas, electrical or communications 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 means any breaking of the ground except agriculture or common household gardening and ground care.

Exempt person or discharge (chapter 31) means any person who is subject to a multi-sector general permit for industrial activities, a general permit for construction activity, a general permit for the discharge of stormwater from the Maine Department of Transportation and the Maine Turnpike Authority Municipal Separate Storm Sewer Systems, or a general permit for the discharge of stormwater from state or federally owned authority municipal separate storm sewer system facilities; and any non-stormwater discharge permitted under a NPDES permit, waiver, or waste discharge license or order issued to the discharger and administered under the authority of the U.S. Environmental Protection Agency ("EPA") or the Maine Department of Environmental Protection ("DEP").

Expansion of a structure means 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 means 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.

Family means one or more persons occupying premises and living as a single housekeeping unit, as distinguished from a group occupying a boardinghouse or motel.

Filling means depositing or dumping any matter on or into the ground or water.

Flood means a temporary rise in stream flow or tidal surge that results in water overtopping its banks and inundating adjacent areas.

Flood or flooding means:

- (1) A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - a. The overflow of inland or tidal waters.

- b. The unusual and rapid accumulation or runoff of surface waters from any source.
- (2) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in subsection (1)a. of this definition.

Flood elevation study means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

Flood insurance rate map (FIRM) means an official map of a community, on which the administrator of the Federal Insurance Administration 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 floodprone area means land area susceptible to being inundated by water from any source (see flooding).

Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

Floodplain management regulations means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain, grading, or erosion control ordinances) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Floodproofing means any combination of structural and nonstructural 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 means the lines marking the limits of floodways on federal, state and local floodplain maps.

Floor area (within chapter 44, Shoreland Zoning) means the sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls, plus the horizontal area of any unenclosed portions of a structure such as porches and decks.

Floor area, gross means the sum, in square feet, of the floor areas of all roofed portions of a building, as measured from the interior faces of the exterior walls.

Forest management activities means timber cruising and other forest resource evaluation activities, pesticide or fertilizer application, management planning activities, timber stand improvement, pruning, regeneration of forest stands, and other similar or associated activities, exclusive of timber harvesting and the construction, creation or maintenance of roads.

Forest stand means a contiguous group of trees sufficiently uniform in age class distribution, composition, and structure, and growing on a site of sufficiently uniform quality, to be a distinguishable unit.

Forested wetland means a freshwater wetland dominated by woody vegetation that is six meters tall (approximately 20 feet) or taller.

Foundation means the supporting substructure of a building or other structure, excluding wooden sills and post supports, but including basements, slabs, frostwalls, or other base consisting of concrete, block, brick or similar material.

Freeboard means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for the many unknown factors, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed, that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions.

Freshwater wetland means freshwater swamps, bogs and similar areas, other than forested wetlands, which are:

- (1) Of ten or more contiguous acres; or of less than ten 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 ten acres; and
- (2) Inundated or saturated by surface or groundwater 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.

Front lot means a lot with frontage on a qualifying street.

Frontage, street means the horizontal distance between the intersections of the side lot lines with the front lot line that abuts a town way or a private way meeting the minimum standards of a town street.

Functionally water-dependent uses mean those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and that can not 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 buildings), finfish 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 that can not reasonably be located or operated at an inland site, and uses that primarily provide general public access to coastal or inland waters.

Gambling means that process in which one stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his or her control or influence, upon an agreement or understanding that he, she or someone else will receive something of value in the event of a certain outcome. Gambling does not include bona fide business transactions valid under the law of contracts, including but not limited to contracts for the purchase or sale at a future date of securities or commodities, and agreements to compensate for loss caused by the happening of chance, including but not limited to contracts of indemnity or guaranty and life, health or accident insurance.

Gambling casino means a building, structure or other facility used to allow, conduct, hold, maintain, or operate a game of chance, game of skill, electronic video machine, roulette, high stakes beano or bingo, slot machines or any other type of gambling activity. A gambling casino shall not be construed to include a building structure or other facility when used incidentally by any bona fide nonprofit charitable, educational, political, civic, recreational, paternal, patriotic or religious organizations, or a volunteer fire department or other public safety nonprofit organization when used for the conduct, of any beano, bingo, raffles, games of chance or other activities specifically permitted by Maine State Statute provided that such nonprofit organizations do not exist primarily to operate such activities and that all requirements of State Statute including all requirements for licensing by the Chief of the Maine State Police are strictly met.

Gambling device means any device, machine, paraphernalia or equipment that is used or usable in the playing phases of any gambling activity, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine. However, lottery tickets and other items used in the playing phases of lottery schemes are not gambling devices within this definition.

Game of chance means any game, contest, scheme or device in which: (A) a person stakes or risks something of value for the opportunity to win something of value; (B) the rules of operation or play require an event the result of which is determined by chance, outside the control of the contestant or participant; and (C) chance enters as an element that influences the outcome in manner that cannot be eliminated through the application of skill.

As used in this definition, "an event the result of which is determined by chance" includes but is not limited to a shuffle of a deck or decks of cards, a roll of a die or dice or a random drawing or generation of an object or objects that may include, but are not limited to, a card or cards, a die or dice, a number or numbers or regulations of any of these. A shuffle of a deck or decks of cards, a roll of a die or dice, a random drawing or generation of an object or objects or some other event the result of which is determined by chance that is employed to determine impartially the initial order of play in a game, contest, scheme or device does not alone make a game, contest, scheme or device a game of chance.

Game of skill means any game, contest, scheme or device in which a person stakes or risks something of value for the opportunity to win something of value and that is not a game of chance.

Gender means either the masculine or feminine gender shall extend and be applied to both the masculine and feminine genders, and to firms, partnerships and corporations.

State law reference—Similar provisions, 1 M.R.S.A. § 71(7).

Grade means, in relation to buildings, the average of the finished ground level at the center of each wall of a building.

Grade plane means a reference plane representing the average of finished ground levels adjoining the building at all exterior walls. When the finished ground level slopes away from exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line or, when the lot line is more than six feet from the building, between the building and a point six feet from the building.

Great pond means any inland body of water which in a natural state has a surface area in excess of ten acres, and any inland body of water artificially formed or increased which has a surface area in excess of 30 acres, except for the purposes of this chapter, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner.

Great pond classified GPA means any great pond classified GPA, pursuant to title 38, article 4-A, M.R.S.A. § 465-A. This classification includes some, but not all impoundments of rivers that are defined as great ponds.

Ground cover means small plants, fallen leaves, needles and twigs, and the partially decayed organic matter of the forest floor.

Growth permit application means an application designed to collect information about proposed residences, to be used as a basis for rating them for approval.

Height of a structure means the greatest vertical measurement between two reference points defined as follows:

- (1) The lower reference point shall be the grade plane as defined herein.
- (2) The upper reference point shall be the highest point of the roof surface.
- (3) A parapet wall, fence, railing or similar structure that extends more than two feet above the roof surface shall be included in the determination of building height, but shall not be included if it does not extend more than two feet above the roof surface.
- (4) To determine building height, measurements shall be taken at least every five feet around the entire perimeter of a building. An average is calculated from these figures and that figure shall be the building's height for the purposes of this ordinance.
- (5) When referring to a telecommunication structure, the distance is measured from ground level to the highest point on the structure, even if said highest point is an antenna or other appurtenance.

Height of a structure (within chapter 44, Shoreland Zoning) means the vertical distance between the mean original (prior to construction) grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas, and similar appurtenances which have no floor area.

High intensity soil survey means a survey that shall contrast soils down to one-tenth acre or less. The mapping units shall be the soil series. Single test pits and their analysis shall not be considered a high intensity soils survey.

Historic structure means 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 that 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 businesses means uses that provide space for commercial activity that is in scale and character with neighborhoods and areas that are primarily residential. Home businesses must comply with the requirements of home businesses, section 45-456.1.

Home business, water-dependent means home businesses as defined in section 45-1 that require 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. A water dependent home business shall meet the requirements of home businesses, section 45-456.1. The following uses are allowed as water dependent home businesses:

- (1) Rental of offshore moorings or docking facilities (excluding dinghies) for boats, limited to a maximum of two rental spaces above and beyond that needed by landowner for boats registered in landowner's name.

Note: Authorization and location of rental moorings is the responsibility of the harbormaster and appropriate state and federal agencies. This ordinance establishes the maximum number of offshore rental moorings a waterfront landowner or lot can have to qualify for a water-dependent home business.

- (2) Outdoor winter storage of boats (September through May) shall be limited to a maximum of two rental spaces above and beyond that needed by landowner for boats registered in landowner's name. Rental spaces shall meet minimum yard and property line setback requirements for principal structures.

Note: In cases where landowner is not a municipal resident on a property seeking a home business, water-dependent, the landowner may transfer (via a letter to the code enforcement officer) their home business, water-dependent rights to a person who is a municipal resident on their property. In no case, shall there be more than a total of two rental offshore moorings or docking facilities, or outdoor boat storage facilities allowed per lot.

Home occupation (regular and water-dependent) means an occupation or profession customarily carried on within a dwelling unit or accessory structure and clearly incidental to the use of the dwelling unit for residential purposes. It may include hairdressing, millinery, laundering, preserving and home cooking, or the office of a doctor, dentist, lawyer, musician, teacher, architect, real estate broker, computer programmer, or member of any recognized profession. It shall also include any occupation or trade carried on or away from the premises and not requiring outside storage of an inventory, stock in trade, or other equipment. This definition does not apply to farming and agriculture. A structure, use or activity not otherwise permitted within a district by this chapter shall not be permitted as a home occupation. A lodging business shall not be considered a home occupation.

- (1) Except for signs as permitted by this chapter, there shall be no external evidence of the occupation. Outside storage of motor vehicle is limited to one business related van, pickup truck, or passenger car.
- (2) At least one member of a family occupying the premise must be engaged in the occupation.
- (3) There shall be no more than five employees engaged in the occupation, including family members. Within any shoreland zone governed by chapter 44 of this Code, such an occupation shall employ no more than two persons other than family members residing in the home.
- (4) No more than 25 percent of the total area of the principal residential and other structures shall be used for the occupation.
- (5) Retail or other sales of merchandise on the premises shall not be considered a home occupation.
- (6) Except for residential requirements, parking for a home occupation shall not exceed ten spaces.
- (7) Home occupations occupying separate buildings shall meet the minimum yard dimensions for principal buildings.
- (8) Providing for rental of offshore moorings or docking facilities (excluding dinghies) for boats shall be limited to a maximum of two rental spaces above and beyond that needed by landowner for boats registered in landowner's name.

Note: Authorization and location of rental moorings is the responsibility of the harbormaster and appropriate state and federal agencies. The intent is to establish the maximum number of offshore rental moorings a waterfront landowner or lot can have to qualify for a water-dependent home occupation use.

- (9) Providing for rental indoor or outdoor winter (September through May) storage of boats shall be limited to a maximum of two rental spaces above and beyond that needed by landowner for boats registered in landowner's name. Rental spaces shall meet setback requirements for principle structure.

Note: In cases where landowner is not a municipal resident on property seeking water-dependent home occupation, the landowner may transfer (via a letter to the code

enforcement officer) his/her water-dependent home occupation rights to a person(s) who is/are municipal resident(s) on his/her property. In no case shall there be more than a total of two rental offshore moorings or docking facilities or boat storage facilities allowed per lot.

Home office means a place within a dwelling unit or within a structure accessory to a dwelling unit where office activities take place. A home office may include desks, chairs, tables, telephones, file cabinets, computers, printers, facsimile machines, copy machines, and other equipment customarily found in an office environment.

Increase in nonconformity of a structure means 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, tributary stream, or wetland than the closest portion of the existing structure from that water body, tributary stream, or wetland. Included in this allowance are expansions which in-fill irregularly shaped structures.

Individual private campsite means 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 ten individuals and which involves site improvements which may include but not be limited to gravel pads, parking areas, fire places, or tent platforms.

Industrial means the assembling, fabrication, finishing, manufacturing, packaging or processing of goods, or the extraction of minerals.

Industrial activity (chapter 31) means activity or activities subject to NPDES industrial permits as defined in 40 CFR, section 122.26(b)(14).

Industrial establishment means any structure or land or combination used for the manufacturing, processing, or fabrication of any article, substance, or commodity.

Institutional buildings and uses means educational, religious, philanthropic, fraternal or social activities primarily conducted indoors and not including residential occupancy.

Institutional use (within chapter 44, Shoreland Zoning) means a nonprofit or quasi-public use, or institution such as a church, library, public or private school, hospital, or municipally owned or operated building, structure or land used for public purposes.

Joint authority means purporting to give authority to three or more officers or other persons shall be construed as giving such authority to a majority of such officers or other persons, unless it is otherwise declared.

State law reference—Similar provisions, 1 M.R.S.A. § 71(3).

Junkyard (salvage yard) means a yard, field, or other area exposed to the elements and used as a place of storage or disposition for:

- (1) Discarded, worn-out or junked plumbing, heating supplies household appliances and furniture.
- (2) Discarded or scrap lumber.
- (3) Old or scrap copper, brass, rope, rags, batteries, paper trash, rubber or plastic debris, waste and all scrap iron, steel and other scrap ferrous or nonferrous material.

Keeper and proprietor. The words keeper and proprietor shall mean and include persons, firms, associations, corporations, clubs and copartnerships, whether acting by themselves or through a servant, agent or employee. M.R.S.A. The abbreviation "M.R.S.A." shall mean the latest edition or supplement of the Maine Revised Statutes Annotated.

Land management road means a route or track consisting of a bed of exposed mineral soil, gravel, or other surfacing materials constructed for, or created by, the passage of motorized vehicles and used primarily for timber harvesting and related activities, including associated log yards, but not including skid trails or skid roads.

Landfill/dump means a site for the placement or disposal of refuse and debris identified as prohibited wastes by this chapter either on the ground or below ground, but not to include containerized waste or other which has been generated on site and merely awaits permanent disposal. The municipal disposal facility is the only site in the town at which any person may dispose of prohibited wastes. This facility is limited to the use of town residents and to wastes generated within the boundaries of the town.

Legislative body means town meeting.

Level of service (LOS) means a description of the operating conditions a driver will experience while traveling on a particular street or highway calculated in accordance with the provisions of the Highway Capacity Manual, 2010 Edition or latest available update, published by the National Research Council, Transportation Research Board. There are six levels of service defined in the manual, ranging from Level of Service A, with free traffic flow and no delays, to Level of Service F, with forced flow and congestion resulting in complete failure of the roadway.

Licensed forester means a forester licensed under 32 M.R.S.A. Chapter 76.

Life care facility means a planned community that meets state and federal licensing and certification requirements and includes more than one of the following uses:

- (1) Elderly housing.
- (2) Nursing facility.

(3) Assisted living facility.

Limited commercial pier means a permanent structure extending over the water the principal use of which is associated with and in support of a water-dependent home occupation or water-dependent home business.

Locally established datum means, for the purposes of this ordinance, an elevation established for a specific site to which all other elevations at the site are referenced. This elevation is generally not referenced to the National Geodetic Vertical Datum (NGVD) 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.

Lodginghouse. See Boardinghouse. (22 M.R.S.A. § 2491 par. 6) Eating and lodging place or lodging places means every building or structure or any part there is kept, used on, maintained as, advertised as, or held out to the public to be a place where eating and sleeping, or sleeping accommodations are furnished to the public as a business, such as hotels, motels, guest homes, and cottages.

Lot means a parcel of land which is defined by metes and bounds, or by boundary lines in a recorded deed, or which is shown on a recorded plot or plan.

Lot area (within chapter 44, Shoreland Zoning) means 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 areas beneath roads serving more than two lots.

Lot area means the total horizontal area within the lot lines.

Lot, corner means a lot with at least two contiguous sides abutting upon a street.

Lot coverage means the percentage of the lot covered by all buildings.

Lot, interior means any lot other than a corner lot.

Lot lines means the lines bounding a lot as defined below:

Front lot line means, on an interior lot, the line separating the lot from the street: on a corner or through lot, the line separating the lot from either street.

Rear lot line means 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 ten 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.

Side lot line means any lot line other than the front lot line or rear lot line.

Lot of record means a parcel of land, a legal description of which is recorded on a document or map on file with the county registry of deeds.

Lot, through means any interior lot having frontages on two more or less parallel streets, or between a street and a waterbody, or between two waterbodies, as distinguished from a corner lot. All sides of through lots adjacent to streets and waterbodies shall be considered frontage, and front yards shall be provided as required.

Lot width, minimum means the horizontal distance between the side lot lines, measured at the setback line. In any shoreland zone governed by chapter 44, "minimum lot width" means the closest distance between the side lots 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.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or

storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements set out in chapter 25, article IV.

Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term manufactured home also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

Manufactured housing unit. See Manufactured home.

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Marina, full service means a business establishment having frontage on navigable water and, as its principal use, providing for hire offshore moorings or docking facilities for boats, and which may also provide accessory services such as boat and related sales, boat repair and construction, indoor and outdoor storage of boats and marine equipment, boat and tackle shops and marine fuel service facilities.

Note: Authorization and location of rental moorings is the responsibility of the harbor master and appropriate state and federal agencies.

Marina, limited means a business establishment having frontage on navigable water and, as its principal use, providing for hire offshore moorings or docking facilities for up to eight boats (excluding dinghies) not registered in landowners name, and which may also provide accessory services such as boat and related sales, indoor storage of boats, indoor storage of marine equipment and boat repair. A limited marina does not allow outdoor storage of earth moving equipment, forklifts, dump trucks, backhoes, industrial machinery, boilers, stationary engines, boat cradles, jack stands, derelict boats or engines, hull or structural molds for fiberglass boat repair or construction, jigs and molds or frames for boat repair or construction, cranes or cherry pickers or other lifting equipment, petroleum products (except home heating oil), air compressors or sand blasters, welders, industrial gases, winches, marine railway equipment, pilings, timbers, steel plating or bar or round stock, concrete reinforcement bar, unused major marine hardware and hull items including keel castings, masts and rigging, anchors, structural sections or ladders, deckhouse, pilothouses, cabins, antennas and pulpits.

Note: Authorization and location of rental moorings is the responsibility of the harbormaster and appropriate state and federal agencies. The intent is to establish the maximum number of offshore rental moorings a waterfront landowner or lot can have to qualify for a limited marina.

Market value means 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 low water for the practical purposes of this chapter, shall be the location of the low water line determined by observation of low tide using a 0.00-foot tide.

Mean sea level means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, or other datum, to which base flood elevations shown on a community's flood insurance rate map are referenced.

Medium intensity soils survey means a general description of soils in areas no greater than two acres in size.

Minimum lot width means the closest distance between the side lot lines of a lot.

Minor development means all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50 percent of the market value of the structure. It also includes, but is not limited to: accessory structures as provided for in article VI.J., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

Minor street means a street providing access to less than 15 units of residential development, or to less than 2,500 square feet of retail commercial or industrial floorspace, or serving other premises generating less than the amount of traffic normally expected for the above uses.

Mineral exploration means hand sampling, test boring, or other methods of determining the nature or extent of mineral resources which create animal disturbance to the land and which include reasonable measures to restore the land to its original condition.

Mineral extraction means 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 to transport the product removed, away from the extraction site.

Mobile home means a detached, totally self-contained and nonsectional residential dwelling unit as originally constructed or designed for transportation by a motor vehicle upon a public way. It is designed, equipped and used primarily for sleeping, eating and living quarters or as intended to be so used after arriving at a site where it is to be occupied as a dwelling and includes any additions, attachment annexes, foundations and appurtenances. It shall not include similarly prefabricated modular or unitized dwellings placed on permanent foundations nor shall it include travel trailers, campers or similar units designed for recreation or other short-term uses.

Mobile home park means a parcel of land under unified ownership designed and/or used to accommodate three or more manufactured housing units.

Motel means a structure in which more than five rooms are offered for overnight accommodation, with or without meals, for compensation. This definition includes hotels, but excludes boardinghouses.

Multifamily dwelling means a building or portion principally designed, adapted, or used for occupancy by three or more families, each living in its own separate quarters. Each individual unit which functions as a separate living quarters shall be deemed to be a dwelling unit.

Multiunit residential means a residential structure containing three or more residential dwelling units.

Municipal officers means the Board of Selectmen of Eliot, Maine.

Municipal official means any elected or appointed member of the town.

Municipal permitting authority means the municipal official or body that has jurisdiction over the land use approval or permit required for a development.

Municipal resident means any person who occupies a dwelling within the town for more than 180 days in a calendar year.

Municipal separate storm sewer system or "MS4" (*chapters 31 and 35*) means conveyances for storm water, including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains (other than publicly-owned treatment works and combined sewers) owned or operated by any municipality, sewer or sewage district, fire district, state agency or federal agency or other public entity that discharges directly to surface waters of the state.

Municipality means the Town of Eliot.

National Geodetic Vertical Datum (NGVD) means the National Vertical Datum, whose standard was established in 1929, which is used by the National Flood Insurance Program (NFIP). NGVD was based upon mean sea level in 1929 and also has been called "1929 Mean Sea Level (MSL)."

National pollutant discharge elimination system (NPDES) stormwater discharge permit (chapters 31 and 35) means a permit issued by the EPA or by the DEP that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Native means indigenous to the local forests.

New construction means structures for which the start of construction commenced on or after the effective date of floodplain management regulations adopted by a community and includes any subsequent improvements to such structure.

New development means any construction activity on unimproved premises.

Nonconforming condition means a nonconforming lot, structure or use which is allowed solely because it was in lawful existence at the time this ordinance or subsequent amendment took effect.

Nonconforming lot means a single lot of record which, at the effective date of adoption or amendment of this chapter, does not meet the area, frontage, or width requirements of the district in which it is located.

Nonconforming structure means a structure which does not meet any one or more of the following dimensional requirements; setback, height, or lot coverage, but which is allowed solely because it was in lawful existence at the time this chapter or subsequent amendments took effect.

Nonconforming use means use of buildings, structures, premises, land or parts thereof which is not permitted in the district in which it is situated, but which is allowed to remain solely because it was in lawful existence at the time this chapter or subsequent amendments took effect.

Nondead-end street means any street that is not a dead-end street.

Nonprofit medical marijuana dispensary means a not for profit entity licensed under Section 6 of the Rules Governing the Maine Medical Use of Marijuana Program, that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana, paraphernalia, prepared marijuana any marijuana products or byproducts, or related supplies and educational materials to registered patients who have designated the dispensary to cultivate marijuana for their medical use and the registered primary caregivers of those patients.

Non-stormwater discharge (chapter 31) means any discharge to an MS4 that is not composed entirely of stormwater.

Normal high-water line (nontidal waters) means that line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous with rivers and great ponds that support nonforested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river or great pond during the period of normal high-water are considered part of the river or great pond. NOTE: Adjacent to tidal waters, setbacks are measured from the upland edge of the "coastal wetland."

Number. A word importing the singular may extend and be applied to the plural, and vice versa.

State law reference—Similar provisions, 1 M.R.S.A. § 71(9).

Nursing facility means a skilled nursing facility on the Medicare program or a nursing facility in the Medicare program which meets state licensing and federal certification requirements for nursing facilities and has a valid agreement with the department of human services. The primary function of the facility is to provide housing, meals and nursing care for the aged, chronically ill, infirm or incurable persons.

Nursery schools. See Day nurseries.

Nursing home means any building in which three or more aged, chronically ill, infirm or incurable persons are housed and furnished meals and nursing care for compensation.

Oath. The word oath shall include an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words swear and sworn shall be equivalent to the words affirm and affirmed.

Official map means the map adopted by the town showing the location of public property, ways used in common by more than two owners of abutting property, and approved subdivisions; and any amendments thereto adopted by the town or additions thereto resulting from the approval of subdivision plans by the planning board and the subsequent filing of record for such approved plans.

Official submittal date means the time of submission of a preapplication, final plan for minor subdivision, preliminary plan or final plan for a major subdivision. The date the planning board accepts by majority vote a complete application shall be indicated on the application. The application shall be accompanied by any required fees and all data required by this chapter.

Off-site parking means an off-site parking facility is any facility meeting one or more of the following criteria:

- (1) Any surface parking lot or parking structure which provides more than ten parking spaces for use by persons who are not visitors to or occupants, customers or employees of a use other than parking located on the same lot or a contiguous lot;
- (2) Any surface parking lot or parking structure which charges fees for parking, where such fees constitute the primary source of revenue derived from the use of the lot on which the parking is located;
- (3) Any surface parking lot or parking structure which provides parking spaces for passengers of a regularly scheduled shuttle bus service;
- (4) Any surface parking lot or parking structure which is the only use located on the lot, unless the parking is utilized to provide required off street parking for a use on an adjacent lot as allowed by section 45-490 or section 45-492 of this Code.

The term off street parking does not include a long term storage facility approved as a storage business.

Outflow stream means any perennial or intermittent stream, as shown on the most recent edition of a 7.5-minute series or, if not available, a 15-minute series topographic map produced by the United States Geological Survey, that flows from a freshwater wetland.

Owner. The word owner applied to a building or land shall include any part owner, joint owner, tenant in common, tenant in partnership, joint tenant, or tenant by the entirety, of the whole or of a part of such building or land.

Ownership means ownership by the same person, corporation, firm, entity, partnership, or unincorporated association; or ownership by different corporations, firms, partnerships, entities, or unincorporated associations, in which a stockholder, partner, or associate, or a

member of his family owns an interest in each corporation, firm, partnership, entity, or unincorporated association. The term family shall include spouse, parent, child or grandchild.

Paraphernalia means equipment, products and materials that are ordinarily used in planting, propagating, cultivating, growing, harvesting, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling or otherwise introducing marijuana into the human body and includes all items listed in the state definition.

Permitted use. See Conforming use.

Person means an individual, corporation, governmental agency, municipality, trust, estate, partnership, association, two or more individuals having a joint or common interest, or other legal entity.

Personal property. The term personal property includes every kind, tangible and intangible except real property.

Petitioner means a person, group, firm, organization, corporation, developer or subdivider who petitions the municipal officers to lay out a street as a town way.

Piers, docks, wharves, bridges and other structures and uses extending over or beyond the normal high-water line or within a wetland means:

Temporary: Structures that remain in or over the water for less than seven months in any period of 12 consecutive months.

Permanent: Structures that remain in or over the water for seven months or more in any period of 12 consecutive months.

Planning assistant means the person designated by the board of selectmen to perform the functions assigned by this Code to the planning assistant or, in the event the board of selectmen has not appointed a planning assistant, the code enforcement officer.

Planning board means the planning board of the town created under 30-A M.R.S.A.

Plumbing inspector. See Code enforcement officer.

Pollutant (chapters 31 and 35) means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

Post-construction stormwater management plan (chapter 35) means BMPs and stormwater management facilities employed by a development to meet the standards of chapter 35 and approved by the planning board.

Premises (chapters 31 and 35) means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within the municipality from which discharges into the storm drainage system are or may be created, initiated, originated or maintained.

Prepared marijuana means the dried leaves and flowers of the marijuana plant, and any mixture or preparation of those dried leaves and flowers, including but not limited to tinctures, ointments, and other preparations. It does not include the seeds, stalks and roots of the marijuana or other ingredients in goods prepared for human consumption and use.

Principal structure (building) means the structure in which the primary use of the lot is conducted.

Principal use means the primary use to which the premises are devoted, and the main purpose for which the premises exist. There may be more than one principal use on a lot.

Private right-of-way means a street that is not intended to be offered to the town for acceptance as a public way.

Prohibited wastes means any unwanted, worn-out or discarded manufactured or industrially processed item or any naturally occurring but hazardous substance or naturally occurring substance that has been contaminated with hazardous chemicals or materials of industrial manufacture. Prohibited wastes shall not include wood, rocks, soil, sand and gravel or agricultural wastes which are uncontaminated by hazardous substances; products specifically manufactured for routine household use and discarded in the course of normal household use; scraps of construction or demolition debris when interred on site during the course of construction or demolition and which contain no hazardous materials.

Property. The word property shall include real, personal and mixed property.

Public facility means any facility, including, but not limited to, buildings, property, recreation areas, and roads, which are owned, leased, or otherwise operated, or funded by a governmental body or public entity.

Public property means property owned by the town and any place subject to the primary control of any public agency, including but not limited to any park, street, public way, cemetery, schoolyard or open space adjacent thereto and any lake or stream.

Public utility means any person, firm, corporation, municipal department, board or commission authorized to furnish gas, steam, electricity, waste disposal, transportation or water to the public.

Qualifying street means a public street or a private street meeting the standards of chapter 37, streets and sidewalks.

Real property. The term real property shall include lands, tenements and hereditaments.

Recent floodplain soils means the following soil series as described and identified by the National Cooperative Soil Survey:

Fryeburg, Lovewell, Alluvial, Podunk, Suncook, Hadley, Medomak, Cornish, Rumney, Sunday, Limerick, Ondawa, Charles, Saco, Winooski

Recreational facility means a place designed and equipped for the conduct of sports, leisure time activities, and other customary and usual recreational activities, excluding boat launching facilities.

Recreational vehicle means a vehicle or an attachment to a vehicle designed to be towed, and designed for temporary sleeping or living quarters for one or more persons, and which may include a pick-up camper, travel trailer, tent trailer, camp trailer, and motor home. In order to be considered as a vehicle and not as a structure, the unit must remain with its tires on the ground, and must be registered with the State Division of Motor Vehicles. Residential dwelling unit means a room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time, and containing cooking, sleeping and toilet facilities. The term shall include mobile homes and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rented. Recreational vehicles are not residential dwelling units.

Redevelopment means construction activity on premises already improved with buildings, structures or activities or uses, but does not include such activities as exterior remodeling.

Registered primary caregiver means a person, a hospice provider licensed under Title 22 M.R.S.A. chapter 1681 or a nursing facility licensed under Title 22 M.R.S.A. chapter 405 that provides care for a registered patient and that has been named by the registered patient as a primary caregiver to assist with a registered patient's use of marijuana.

Regulated small MS4 (chapters 31 and 35) means any small MS4 regulated by the State of Maine "General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems" ("General Permit"), including all those located partially or entirely within an urbanized area (UA) and those additional small MS4s located outside an UA that as of the issuance of the general permit have been designated by the DEP as regulated small MS4s.

Regulatory floodway means:

- (1) The channel of a river or other watercourse 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
- (2) When not designated on the community's flood insurance rate map, it is considered to be the channel of a river or other watercourse 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.

Relative means child, parent, grandparent, brother or sister, and such relationships resulting from adoption or remarriage (step-parent, step-child, step-brother, step-sister, etc.).

Replacement system means 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 discharges.

Required improvements, as used in chapter 33, article III (Site Review) and in chapter 41 (Subdivisions), means the infrastructure improvements necessary for the construction of a development, including street grading, street surfacing, storm drainage, utilities (including conduits for cable where electric and telephone utilities are to be located underground), landscaping and any other site improvements required by the planning board in approving a site plan or subdivision plan.

Residential dwelling unit means a room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family. The term shall include mobile homes, but not recreational vehicles.

Residential pier means a permanent structure extending over the water the principal use of which is the personal, recreational, and noncommercial use of the shoreland owner. Any pier which is over six feet in width or which has any permanent structural parts extending below the mean low water line shall not qualify as a residential pier and shall be deemed to be a commercial pier.

Restaurant means an establishment where meals are prepared and served to the public for consumption on the premises entirely within a completely enclosed building; and where no food or beverages are served directly to occupants of motor vehicles or directly to pedestrian

traffic from an exterior service opening or counter, or any combination of the foregoing; and where customers are not permitted or encouraged by the design of the physical facilities, by advertising, or by the servicing or packaging procedures to take out food or beverages for consumption outside the enclosed building.

Restaurant, takeout means an establishment where food and/or nonalcoholic beverages are prepared and served to the public for consumption on or off the premises; where food and/or beverages may be served to pedestrians from an exterior opening or counter but not to occupants in motor vehicles whether parked or in a drive-through lane or similar arrangements; and where use of exterior loudspeakers is not permitted. The licensing authority may approve service of alcoholic beverages within an enclosed service area for on-premises consumption.

Restrictive easement, as used in the provisions of this Code governing small wind energy systems, means an easement on a property abutting a small wind energy system that imposes restrictions on the uses and structures within the easement area that are sufficient to allow the small wind energy system to be located closer to the property line than the otherwise applicable setback requirement.

Resubdivision means the division of an existing subdivision or any change or lot size therein or the relocation of any street or lot in a subdivision.

Riparian forest buffers means performance standards for setback areas associated with farm and croplands contained in USDA booklet titled "Riparian Forest Buffers," NA-PR-07-91.

Riprap means rocks, irregularly shaped, and at least six 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 means a free flowing body of water including its associated floodplain wetlands from that point at which it provides drainage for a watershed of 25 square miles to its mouth. NOTE: The portion of a river that is subject to tidal action is a coastal wetland.

Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Road means a route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles, excluding a driveway as defined.

Roominghouse. See Boardinghouse.

Rotor diameter means the cross sectional dimension of the circle swept by the rotating blades.

Roulette means a game of chance in which players bet on the compartment of a revolving wheel into which a small ball will come to rest.

Routine maintenance (chapter 35) means maintenance performed to maintain the original line and grade, hydraulic capacity, and original purpose of land or improvements thereon.

Salt marsh means areas along coastal waters (most often along coastal bays) which support salt tolerant species, and where at average high tide during the growing season, the soil is irregularly inundated by tidal waters. The predominant species is saltmarsh cordgrass (*Spartina alterniflora*). More open areas often support widgeon grass, eelgrass, and Sago pondweed.

Salt meadow means areas of a coastal wetland that support salt tolerant plant species bordering the landward side of salt marshes or open coastal water, where the soil is saturated during the growing season but which is rarely inundated by tidal water. Indigenous plant species include salt meadow cordgrass (*Spartina patens*) and black rush; common three-square occurs in fresher areas.

Service drop means any utility line extension which does not cross or run beneath any portion of a water body provided that:

- (1) In the case of electric service:
 - a 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
 - b. The total length of the extension is less than 1,000 feet.
- (2) In the case of telephone service:
 - a. The extension, regardless of length, will be made by the installation of telephone wires to existing utility poles; or
 - b. The extension requiring the installation of new utility poles or placement underground is less than 1,000 feet in length.

Seasonal means six months out of any one-year period.

Setback means the minimum horizontal distance from a lot line to the nearest part of a structure.

Setback (within any shoreland zone governed by chapter 44) means the nearest horizontal distance from the normal high-water line of a water body or tributary stream, or upland edge of a wetland, to the nearest part of a structure, road, parking space or other regulated object or area.

Sharp curve means any curve with a centerline radius less than the minimum centerline radius allowed by section 37-70.

Shore frontage means the length of a lot bordering on a water body measured in a straight line between the intersections of the lot lines with the shoreline at normal high-water elevation.

Shoreland zone means the land area located within 250 feet, horizontal distance, of the normal high-water line of any great pond or river, within 250 feet, horizontal distance, of the

upland edge of a coastal wetland, including all areas affected by tidal action, within 250 feet of the upland edge of a freshwater wetland; or within 75 feet, horizontal distance, of the normal high-water line of a stream.

Shoreline means the normal high-water line, or upland edge of a freshwater or coastal wetland.

Sidewalk means any portion of a street between the curblineline and the adjacent property line, intended for the use of pedestrians, excluding parkways.

Sign means any structure, device, light, letter, word, model, banner pennant, insignia, trade flag, or representation that is designed to be seen from outside a building or from a town way and which is designed to occupy a message to the public. It advertises activities, goods, products, services or facilities available either on the lot where the sign appears or in some other location.

Sign, direct illuminated means a sign which has characters, letters, figures, designs or outlines illuminated by electric lighting or luminous tubes which are part of that sign.

Sign, flashing means a sign whose illumination is not kept constant in intensity at all times when in use, and which exhibits changes in light, color, light direction, and/or animation. Illuminated signs which indicate the time and temperature shall not be considered as flashing signs.

Sign, freestanding means a sign which is not attached to or supported by any building or tree.

Sign, indirect-illuminated means an illuminated sign whose illumination is derived entirely from an external artificial source.

Sign, parallel means a wall-mounted sign which is parallel to the building surface and not more than 12 inches from that surface.

Sign, projecting means a sign which is attached to a building wall, tree, or other structure and which extends more than 12 inches beyond the surface of that portion of the building wall, tree, or other structure to which it is attached.

Sign, roof means a sign which is located above, or which projects above, the eave line or the parapet wall of the building.

Sign, wall means any sign which is painted on, incorporated into, or consisting of cutout letters or devices affixed to the building wall with no background defined on the building wall.

Significant river segments. See title 38, M.R.S.A. section 437.

Signature or subscription. The word signature or subscription includes a mark when the person cannot write.

Single-family dwelling. See Dwelling unit and family.

Sight distance means the length of unobstructed view from a particular access point to the farthest visible point of reference on a roadway.

Skid road or skid trail means a route repeatedly used by forwarding machinery or animal to haul or drag forest products from the stump to the yard or landing, the construction of which requires minimal excavation.

Slash means the residue, e.g., treetops and branches, left on the ground after a timber harvest.

Slot machine means any machine which operates by inserting a coin, token or similar object, setting the internal mechanism of the machine in motion, and by the application of the element of chance may deliver or entitle the person playing or operating the machine to receive cash, premiums, tickets or something of value.

Small municipal separate storm sewer system, or "small MS4" (chapters 31 and 35) means any MS4 that is not already covered by the Phase I MS4 stormwater program including municipally owned or operated storm sewer systems, state- or federally-owned systems, such as colleges, universities, prisons, Maine Department of Transportation and Maine Turnpike Authority road systems and facilities, and military bases and facilities.

Small wind energy system means a system of equipment located on a single lot that has an aggregate rated capacity of not more than 100 kW that converts and then stores or transfers energy from the wind into usable forms of energy for use on the same lot as the system, or on an abutting lot in the case of a common system serving more than one principal use or structure. This equipment includes the base, blade, foundation, generator, nacelle, rotor, tower, transformer, vane, wire, inverter, batteries, or other components used in the system. Small wind energy systems are allowed only as accessory uses or structures, and only one small wind energy system is allowed per lot.

Small wind energy system height means the height above grade to the tip of the turbine blade when it reaches its highest elevation.

Soil scientist means a soil scientist certified by the state.

Solar energy system means a system designed and used to obtain energy from the sun in order to supply energy to a principal use or structure located on the same lot as the system, or on an abutting lot in the case of a common system serving more than one principal use or structure, for the purpose of reducing the consumption of fuel for heating or electricity. A solar energy system may include solar hot water or air heating or photovoltaic systems. Solar energy systems are allowed only as accessory uses or structures.

Something of value means: (A) any money or property; (B) any token, object or article exchangeable for money, property, amusement or entertainment; or (C) any form of credit or promise directly or indirectly contemplating transfer of money or property, or of any interest therein, or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge.

Special flood hazard area. See Area of special flood hazard.

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

Storm drainage system (chapters 31 and 35) means the municipality's regulated small MS4 and any of the unregulated small MS4.

Stormwater means any stormwater runoff, snowmelt runoff, and surface runoff and drainage; "stormwater" has the same meaning as "storm water."

Stormwater management facilities (chapter 35) means any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures that are part of the post-construction stormwater management plan for a development.

Street means any common access to three or more lots and shall meet the requirements of division 2 of article II of chapter 37 of this Code, the street design and construction standards for the town.

Structure (building, and within any shoreland zone governed by chapter 44) means 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, patios, and satellite dishes.

State. The term state shall mean the State of Maine.

Stream means 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, or if not available, a 15-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 or road means a street as defined by or meeting the standards of the street design and construction standards in division 2 of article II of chapter 37 of this Code.

Street, town way or public way. The word street shall embrace streets, highways, avenues, boulevards, roads, town ways, lanes, bridges, and all other public ways dedicated to public use.

Structure (building) means 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. The term includes structures temporarily or permanently located, such as decks and satellite dishes.

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

Subdivision means the division of a tract or parcel of land into three or more lots within any five-year period that begins on or after September 23, 1971. This definition applies whether the division is accomplished by sale, lease, development, buildings or otherwise. The term subdivision also includes the division of a new structure or structures on a tract or parcel of land into three or more dwelling units within a five-year period, the construction or placement of three or more dwellings units on a single tract or parcel of land and the division of an existing structure or structures previously used for commercial or industrial use into three or more dwelling units within a five-year period.

Subdivision, major means any subdivision containing more than four lots, or any subdivision requiring new public or private street connection, or the extension of municipal services.

Subdivision, minor means subdivision containing not more than four lots.

Subdivision, mobile home park means any subdivision containing three or more manufactured homes on a parcel of land under unified ownership.

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

Substantial improvement means any reconstruction, rehabilitation, addition or 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 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 official 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 community's board of appeals.

Substantial start means completion of 30 percent of a permitted structure or use measured as a percentage of estimated total cost.

Subsurface sewage disposal system means any system designed to dispose of waste or waste water on or beneath the surface of the earth; includes, but is not limited to: septic tanks; disposal fields; grandfathered cesspools; holding tanks; pretreatment filter, piping, or any other fixture, mechanism, or apparatus used for those purposes; does not include any discharge system licensed under 38 M.R.S.A. section 414, any surface waste water disposal system, or any municipal or quasi-municipal sewer or waste water treatment system.

Sustained slope means a change in elevation where the referenced percent grade is substantially maintained or exceeded throughout the measured area.

Timber harvesting means 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.

Telecommunication structure means a tower of any height and all accessory equipment which supports communication (broadcast or receiving) equipment, either analog or digital. It also includes a tower of any height and all accessory equipment which supports communication (broadcast or receiving) used by television or radio broadcasts.

Tenant, occupant. The words tenant and occupant applied to a building or land shall include any person holding a written or oral lease of, or who occupies the whole or part of such building or land, either alone or with others.

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

Tidal waters means all waters affected by tidal action during the maximum spring tide.

Timber harvesting means the cutting and removal of timber for the primary purpose of selling or processing forest products. The cutting or removal of trees in the shoreland zone on a lot that has less than two acres within the shoreland zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to chapter 44, subsection 44-35(p), clearing or removal of vegetation for activities other than timber harvesting.

Timber harvesting and related activities means timber harvesting, the construction and maintenance of roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting.

Tower means with regard to a wind energy system, the structure on which the wind system is mounted. This includes a monopole, freestanding, or guyed structure that supports a wind generator.

Tower height means with regard to a wind energy system, the height above grade of the fixed portion of the tower, excluding the wind turbine itself.

Town. The word town shall mean the Town of Eliot, Maine, and shall extend to and include its several officers, agents and employees.

Town boards, committees, commissions, officers, employees, departments, etc. Whenever reference is made to a board, committee, commission, officer, employee or department, etc., it shall mean the same as if it were followed by the words "of the Town of Eliot, Maine."

Tributary stream means a channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil, parent material or bedrock, and which is connected hydrologically with other water bodies. "Tributary stream" does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by human activity. This definition does not include the term stream as defined elsewhere in this chapter, and only applies to that portion of the tributary stream located within the shoreland zone of the receiving water body or wetland. NOTE: Water setback requirements apply to tributary streams within the shoreland zone.

Two-family dwelling means a building or portion principally designed, adapted, or used for occupancy by two families, and each living in its own separate quarters.

Upland edge of a wetland means the boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation and/or the maximum spring tide level, including all areas affected by tidal action. For purposes of a freshwater 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 six meters (approximately 20 feet) tall or taller.

Urbanized area ("UA") (chapter 35) means the areas of the State of Maine so defined by the latest decennial (2000) census by the U.S. Bureau of the Census.

Use means 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.

Variance means relaxation of requirements of this chapter as provided in section 45-49(b).

Variance (floodplain management ordinance) means a grant of relief by a community from the terms of the floodplain management regulations.

Vegetation means all live trees, shrubs, ground cover, and other plants including without limitation, trees both over and under four inches in diameter, measured at four and one half feet above ground level.

Velocity zone means an area of special flood hazard extending from offshore to the inland limit of the primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

Veterinary hospital means a commercial establishment, operated by a licensed veterinarian, for the medical and surgical care of sick or injured animals.

Vibration means a temporal and spatial oscillation of a displacement, velocity and acceleration in any material.

Viewing booth means any booth, cubicle, room, or stall within premises of a commercial adult enterprise used to display, by audio or visual reproduction, projection or other means, any materials listed under the definition of commercial adult enterprise.

Violation means the failure of a structure or other development to fully comply with a community's floodplain management regulations or ordinances.

Volume of a structure means the volume of all portions of a structure enclosed by roof and fixed exterior walls as measured from the exterior faces of these walls and roof.

Waste container means any receptacle with a capacity of two or more cubic yards used for the collection, storage and/or transportation of rubbish, garbage, materials to be recycled and other substances and materials.

Water body means any great pond, river, stream.

Water crossing means any project extending from one bank to the opposite bank of a river, stream, tributary stream, or wetland 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. This definition includes crossings for timber harvesting equipment and related activities.

Waters of the state means any and all surface and subsurface waters that are contained within, flow through, or under or border upon this state or any portion of the state, including the marginal and high seas, except such waters as are confined and retained completely upon the property of one person and do not drain into or connect with any other waters of the state, but not excluding waters susceptible to use in interstate or foreign commerce, or whose use, degradation or destruction would affect interstate or foreign commerce.

Wetland means a freshwater or coastal wetland.

Wind turbine means the parts of the wind system including the blades, generator, and tail.

Windfirm means the ability of a forest stand to withstand strong winds and resist windthrow, wind rocking, and major breakage.

Woody vegetation means live trees or woody, nonherbaceous shrubs.

Written and in writing. The words written and in writing shall include any representation of words, letters or figures, whether by printing or otherwise.

State law reference—Similar definitions, 30-A M.R.S.A. § 2001.

Yard means the area of land on a lot not occupied by the principal building and parking.

Yard, front means the area of land between the front lot line and the nearest part of the principal building.

Yard, rear means the area of land between the rear lot line and the nearest part of the principal building.

Yard, side means the area of land between the side lot line and the nearest part of the principal building.

(T.M. of 6-19-01, (arts. 6—8); T.M. of 11-6-01, (arts. 2, 8); T.M. of 3-16-02, (art. 3, § 1), (art. 4); T.M. of 11-5-02; T.M. of 6-10-03; T.M. of 11-4-03; T.M. of 3-20-04; T.M. of 6-8-04; T.M. of 6-14-05; T.M. of 6-16-07; T.M. of 6-16-07; T.M. of 6-14-08; T.M. of 6-9-09(1); T.M. of 6-9-09(2); T.M. of 6-12-2010(3); T.M. of 6-18-2011(5); T.M. of 6-18-2011(6); T.M. of 6-16-2012(1); T.M. of 6-16-2012(3); T.M. of 6-11-2013(1))

State law reference—Similar definitions, 30-A M.R.S.A. § 2001.

Sec. 1-3. Catchlines of sections.

The catchlines of the several sections of this Code printed in boldface type are intended as mere catchwords to indicate the contents of the sections and shall not be deemed or taken to be titles of such sections, nor as any part of the sections; nor, unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines, are amended or reenacted.

State law reference—Similar provisions, 1 M.R.S.A. § 71(10).

Sec. 1-4. History notes.

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

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section. The date after the abbreviation "T.M." indicates the date of the town meeting at which the provision was adopted. The article of the town meeting agenda, if applicable, follows the date. The article and/or section of the ordinance is always in parentheses.

State law reference—Similar provisions, 1 M.R.S.A. § 71(10).

Sec. 1-5. References and editor's notes.

References and editor's notes following certain sections are inserted as an aid and guide to the reader and are not controlling nor meant to have any legal effect.

State law reference—Similar provisions, 1 M.R.S.A. § 71(10).

Sec. 1-6. Code does not affect prior offenses, rights, etc.

Nothing in this Code or the ordinance adopting this Code shall affect any offense or act committed or done, or any penalty or forfeiture incurred, or any contract or right established or accruing before the effective date of this Code.

Sec. 1-7. Effect of repeals.

The repeal of an ordinance or portion of this Code shall not revive any ordinance or portion of this Code in force before or at the time the provision repealed took effect. The repeal of an ordinance or a portion of this Code shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of the repeal, for an offense committed under the provision repealed.

Sec. 1-8. Certain ordinances not affected by Code.

Nothing in this Code or the ordinance adopting this Code shall be construed to repeal or otherwise affect the validity of any of the following when not inconsistent with this Code:

- (1) Any offense or act committed or done or any penalty or forfeiture incurred before the effective date of this Code.
- (2) Any ordinance or resolution promising or guaranteeing the payment of money for the town, or authorizing the issue of any bonds of the town, or any evidence of the town's indebtedness, or any contract, right, agreement, lease, deed or other instrument or obligation assumed by the town.
- (3) Any administrative ordinances of the town not in conflict or inconsistent with the provisions of this Code.
- (4) Any right or franchise granted by any ordinance.
- (5) Any ordinance dedicating, naming, establishing, locating, relocating, opening, paving, widening, repairing, vacating, etc., any street or public way in the town.
- (6) Any appropriation ordinance.
- (7) Any ordinance levying or imposing taxes.
- (8) Any ordinance regarding traffic or motor vehicles.

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- (9) Any land use, zoning or rezoning ordinance or amendment to the zoning map.
- (10) Any ordinance establishing and prescribing the street grades of any street in the town.
- (11) Any ordinance providing for local improvements and assessing taxes therefor.
- (12) Any ordinance dedicating or accepting any plat or subdivision in the town.
- (13) Any ordinance establishing or setting salaries of town officers and employees.
- (14) Any administrative ordinances.
- (15) Any ordinance regarding licenses or business regulations or economic development.
- (16) Any ordinance regarding standards for buildings, public facilities, the harbor, public safety or natural resources.
- (17) Any ordinance regarding animals.
- (18) Any temporary or special ordinances.

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

Sec. 1-9. Effect of amendments to Code.

(a) Any and all additions and amendments to this Code, when passed in such form as to indicate the intention of the town to make the same a part hereof, shall be deemed to be incorporated in this Code so that reference to the Code shall be understood and intended to include such additions and amendments.

(b) All ordinances passed subsequent to this Code which amend, repeal or in any way affect this Code may be numbered in accordance with the numbering system of this Code and printed for inclusion therein. When subsequent ordinances repeal any chapter, article, division, section or subsection or any portion thereof, such repealed portions may be excluded from the Code by omission from reprinted pages.

(c) Amendments to any of the provisions of this Code may be made by amending such provisions by specific reference to the section number of this Code in substantially the following language: "That section _____ of the Municipal Code of Ordinances, Town of Eliot, Maine, is hereby amended to read as follows:" The new provisions shall then be set out in full as desired.

(d) If a new section not heretofore existing in the Code is to be added, the following language may be used: "That the Municipal Code of Ordinances, Town of Eliot, Maine, is hereby amended by adding a section to be numbered _____, which section reads as follows:" The new section may then be set out in full as desired.

(e) All sections, divisions, articles, chapters, or provisions desired to be repealed must be specifically repealed by section, division, article or chapter number, as the case may be.

Sec. 1-10. Supplementation of Code.

(a) By contract or by town personnel, supplements to this Code shall be prepared and printed whenever authorized or directed by the town. A supplement to the Code shall include all substantive permanent and general parts of ordinances passed by the board of selectmen or adopted by town meeting, or initiative and referendum during the period covered by the supplement and all changes made thereby in the Code. The pages of a supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages that have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement.

(b) In preparing a supplement to this Code, all portions of the Code which have been repealed shall be excluded from the Code by the omission thereof from reprinted pages.

(c) When preparing a supplement to this Code, the codifier, meaning the person authorized to prepare the supplement, may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:

- (1) Organize the ordinance material into appropriate subdivisions.
- (2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the Code printed in the supplement, and make changes in catchlines, headings and titles.
- (3) Assign appropriate numbers to sections and other subdivisions to be inserted in the Code and, where necessary to accommodate new material, change existing section or other subdivision numbers.
- (4) Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections _____ through _____." The inserted section numbers will indicate the sections of the Code which embody the substantive sections of the ordinance incorporated into the Code.
- (5) Make other nonsubstantive changes necessary to preserve the original meaning of ordinance sections inserted into the Code; but in no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the Code.

Sec. 1-11. Severability of parts of Code.

It is hereby declared to be the intention of the board of selectmen that the sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional, invalid or unenforceable, such unconstitutionality, invalidity or unenforceability shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code.

State law reference—Similar provisions, 1 M.R.S.A. § 71(8).

Secs. 1-12—1-19. Reserved.**Sec. 1-20. Effect of changes to this Code on existing applications.**

Once an application for any approval or permit required under this Code has had at least one substantive review by the reviewing authority, it is considered pending and will not be affected by any ordinance change or moratorium enacted from that point forward, unless such ordinance change or moratorium expressly provides otherwise. Notwithstanding anything to the contrary in 1 M.R.S.A. §302 a substantive review has been conducted only when the following criteria have been met:

- (1) The application has been discussed as an agenda item during a regular meeting of the planning board with the applicant, or his representative, present:
 - (2)
 - (a) For site review applications, the planning board has completed sketch plan review and accepted the site plan for review;
 - (b) For minor subdivision applications, the planning board has accepted the final plan for review;
 - (c) For major subdivision applications, the planning board has approved the preliminary plan;
 - (3) A public hearing on the application has been scheduled.
- (T.M. of 3-22-03)

State law reference—Similar provisions, 1 M.S.R.A. § 302.

Secs. 1-21—1-24. Reserved.**Sec. 1-25. Fee schedule.**

CODE ENFORCEMENT			
PURPOSE		FEE	
Building permits (Sec. 45-125)	Foundation/slab only	\$100.00	
	Accessory structures	\$0.20/sq. ft.	
	Principal structures (new construction or additional living area)	Finished area	\$0.50/sq. ft.
		Unfinished area	\$0.25/sq. ft.
	Alterations/renovations	\$8.00 per \$1,000.00 of est. construction cost	
	Demolition (of structures 8' x 8' or more)	\$25.00 - Accessory structures	
		\$50.00 - Principal structures	
	Fence permit - any height or length (Sec. 45-423)	\$25.00	
	Swimming pool permit - any size, any type (excluding temporary/inflatable pools)	\$75.00	
	Piers, docks, wharves, bridges or other structure extending over or below the high water line (Sec. 44-35(c))	Temporary	\$50.00
Permanent - residential		\$100.00	
Permanent - commercial		\$150.00	
Campsite license fees (Sec. 33-173)	New campsites	\$150.00 application fee + \$10.00/campsite	
	Annual renewals	\$25.00 application fee + \$10.00/campsite	

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CODE ENFORCEMENT			
PURPOSE		FEE	
Electrical permits (Sec. 45-132)	New dwelling units (fee includes electrical permit and 2 inspections)	Single family dwellings	\$100.00
		All other dwelling units (ADUs, modular, manufactured, etc.)	\$75.00 each
	AMP service (fee includes permit and 1 inspection)	Temporary service	\$30.00
		100 & 200 AMP (panel & service)	\$50.00
		Subpanels, underground service wire, other	\$30.00 each
	Wiring (fee includes electrical permit and 1 inspection)	\$50.00	
	Alternative energy systems (fee includes permit and 1 inspection) (Sec. 45-461 & 462)	Solar energy systems	\$50.00
		Small wind energy systems	\$75.00
	Swimming pools, hot tubs, saunas, spas, etc. (includes permit and 1 inspection)	\$30.00 each	
	Signs (any illuminated)	\$30.00 each	
	Generators (any size), transfer switches, transformers (permit + 1 inspection)	\$30.00 each	
	Re-inspection fee (for any additional inspections)	\$50.00 each	
Flood hazard development permit (Sec. 25-58)		\$50.00	
Plumbing permits (Sec. 45-131)	External plumbing (subsurface wastewater disposal systems)	Engineered system	\$300.00
		Non-engineered system	\$250.00 + \$15.00 (state fee)
		Disposal field only	\$150.00
		Treatment tank only	\$125.00
		Holding tank	\$150.00
		Other components (complete pump station, piping, etc.)	\$50.00
		Primitive system (incl. 1 alternative toilet)	\$150.00
		Alternative toilet	\$50.00
		Seasonal conversion	\$50.00
		Separated laundry system	\$50.00
		1st time system variance	\$50.00
	Internal plumbing	\$40.00 min. (includes 1—4 fixtures) + \$10.00 per additional fixture	
	Re-inspection fee (for any additional inspections)	\$50.00 each	
Tele-communication structures (Sec. 45-460)	Expansion of existing telecommunication structure	\$350.00	
	Collocation of antenna on existing telecommunication structure	\$350.00	
	New telecommunication structure (any height)	\$500.00	
Sign permit (Sec. 45-130)	Exterior signs for commercial establishments (new, permanent signs only)	\$50.00	
	Home business signs or replacement signs for commercial establishments	\$25.00	
After-the-fact permits		Permit fees doubled	

PUBLIC WORKS/ROAD COMMISSIONER	
PURPOSE	FEE
Stormwater management facilities - annual inspection of properties entered into a maintenance agreement with the Town (Sec. 35-4(b)(6))	\$100.00 - annual inspection fee
Excavation permit - for excavation of town ways (Sec. 37-55)	\$100.00
Driveway construction permit	\$50.00

PLANNING BOARD			
PURPOSE		FEE	
Site Plan Review (Sec. 33-128) (Public hearing fees not included)	Rural, Suburban, Village, Commercial/Industrial Zoning Districts	General site plan review application (non Shoreland zone)	\$100.00 per acre up to 5 acres; \$50.00 each additional acre (minimum fee \$100.00)
		Change of use (no site changes or major structural changes or additional square footage)	\$25.00
		Home business; home occupation	\$25.00
		Lodging businesses (bed & breakfasts, hotels, motels, boarding homes, inns, etc.)	\$25.00 per room for lodging businesses in lieu of acreage-based fee
	Shoreland Zoning Districts	General site plan review application	\$100.00/acre up to 5 acres. \$50.00 each additional acre (minimum fee \$100.00)
		Piers, docks, wharves, bridges and other structures extending over or below the high-water line	\$50.00
		Road & driveway construction permits	\$50.00
		Non-conforming structures, uses and lots per Sec. 44-32	\$75.00
		Revisions to final site plans after planning board approval (Sec. 33-140)	\$100.00
	Subdivisions (Sec. 41-142)	Subdivision application fee	\$200.00 per lot or dwelling unit
Mobile home park application fee		\$50.00 per unit	
Final plan fee for subdivisions and mobile home parks (Sec. 41-171)		\$50.00	
Revisions to final subdivision plans after approval (Sec. 41-182)		\$200.00 per lot or dwelling unit affected by change	
Public hearing fees (includes abutter notification via certified mail and advertising in 2 local newspapers)		\$175.00	

BOARD OF APPEALS	
PURPOSE	FEE
All Board of Appeals applications (variances, waivers, administrative appeals) (Sec. 45-50)	\$150.00 (includes application and all public hearing fees)

(T.M. of 11-4-03; T.M. of 3-20-04; T.M. of 6-11-2013(3))

Chapter 2

ADMINISTRATION*

Article I. In General

Secs. 2-1—2-35. Reserved.

Article II. Officers and Employees

Division 1. Generally

Secs. 2-36—2-50. Reserved.

Division 2. Code Enforcement Officer

- Sec. 2-51. Position created.
- Sec. 2-52. Appointment and compensation.
- Sec. 2-53. Duties.

***Cross references**—Administration of the flood prevention and protection regulations, § 25-36 et seq.; administration of the site review procedures, § 33-81 et seq.; administration and enforcement of the subdivision regulations, § 41-36 et seq.; enforcement of Shoreland Zoning Regulations, § 44-48; administration of the zoning regulations, § 45-76 et seq.

ADMINISTRATION

§ 2-53

ARTICLE I. IN GENERAL

Secs. 2-1—2-35. Reserved.

ARTICLE II. OFFICERS AND EMPLOYEES*

DIVISION 1. GENERALLY

Secs. 2-36—2-50. Reserved.

DIVISION 2. CODE ENFORCEMENT OFFICER†

Sec. 2-51. Position created.

There is hereby created a position known as the code enforcement officer for the town whose function is the enforcement of the local, state and federal laws and codes relating to the protection of public health, welfare and land use.

(T.M. of 3-20-76 art. 59)

Sec. 2-52. Appointment and compensation.

The code enforcement officer shall be appointed by the board of selectmen and shall receive an annual compensation determined by the selectmen.

(T.M. of 3-20-76 art. 59)

Sec. 2-53. Duties.

The code enforcement officer shall be responsible for the enforcement of the overall administration of the town's inspection services and general code enforcement program including the enforcement of building, zoning, plumbing, electrical, fire safety ordinances and codes.

(T.M. of 3-20-76 art. 59)

State law reference—Duties of code enforcement officer, 30-A M.R.S.A. §§ 4451, 4452.

***Cross reference**—Zoning board of appeals, § 45-46 et seq.

†**Cross references**—Building code adopted, § 21-1; administration and enforcement of the flood prevention and protection regulations, § 25-36 et seq.; administration and enforcement of the site review requirements, § 33-81 et seq.; administration and enforcement of the subdivision regulations, § 41-36 et seq.; administration and enforcement of the zoning regulations, § 45-76 et seq.

State law references—Code enforcement, 25 M.R.S.A. § 2361; inspections, 25 M.R.S.A. § 2351 et seq.; training for code enforcement officers, 30-A M.R.S.A. § 4451; shoreland zoning, enforcement, 38 M.R.S.A. § 441.

Chapters 3—5

RESERVED

Chapter 6

ALCOHOLIC BEVERAGES

Article I. Special Amusement Permits

- Sec. 6-1. Purpose; findings and rationale.
- Sec. 6-2. Definitions.
- Sec. 6-3. Permit required.
- Sec. 6-4. Issuance of permit.
- Sec. 6-5. Fees.
- Sec. 6-6. Inspection.
- Sec. 6-7. Expiration and renewal of permit.
- Sec. 6-8. Suspension.
- Sec. 6-9. Revocation.
- Sec. 6-10. Hearing; permit suspension, revocation; appeal.
- Sec. 6-11. Hours of permitted activities.
- Sec. 6-12. Admission.
- Sec. 6-13. Loitering, exterior lighting and monitoring, and interior lighting requirements.
- Sec. 6-14. Penalties and enforcement; nuisance.
- Sec. 6-15. Applicability of article to pending applications.
- Sec. 6-16. Prohibited conduct.
- Sec. 6-17. Scierter required to prove violation or permittee liability.
- Sec. 6-18. Failure of town to meet deadline not to risk applicant/permittee rights.
- Sec. 6-19. Severability.
- Sec. 6-20. Conflicting code provisions repealed.
- Sec. 6-21. Effective date.

ARTICLE I. SPECIAL AMUSEMENT PERMITS**Sec. 6-1. Purpose; findings and rationale.**

The purpose of this article is to control the issuance of special amusement permits for providing activities or entertainment in facilities licensed by the State of Maine for sale of liquor to be consumed on the premises, as required by 28-A M.R.S.A. § 1054.

It is the further purpose of this article to regulate facilities that are licensed for the sale of liquor to be consumed on the premises in order to promote the health, safety, and general welfare of the citizens of the town, and to establish reasonable and uniform regulations to prevent the potential deleterious secondary effects of such establishments. The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials or performances, including sexually oriented materials or performances. Similarly, it is neither the purpose nor effect of this article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the purpose nor effect of this article to condone or legitimize the distribution or presentation of obscene material or performances.

Based on evidence of adverse secondary effects associated with certain conduct in alcoholic beverage establishments, which effects have been presented in hearings and in reports made available to the town, and on findings, interpretations, and narrowing constructions incorporated in numerous cases, including, but not limited to *California v. LaRue*, 409 U.S. 109 (1972); *New York State Liquor Authority v. Bellanca*, 452 U.S. 714, 718 (1981); *City of Bangor v. Diva's, Inc.*, 830 A.2d 898 (Me. 2003); *5634 East Hillsborough Ave., Inc. v. Hillsborough County*, 2008 WL 4276370 (11th Cir. 2008); *Peek-A-Boo Lounge, Inc. v. Manatee County*, 630 F.3d 1346 (11th Cir. 2011); *Flanigan's Enters., Inc. v. Fulton County*, 596 F.3d 1265 (11th Cir. 2010); *Imaginary Images, Inc. v. Evans*, 612 F.3d 736 (4th Cir. 2010); *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005); *Hang-On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *Artistic Entertainment, Inc. v. City of Warner Robins*, 223 F.3d 1306 (11th Cir. 2000); *Gary v. City of Warner Robins*, 311 F.3d 1334 (11th Cir. 2002); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *BZAPs, Inc. v. City of Mankato*, 268 F.3d 603 (8th Cir. 2001); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005); *Sammy's of Mobile, Ltd. v. City of Mobile*, 140 F.3d 993 (11th Cir. 1998); *Grand Faloon Tavern, Inc. v. Wicker*, 670 F.2d 943 (11th Cir. 1982); *Board of County Commissioners v. Dexterhouse*, 348 So. 2d 916 (Ct. App. Fla. 1977); *International Food & Beverage Systems v. Ft. Lauderdale*, 794 F.2d 1520 (11th Cir. 1986); and other cases; and on reports of secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Jacksonville, Florida; Dallas, Texas - 1997, 2004; Phoenix, Arizona - 1995-98; and also on findings of physical abuse from the papers entitled "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; Expert

Report of Richard McCleary, Ph.D., Dec. 18, 2004; Affidavit of J.R. Long; and "Sexually Oriented Businesses: An Insider's View," by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000; the Town of Eliot finds that:

- (1) Nudity, partial nudity, and/or sexual conduct coupled with liquor in public places begets negative secondary effects, including sexual, lewd, lascivious, and salacious conduct among patrons and employees resulting in violation of laws and in dangers to the health, safety and welfare of the public.
- (2) Paid physical contact between scantily-clad employees of alcoholic beverage establishments, including "private" dances, "lap" dances, and "couch" dances, as they are commonly called, are associated with and can lead to illicit sexual activities, including masturbation, lewdness, and prostitution, as well as other negative effects, including sexual assault.
- (3) The town finds that the foregoing conduct, even when said employees are not technically nude or semi-nude as defined in other portions of town ordinances, is substantially similar to and presents similar concerns as conduct by nude and semi-nude employees in sexually oriented businesses.
- (4) Each of the negative effects targeted by this article constitutes a harm which the town has a substantial government interest in preventing and/or abating in the future. This substantial government interest in preventing such negative effects, which is the town's rationale for this article, exists independent of any comparative analysis between the regulated establishments and other, non-regulated establishments. The town finds that the cases and secondary effects documentation relied on in this article are reasonably believed to be relevant to the town's interest in preventing illicit sexual behavior and other negative secondary effects.

The town hereby adopts and incorporates herein its stated findings and legislative record related to adverse secondary effects, including the judicial opinions and reports related to such secondary effects.

(T.M. of 6-18-2011(1))

Sec. 6-2. Definitions.

For purposes of this article, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

Bikini-clad means a state of dress in which opaque clothing covers (i) the human male or female genitals, pubic area, and buttocks, and (ii) the female breasts below the top of the areolae, but no additional area contiguous to those portions of the body described in (i) and (ii).

Employee means any person who performs a service on the premises of a facility licensed to sell liquor on a full time, part time, or contract basis, regardless of whether the person is

denominated an employee, independent contractor, agent, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

Influential interest means any of the following:

- (1) The actual power to operate the establishment or control the operation, management or policies of the establishment or legal entity which operates the establishment;
- (2) Ownership of a financial interest of 30 percent or more of a business or of any class of voting securities of a business; or
- (3) Holding an office (e.g., president, vice president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates the establishment.

Nudity means the showing of the human male or female genitals, pubic area, vulva, or anus with less than a fully opaque, non-flesh-colored covering, or the showing of the female breast with less than a fully opaque, non-flesh-colored covering of any part of the nipple and areola.

Permittee means a person in whose name a special amusement permit has been issued, as well as the individual or individuals listed as an applicant on the application for a special amusement permit.

Premises means the real property upon which the licensee for sale of liquor to be consumed on the premises operates, and all appurtenances thereto and buildings thereon, including, but not limited to, the business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a special amusement permit.

Regularly means the consistent and repeated doing of an act on an ongoing basis.

Semi-nude or *semi-nudity* means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

Specified anatomical areas means and includes:

- (1) Less than completely and opaquely covered: human genitals, pubic region; buttock; and female breast below a point immediately above the top of the areola; and
- (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified criminal activity means any of the following specified crimes for which less than five years has elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:

- (1) Sex crimes as defined in 17-A M.R.S.A. §§ 253 through 261 and §§ 282 through 284;

- (2) Prostitution and public indecency crimes as defined in 17-A M.R.S.A. §§ 852 through 855;
- (3) Assault, domestic violence assault, aggravated assault, or elevated aggravated assault as defined in 17-A M.R.S.A. §§ 207, 207-A, 208, or 208-B;
- (4) Obscenity crimes as defined in 17 M.R.S.A. §§ 2911 through 2913;
- (5) Drug crimes as defined in 17-A M.R.S.A. §§ 1103 through 1118;
- (6) Any attempt, solicitation, or conspiracy to commit one of the foregoing offenses; or
- (7) Any offense in another jurisdiction that, had the predicate act(s) been committed in Maine, would have constituted any of the foregoing offenses.

Specified sexual activity means any of the following:

- (1) Intercourse, oral copulation, masturbation or sodomy; or
- (2) Excretory functions as a part of or in connection with any of the activities described in (1) above.

(T.M. of 6-18-2011(1))

Sec. 6-3. Permit required.

(a) *Permit required.* It shall be unlawful for a licensee for sale of liquor to be consumed on the premises to provide activities or entertainment listed in 28-A M.R.S.A. § 1054(1) without a valid special amusement permit from the town.

(b) *Application.* An applicant for a special amusement permit shall file in person at the office of the town administrative assistant a completed application made on a form provided by the administrative assistant. The application shall be signed as required by subsection (c) herein and shall be notarized. An application shall be considered complete when it contains the information and/or items required in this subsection (b), accompanied by the appropriate permit application fee:

- (1) The applicant's full legal name and any other names used by the applicant in the preceding five years.
- (2) Current business address or another mailing address for the applicant.
- (3) Written proof of age, in the form of a driver's license, a picture identification document containing the applicant's date of birth issued by a governmental agency, or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.
- (4) The business name, location, legal description, mailing address and phone number.
- (5) The name and business address of the statutory agent or other agent authorized to receive service of process.
- (6) A copy of the applicant's current license for sale of liquor to be consumed on the premises.

- (7) A statement of whether an applicant has been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in this article, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.
- (8) A statement of whether any establishment in which an applicant has had an influential interest, has, in the previous five years (and at a time during which the applicant had the influential interest):
 - a. Been declared by a court of law to be a nuisance; or
 - b. Been subject to a court order of closure.
- (9) An application for a special amusement permit shall be accompanied by a legal description of the property where the business is located and a sketch or diagram showing the configuration of the premises, including a statement of total floor area occupied by the business and a statement of floor area visible or accessible to patrons for any reason, excluding restrooms. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. The town administrative assistant may waive the requirements of this subsection (9) for a subsequent application if the applicant adopts a legal description and a sketch or diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

The information provided pursuant to this subsection (b) shall be supplemented in writing by certified mail, return receipt requested, to the town administrative assistant within ten working days of a change of circumstances which would render the information originally submitted false or incomplete.

(c) *Signature.* If a person who seeks a special amusement permit under this section is an individual, he shall sign the application as applicant. If a person who seeks a special amusement permit is other than an individual, each person with an influential interest in the establishment or in a legal entity that controls the establishment shall sign the application for a permit as applicant. Each applicant must be qualified under this article and each applicant shall be considered a permittee if a special amusement permit is granted.

(d) The information provided by an applicant in connection with an application for a special amusement permit under this article shall be maintained by the office of the town administrative assistant on a confidential basis, and such information may be disclosed only as may be required, and only to the extent required, by governing law or court order. Any information protected by the right to privacy as recognized by state or federal law shall be redacted prior to such disclosure.

(T.M. of 6-18-2011(1))

Sec. 6-4. Issuance of permit.

(a) Upon the filing of a completed application for a special amusement permit, the town administrative assistant shall immediately schedule a public hearing on the application before the Eliot Board of Selectmen to occur within 14 days. The administrative assistant shall provide written notice of the public hearing to the applicant and to the board of selectmen within five days of the filing of a completed application.

(b) At the public hearing on the special amusement permit application, the board of selectmen shall take testimony of the applicant and any interested members of the public. The hearing shall focus upon the criteria for issuance of a permit as set forth in subpart (c), below.

(c) Within 15 days of the filing of a completed special amusement permit application, the board of selectmen shall issue to the applicant written notice of its decision to grant or deny the licensee a permit. If the board denies the permit, the written notice shall set forth the board's reasons for the denial. The board of selectmen shall grant a special amusement permit unless it finds that the issuance of the permit would be detrimental to public health, safety or welfare, as demonstrated by the following criteria:

- (1) An applicant is less than 18 years of age.
- (2) An applicant has failed to provide information required by this article for issuance of a permit or has falsely answered a question or request for information on the application form.
- (3) The applicant does not possess a valid license for sale of liquor to be consumed on the premises.
- (4) The establishment is in a location where sale of liquor to be consumed on the premises, or the activity for which the special amusement permit is sought, is prohibited by the Eliot Municipal Code.
- (5) Any establishment in which an applicant has had an influential interest, has, in the previous five years (and at a time during which the applicant had the influential interest):
 - a. Been declared by a court of law to be a nuisance; or
 - b. Been subject to an order of closure.
- (6) An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this article.

(d) The permit, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the permit issued to the permittee(s), the expiration date, and the address of the business. The special amusement permit shall be posted in a conspicuous place at or near the entrance to the business so that it may be read at any time that the business is occupied by patrons or is open to the public.

(T.M. of 6-18-2011(1))

Sec. 6-5. Fees.

The application fee for a special amusement permit shall be \$50.00.
(T.M. of 6-18-2011(1))

Sec. 6-6. Inspection.

Special amusement permit holders and their employees shall permit the town administrative assistant and town chief law enforcement officer and/or their agents to inspect, from time to time on an occasional basis, the portions of the establishment where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this article, during those times when the establishment is occupied by patrons or is open to the public. This section shall be narrowly construed by the town to authorize reasonable inspections of the licensed premises pursuant to this article, but not to authorize a harassing or excessive pattern of inspections.
(T.M. of 6-18-2011(1))

Sec. 6-7. Expiration and renewal of permit.

Each special amusement permit shall remain valid for the license year of the existing license for sale of liquor to be consumed on the premises. Such permit may be renewed for a subsequent license year only by making application and payment of a fee as provided in this article.
(T.M. of 6-18-2011(1))

Sec. 6-8. Suspension.

The town administrative assistant shall issue written notice of intent to recommend that the board of selectmen suspend a special amusement permit for a period not to exceed 30 days if the permittee has knowingly or recklessly violated this article or has knowingly or recklessly allowed an employee or any other person to violate this article.
(T.M. of 6-18-2011(1))

Sec. 6-9. Revocation.

(a) The town administrative assistant shall issue a written notice of intent to recommend that the board of selectmen revoke a special amusement permit if the permittee knowingly or recklessly violates this article or has knowingly or recklessly allowed an employee or any other person to violate this article and a suspension of the permittee's permit has become effective within the previous 12-month period.

(b) The town administrative assistant shall issue a written notice of intent to recommend that the board of selectmen revoke a special amusement permit if:

- (1) The permittee has knowingly given false information in the application for the special amusement permit;

- (2) The permittee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises of the establishment;
- (3) The permittee has knowingly or recklessly engaged in or allowed prostitution on the premises of the establishment;
- (4) The permittee knowingly or recklessly provided activities or entertainment listed in 28-A M.R.S.A. § 1054(1) during a period of time when the special amusement permit was finally suspended or revoked;
- (5) The permittee has knowingly or recklessly engaged in or allowed any specified sexual activity or specified criminal activity to occur in or on the premises of the establishment; or
- (6) The permittee has knowingly or recklessly allowed a person under the age of 18 years to consume alcohol or appear in a state of semi-nudity or nudity on the premises of the establishment.

(c) The fact that any relevant conviction is being appealed shall have no effect on the revocation of the permit, provided that, if any conviction which serves as a basis of a permit revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.

(d) When, after the notice and hearing procedure described in section 6-10 of this article, the town revokes a permit, the revocation shall continue for one year and the licensee shall not be issued a special amusement permit for one year from the date revocation becomes effective. (T.M. of 6-18-2011(1))

Sec. 6-10. Hearing; permit suspension, revocation; appeal.

(a) When the town administrative assistant issues a written notice of intent to recommend that the board of selectmen suspend or revoke a special amusement permit, the administrative assistant shall immediately send such notice, which shall include the specific grounds under this article for such action, to the permittee (respondent) by personal delivery or certified mail. The notice shall specify a date, not less than ten days nor more than 20 days after the date the notice is issued, on which the board of selectmen shall conduct a public hearing on the administrative assistant's written notice of intent to recommend that the board of selectmen suspend or revoke the permit.

At the public hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the administrative assistant's witnesses. The administrative assistant shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the license. The hearing shall take no longer than two days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The board of selectmen shall issue a written decision, including specific reasons for the decision pursuant to this article, to the respondent within five days after the public hearing. The decision, if adverse to the

respondent, shall not become effective until the 30th day after it is rendered. If, within said 30 days, the respondent files an appeal with the Eliot Board of Appeals, the decision shall be stayed pending the resolution of the appeal by the Eliot Board of Appeals.

(b) Any licensee for sale of liquor to be consumed on the premises who has applied for a special amusement permit and has been denied, or whose permit has been revoked or suspended, may appeal the decision to the Eliot Board of Appeals within 30 days of the denial, suspension or revocation. Upon notice to the town administrative assistant that an appeal has been filed, the town administrative assistant shall provide the written decision and the administrative record on the denial, suspension or revocation to the board of appeals within ten days. The board of appeals shall consider the written decision, the administrative record, and the appeal at the first monthly meeting after receiving the administrative record, or within 30 days of the receipt of the administrative record, whichever is sooner. Within five days after the meeting, the board of appeals shall issue to the applicant written notice of its decision on the appeal. The board of appeals shall grant or reinstate the special amusement permit if it finds that: (1) the permitted activities would not constitute a detriment to the public health, safety or welfare or violate municipal ordinances or regulations; or (2) the denial, revocation or suspension was arbitrary and capricious.

If the board of appeals upholds the decision to deny, suspend, or revoke the permit, the decision shall advise the respondent of the right to appeal such decision to a court of competent jurisdiction, and the decision shall not become effective until the 30th day after it is rendered. If the board of appeals' decision finds that no grounds exist for denial, suspension, or revocation of the permit, the board of appeals shall, contemporaneously with the issuance of its decision, direct the board of selectmen to immediately issue the permit to the applicant.

(c) If any court action challenging a permit decision is initiated, the town shall prepare and transmit to the court a transcript of the hearing within 30 days after receiving written notice of the filing of the court action. The town shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings. The following shall apply to any licensee for sale of liquor to be consumed on the premises that holds a valid special amusement permit on the date on which the completed application is filed with the town administrative assistant: Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the town's enforcement of any denial, suspension, or revocation of a special amusement permit, the administrative assistant shall immediately issue the respondent a provisional permit. The provisional permit shall allow the respondent to continue to provide activities and entertainment listed in 28-A M.R.S.A. § 1054(1) and will expire upon the court's entry of a judgment on the respondent's appeal or other action to restrain or otherwise enjoin the town's enforcement. (T.M. of 6-18-2011(1))

Sec. 6-11. Hours of permitted activities.

No special amusement permittee shall provide permitted activities or entertainment between 12:00 midnight and 6:00 a.m. on any day.
(T.M. of 6-18-2011(1))

Sec. 6-12. Admission.

A licensee who has been issued a special amusement permit may charge admission.
(T.M. of 6-18-2011(1))

Sec. 6-13. Loitering, exterior lighting and monitoring, and interior lighting requirements.

(a) It shall be the duty of the special amusement permittee to: (i) ensure that at least two conspicuous signs stating that no loitering is permitted on the premises are posted on the premises; (ii) designate one or more employees to monitor the activities of persons on the premises by visually inspecting the premises at least once every 90 minutes or inspecting the premises by use of video cameras and monitors; and (iii) provide lighting to the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. Said lighting shall be of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than one foot candle as measured at the floor level. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.

(b) It shall be the duty of the special amusement permittee to ensure that the interior premises shall be equipped with overhead lighting of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than five foot candles as measured at the floor level. When entertainment is provided, the illumination may be lowered to not less than one foot candle as measured at the floor level.

(c) It shall be unlawful for a person having a duty under this section to knowingly or recklessly fail to fulfill that duty.
(T.M. of 6-18-2011(1))

Sec. 6-14. Penalties and enforcement; nuisance.

(a) A person who violates any of the provisions of this article shall be punished by a civil penalty of not less than \$100.00 and not more than \$2,500.00 for each violation, plus attorneys' fees and costs, to be recovered on complaint, to the use of the Town of Eliot. Each day a violation is committed, or permitted to continue, shall constitute a separate violation and shall be fined as such.

(b) The town's municipal officers are hereby authorized to institute civil proceedings necessary for the enforcement of this article to enjoin, prosecute, restrain, or correct violations hereof. Such proceedings shall be brought in the name of the town, provided, however, that nothing in this section and no action taken hereunder, shall be held to exclude such criminal, civil, or administrative proceedings as may be authorized by other provisions of this article, or any of the laws in force in the town or to exempt anyone violating this code or any part of the said laws from any penalty which may be incurred.

(c) In addition to any other penalty provided in ordinance or by state statute, the commission of acts prohibited by this article shall constitute a nuisance and may be abated by the town seeking an injunction to prohibit further and continued violation of this article.

(T.M. of 6-18-2011(1))

Sec. 6-15. Applicability of article to pending applications.

Notwithstanding anything to the contrary in 1 M.R.S.A. § 302, or in § 1-20 of the Eliot Municipal Code, this article applies to any applications pending or approved on the date of its passage, regardless of whether such applications would constitute a "pending proceeding" under 1 M.R.S.A. § 302. Nothing in this article shall be interpreted to mean it is other than a police power regulation, effective in relation to its regulated activities once enacted.

(T.M. of 6-18-2011(1))

Sec. 6-16. Prohibited conduct.

(a) No patron, employee, or any other person shall knowingly or intentionally, in an establishment with a special amusement permit, appear in a state of nudity or semi-nudity or engage in a specified sexual activity.

(b) No bikini-clad employee of an establishment with a special amusement permit shall knowingly or intentionally touch or make physical contact with the clothed or unclothed buttocks, breast(s), lap, groin area, or pubic area of a patron on the premises of the establishment.

(c) No patron of an establishment with a special amusement permit shall knowingly or intentionally touch or make physical contact with the clothed or unclothed buttocks, breast(s), lap, groin area, or public area of a bikini-clad employee of an establishment with a special amusement permit on the premises of the establishment.

(d) No special amusement permittee shall knowingly violate the regulations in this section or knowingly allow an employee or any other person to violate the regulations in this section.

(e) A sign in a form to be prescribed by the town administrative assistant, and summarizing the provisions of subsections (a), (b), (c), and (d), shall be posted near the entrance of the establishment with a special amusement permit in such a manner as to be clearly visible to patrons upon entry. No person shall cover, obstruct, or obscure said sign.

(f) *Exception.* This section does not apply to persons operating or performing in theaters, concerts halls, art centers, museums, or similar establishments that are primarily devoted to the arts or theatrical performances, when the performances that are presented are expressing matters of serious literary, artistic, scientific, or political value.

(T.M. of 6-18-2011(1))

Sec. 6-17. Scienter required to prove violation or permittee liability.

This article does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a knowing or reckless mental state is necessary to establish a

violation of a provision of this article. Notwithstanding anything to the contrary, for the purposes of this article, an act by an employee shall be imputed to the special amusement permittee for purposes of finding a violation of this article, or for purposes of permit denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act.

(T.M. of 6-18-2011(1))

Sec. 6-18. Failure of town to meet deadline not to risk applicant/permittee rights.

In the event that a town official is required to act or to do a thing pursuant to this article within a prescribed time, and fails to act or to do such thing within the time prescribed, said failure shall not prevent the exercise of constitutional rights of an applicant or permittee. If the act required of the town official under this article, and not completed in the time prescribed, includes approval of condition(s) necessary for approval by the town of an application for a special amusement permit, the permit shall be deemed granted and the permittee allowed to provide activities or entertainment listed in 28-A M.R.S.A. § 1054(1) the day after the deadline for the town's action has passed.

(T.M. of 6-18-2011(1))

Sec. 6-19. Severability.

This article and each section and provision of said article hereunder, are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said article, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid. Should any procedural aspect of this article be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this article.

(T.M. of 6-18-2011(1))

Sec. 6-20. Conflicting code provisions repealed.

Any provision(s) in the Municipal Code of Ordinances, Town of Eliot, Maine specifically in conflict with any provision in this article is hereby deemed inoperative and repealed. The Special Amusement Ordinance of the Town of Eliot of January 20, 1984 is hereby repealed.

(T.M. of 6-18-2011(1))

Sec. 6-21. Effective date.

This article shall take effect and be in force from the time of its adoption by the voters of the Town of Eliot at town meeting.

(T.M. of 6-18-2011(1))

Chapters 7—9

RESERVED

Chapter 10

AMUSEMENTS AND ENTERTAINMENTS

Article I. Sexually Oriented Businesses

- Sec. 10-1. Purpose; findings and rationale.
- Sec. 10-2. Definitions.
- Sec. 10-3. License required.
- Sec. 10-4. Issuance of license.
- Sec. 10-5. Fees.
- Sec. 10-6. Inspection.
- Sec. 10-7. Expiration and renewal of license.
- Sec. 10-8. Suspension.
- Sec. 10-9. Revocation.
- Sec. 10-10. Hearing; license denial, suspension, revocation; appeal.
- Sec. 10-11. Transfer of license.
- Sec. 10-12. Hours of operation.
- Sec. 10-13. Regulations pertaining to exhibition of sexually explicit films on premises.
- Sec. 10-14. Loitering, exterior lighting and monitoring, and interior lighting requirements.
- Sec. 10-15. Penalties and enforcement; nuisance.
- Sec. 10-16. Applicability of article to existing businesses.
- Sec. 10-17. Prohibited conduct.
- Sec. 10-18. Scierter required to prove violation or business licensee liability.
- Sec. 10-19. Failure of town to meet deadline not to risk applicant/licensee rights.
- Sec. 10-20. Severability.
- Sec. 10-21. Conflicting Code provisions repealed.
- Sec. 10-22. Effective date.

ARTICLE I. SEXUALLY ORIENTED BUSINESSES**Sec. 10-1. Purpose; findings and rationale.**

(a) *Purpose.* It is the purpose of this article to regulate sexually oriented businesses in order to promote the health, safety, and general welfare of the citizens of the town, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the town. The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this article to condone or legitimize the distribution of obscene material.

(b) *Findings and rationale.* Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the town, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *N.Y. State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); and *D.H.L. Assocs. Inc. v. O'Gorman*, 199 F.3d 50 (1st Cir. 1999); *Fantasy Book Shop, Inc. v. City of Boston*, 652 F.2d 1115 (1st Cir. 1981); *City of Bangor v. Diva's, Inc.*, 830 A.2d 898 (Me. 2003); *City of Portland v. Jacobsky*, 496 A.2d 646 (Me. 1985); *Gabriel v. Town of Old Orchard Beach*, 390 A.2d 1065 (Me. 1978); *Town of Farmingdale v. Fisher*, 2004 WL 2186208 (Me. Super. Ct. June 30, 2004); *Imaginary Images, Inc. v. Evans*, 612 F.3d 736 (4th Cir. 2010); *Plaza Group Properties, LLC v. Spencer County Plan Commission*, 877 N.E.2d 877 (Ind. Ct. App. 2007); *Flanigan's Enters., Inc. v. Fulton County*, 596 F.3d 1265 (11th Cir. 2010); *East Brooks Books, Inc. v. Shelby County*, 588 F.3d 360 (6th Cir. 2009); *Entm't Prods., Inc. v. Shelby County*, 588 F.3d 372 (6th Cir. 2009); *Sensations, Inc. v. City of Grand Rapids*, 526 F.3d 291 (6th Cir. 2008); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *Peek-a-Boo Lounge v. Manatee County*, 630 F.3d 1346 (11th Cir. 2011); *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007); *Williams v. Morgan*, 478 F.3d 1316 (11th Cir. 2007); *Jacksonville Property Rights Ass'n, Inc. v. City of Jacksonville*, 635 F.3d 1266 (11th Cir. 2011); *H&A Land Corp. v. City of Kennedale*, 480 F.3d 336 (5th Cir. 2007); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *Fantasy Ranch, Inc. v. City of Arlington*, 459 F.3d 546 (5th Cir. 2006); *Illinois One News, Inc. v. City of Marshall*, 477 F.3d 461 (7th Cir. 2007); *G.M. Enterprises, Inc. v. Town of St. Joseph*, 350 F.3d 631 (7th Cir. 2003); *Richland Bookmart, Inc. v. Knox County*, 555 F.3d 512 (6th Cir. 2009); *Richland Bookmart, Inc. v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *Spokane Arcade, Inc. v. City of Spokane*, 75 F.3d 663 (9th Cir. 1996); *City of New York v. Hommes*, 724 N.E.2d 368 (N.Y. 1999); *Taylor v. State*, No. 01-01-00505-CR, 2002 WL 1722154 (Tex. App. July 25, 2002); *Draus v. Town of Houlton*, 141

F.3d 1149 (1st Cir. 1998) (table); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005); *Z.J. Gifts D-4, L.L.C. v. City of Littleton*, Civil Action No. 99-N-1696, Memorandum Decision and Order (D. Colo. March 31, 2001); *People ex rel. Deters v. The Lion's Den, Inc.*, Case No. 04-CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005); *Reliable Consultants, Inc. v. City of Kennedale*, No. 4:05-CV-166-A, Findings of Fact and Conclusions of Law (N.D. Tex. May 26, 2005); and based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Austin, Texas - 1986; Indianapolis, Indiana - 1984; Garden Grove, California - 1991; Houston, Texas - 1983, 1997; Phoenix, Arizona - 1979, 1995-98; Chattanooga, Tennessee - 1999-2003; Los Angeles, California - 1977; Whittier, California - 1978; Spokane, Washington - 2001; St. Cloud, Minnesota - 1994; Littleton, Colorado - 2004; Oklahoma City, Oklahoma - 1986; Dallas, Texas - 1997; Ft. Worth, Texas - 2004; Kennedale, Texas - 2005; Greensboro, North Carolina - 2003; Amarillo, Texas - 1977; Jackson County, Missouri - 2008; Louisville, Kentucky - 2004; New York, New York Times Square - 1994; the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota); Dallas, Texas - 2007; "Rural Hotspots: The Case of Adult Businesses," 19 Criminal Justice Policy Review 153 (2008); "Correlates of Current Transactional Sex among a Sample of Female Exotic Dancers in Baltimore, MD," Journal of Urban Health (2011); and Assorted Strip Club Reports, the town finds:

- (1) Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation. Alcohol consumption impairs judgment and lowers inhibitions, thereby increasing the risk of adverse secondary effects.
- (2) Each of the foregoing negative secondary effects constitutes a harm which the town has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the town's rationale for this article, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the town's interest in regulating sexually oriented businesses extends to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the town. The town finds that the cases and documentation relied on in this article are reasonably believed to be relevant to said secondary effects.

The town hereby adopts and incorporates herein its stated findings and legislative record related to the adverse secondary effects of sexually oriented businesses, including the judicial opinions and reports related to such secondary effects.

(T.M. of 6-18-2011(2))

Sec. 10-2. Definitions.

For purposes of this article, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

Adult bookstore or adult video store means a commercial establishment which, as one of its principal business activities, offers for sale or rental for any form of consideration any one or more of the following: Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas." A "principal business activity" exists where the commercial establishment meets any one or more of the following criteria:

- (1) At least 35 percent of the establishment's displayed merchandise consists of said items; or
- (2) At least 35 percent of the wholesale value of the establishment's displayed merchandise consists of said items; or
- (3) At least 35 percent of the retail value (defined as the price charged to customers) of the establishment's displayed merchandise consists of said items; or
- (4) At least 35 percent of the establishment's revenues derive from the sale or rental, for any form of consideration, of said items; or
- (5) The establishment maintains at least 35 percent of its floor space for the display, sale, and/or rental of said items (aisles and walkways used to access said items shall be included in "floor space" maintained for the display, sale, or rental of said items); or
- (6) The establishment maintains at least 500 square feet of its floor space for the display, sale, and/or rental of said items (aisles and walkways used to access said items shall be included in "floor space" maintained for the display, sale, or rental of said items); or
- (7) The establishment regularly offers for sale or rental at least 2,000 of said items; or
- (8) The establishment regularly features said items and regularly advertises itself or holds itself out, by using "adult," "adults-only," "XXX," "sex," "erotic," "novelties," or substantially similar language, as an establishment that caters to adult sexual interests; or
- (9) The establishment maintains an "adult arcade," which means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting "specified sexual activities" or "specified anatomical areas."

Adult cabaret means a nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment, regardless of whether alcoholic beverages are served, which regularly features live conduct characterized by semi-nudity. No establishment shall avoid classification as an adult cabaret by offering or featuring nudity.

Adult motion picture theater means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas" are regularly shown to more than five persons for any form of consideration.

Characterized by means describing the essential character or quality of an item. As applied in this article, no business shall be classified as a sexually oriented business by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.

Employ, employee, and employment describe and pertain to any person who performs any service on the premises of a sexually oriented business, on a full time, part time, or contract basis, regardless of whether the person is denominated an employee, independent contractor, agent, lessee, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

Establish or establishment means and includes any of the following:

- (1) The opening or commencement of any sexually oriented business as a new business;
- (2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or
- (3) The addition of any sexually oriented business to any other existing sexually oriented business.

Floor space means the floor area inside an establishment that is visible or accessible to patrons for any reason, excluding restrooms.

Hearing officer means an attorney, not otherwise employed by the town, who is licensed to practice law in Maine, and retained to serve as an independent tribunal to conduct hearings under this article.

Influential interest means any of the following:

- (1) The actual power to operate the sexually oriented business or control the operation, management or policies of the sexually oriented business or legal entity which operates the sexually oriented business;
- (2) Ownership of a financial interest of 30 percent or more of a business or of any class of voting securities of a business; or
- (3) Holding an office (e.g., president, vice president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates the sexually oriented business.

Licensee means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license. In the case of an "employee," it shall mean the person in whose name the sexually oriented business employee license has been issued.

Nudity means the showing of the human male or female genitals, pubic area, vulva, or anus with less than a fully opaque, non-flesh-colored covering, or the showing of the female breast with less than a fully opaque, non-flesh-colored covering of any part of the nipple and areola.

Operator means any person on the premises of a sexually oriented business who causes the business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises. A person may be found to be operating or causing to be operated a sexually oriented business regardless of whether that person is an owner, part owner, or licensee of the business.

Person has the meaning set forth in section 1-2 of the Eliot Municipal Code.

Premises means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a sexually oriented business license.

Regularly means the consistent and repeated doing of an act on an ongoing basis.

Semi-nude or *semi-nudity* means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

Semi-nude model studio means a place where persons regularly appear in a state of semi-nudity for money or any form of consideration in order to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. This definition does not apply to any place where persons appearing in a state of semi-nudity did so in a class operated:

- (1) By a college, junior college, or university supported entirely or partly by taxation;
- (2) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
- (3) In a structure:
 - a. Which has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewing; and
 - b. Where, in order to participate in a class a student must enroll at least three days in advance of the class.

Sexual device means any three dimensional object designed for stimulation of the male or female human genitals, anus, buttocks, female breast, or for sadomasochistic use or abuse of oneself or others and shall include devices commonly known as dildos, vibrators, penis pumps,

cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

Sexual device shop means a commercial establishment that regularly features sexual devices. This definition shall not be construed to include any pharmacy, drug store, medical clinic, any establishment primarily dedicated to providing medical or healthcare products or services, or any establishment that does not limit access to its premises or a portion of its premises to adults only.

Sexually oriented business means an "adult bookstore or adult video store," an "adult cabaret," an "adult motion picture theater," a "semi-nude model studio," or a "sexual device shop."

Specified anatomical areas means and includes:

- (1) Less than completely and opaquely covered: human genitals, pubic region; buttock; and female breast below a point immediately above the top of the areola; and
- (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified criminal activity means any of the following specified crimes for which less than five years has elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:

- (1) Sex crimes as defined in 17-A M.R.S.A. §§ 253 through 261 and §§ 282 through 284;
- (2) Prostitution and public indecency crimes as defined in 17-A M.R.S.A. §§ 852 through 855;
- (3) Assault, domestic violence assault, aggravated assault, or elevated aggravated assault as defined in 17-A M.R.S.A. §§ 207, 207-A, 208, or 208-B;
- (4) Obscenity crimes as defined in 17 M.R.S.A. §§ 2911 through 2913;
- (5) Drug crimes as defined in 17-A M.R.S.A. §§ 1103 through 1118;
- (6) Any attempt, solicitation, or conspiracy to commit one of the foregoing offenses; or
- (7) Any offense committed in another jurisdiction that, had the predicate act(s) been committed in Maine, would have constituted any of the foregoing offenses.

Specified sexual activity means any of the following:

- (1) Intercourse, oral copulation, masturbation or sodomy; or
- (2) Excretory functions as a part of or in connection with any of the activities described in (1) above.

Town means the Town of Eliot, Maine.

Transfer of ownership or control of a sexually oriented business means any of the following:

- (1) The sale, lease, or sublease of the business;

- (2) The transfer of securities which constitute an influential interest in the business, whether by sale, exchange, or similar means; or
- (3) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

Viewing room means the room, booth, or area where a patron of a sexually oriented business would ordinarily be positioned while watching a film, videocassette, digital video disc, or other video reproduction.

(T.M. of 6-18-2011(2))

Sec. 10-3. License required.

(a) *Business license.* It shall be unlawful for any person to operate a sexually oriented business in the town without a valid sexually oriented business license.

(b) *Employee license.* It shall be unlawful for any person to be an "employee," as defined in this article, of a sexually oriented business in the town without a valid sexually oriented business employee license, except that a person who is a licensee under a valid sexually oriented business license shall not be required to also obtain a sexually oriented business employee license.

(c) *Application.* An applicant for a sexually oriented business license or a sexually oriented business employee license shall file in person at the office of the town administrative assistant a completed application made on a form provided by the administrative assistant. A sexually oriented business may designate an individual with an influential interest in the business to file its application for a sexually oriented business license in person on behalf of the business. The application shall be signed as required by subsection (d) herein and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in this subsection (c), accompanied by the appropriate licensing fee:

- (1) The applicant's full legal name and any other names used by the applicant in the preceding five years.
- (2) Current business address or another mailing address for the applicant.
- (3) Written proof of age, in the form of a driver's license, a picture identification document containing the applicant's date of birth issued by a governmental agency, or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.
- (4) If the application is for a sexually oriented business license, the business name, location, legal description, mailing address and phone number of the sexually oriented business.
- (5) If the application is for a sexually oriented business license, the name and business address of the statutory agent or other agent authorized to receive service of process.

- (6) A statement of whether an applicant has been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in this article, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.
- (7) A statement of whether any sexually oriented business in which an applicant has had an influential interest, has, in the previous five years (and at a time during which the applicant had the influential interest):
 - a. Been declared by a court of law to be a nuisance; or
 - b. Been subject to a court order of closure.
- (8) An application for a sexually oriented business license shall be accompanied by a legal description of the property where the business is located and a sketch or diagram showing the configuration of the premises, including a statement of total floor area occupied by the business and a statement of floor area visible or accessible to patrons for any reason, excluding restrooms. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. Applicants who are required to comply with the stage, booth, and/or room configuration requirements of this article shall submit a diagram indicating that the setup and configuration of the premises meets the requirements of the applicable regulations. The town administrative assistant may waive the requirements of this subsection (8) for a renewal application if the applicant adopts a legal description and a sketch or diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

The information provided pursuant to this subsection (c) shall be supplemented in writing by certified mail, return receipt requested, to the town administrative assistant within ten working days of a change of circumstances which would render the information originally submitted false or incomplete.

(d) *Signature.* A person who seeks a sexually oriented business employee license under this section shall sign the application for a license. If a person who seeks a sexually oriented business license under this section is an individual, he shall sign the application for a license as applicant. If a person who seeks a sexually oriented business license is other than an individual, each person with an influential interest in the sexually oriented business or in a legal entity that controls the sexually oriented business shall sign the application for a license as applicant. Each applicant must be qualified under this article and each applicant shall be considered a licensee if a license is granted.

(e) The information provided by an applicant in connection with an application for a license under this article shall be maintained by the office of the town administrative assistant on a confidential basis, and such information may be disclosed only as may be required, and only to the extent required, by governing law or court order. Any information protected by the right to privacy as recognized by state or federal law shall be redacted prior to such disclosure.

(T.M. of 6-18-2011(2))

Sec. 10-4. Issuance of license.

(a) *Business license.* Upon the filing of a completed application for a sexually oriented business license, the town administrative assistant shall immediately issue a temporary license to the applicant if the completed application is from a preexisting sexually oriented business that is lawfully operating in the town and the completed application, on its face, indicates that the applicant is entitled to an annual sexually oriented business license. The temporary license shall expire upon the final decision of the town to deny or grant an annual license. Within 20 days of the filing of a completed sexually oriented business license application, the administrative assistant shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The administrative assistant shall issue a license unless:

- (1) An applicant is less than 18 years of age.
- (2) An applicant has failed to provide information required by this article for issuance of a license or has falsely answered a question or request for information on the application form.
- (3) The license application fee required by this article has not been paid.
- (4) The sexually oriented business, as defined herein, is not in compliance with the interior configuration requirements of this article or is in a location where sexually oriented businesses are prohibited by the Eliot Municipal Code.
- (5) Any sexually oriented business in which an applicant has had an influential interest, has, in the previous five years (and at a time during which the applicant had the influential interest):
 - a. Been declared by a court of law to be a nuisance; or
 - b. Been subject to an order of closure.
- (6) An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this article.

(b) *Employee license.* Upon the filing of a completed application for a sexually oriented business employee license, the town administrative assistant shall immediately issue a temporary license to the applicant if the applicant seeks licensure to work in a licensed sexually oriented business and the completed application, on its face, indicates that the applicant is entitled to an annual sexually oriented business employee license. The temporary license shall expire upon the final decision of the town to deny or grant an annual license. Within 20 days of the filing of a completed sexually oriented business employee license application, the administrative assistant shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The administrative assistant shall issue a license unless:

- (1) The applicant is less than 18 years of age.

- (2) The applicant has failed to provide information as required by this article for issuance of a license or has falsely answered a question or request for information on the application form.
- (3) The license application fee required by this article has not been paid.
- (4) Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five years (and at a time during which the applicant had the influential interest):
 - a. Been declared by a court of law to be a nuisance; or
 - b. Been subject to an order of closure.
- (5) The applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this article.

(c) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and, if the license is for a sexually oriented business, the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be read at any time that the business is occupied by patrons or is open to the public. A sexually oriented business employee shall keep the employee's license on his or her person or on the premises where the licensee is then working or performing.

(T.M. of 6-18-2011(2))

Sec. 10-5. Fees.

The initial license and annual renewal fees for sexually oriented business licenses and sexually oriented business employee licenses shall be as follows: \$100.00 for the initial fee for a sexually oriented business license and \$50.00 for annual renewal; \$50.00 for the initial sexually oriented business employee license and \$25.00 for annual renewal.

(T.M. of 6-18-2011(2))

Sec. 10-6. Inspection.

Sexually oriented businesses and sexually oriented business employees shall permit the town administrative assistant and town chief law enforcement officer and/or their agents to inspect, from time to time on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this article, during those times when the sexually oriented business is occupied by patrons or is open to the public. This section shall be narrowly construed by the town to authorize reasonable inspections of the licensed premises pursuant to this article, but not to authorize a harassing or excessive pattern of inspections.

(T.M. of 6-18-2011(2))

Sec. 10-7. Expiration and renewal of license.

(a) Each license shall remain valid for a period of one calendar year from the date of issuance unless otherwise suspended or revoked. Such license may be renewed only by making application and payment of a fee as provided in this article.

(b) Application for renewal of an annual license should be made at least 90 days before the expiration date of the current annual license, and when made less than 90 days before the expiration date, the expiration of the current license will not be affected.

(T.M. of 6-18-2011(2))

Sec. 10-8. Suspension.

(a) The town administrative assistant shall issue a written notice of intent to suspend a sexually oriented business license for a period not to exceed 30 days if the sexually oriented business licensee has knowingly or recklessly violated this article or has knowingly or recklessly allowed an employee or any other person to violate this article.

(b) The town administrative assistant shall issue a written notice of intent to suspend a sexually oriented business employee license for a period not to exceed 30 days if the employee licensee has knowingly or recklessly violated this article.

(T.M. of 6-18-2011(2))

Sec. 10-9. Revocation.

(a) The town administrative assistant shall issue a written notice of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if the licensee knowingly or recklessly violates this article or has knowingly or recklessly allowed an employee or any other person to violate this article and a suspension of the licensee's license has become effective within the previous 12-month period.

(b) The town administrative assistant shall issue a written notice of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if:

- (1) The licensee has knowingly given false information in the application for the sexually oriented business license or the sexually oriented business employee license;
- (2) The licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises of the sexually oriented business;
- (3) The licensee has knowingly or recklessly engaged in or allowed prostitution on the premises of the sexually oriented business;
- (4) The licensee knowingly or recklessly operated the sexually oriented business during a period of time when the license was finally suspended or revoked;
- (5) The licensee has knowingly or recklessly engaged in or allowed any specified sexual activity or specified criminal activity to occur in or on the premises of the sexually oriented business; or

- (6) The licensee has knowingly or recklessly allowed a person under the age of 18 years to consume alcohol or appear in a state of semi-nudity or nudity on the premises of the sexually oriented business.

(c) The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.

(d) When, after the notice and hearing procedure described in this article, the town revokes a license, the revocation shall continue for one year and the licensee shall not be issued a sexually oriented business license or sexually oriented business employee license for one year from the date revocation becomes effective.

(T.M. of 6-18-2011(2))

Sec. 10-10. Hearing; license denial, suspension, revocation; appeal.

(a) When the town administrative assistant issues a written notice of intent to deny, suspend, or revoke a license, the administrative assistant shall immediately send such notice, which shall include the specific grounds under this article for such action, to the applicant or licensee (respondent) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the administrative assistant for the respondent. The notice shall also set forth the following: The respondent shall have ten days after the delivery of the written notice to submit, at the office of the administrative assistant, a written request for a hearing. If the respondent does not request a hearing within said ten days, the administrative assistant's written notice shall become a final denial, suspension, or revocation, as the case may be, on the 30th day after it is issued, and shall be subject to the provisions of subsection (b) of this section.

If the respondent does make a written request for a hearing within said ten days, then the administrative assistant shall, within ten days after the submission of the request, send a notice to the respondent indicating the date, time, and place of the hearing. The hearing shall be conducted not less than ten days nor more than 20 days after the date that the hearing notice is issued. The town shall provide for the hearing to be transcribed.

At the hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the administrative assistant's witnesses. The administrative assistant shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the license. The hearing shall take no longer than two days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The hearing officer shall issue a final written decision, including specific reasons for the decision pursuant to this article, to the respondent within five days after the hearing.

If the decision is to deny, suspend, or revoke the license, the decision shall advise the respondent of the right to appeal such decision to a court of competent jurisdiction, and the decision shall not become effective until the 30th day after it is rendered. If the hearing officer's decision finds that no grounds exist for denial, suspension, or revocation of the license, the hearing officer shall, contemporaneously with the issuance of the decision, order the town administrative assistant to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action. If the respondent is not yet licensed, the administrative assistant shall contemporaneously there-with issue the license to the applicant.

(b) If any court action challenging a licensing decision is initiated, the town shall prepare and transmit to the court a transcript of the hearing within 30 days after receiving written notice of the filing of the court action. The town shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings. The following shall apply to any sexually oriented business that is lawfully operating as a sexually oriented business, or any sexually oriented business employee that is lawfully employed as a sexually oriented business employee, on the date on which the completed business or employee application, as applicable, is filed with the town administrative assistant: Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the town's enforcement of any denial, suspension, or revocation of a temporary license or annual license, the administrative assistant shall immediately issue the respondent a provisional license. The provisional license shall allow the respondent to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire upon the court's entry of a judgment on the respondent's appeal or other action to restrain or otherwise enjoin the town's enforcement.

(T.M. of 6-18-2011(2))

Sec. 10-11. Transfer of license.

A licensee shall not transfer his or her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the sexually oriented business license application.

(T.M. of 6-18-2011(2))

Sec. 10-12. Hours of operation.

No sexually oriented business shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day.

(T.M. of 6-18-2011(2))

Sec. 10-13. Regulations pertaining to exhibition of sexually explicit films on premises.

(a) A person who operates or causes to be operated a sexually oriented business which exhibits in a booth or viewing room on the premises, through any mechanical or electronic image-producing device, a film, video cassette, digital video disc, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements.

- (1) Each application for a sexually oriented business license shall contain a diagram of the premises showing the location of all operator's stations, booths or viewing rooms, overhead lighting fixtures, and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain equipment for displaying films, video cassettes, digital video discs, or other video reproductions. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The town administrative assistant may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
- (2) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted.
- (3) The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five foot candles as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.
- (4) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no specified sexual activity occurs in or on the licensed premises.
- (5) It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:
 - a. That the occupancy of viewing rooms less than 150 square feet is limited to one person.
 - b. That specified sexual activity on the premises is prohibited.
 - c. That the making of openings between viewing rooms is prohibited.
 - d. That violators will be required to leave the premises.

- e. That violations of these regulations are unlawful.
 - (6) It shall be the duty of the operator to enforce the regulations articulated in [subsections] (5)a. through (5)d. above.
 - (7) The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed 32 square feet of floor area. If the premises has two or more operator's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose, excluding restrooms, from at least one of the operator's stations. The view required in this paragraph must be by direct line of sight from the operator's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in each operator's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.
 - (8) It shall be the duty of the operator to ensure that no porous materials are used for any wall, floor, or seat in any booth or viewing room.
- (b) It shall be unlawful for a person having a duty under subsections (a)(1) through (a)(8) to knowingly or recklessly fail to fulfill that duty.
- (c) No patron shall knowingly or recklessly enter or remain in a viewing room less than 150 square feet in area that is occupied by any other patron.
- (d) No patron shall knowingly or recklessly be or remain within one foot of any other patron while in a viewing room that is 150 square feet or larger in area.
- (e) No person shall knowingly or recklessly make any hole or opening between viewing rooms.
- (T.M. of 6-18-2011(2))

Sec. 10-14. Loitering, exterior lighting and monitoring, and interior lighting requirements.

- (a) It shall be the duty of the operator of a sexually oriented business to: (i) ensure that at least two conspicuous signs stating that no loitering is permitted on the premises are posted on the premises; (ii) designate one or more employees to monitor the activities of persons on the premises by visually inspecting the premises at least once every 90 minutes or inspecting the premises by use of video cameras and monitors; and (iii) provide lighting to the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. Said lighting shall be of sufficient intensity to illuminate every place to which customers are permitted

access at an illumination of not less than one foot candle as measured at the floor level. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.

(b) It shall be the duty of the operator of a sexually oriented business to ensure that the interior premises shall be equipped with overhead lighting of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than five foot candles as measured at the floor level and the illumination must be maintained at all times that any customer is present in or on the premises.

(c) No sexually oriented business shall erect a fence, wall, or similar barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right-of-way.

(d) It shall be unlawful for a person having a duty under this section to knowingly or recklessly fail to fulfill that duty.

(T.M. of 6-18-2011(2))

Sec. 10-15. Penalties and enforcement; nuisance.

(a) A person who violates any of the provisions of this article shall be punished by a civil penalty of not less than \$100.00 and not more than \$2,500.00 for each violation, plus attorneys' fees and costs, to be recovered on complaint, to the use of the Town of Eliot. Each day a violation is committed, or permitted to continue, shall constitute a separate violation and shall be fined as such.

(b) The town's municipal officers are hereby authorized to institute civil proceedings necessary for the enforcement of this article to enjoin, prosecute, restrain, or correct violations hereof. Such proceedings shall be brought in the name of the town, provided, however, that nothing in this section and no action taken hereunder, shall be held to exclude such criminal, civil, or administrative proceedings as may be authorized by other provisions of this article, or any of the laws in force in the town or to exempt anyone violating this Code or any part of the said laws from any penalty which may be incurred.

(c) In addition to any other penalty provided in ordinance or by state statute, the commission of acts prohibited by this article shall constitute a nuisance and may be abated by the town seeking an injunction to prohibit further and continued violation of this article.

(T.M. of 6-18-2011(2))

Sec. 10-16. Applicability of article to existing businesses.

All preexisting sexually oriented businesses lawfully operating in the town in compliance with all state and local laws prior to the effective date of this article, and all sexually oriented business employees working in the town prior to the effective date of this article, are hereby granted a *De Facto* temporary license to continue operation or employment for a period of 90 days following the effective date of this article. By the end of said 90 days, all sexually oriented businesses and sexually oriented business employees must conform to and abide by the

requirements of this article. Notwithstanding anything to the contrary in 1 M.R.S.A. § 302, or in section 1-20 of the Eliot Municipal Code, this article applies to any applications pending or approved on the date of its passage, regardless of whether such applications would constitute a "pending proceeding" under 1 M.R.S.A. § 302. Nothing in this article shall be interpreted to mean it is other than a police power regulation, effective in relation to its regulated activities once enacted.

(T.M. of 6-18-2011(2))

Sec. 10-17. Prohibited conduct.

(a) No patron, employee, or any other person shall knowingly or intentionally, in a sexually oriented business, appear in a state of nudity or engage in a specified sexual activity.

(b) No person shall knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six feet from all patrons and on a stage at least 18 inches from the floor in a room of at least 600 square feet.

(c) No employee who regularly appears semi-nude in a sexually oriented business shall knowingly or intentionally touch a customer or the clothing of a customer on the premises of a sexually oriented business.

(d) No person shall possess, use, or consume alcoholic beverages on the premises of a sexually oriented business.

(e) No person shall knowingly or recklessly allow a person under the age of 18 years to be or remain on the premises of a sexually oriented business.

(f) No operator or licensee of a sexually oriented business shall knowingly violate the regulations in this section or knowingly allow an employee or any other person to violate the regulations in this section.

(g) A sign in a form to be prescribed by the town administrative assistant, and summarizing the provisions of subsections (a), (b), (c), (d), and (e), shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry. No person shall cover, obstruct, or obscure said sign.

(T.M. of 6-18-2011(2))

Sec. 10-18. Scienter required to prove violation or business licensee liability.

This article does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a knowing or reckless mental state is necessary to establish a violation of a provision of this article. Notwithstanding anything to the contrary, for the purposes of this article, an act by an employee that constitutes grounds for suspension or revocation of that employee's license shall be imputed to the sexually oriented business licensee for purposes of finding a violation of this article, or for purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or a person who

managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act.

(T.M. of 6-18-2011(2))

Sec. 10-19. Failure of town to meet deadline not to risk applicant/licensee rights.

In the event that a town official is required to act or to do a thing pursuant to this article within a prescribed time, and fails to act or to do such thing within the time prescribed, said failure shall not prevent the exercise of constitutional rights of an applicant or licensee. If the act required of the town official under this article, and not completed in the time prescribed, includes approval of condition(s) necessary for approval by the town of an applicant or licensee's application for a sexually oriented business license or a sexually oriented business employee's license (including a renewal), the license shall be deemed granted and the business or employee allowed to commence operations or employment the day after the deadline for the town's action has passed.

(T.M. of 6-18-2011(2))

Sec. 10-20. Severability.

This article and each section and provision of said article hereunder, are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said article, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid. Should any procedural aspect of this article be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this article.

(T.M. of 6-18-2011(2))

Sec. 10-21. Conflicting Code provisions repealed.

Any provision(s) in the Municipal Code of Ordinances, Town of Eliot, Maine specifically in conflict with any provision in this article is hereby deemed inoperative and repealed.

(T.M. of 6-18-2011(2))

Sec. 10-22. Effective date.

This article shall take effect and be in force from the time of its adoption by the voters of the Town of Eliot at town meeting.

(T.M. of 6-18-2011(2))

Chapter 11

RESERVED

Chapter 12

FIREWORKS

Article I. Sale of Fireworks

- Sec. 12-1. Title and authority.
- Sec. 12-2. Definitions.
- Sec. 12-3. Sales.
- Sec. 12-4. Fireworks display.
- Sec. 12-5. Civil penalties.
- Secs. 12-6—12-20. Reserved.

Article II. Use of Fireworks

- Sec. 12-21. Restriction on use of consumer fireworks.

ARTICLE I. SALE OF FIREWORKS**Sec. 12-1. Title and authority.**

This ordinance shall be known as the "Town of Eliot Fireworks Sale Ordinance." It is adopted pursuant to the enabling provisions of the Maine Constitution, the provisions of 30-A M.R.S.A. § 3001, and the provisions of 8 M.R.S.A. § 223-A.
(T.M. of 12-8-2011(1))

Sec. 12-2. Definitions.

In accordance with 8 M.R.S.A. § 221-A, subsection 1-A:

Consumer fireworks has the same meaning as in 27 Code of Federal Regulations, Section 555.11 or subsequent provision, but includes only products that are tested and certified by a third-party testing laboratory as conforming with United States Consumer Product Safety Commission standards, in accordance with 15 United States Code, Chapter 47. "Consumer fireworks" does not include the following products:

- (1) Missile-type rockets, as defined by the state fire marshal by rule;
- (2) Helicopters and aerial spinners, as defined by the state fire marshal by rule; and
- (3) Sky rockets and bottle rockets. For purposes of this paragraph, "sky rockets and bottle rockets" means cylindrical tubes containing not more than 20 grams of chemical composition, as defined by the state fire marshal by rule, with a wooden stick attached for guidance and stability that rise into the air upon ignition and that may produce a burst of color or sound at or near the height of flight.

Fireworks means any:

- (1) Combustible or explosive composition or substance;
- (2) Combination of explosive compositions or substances;
- (3) Other article that was prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, including blank cartridges or toy cannons in which explosives are used, the type of balloon that requires fire underneath to propel it, firecrackers, torpedoes, skyrockets, roman candles, bombs, rockets, wheels, colored fires, fountains, mines, serpents and other fireworks of like construction;
- (4) Fireworks containing any explosive or flammable compound; or
- (5) Tablets or other device containing any explosive substance or flammable compounds.

The term "fireworks" does not include consumer fireworks or toy pistols, toy canes, toy guns or other devices in which paper caps or plastic caps containing 25/100 grains or less of explosive compound are used if they are constructed so that the hand cannot come in contact

with the cap when in place for the explosion, toy pistol paper caps or plastic caps that contain less than 20/100 grains of explosive mixture, sparklers that do not contain magnesium chlorates or perchlorates or signal, antique or replica cannons if no projectile is fired.

(T.M. of 12-8-2011(1))

Sec. 12-3. Sales.

The sale of consumer fireworks is prohibited.

(T.M. of 12-8-2011(1))

Sec. 12-4. Fireworks display.

A fireworks display requires a permit from the Maine Commissioner of Public Safety or his or her designee under the provisions of 8 M.R.S.A. §§ 221—237, and particularly section 227-A. The fire chief, or his or her designee, shall inspect the proposed display site at the time of the inspection conducted by a representative of the Maine Public Safety Department under 8 M.R.S.A. § 227-A(2). A fireworks display shall comply with all federal, state and local laws, ordinances, rules and regulations.

(T.M. of 12-8-2011(1))

Sec. 12-5. Civil penalties.

Whoever violates any of the provisions of the foregoing sections shall be subject to a civil penalty of not less than \$500.00 per occurrence and not more than \$2,500.00 per occurrence, plus attorney's fees and costs.

(T.M. of 12-8-2011(1))

Secs. 12-6—12-20. Reserved.

ARTICLE II. USE OF FIREWORKS*

Sec. 12-21. Restriction on use of consumer fireworks.

(a) *Consumer fireworks* has the same meaning as in 27 Code of Federal Regulations, Section 555.11 or subsequent provision, but includes only products that are tested and certified by a third party testing laboratory as conforming with United Consumer Product Safety Commission, in accordance with 15 United States Code, Chapter 47.

(b) Consumer fireworks may be used between 9:00 a.m. and 10:00 p.m. from June 27 to July 7, except that on July 4 and December 31 they may be used between 9:00 a.m. and 12:30 a.m. Consumer fireworks may be used at other times with a permit from the town and with a permit fee set by the town.

***Editor's note**—T.M. of 6-11-2013(2) repealed the former Art. II, §§ 12-21—12-25, and enacted a new Art. II as set out herein. The former Art. II pertained to similar subject matter and derived from T.M. of 12-8-2011(2).

(c) A person may use fireworks only on his own property or on property of a person who has consented to the use of fireworks on that property.

(d) Fireworks will not be used when the forest service fire index is at class 4 or 5.
(T.M. of 6-11-2013(2))

Chapter 13

RESERVED

Chapter 14

OFFENSES AND MISCELLANEOUS PROVISIONS

Article I. Obscenity

- Sec. 14-1. Purpose.
- Sec. 14-2. Definitions.
- Sec. 14-3. Prohibition.
- Sec. 14-4. Exceptions.
- Sec. 14-5. Penalty.
- Sec. 14-6. Applicability of article to pending applications.
- Sec. 14-7. Severability.
- Sec. 14-8. Conflicting code provisions repealed.
- Sec. 14-9. Effective date.

ARTICLE I. OBSCENITY**Sec. 14-1. Purpose.**

The purpose of this article is to prohibit any commercial enterprise from presenting, engaging in, or disseminating any obscene exhibitions or material for profit. It is not intended to suppress or inhibit the free exchange of ideas or artistic expression, nor to regulate the behavior of individuals in the privacy of their own residences. This article is enacted for promoting and protecting the general welfare, public safety, public order, and morals of the people of the Town of Eliot, Maine.

(T.M. of 6-18-2011(3))

Sec. 14-2. Definitions.

For purposes of this article, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

Commercial enterprise means any business, corporation, association, partnership, or natural person; or any trustee, lessee, agent, assign or other legal entity of any of the above.

Disseminate means to import, publish, produce, print, manufacture, distribute, sell, lease, rent, exhibit or display.

Engage in means to solicit, produce, direct, finance, physically participate in, compensate others for, further the interest of, or otherwise be involved with the proscribed conduct.

Exhibit or *exhibition* means any aural, visual, or tactile performance, dramatization, simulation of, show or display which includes any amount of human, animal or animated conduct presented in a live performance or by silhouette.

Material means any printed matter, visual representation or sound recording including but not limited to, books, magazines, motion pictures, photographs, figures, statues or other types of representation or embodiment.

Obscene means any conduct, exhibit, or material of a sexual nature which:

- (1) To the average individual applying contemporary community standards considered as a whole, appeals to prurient interests;
- (2) Presents in a patently offensive manner, sexual acts, sodomy, bestiality, excretory functions, masturbation, direct stimulation of male, or female or animal genitals, flagellation or torture in the context of sexual acts or gratification, exhibits of male or female genitals; and
- (3) Considered as a whole lacks serious literary, artistic, political or scientific value.

Present means to show, reveal, display or expose to any person.

(T.M. of 6-18-2011(3))

Sec. 14-3. Prohibition.

(a) It shall be unlawful for any commercial enterprise to present for profit, any obscene exhibitions within the Town of Eliot.

(b) It shall be unlawful for any commercial enterprise to engage in for profit, any obscene exhibitions within the Town of Eliot.

(c) It shall be unlawful for any commercial enterprise to disseminate any obscene materials for profit within the Town of Eliot.

(d) It shall be unlawful for any commercial enterprise to solicit, permit, promote, or assist any commercial enterprise or private person to present, engage in or disseminate any obscene exhibit or materials within the Town of Eliot.

(T.M. of 6-18-2011(3))

Sec. 14-4. Exceptions.

(a) This article is not intended to regulate any established or existing school, church, museum, private or public library or governmental agency nor their libraries or collections as they many exist under state, local or federal law.

(b) This article is not intended to regulate any conduct expressly regulated by existing state statute.

(T.M. of 6-18-2011(3))

Sec. 14-5. Penalty.

(a) Any conduct made unlawful by this article and any violation of this article shall be punishable by a civil penalty of not less than \$100.00 and not more than \$2,500.00 for each violation, plus attorneys' fees and costs, to be recovered on complaint, to the use of the Town of Eliot. Each day that such unlawful act or violation continues shall be considered a separate violation.

(b) In addition to any other penalty provided by law, the commission of acts prohibited by this article shall constitute a nuisance and may be abated by the town seeking an injunction to prohibit further and continued violations.

(T.M. of 6-18-2011(3))

Sec. 14-6. Applicability of article to pending applications.

Notwithstanding anything to the contrary in 1 M.R.S.A. § 302, or in section 1-20 of the Eliot Municipal Code, this article applies to any applications pending or approved on the date of its passage, regardless of whether such applications would constitute a "pending proceeding" under 1 M.R.S.A. § 302. Nothing in this article shall be interpreted to mean it is other than a police power regulation, effective in relation to its regulated activities once enacted.

(T.M. of 6-18-2011(3))

Sec. 14-7. Severability.

This article and each section and provision of said article hereunder, are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said article, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid. Should any procedural aspect of this article be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this article.

(T.M. of 6-18-2011(3))

Sec. 14-8. Conflicting code provisions repealed.

Any provision(s) in the Municipal Code of Ordinances, Town of Eliot, Maine specifically in conflict with any provision in this article is hereby deemed inoperative and repealed. The Ordinance Prohibiting Material or Obscenity for Commercial Gain in the Town of Eliot, Maine of July 16, 1980 is hereby repealed.

(T.M. of 6-18-2011(3))

Sec. 14-9. Effective date.

This article shall take effect and be in force from the time of its adoption by the voters of the Town of Eliot at town meeting.

(T.M. of 6-18-2011(3))

Chapters 15—20

RESERVED

Subpart B

LAND USE REGULATIONS

Chapter 21

BUILDINGS AND BUILDING REGULATIONS*

- Sec. 21-1. Building code adopted.
- Sec. 21-2. Designation, duties of building official.
- Sec. 21-3. Enforcement and penalties.
- Sec. 21-4. Permit.
- Sec. 21-5. Appeals.

***Cross references**—All new dwelling units required to comply with the growth management requirements, § 29-4; growth permit required, § 29-41; comprehensive plan adopted, § 33-36.

Sec. 21-1. Building code adopted.

There is hereby adopted by the town for the purposes of establishing rules and regulations for the construction, alteration, removal, demolition, equipment, use and occupancy, relocation, location and maintenance of buildings and structures, including permits and penalties, the Maine Uniform Building and Energy Code as such components may be revised from time to time by the Technical Building Codes and Standards Board. The same is hereby adopted and incorporated as fully as if set out in length herein and the provisions thereof shall be controlling in the construction of all residential buildings and structures therein contained within the corporate limits of the town. One copy is on file in the office of the town clerk.

(T.M. of 3-12-73 art. 58, (§ 1); T.M. of 6-14-05; T.M. of 6-18-2011(4))

Cross reference—Code enforcement officer, § 2-51 et seq.

Sec. 21-2. Designation, duties of building official.

For purposes of the code adopted in section 21-1, the code enforcement officer shall be designated as the building official and it shall be the duty of the code enforcement officer to enforce the building code according to the terms set forth in this chapter. The code enforcement officer may require whatever plans, information or sketches he reasonably deems necessary before a determination of whether a permit shall be issued under the terms of this chapter. The code enforcement officer shall in all cases involving new construction, require that a soils test be conducted on the premises by a site evaluator licensed by the State of Maine and the results thereof shall be approved by the plumbing inspector before any permit is issued under the terms of this chapter. A soils test will be required only in these cases where sewage systems will be involved in the construction.

(T.M. of 3-24-73 art. 58, (§ 3); T.M. of 3-20-04)

Sec. 21-3. Enforcement and penalties.

The building code adopted in this chapter shall be enforced pursuant to section 45-6.

Sec. 21-4. Permit.

Building permits shall be issued in accordance with sections 45-125, 45-131 and 45-132.

Cross references—Procedure for issuing building permits, § 45-125; procedure for issuing plumbing permits, § 45-131; procedure for the issuing of electrical permits, § 45-132.

Sec. 21-5. Appeals.

Appeals regarding any order of the code enforcement officer shall be processed pursuant to section 45-46 et seq.

Cross reference—Board of appeals, § 45-46 et seq.

Chapters 22—24

RESERVED

Chapter 25

FLOODPLAIN MANAGEMENT ORDINANCE*

Article I. General

- Sec. 25-1. Definitions.
- Sec. 25-2. Purpose and establishment.
- Sec. 25-3. Review of subdivision and development proposals.
- Sec. 25-4. Enforcement and penalties.
- Sec. 25-5. Validity and severability.
- Sec. 25-6. Conflict with other ordinances.
- Secs. 25-7—25-15. Reserved.

Article II. Permit Required

- Sec. 25-16. Required.
- Sec. 25-17. Application for permit.
- Sec. 25-18. Application fee and expert's fee.
- Secs. 25-19—25-25. Reserved.

Article III. Review Standards for Flood Hazard Development Permit Applications

- Sec. 25-26. Review of applications; issuance of permit.
- Secs. 27—35. Reserved.

Article IV. Development Standards

- Sec. 25-36. Scope.
- Sec. 25-37. All development specifications.
- Sec. 25-38. Utilities.
- Sec. 25-39. Watercourse carrying capacity.
- Sec. 25-40. Lowest floor elevation.
- Sec. 25-41. Floodways.
- Sec. 25-42. Enclosed areas below the lowest floor.
- Sec. 25-43. Bridges.
- Sec. 25-44. Containment walls.
- Sec. 25-45. Wharves, piers and docks.
- Secs. 25-46—25-60. Reserved.

***Editor's note**—At a town meeting held on June 16, 2007, Ch. 25 was amended in its entirety, in effect deleting Ch. 25 as being superseded and providing for a new Ch. 25 to read as set out herein. The amendment supplied provisions to be set out as §§ 25-1—25-26. In order to maintain the style of the Code and ease of supplementation, at the discretion of the editor, these provisions have been redesignated as §§ 25-1—26-75. Former Ch. 25 pertained to flood prevention and protection and derived from a town meeting held on Jan. 15, 1991.

Cross references—Site plan review, § 33-56; subdivisions, ch. 41; zoning, ch. 45.

ELIOT CODE

Article V. Certificate of Compliance

Sec. 25-61. Required; issuance.
Secs. 25-62—25-70. Reserved.

Article VI. Appeals and Variances

Sec. 25-71. Hearing by board of appeals.
Sec. 25-72. Criteria for granting.
Sec. 25-73. Issuance of variance.
Sec. 25-74. Notice to applicant; indemnity of town.
Sec. 25-75. Appeal procedure for administrative and variance appeals.

ARTICLE I. GENERAL**Sec. 25-1. Definitions.**

See section 1-2.
(T.M. of 6-16-07, § 25-1)

Sec. 25-2. Purpose and establishment.

Certain areas of the town are subject to periodic flooding, causing serious damages to properties within these areas. Relief is available in the form of flood insurance as authorized by the National Flood Insurance Act of 1968.

Therefore, the town has chosen to become a participating community in the National Flood Insurance Program, and agrees to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as delineated in this floodplain management ordinance.

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

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

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

The areas of special flood hazard, Zones A and AE, are identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study - Town of Eliot, Maine, York County," dated June 5, 1989 with accompanying "Flood Insurance Rate Map" dated June 5, 1989, which are hereby adopted by reference and declared to be a part of this chapter.
(T.M. of 6-16-07, § 25-2)

Sec. 25-3. Review of subdivision and development proposals.

The planning board shall, when reviewing subdivisions and other proposed developments that require review under other federal law, state law or local ordinances or regulations and all projects on five or more disturbed acres, or in the case of manufactured home parks divided into two or more lots, assure that:

- (1) All such proposals are consistent with the need to minimize flood damage.
- (2) All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damages.

- (3) Adequate drainage is provided so as to reduce exposure to flood hazards.
 - (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.
 - (5) Any proposed development plan must include a condition of plan approval requiring that structures on any lot in the development having any portion of its land within a special flood hazard area, are to be constructed in accordance with article VI of this chapter. Such requirement will be included in any deed, lease, purchase and sale agreement, or document transferring or expressing an intent to transfer any interest in real estate or structure, including but not limited to a time-share interest. The condition shall clearly articulate that the municipality may enforce any violation of the construction requirement and that fact shall also be included in the deed or any other document previously described. The construction requirement shall also be clearly stated on any map, plat, or plan to be signed by the planning board or local reviewing authority as part of the approval process.
- (T.M. of 6-16-07, § 25-3)

Sec. 25-4. Enforcement and penalties.

- (a) It shall be the duty of the code enforcement officer to enforce the provisions of this chapter pursuant to Title 30-A MRSA § 4452.
- (b) The penalties contained in Title 30-A MRSA § 4452 shall apply to any violation of this Ordinance.
- (c) In addition to any other actions, the code enforcement officer, upon determination that a violation exists, 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.

(T.M. of 6-16-07, § 25-4)

Sec. 25-5. Validity and severability.

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

(T.M. of 6-16-07, § 25-5)

Sec. 25-6. Conflict with other ordinances.

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

(T.M. of 6-16-07, § 25-6)

Secs. 25-7—25-15. Reserved.**ARTICLE II. PERMIT REQUIRED****Sec. 25-16. Required.**

Before any construction or other development (as defined in section 1-2), including the placement of manufactured homes, begins within any areas of special flood hazard established in article I, a flood hazard development permit shall be obtained from the code enforcement officer. This permit shall be in addition to any other permits which may be required pursuant to the codes and ordinances of the town.

(T.M. of 6-16-07, § 25-7)

Sec. 25-17. Application for permit.

The application for a flood hazard development permit shall be submitted to the code enforcement officer and shall include:

- (1) The name, address and phone number of the applicant, owner, and contractor;
- (2) An address and a map indicating the location of the construction site;
- (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;
- (4) A statement of the intended use of the structure and/or development;
- (5) A statement of the cost of the development including all materials and labor;
- (6) A statement as to the type of sewage system proposed;
- (7) Specification of dimensions of the proposed structure and/or development;

[Items (8)—(11)b. apply only to new construction and substantial improvements.]

- (8) The elevation in relation to the National Geodetic Vertical Datum (NGVD), or to a locally established datum in Zone A only, of the:
 - a. Base flood at the proposed site of all new or substantially improved structures, which is determined:
 1. In Zones AE, from data contained in the "Flood Insurance Study - Town of Eliot, Maine," as described in article I; or,
 2. In Zone A:
 - (i) 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 25-16 and subsection 25-3(4)
 - (ii) 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,
 - (iii) 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.
 - b. Highest and lowest grades at the site adjacent to the walls of the proposed building;
 - c. Lowest floor, including basement; and whether or not such structures contain a basement; and,
 - d. Level, in the case of nonresidential structures only, to which the structure will be floodproofed.
- (9) A description of an elevation reference point established on the site of all developments for which elevation standards apply as required in article IV;
- (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;
- (11) The following certifications as required in article IV by a registered professional engineer or architect:
 - a. A floodproofing certificate (FEMA Form 81-65, 01/03, as amended), to verify that the floodproofing methods for any nonresidential structures will meet the floodproofing criteria of subsection (9)d.; subsection 25-15(b); and other applicable standards in article IV;

- b. A hydraulic openings certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of subsection 25-17.A.2(a);
 - c. A certified statement that bridges will meet the standards of section 25-18;
 - d. Certified statement that containment walls will meet the standards of section 25-19;
- (12) A description of the extent to which any water course will be altered or relocated as a result of the proposed development; and,
- (13) A statement of construction plans describing in detail how each applicable development standard in article IV will be met.
- (T.M. of 6-16-07, § 25-8)

Sec. 25-18. Application fee and expert's fee.

(a) A nonrefundable application fee in the amount established by the fee schedule set in section 1-25 shall be paid to the town clerk and a copy of a receipt for the same shall accompany the application for a flood hazard development permit.

(b) An additional fee may be charged if the code enforcement officer and/or board of appeals need the assistance of a professional engineer or other expert. The expert's fee shall be paid in full by the applicant within ten days after the town submits a bill to the applicant. Failure to pay the bill shall constitute a violation of the ordinance and be grounds for the issuance of a stop work order. An expert shall not be hired by the municipality at the expense of an applicant until the applicant has either consented to such hiring in writing or been given an opportunity to be heard on the subject. An applicant who is dissatisfied with a decision to hire expert assistance may appeal that decision to the board of appeals.

(T.M. of 6-16-07, § 25-9)

Secs. 25-19—25-25. Reserved.

**ARTICLE III. REVIEW STANDARDS FOR FLOOD HAZARD DEVELOPMENT
PERMIT APPLICATIONS**

Sec. 25-26. Review of applications; issuance of permit.

The code enforcement officer shall:

- (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 requirements of article IV (Development standards) have been, or will be met;
- (2) Utilize, in the review of all flood hazard development permit applications:
 - a. The base flood and floodway data contained in the "Flood Insurance Study - Town of Eliot, Maine," as described in article I;

- b. 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 subsection 25-17(8)a.2.; section 25-16; and subsection 25-3(3), in order to administer article IV of this chapter; and,
 - c. When the code enforcement officer establishes a base flood elevation in a Zone A by methods outlined in subsection 25-17(8)a.2., the code enforcement officer shall submit that data to the Maine Floodplain Management Program in the state planning office.
- (3) Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in article I of this chapter;
- (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;
- (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;
- (6) If the application satisfies the requirements of this chapter, approve the issuance of one of the following flood hazard development permits based on the type of development:
 - a. 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 subsection 25-15.A, B or C. 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,
 - b. A flood hazard development permit for floodproofing of nonresidential structures that are new construction or substantially improved nonresidential structures that are not being elevated but that meet the floodproofing standards of subsection 25-15.B.1.a, b and c. The application for this permit shall include a floodproofing certificate signed by a registered professional engineer or architect; or,

- c. 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 percent of the market value of the structure. Minor development also includes, but is not limited to: accessory structures as provided for in subsection 25-15.E, 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 nonstructural projects such as bridges, dams, towers, fencing, pipelines, wharves and piers.
 - (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 article VI of this chapter, and copies of elevation certificates, floodproofing certificates, certificates of compliance and certifications of design standards required under the provisions of articles II, IV, and V of this chapter.
- (T.M. of 6-16-07, § 25-10)

Secs. 27—35. Reserved.

ARTICLE IV. DEVELOPMENT STANDARDS

Sec. 25-36. Scope.

All developments in areas of special flood hazard shall meet the following applicable standards in this article:

(T.M. of 6-16-07, § 25-11)

Sec. 25-37. All development specifications.

All development shall:

- (1) Be designed or modified and adequately anchored to prevent flotation (excluding piers and docks), collapse or lateral movement of the development resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- (2) Use construction materials that are resistant to flood damage;
- (3) Use construction methods and practices that will minimize flood damage; and,
- (4) Use electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during flooding conditions.

(T.M. of 6-16-07, § 25-12)

Sec. 25-38. Utilities.

(a) *Water supply.* All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems.

(b) *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.

(c) *On site waste disposal systems.* On site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during floods.

(T.M. of 6-16-07, § 25-13)

Sec. 25-39. 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.

(T.M. of 6-16-07, § 25-14)

Sec. 25-40. Lowest floor elevation.

(a) *Residential.* New construction or substantial improvement of any residential structure located within:

- (1) Zones AE shall have the lowest floor (including basement) elevated to at least two feet above the base flood elevation.
- (2) Zone A shall have the lowest floor (including basement) elevated to at least two feet above the base flood elevation utilizing information obtained pursuant to subsection 25-17(8)a.2, 25-2(2), or 25-3(4).

(b) *Nonresidential.* New construction or substantial improvement of any nonresidential structure located within:

- (1) Zones AE shall have the lowest floor (including basement) elevated to at least two feet above the base flood elevation, or together with attendant utility and sanitary facilities shall:
 - a. Be floodproofed to at least two feet above the base flood elevation so that below that elevation the structure is watertight with walls substantially impermeable to the passage of water;
 - b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
 - c. Be certified by a registered professional engineer or architect that the floodproofing design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall

be provided with the application for a flood hazard development permit, as required by subsection 25-17(11) and shall include a record of the elevation above mean sea level to which the structure is floodproofed.

- (2) Zone A shall have the lowest floor (including basement) elevated to at least two feet above the base flood elevation utilizing information obtained pursuant to subsection 25-17(8)a.2; subsection 25-26(2); subsection or 25-3(4), or

- a. Together with attendant utility and sanitary facilities meet the floodproofing standards of subsection (b)(1).

(c) *Manufactured homes.* New or substantially improved manufactured homes located within:

- (1) Zones AE shall:

- a. Be elevated such that the lowest floor (including basement) of the manufactured home is at least two feet above the base flood elevation;
- b. Be on a permanent foundation, which may be poured masonry slab or foundation walls, with hydraulic openings, or may be reinforced piers or block supports, any of which support the manufactured home so that no weight is supported by its wheels and axles; and,
- c. Be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to:
1. Over-the-top ties anchored to the ground at the four corners of the manufactured home, plus two additional ties per side at intermediate points (manufactured homes less than 50 feet long require one additional tie per side); or by,
 2. Frame ties at each corner of the home, plus five additional ties along each side at intermediate points (manufactured homes less than 50 feet long require four additional ties per side).
 3. All components of the anchoring system described in subsection (c)(1)c.1 and 2 shall be capable of carrying a force of 4,800 pounds.

- (2) Zone A shall:

- a. Be elevated on a permanent foundation, as described in subsection (c)(1)b, such that the lowest floor (including basement) of the manufactured home is at least two feet above the base flood elevation utilizing information obtained pursuant to subsection 25-17(8)a.2; subsection 25-26(2); or subsection 25-3(4); and
- b. Meet the anchoring requirements of subsection (c)(1)c.

(d) *Recreational vehicles.* Recreational vehicles located within:

- (1) Zones AE shall either:

- a. Be on the site for fewer than 180 consecutive days,

- b. Be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or,
- c. Be permitted in accordance with the elevation and anchoring requirements for "manufactured homes" in subsection (c)(1).

(e) *Accessory structures.* Accessory structures, as defined in section 1-2, located within Zones AE and A, shall be exempt from the elevation criteria required in subsections (a) and (b) above, if all other requirements of article IV and all the following requirements are met. Accessory structures shall:

- (1) Be 500 square feet or less and have a value less than \$3,000.00;
- (2) Have unfinished interiors and not be used for human habitation;
- (3) Have hydraulic openings, as specified in subsection 25-42(a)(2) in at least two different walls of the accessory structure;
- (4) Be located outside the floodway;
- (5) When possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than is the primary structure; and,
- (6) Have only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and when possible outside the special flood hazard area.

(T.M. of 6-16-07, § 25-15)

Sec. 25-41. Floodways.

(a) In Zones 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.

(b) In Zones 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 subsection (c) 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:

- (1) Will not increase the water surface elevation of the base flood more than one foot at any point within the community; and,

- (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).

(c) In Zones 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.

(T.M. of 6-16-07, § 25-16)

Sec. 25-42. 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 article IV, including the elevation requirements of subsections 25-40(a), (b) or (c) and is elevated on posts, columns, piers, piles, "stilts," or crawlspaces may be enclosed below the base flood elevation requirements provided all the following criteria are met or exceeded:

- (1) Enclosed areas are not "basements" as defined in section 1-2;
- (2) Enclosed areas shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either:
 - a. Be engineered and certified by a registered professional engineer or architect; or,
 - b. Meet or exceed the following minimum criteria:
 1. A minimum of two openings having a total net area of not less than one square inch for every square foot of the enclosed area;
 2. The bottom of all openings shall be below the base flood elevation and no higher than one foot above the lowest grade; and,
 3. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the entry and exit of floodwaters automatically without any external influence or control such as human intervention, including the use of electrical and other non-automatic mechanical means;
- (3) The enclosed area shall not be used for human habitation; and,
- (4) The enclosed areas are usable solely for building access, parking of vehicles, or storage.

(T.M. of 6-16-07, § 25-17)

Sec. 25-43. Bridges.

New construction or substantial improvement of any bridge in Zones AE and A shall be designed such that:

- (1) When possible, the lowest horizontal member (excluding the pilings, or columns) is elevated to at least two feet above the base flood elevation; and

(2) A registered professional engineer shall certify that:

- a. The structural design and methods of construction shall meet the elevation requirements of this section and the floodway standards of section 25-16; and
- b. The foundation and superstructure attached thereto are designed to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all structural components. Water loading values used shall be those associated with the base flood.

(T.M. of 6-16-07, § 25-18)

Sec. 25-44. Containment walls.

New construction or substantial improvement of any containment wall located within:

(1) Zones AE and A shall:

- a. Have the containment wall elevated to at least two feet above the base flood elevation;
- b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
- c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a flood hazard development permit, as required by subsection 25-17(11).

(T.M. of 6-16-07, § 25-19)

Sec. 25-45. Wharves, piers and docks.

New construction or substantial improvement of wharves, piers, and docks are permitted in Zones AE and A, in and over water and seaward of the mean high tide if the following requirements are met:

- (1) Wharves, piers, and docks shall comply with all applicable local, state, and federal regulations; and
- (2) For commercial wharves, piers, and docks, a registered professional engineer shall develop or review the structural design, specifications, and plans for the construction.

(T.M. of 6-16-07, § 25-20)

Secs. 25-46—25-60. Reserved.

ARTICLE V. CERTIFICATE OF COMPLIANCE**Sec. 25-61. Required; issuance.**

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:

- (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 subsection 25-40(a), (b), or (c).
- (2) The applicant shall submit written notification to the code enforcement officer that the development is complete and complies with the provisions of this chapter.
- (3) Within ten working days, the code enforcement officer shall:
 - a. Review the elevation certificate and the applicant's written notification; and,
 - b. Upon determination that the development conforms with the provisions of this ordinance, shall issue a certificate of compliance.

(T.M. of 6-16-07, § 25-21)

Secs. 25-62—25-70. Reserved.**ARTICLE VI. APPEALS AND VARIANCES****Sec. 25-71. Hearing by board of appeals.**

The board of appeals of the Town of Eliot may, upon written application of an aggrieved party, hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the code enforcement officer or planning board in the administration or enforcement of the provisions of this chapter.

(T.M. of 6-16-07, § 25-22)

Sec. 25-72. Criteria for granting.

The board of appeals may grant a variance from the requirements of this chapter consistent with state law and the following criteria:

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

- threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances; and,
- c. A showing that the issuance of the variance will not conflict with other state, federal or local laws or ordinances; and,
 - d. A determination that failure to grant the variance would result in "undue hardship," which in this subsection means:
 1. That the land in question cannot yield a reasonable return unless a variance is granted; and,
 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,
 3. That the granting of a variance will not alter the essential character of the locality; and,
 4. That the hardship is not the result of action taken by the applicant or a prior owner.

(T.M. of 6-16-07, § 25-23)

Sec. 25-73. Issuance of variance.

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.

- (1) Variances may be issued for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that:
 - a. Other criteria of article VI and section 25-41 are met; and,
 - b. 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) Variances may be issued for the repair, reconstruction, rehabilitation, or restoration of historic structures upon the determination that:
 - a. The development meets the criteria of section 25-72; and,
 - b. 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.

(T.M. of 6-16-07, § 25-24)

Sec. 25-74. Notice to applicant; indemnity of town.

Any applicant who meets the criteria of section 25-72 and this section shall be notified by the board of appeals in writing over the signature of the chairman of the board of appeals that:

- (1) The issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25.00 per \$100.00 of insurance coverage;

- (2) Such construction below the base flood level increases risks to life and property; and,
 - (3) The applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.
- (T.M. of 6-16-07(2), § 25-25)

Sec. 25-75. Appeal procedure for administrative and variance appeals.

(a) An administrative or variance appeal may be taken to the board of appeals by an aggrieved party within 30 days after receipt of a written decision of the code enforcement officer or planning board.

(b) Upon being notified of an appeal, the code enforcement officer or planning board, as appropriate, shall transmit to the board of appeals all of the papers constituting the record of the decision appealed from.

(c) The board of appeals shall hold a public hearing on the appeal within 35 days of its receipt of an appeal request.

(d) The person filing the appeal shall have the burden of proof.

(e) The board of appeals shall decide all appeals within 35 days after the close of the hearing, and shall issue a written decision on all appeals.

(f) The board of appeals shall submit to the code enforcement officer a report of all variance actions, including justification for the granting of the variance and an authorization for the code enforcement officer to issue a flood hazard development permit, which includes any conditions to be attached to said permit.

(g) Any aggrieved party who participated as a party during the proceedings before the board of appeals may take an appeal to superior court in accordance with state laws within 45 days from the date of any decision of the board of appeals.

(T.M. of 6-16-07, § 25-26)

Chapters 26—28

RESERVED

Chapter 29

GROWTH MANAGEMENT*

Article I. In General

- Sec. 29-1. Definitions.
- Sec. 29-2. Purpose.
- Sec. 29-3. Exemption.
- Sec. 29-4. Compliance required.
- Sec. 29-5. Maximum rate of housebuilding; exemptions.
- Sec. 29-6. Legal authority.
- Sec. 29-7. Periodic review.
- Sec. 29-8. Amendments.
- Sec. 29-9. Appeals.
- Sec. 29-10. Violations.
- Sec. 29-11. Penalty.
- Secs. 29-12—29-40. Reserved.

Article II. Permit

- Sec. 29-41. Application.
- Sec. 29-42. Issuance procedure.
- Sec. 29-43. System for ranking applications.
- Sec. 29-44. Submitting false information; reconsideration of disapproved applications.
- Sec. 29-45. Reserved.
- Sec. 29-46. Replacement with building permit and expiration.
- Sec. 29-47. Nontransferability.
- Sec. 29-48. Conflict with other provisions.
- Sec. 29-49. Expiration of growth management ordinance.

***Cross references**—Planning and development, ch. 33; comprehensive plan adopted, § 33-36; comprehensive plan, § 33-36 et seq.; site review procedures, § 33-56; subdivisions, ch. 41; zoning, ch. 45.

State law reference—Growth management, 30-A M.R.S.A. § 4326.

ARTICLE I. IN GENERAL**Sec. 29-1. Definitions.**

(See section 1-2).

Editor's note—A Town Meeting held on Nov. 6, 2001, art. 4, revised § 29-1, which pertained to definitions, and derived from T.M. of 12-2-78; T.M. of 3-21-87, (§ 3.12); T.M. of 3-28-98, § 1. Former provisions of this section can now be found in § 1-2 of this Code.

Sec. 29-2. Purpose.

The purpose of this chapter is to:

- (1) Provide for the local housing needs of the town's existing residents.
 - (2) Plan for continued residential population growth of the town at a rate which would be compatible with the orderly and gradual expansion of community services, including education, fire and police protection, road maintenance, waste disposal, health services, etc.
 - (3) Avoid a situation in which the rapid completion of major subdivisions, housing many families with school-age children, could outstrip the town's capability to expand its schools and other services soon enough to avoid serious overcrowding.
 - (4) Ensure fairness in the allocation of building permits.
- (T.M. of 12-2-78; T.M. of 3-21-87, (§§ 1.1—1.5); T.M. of 3-28-98, §§ 2, 3)

Sec. 29-3. Exemption.

(a) The repair, replacement, reconstruction or alteration of any existing building or structure is exempt from the provisions of this chapter.

(b) Dwelling units in elderly housing, as defined in section 45-1 of this Code, shall be exempt from the provisions of this chapter.

(c) Dwelling units in assisted living facility, as defined in section 45-1 of this Code, shall be exempt from the provisions of this chapter.

(T.M. of 12-2-78; T.M. of 3-21-87, (§ 1.6); T.M. of 3-28-98, § 4; T.M. of 6-19-01(art. 8))

Sec. 29-4. Compliance required.

All new dwelling units, including new mobile homes, within the town, whether permanent or seasonal, shall conform with the provisions of this chapter. No new dwelling unit which fails to meet the requirements of this chapter shall be constructed or placed within the town.

(T.M. of 12-2-78; T.M. of 3-21-87, (§ 2.1))

Cross references—Buildings and building regulations, ch. 21; site review procedures, § 33-56 et seq.; building and zoning permits, § 45-125 et seq.

Sec. 29-5. Maximum rate of housebuilding; exemptions.

(a) The planning board shall publish in the annual report of the municipal officers of the town the specific number of new dwelling units, not including permits for affordable housing, at 105 percent of the mean number of permits issued in Eliot during the ten years immediately prior to the year in which the number is calculated. If the number is determined to be an odd number increase to the next even number. The mean is determined by adding together the total number of growth permits issued for each year in the prior ten years and dividing by ten. This annual total shall be subject to the review procedure in section 29-7.

(b) In addition, the planning board shall publish in the annual report of the municipal officers of the town, the specific number of new dwelling units for affordable housing at an additional ten percent of the number of growth permits set forth in subsection (a). This annual total shall be subject to the review procedure in section 29-7.

(T.M. of 12-2-78; T.M. of 3-21-87, (§ 2.2); T.M. of 3-28-98, § 5; T.M. of 6-16-07)

Sec. 29-6. Legal authority.

This chapter is adopted pursuant to Home Rule Powers as provided for in Article VIII-A of the Maine Constitution and 30-A M.R.S.A. § 2101 et seq.

(T.M. of 12-2-78; T.M. of 3-21-87, (§ 3.2))

Sec. 29-7. Periodic review.

The operation of this chapter shall be reviewed by the planning board periodically (but not less frequently than once every three years), to ensure that the annual maximum growth rate has not become inconsistent with the town's capital improvement capability to establish or enlarge needed public facilities and services. Based on its review the planning board may recommend amending this chapter as provided in section 29-8.

(T.M. of 12-2-78; T.M. of 3-21-87, (§ 3.3); T.M. of 3-28-98, § 6)

Sec. 29-8. Amendments.

(a) An amendment to this chapter may be initiated by one of the following:

- (1) The planning board, provided a majority of the board has so voted.
- (2) Request of the municipal officers to the planning board.
- (3) Written petition of a number of voters equal to at least ten percent of the number of votes cast in the town at the last gubernatorial election.

(b) An amendment to this chapter shall be adopted by majority vote of registered voters present and voting.

(c) The planning board shall hold a public hearing on the proposed amendment at least 30 days prior to the town meeting at which it will be voted upon. Notice of the hearing shall be posted at least ten days in advance in two newspapers of general circulation in the area.

(T.M. of 12-2-78; T.M. of 3-21-87, (§ 3.8))

Sec. 29-9. Appeals.

An appeal may be taken from any decision of the code enforcement to the board of appeals in accordance with zoning chapter and from the board of appeals to the superior court as provided by state statute.

(T.M. of 12-2-78; T.M. of 3-21-87, (§ 3.9); T.M. of 3-28-98, § 7)

Cross reference—Board of appeals, § 45-46 et seq.

Sec. 29-10. Violations.

(a) It shall be a violation of this chapter for any person to build or place a dwelling unit within the town, without first having obtained a building permit in accordance with the zoning chapter from the code enforcement officer, unless such construction or placement constitutes an exception under this chapter.

(b) If a dwelling has been constructed or placed without a building permit in accordance with the zoning chapter, it shall also be a violation for any person to convey such dwelling.

(T.M. of 12-2-78; T.M. of 3-21-87, (§ 3.10))

Sec. 29-11. Penalty.

(a) Any person owning or controlling the use of any residence being constructed in violation of this chapter shall be guilty of a misdemeanor, and on conviction shall be fined not less than \$50.00 for each day such a violation (construction activity) continues after notification by the code enforcement officer.

(b) If a dwelling unit has been built in violation of this chapter and then conveyed for residential use, the conveyer shall be guilty of a misdemeanor, and on conviction shall be fined not less than \$5,000.00.

(c) If a dwelling unit has been built in violation of this chapter and is then occupied by the builder or his family, for residential use, the builder shall be guilty of a misdemeanor, and on conviction shall be fined as provided in 17-A M.R.S.A.

(T.M. of 12-2-78; T.M. of 3-21-87, (§ 3.11))

Secs. 29-12—29-40. Reserved.**ARTICLE II. PERMIT*****Sec. 29-41. Application.**

(a) A growth permit application must be completed by the lot owner of record, including all endorsements and certifications.

***Cross references**—Buildings and building regulations, ch. 21; site review procedures, § 33-56 et seq.; zoning permit requirements, § 45-125 et seq.

(b) Applications shall be on forms provided by the town. The code enforcement officer may request additional information and shall have the authority to require that the application be revised or supplemented in order to meet state or local requirements.

(T.M. of 12-2-78; T.M. of 3-21-87, (§ 2.3))

Sec. 29-42. Issuance procedure.

Growth permit applications shall be submitted to the code enforcement officer who shall endorse each with the date and time of receipt. In the event two or more growth permit applications are received simultaneously, the code enforcement officer shall determine their order by random selection. The code enforcement officer shall review growth permit applications in the same order as they are received. The code enforcement officer shall review all growth permit applications for completeness and accuracy. When the code enforcement officer finds an application to be complete, they shall approve it, endorsing the date and time of approval on the application.

- (1) Growth permit applications approved by the code enforcement officer may be replaced by building permits according to their rankings in accordance with section 29-43. Growth permit applications approved by the code enforcement officer shall be separated into two groups, one group for dwelling units within a subdivision and another group for dwelling units not in a subdivision. Beginning on January first of each year and continuing until (but not including) the third Monday in December of each year, up to one-half of the approved growth permit applications for dwelling units within a subdivision may be replaced by building permits and up to one-half of the approved growth permit applications for dwelling units not within a subdivision may be replaced by building permits, according to their rankings within each group. Beginning on the third Monday in December any remaining approved growth permit applications may be replaced by building permits according to their rankings without regard to the distinction between subdivision and non-subdivision dwelling units until the total number of growth permits allowed for new dwelling units (published in the annual report of the municipal officers of the town) have been issued. This subsection shall not apply to remaining growth permits designated specifically for affordable housing.
- (2) Any approved growth permit applications which have not been converted to building permits by December 31 shall expire and shall not be carried over to the next year.
- (3) Applications for new apartments and other new multi-family dwelling units shall be classified as dwelling units within a subdivision for the purposes of this article.
- (4) No more than eight building permits shall be issued for dwelling units within a single subdivision prior to the third Monday in December of each year, after which additional building permits for such subdivision may be issued in accordance with subparagraph (1).

(T.M. of 12-2-78; T.M. of 3-21-87, (§ 2.4 A.—F.); T.M. of 3-28-98, § 8; T.M. of 6-16-07)

Sec. 29-43. System for ranking applications.

The system for ranking growth permit applications shall be as follows:

- (1) *Time*: First come, first served based on when the application is approved and signed by the code enforcement officer.

(T.M. of 12-2-78; T.M. of 3-21-87, (§ 2.4 G.); T.M. of 3-28-98, § 9)

Sec. 29-44. Submitting false information; reconsideration of disapproved applications.

(a) Any person submitting false information on an application shall be subject to the penalties provided by law and shall not be eligible to apply for a growth permit application for a period of one year.

(b) Growth permit applications which are not approved by the code enforcement officer because of incomplete or inaccurate information shall be automatically reranked and reconsidered upon resubmission following corrections.

(T.M. of 12-2-78; T.M. of 3-21-87, (§ 2.4 G.); T.M. of 3-28-98, § 10)

Sec. 29-45. Reserved.

Editor's note—Section 11 of a Town Meeting held on March 28, 1998, deleted § 29-45 in its entirety. Formerly, § 29-45 pertained to the waiting mode for building permits and derived from Town Meeting of Dec. 2, 1978 and § 2.4 I., Town Meeting of March 21, 1987.

Sec. 29-46. Replacement with building permit and expiration.

(a) A growth permit application shall be replaced by a building permit for a dwelling on the specific site rated and approved as in sections 29-42 through 29-44. A growth permit which has not been replaced with a building permit within 90 days of growth permit approval by code enforcement officer shall be considered expired and must be resubmitted for consideration. Ranking of resubmitted growth permits will be based on new code enforcement officer approval dates. The expiration of the building permit shall be in conformity with section 45-128 of the zoning chapter.

(b) Upon application made prior to expiration of a growth permit, the code enforcement officer may extend the 90-day limit of subsection (a) by up to 60 additional days, if the code enforcement officer determines, in his or her sole and exclusive judgment, that weather conditions prevented the applicant from conducting the on-site testing necessary to design a subsurface wastewater disposal system.

(T.M. of 12-2-78; T.M. of 3-21-87, (§ 2.5); T.M. of 3-28-98, § 12; T.M. of 11-4-03)

Sec. 29-47. Nontransferability.

Growth permit applications shall be site-specific, and shall be valid for construction only on the lot specified on the application. However, such applications shall be transferable to new owners of the lot, should the property change hands. Transfer of ownership of the site shall

cause the application to be rerated according to section 29-43(4), but not by section 29-43(8). An application which is transferred not in accordance with this article shall be nullified and revoked by the code enforcement officer.

(T.M. of 12-2-78; T.M. of 3-21-87, (§ 3.4))

Sec. 29-48. Conflict with other provisions.

This article 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 article imposes a greater restriction upon the use of land, buildings or structures, the provisions of this article shall prevail.

(T.M. of 12-2-78; T.M. of 3-21-87, (§ 3.5))

Sec. 29-49. Expiration of growth management ordinance.

This growth management ordinance, chapter 29 shall expire in its entirety upon:

- (a) Approval of a revision to the 1978 supplemented comprehensive plan; and
 - (b) Approval of ordinance changes needed to comply with revised comprehensive plan.
- (T.M. of 3-28-98, § 13)

Chapter 30

RESERVED

Chapter 31

NON-STORMWATER DISCHARGES

- Sec. 31-1. Purpose.
- Sec. 31-2. Objectives.
- Sec. 31-3. Definitions.
- Sec. 31-4. Applicability.
- Sec. 31-5. Responsibility for administration.
- Sec. 31-6. Prohibition of non-stormwater discharges.
- Sec. 31-7. Suspension of access to the municipality's small MS4.
- Sec. 31-8. Monitoring of discharges.
- Sec. 31-9. Enforcement.
- Sec. 31-10. Severability.
- Sec. 31-11. Basis.

Sec. 31-1. Purpose.

The purpose of this Non-Stormwater Discharge Ordinance (the "ordinance") is to provide for the health, safety, and general welfare of the citizens of the Town of Eliot through the regulation of non-stormwater discharges to the municipality's storm drainage system as required by federal and state law. This chapter establishes methods for controlling the introduction of pollutants into the town's storm drainage system in order to comply with requirements of the federal Clean Water Act and state law.

(T.M. of 6-17-06)

Sec. 31-2. Objectives.

(a) To prohibit un-permitted or un-allowed non-stormwater discharges to the storm drainage system; and

(b) To set forth the legal authority and procedures to carry out all inspection, monitoring and enforcement activities necessary to ensure compliance with this chapter.

(T.M. of 6-17-06)

Sec. 31-3. Definitions.

Note: Definitions have been relocated to section 1-2, definitions and rules of construction. (T.M. of 6-17-06; T.M. of 6-9-09(2))

Sec. 31-4. Applicability.

This chapter shall apply to all persons discharging stormwater and/or non-stormwater discharges from any premises into the storm drainage system.

(T.M. of 6-17-06)

Sec. 31-5. Responsibility for administration.

The code enforcement officer of the town is the enforcement authority who shall administer, implement, and enforce the provisions of this chapter.

(T.M. of 6-17-06)

Sec. 31-6. Prohibition of non-stormwater discharges.

(a) *General prohibition.* Except as allowed or exempted herein, no person shall create, initiate, originate or maintain a non-stormwater discharge to the storm drainage system. Such non-stormwater discharges are prohibited notwithstanding the fact that the municipality may have approved the connections, drains or conveyances by which a person discharges un-allowed non-stormwater discharges to the storm drainage system.

(b) *Allowed non-stormwater discharges.* The creation, initiation, origination and maintenance of the following non-stormwater discharges to the storm drainage system is allowed:

- (1) Landscape irrigation; diverted stream flows; rising ground waters; uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)); uncontaminated pumped

ground water; uncontaminated flows from foundation drains; air conditioning and compressor condensate; irrigation water; flows from uncontaminated springs; uncontaminated water from crawl space pumps; uncontaminated flows from footing drains; lawn watering runoff; flows from riparian habitats and wetlands; residual street wash water (where spills/leaks of toxic or hazardous materials have not occurred, unless all spilled material has been removed and detergents are not used); hydrant flushing and fire fighting activity runoff; water line flushing and discharges from potable water sources; and individual residential car washing;

- (2) Discharges specified in writing by the enforcement authority as being necessary to protect public health and safety; and
- (3) Dye testing, with verbal notification to the enforcement authority prior to the time of the test.

(c) *Exempt person or discharge.* This chapter shall not apply to an exempt person or discharge, except that the enforcement authority may request from exempt persons and persons with exempt discharges copies of permits, notices of intent, licenses and orders from the EPA or DEP that authorize the discharge(s).

(T.M. of 6-17-06)

Sec. 31-7. Suspension of access to the municipality's small MS4.

The enforcement authority may, without prior notice, physically suspend discharge access to the storm drainage system to a person when such suspension is necessary to stop an actual or threatened non-stormwater discharge to the storm drainage system which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the storm drainage system, or which may cause the municipality to violate the terms of its environmental permits. Such suspension may include, but is not limited to, blocking pipes, constructing dams or taking other measures, on public ways or public property, to physically block the discharge to prevent or minimize a non-stormwater discharge to the storm drainage system. If the person fails to comply with a suspension order issued in an emergency, the enforcement authority may take such steps as deemed necessary to prevent or minimize damage to the storm drainage system, or to minimize danger to persons. In taking such steps the enforcement authority may enter upon the property of the premises at reasonable hours or a building on the premises with the consent of owner, occupant or agent.

(T.M. of 6-17-06)

Sec. 31-8. Monitoring of discharges.

In order to determine compliance with this chapter, the enforcement authority may enter upon and inspect the property of the premises subject to this chapter at reasonable hours or any building on the premises with the consent of the premises' owner, occupant or agent: to inspect the premises and connections thereon to the storm drainage system; and to conduct monitoring, sampling and testing of the discharge to the storm drainage system.

(T.M. of 6-17-06)

Sec. 31-9. Enforcement.

In order to determine compliance with this chapter, the enforcement authority may enter upon and inspect the property of the premises subject to this chapter at reasonable hours or any building on the premises with the consent of the premises' owner, occupant or agent: to inspect the premises and connections thereon to the storm drainage system; and to conduct monitoring, sampling and testing of the discharge to the storm drainage system.

- (1) *Notice of violation.* Whenever the enforcement authority believes that a person has violated this chapter, the enforcement authority may order compliance with this chapter by written notice of violation to that person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:
 - a. The elimination of non-stormwater discharges to the storm drainage system, including, but not limited to, disconnection of the premises from the MS4;
 - b. The cessation of discharges, practices, or operations in violation of this chapter;
 - c. At the person's expense, the abatement or remediation (in accordance with best management practices in DEP rules and regulations) of non-stormwater discharges to the storm drainage system and the restoration of any affected property; and/or
 - d. The payment of fines, of the municipality's remediation costs and of the municipality's reasonable administrative costs and attorneys' fees and costs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement or restoration must be completed.

- (2) *Penalties / fines / injunctive relief.* Any person who violates this chapter shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the municipality's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any person who violates this chapter also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred by the municipality for violation of federal and state environmental laws and regulations caused by or related to that person's violation of this chapter; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this section.
- (3) *Consent agreement.* The enforcement authority may, with the approval of the municipal officers, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this chapter for the purposes of eliminating violations of this chapter and of recovering fines, costs and fees without court action.
- (4) *Appeal of notice of violation.* Any person receiving a notice of violation or suspension notice may appeal the determination of the enforcement authority to the board of appeals in accordance with the applicable provisions of the Eliot Zoning Ordinance. The notice of appeal must be received within 30 days from the date of receipt of the

notice of violation. The board of appeals shall hold a de novo hearing on the appeal within 30 days from the date of receipt of the notice of appeal. The board of appeals may affirm, reverse or modify the decision of the enforcement authority. A suspension under section 31-7 remains in place unless or until lifted by the board of appeals or by a reviewing court. A party aggrieved by the decision of the board of appeals may appeal that decision to the Maine Superior Court within 45 days of the date of the board of appeals decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.

- (5) *Enforcement measures.* If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal to the board of appeals, within 45 days of a decision of the board of appeals affirming the enforcement authority's decision, then the enforcement authority may recommend to the municipal officers that the municipality's attorney file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.
- (6) *Ultimate responsibility of discharger.* The standards set forth herein are minimum standards; therefore this chapter does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants into waters of the U.S. caused by said person. This chapter shall not create liability on the part of the municipality, or any officer, agent or employee thereof for any damages that result from any person's reliance on this chapter or any administrative decision lawfully made hereunder.

(T.M. of 6-17-06)

Sec. 31-10. Severability.

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

(T.M. of 6-17-06)

Sec. 31-11. Basis.

The town enacts this Non-Stormwater Discharge Ordinance (the "ordinance") pursuant to 30-A M.R.S.A. § 3001 (Municipal Home Rule Ordinance Authority), 38 M.R.S.A. § 413 (the "Wastewater Discharge Law"), 33 U.S.C. § 1251 et seq. (the "Clean Water Act"), and 40 CFR Part 122 (U.S. Environmental Protection Agency's regulations governing the National Pollutant Discharge Elimination System ("NPDES")). The Maine Department of Environmental Protection, through its promulgation of the "General permit for the discharge of stormwater from small municipal separate storm sewer systems" dated June 3, 2003, has listed the Town of Eliot as having a regulated small municipal separate storm sewer system ("Small MS4"); under this general permit, listing as a regulated small MS4 necessitates enactment of this chapter as part of the municipality's stormwater management program.

(T.M. of 6-17-06)

Chapter 32

RESERVED

Chapter 33

PLANNING AND DEVELOPMENT*

Article I. In General

Secs. 33-1—33-35. Reserved.

Article II. Comprehensive Plan

Sec. 33-36. Adopted.

Secs. 33-37—33-55. Reserved.

Article III. Site Plan Review

Division 1. Generally

Sec. 33-56. Definitions.
Sec. 33-57. Purpose.
Sec. 33-58. Application of article.
Sec. 33-59. Expiration of conditional use permit.
Sec. 33-60. Reference to other ordinances.
Sec. 33-61. Conflict with other provisions.
Sec. 33-62. Legal authority.
Sec. 33-63. Initiation of review process.
Sec. 33-64. Site inspection.
Sec. 33-65. Enforcement.
Sec. 33-66. Violations.
Sec. 33-67. Penalty.
Secs. 33-68—33-80. Reserved.

Division 2. Administration

Sec. 33-81. Amendments.
Sec. 33-82. Appeals.
Secs. 33-83—33-100. Reserved.

Division 3. Application and Sketch Plan

Sec. 33-101. Required.
Sec. 33-102. Review by appropriate agencies or officials.
Sec. 33-103. Notification of developer of comments on plan.
Sec. 33-104. Location map.
Sec. 33-105. Specifics of sketch plan.
Sec. 33-106. Affidavit of ownership.
Secs. 33-107—33-125. Reserved.

***Cross references**—Growth management, ch. 29; streets and sidewalks, ch. 37; streets, § 37-31 et seq.; subdivisions, ch. 41; zoning, ch. 45.

State law reference—Planning and land use regulations, 30-A M.R.S.A. § 4301 et seq.

ELIOT CODE

Division 4. Site Plans

- Sec. 33-126. Application for review.
- Sec. 33-127. Contents; required information.
- Sec. 33-128. Application fees.
- Sec. 33-129. Public hearing generally.
- Sec. 33-130. Scheduling of hearing; notification of interested parties; representation by agent.
- Sec. 33-131. Determination of planning board.
- Sec. 33-132. Performance guarantees.
- Secs. 33-133—33-139. Reserved.
- Sec. 33-140. Revisions to final site plans after planning board approval.
- Secs. 33-141—33-150. Reserved.

Division 5. Performance Standards

- Sec. 33-151. Compliance with applicable provisions.
- Sec. 33-152. Scope.
- Sec. 33-153. Traffic data.
- Secs. 33-154—33-170. Reserved.

Division 6. Specific Activities

- Sec. 33-171. Scope.
- Sec. 33-172. Campgrounds—Area requirements and improvements.
- Sec. 33-173. Same—License.
- Sec. 33-174. Reserved.
- Sec. 33-175. Commercial and industrial establishments—Landscaping.
- Sec. 33-176. Same—Vibration.
- Sec. 33-177. Same—Site improvements.
- Sec. 33-178. Same—Electromagnetic interference.
- Sec. 33-179. Same—Parking and loading areas.
- Sec. 33-180. Same—Glare.
- Sec. 33-181. Earth material removal.
- Sec. 33-182. Motels.
- Sec. 33-183. Multifamily dwellings.
- Sec. 33-184. Reserved.
- Sec. 33-185. Telecommunication structures; visual impact.
- Sec. 33-186. Same—Shared use.
- Sec. 33-187. Reserved.
- Sec. 33-188. Commercial adult enterprise.
- Sec. 33-189. Nonprofit medical marijuana dispensaries.

ARTICLE I. IN GENERAL

Secs. 33-1—33-35. Reserved.

ARTICLE II. COMPREHENSIVE PLAN*

Sec. 33-36. Adopted.

The comprehensive plan of the town adopted in January 1975 and amended in 1978 is on file in the office of the code enforcement officer.

Cross references—Buildings and building regulations, ch. 21; growth management, ch. 29; streets, § 37-31 et seq.; subdivisions, ch. 41; zoning, ch. 45.

Secs. 33-37—33-55. Reserved.

ARTICLE III. SITE PLAN REVIEW†

DIVISION 1. GENERALLY

Sec. 33-56. Definitions.

(See section 1-2).

Editor's note—A Town Meeting held on Nov. 6, 2001, art. 4, revised § 33-56, which pertained to definitions, and derived from T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (art. 6). Former provisions of this section can now be found in § 1-2 of this Code.

Sec. 33-57. Purpose.

The purpose of this article is to establish review procedures and standards for specific types of development in the town as listed as SPR in the zoning table of uses in section 44-34. Review of subdivisions, as defined in Title 30-A MRSA sec. 4401, shall be considered a specialized type of site plan review. The standards are also necessary to ensure that a specific land use is compatible with neighboring uses, for all land uses have potentially annoying, harmful, or unsafe external characteristics.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 102); T.M. of 6-12-2010(3))

***Cross references**—Flood hazard development standards, § 25-136 et seq.; growth management, ch. 29; subdivision plats and plans, § 41-91 et seq.

†Cross references—Flood prevention and protection, ch. 25; flood hazard development permit required, § 25-56; all new dwelling units required to comply with the growth management requirements, § 29-4; growth permit required, § 29-41; shoreland protection overlay districts table of uses, § 45-253; other zoning district table of uses, § 45-290; land use review, § 45-402.

Sec. 33-58. Application of article.

(a) The provisions of this article shall apply to all land uses identified as SPR in sections 44-34, 45-290 and 45-402.

(b) Unless in conformity with this article, there shall be no construction or establishment of a structure or use, or changes in structures, uses or conditions governed by this article. (T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§§ 103.1, 103.2); T.M. of 6-12-2010(3))

Cross reference—Land use review for PB uses, § 45-402.

Sec. 33-59. Expiration of site plan approval.

The approval of a site plan review under chapter 33, article III shall expire if the work or change involved does not commence within two years of the date the planning board makes its determination of approval under section 33-131, or if the work or change is not substantially completed within three years after such date. This provision shall not apply to subdivisions. (T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 205); T.M. of 3-23-02, (art. 48); T.M. of 6-14-05; T.M. of 6-12-2010(3))

Cross reference—Conditional use permit requirements, § 45-126.

Sec. 33-60. Reference to other ordinances.

The following ordinances or resolutions may be referenced in this article, and must be considered since they contain the same force and effect as does this article:

- (1) Resolution pertaining to locations subject to flooding which is on file in the office of the code enforcement officer.
 - (2) Street design and construction standards, section 37-51 et seq.
 - (3) NFPA 101, Life Safety Code which is on file in the office of the code enforcement officer.
 - (4) Building code, chapter 21.
 - (5) Electrical code which is on file in the office of the code enforcement officer.
 - (6) Plumbing code which is on file in the office of the code enforcement officer.
 - (7) Mass outdoor gathering which is on file in the office of the code enforcement officer.
 - (8) Permit limitations, chapter 29.
 - (9) Ordinance prohibiting the discharge of treated wastewater or hazardous waste into the waterbodies of the town, section 45-420.
 - (10) Subdivision regulations, chapter 41.
 - (11) Zoning regulations, chapter 45.
- (T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 104))

Sec. 33-61. Conflict with other provisions.

Whenever the requirements of this article or any other ordinance, code or statute conflict, the more restrictive requirements shall apply.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 105))

Sec. 33-62. Legal authority.

This article is enacted pursuant to authority vested in the town by 30-A M.R.S.A. § 3001. (T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 106))

Sec. 33-63. Initiation of review process.

The site review process shall begin when an applicant, referred to as the developer, submits to the planning assistant an application, sketch plan, survey map, location map and other data relevant to the proposed development.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 201.1); T.M. of 6-12-2010(3))

Sec. 33-64. Site inspection.

In order that the planning board may review the development site, prescribe a contour interval for topographic maps and grading plans, and classify any proposed public or private streets, the developer shall arrange for a joint site inspection with the planning board or board members or other representatives appointed by the chairman. Before the initial site inspection, the developer shall temporarily stake the centerline of all proposed streets and entrances in the development.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 201.2))

Sec. 33-65. Enforcement.

(a) The code enforcement officer shall enforce the provisions of this article in accordance with the requirements of sections 45-6 through 45-8 and articles II through IV of chapter 45 of this Code.

(b) Enforcement may generally occur through two procedures: One consists of occasional inspection of all uses and investigation of complaints; the second, applying to specific uses, is regular or periodic inspection through licensing. Section 33-173 contains provisions for licensing of some uses.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 501))

Sec. 33-66. Violations.

The owner or occupant who permits, establishes or changes part or all of any land, structure or building, use, or condition of use, or other aspects regulated by this article in violation of the provisions of this article has committed a violation. Each day that any violation continues shall constitute a separate offense.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 504))

Sec. 33-67. Penalty.

(a) The penalty for violation of this article shall be a fine not greater than \$1,000.00 per violation. Fines collected for violations shall be recovered for the use of the town.

(b) Any violation of this article shall be considered a nuisance and shall be corrected or removed at the expense of the violator, whether owner or occupant.
(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 505))

Secs. 33-68—33-80. Reserved.

DIVISION 2. ADMINISTRATION*

Sec. 33-81. Amendments.

Petitions or requests for changes, revisions or repeal of this article shall be submitted to the planning board for report or recommendation at least 90 days prior to action by any town meeting. The planning board shall conduct a public hearing on any proposed amendment at least ten days prior to such town meeting.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 506))

Sec. 33-82. Appeals.

An aggrieved person or party is:

- (1) An owner of land whose property is directly or indirectly affected by the approval or denial of an application or final plan, or by the granting or denial of a permit, variance, waiver or administrative appeal under this article.
- (2) A person whose land abuts land for which approval of an application or final plan has been granted, or which has been granted or denied a permit, variance, waiver, or administrative appeal.
- (3) A group of five or more residents or taxpayers of the town who represent an interest adverse to the granting or denial of a permit, variance, waiver or administrative appeal.

Municipal officials and members of committees, boards and commissions shall be granted the same rights as residents or taxpayers when filing appeals. A person or party aggrieved by a decision of the code enforcement officer or planning board may appeal such decision according to the provisions of article II of chapter 45 of this Code.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 503))

Cross reference—Board of appeals, § 45-46.

Secs. 33-83—33-100. Reserved.

***Cross references**—Administration, ch. 2; code enforcement officer, § 2-51 et seq.

DIVISION 3. APPLICATION AND SKETCH PLAN

Sec. 33-101. Required.

The planning board shall determine whether the sketch plan which is required in this article complies with this article and with other municipal ordinances and policies, and it shall, where it deems necessary, make specific suggestions in writing to be incorporated by the developer in his subsequent submissions.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 201.3))

Sec. 33-102. Review by appropriate agencies or officials.

The planning board may submit a copy of the sketch plan for review by appropriate agencies or officials. This review shall include state or federal agencies if mandated by law or the planning board determines that such review is appropriate.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 201.4))

Sec. 33-103. Notification of developer of comments on plan.

Within 30 days of its preliminary site inspection, the planning board shall notify the developer in writing of the contour interval, street classification and other comments on the sketch plan.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 201.5))

Sec. 33-104. Location map.

The developer shall submit with the application and sketch plan a location map drawn at a scale of 500 feet to the inch, showing the relation of the proposed development to adjacent properties and the general surrounding area. The location map shall show all the area within 2,000 feet of any property line of the proposed development; or any smaller area between the parcel and all surrounding existing streets, provided any part of such a street used as part of the perimeter for the location map is at least 500 feet from any boundary of the proposed development. Within such area the location map shall show:

- (1) The approximate tract lines and names of record owners of all adjacent parcels of land, namely those directly abutting or directly across any street adjoining the proposed development.
- (2) The boundaries and designations of zoning districts.
- (3) An outline of the proposed development together with its street system and an indication of its entrances.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 204.1))

Sec. 33-105. Specifics of sketch plan.

The developer shall submit a sketch plan, showing in approximate dimensions all zoning districts, existing and proposed structures, parking areas, streets and entrances, existing and

proposed setbacks, proposed lot divisions, proposed open space to be preserved, common areas, site and public improvements and facilities, any areas of excavation and grading, or other site changes relative to the proposal that the planning board may require.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 204.2); T.M. of 6-12-2010(3))

Sec. 33-106. Affidavit of ownership.

The developer shall submit with the sketch plan application an affidavit of ownership or valid option of at least 90 days. The affidavit shall include the acquisition date of the property, book and page number of the recorded conveyance legal and contract owners of the property, and, if any corporations are involved, a complete list of all directors, officers and stockholders owning more than five percent of any class of stock in each corporation. The developer shall also provide the name, address and telephone number of an authorized agent who shall receive all notices required by this article.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 204.3); T.M. of 6-12-2010(3))

Secs. 33-107—33-125. Reserved.

DIVISION 4. SITE PLANS*

Sec. 33-126. Application for review.

Following review of the sketch plan, the developer shall submit to the planning assistant an application for review of a site plan. The site plan shall conform to the layout shown on the sketch plan plus any recommendations made by the planning board. Any amendments in applicable town ordinances or in the sketch plan shall require submission of a new sketch plan. For subdivision applications, notice of receipt of the application shall be made, pursuant to sec. 41-141.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 202.1); T.M. of 6-12-2010(3))

Sec. 33-127. Contents; required information.

The developer shall submit two originals of a site plan, drawn at a scale not smaller than one inch equals 20 feet, and ten copies reduced to 11 inches by 17 inches, and showing the following information unless the planning board waives these requirements, upon the written request of the applicant:

- (1) Development name or identifying title and the name of the town.
- (2) Name and address of record owners, developer and designer.
- (3) Names and address of all abutters and their present land use.

***Cross reference**—Subdivision plats and plans, § 41-91 et seq.

- (4) Perimeter survey of the parcel made and certified by a state-registered land surveyor, relating to reference points, showing true north point, graphic scale, corners of the parcel, date of survey, total acreage, existing easements, buildings, watercourses and other essential existing physical features.
- (5) The location of temporary markers adequate to enable the planning board to locate readily and appraise the basic layout in the field.
- (6) Contour lines at intervals of not more than five feet or at such intervals as the planning board may require, based on U.S. Geological Survey topographical map datum of existing grades where change of existing ground elevation will be five feet or more.
- (7) Provisions of chapter 45 of this Code applicable to the area to be developed and any zoning district boundaries affecting the development.
- (8) Provisions for collecting and discharging storm drainage, in the form of a drainage plan.
- (9) Preliminary designs of any bridges or culverts which may be required.
- (10) The location of all natural features or site elements to be preserved.
- (11) A soil erosion and sediment control plan.
- (12) A high-intensity soils report by a state-certified soils scientist identifying the soils boundaries and names in the proposed development, with the soils information superimposed upon the plot plan. Such soils survey shall account for the water table in wet and dry seasons, slope, soil quality, etc.; and planning board approval will be conditioned upon compliance with any recommendations included in such report.
- (13) The location and size of any existing sewers and water mains, culverts and drains on the property to be developed.
- (14) Connection with existing water supply or alternative means of providing water supply to the proposed development.
- (15) Connection with existing sanitary sewerage system or alternative means of treatment and disposal proposed.
- (16) If a private sewage disposal system is proposed, location and results of tests to ascertain subsurface soil and groundwater conditions, depth to maximum groundwater level, location and results of soils testing.
- (17) An estimated progress schedule.
- (18) Construction drawings sufficient to enable the code enforcement officer to verify the following information:
 - a. Total floor area, ground coverage and location of each proposed building, structure or addition.
 - b. All existing and proposed setback dimensions.

- c. The size, location and direction and intensity of illumination of all major outdoor lighting apparatus and signs.
- d. The type, size and location of all incineration devices.
- e. The type, size and location of all machinery likely to generate appreciable noise beyond the lot lines.
- f. The amount and type of any raw, finished, or waste materials to be stored outside of roofed buildings, including their physical and chemical properties, if appropriate.
- g. The location, type and size of all curbs, sidewalks, driveways, fences, retaining walls, parking space areas, and the layouts together with all dimensions.
- h. All landscaped areas, fencing and size and type of plant material proposed to be retained or planted.
- i. A site plan for a telecommunication structure must provide a description and construction detail of the telecommunication structure, including plot plan identifying location of the structure on the property; dimensions of the structure; structural supports, if any; lighting; color; and equipment located on the structure, if any. This description shall also identify any accessory structures that are proposed in connection with the operation of the telecommunication structure.
- j. Applications for subdivisions shall include all applicable submission requirements above, in addition to those required by chapter 41 of this Code. If these submission requirements conflict with the requirements of the chapter 41, the stricter standards shall apply.

(19) Site plans and construction drawings for new and existing structures listed as "SPR" in section 45-290 shall be submitted to the Eliot Fire Chief for review and comment prior to final approval by the planning board.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 204.4); T.M. of 3-27-99(1), § 8; T.M. of 6-12-2010(3); T.M. of 6-18-2011(5))

Cross references—Landscaping, § 33-175; landscape requirements under the zoning regulations, § 45-413.

Sec. 33-128. Application fees.

The developer shall submit with the application a fee in the amount established by the fee schedule set in section 1-25. This shall be payable by check to the town, stating the specific purpose of the fee. Fees are not refundable.

In addition, the applicant shall pay a technical consultant fee of \$2,500.00 to be deposited in a special account designated for that subdivision application, to be used by the planning board for selecting and hiring independent, third party consulting services to review the application. If the balance in this special account is drawn down by 75 percent, the board shall notify the applicant and require that an additional \$500.00 be deposited by the applicant. The

board shall continue to notify the applicant and require an additional \$500.00 be deposited as necessary whenever the balance of the account is drawn down by 75 percent of the original deposit. Any balance in the account remaining after a decision on the final subdivision plan application by the board shall be returned to the applicant.

Subsequent to the approval of the application by the planning board, the applicant shall continue to replenish the technical consultant fee escrow to fund any independent, third party engineering inspections required by this Code, to assure that any approved streets or improvements are installed according to the specifications of the application.

An application is not considered complete until all required fees are submitted.
(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 202.2); T.M. of 11-4-03; T.M. of 6-16-2012(3))

Sec. 33-129. Public hearing generally.

(a) The planning board shall schedule a public hearing for comment on the site plan. Notice for a public hearing shall be given in compliance with section 33-130.

(b) The developer or his duly authorized representative shall attend the meeting of the planning board to discuss the site plan.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§§ 202.3, 202.4))

Sec. 33-130. Scheduling of hearing; notification of interested parties; representation by agent.

(a) Within 30 days following a finding that the application for the site plan is complete, the planning board shall hold a public hearing. At least ten days before such hearing, notices shall be posted in at least three prominent places, advertised in a newspaper with local circulation, and forwarded to the clerk of an adjacent municipality in the case where a plan is located within 500 feet of a municipal boundary. Abutters shall be notified by certified mail, return receipt requested.

(b) In scheduling public hearings under this division, the planning board shall notify the board of selectmen, the code enforcement officer, and the board of appeals, at least ten days in advance of the time and place of the hearing.

(c) The abutters or owners of property shall be considered to be 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 planning board.

(d) At any hearing, the developer or other parties may be represented by agent or attorney. Hearings shall not be continued to other times except for good cause.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 203); T.M. of 11-4-03; T.M. of 6-12-2010(3))

Sec. 33-131. Determination of planning board.

(a) Within 30 days of the public hearing but no more than 75 days of its acceptance of a completed application and site plan, the planning board shall approve, modify and approve, or disapprove the site plan. The planning board shall specify in writing its reasons for any such modification or disapproval. If the planning board fails to take action within 75 days as specified above, the site plan shall be deemed disapproved.

(b) If the planning board disapproves a site plan, the developer may again initiate development review or appeal. The developer shall lose any rights for consideration before other applications and/or under any municipal policies or regulations changed since the developer first submitted the application. The developer has 30 days to appeal modification or disapproval of the site plan in accordance with the provisions of sections 45-6 through 45-8 and articles II through IV of chapter 45 of this Code.

(c) Before the planning board approves any site plan application, the board shall make written findings certifying compliance with this article and other policies, ordinances or statutes. In addition, the planning board may make other conditions for approval that will ensure such compliance and would mitigate any adverse effects on adjoining or neighboring properties, which might otherwise result from any proposed use.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§§ 202.5—202.7))

Sec. 33-132. Performance guarantees.

(a) Whenever a new street or any other required improvements are proposed as part of a site review application, an application for multi-family housing under chapter 33, an application for subdivision approval under chapter 41, or an application for an open space development under chapter 45, the applicant shall provide a performance guarantee for the streets and/or required improvements, as described below.

(b) At the time of submission of an application for review of a site plan under section 33-126 or an application for review of a preliminary subdivision under section 41-141, or an open space development under section 45-467, the applicant shall submit a written statement, addressed to the Eliot Board of Selectmen and to the Eliot Planning Board, affirming that the applicant will provide a performance guarantee for all streets and required improvements under either option 1 or option 2 below, and stating which option the applicant elects.

(1) *Option 1.* Financial guaranty.

- a. In order to ensure completion of all streets and required improvements, the applicant shall, prior to the issuance of any building permits for the approved project, furnish to the board of selectmen a performance guaranty in the form of cash, a certified check payable to the town, or an irrevocable letter of credit in a form and from an issuer acceptable to the board of selectmen. The amount of such performance guaranty shall be determined by the board of selectmen, and shall be at least equal to the total cost of furnishing, installing, connecting and completing all of the streets and required improvements. An independent, third

party professional engineer, licensed in Maine, and selected by the board of selectmen shall be required, to confirm that the amount of the performance guaranty proposed by the applicant will be sufficient. Said engineering evaluation shall be at the expense of the applicant, funded by an escrowed technical consulting fee, established by the board of selectmen, pursuant to the procedure of section 33-128 of this Code. The performance guaranty shall be conditioned upon the completion of all streets and required improvements within 36 months after the date the performance guaranty is issued. If cash or a certified check is used for the performance guaranty, the funds shall be deposited in an escrow account with a financial institution acceptable to the board of selectmen and pursuant to an escrow agreement approved by the board of selectmen.

- b. The irrevocable letter of credit or escrow agreement shall provide that funds may be released in part or in whole only as approved by the board of selectmen after certification by the road commissioner and with the concurrence of the code enforcement officer and an independent, third party professional engineer, funded at the applicant's expense from the technical consulting fee escrow, established above, that the streets or, in the case of a partial release, a specified portion of the streets, have been completed as required by the planning board approval. The letter of credit or escrow agreement shall not obligate the town to allow partial releases.
- c. The applicant shall not commence construction of the streets or required improvements until the performance guaranty has been provided and accepted by the board of selectmen. Thereafter, prior to the commencement of each major phase of street construction, the applicant shall notify the road commissioner and code enforcement officer to schedule an inspection of the construction site. The applicant shall not begin the next major phase of street construction without an agreement from the road commissioner, and the independent, third party professional engineer, funded at the applicant's expense from the technical consulting fee escrow, established above, that the phase of the street being inspected has been completed as shown on the plans approved by the planning board. For the purpose of this condition, the major phases of street construction are shown on Table 1, below.

Table 1.

Phase 1	Pre-construction meeting with road commissioner, code enforcement officer, applicant, street contractor and applicant's engineer.
Phase 2	Clearing and removal of tree stumps, organic material, rocks and boulders as specified in Sec. 37-72.
Phase 3	Completion of grading, shoulders, and culverts.
Phase 4	Installation of aggregate subbase course as specified in Sec. 37-71.

Phase 5	Installation of crushed gravel base course as specified in Sec. 37-71.
Phase 6	Installation of hot bituminous pavement base course as specified in Sec. 37-71.
Phase 7	Placement of permanent reference monuments as specified in Sec. 37-72.
Phase 8	Installation of hot bituminous pavement wearing/surface course as specified in Sec. 37-71.
Phase 9	Final seeding of slopes and landscaping.

- d. After the performance guaranty has been provided and accepted by the board of selectmen, the applicant may sell lots and building permits may be issued during the construction of the streets. However, no occupancy permit shall be issued for any building until the street on which that building fronts has been completed through Phase 5, as described in Table 1 above.
- (2) *Option 2.* Lot sales and building permits deferred until streets and required improvements are complete.
- a. In lieu of a financial performance guaranty under option 1, the applicant may enter into a written agreement with the board of selectmen agreeing that no lots shall be sold and no building permits shall be issued until the proposed streets and required improvements are completed in accordance with the planning board's approval, and that, before the applicant may sell lots or obtain building permits, both of the following documents must be provided to the code enforcement officer:
 1. A written statement from the applicant's registered professional engineer, licensed in Maine, indicating that he or she has completed a site evaluation and that, to the best of his or her knowledge, the street and/or required improvements were designed and constructed in accordance with the final plan as approved by the planning board.
 2. A written statement from the town road commissioner and an independent, third party professional engineer, funded at the applicant's expense from the technical consulting fee escrow, established above, that the street was inspected prior to the commencement of each major phase of street construction per Table 1, and to the best of his or her knowledge the street was constructed in accordance with the final plan as approved by the planning board.
 - b. Upon receipt of such agreement from the applicant, the board of selectmen shall provide a copy of the agreement to the code enforcement officer and shall direct the code enforcement officer not to issue building permits until the road commissioner and an independent, third party professional engineer, funded at the applicant's expense from the technical consulting fee escrow, established

above, have certified in writing to the board of selectmen that all streets and required improvements have been constructed in accordance with the final plan as approved by the planning board.

- c. The applicant shall not commence construction of the streets or required improvements until the agreement has been executed and delivered to the board of selectmen. Thereafter, prior to the commencement of each major phase of street construction, the applicant shall notify the road commissioner and code enforcement officer to schedule an inspection of the construction site. The independent, third party professional engineer, funded at the applicant's expense from the technical consulting fee escrow, established above, shall be included in the inspection. The applicant shall not begin the next major phase of street construction without an agreement from the applicant, the independent, third party professional engineer and the road commissioner, that the phase of the street being inspected has been completed as shown on the plans approved by the planning board. For the purpose of this condition, the major phases of street construction are shown on Table 1, above.

(T.M. of 6-8-04; T.M. of 6-16-2012(3))

Secs. 33-133—33-139. Reserved.

Sec. 33-140. Revisions to final site plans after planning board approval.

(a) The property shown on an approved final site plan may be developed and used only as depicted on the approved plan and only in accordance with all materials submitted and representations made by the applicant during planning board review, all of which are conditions of approval. No change from the approved plan is permitted unless an amended plan is first submitted to and approved by the planning board. If any changes from the approved plan are discovered after completion of the project, revised plans shall be submitted and reviewed by the planning board as an application to amend an approved plan, pursuant to the procedure set forth below.

(b) Any person proposing any change to an approved final site plan shall submit an application for an amended site plan to the planning assistant together with a fee in the amount established by the fee schedule set in section 1-25. Upon receipt of the application fee, the planning assistant shall place the application for an amended site plan on the agenda for a planning board meeting. At that meeting, if the planning board determines that the proposed revisions are minor and do not result in any substantial changes to the approved development or further impact abutters, the planning board may approve the amended site plan. If the planning board determines that the changes are substantial, then the planning board shall process the application for the amended site plan in the same fashion as an application for review of a site plan under division 4 of this article III.

(c) Revisions to subdivision approvals shall follow the procedures of section 41-182 and title 30-A M.R.S.A. § 4407.

(T.M. of 3-22-03; T.M. of 11-4-03; T.M. of 6-12-2010(3); T.M. of 6-16-2012(3))

Secs. 33-141—33-150. Reserved.

DIVISION 5. PERFORMANCE STANDARDS*

Sec. 33-151. Compliance with applicable provisions.

All proposals for new, additions, conversions or other changes in developments and use shall conform to the following requirements:

- (1) General requirements for subdivisions, article IV of chapter 41 of this Code;
 - (2) Zoning standards, articles VII through XI of chapter 45 of this Code;
 - (3) General requirements of this division; and
 - (4) Specific activities requirements of division 6 of this article.
- (T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 301))

Sec. 33-152. Scope.

The requirements in section 33-153 shall apply to all proposals which the planning board considers under site review and to other proposals which the planning board may require.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 302))

Sec. 33-153. Traffic data.

The planning board may require a developer to submit a traffic engineering study, should any proposal have a potentially significant impact upon any town streets or state-maintained or state-funded highways where fast-moving traffic occurs. Should a traffic study be requested by the planning board, the developer shall include the following information:

- (1) The estimated peak-hour traffic to be generated by the proposed use.
 - (2) Existing traffic counts and volumes on surrounding roads.
 - (3) Traffic accident data covering a recent five-year period.
 - (4) The capacity of surrounding roads and any improvements which may be necessary on such roads to accommodate anticipated traffic generations.
 - (5) The need for traffic signals and signs or other directional markers to regulate anticipated traffic.
- (T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 303); T.M. of 6-12-2010(3))

Secs. 33-154—33-170. Reserved.

***Cross reference**—Performance standards for zoning, § 45-401 et seq.

DIVISION 6. SPECIFIC ACTIVITIES

Sec. 33-171. Scope.

The requirements in the sections in this division shall apply to the establishment, additions or changes in the specified land uses.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 401))

Sec. 33-172. Campgrounds—Area requirements and improvements.

(a) The area of a campground shall be not less than ten acres.

(b) Each campground shall contain no less than 20 campsites. The maximum density of campsites shall be no more than ten per acre.

(c) Each campsite shall be provided with a picnic table, trash container and fireplace or outdoor grill.

(d) All utility and service buildings and all areas designated for campsites shall be set back a minimum of 100 feet from the exterior lot lines of the camping area.

(e) All campgrounds shall be screened from adjacent land areas by a continuous landscaped area not less than 25 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.

(f) For refuse from each campsite there shall be a flytight, watertight, and rodentproof container capable of storing the amount of refuse the campsite can generate in one week. The campground operator shall dispose of refuse from trash containers by transporting the refuse in a closed truck to an approved disposal area at least once a week.

(g) Sanitary facilities must conform to applicable standards of the state department of human services, division of health engineering.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 402))

Cross reference—Requirements for campgrounds and beach construction under the zoning ordinance, § 45-454.

Sec. 33-173. Same—License.

(a) No person shall establish or maintain a campground within the town without a license issued in conformity with the provisions of the section. A campground existing prior to the adoption of this section is required only to conform with the licensing and fee requirements of this section unless it has been commercially inactive for two or more years. In the case of such inactive parks and campgrounds, all the relevant provisions of this section must be met before a license may be issued. All new extensions to campgrounds shall be required to meet the provisions of this section. Any increase in the number of campsites shall be deemed an extension of the use, even though the outer boundaries of the premises might not be enlarged.

(b) Application for a campground license shall be filed with the code enforcement officer, who shall, in turn, present the application to the planning board for review, except that applications for license renewals are not subject to planning board review.

(c) Each application for a license shall be accompanied by a fee in the amount established by the fee schedule set in section 1-25. Each such license shall expire on April 30 next following the date of issuance. Before any license shall be renewed, the premises shall be inspected by the health officer, code enforcement officer and the fire chief. If they find compliance with all requirements of this and other town and state ordinances and statutes, they shall certify the same; and the code enforcement officer shall issue the license.

(d) Such licenses shall be conspicuously posted on the premises at all times and shall not be transferable.

(e) Upon receipt of a written request from either the health officer, code enforcement officer, police chief or fire chief, the planning board is authorized to revoke any license issued pursuant to the terms of this section if, after due investigation and public hearing, they determine the holder has violated any of the provisions of this section or any other ordinances, policies or statutes.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 502); T.M. of 11-4-03)

Cross reference—Campgrounds and beach construction, § 45-454.

Sec. 33-174. Reserved.

Editor's note—A Town Meeting held on June 16, 2012, repealed § 33-174, which pertained to commercial and industrial establishments—rooftop equipment and appurtenances, and derived from T.M. of 6-18-2011(5).

Sec. 33-175. Commercial and industrial establishments—Landscaping.

(a) Where no vegetative buffering at least ten feet in width and eight feet in height exists or can be maintained, all side and rear yards abutting any other district or residential use shall be effectively screened from view by a continuous landscaped area not less than ten feet in width containing large trees, shrubs, fences, walls, berms, or similar condition forming a visual barrier not less than eight feet in height along such side and rear lot lines. Fences must conform to the requirements of section 45-423.

(b) Front yards, especially those along Rte. 236, shall have an extensive vegetative cover, including large shade trees. Areas along Rte. 236 shall be 50 feet in width, beginning at the 50-foot setback line and extending to the rear of the front yard so as to screen the proposed use. Similarly, half of the front yard for commercial or industrial uses on other streets shall be landscaped.

(c) A partial foundation planting shall be provided in front and side yard areas.
(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 404.1); T.M. of 3-20-04)

Cross references—Site plan requirements for commercial and industrial establishments, § 33-127; landscaping requirements under the zoning regulations, § 45-413.

Sec. 33-176. Same—Vibration.

(a) Commercial and industrial establishments shall not be permitted to produce vibrations perceptible without the aid of instruments beyond their lot lines. An exception to this requirement shall be vibration produced as a result of temporary construction activity.

(b) Vibration is a temporal and spatial oscillation of a displacement, velocity and acceleration in any material.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 404.2))

Sec. 33-177. Same—Site improvements.

Removal of undergrowth, debris, rubbish, excess dirt, trash, industrial waste or any other unsightly material from the building site shall be performed by the developer or occupant of the commercial or industrial establishment.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 404.3))

Sec. 33-178. Same—Electromagnetic interference.

Magnetic interference in the transmission or reception of electrical impulses shall not extend beyond any lot lines. All such activity shall comply with applicable federal and state regulations.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 404.4))

Sec. 33-179. Same—Parking and loading areas.

(a) Access points from a public road to commercial and industrial operations shall be so located as to minimize traffic congestion and also to avoid generating traffic on local access streets of a primarily residential character.

(b) All parking areas, driveways, and other areas shall be paved, tarred, or prepared with suitable material that will adequately support parking and traffic, and shall not produce objectionable dust or other negative effects upon abutting property.

(c) All entrances and exits shall be kept free from visual obstructions higher than three feet above street level in order to provide visibility for traffic.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 404.5))

Cross reference—Offstreet parking and loading requirements in the zoning regulations, § 45-486 et seq.

Sec. 33-180. Same—Glare.

(a) The developer shall provide illumination that shall not exceed the following standards:

- (1) Bare incandescent bulbs 40 watts
- (2) Illuminated buildings..... 30 footcandles
- (3) Back-lighted signs..... 250 footlamberts
- (4) Any other unshielded sources, intrinsic brightness..... 50 candles per sq.
centimeter

(b) Direct or indirect light from any source shall not cause illumination in excess of 0.5 footcandles when measured from any residential use.

(c) Illumination levels shall be measured with a photoelectric photometer having a spectral luminous efficiency curve adopted by the International Commission on Illumination. A footcandle may be described generally as a unit of illumination which has been standardized and may be measured. The amount or intensity will vary according to the light source, whether it is direct or indirect, and the distance away from residential use. The developer shall be responsible for determining compliance with this standard, explaining appropriate factors, and certifying in writing compliance with this standard.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 406.6))

Cross reference—Glare requirements under the zoning ordinance, § 45-410.

Sec. 33-181. Earth material removal.

(a) Applicability.

All performance standards and procedures established in this section shall be applicable to all new earth material removal operations and expansion of existing operations proposed after the enactment of this section. The standards of section 33-181 shall not apply to the following activities:

- (1) Any exploratory excavation provided all excavated material is immediately replaced from the test pit, boring hole, or excavation trench.
- (2) Excavation incidental to site grading or construction for which a building permit has been issued.
- (3) Movement of earth materials from one portion of a parcel to another location on the same parcel or to a contiguous parcel of the same owner.
- (4) Movement of earth materials from one parcel to another parcel of the same owner if the material is to be used for agricultural purposes.
- (5) With the exception of topsoil, the removal of less than 100 cubic yards of earth material from a single parcel in a calendar year, provided the activity does not disturb more than one acre of surface area.
- (6) Municipal uses, including storage of earth materials associated with construction.
- (7) Approved operations in existence upon adoption of this section.

(b) Expansion of existing earth material removal operations.

Any approved existing operation proposing to expand earth material removal operations shall be required to make a conditional use application to the planning board under the provisions of section 33-181(c) below.

(c) Application for new earth material removal operations or expansion of existing earth material removal operations.

Proposed new earth material removal operations or expansion of existing earth material removal operation may be permitted as conditional uses within the rural, suburban, village and commercial industrial districts.

- (1) Criteria for approval of new earth material removal operations or expansion of existing earth material removal operations as conditional uses.

Earth material removal may be permitted in designated districts, provided the planning board determines that the proposal meets all performance criteria contained in sections 33-181(d) as well as all pertinent portions of chapters 33 and 45 and the following criteria:

- a. Duration of the operation shall not exceed five years without re-approval from the planning board;
 - b. Upon close-out of earth material removal operations, the site will be capable of supporting productive reuses consistent with the goals and requirements of the zoning district;
 - c. The proposed earth material removal operation will not cause unreasonable impacts in terms of noise, dust, vibration, unsightly views, traffic impacts on public roads, ground and surface water contamination, soil erosion and sedimentation, and groundwater contamination;
 - d. The earth material removal activity will not cause premature deterioration of public streets and highways. An evaluation of roadway conditions shall be performed by a state licensed professional engineer and provided by the applicant.
- (2) Application requirements.

Applications for a conditional use permit for new earth material removal operations or expansion of existing earth material removal operations shall be submitted to the planning assistant. Earth material removal activities also require a site plan review approval, and shall therefore be subject to the application and review procedures outlined elsewhere in chapters 33 and 45 of this Code.

(d) Performance standards for new earth material removal activities or expansion of existing earth material removal operations.

The following performance standards shall apply to all new earth material removal operations and expansion of existing earth material removal operations.

- (1) Depth and limits of excavation.
 - a. Extraction procedures shall not proceed to within five feet of the seasonal high water table. Water table and its seasonal high elevation shall be established by on-site exploratory borings recorded and verified by a professional engineer, geologist, or hydrogeologist licensed in the state of Maine.
 - b. No earth material removal operations shall be permitted within 150 feet of any public way or property line. All existing vegetation within this setback shall be retained. Where vegetation does not exist, a vegetation plan shall be provided.
 - c. No earth material removal activities shall occur within an existing stream or wetland.
- (2) Maximum excavation slopes: During extraction operations, the average gradient from the top of the cut bank to the foot of the slope shall not exceed 50 percent or 2:1 ratio of horizontal distance to vertical distance for gravel, sand, and unconsolidated earth materials. Quarrying of sedimentary rock materials shall not exceed a gradient of 1:1 or 100 percent slope. Igneous and metamorphic rock mining shall not exceed gradients 90 degree or vertical slopes.
- (3) Maximum exposed area: No more than five acres can be exposed at any time. Reclamation and re-vegetation shall occur in phases during development of a site.
- (4) Fencing: For all areas of excavation where slopes exceed 2:1 or 50 percent there shall be installed a minimum six foot high solid or chain-link fence at the top of the cut bank to prevent unwary pedestrians and vehicles from falling over the bank. All fencing shall be maintained in good condition.
- (5) Buffering and screening: Excepting access driveways, no portion of the earth material removal operation shall be visible from a public way or public lands. Nor shall the excavation operations be visible from the first floor elevation of any residence or commercial structure located within 1,000 feet of the property containing the mineral extraction operation. Buffering procedures as specified in section 33-175 and section 45-417 may be employed to meet the requirement of this section.

Note: The planning board may modify these requirements to facilitate final closeout of the extraction operation, reclamation of the property, or for any similar purpose in which the visual impact upon nearby properties persists for less than six months.

- (6) Storage of materials.
 - a. All fuel, liquid petroleum products, and associated materials shall be stored within enclosed storage containers. If such containers are stored outside of an enclosed and locked structure, said storage area shall be enclosed by a minimum

eight foot high chain link or solid fence and accessed only through a locked gate. Secondary containment consisting of 110 percent of the volume to be stored shall be provided for storage in excess of 200 gallons.

- b. All explosives shall be stored within an enclosed building and shall be kept secure at all times.
- (7) Access driveways: All access roads within the 150-foot setback area specified in section 33-181(d)(1)b. above shall be paved, or provided with a dust free surface as prescribed by the planning board.
- (8) Hours of operation: Hours of operation shall be limited to 7:00 AM to 6:00 PM, Monday through Friday, and 8:00 AM to 3:00 PM on Saturdays. The planning board may extend the permissible hours of operation for any day except Sundays, provided the operation will not unreasonably interfere with the peace and use of neighboring properties or cause an unreasonable use of travel routes to and from the operation. The planning board may also restrict the hours of operation so that it will not unreasonably interfere with the peace and use of neighboring properties.
- (9) Crushing and import of material:
- a. Rock and gravel crushing shall be permitted as an accessory activity to earth material removal operations. Crushers shall be limited in operation to between the hours of 7:00 AM and 5:00 PM, Monday through Friday or any more restrictive hours as prescribed by the planning board to preserve the residential quality of surrounding neighborhoods.
 - b. No more than 35 percent of all materials crushed annually on the site may be imported from another location.
- (10) Travel routes:
- a. Transportation routes to and from the site must be confined primarily to designated collector streets, and all routing plans prescribed by the planning board shall be strictly observed. In order to preserve public safety, the planning board may require the applicant to effect necessary design and/or surface improvements to public roads in order to accommodate safe passage of the associated trucking.
 - b. The planning board may require performance assurances from the applicant to effect repairs or reconstruction of public roads in the event that the earth material removal operation's trucking activity has prematurely denigrated the structural or surface integrity of the public roads.
- (11) Erosion and sedimentation control:
- a. Erosion and sedimentation arising from the earth material removal activities shall follow all guidelines as prescribed by the York County Soil Conservation District and Sediment Control Plans approved by the planning board.

- b. Earth material removal rock-quarrying activities shall implement runoff pre-treatment procedures to minimize mineral leachate prior to disposal into surface or groundwater on and off-site.
 - c. All soil erosion, sedimentation, and runoff pretreatment devices and structures shall be kept in prime operating condition at all times.
- (12) Operations manual: An operations manual shall be developed and followed. The manual shall address all facets of site operation including on-site equipment fueling and spill containment.
- (e) *Reclamation performance standards.*
- (1) Reclamation required. All new earth material removal operations and expansion of existing earth material removal operations shall rehabilitate the extraction site in accordance with reclamation plans approved by the planning board.
 - (2) Phasing of reclamation activities. Operations of less than five acres shall complete implementation of the approved reclamation plan within nine-months after closure or termination of operations on the site. Operations on sites of greater than five acres shall implement phased reclamation plans in accordance with their approved reclamation plan. No new phase of extraction shall commence until rehabilitation of the previous phase is completed to the satisfaction of the CEO.
 - (3) Definition of closure. An earth material removal operation shall be deemed closed if the limits of excavation approved by the planning board are achieved, or if the applicant fails to extract 400 cubic yards of material in any two-year period. Upon designation as a "closed operation", the operator is obligated to meet all provisions of the reclamation plan within nine months.
 - (4) Reuse of the land: Reclamation of the extraction site shall return the site to a natural state or to a productive reuse of the site.
 - (5) Reclamation practices:
 - a. Topographic design: all disturbed areas shall be re-graded to create natural appearing landforms that are compatible in form, shape, direction, and slope with surrounding landforms. The planning board shall have the flexibility to approve sculptured or dramatic landforms, provided these new landforms are compatible with the visual character of the proposed re-use of the site and surrounding terrain.
 - b. Final gradients: Maximum slopes shall be determined based on the physical qualities of the soil:

<i>Soil type/parent material</i>	<i>Maximum slope ratio (Horizontal: Vertical)</i>
Clay	5:1
Loose sand	4:1
Compacted Sand & Gravel	3:1

<i>Soil type/parent material</i>	<i>Maximum slope ratio (Horizontal: Vertical)</i>
Silt & Glacial Till	2:1
Sedimentary & Fractured Metamorphic Rock	2:1
Igneous or Consolidated Metamorphic Rock	2:1

- c. Drainage: Grading of the site shall be performed in a manner that assures adequate surface drainage of runoff, prevents standing water, and protects against erosion as well as sedimentation into surface waters.
- d. Overburden: Overburden soil shall be either redistributed onto the site or shall be removed from the property. Broken ledge shall be trimmed of loose rock.
- e. Soil stabilization: With the exception of exposed rock, all disturbed areas shall be loamed with a minimum of four inches of topsoil and planted with leguminous ground cover, and other plant material approved by the planning board.
- f. Reclamation guarantee: All rehabilitated mineral extraction sites shall carry a performance guarantee extending for period of 18 months following the completion of reclamation work. In the case of phased reclamation plans, performance guarantees and the corresponding guarantee period shall apply only to the specific phase.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 405); T.M. of 11-4-03; T.M. of 6-12-2010(3))

Sec. 33-182. Motels.

(a) A motel is a structure in which more than five rooms are offered for overnight accommodation for compensation, whether or not meals are served. This definition includes hotels, but excludes boardinghouses.

(b) The minimum area for a motel shall be three acres.

(c) The maximum density of units per acre shall be no more than four per acre, provided that soils are adequate for construction and for onsite subsurface disposal, if utilized.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 407))

Cross reference—District regulations, § 45-286 et seq.

Sec. 33-183. Multifamily dwellings.

(a) A multifamily dwelling is a structure or portion that is principally designed, adapted or used for occupancy by three or more families, each living in its own separate quarters. Each individual unit which functions as a separate living quarter shall be deemed to be a dwelling unit.

(b) A maximum of eight dwelling units shall be permitted in any one multifamily building.

(c) Residential buildings containing multifamily dwelling units shall be located at least 100 feet apart from each other.

(d) Garages or other accessory buildings shall not be located between the multifamily residential buildings and the front lot line. Accessory buildings shall be located so as not to inhibit the access of emergency vehicles and fire apparatus to any side of a residential building.

(e) No multifamily residential building shall exceed two floors above grade, or 35 feet from the average ground grade to the eaves.

(f) The proposed development shall provide for safe access to and from public and private roads. Safe access shall be ensured by providing an adequate number and location of access points, with respect to sight-distances, intersections, schools, and other traffic generators. All corner lots shall be kept clear from visual obstructions, higher than three feet above ground level.

(g) The proposed development shall not have an unreasonable adverse impact on the town road system, and shall assure safe interior circulation within its site, by separating pedestrian and vehicular traffic and by providing adequate parking and turnaround areas. Street entrances and exits shall be limited to one per street; however, developments containing 16 or more units shall have two entrances to town ways. All driveways and parking areas within the site shall be constructed in accordance with the standards in 37-51 et seq.

(h) All multifamily residential buildings on a single lot shall be connected to a common water supply and distribution system, either private or public, at no expense to the town. Prior to the issuance of any building permit, the applicant shall demonstrate by actual test or by a signed affidavit from an authorized representative of the servicing water company that water can be supplied at the rate of at least 250 gallons per day per dwelling unit and at an adequate pressure for firefighting purposes before starting construction of any building.

(i) All principal buildings shall have sprinklers or an approved fire alarm system installed pursuant to NFPA standards. Either system shall be connected to the municipal fire alarm system or dispatching panel.

(j) All multifamily dwellings shall be connected to a municipal sewer system, if available.

(k) It shall be the responsibility of the owner to provide for rubbish disposal, snow removal and site maintenance.

Note: In reviewing any development of multifamily housing which is classified as elderly housing, an assisted living facility or a life care facility under chapter 45, section 45-1 of this Code, the planning board may waive any of the standards of this section which the board determines are not applicable because of the nature and circumstances of the proposed development the planning board must vote separately on each standard waived and the reasons for each waiver must appear in the board's minutes.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 408); Ord. of 3-25-00(1))

Cross reference—District regulations, § 45-286 et seq.

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Sec. 33-184. Reserved.

Sec. 33-185. Telecommunication structures; visual impact.

Telecommunication structures 70 feet and higher shall be designed to minimize visual impact and satisfy the following standards:

(a) *Setback—Structure.* A telecommunication structure shall maintain a minimum setback from all property lines, equal to 100 percent of the height of the structure plus 25 feet. The planning board may accept restrictive easements on abutting parcel(s) to satisfy this setback requirement.

(b) *Same—Supports.* All peripheral supports, guywires, guyanchors and similar mechanisms used to support a telecommunications structure shall be located a minimum of 100 feet from all property boundaries of the parcel on which the structure is located. The planning board may accept restrictive easements on abutting parcel(s) to satisfy this setback requirement.

(c) *Buffers.* All telecommunications structures shall maintain a minimum of a 100-foot undisturbed buffer, except for an access road, on all sides of the parcel on which the structure is located. The planning board may accept restrictive easements on abutting parcel(s) to satisfy this buffer requirement. All respective sides of the buffer shall include existing mature trees, which are a minimum of 35 feet or greater in height. The planning board may require additional plantings in the buffer area to enhance the quality and effectiveness of the buffer area to serve as a visual screen. Inside the buffer area, the applicant shall remove the minimum amount of existing vegetation necessary to achieve the safe construction and support of the telecommunication structure, accessory fencing, and required fencing. Existing mature tree growth and natural land forms present on the site shall be preserved to the maximum extent possible.

(d) *Setback from dwellings.* All telecommunication structures shall be located a minimum of 500 feet from any dwelling located on any abutting property at the time the structure is initially constructed, unless the affected abutting property owner agrees to waive this setback requirement. This waiver shall be specifically noted on the plan and permit, and shall be recorded in the deed for the respective property.

(e) *Tower finishes.* To ensure telecommunication structures have the least practicable adverse visual effect on the environment, towers that are not subject to special painting or lighting requirements of any federal or state agency, shall submit a plan detailing the planned finish coating and the schedule for maintaining the finish.

(f) *Antenna finishes.* If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.

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(g) *Shared uses.* A telecommunication structure may be located on a property on which another principal or accessory use is located, subject to the written concurrence of all parties that have an interest in the parcel at the time the structure is initially constructed. There shall be no minimum setback requirements from other structures located on the same property as the telecommunication structure.

(h) *Location on slopes.* To ensure telecommunication structures have the least practicable adverse visual effect on the environment, towers that are 100 feet or more in height shall, when practical, be located on sites where grade/slope of the parcel and surrounding land can be used to decrease the amount of adverse visual impact.

(i) *Fence.* A fence of not less than eight feet in height from finished grade shall be constructed around each communication structure and around each guyanchor if used.

(j) *Road access.* Road access to the telecommunication structure shall be the minimum size necessary, as determined by the planning board, to allow safe and required access. Access to the telecommunication structure shall be through a locked gate.

(k) *Wetland or floodplain location.* The base of the telecommunication structure may not be located in a wetland or floodplain, but the guyanchors and other supports may be located in a wetland provided the location does not adversely affect the value or functioning of the wetland and provided the location is otherwise permitted under state and federal law.

(l) *Abandonment.* Telecommunication structures not used for a period of 24 months or greater shall be removed by the owner. To ensure compliance the applicant shall post a performance guarantee with the town prior to obtaining a permit equal to 125 percent of the cost of removing the structure. All moneys not used shall be returned to the owner when the CEO is satisfied the site has been returned to its original condition as much as is practical.

(m) *Analysis—Visual impact.* The applicant must provide a visual impact analysis prepared by a qualified professional that quantifies the amount of visual impact on properties located within 500 feet, within 2,000 feet, and within two miles of the proposed telecommunication structure. This analysis will include recommendations to mitigate adverse visual impacts on such properties.

(n) *Same—Needs.* The applicant shall provide an analysis prepared by a qualified professional that describes why this site and structure is necessary for the operation for which it is proposed. That analysis shall address, at a minimum: how this structure is integrated with other company operations, particularly other structures in Eliot and the surrounding communities; the effect on company operations if this structure is not constructed in this location; other sites evaluated for location of this structure and how such sites compare to the proposed site; other options, if any, which could be used to deliver similar services, particularly if the proposed equipment can be collated (shared use) on an existing structure; and an analysis of the projected life cycle of this structure and location.

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(o) *Structural certification.* Each applicant for a telecommunication structure shall submit a design certified by a registered, professional engineer licensed in the State of Maine that the structure has been engineered to accommodate the maximum number and type of all compatible telecommunication media antennae, but in no event shall the applicant provide fewer than three additional collocations. New structures shall comply with the Electronic Industries Association/Telecommunications Industry Association (EIT/TIA) 222 Revision Standard entitled: "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures."

(p) *Navigational hazard to aviation.* The applicant shall provide substantial evidence that the telecommunication structure will not create a navigational hazard to aviation, or other hazard to the operation of Pease International Tradeport or Littlebrook Airpark.

Note: In 1996 the Pease Development Authority informed the Eliot Planning Board that Eliot needs to be concerned about objects which are more than 200 feet in height above ground level or 301 feet above mean sea level (MSL). Submission of FAA Form 7460-1 is required for objects which are more than 200 feet in height above ground level regardless of the location of the object, i.e. even if the object is located outside the imaginary surfaces of the airport.

(q) *Location map—Airport.* The applicant shall provide a location map of the telecommunication structure and site with respect to the Pease International Tradeport and Littlebrook Airpark, indicating airport flight paths.

(r) *Compliance with standards and regulations.* The applicant shall submit evidence that the telecommunication structure meets or exceeds current standards or regulation of the FAA, FCC and any other agency of the federal government with the authority to regulate towers and antennas.

(s) *Certification of need.* The applicant shall submit substantial evidence that existing towers or structures located within the geographic area do not have sufficient structural strength to support the applicant's proposed antenna and related equipment. In addition, the applicant shall submit substantial evidence that no existing towers or structures are located within the geographic area that are of sufficient height to meet the applicant's engineering requirements.

(t) *Collocation agreement.* The applicant proposing to build a new telecommunication structure shall submit an agreement to the town that allows for the maximum number and type of compatible telecommunication media antennae, but in no event shall the applicant provide fewer than three additional collocations on the new structure. Such an agreement shall become a condition of approval. This agreement shall, at a minimum, require the applicant to supply available collocation at a reasonable cost to other telecommunication providers. Failure to provide such an agreement is evidence of the applicant's unwillingness to cooperate with the orderly and well planned development of the town and is grounds for denial of the permit.

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(u) *Graphics*. Telecommunication structures shall not display any permanent or temporary signs, writing, symbols, logos, or any graphic representation of any kind.
(T.M. of 3-27-99(1), § 9)

Sec. 33-186. Same—Shared use.

Shared use of telecommunication structures 70 feet and higher.

This section is designed to foster shared use of telecommunication structures and their accessory support facilities, to minimize proliferation of such structures by making all parties aware of sharing opportunities, and to require shared use where feasible. All applicants for a telecommunication structure shall comply with the following procedures:

- (1) The CEO shall maintain a list of known owners of telecommunication structures in the town and those within two miles of the borders of the town.
- (2) An applicant for a telecommunication structure, at the time an application is submitted to the town, shall provide notice by certified mail to all telecommunication structure owners on the town list providing the following information:
 - a. Specifications of the proposed structure.
 - b. The general location in the town of the proposed structure.
 - c. The general rate structure for leasing space.
 - d. The proposed height of the telecommunication structure.
 - e. A phone number of the applicant.
 - f. Evidence that a solicitation of interest in opportunities for shared use has been published in three newspapers with local circulation.
- (3) All responses received by the applicant shall be submitted to the town and may be considered by the planning board in making a decision on a permit application.
- (4) If the applicant rejects one or more parties who express interest in sharing use of the telecommunication structure, the applicant must describe why such use is incompatible with the proposal. The planning board shall submit this evaluation for review by a qualified professional. If, after evaluation, the board determines that the applicant does not have a valid reason to reject an offer for collocation, the board may deny the application.
- (5) The applicant shall provide adequate evidence that the fees, costs, or contractual provisions required by an existing structure owner in order to share an existing tower or structure are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.

(T.M. of 3-27-99(1), § 10)

Sec. 33-188. Commercial adult enterprise.

A commercial adult enterprise must satisfy the following performance standards that shall not be waived by the planning board:

- (1) A commercial adult enterprise shall not be located where any customer entrance would be closer than 500 feet, measured in a straight line without regard to intervening structures or objects, to the nearest point on the boundary of any property which is:
 - a. Occupied by a residence, school, child-care facility, park, playground, place of worship, or public facility.
 - b. Occupied by another commercial adult enterprise.
- (2) No materials described in the definition of commercial adult enterprise shall be visible from the exterior of the building in which the commercial adult enterprise is located.
- (3) Any viewing booths within a commercial adult enterprise shall be designed, located, and lighted so that the interior of each viewing booth is clearly visible from the interior common areas of the premises. Visibility into the viewing booths shall not be blocked or obscured by any doors, curtains, partitions, drapes, or any other visual barriers.
- (4) A commercial adult enterprise shall not have live entertainment.
- (5) A commercial adult enterprise shall not have liquor sales, (including beer and wine), nor allow consumption of liquor, beer, or wine on the premises.

(T.M. of 6-19-01, (art. 6))

Sec. 33-189. Nonprofit medical marijuana dispensaries.

(a) The provisions for nonprofit medical marijuana dispensaries shall apply to both dispensaries and registered primary caregivers.

(b) The applicant must hold a current dispensary certificate in good standing from the State of Maine Department of Health and Human Services, Division of Licensing and Regulatory Services prior to making an application with the town. If approved, the dispensary operator shall annually submit a copy of the current dispensary certificate to the code enforcement officer.

(c) A dispensary may not be located within 500 feet of the property line of an existing public or private school, residential property, childcare facility, place of worship or public facility.

(d) All cultivation of marijuana must take place in a fully enclosed and locked structure. Outdoor cultivation of marijuana is prohibited.

(e) The property shall be screened in accordance with section 33-175.

(f) The dispensary shall comply with the parking requirements of section 45-495(9).

(g) The dispensary shall comply with all applicable town and state regulations.

(h) No materials described in the definition of a nonprofit medical marijuana facility shall be visible from the exterior of the building in which the nonprofit medical marijuana dispensary is located.

(T.M. of 6-18-2011(6))

Chapter 34

RESERVED

Chapter 35

POST-CONSTRUCTION STORMWATER MANAGEMENT*

- Sec. 35-1. Purpose.
- Sec. 35-2. Objectives.
- Sec. 35-3. Applicability.
- Sec. 35-4. Post-construction stormwater management plan approval.
- Sec. 35-5. Same—Compliance.
- Sec. 35-6. Enforcement.
- Sec. 35-7. Severability.
- Sec. 35-8. Basis.

***Cross reference**—Non-stormwater discharges, ch. 31 et seq.

Sec. 35-1. Purpose.

The purpose of this "Post-Construction Stormwater Management Ordinance" (the "ordinance") is to provide for the health, safety, and general welfare of the citizens of the Town of Eliot through review and approval of post-construction stormwater management plans and monitoring and enforcement of compliance with such plans as required by federal and state law. This chapter establishes methods for post-construction stormwater management in order to comply with minimum control measures requirements of the Federal Clean Water Act, of federal regulations and of Maine's Small Municipal Separate Storm Sewer Systems General Permit.

(T.M. of 6-9-09(2))

Sec. 35-2. Objectives.

This chapter seeks to meet the above purpose through the following objectives:

- (1) Reduce the impact of post-construction discharge of stormwater on waters of the state; and
- (2) Reduce stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through use of best management practices as promulgated by the Maine Department of Environmental Protection (MEDEP) pursuant to its Chapters 500 and 502 Rules, and ensure that these management controls are properly maintained and pose no threat to public safety.

(T.M. of 6-9-09(2))

Sec. 35-3. Applicability.

(a) *In general.* This chapter applies to:

- (1) Development or redevelopment that disturbs more than one acre of land within the municipality; and
- (2) Development that disturbs less than one acre if the development is part of a larger common plan of development or sale.

(T.M. of 6-9-09(2))

Sec. 35-4. Post-construction stormwater management plan approval.

(a) *General requirement.* No applicant for a building permit, subdivision approval, site plan approval or other zoning, planning or other land use approval for development to which this chapter is applicable shall receive such permit or approval for that development unless the municipal permitting authority for that development also determines that the applicant's post-construction stormwater management plan for that development meets the requirements of this chapter.

(b) *Performance standards.*

- (1) The applicant shall make adequate provision for the management of the quantity and quality of all stormwater generated by the development through a post-construction stormwater management plan. This post-construction stormwater management plan shall be designed to meet the standards contained in the MEDEP's Chapters 500 and 502 Rules and shall comply with the practices described in the manual Stormwater Management for Maine, published by the MEDEP, January 2006, which hereby are incorporated by reference pursuant to 30-A M.R.S.A. § 3003.
- (2) The applicant may meet the quantity and quality design standards of Chapter 500 and Chapter 502 MEDEP Rules above either on-site or off-site, but where off-site facilities are used, the applicant must submit to the municipality documentation approved as to legal sufficiency by the municipality's attorney that the applicant has a sufficient property interest in the property where the off-site facilities are located—by easement, covenant or other appropriate legal instrument—to ensure that the facilities will be able to provide post-construction stormwater management for the development and that the property interest will not be altered in a way that interferes with the off-site facilities.
- (3) Where the applicant proposes to retain ownership of the stormwater management facilities shown in its post-construction stormwater management plan, the applicant shall submit to the municipality documentation, approved as to legal sufficiency by the municipality's attorney that the applicant, its successors, heirs and assigns shall have the legal obligation and the resources available to operate, repair, maintain and replace the stormwater management facilities. Applications for development requiring stormwater management facilities that will not be dedicated to the municipality shall enter into a maintenance agreement with the municipality. A sample of this maintenance agreement is attached as Appendix 1 to this chapter.
- (4) Whenever elements of the stormwater management facilities are not within the right-of-way of a public street and the facilities will not be offered to the municipality for acceptance as public facilities, the municipal permitting authority may require that perpetual easements not less than 30 feet in width, containing facilities necessary for post-construction stormwater management as approved by the municipal permitting authority and in a form acceptable to the municipality's attorney, shall be provided to the municipality allowing access for maintenance, repair, replacement and improvement of the stormwater management facilities. When an offer of dedication is required by the municipal permitting authority, the applicant shall be responsible for the maintenance of these stormwater management facilities under this chapter until such time (if ever) as they are accepted by the municipality.
- (5) In addition to any other applicable requirements of this chapter and the municipality's municipal code of chapters, any development which also requires a stormwater management permit from the MEDEP under 38 M.R.S.A. 420-D shall comply with the rules adopted by DEP under 38 M.R.S.A. 420-D(1), as the same may be amended from

time to time, and the applicant shall document such compliance to the municipal permitting authority. Where the standards or other provisions of such stormwater rules conflict with municipal chapters, the stricter (more protective) standard shall apply.

- (6) In addition, any persons required to enter into a maintenance agreement under this section of this chapter will be inspected annually by the town's code enforcement officer or as designated by the board of selectmen, and shall pay an annual fee to cover the inspection. The amount of the initial fee is included in the project application fees. The party to the maintenance agreement shall receive notices annually thereafter of the amount of the inspection fee.
 - (7) Notice of BMP discharge to municipality's MS4. At the time of application, the applicant shall notify the municipal permitting authority if its post-construction stormwater management plan includes any BMP(s) that will discharge to the municipality's MS4 and shall include in this notification a listing of which BMP(s) will so discharge.
- (T.M. of 6-9-09(2))

Sec. 35-5. Same—Compliance.

(a) *General requirements.* Any person owning, leasing or having control over stormwater management facilities required by a post-construction stormwater management plan under this chapter shall demonstrate compliance with that plan as follows.

- (1) That person shall, at least annually, clean and maintain the stormwater management facilities, including but not limited to any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures, in accordance with all municipal and state inspection, cleaning and maintenance requirements of the approved post-construction stormwater management plan.
- (2) That person shall repair any deficiencies found during the town's inspection of the stormwater management facilities.

(b) *Right of entry.* In order to determine compliance with this chapter and with the post-construction stormwater management plan and to conduct annual inspections, the code enforcement officer or town designee may enter upon property at reasonable hours with the consent of the owner, occupant or agent to inspect the stormwater management facilities.

(T.M. of 6-9-09(2))

Sec. 35-6. Enforcement.

It shall be unlawful for any person to violate any provision of or to fail to comply with any of the requirements of this chapter or of the post-construction stormwater management plan.

Whenever the code enforcement officer believes that a person has violated this chapter or the post-construction stormwater management plan, the code enforcement officer may enforce this chapter in accordance with 30-A M.R.S.A. § 4452.

- (1) *Notice of violation.* Whenever the code enforcement officer believes that a person has violated this chapter or the post-construction stormwater management plan, the code enforcement officer may order compliance with this chapter or with the post-construction stormwater management plan by written notice of violation to that person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:
 - a. The abatement of violations, and the cessation of practices, or operations in violation of this chapter or of the post-construction stormwater management plan;
 - b. At the person's expense, compliance with BMPs required as a condition of approval of the development, the repair of stormwater management facilities and/or the restoration of any affected property; and/or
 - c. The payment of fines, of the Municipality's remediation costs and of the Municipality's reasonable administrative costs and attorneys' fees and costs.

If abatement of a violation, compliance with BMPs, repair of stormwater management facilities and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement, compliance, repair and/or restoration must be completed.

- (2) *Penalties/fines/injunctive relief.* Any person who violates this chapter or the post-construction stormwater management plan shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the municipality's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any person who violates this chapter or the post-construction stormwater management plan also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred by the municipality for violation of federal and state environmental laws and regulations caused by or related to that person's violation of this chapter or the post-construction stormwater management plan; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this section.
- (3) *Consent agreement.* The municipal officers may enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this chapter or of the post-construction stormwater management plan for the purposes of eliminating violations of this chapter or of the post-construction stormwater management plan and of recovering fines, costs and fees without court action.

- (4) *Appeal of notice of violation.* Any person receiving a notice of violation or suspension notice may appeal the determination of the code enforcement officer to the board of appeals in accordance with chapter 45, article II of this Code.
- (5) *Enforcement measures.* If the violation has not been corrected pursuant to the requirements set forth in the notice of violation the municipal officers, upon notice from the code enforcement officer, are hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and imposition of fines, that may be appropriate or necessary to enforce the provisions of this chapter in the name of the town.

(T.M. of 6-9-09(2))

Sec. 35-7. Severability.

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

(T.M. of 6-9-09(2))

Sec. 35-8. Basis.

The Town of Eliot enacts this "Post-Construction Stormwater Management Control Ordinance" (the "ordinance") pursuant to 30-A M.R.S.A. § 3001 (Municipal Home Rule Ordinance Authority), 38 M.R.S.A. § 413 (the "Wastewater Discharge Law"), 33 U.S.C. § 1251 et seq. (the "Clean Water Act"), and 40 CFR Part 122 (U.S. Environmental Protection Agency's regulations governing the National Pollutant Discharge Elimination System ("NPDES")). The Maine Department of Environmental Protection, through its promulgation of the "General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems," has listed the Town of Eliot as having a regulated small municipal separate storm sewer system ("Small MS4"); under this general permit, listing as a regulated small MS4 necessitates enactment of this chapter as part of the municipality's storm water management program in order to satisfy the minimum control measures required by Part IV D 5 ("Post-construction stormwater management in development").

(T.M. of 6-9-09(2))

APPENDIX 1

Maintenance Agreement for Stormwater Management Facilities

This Maintenance Agreement is made this ____ day of _____ 20____ by and between _____ and the Town of Eliot, Maine.

The project name is _____.

The location is: _____, Eliot, Maine.

The project's Tax Map and Lot Numbers are Tax Map Lot _____

The project is shown on a plan entitled " _____ " dated _____ and most recently revised on _____, approved by the _____ [Municipal Permitting Board] on _____ and recorded in the _____ County Registry of Deeds in Plan Book _____ Page _____ (the "Project").

WHEREAS, the approval of the Project includes Stormwater Management Facilities which requires periodic maintenance; and

WHEREAS, in consideration of the approval of the Project the Town of Eliot requires that periodic maintenance be performed on the Stormwater Management Facilities;

NOW, THEREFORE, in consideration of the mutual benefits accruing from the approval of the Project by the Town and the agreement of _____ to maintain the Stormwater Management Facilities, the parties hereby agree as follows:

1. _____, for itself, and its successors and assigns, agrees to the following:
 - (a) To clean, maintain, and repair the Stormwater Management Facilities, which includes, to the extent they exist, parking areas, catch basins, detention basins or ponds, drainage swales, pipes and related structures, at least annually, to prevent the build up and storage of sediment and debris in the system as described in the Post-Construction Maintenance Plan for the facilities;
 - (b) To allow access by Town personnel or the Town's designee for annual inspection of the Stormwater Management Facilities for conformance with these requirements;
 - (c) To pay the Town of Eliot an annual fee to conduct the inspections;
 - (d) To repair any deficiencies in the Stormwater Management Facilities noted during the annual inspection; and
 - (e) For subdivisions, to create a homeowners' association for the purpose of maintaining the Stormwater Management Facilities.
2. For subdivisions, upon creation of the homeowners' association, the homeowners' association shall become responsible for compliance with the terms of this Agreement.

3. This Agreement shall constitute a covenant running with the land, and _____ shall reference this Agreement in all deeds to lots and/or units within the Project.

Witness

By: _____
Its: _____

TOWN OF ELIOT, MAINE

Witness

By: _____
Its: _____

STATE OF MAINE _____, ss. _____, 20____

Personally appeared the above-named _____, the
_____ of _____, and acknowledged the
foregoing Agreement to be said person's free act and deed in said capacity.

Before me,

Notary Public/Attorney at Law

Print Name: _____

STATE OF MAINE _____, ss. _____, 20____

Personally appeared the above-named _____, the
_____ of the Town of _____, and
acknowledged the foregoing Agreement to be said his/her free act and deed in said capacity.

Before me,

Notary Public/Attorney at Law

Print Name: _____

Chapter 36

RESERVED

Chapter 37

STREETS AND SIDEWALKS*

Article I. In General

Secs. 37-1—37-30. Reserved.

Article II. Streets

Division 1. Generally

Secs. 37-31—37-50. Reserved.

Division 2. Platting, Acceptance, Design and Construction

- Sec. 37-51. Definitions.
- Sec. 37-52. Purpose.
- Sec. 37-53. Legal authority.
- Sec. 37-54. Conformance to specifications; supervision by road commissioner.
- Sec. 37-55. Excavation permit.
- Sec. 37-56. Performance guarantees.
- Sec. 37-57. Wavers and deviations.
- Sec. 37-58. Appeals.
- Sec. 37-59. Petition and application—Required.
- Sec. 37-60. Same—Form.
- Sec. 37-61. Same—Plans.
- Sec. 37-62. Same—Review and comment.
- Sec. 37-63. Notice.
- Sec. 37-64. Locating and determining town way.
- Sec. 37-65. Recording.
- Sec. 37-66. Statement by engineer.
- Sec. 37-67. Town meeting warrant.
- Sec. 37-68. Acceptance of town way.
- Sec. 37-69. Street layout requirements.
- Sec. 37-70. Street design standards.
- Sec. 37-71. Street construction standards.
- Sec. 37-72. Clearing, grading of right-of-way area; boundaries, reference points; paving.
- Sec. 37-73. Curbs and gutters.
- Sec. 37-74. Side slopes.
- Sec. 37-75. Sidewalks; footpaths.
- Sec. 37-76. Stormwater management design guidelines.
- Sec. 37-77. Geometric street standards.
- Secs. 37-78, 37-79. Reserved.
- Sec. 37-80. Conflict with other standards.

***Cross references**—Planning and development, ch. 33; subdivisions, ch. 41; zoning, ch. 45.

ARTICLE I. IN GENERAL

Secs. 37-1—37-30. Reserved.

ARTICLE II. STREETS*

DIVISION 1. GENERALLY

Secs. 37-31—37-50. Reserved.

DIVISION 2. PLATTING, ACCEPTANCE, DESIGN AND CONSTRUCTION†

Sec. 37-51. Definitions.

(See section 1-2).

Editor's note—A Town Meeting held on Nov. 6, 2001, art. 4, revised § 37-51, which pertained to definitions, and derived from T.M. of 12-2-78, art. 8, (§ 3); Ord. of 3-25-00(2). Former provisions of this section can now be found in § 1-2 of this Code.

Sec. 37-52. Purpose.

The purpose of this division is to:

- (1) Provide safe access to each residence for fire trucks, ambulances, etc.
- (2) Protect the water resources of the area by minimizing erosion, sedimentation and stormwater runoff.
- (3) Protect property from disruption of drainage patterns that could result in flooding.
- (4) Protect the town residents from having to assume the financial burden of constructing new streets for new residents.
- (5) Assure that the roads built can be efficiently maintained by the town.
- (6) Ensure that the new roads will remain in reasonably safe condition for at least 15 years.
- (7) Reduce traffic hazards resulting from poorly located intersections or inadequate access to collector streets.
- (8) Preserve natural amenities, such as trees, wherever possible.

(T.M. of 12-2-78 art. 8, (§ 1))

***Cross references**—Planning and development, ch. 33; comprehensive plan adopted, § 33-36.

†Cross reference—Subdivision plats and plans, § 41-91 et seq.

Sec. 37-53. Legal authority.

This division, regarding street design and construction standards is enacted pursuant to the provisions of 30-A M.R.S.A. § 2101 et seq. and 30-A M.R.S.A. § 3001 et seq.
(T.M. of 12-2-78 art. 8, (§ 2))

Sec. 37-54. Conformance to specifications; supervision by road commissioner.

All roadways shall be constructed according to road specifications in this division as overseen by the road commissioner, and by an independent, third party registered professional engineer, licensed in Maine, selected by the municipal officers and obtained at the expense of the applicant, funded by a technical consulting fee escrow, established by section 33-128 of this Code. Prior to the commencement of each major phase or road construction, the road commissioner, independent, third party professional engineer, and code enforcement officer shall be notified.

(T.M. of 12-2-78 art. 8, (§ 4.1); T.M. of 6-16-2012(3))

Sec. 37-55. Excavation permit.

No person shall excavate or otherwise disturb any town way without first obtaining a permit from the road commissioner and board of selectmen and paying a fee in the amount established by the fee schedule in section 1-25. If the purpose is for placing a transmission pipeline to transport gas, petroleum products or any other fuel, permission must first be obtained by a majority vote of the board of selectmen. No person shall excavate or otherwise disturb any town way for the first five years after paving, except for emergency reasons as declared by the road commissioner and municipal officers.

(T.M. of 12-2-78 art. 8, (§ 4.3); T.M. of 6-11-2013(3))

Cross reference—Permits, § 45-125 et seq.

Sec. 37-56. Performance guarantees.

Before commencing any road construction activity, a performance guarantee shall be furnished in compliance with section 33-132.

(T.M. of 12-2-78 art. 8, (§ 8); T.M. of 6-14-05)

Sec. 37-57. Waivers and deviations.

Where the planning board finds that due to special documented circumstances of a particular street, the provision of certain performance standards is not requisite in the interest of public health, safety, and general welfare, or is inappropriate because of the topography of the street site the planning board may waive such requirements subject to appropriate conditions.

- (1) For streets existing prior to December 2, 1978. Where extraordinary and unnecessary hardships may result, or due to special circumstances, these streets may have certain

requirements of this chapter waived by the planning board subject to appropriate conditions. In granting such waivers the planning board must determine that the provisions of this chapter are followed to the maximum extent possible.

- (2) For streets constructed on or after December 2, 1978. Only the material and dimensions specified in this chapter may be used unless specific requirements are waived by the planning board.
 - a. Such waivers shall require a concurring vote of at least four planning board members.
 - b. A separate waiver request must be submitted for each item requested to be waived. Each request must include engineering rationale with supporting reference documentation. Each request must include a statement signed by a registered professional engineer licensed in the state that the proposed deviation reflects good engineering practice and will not result in decreased quality or durability of the proposed street.
 - c. Each waiver request must include signed review comments from the town road commissioner, police chief, and fire chief.
 - d. All waivers approved by the planning board shall be indicated in the notes of the final plan to be recorded.
 - (3) Waivers granted by the planning board shall be so noted in the report of the municipal officers at the town meeting called for accepting the street as a public street.
 - (4) In granting waivers, the planning board shall require such conditions, as will, in its judgment, secure substantially the objectives of the requirements so waived.
- (Ord. of 3-25-00(2))

Editor's note—Ord. of 3-25-00(2) repealed former section 37-57. Former § 37-57 pertained to variances and waivers and derived from T.M. of 12-2-78 art. 8, (§ 9).

Sec. 37-58. Appeals.

Any person aggrieved by a decision or failure to act of the municipal officers or planning board pursuant to this division may appeal to the county superior court within 30 days of such decision or refusal to issue a decision.

(T.M. of 12-2-78 art. 8, (§ 10))

Sec. 37-59. Petition and application—Required.

Any person who has established residence in the town may petition the municipal officers to lay out, alter, widen or extend a public town way. The petition is necessary to give the municipal officers jurisdiction. In addition to the petition, an application shall be submitted in accordance with sections 37-62 through 37-65.

(T.M. of 12-2-78 art. 8, (§ 5.1))

Sec. 37-60. Same—Form.

A petition to lay out a street for acceptance as a town way shall be accompanied by a written application which shall include the following information:

- (1) The applicant's name and a statement of general purposes of the street.

- (2) Names of the owners of record of the land upon which the proposed town way is located.
 - (3) A statement of any legal encumbrances on the land upon which the proposed way is located.
 - (4) The anticipated beginning and ending dates of each major phase of street construction.
 - (5) The proposed name of the street and a statement that the name has been selected in accordance with the town's expanded 911 system guidelines and does not conflict with other existing street names in the town.
 - (6) An appropriate instrument of conveyance to the title interest in the street together with a waiver of claim for damages by the owner as contemplated by 23 M.R.S.A. § 3025.
- (T.M. of 12-2-78 art. 8, (§ 6.1); Ord. of 3-25-00(2))

Sec. 37-61. Same—Plans.

The written application shall be accompanied by plans and illustrations, which shall include the following information:

- (1) The scale of the plan.
- (2) The directions of true and magnetic north.
- (3) The beginning and ending points with relation to accepted town ways, and any planned or anticipated future extensions of the streets proposed for acceptance. All terminal points and the centerline alignment shall be identified by survey stationing.
- (4) A plan view, centerline view, and typical cross section view of the proposed streets.
- (5) The roadway and roadway limits with relation to existing buildings and established landmarks.
- (6) Dimensions, both linear and angular, necessary for locating subdivisions, lots, easements and building lines.
- (7) The lots as laid out and numbered on the proposed town way, showing the names of all owners of abutting property.
- (8) All natural waterways and watercourses in or on land contiguous to the proposed town ways.
- (9) The kind, size and location of all existing and proposed drainage structures and/or channels.
- (10) A written report describing the location of all existing and proposed overhead and underground utilities.

- (11) Where the subdivision streets are to remain private streets the following shall appear on the recorded plan:

All streets in this subdivision shall remain private streets to be maintained by the developer or the lot owners and shall not be accepted or maintained by the town, until they meet the municipal street design and construction standard which are in force at the time of request for acceptance.

(T.M. of 12-2-78 art. 8, (§ 6.2); Ord. of 3-25-00(2))

Sec. 37-62. Same—Review and comment.

(a) The municipal officers shall, after receipt of the application and petition to lay out a street for acceptance as a town way, notify the planning board for its review and written comment. The classification of a proposed town way shall be made by the planning board after its consideration of land use or the comprehensive plan of the town. Upon notice from the planning board of the classification of the proposed way, the municipal officer shall notify the petitioner of such classification.

(b) Upon receipt of plans for a public street the planning board shall forward one copy to the municipal officers, the road commissioner, and the code enforcement officer for review and comment. In addition, plans shall be sent to an independent, third party registered professional engineer for review and comment. Said engineer shall be licensed in Maine, selected by the municipal officers, and obtained at the expense of the applicant, funded by a technical consulting fee escrow, established by section 33-128 of this Code.

(c) Where the applicant proposes changes to existing public streets, the proposed design and construction details shall be approved in writing by the road commissioner or the state department of transportation, as appropriate, and shall be sent to an independent, third party registered professional engineer for review and comment. Said engineer shall be licensed in Maine, selected by the municipal officers, and obtained at the expense of the applicant, funded by a technical consulting fee escrow, established by section 33-128 of this Code.

(T.M. of 12-2-78 art. 8, (§ 5.2); Ord. of 3-25-00(2); T.M. of 6-16-2012(3))

Sec. 37-63. Notice.

The municipal officers shall post notice of their intentions to locate a public town way and to determine that the way is to be a public town way. The officers may locate the way personally or by agent. Notice shall be posted for seven days in three locations including the vicinity of the way and two public places in the town.

(T.M. of 12-2-78 art. 8, (§ 5.3))

Sec. 37-64. Locating and determining town way.

At the time and place designated in the notice the municipal officers shall meet to locate the public town way. They may also meet to locate the way informally and prior to posting the notice. The municipal officers may be represented by an agent at the formal meeting if the acts of the agent are ratified by them. The municipal officers and their agent are not bound by the

description in the petition but may adopt measures suitable to attaining the end sought by the petition. At the time that the public town way is located the officers shall determine whether it is to be a public town way or a private way.

(T.M. of 12-2-78 art. 8, (§ 5.4))

Sec. 37-65. Recording.

The municipal officers shall make written record of their proceedings containing the bounds and measurements of the public town way and the measurements of the public town way and the damages allowed to each person for land taken. The record shall show that notice was properly posted and that the way was determined to be a public town way. In order for the way to be legally established the record must be filed with the town clerk. The municipal officers' record is evidence of the posting, therefore a constable's certificate is not necessary.

(T.M. of 12-2-78 art. 8, (§ 5.5))

Sec. 37-66. Statement by engineer.

Upon completion of street or street construction and prior to a vote by the municipal officers to submit a proposed town way to a town meeting, a written statement shall be submitted to the municipal officers by an independent, third party registered professional engineer, licensed in the state selected by the municipal officers, and funded at the expense of the applicant. This statement shall indicate that he or she has completed a site evaluation of the proposed street and that to the best of his or her knowledge the street was designed to be in compliance with this chapter and that the street was constructed in accordance with the plan approved by the planning board.

(Ord. of 3-25-00(2); T.M. of 6-16-2012(3))

Editor's note—Ord. of 3-25-00(2) repealed former section 37-66. Former section 37-57 pertained to certification by engineer and derived from T.M. of 12-2-78 art. 8, (§ 4.2).

Sec. 37-67. Town meeting warrant.

Until the public town way has been located and the record has been filed, the public town way cannot be legally established at a town meeting called by a warrant containing an article for the purpose of accepting the way. After the public town way has been located and the record has been filed, a warrant article shall be filed, the format of which shall be determined by the municipal officers.

(T.M. of 12-2-78 art. 8, (§ 5.6))

Sec. 37-68. Acceptance of town way.

At the town meeting legally called for the purpose of accepting a public way, the municipal officers shall make their report. The form of this report shall be determined by the municipal officers. A majority vote of the governing body shall be necessary to accept a public way.

(T.M. of 12-2-78 art. 8, (§§ 5.7, 5.8))

Sec. 37-69. Street layout requirements.

(a) All proposed streets shall conform to such comprehensive plan as may have been adopted prior to the submission of a preliminary plan. All streets shall be designed so that they will provide safe vehicular travel while discouraging movement of through traffic. No road being submitted to the town for acceptance shall require travel over any road, street or right-of-way which has not been accepted by the town. Any improvements to existing town roads required as a direct result of a road being submitted for acceptance shall be accomplished at the expense of the applicant.

(b) The arrangement, character, extent, width, grade and location of all streets shall be considered in their relation to existing or planned streets, to topographical conditions, to public convenience and safety, and their appropriate relation to the proposed use of land to be served by such streets. Grades of streets shall conform as closely as possible to the original topography. In the case of dead-end streets, where needed or desirable, the planning board may require the reservation of a 20-foot side easement in the line of the street to provide continuation of pedestrian traffic or utilities to the next street. Reserve strips controlling access to streets shall be prohibited except where their control is definitely placed in the town under conditions approved by the planning board.

(c) In front of areas zoned and designed for commercial use, or where a change of zoning to a zone which permits commercial use is contemplated by the town, the street right-of-way and/or pavement width shall be increased by such amount on each side to assure the free flow of through traffic without interference by parked or parking vehicles, and to provide adequate and safe parking spaces for such commercial or business district. In no case shall the street have a right-of-way width less than 40 feet nor have less than 20 feet width of pavement. Adequate off-street loading space, suitably surfaced, shall be provided in connection with lots designed for commercial or industrial use. All such uses shall comply with the performance standards in the zoning chapter pertaining to off-street loading.

(d) Where new development abuts or contains an existing or proposed arterial street, the planning board may require a marginal access street which is a street parallel to an arterial street providing access to adjacent lots; reverse frontage, that is, frontage on the street other than the existing or proposed arterial street, with screen planting contained in a nonaccess reservation along the rear property line; or such other treatments as may be necessary for adequate protection of such properties and/or to afford separation of through and local traffic.

(e) Subdivisions containing 15 lots or more shall provide a minimum of two access points to public streets or public roads previously accepted, acquired or laid out and taken by the town or state.

(f) The distance between the closed end of a dead-end street and the nearest nondead-end street shall not exceed 1,000 feet. That distance shall be measured using right of way dimensions, beginning at the outermost edge of the closed end and following center lines to the nearest sideline (or extended sideline) of the nondead-end street, including any intervening

streets or portions of streets which must be traversed to reach the nondead-end street. The closed end of a dead-end street shall contain a cul-de-sac turnaround in compliance with section 37-70(a). The planning board may not waive this 1,000-foot limit.

(g) Entrances onto existing or proposed collector streets shall not exceed a frequency of one per 400 feet of street frontage, or the minimum distance required by section 37-70, whichever is greater. Entrances onto existing or proposed arterial streets shall not exceed a frequency of one per 1,000 feet of street frontage.

(T.M. of 12-2-78 art. 8, (§ 7.1); Ord. of 3-25-00(2); T.M. of 6-16-2012(3))

Sec. 37-70. Street design standards.

(a) All streets shall be designed to meet the following standards according to their classification as determined by the planning board:

Design Standards for Streets

<i>Description</i>	<i>Arterial</i>	<i>Collector (15 or more lots)</i>	<i>Minor (less than 15 lots)</i>	<i>C/I</i>
Minimum width of right-of-way	80 ft	50 ft	40 ft	60 ft
Minimum width of traveled way	44 ft	20 ft	18 ft	30 ft
Minimum width of shoulders (each side)	5 ft	3 ft	2 ft	9 ft
Sidewalk width (if used)	8 ft	5 ft	5 ft	8 ft
Minimum grade	0.5%	0.5%	0.5%	0.5%
Maximum grade (1)	5%	6%	8%	5%
Maximum grade at intersections (within 75 ft of intersections)	3%	3%	3%	3%
Minimum angle of street intersections (2)	90 deg	90 deg	75 deg	90 deg
Minimum centerline radius of curves	280 ft	280 ft	100 ft	400 ft
Minimum tangent length between reverse curves	100 ft	100 ft	100 ft	100 ft
Roadway crown (minimum) (3)	¼"/ft (1:48)	¼"/ft (1:48)	¼"/ft (1:48)	¼"/ft (1:48)
Minimum curb radius at 90 degree intersections	30 ft	25 ft	20 ft	30 ft (4)
Minimum right of way radii at intersections	20 ft	10 ft	10 ft	20 ft
Radius of cul-de-sac turnaround at enclosed end (5), (6), (7)	—	—	—	—
• at property line (minimum)	NA	70 ft	70 ft	70 ft
• outer edge of pavement (minimum)	NA	65 ft	65 ft	65 ft

<i>Description</i>	<i>Arterial</i>	<i>Collector (15 or more lots)</i>	<i>Minor (less than 15 lots)</i>	<i>C/I</i>
• inner edge of pavement	NA	40 ft	40 ft	30 ft
• outer edge of center island	NA	30 ft	30 ft	20 ft

Footnotes:

(1) = Maximum grade may be exceeded for a length of 100 ft or less.

(2) = Street intersection angles shall be as close to 90 degrees as feasible but no less than the listed angle.

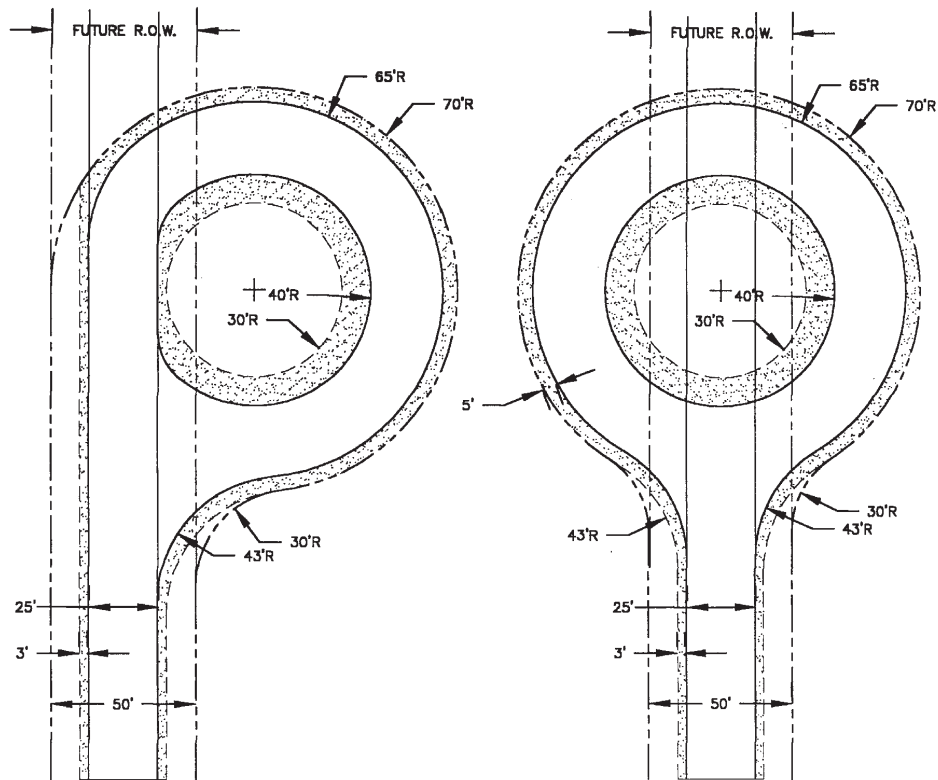
(3) = Roadway crown is per foot of lane width.

(4) = Should be based on the turning radii of expected commercial vehicles, but no less than 30 ft.

(5) = All cul-de-sacs shall have suitable areas designated for snow storage, either within the center island or around the outside of the cul-de-sac perimeter, subject to the review and recommendation of the road commissioner. If practicable, cul-de-sacs are strongly encouraged to have a vegetated center island, and existing trees should be preserved if possible, if the area was wooded prior to construction. A landscaping plan shall be submitted which indicates the location of snow storage, and the type of vegetation that will be removed, planted and/or preserved within the island or around the outside of the perimeter of the cul-de-sac.

(6) = Except in the C/I zone, all cul-de-sacs shall have a minimum 25-foot pavement width around the center island with a clear five-foot outer and ten-foot inner shoulder. The large cul-de-sac pavement width and shoulders are intended to provide a sufficient area to facilitate easy maneuvering of emergency and service vehicles, and to allow sufficient room for snow storage. In the C/I zone a smaller center island and larger pavement width is specified in order to accommodate commercial vehicles.

(7) = An alternate "P" shaped cul-de-sac may be used as shown below. A reverse "P" shape may also be used.



"P SHAPED"

PLAN
SCALE 1" = 40'

"DROP SHAPED"

LEGEND

- APPROXIMATE PROPERTY LINE
- PAVED ROAD/DRIVE
- - - GRAVEL SHOULDER

**TYPICAL
CUL-DE-SAC
CONFIGURATIONS**

**ROAD STANDARDS
TOWN OF ELIOT
MAINE**

(b) Grades of all streets shall conform in general to the existing terrain, but shall not exceed the minimum and maximum standards detailed above. All changes in grade shall be connected by vertical curves of such length and radius in order to provide the following minimum stopping sight distances based on street design speed:

Design Speed (mph)	20	25	30	35
Stopping Sight Distance (ft.)	125	150	200	250

Stopping sight distance shall be calculated with a height of eye at three and one-half feet and the height of object at one-half foot.

(c) Cross (four-cornered) street intersections shall be avoided insofar as possible, except as shown on the comprehensive plan or at other important traffic intersections. A distance of at least 200 feet shall be maintained between centerlines of offset intersecting streets.

(d) Street intersections, driveway curb-cuts, and curves shall be so designed as to permit a minimum sight distance of ten feet for each mph of posted speed limit for both pedestrian and vehicular traffic. Sight distances shall be measured from the drivers seat of a vehicle at rest on that portion of the exit with the front of the vehicle a minimum of ten feet behind the curb line of the shoulder, with the height of the eye three and one-half feet, to the top of an object four and one-half feet above the pavement. Where necessary, corner lots shall be cleared of all growth (except isolated trees) and sight obstructions, including ground excavation, to achieve the required visibility.

(e) In the event that the construction of a connector street or the adjacent terrain creates a situation that makes it technically impractical to design a new street to these standards, the applicant may submit an alternate design. Formal waiver requests for each deviation from the standards herein must be submitted as specified in section 37-57.

(f) Upon completion of any new street serving three or more lots, public or private, an as-built/record drawing plan shall be prepared by registered professional engineer licensed in the State of Maine and recorded at the York County Registry of Deeds. The as-built plan shall include the following:

- (1) A plan view of the road and right-of-way as constructed, showing:
 - a. The right-of-way property boundaries, and information to describe each property boundary which intersects the right-of-way boundary;
 - b. Survey monumentation and bearings and distances of property boundaries, sufficient to allow ready location of the right-of-way on the ground;
 - c. Edge of pavement, edge of shoulder, edge of sidewalk, and edge of curb;
 - d. Complete curve data for all horizontal curves;
 - e. Turning radii at all intersections;
 - f. Pavement marking;
 - g. Road signs;

- h. Street lights, utility poles, fire hydrants, pump stations, and other utility features visible on the ground;
 - i. Elevation contours at not greater than two-inch intervals;
 - j. Other roads which intersect this road, with an indication of ownership (private or public) for each;
 - k. indication of the location of the sample cross-section; and other features as relevant.
- (2) A profile plan of the road at a scale not larger than 50'=1" with a vertical exaggeration not in excess of 10:1. This plan shall show the profile of the centerline of the road, and shall indicate grades at critical points along the centerline, and shall include complete curve data for all vertical curves.
- (3) A sample cross-section of the road drawn to a horizontal scale no larger than 5'=1" and a vertical scale of 1'=1". The location of this cross-section shall be indicated on the plan view.
- (4) A plan showing the size and location of all existing water lines, sewer lines, storm drains, culverts, underdrains and other underground utilities within the right-of-way, including all service feeds to properties along the road.
- (5) Certification by a Maine-licensed professional land surveyor that all survey monuments shown on the recorded plan and as-built plans exist and have been physically located by the surveyor.
- (T.M. of 12-2-78 art. 8, (§ 7.2); T.M. of 11-2-82 art. 2, (§ 7.2.1); Ord. of 3-25-00(2); T.M. of 6-16-2012(3))

Sec. 37-71. Street construction standards.

All streets shall be constructed to meet the following standards for minimum thickness of materials after compaction:

Construction Standards for Streets

<i>Street Materials</i>	<i>Arterial</i>	<i>Collector (15 or more lots)</i>	<i>Minor (less than 15 lots)</i>	<i>C/I</i>
Aggregate subbase course (max size stone 4")	24"	15"	15"	24"
Crushed gravel base course (max size stones 2")	6"	6"	6"	6"
Hot bituminous pavement	—	—	—	—
• Total thickness	3"	3"	3"	4"
• Wearing/surface course	1¼"	1¼"	1¼"	1¼"
• Base course	1¾"	1¾"	1¾"	2¾"

<i>Street Materials</i>	<i>Arterial</i>	<i>Collector (15 or more lots)</i>	<i>Minor (less than 15 lots)</i>	<i>C/I</i>
Surface gravel	NA	NA	NA	NA

(T.M. of 12-2-78 art. 8, (§ 7.3.1); Ord. of 3-25-00(2); T.M. of 6-16-2012(3))

Sec. 37-72. Clearing, grading of right-of-way area; boundaries, reference points; paving.

(a) Tree stumps, other organic materials, and rocks and boulders shall be removed to a depth of two feet below the subbase of the roadway. In addition all ledges, large boulders and tree stumps shall be removed from the right-of-way so that the entire right-of-way area is cleared and rough-graded.

(b) The road plan shall contain sufficient data acceptable to the road commissioners to determine readily the location, bearing and length of every street line, and to reproduce such lines upon the ground. Where practicable, these should be tied to reference points previously established. The road plan shall show the length of all straight lines, the deflection angles, radii, lengths of curves and central angles of all curves, tangent distances, and tangent bearings for each street.

(c) All boundaries shall be recorded also on warranty deeds of all land which has frontage on the proposed street.

(d) Permanent reference monuments shall be set at all street intersections and points of curvature. Monuments shall be stone or granite located in the ground at final grade level, and shall be indicated on the road plan. The minimum monument size shall be four inches square at the top and four feet in length. After they are set, drill holes one-half inch deep shall locate the points described above.

(e) Pavement.

- (1) Minimum standards for the base layer of pavement shall be the state department of transportation specifications for plant mix grade B with an aggregate size no more than one inch maximum and a liquid asphalt content between four and eight-tenths percent and six percent by weight depending on aggregate characteristics. The pavement may be placed providing the air temperature in the shade at the paving location is 40 degrees F or higher and the surface to be paved is not frozen or unreasonably wet. Pavement may not be placed when wind conditions are such that rapid cooling will prevent satisfactory compaction. Between November 15 and April 15 base layer pavement may only be placed when the above temperature and low wind conditions exist and with the specific approval of the road commissioner in writing.
- (2) Minimum standards for the surface layer of pavement shall be the state department of transportation specifications for plant mix grade C or D with an aggregate size no more than three-quarter inch and a liquid asphalt content between five and eight-tenths percent and seven percent by weight depending on aggregate characteristics. The

pavement may be placed providing the air temperature in the shade at the paving location is 50 degrees or higher. Pavement may not be placed when wind conditions are such that rapid cooling will prevent satisfactory compaction. Between October 15 and April 15 surface layer pavement may only be placed when the above temperature and low wind conditions exist and with the specific approval of the road commissioner in writing.

- (3) Paving shall be in place for one complete winter season (October 1 to April 14 of any year) before the street may be submitted to the town for acceptance.

(T.M. of 12-2-78 art. 8, (§§ 7.3.2—7.3.6); Ord. of 3-25-00(2); T.M. of 6-16-2012(3))

Sec. 37-73. Curbs and gutters.

(a) Street curbs, gutters and catchbasins may be required on all streets within growth areas as designated by the comprehensive plan, and shall be required at the direction of the planning board when considered advisable for runoff or other reasons. Curbing shall be quarried granite, bituminous concrete or cement, and shall be installed on a thoroughly compacted gravel base of six inches minimum, except bituminous curbing shall be installed on a three-inch-thick bituminous pad.

(b) Where curbs and gutters are not required, stabilized shoulders and proper drainage facilities shall be the responsibility of the developer in compliance with the requirements in this division.

(T.M. of 12-2-78 art. 8, (§§ 7.3.7—7.3.8); T.M. of 6-16-2012(3))

Sec. 37-74. Side slopes.

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 one foot horizontal to four feet vertical is permitted.

(T.M. of 12-2-78 art. 8, (§ 7.3.9); Ord. of 3-25-00(2); T.M. of 6-16-2012(3))

Sec. 37-75. Sidewalks; footpaths.

Sidewalks and footpaths, where installed as required by section 41-221, shall be at least five feet wide and shall meet the following minimum requirements:

- (1) *Location.* Sidewalks may be located adjacent to the curb or shoulder but it is recommended to locate sidewalks a minimum of two and one-half feet from the curb facing or edge of shoulder if the street is not curbed.
- (2) *Bituminous sidewalks.*
 - a. The "subbase" aggregate course shall be no less than 12 inches thick after compacting.
 - b. The hot bituminous pavement surface course shall be MDOT plant mix. Grade D constructed in two lifts, each no less than one inch after compacting.

(3) *Portland cement concrete sidewalks.*

- a. The "subbase" aggregate shall be no less than 12 inches thick after compacting.
- b. The Portland cement concrete shall be reinforced with six-inch square, number ten wire mesh and shall be no less than four inches thick.

(T.M. of 12-2-78 art. 8, (§ 7.3.10); Ord. of 3-25-00(2); T.M. of 6-16-2012(3))

Sec. 37-76. Stormwater management design guidelines.

(a) Design of stormwater management facilities to handle runoff from streets and sidewalks shall use the following design techniques and best management practices:

- (1) For subdivisions that require a DEP review under the Site Location of Development Act (SLDA), a stormwater management plan shall be submitted which complies with the SLDA permit and the requirements of DEP Chapter 500 Stormwater Regulations.
- (2) For subdivisions that do not require a SLDA permit, but require a DEP permit under the Stormwater Law, a stormwater management plan shall be submitted which complies with the requirements of DEP Chapter 500 Stormwater Regulations.
- (3) For subdivisions outside of the watershed of a great pond, that neither require a SLDA permit, nor a DEP permit under the Stormwater Law, a stormwater management plan shall be submitted which incorporates low impact development techniques on each individual lot, as described in Volume I of the Maine Stormwater Best Management Practices Manual, 2006.
- (4) For subdivisions within the watershed of a great pond, that neither require a SLDA permit, nor a DEP permit under the Stormwater Law, that contain:
 - a. Five or more lots or dwelling units created within any five-year period; or
 - b. Any combination of 800 linear feet of new or upgraded driveways and/or streets;a stormwater management plan shall be submitted that meets the phosphorus allocation across the entire subdivision in accordance with the methodology described in the DEP Phosphorus Design Manual, Volume II of the Maine Stormwater Best Management Practices Manual, 2006.

(b) The planning board may require a hydrologic analysis for any site in areas with a history of flooding or in areas with a potential for future flooding, associated with cumulative impacts of development. This hydrologic analysis would be in the form of a "downstream analysis" under conditions of the ten-year, 24-hour storm and the 25-year, 24-hour storm, and the 100-year, 24-hour storm, as described below:

Downstream analysis methodology

The criteria used for the downstream analysis is referred to as the "10% rule." Under the ten percent rule, a hydrologic and hydraulic analysis for the ten-year, 24-hour storm and the 25-year, 24-hour storm, and the 100-year, 24-hour storm is extended downstream to the point where the site represents ten percent of the total drainage area. For example, a ten-acre site would be analyzed to the point downstream with a drainage area of 100 acres.

This analysis should compute flow rates and velocities downstream to the location of the ten percent rule for present conditions and proposed conditions. If the flow rates and velocities increase by more than five percent and/or if any existing downstream structures are impacted, the designer should redesign and incorporate detention facilities.

(Ord. of 3-25-00(2); T.M. of 6-16-2012(3))

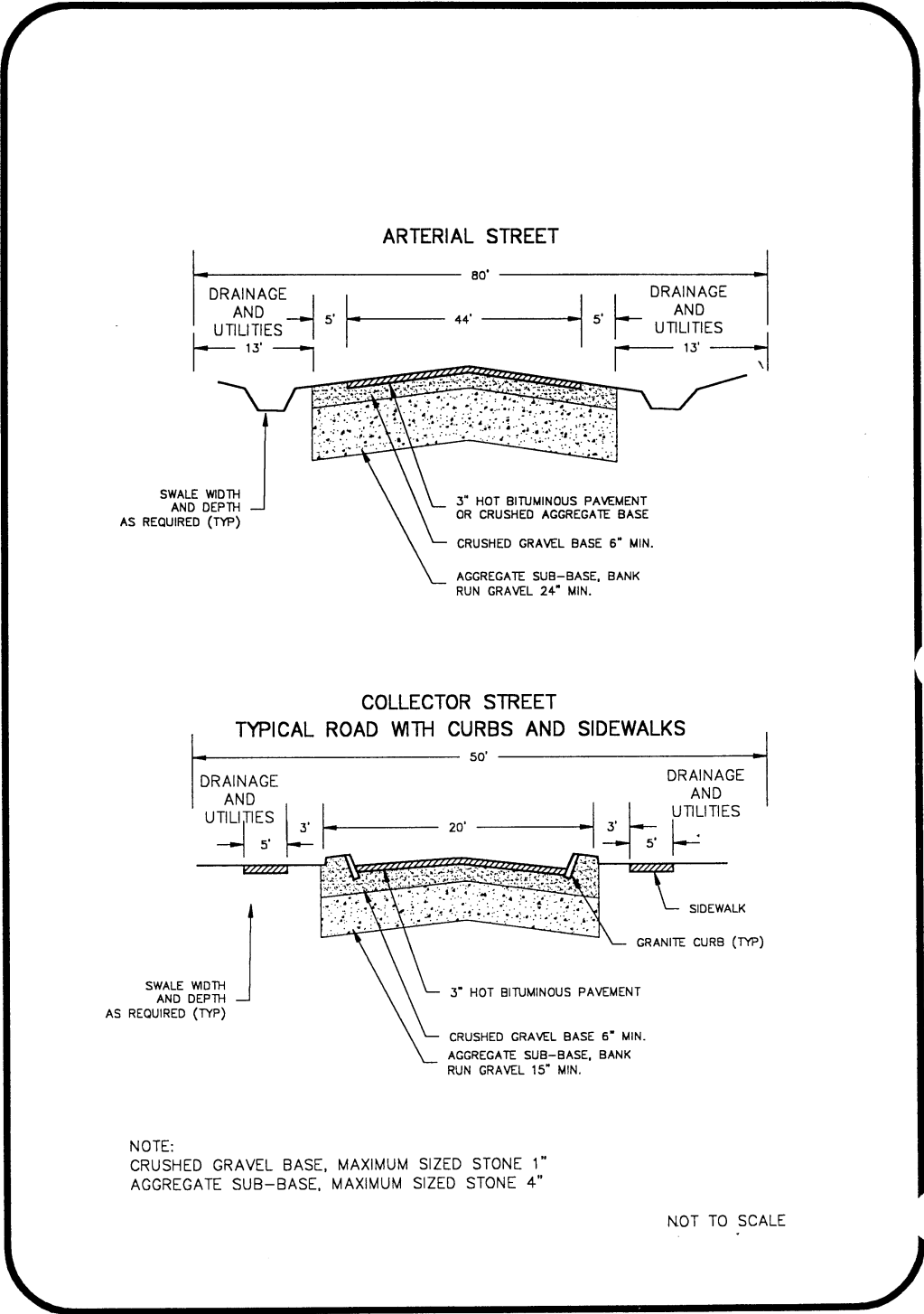
Editor's note—Ord. of 3-25-00(2) repealed former section 37-76. Former section 37-76 pertained to stormwater drainage design standards and derived from T.M. of 12-2-78 art. 8, (§ 7.4).

STREETS AND SIDEWALKS

§ 37-77

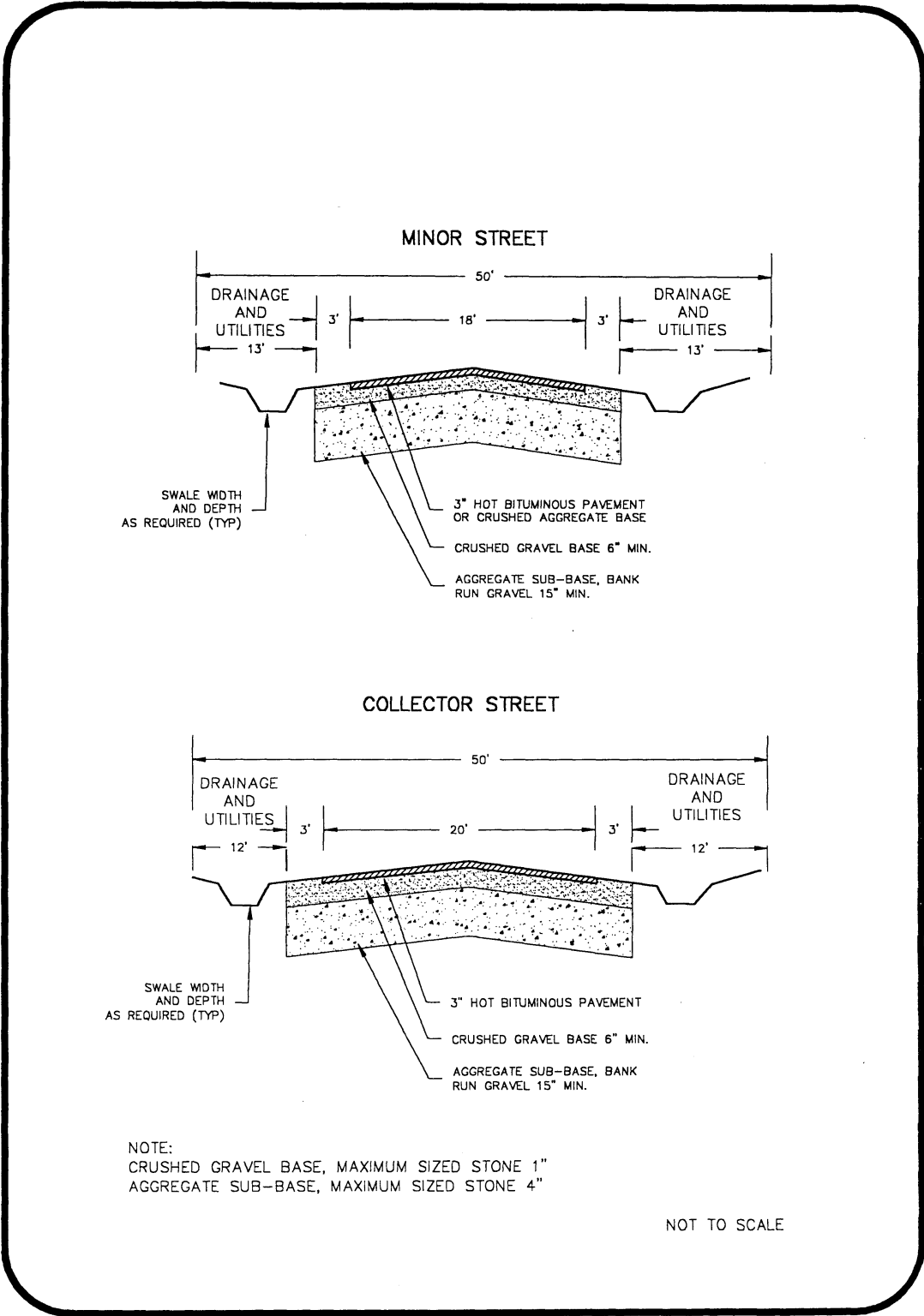
Sec. 37-77. Geometric street standards.

The following illustrates the minimum requirements for streets.



§ 37-77

ELIOT CODE



(Ord. of 3-25-00(2))

Sec. 37-78, 37-79. Reserved.

Sec. 37-80. Conflict with other standards.

Whenever the requirements of this chapter conflict with any other ordinance, code or federal or state standard, the more restrictive requirements shall apply. Whenever provisions of this chapter differ from state or federal standards that are less restrictive the planning board has the option of following the less restrictive or differing standards and may waive the specific standards in this chapter as specified in section 37-57.

(Ord. of 3-25-00(2); T.M. of 6-16-2012(3))

Chapters 38—40

RESERVED

Chapter 41

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- Sec. 41-91. Preliminary procedure.
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Division 3. Preliminary Plan for Subdivisions and Mobile Home Park Subdivisions

- Sec. 41-141. Submission of application and required notices.

***Cross references**—Flood prevention and protection, ch. 25; flood hazard development permit required, § 25-56; flood hazard development standards, § 25-136 et seq.; growth management, ch. 29; planning and development, ch. 33; comprehensive plan adopted, § 33-36; streets and sidewalks, ch. 37; zoning, ch. 45; land use review, § 45-402.

State law reference—Subdivisions, 30-A M.R.S.A. § 4401 et seq.

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- Sec. 41-142. Application fees.
- Sec. 41-143. Attendance at planning board meeting.
- Sec. 41-144. Official submittal date.
- Sec. 41-145. Public hearing; notice.
- Sec. 41-146. Action of planning board.
- Sec. 41-147. Conditions of preliminary approval.
- Sec. 41-148. Scope of preliminary approval.
- Sec. 41-149. Location map.
- Sec. 41-150. Preliminary plan specifications.
- Secs. 41-151—41-170. Reserved.

Division 4. Final Plan for Subdivisions and Mobile Home Park Subdivisions

- Sec. 41-171. Application; fee.
- Sec. 41-172. Official submittal date.
- Sec. 41-173. Securing state, federal, etc., approvals.
- Sec. 41-174. Water supply system.
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- Sec. 41-178. Appeals.
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- Sec. 41-251. Scope.

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- Sec. 41-252. Monuments.
- Sec. 41-253. Street signs.
- Sec. 41-254. Blocks.
- Sec. 41-255. Lots.
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Division 2. Requirements Unique to Mobile Home Park Subdivisions

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- Sec. 41-283. Groundwater impacts.
- Sec. 41-284. Conversion to another use.
- Sec. 41-285. Responsibilities of park management.
- Sec. 41-286. Requirements for individual manufactured housing units within a mobile home park.
- Sec. 41-287. Requirements for manufactured housing unit structures within a mobile home park.
- Secs. 41-288—41-309. Reserved.

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- Sec. 41-310. Construction requirements.
- Sec. 41-311. Landscaping.
- Sec. 41-312. Parking.

ARTICLE I. IN GENERAL**Sec. 41-1. Definitions.**

(See section 1-2).

Editor's note—A Town Meeting held on Nov. 6, 2001, art. 4, revised § 41-1, which pertained to definitions, and derived from T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 1101). Former provisions of this section can now be found in § 1-2 of this Code.

State law reference—Subdivision definitions, 30-A M.R.S.A. § 4401.

Sec. 41-2. Purpose.

The purpose of this chapter shall be to ensure the comfort, convenience, safety, health and welfare of the people, to protect the environment and to promote the development of an economically sound and stable community. To this end, in approving subdivisions within the town, the planning board shall consider the following criteria and before granting approval shall determine that the proposed subdivision will:

- (1) Preserve and enhance general air quality.
 - (2) Preserve and enhance general water quality.
 - (3) Preserve and enhance soil quality and subterranean resources.
 - (4) Preserve and enhance natural resources and scenic beauty, including access to direct sunlight.
 - (5) Respect and preserve historical features and sites and traditional land use patterns.
 - (6) Provide sufficient water for development either from public or private sources.
 - (7) Provide adequate sewer disposal from public or private sources.
 - (8) Provide adequate solid waste disposal from public or private sources.
 - (9) Contribute to or at least not burden government services.
 - (10) Maintain safe roads and prevent traffic congestion.
 - (11) Protect and promote public health and safety.
 - (12) Comply with local, state and federal land use and other policies and laws.
 - (13) Provide and maintain adequate financing to accomplish these purposes.
- (T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (art. 1))

Sec. 41-3. Authority.

(a) This chapter has been prepared in accordance with the provisions of 30-A M.R.S.A. § 4401 et seq.

(b) This chapter is enacted pursuant to the comprehensive plan of the town.
(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 201))

Sec. 41-4. Jurisdiction.

(a) The planning board of the town shall review, act on subdivision plans and perform other tasks as required by this chapter.

(b) The provisions of this chapter shall pertain to all proposed land, as herein defined, within the boundaries of the town.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 202))

Secs. 41-5—41-35. Reserved.

ARTICLE II. ADMINISTRATION AND ENFORCEMENT*

DIVISION 1. GENERALLY

Sec. 41-36. Filing, recording of plan.

No plan of a subdivision or any division of land within the municipal boundaries which would constitute a subdivision as defined herein shall hereafter be filed or recorded in the registry of deeds until a final plan thereof shall have been approved by the planning board in accordance with all of the requirements, design standards and construction specifications set forth elsewhere in this chapter nor until such approval shall have been entered on such final plan by the planning board.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 1001.1))

Sec. 41-37. Conveyance of land.

(a) No person may convey, offer or agree to convey any land in a subdivision which has not been approved by the planning board and recorded in the registry of deeds.

(b) Any person who conveys, offers or agrees to convey any land in a subdivision which has not been approved as required by this section shall be punished by a fine of not more than \$1,000.00 for each such conveyance, offering, or agreement. The municipal officers may institute proceedings to enjoin the violation of this section. Fines collected for violation of this section shall be recovered for the use of the town.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§§ 1001.2, 1001.3))

Sec. 41-38. Utility service.

No public utility, water districts, 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.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 1001.4))

***Cross references**—Administration, ch. 2; code enforcement officer, § 2-51 et seq.

Sec. 41-39. Construction of roads, buildings, etc.

Not only is making a subdivision without planning board approval a violation of law, but so also within such a subdivision is grading or construction of roads, grading of land or lots, or construction of buildings until such time as a final plan of such subdivision shall have been duly prepared, submitted, reviewed, approved and endorsed as provided in this chapter and until the original copy of the final plan so approved and endorsed has been duly recorded in the county registry of deeds.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 1001.5))

Sec. 41-40. Plumbing permit prerequisite to issuance of building permit.

No building permit shall be granted until a plumbing permit has been issued.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 1001.6))

Sec. 41-41. Reserved.

Editor's note—Section 41-41 was repealed in its entirety at a town meeting held on Mar. 20, 2004. Former § 41-41 pertained to well-drilling permit and derived from T.M. of 11-2-82; T.M. of 3-19-88 and T.M. of 12-20-89 (§ 1001.7).

Sec. 41-42. Reserved.

Editor's note—Section 41-42 was repealed in its entirety at a town meeting held on Mar. 20, 2004. Former § 41-42 pertained to soils testing and derived from T.M. of 11-2-82; T.M. of 3-19-88 and T.M. of 12-20-89 (§ 1001.8).

Secs. 41-43—41-65. Reserved.

DIVISION 2. VARIANCES, WAIVERS AND APPEALS

Sec. 41-66. Variance.

Where the planning board finds that the subdivider or abutter has documented that extraordinary and unnecessary hardships may result from strict compliance with this article or where there are special circumstances of a particular plan, it may vary requirements of this article so that substantial justice may be done, and the public interest secured; provided that such variations will not have the effect of nullifying the intent and purpose of the official map, the comprehensive plan or the zoning chapter, where such exist.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 1002.1))

Sec. 41-67. Waiver of requirements.

Where the planning board finds that due to special documented circumstances of a particular plan, the provision of certain required improvements is not requisite in the interest

of public health, safety and general welfare, or is inappropriate because of inadequacy or lack of connecting facilities adjacent in proximity to the proposed subdivision, it may waive such requirements, subject to appropriate conditions.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 1002.2))

Sec. 41-68. Conditions for granting modifications.

In granting variances, waivers and modifications, the planning board shall require such conditions as will, in its judgment, secure substantially the objectives of the requirements so varied, waived or modified.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 1002.3))

Sec. 41-69. Appeals.

An aggrieved person or party as defined in section 41-178 may take an appeal from a decision on an application or final plan made by the planning board to the board of appeals in accordance with section 45-46 et seq.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 1003))

Cross reference—Board of appeals, § 45-46 et seq.

Secs. 41-70—41-90. Reserved.

ARTICLE III. PLATS AND PLANS*

DIVISION 1. GENERALLY†

Sec. 41-91. Preliminary procedure.

(a) A subdivision application shall be considered to be a specialized type of planning board site plan review. The subdivision review process shall begin when an applicant, referred to as the subdivider, submits to the planning assistant an application for review of a sketch plan, and other data relative to the proposed subdivision, following the procedures in chapter 33, article III, division 3. The planning assistant shall review all subdivision applications, identify other requirements for planning board review, and verify compliance with local, state and federal laws.

(b) After review of the sketch plan application, and completion of the preliminary inspection required by section 33-64, the planning board shall prescribe the contour interval for subdivision plans and classify the sketch plan into one of two categories as defined below:

(1) Subdivision.

***Cross references**—Comprehensive plan, § 33-36 et seq.; site plan, § 33-126 et seq.; street platting, § 37-51 et seq.

†Editor's note—T.M. of 6-12-2010(3) repealed §§ 41-92—41-94, which pertained to affidavit of ownership; sketch plan requirements; and other required information; and derived from T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89. See also the Code Comparative Table.

- (2) Mobile home park subdivision.

The planning board shall also indicate to the applicant whether or not a technical consultant fee will be required upon submission of the preliminary plan, pursuant to section 41-142.

(c) If the sketch plan is classified as a subdivision, the subdivider shall then comply with the procedures outlined in article III of this chapter. In addition, all subdivisions shall comply with general requirements and design standards outlined in articles IV and V of this chapter. (T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 301); T.M. of 6-12-2010(3); T.M. of 6-16-2012(3))

Secs. 41-92—41-115. Reserved.

DIVISION 2. RESERVED*

Secs. 41-116—41-140. Reserved.

DIVISION 3. PRELIMINARY PLAN FOR SUBDIVISIONS AND MOBILE HOME PARK SUBDIVISIONS

Sec. 41-141. Submission of application and required notices.

Within six months after the planning board approves the sketch plan, the subdivider shall submit an application for the consideration of a preliminary plan, at least 14 days prior to a regularly scheduled meeting of the planning board. If he fails to do so, the subdivider shall resubmit the sketch plan to the planning board for reclassification. The preliminary plan shall conform to the layout shown on the sketch plan plus any recommendations made by the planning board.

When a preliminary plan application is received, the planning board staff shall give a dated receipt to the applicant and shall immediately notify by mail all abutting property owners of the proposed subdivision, and the clerk and the reviewing authority of municipalities that abut or include any portion of the subdivision, specifying the location of the proposed subdivision and including a general description of the project.

The municipal reviewing authority shall notify by mail a public drinking water supplier if the subdivision is within its source water protection area.

***Editor's note**—T.M. of 6-12-2010(3) repealed Div. 2, §§ 41-116—41-123, which pertained to minor subdivisions and derived from T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89; T.M. of 11-4-03. See also the Code Comparative Table.

Within 30 days after receiving an application, the planning board, after reviewing the application for completeness, shall notify the applicant in writing either that the application is complete or, if the application is incomplete, the specific additional material needed to complete the application.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 501.1); T.M. of 6-12-2010(3))

Cross reference—Development standards for manufactured homes in the flood hazard areas, § 25-142.

Sec. 41-142. Application fees.

The subdivider shall submit with the application under this division a fee in the amount established by the fee schedule set in section 1-25 payable by check to the town, stating the specific purpose of the fee. Fees are not refundable.

In addition, if the planning board had informed the applicant that a technical consultant fee would be required upon acceptance of the sketch plan, the applicant shall pay said fee of \$1,500.00 to be deposited in a special account designated for that subdivision application, to be used by the planning board for hiring independent, third party technical consulting services to assist in its review. If the balance in this special account is drawn down by 75 percent, the board shall notify the applicant and require that an additional \$500.00 be deposited by the applicant. The board shall continue to notify the applicant and require an additional \$500.00 be deposited as necessary whenever the balance of the account is drawn down by 75 percent of the original deposit. Any balance in the account remaining after a decision on the final subdivision plan application by the board shall be returned to the applicant.

An application is not considered complete until all required fees are submitted.
(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 501.2); T.M. of 11-4-03; T.M. of 6-16-2012(3))

Sec. 41-143. Attendance at planning board meeting.

The subdivider, or his duly authorized representative, shall attend the meeting of the planning board to discuss the preliminary plan under this division.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 501.3))

Sec. 41-144. Official submittal date.

The official submittal date of the preliminary plan under this division shall be as defined in section 41-1.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 501.4))

Sec. 41-145. Public hearing; notice.

Within 30 days following finding the application for the preliminary plan to be complete under this division, the planning board shall hold a public hearing. Public notice of the hearing shall be made pursuant to section 33-130.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 501.5); T.M. of 11-4-03; T.M. of 6-12-2010(3))

State law reference—Public hearing to be held within 30 days of determination of completed application, 30-A M.R.S.A. § 4403(4).

Sec. 41-146. Action of planning board.

Within 30 days of the public hearing, the planning board shall give approval, with or without modification, or disapprove such preliminary plan. Board records shall contain reasons for any modifications required or the grounds for disapproval. Failure of the planning board to act within the specified period shall constitute disapproval of the preliminary plan. With the consent of the subdivider, the planning board may extend the period for final action on a preliminary plan. The planning board may require that additional information be submitted or that changes be made to the application, as a result of further study of the preliminary plan or as a result of new information obtained at a public hearing, for the purpose of ensuring that all requirements of this chapter shall be met.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 501.6); T.M. of 6-12-2010(3))

State law references—Issuance of order within 30 days of a public hearing, 30-A M.R.S.A. § 4403(5); issuance of order within 60 days of acceptance of completed application if no public hearing is held, 30-A M.R.S.A. § 4403(5).

Sec. 41-147. Conditions of preliminary approval.

When granting preliminary approval to a preliminary plan under this division, the planning board shall state the conditions of such approval, if any, with respect to:

- (1) The specific changes which it will require in the final plan;
- (2) The character and extent of the required improvements for which waivers may have been requested and which in its opinion may be waived without jeopardy to the public health, safety and general welfare;
- (3) The amount of improvements and the amount of all bonds which it will require as prerequisite to the approval of the final subdivision plan.

The decision of the planning board plus any conditions imposed shall be noted in a letter to the subdivider. The chairman of the board shall sign three copies of the preliminary plan. One copy shall be returned to the subdivider, one retained by the planning board, and one forwarded to the municipal officers.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 501.7))

Sec. 41-148. Scope of preliminary approval.

Preliminary approval of a preliminary plan under this division shall not constitute approval of the final plan, but rather it shall be deemed an expression of approval of the design submitted on the preliminary plan as a guide to the preparation of the final plan. The final plan shall be submitted for approval of the planning board and for recording upon fulfillment of the requirements of this division, and the conditions of the preliminary approval, if any. Prior to approval of the final subdivision plan, the planning board may require that additional information be submitted or that changes be made to the application, as a result of further study of the subdivision in final form or as a result of new information obtained at a public hearing, for the purpose of ensuring that all requirements of this chapter shall be met. (T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 501.8); T.M. of 6-12-2010(3))

Sec. 41-149. Location map.

The subdivider shall submit with the preliminary plan a location map drawn at a scale of 500 feet to the inch to show the relation of the proposed subdivision to the adjacent properties and to the general surrounding area. The location map shall show: all the area within 2,000 feet of any property line of the proposed subdivision; or any smaller area between the tract and all surrounding existing streets, provided any part of such a street used as part of the perimeter for the location map is at least 500 feet from any boundary of the proposed subdivision. Within such area the location map shall show:

- (1) All existing subdivisions and approximate tract lines of adjacent parcels together with the names of the record owners of all adjacent parcels of land. Namely, those directly abutting or directly across any street adjoining the proposed subdivision.
 - (2) Locations, widths and names of existing, filed or proposed streets easements, building lines and alleys pertaining to the proposed subdivision and to the adjacent properties as designated in subsection (1) above.
 - (3) The boundaries and designations of zoning districts, school districts and parks or other public spaces.
 - (4) An outline of the proposed subdivision together with its street system and an indication of the future probable street system of the remaining portion of the tract, if the preliminary plan submitted covers only part of the subdivider's entire holding.
- (T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 502.1))

Sec. 41-150. Preliminary plan specifications.

The subdivider shall submit the preliminary plan in seven copies of one or more maps or drawings which may be printed or reproduced on paper with all dimensions as shown in section 41-123, showing or accompanied by the following information:

- (1) Proposed name of the subdivision or identifying title and the name of the town.
- (2) The name and address of record owner, subdivider, and designer.

- (3) The name and address of abutters, including subdivisions, streets and land use.
- (4) An actual field survey of the parcel made and certified by a state-registered land surveyor, showing boundary locations, bearings, and dimensions, reference points, true north point, graphic scale, acreage, contour lines, elevations, existing and proposed lots, buildings, utilities, rights-of-way, easements, and covenants, cemeteries, watercourses, and other essential physical features. The corners of the parcel shall be located on the ground and marked by monuments, as required in section 41-252.
- (5) The location of temporary markers adequate to enable the planning board to locate readily and appraise the basic layout in the field.
- (6) The proposed lot lines with approximate dimensions and suggested locations of buildings.
- (7) All parcels of land proposed to be dedicated to public use and the conditions of such dedication.
- (8) A statement or plan showing effect upon air quality as provided in section 41-212.
- (9) A plan for minimizing surface water drainage as provided in section 41-213 and preliminary designs of any culverts or bridges which may be required.
- (10) A soil erosion and sediment control plan as provided in section 41-214.
- (11) A soils report and high intensity soils survey prepared and signed by a soils scientist identifying the soils names and boundaries in the proposed subdivision. Following its review of all soils analyses, the planning board may require that at least 20,000 square feet or 25 percent of the land area (whichever is greater) of any proposed building lot contain soils in which seasonal groundwater is not within 15 inches of the original ground surface. This is intended to ensure that lots will have sufficient land area suitable for foundations, subsurface sewage disposals, outdoor yard space, and other regular land uses. See article V of this chapter for soils survey and report requirements for mobile home parks.
- (12) The location of all natural features or site elements to be preserved as provided in section 41-215.
- (13) A statement or plan concerning historical sites and land use patterns as provided in section 41-216.
- (14) Connection with existing water supply or alternative means of providing water supply to the proposed subdivision as provided in section 41-217.
- (15) Connection with existing sanitary sewerage system or alternative means of treatment and disposal proposed. If a private sewage disposal system is proposed, location and results of tests to ascertain subsurface soil and groundwater conditions, depth to maximum groundwater level, location and results of soils testing as provided in section 41-218.
- (16) A statement or plan for solid waste disposal as provided in section 41-219.

- (17) A community services and impact statement as provided in section 41-220.
- (18) A traffic congestion and safety plan as provided in section 41-221.
- (19) A public health and safety statement as provided in section 41-222.
- (20) Demonstrate compliance with federal, state and local land use and other policies and laws as provided in section 41-223. The subdivider shall show the width and location of any existing streets, highways, easements, utilities, building lines, alleys, parks, public open spaces, or other public places; those shown upon the official map and the comprehensive plan, if any, within the area to be subdivided; and the width, location, grades and street profiles of all streets or other public improvements proposed by the subdivider.
- (21) An estimated progress schedule.
- (22) Demonstrate adequate financing as provided in section 41-224.
(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 502.2))

Secs. 41-151—41-170. Reserved.

DIVISION 4. FINAL PLAN FOR SUBDIVISIONS AND MOBILE HOME PARK
SUBDIVISIONS

Sec. 41-171. Application; fee.

The subdivider shall, within six months after the preliminary approval of the preliminary plan under this article, file with the planning board an application for approval of the final subdivision plan in the form described herein. If the final plan is not submitted to the planning board within six months after the approval of the preliminary plan, the board may refuse without prejudice to act on the final plan and require resubmission of the preliminary plan. All applications for final plan approval for subdivisions shall be accompanied by a fee in the amount established by the fee schedule set in section 1-25 payable by check to the town.

The planning board shall continue to require the replenishment of the escrow account established pursuant to section 41-142 for hiring independent, third party technical consulting services to review the application for final plan approval. The planning board shall continue to employ consultants to review the final plan application and any supporting materials.

An application is not considered complete until all required fees are submitted.
(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 601.1); T.M. of 11-4-03; T.M. of 6-12-2010(3); T.M. of 6-16-2012(3))

Sec. 41-172. Official submittal date.

The official submittal date of the final plan under this division shall be as defined in section 41-1.
(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 601.2))

Sec. 41-173. Securing state, federal, etc., approvals.

The subdivider shall secure in writing state or federal review and/or approval of any required improvements before submitting the final plan. The subdivider is solely responsible for identifying and meeting local, state and federal requirements as provided in section 41-223. (T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 601.3))

Sec. 41-174. Water supply system.

Water supply system proposals contained in the final plan under this division shall be approved in writing by:

- (1) The servicing water department if existing public water service is to be used;
- (2) The state department of human services, if the subdivider proposes to provide a central water supply system; or
- (3) A soil scientist if the subdivider constructs individual structures and wells serving each building site. The planning board may also require the subdivider to submit the results of water quality tests as performed by the state department of human services.

Such approval shall be secured before official submission of the final plan.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 601.4))

Sec. 41-175. Soils report; sewage disposal plan.

A favorable, high intensity, soils report and plan for sewage disposal by a soil scientist must be submitted under this division, having taken into consideration water table in wet and dry seasons, slope, soil quality, etc.; and final approval will be conditioned upon compliance with any recommendations included in such report.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 601.5))

Sec. 41-176. Performance guarantee.

Before commencing any construction activity within the subdivision, the subdivider shall furnish a performance guarantee in compliance with section 33-132.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 601.6); T.M. of 6-8-04)

Sec. 41-177. Determination of planning board.

The planning board shall, within 45 days from the official submittal date of the final plan application, approve, modify and approve, or disapprove the final plan under this division. The planning board may hold an optional public hearing on the final plan prior to making its determination. The reasons for any modification required or the grounds for disapproval shall be stated upon the records of the planning board. Except as provided in section 41-224(a), failure of the planning board to act within such 45-day period shall constitute disapproval of the final plan.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 601.7); T.M. of 6-12-2010(3))

Sec. 41-178. Appeals.

(a) In all cases, a person aggrieved by a decision of the code enforcement officer or by a decision of the planning board shall commence his appeal within 30 days after a decision is made. The appeal shall be filed with the board of appeals on forms approved by that board, and the aggrieved person shall specifically set forth on the form the grounds for the appeal. The aggrieved shall bear the burden of expense incurred, to provide the board of appeals with information as is reasonable for it to arrive at a decision.

(b) An aggrieved person or party is:

- (1) An owner of land whose property is directly or indirectly affected by the approval or denial of an application or final plan under this division.
- (2) A person whose land abuts land for which approval of an application or final plan has been granted.
- (3) A group of five or more residents or taxpayers of the town who represent an interest adverse to the granting or denial of application or final plan.

Municipal officials and members of committees, boards and commissions shall be granted the same rights as residents or taxpayers when filing appeals.

(c) The board of appeals shall hear appeals according to the provisions of section 45-46 et seq.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 601.8))

Cross references—Subdivision plan review, § 41-122; board of appeals, § 45-46 et seq.

Sec. 41-179. Final plan specifications.

The final plan under this division shall consist of four copies of one or more maps or drawings which shall be printed or reproduced in the same manner as the preliminary plan. Space shall be reserved thereon for endorsement by all appropriate agencies. The final plan shall show:

- (1) All of the information presented on the preliminary plan and location map and any amendments suggested or required by the planning board.
- (2) The name, registration number and seal of the land surveyor, architect, engineer, or planning consultant who prepared the plan.
- (3) Street names and lines, pedestrian ways, lots, utility lines, easements, and areas to be reserved for or dedicated to public use.
- (4) Sufficient data acceptable to the code enforcement officer to determine readily the location, bearing and length of every street line, lot line, boundary line, and to reproduce such lines upon the ground; where practical, these should be tied to reference points previously established.
- (5) The length of all straight lines, the deflection angles, radii, length of curves, and central angles of all curves, tangent distances, and tangent bearings for each street.
- (6) By proper designation, all public open space for which irrevocable offers of cession are made by the subdivider and those spaces to which title is reserved by him.
- (7) Permanent reference monuments shown thus: "X," they shall be constructed in accordance with section 41-252 and their location noted and referenced upon the final plan.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 602.1))

Sec. 41-180. Accompanying documents.

There shall be submitted to the planning board with the final plan under this division:

- (1) Irrevocable offers of cession to the town of all public open space shown on the plan, and copies of agreements or other documents showing the manner in which spaces, title to which is reserved by the subdivider, are to be maintained.
- (2) Written evidence that the municipal officers are satisfied with the legal sufficiency of the documents referred to in subsection (1) above. Such written evidence shall not constitute an acceptance by the town of any public open space referred to in subsection (1) above.
- (3) A copy of such covenants or deed restrictions as are intended to cover all or part of the tract.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 602.2); T.M. of 6-8-04)

Sec. 41-181. Final approval for all final plans.

(a) *Withholding of approval.* The planning board shall not approve any plan as long as the subdivider is in default on a previously approved plan.

(b) *Approval.* After the subdivider has completed the requirements for either a subdivision or mobile home park subdivision, he shall present the original and at least five copies of the final plan to the planning board for signature. After a majority signs the plans, the code enforcement officer shall retain one copy.

(c) *Recording, distribution of copies.* The subdivider shall then file the original and one copy with the county registry of deeds. The subdivider shall return three copies, endorsed by the registrar of deeds, to the code enforcement officer, who shall distribute them to the planning board, municipal offices, and tax assessor. The subdivider shall pay all necessary expenses.

(d) *Voiding of plan.* Any plan not recorded and returned within 90 days of signature of the planning board shall become null and void. However, the planning board may grant an extension which shall not exceed two additional periods of 90 days.

(e) *Filing copy of covenants, deed restrictions.* The subdivider shall file with the code enforcement officer a copy of all covenants or deed restrictions as are intended to cover all or part of the parcel.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 701); T.M. of 6-12-2010(3))

Sec. 41-182. Plan revisions after approval.

(a) The subdivider shall not make any changes, erasures, modifications or revisions in any final plan after approval has been given by the planning board and endorsed in writing on the plan, unless he first resubmits the plan and the planning board approves any modifications. If a subdivider records a final plan without complying with this requirement, the same shall be considered null and void, and the code enforcement officer shall institute proceedings to have the plan stricken from the records of the municipal officers and the registry of deeds.

(b) Any person making any resubdivision or other changes, modifications or revisions in a final plan or lots contained in a final plan shall obtain planning board approval. The planning board may review and act upon such changes by application or by subdivision review. The fee for review shall be in the amount established by the fee schedule set in section 1-25.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 702); T.M. of 11-4-03)

Sec. 41-183. Public acceptance of improvements.

(a) The approval by the planning board of a final plan shall not be deemed to constitute or be evidence of any acceptance by the town of any street, easement or other dedication of land or improvements shown on such plan.

(b) The planning board shall endorse the final plan with appropriate notes to this effect. The planning board may also require the filing of a written agreement between the subdivider and the municipal officers covering future deed and title, dedication, and provision for the cost of grading, development, equipment and maintenance of any open areas or improvements.

(c) The subdivider shall maintain all improvements and provide for snow removal on streets and sidewalks until the legislative body accepts such improvements.
(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 703))

Sec. 41-184. Inspection of required improvements.

(a) At least five days prior to commencing construction of required improvements the subdivider shall at the discretion of the planning board:

- (1) Pay an inspection fee equal to two percent of the cost of the required improvements;
- (2) Pay an inspection fee equal to the estimated cost of inspection, if any, by the code enforcement officer; or
- (3) Pay an inspection fee equal to the estimated cost of inspection by an engineer appointed by the planning board, payable by check to the town stating the purpose of the fee.

The subdivider shall notify the municipal officers in writing of the time when he proposes to commence construction of such improvements so that the municipal officers can order inspection to assure that all municipal specifications and requirements are met during the construction of required improvements and to assure the satisfactory completion of improvements and utilities required by the planning board.

(b) If the code enforcement officer or appointed engineer shall find, upon inspection of the improvements performed before expiration date of the performance bond, that any of the required improvements have not been constructed in accordance with plans and specifications filed by subdivider, he shall so report to the municipal officers and planning board. The municipal officers shall then notify the subdivider and, if necessary, the bonding company, and take all necessary steps to preserve the town's rights under the bond or surety.

(c) If at any time before or during the construction of the required improvements the subdivider demonstrates to the satisfaction of the code enforcement officer or appointed engineer that unforeseen conditions make it necessary or preferable to modify the location or design of such required improvements, he may, upon approval of the planning board, authorize modifications provided these modifications are within the spirit and intent of the planning board's approval and do not waive or substantially alter the function of any improvements required by the planning board. The code enforcement officer appointed engineer shall issue any authorization under this section in writing and shall transmit a copy of such authorization to the planning board at its next meeting.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 704))

Secs. 41-185—41-210. Reserved.

ARTICLE IV. GENERAL REQUIREMENTS***Sec. 41-211. Required review by planning board.**

In reviewing applications for the subdivision of land, the planning board shall consider the general requirements in this article. In all instances the burden of proof shall be upon the person proposing the subdivision.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (art. 8))

Sec. 41-212. Air quality.

(a) *Dust, fumes, vapors, gases.* Emission of dust, dirt, fly ash, fumes, vapors or gases which could damage human health, animals, vegetation, or property, or which could soil or stain property, at any point beyond the lot line of the establishment creating that emission, shall be prohibited. All such activities shall comply with applicable federal and state regulations.

(b) *Odor.* No nonfarming land use or establishment shall produce offensive or harmful odors perceptible beyond its lot lines, measured either at ground or habitable elevation.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 801))

***State law reference**—Review criteria, 30-A M.R.S.A. § 4404.

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Sec. 41-213. Water quality.

(a) *Stormwater runoff.* Surface water runoff shall be minimized and detained onsite if possible or practical. If it is not possible to detain water onsite, downstream improvements to the channel may be required of the subdivider to prevent flooding caused by his project. The natural state of watercourses, swales, floodways, or rights-of-way shall be maintained as nearly as possible.

(b) *Drainage easement.* Where a subdivision is traversed by a watercourse, drainageway, channel, stream, future sewer line, or where the board feels that surface water drainage to be created by the subdivision should be controlled for the protection of the subdivision and owners of property abutting it, there shall be provided an easement of drainage right-of-way and culverts, catchbasins, or other means of channelling surface water within such subdivision and over property abutting upon it, of such nature, width, and location as the planning board or code enforcement officer deems adequate. Generally such easement or right-of-way shall not be less than 30 feet in width.

(c) *Soil statement; drainage plan.* The subdivider shall provide a statement from a soil scientist that the proposed subdivision will not create erosion, drainage or runoff problems either in the subdivision or in adjacent properties. The subdivider shall submit a surface drainage plan showing ditching, culverts, easements and other proposed improvements.

(d) *Storage of materials.* All outdoor storage facilities for fuel, raw materials, products, and any other materials, as well as waste collection and disposal facilities, shall be located on impervious pavement, and shall be completely enclosed by an approved safety fence at least six feet in height. Such fence shall be set on top of an impervious dike which shall be high enough to contain the total volume of liquid kept within the storage area, plus the rain falling into this storage area during a storm, so that such liquid shall not be able to spill onto or seep into the ground surrounding the paved storage area.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 802))

Sec. 41-214. Soil quality.

(a) *Soil suitability for construction.* In any instance where the code enforcement officer or the planning board doubts the capability of the soil to adequately accommodate proposed construction, they may require that a soil test be made, at the owner's expense, in order to identify the soil type, by a soil scientist. If the soil type which is identified is classified as having poor or very poor suitability for the proposed use, the code enforcement officer or planning board may require the subdivider to submit written evidence from the soil scientist or a professional civil engineer that the soil will be able to support all proposed pavement, structures and utilities. This report may include recommended engineering measures to ensure that cracking, subsidence, or other failure will not result.

(b) *Reasons for disapproval.* The planning board shall not approve such portions of any proposed subdivision that:

- (1) Are situated below sea level.

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- (2) Are located on land which must be filled or drained or on land created by diverting a watercourse; except the planning board may grant approval if municipal sewage collection and treatment is provided. In no instance shall the planning board approve any part of a subdivision located on filled floodplains, as defined in the zoning chapter.

(c) *Erosion control.* Erosion of soil and sedimentation of watercourses and waterbodies shall be minimized by employing the following best-management practices:

- (1) Stripping of vegetation, and regrading or other development shall be minimized as far as is practical, and shall be done in such a way as to minimize erosion.
- (2) The duration of exposure of the disturbed area shall be kept to a practical minimum.
- (3) Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development.
- (4) Permanent (final) vegetation and mechanical erosion control measures shall be installed as soon as practical after construction ends.
- (5) Until a disturbed area is stabilized, sediment in runoff water shall be trapped by the use of debris basins, sediment basins, silt traps, or other acceptable methods as determined by the planning board.
- (6) The top of a cut or the bottom of a fill section shall not be closer than ten feet to an adjoining property, unless otherwise specified by the planning board.
- (7) During grading operations, methods of dust control shall be employed.
- (8) On slopes greater than 25 percent, there shall be no grading or filling within 100 feet of the normal high water mark except to protect the shorelines and prevent erosion.
- (9) Topsoil shall be considered part of the subdivision. Except for surplus topsoil for roads, parking areas, and building excavations, it is not to be removed from the site.

(d) *Debris and waste.* The subdivider shall not deposit or bury trees, timber, debris, rocks, junk, rubbish, unsuitable soil, or other waste materials of any kind. The code enforcement officer shall withhold approval of permits or recommendation of release of any performance bonds or dedication of improvements until the subdivider removes such waste materials.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 803))

Sec. 41-215. Preservation of natural resources and scenic beauty.

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

(b) The planning board may require the subdivider to plant shade trees or establish and maintain some other form of buffer on the property of the subdivision. The trees shall be planted 40 feet apart within five feet of rights-of-way or in such other arrangement that the

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planning board may require. The planning board shall also determine what trees or buffer the subdivider shall provide. The planning board, as an alternative, may require the subdivider to provide an easement upon which the town may establish a similar buffer. The planning board may withhold recommendation of approval for dedication of streets until the subdivider has complied with all conditions. For additional requirements unique to mobile home park subdivisions see division 2 of article V of this chapter.

(c) To ensure access to direct sunlight, the subdivider shall properly site development or may ensure such access through restrictive covenants, height restrictions, stricter setbacks or other appropriate measures.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 804))

Sec. 41-216. Preservation of historical features and traditional land use pattern.

The planning board may require that a landscape plan include graveyards, historical sites and buildings, and other features that are important assets. These sites may be identified from the comprehensive plan; information from maps, books or other printed matter; information from historical societies; or such other information that the planning board determines to be useful in its review of a subdivision plan.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 805))

Sec. 41-217. Water supply.

(a) *Public water service.* The subdivider shall extend public water service or provide a private supply sufficient for general requirements and fire protection. A private water supply may be used if public water service is unavailable and may be a central system or individual wells.

(b) *Facilities, water quality, supply capacity.* All water supply facilities and water quality must meet the requirements of the state department of human services and other appropriate standards. The minimum water supply shall be 350 gallons per day per dwelling unit or other standard sufficient to meet peak domestic needs and at adequate pressure and volume for firefighting purposes based upon site construction plans and other factors pertinent to the proposed subdivision and firefighting capabilities of the town.

- (1) Where a public water supply is located within 1,500 feet of a proposed subdivision, the subdivider shall extend service and shall demonstrate by affidavits signed by an authorized representative from the servicing water district that an adequate water supply, as described in subsection (b) of this section, is available for the proposed subdivision and will not result in an undue burden on the source, treatment facilities or distribution system involved or provide adequate assurance that such source, treatment facility or distribution system will be modified to meet the expanded needs.
- (2) The subdivider shall install minimum water mains of at least eight inches or such other standard that shall adequately serve the proposed subdivision and future development.

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- (3) Fire hydrants supplied in conjunction with public water service shall be located no more than 1,000 feet apart or within 500 feet of proposed structures. The subdivider shall note the location of hydrants on the subdivision plan, and the fire chief shall disapprove, require modification before approval, or approve the plan. The planning board may require that the subdivider and future parcel owners pay periodic hydrant fees.

(c) *Private central supply.* Where a public water supply is not foreseeable, the planning board may approve a private central water system or individual wells. If the subdivider provides a central system, an engineer shall design its location and protection of the source, and design, construction and operation of the treatment facilities and distribution system conforming to federal and state requirements, or other appropriate standards as the planning board may require.

(d) *Individual wells.* All wells shall be drilled in conformance with the State of Maine Well Drillers Rules. A site evaluator licensed in the State of Maine shall indicate their general location on the subdivision plan as well as the location of the individual septic systems, if applicable.

(e) *Fire protection.* Where the subdivider does not provide fire hydrants, the planning board may require dry hydrants or other measures to provide adequate fire protection.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 806); T.M. of 3-20-04)

Sec. 41-218. Sewage disposal.

(a) Where a public sanitary sewer line is located within 1,500 feet of a proposed subdivision at its nearest point, the subdivider shall connect with such sanitary sewer line with a main not less than eight inches in diameter, provided the appropriate municipal agencies certify that extending the services will not be a burden on the system. Connections to a public sewer line shall conform to the requirements of the sewer district.

(b) Where connection to a public sewer system is not practical, the planning board may permit a subdivider to install a private central system or provide for individual treatment systems. In no instance shall the planning board approve a septic disposal system in soils rated poor or very poor for such purpose by the state plumbing code.

(c) A subdivider shall submit plans for a private central sewage disposal system designed by an engineer in full compliance with the requirements of the town plumbing code, state plumbing code, section 45-420, prohibiting the discharge of treated wastewater or hazardous wastes into the waterbodies of the town and other applicable regulations. In every instance where a subdivider proposes a central system, the planning board shall appoint a qualified soil scientist and/or engineer at the subdivider's expense to review the proposed system. Upon the recommendation of such person, the planning board may disapprove, approve with modifications, or approve any proposed plan, even where such plan has already received initial state approval. The planning board shall not approve any final plan until the state and the planning board approve such proposed system.

(d) Where a subdivider proposes individual septic disposal systems, he shall indicate their general location on the subdivision plan and submit required soils tests for each proposed lot. The planning board shall not approve any lot unless it meets minimum disposal standards.

(e) The minimum lot size in any zone shall be as specified in chapter 45 of this Code. Where the subdivider proposes individual onsite waste disposal systems, larger lot sizes recommended in the state plumbing code and based on soil characteristics and environmental considerations shall be the minimum lot sizes acceptable. No underground waste disposal shall be permitted where chapter 45 of this Code indicates "not permitted." In cases where large parcels of land are totally covered with residential lots, larger minimum lot sizes may be necessary to prevent saturation of groundwater or wells from effluent.
(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 807))

Sec. 41-219. Solid waste disposal.

(Reserved for future use)
(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 808))

Sec. 41-220. Relationship of subdivision to community services.

(a) *List of items borne by subdivider or town.* The planning board shall review any proposed subdivision with respect to its effect upon existing services and facilities. The final plan shall include a list of the construction items that the subdivider shall complete prior to or during the sale of lots; and the list of construction and maintenance items that must be borne by the town, which shall include, but not be limited to:

- (1) Schools, including busing.
- (2) Road maintenance and snow removal.
- (3) Police and fire protection.
- (4) Recreation facilities.
- (5) Solid waste disposal.
- (6) Runoff water disposal drainageways and/or storm sewer enlargement with sediment traps.

The planning board shall further require the subdivider to provide accurate cost estimates to the town for the above and other services, and the expected tax revenue of the subdivision.

(b) *Utilities.* The planning board shall approve the size, type and location of public utilities, such as streetlights, electricity, telephones, cable television, gas lines, fire hydrants, etc. Except as the planning board permits otherwise, the subdivider shall install utilities underground and shall complete their installation prior to paving when they are located below proposed streets. Underground utilities are not required for mobile home park subdivisions.

(c) *Open space.* The planning board may require the subdivider to provide up to ten percent of the total area for open space and other public sites. It is desirable that areas reserved for recreation be at least two acres in size and easily accessible from all lots within the subdivision. Mobile home park subdivision open space requirements are covered in division 2 of article V of this chapter.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 809))

Sec. 41-221. Traffic and streets.

(a) *Traffic.* The proposed subdivision shall provide safe access for vehicles and pedestrians to and from public and private roads.

- (1) The street giving access to the subdivision, as well as off-site, neighboring streets and intersections which reasonably can be expected to carry traffic to and from the subdivision shall have adequate traffic-carrying capacity according to the traffic impact analysis submitted by the applicant, or shall be suitably improved, so the proposed subdivision does not result in unreasonable congestion or unsafe traffic conditions, according to the following criteria:
- (2) In the traffic impact analysis, the applicant's engineer shall determine existing traffic flows of average annual daily traffic, as well as the existing capacity and level of service of the off-site, neighboring streets and intersections. The post-development traffic expected to be generated by the proposed project shall then be modeled. Traffic volume estimates shall be defined by the latest edition of the Trip Generation Manual published by the Institute of Transportation Engineers.
- (3) No subdivision shall be created, accessed by an existing off-site street or intersection, which is currently at a level of service (LOS) C or below, nor shall any proposed subdivision reduce an off-site street or intersection's level of service to C or below, unless the subdivision is located in the village, village center, or village expansion areas, as indicated on the proposed future land use map in the comprehensive plan.
 - a. Should a traffic impact analysis indicate that such traffic conditions exist now at LOS C or below, or will occur if a proposed subdivision is created, the planning board shall require the applicant to improve the off-site street or intersection up to a level of service C, after including the traffic modeled in the analysis to be added by the proposed subdivision.
 - b. The planning board shall require all such off-site traffic improvements required by this subsection, to be made at the expense of the applicant. The applicant shall submit preliminary cost estimates and designs for such improvements, prepared by a professional engineer, as well as authorization from any parties-in-interest to improve the off-site streets or intersections, before preliminary plan approval of the subdivision application may be granted.
- (4) Sidewalks shall be installed within all subdivisions located in all growth areas, as indicated in the comprehensive plan, pursuant to the design standards of sections 37-70 and 37-75. Where sidewalks exist adjacent to a proposed subdivision, sidewalks

shall be installed offsite at the expense of the applicant, connecting the sidewalks within the proposed subdivision to existing sidewalks, whether or not the subject subdivision is located within a growth area.

- (5) Where necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, provision shall be made, both within the subdivision, and off-site, for turning lanes, traffic directional islands, frontage roads, sidewalks, bicycleways, and traffic controls and/or traffic signage, if warranted by the traffic impact analysis. For nonresidential subdivisions or multifamily developments, left turn lane storage capacity shall be provided to meet anticipated demand, if determined as necessary by a warrant analysis.
- (6) The subdivider shall assure safe access from existing streets by providing an adequate number and location of access points, with respect to sight-distances, intersections, schools, and other traffic-generators, pursuant to sections 37-69, 37-70 and 45-406 of this Code. The proposed subdivision shall not have an unreasonable adverse impact on the town road system, and shall ensure safe interior circulation, by separating pedestrian and vehicular traffic and providing adequate parking and loading areas.

(b) *Streets.*

- (1) The planning board shall consider both the proposed subdivision and future development when classifying a proposed street on a subdivision plan.
- (2) All streets which a subdivider proposes shall meet the minimum requirements of the street design and construction standards in division 2 of article II of chapter 37 of this Code whether the streets are to remain private or be dedicated for public ownership.
- (3) The planning board shall not consider or approve a subdivision plan unless or until it has direct access to a street or road previously accepted by the town or state.
- (4) The planning board shall require a subdivider to restrict or eliminate access from individual lots to collector or arterial streets.
- (5) The planning board may require that a subdivider reserve sufficient land for future rights-of-way where a proposed subdivision abuts undeveloped property.
- (6) Subdivisions containing 15 lots or more shall provide a minimum of two access points to public streets or public roads previously accepted, acquired or laid out and taken by the town or state, as required by section 37-69.
- (7) Where topographic and other conditions allow, provision shall be made for circulation access connections to adjoining lots of similar existing or potential use, when the subdivision is located within a growth area, as designated by the comprehensive plan, and:
 - a. When such access connection will facilitate fire protection and emergency services as recommended and approved by the fire chief; or
 - b. When such access connection will facilitate plowing or other public services, as recommended and approved by the road commissioner; or

- c. When such access will enable the public to travel between two existing or potential uses, generally open to the public, without the need to travel upon a street outside of the proposed subdivision.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 810); Ord. of 3-25-00(1), (2); T.M. of 6-16-2012(3))

Sec. 41-222. Public health and safety.

(a) *Glare*. No land use or establishment shall be permitted to produce a strong, dazzling light or reflection of that light beyond its lot lines onto adjacent properties, or onto any town way so as to impair the vision of the driver of any vehicle upon that town way. All such activities shall comply with applicable federal, state and town regulations.

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(b) *Noise*. The subdivision design shall minimize the possibility of noise pollution either from within or without the development (from highway or industrial sources) by providing and maintaining a green strip at least 30 feet wide or other buffer between abutting properties that are so endangered.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 811))

Sec. 41-223. Local, state, federal land use and other policies and laws.

(a) Any proposed subdivision shall be in conformity with a comprehensive plan or with a comprehensive plan and policy statements of the town and with the provisions of all pertinent local, state, and federal laws. The subdivider shall be solely responsible for identifying and meeting such requirements.

(b) Wherever situated, in whole or in part, within 250 feet of the high water line of any pond, lake, river, brook or tidal waters controlled by the shoreland zoning district, a proposed subdivision shall conform to the requirements of division 2 of article VI of chapter 45 of this Code.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 812))

Secs. 41-224—41-250. Reserved.

Editor's note—Section 41-224 was repealed in its entirety at a town meeting held on June 8, 2004. Former § 41-224 pertained to adequate financing and derived from T.M. of 11-2-82; T.M. of 3-19-88 and T.M. of 12-20-89 (§ 813.2).

ARTICLE V. DESIGN STANDARDS*

DIVISION 1. GENERALLY

Sec. 41-251. Scope.

All subdivisions, including mobile home parks, shall comply with the design standards set out in this article.

Sec. 41-252. Monuments.

(a) Permanent monuments shall be set at all corners and angle points of the subdivision boundaries; and at all street intersections and points of curvature.

(b) Monuments shall be stone or pipe located in the ground at final grade level, and indicated as a pipe on the final plan. After the monuments are set, drill holes one-half inch deep shall locate the point or points described above.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 901))

***State law reference**—Review criteria, 30-A M.R.S.A. § 4404.

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Sec. 41-253. Street signs.

(a) Streets which join or are in alignment with streets of abutting or neighboring properties shall bear the same name. Names of new streets shall not duplicate or bear phonetic resemblance to names of existing streets or areas within the municipality and shall be subject to approval of the planning board.

(b) Street name signs shall be furnished and installed by the subdivider. The type, size and location are to meet the approval of the planning board.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 902))

Sec. 41-254. Blocks.

(a) The length, width and shape of blocks shall be determined with due regard to:

- (1) Provision of adequate building sites suitable to the special needs of the type of use contemplated.
- (2) Zoning requirements as to lot sizes and dimensions.
- (3) Need for convenient access, circulation, control and safety of street traffic.
- (4) Limitations and opportunities of topography.

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(b) In blocks exceeding 800 feet in length, the planning board may require the reservation of a 20-foot-wide easement through the block to provide for the crossing of underground utilities and pedestrian traffic where needed or desirable and may further specify, at its discretion, that a four-foot-wide paved footpath be included. The planning board shall require the subdivider to provide for the proper maintenance of any such easement.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 903))

Sec. 41-255. Lots.

(a) The lot size, width, depth, shape and orientation and the minimum building setback lines shall be appropriate for the location of the subdivision and for the type of development and use contemplated and shall conform to the requirements of section 41-218(e).

(b) Depth and width of properties reserved or laid out for all purposes shall be adequate to provide for offstreet parking and service facilities for vehicles required by the type of use and development contemplated.

(c) Double-frontage lots and reverse frontage lots shall be avoided except where essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography and orientation. A planting screen easement of at least 30 feet, across which there shall be no right of access, shall be provided along the line of lots abutting such a traffic artery or other disadvantageous use.

(d) Side lot lines shall be substantially at right angles or radial to street lines.

(e) Where a tract is subdivided into lots substantially larger than the minimum size required in the zoning district in which a subdivision is located, the planning board may require that streets and lots be laid out so as to permit or prohibit future resubdivision in accordance with the requirements contained in these standards.

(f) The U.S. Postal Service shall assign all lot numbers.

(g) The planning board may by waiver reduce the minimum street frontage by 20 percent for lots located on the outside of sharp curves, increase the street frontage by 20 percent for lots located on the inside of sharp curves, and reduce the street frontage by 50 percent for lots located on culs-de-sac.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 904))

Sec. 41-256. Reservation of land.

(a) Land reserved for park and/or recreational purposes shall be of a character, configuration and location suitable for the particular use intended. A site to be used for active recreation purposes, such as a playground or a playfield, should be relatively level and dry, have a total frontage of one or more streets of at least 200 feet, and have no major dimensions of less than 200 feet. Sites selected primarily for scenic or passive recreation purposes shall have such access as the planning board may deem suitable and shall have no less than 25 feet of road

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frontage. The configuration of such sites shall be deemed adequate by the planning board with regard to scenic attributes to be preserved, together with sufficient areas for trails, lookouts, etc., where necessary and appropriate.

(b) Where the proposed subdivision is located on a lake, pond, river or stream, a portion of the waterfront area, when feasible, shall be included in the reserved land. The land so reserved shall be at least 200 feet wide measured perpendicularly from the normal high water mark.

(c) If the planning board determines that the reservation of land for parks and/or recreational purposes would be inappropriate, the planning board may waive the requirement of land reservation. The planning board may require that the subdivider deposit a cash payment in lieu of land reservation with the town clerk. Such payment shall be placed in a trust fund to be used exclusively for the purchase and development of sites for parks, playgrounds, and other recreational purposes and would serve the proposed subdivision. The amount of such payment shall be as determined by the planning board, for each lot approved on the final plan. The planning board may further require that the subdivider provide space for future municipal uses, in accordance with a comprehensive plan or policy statement, with a five-year option for town purchase after which the space may be sold for other development. (T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 905))

Secs. 41-257—41-275. Reserved.

DIVISION 2. REQUIREMENTS UNIQUE TO MOBILE HOME PARK SUBDIVISIONS*

Sec. 41-276. Areas where establishment is permitted.

Mobile home parks may be established only in the areas specified in the following subsections. Areas identified are not limited only to mobile home park development, but may continue to permit all such land uses as are allowed for each district by the zoning chapter.

- (1) Both sides of Bolt Hill Road between State Road and Route 236. Access to park must be from Bolt Hill Road.
- (2) Both sides of Beech Road between Route 236 and Goodwin Road. Access to park must be from Beech Road.
- (3) Both sides of Hanscom Road between Beech Road and Kittery Town Line. Access to park must be from Hanscom Road.
- (4) Both sides of Route 236 between Depot Road and Route 103. Access to park must be from Route 236.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 906.1))

***Cross references**—Minimum requirements for lots within a mobile home park, § 45-405(q); performance standards for mobile homes under the zoning regulations, § 45-457.

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Sec. 41-277. Compliance with applicable regulations; conflicting provisions.

Except as stipulated in this division, mobile home parks shall meet all the requirements for a residential subdivision, and shall conform to all applicable state laws and local ordinances or regulations. Where the provisions of this division conflict with previous sections of this chapter, the provisions of this division shall prevail.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 906.2))

Sec. 41-278. Lot area, lot width.

Notwithstanding the dimensional requirements table located in section 45-405, lots in a mobile home park shall at least meet the following minimum lot area and lot width requirements:

- (1) Lots served by public sewer:
 - a. Minimum lot area 6,500 square feet
 - b. Minimum lot width 50 feet
- (2) Lots served by individual subsurface wastewater disposal systems:
 - a. Minimum lot area 20,000 square feet
 - b. Minimum lot width 100 feet
- (3) Lots served by a central subsurface wastewater disposal system approved by the state department of human services:
 - a. Minimum lot area 12,000 square feet
 - b. Minimum lot width 75 feet
- (4) The overall density of any park served by any subsurface wastewater disposal system shall not exceed one dwelling unit per 20,000 square feet total park area.
- (5) Lots located within any shoreland zoning district shall meet the lot area, width and shore frontage requirements for that district.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 906.3))

Sec. 41-279. Lot setbacks.

- (a) The following lot setbacks shall apply to all homes and accessory buildings:
 - (1) Front setback 20 feet
 - (2) Side setback 20 feet
 - (3) Rear setback 10 feet
- (b) If these requirements conflict with the requirements of the shoreland zone, the stricter standards shall apply. If a lot is on a public road, the setback shall conform with the residential setback requirements applicable to residential dwelling units.

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(c) So as to avoid monotony and sameness, the planning board may allow the front setback on a private road within a mobile home park to be varied provided that no home may be closer than ten feet from the right-of-way and the average distance is at least 20 feet for all units.

(d) Carports of noncombustible materials are not subject to side setback requirements.

(e) The planning board may allow lot side yard setbacks to be reduced to five feet provided a distance of 20 feet is maintained between units, for the purpose of providing more usable yard space on one side of the home.

(f) A minimum 20-foot separation shall be maintained between all manufactured homes in all directions.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 906.4))

Sec. 41-280. Buffering and storage.

(a) If a park is proposed with a residential density at least twice the density of adjacent development in existence, or at least twice the density permitted in the zoning district in which the park is located if the neighboring land is undeveloped, the park shall be designed with a continuous landscaped area not less than 50 feet in width which shall contain no structures or streets. The first 25 feet of the buffer strip, as measured from the exterior boundaries of the park, shall contain evergreen shrubs, trees, fences, walls or any combination which forms an effective visual barrier to be located on all exterior lot lines of the park, except that driveways shall be kept open to provide visibility for vehicles entering and leaving the park.

(b) At least 300 cubic feet of enclosed tenant storage facilities shall be conveniently provided on or near each mobile home lot for the storage of materials and equipment.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 906.5))

Sec. 41-281. Open space.

(a) Open space requirements for lots served by public sewer are as follows:

- (1) *Open space suitability.* At least 50 percent of the required open space shall consist of land that is suitable for active recreation or storage.
- (2) *Developed open space.* All developed open space shall be designed and landscaped for the use and enjoyment of the park residents and shall be maintained for their longterm use. Plans for these areas shall be submitted by the developer.
- (3) *Undeveloped open space.* To the maximum extent possible, undeveloped open space shall be left in its natural state. Improvements to make trails for walking and jogging or to make picnic areas are permitted.
- (4) *Open space ownership.* The developer shall submit, as part of his application, a copy of that portion of the proposed park rules and a plan which specify how the open space is to be used and maintained and what conditions are to apply to its use. The plan shall specify the areas to be dedicated to open space, recreation and storage.

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(b) Open space shall be maintained and used for its stated purpose.
(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 906.6))

Sec. 41-282. Road design, circulation and traffic impacts.

(a) Streets within a park shall be designed by a professional engineer, registered in the state.

(1) Streets which the subdivider proposes to remain private ways shall meet the street design and construction standards in section 37-70 et seq. or the following minimum geometric design standards:

- a. Minimum right-of-way width: 23 feet.
- b. Minimum width of traveled way: 20 feet.

(b) Any mobile home park expected to generate average daily traffic of 200 trips per day or more shall have at least two street connections with existing public streets. Any street within a park with an average daily traffic of 200 trips per day or more shall have at least two street connections leading to existing public streets, other streets within the park, or other streets shown on an approved subdivision plan.

(c) No individual lot within a park shall have direct vehicular access onto an existing public street.

(d) The intersection of any street within a park and an existing public street shall meet the following standards:

- (1) *Angle of intersection.* The desired angle of intersection shall be 90 degrees. Minimum angle of intersection shall be 75 degrees.
- (2) *Maximum grade within 75 feet of intersection.* The maximum permissible grade within 75 feet of the intersection shall be two percent.
- (3) *Minimum sight distance.* A minimum sight distance of ten feet for every mile per hour of posted speed limit on the existing road shall be provided. Sight distances shall be measured from the driver's seat of a vehicle that is ten feet behind the curb or edge of shoulder line with the height of the eye three feet above the pavement and the height of object 4¼ feet.
- (4) *Distance from other intersections.* The centerline of any street within a park intersecting an existing public street shall be no less than 125 feet from the centerline of any other street intersecting that public street.

(e) The application shall contain an estimate of the average daily traffic projected to be generated by the park. Estimates of traffic generation shall be based on the Trip Generation Manual, 1987 edition, published by the Institute of Transportation Engineers. If the park is projected to generate more than 400 vehicle trip ends per day, the application shall also include traffic impact analysis, by a registered professional engineer with experience in transportation design.

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(f) For each mobile home lot there shall be provided and maintained at least two offstreet parking spaces. Each parking space shall contain a minimum area of 200 square feet with minimum dimensions of ten feet by 20 feet. This requirement may be waived if an equivalent number of spaces is provided by a parking lane. In addition to occupant parking, offstreet guest and service parking shall be provided within the boundaries of the park at a ratio of one space for each four mobile home lots. Such parking shall be hard-surfaced and the spaces shall be reserved for that sole use. This requirement shall be waived if a parking lane provides an equivalent number of spaces.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 906.7))

Sec. 41-283. Groundwater impacts.

(a) *Assessment submitted.* Accompanying the application for approval of any mobile home park which is not served by public sewer shall be an analysis of the impacts of the proposed mobile home park on groundwater quality. The hydrogeologic assessment shall be prepared by a certified geologist or registered professional engineer, experienced in hydrogeology, and shall contain at least the following information:

- (1) A map showing the basic soils types.
- (2) The depth to the water table at representative points throughout the mobile home park.
- (3) Drainage conditions throughout the mobile home park.
- (4) Data on the existing groundwater quality, either from test wells in the mobile home park or from existing wells on neighboring properties.
- (5) An analysis and evaluation of the effect of the mobile home park on groundwater resources. The evaluation shall, at a minimum, include a projection of post-development nitrate-nitrogen concentrations at any wells within the mobile home park, at the mobile home park boundaries and at a distance of 1,000 feet from potential contamination sources, whichever is a shorter distance. For mobile home parks within the watershed of a lake, projections of the development's impact on groundwater phosphate concentrations shall also be provided.
- (6) A map showing the location of any subsurface wastewater disposal systems and drinking water wells within the mobile home park and within 200 feet of the mobile home park boundaries.

(b) *Standards for acceptable groundwater impacts:*

- (1) Projections of groundwater quality shall be based on the assumption of drought conditions (assuming 60 percent of annual average precipitation).
- (2) No mobile home park shall increase any contaminant concentration in the groundwater to more than one half of the primary drinking water standards. No mobile home park shall increase any contaminant concentration in the groundwater to more than the secondary drinking water standards.

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- (3) If groundwater contains contaminants in excess of the primary standards, and the mobile home park is to be served by onsite groundwater supplies, the applicant shall demonstrate how water quality will be improved or treated.
- (4) Water contains contaminants in excess of the secondary standards, the mobile home park shall not cause the concentration of the parameters in question to exceed 150 percent of the ambient concentration.

(c) *Subsurface wastewater disposal systems and drinking water wells.* Subsurface wastewater disposal systems and drinking water wells shall be constructed as shown on the map submitted with the assessment. If construction standards for drinking water wells are recommended in the assessment, those standards shall be included as a note on the plan.
(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 906.8))

Sec. 41-284. Conversion to another use.

No development or subdivision which is approved under this chapter as a mobile home park may be converted to another use without the approval of the planning board, and meeting the appropriate lot size, lot width, setback and other requirements. The plan to be recorded at the registry of deeds and filed with the town shall include the following restrictions as well as any other notes or conditions of approval:

- (1) The land within the park shall remain in a unified ownership and the fee to lots or portions of lots shall not be transferred.
- (2) No dwelling unit other than a manufactured housing unit shall be located within the park.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 906.9))

Sec. 41-285. Responsibilities of park management.

The management of mobile home parks shall be responsible for operating their respective parks in accordance with all town policies and ordinances and all state statutes. The maintenance of all open space areas, facilities, roads and utilities in a park shall be the responsibility of the park management. The management shall also be responsible for proper placement of mobile homes, stability and installation and hookup of all utilities and skirting. The management shall plow all roads within the mobile park and maintain them in safe condition.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 906.10))

Sec. 41-286. Requirements for individual manufactured housing units within a mobile home park.

The following requirements shall apply to individual manufactured housing units within a mobile home park:

- (1) *Minimum standards.* Individual mobile homes allowed in any park after adoption of this division shall meet all the minimum requirements of the Federal Mobile Home

Construction and Safety Standards Act of 1976. Mobile homes built to the ANSI-119.1 standards of 1974 (American National Standards Institute) may be permitted, provided that they are fitted with operating smoke detectors and with emergency egress windows in the bedrooms. All mobile homes shall bear the seal of the state housing authority and identification number A119.1, certifying conformance with these standards.

- (2) *Pads.* Each pad or stand, for foundation purposes, shall consist of a reinforced concrete footing below frost line, sufficiently adequate to support the weight of a mobile home without movement due to frost heaving or settling. Suitable tiedowns shall be installed and secured to each mobile home.
- (3) *Sewage disposal.* Each pad shall be equipped with a four-inch inside diameter sewage line extending at least six inches above the pad and securely sealed when not in use.
- (4) *Water supply.* Each individual mobile home pad shall have a sealed three-fourths-inch inside diameter riser water pipe extending at least six inches above the pad. The riser pipe shall have an independent shutoff valve below the frost line. Water systems shall be capable of delivering 250 gallons per day per lot. If an adequate public supply of water is available within 1,500 feet of a mobile home park, such supply must be used, subject to an engineering feasibility study. Individual underground shutoffs shall be provided for each mobile home space.
- (5) *Electricity supply.* Individual pads shall have a separate, properly mounted, electric service entry unit in accordance with the National Electrical Code as adopted by the town.
- (6) *Telephone.* Each mobile home space shall have a telephone outlet.
- (7) *Street lighting.* The mobile home park management shall provide and maintain adequate streetlights according to electric utility company standards.
- (8) *Oil and gas.* All tanks not buried shall be securely fastened to prevent accidental overturn, and shall be screened from view from all streets.
- (9) *Screened storage.* The mobile home park management shall provide a separate screened storage area for the storage of major items of equipment owned by the tenants, such as boats, trailers, snowmobiles, etc.
- (10) *Fire protection.* Fire extinguishers capable of controlling both electrical and wood fires shall be kept in all service buildings. A mobile home park shall have suitable entrances so that mobile homes may be readily serviced in emergency situations. An adequate source of water for fire protection shall be available at all times of occupancy. Hydrants shall be located in all parks with public or central water supply so that not over 500 feet of hose laid on the street will be required to extend to any mobile home space or service building. Holding ponds of water may be acceptable providing their location, capacity, and accessibility meets with NFPA standards and the approval of the fire chief.
- (11) *Sidewalks/walkways.* The mobile home park shall contain pedestrian walkways that link all units and all service and recreational facilities. Such walkways shall be

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adequately surfaced and lit. A portion of the road surface may be reserved for walkways provided the roadway width is increased accordingly. Walkways shall be a minimum width of three feet.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 906.11))

Sec. 41-287. Requirements for manufactured housing unit structures within a mobile home park.

The following requirements shall apply to manufactured housing unit structures within mobile home parks:

- (1) Each manufactured housing unit shall be skirted with fire-resistant materials. All materials shall comply with the fire code of the town.
- (2) All skirting, plus one storage shed minimum size of eight by six feet per site, shall be of uniform conventional construction materials, and shall be installed by the developer.
- (3) All outside storage sheds shall be capable of being securely closed, shall be placed towards the rear of lots, and may be used as a screening device.
- (4) All cabanas, carports, porches, extra rooms and other attached accessory structures shall be of a design and material specifically appropriate for such use, and shall be installed only after written approval of the code enforcement officer, who shall certify that such additional structures meet minimum safety requirements.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 906.12))

Secs. 41-288—41-309. Reserved.

**DIVISION 3. REQUIREMENTS UNIQUE TO ELDERLY HOUSING, ASSISTED LIVING
AND LIFE CARE FACILITIES**

Sec. 41-310. Construction requirements.

(a) All new construction of buildings shall have pitched roofs, which may include a gable roof, hip roof, mansard roof or gambrel roof. If a gable roof or a hip roof is used, the roof pitch shall be at least four feet in 12 feet. All new construction shall use materials and design compatible with other structures in the surrounding area.

(b) Covered sidewalk or interior corridor access to all units, central dining and/or community center.

(c) Congregate housing and residential care dwelling units shall have a maximum gross floor area of 550 square feet or less.

(d) Elderly housing dwelling units shall have a maximum gross floor area of 1,200 square feet or less.

(e) Security system identified on site plan.

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(f) Served by public water and sewer.
(Ord. of 3-25-00(1); T.M. of 6-19-01, (art. 8))

Sec. 41-311. Landscaping.

(a) Landscape plan shall be prepared by a landscape architect licensed in the state and submitted as part of application. All parking that serves the facility shall be screened from adjacent properties by a continuous landscaped area not less than ten feet in width containing large trees, shrubs, fences, walls, berms, or similar condition forming a visual barrier not less than eight feet in height along side and rear lot lines.

(b) The criteria of zoning, section 45-413, preservation of landscape and section 45-423, fencing, shall be met.
(Ord. of 3-25-00(1); T.M. of 3-20-04)

Sec. 41-312. Parking.

(a) One space per dwelling unit of elderly housing, plus one space per six dwelling units of assisted living, plus one space per employee on the peak shift, plus five physician and ten visitor spaces at the assisted living facility.

(b) At least one loading area for the delivery of goods and supplies shall be provided for projects involving more than 15 dwelling units in an assisted living facility.

For elderly housing and assisted living facilities, the standards of section 43-312 supersede the requirements of chapter 45, sections 494 and 495.
(Ord. of 3-25-00(1))

Chapters 42, 43

RESERVED

Chapter 44

SHORELAND ZONING*

Article I. In General

- Sec. 44-1. Purposes.
- Sec. 44-2. Authority.
- Sec. 44-3. Applicability.
- Sec. 44-4. Definitions.
- Sec. 44-5. Effective date of ordinance and ordinance amendments, repeal of formerly adopted ordinance, and repeal of timber harvesting standards.
- Sec. 44-6. Availability.
- Sec. 44-7. Severability.
- Sec. 44-8. Conflicts with other provisions.
- Sec. 44-9. Amendments.
- Secs. 44-10—44-20. Reserved.

Article II. District Regulations

- Sec. 44-21. Districts and zoning map.
- Sec. 44-22. Interpretation of district boundaries.
- Secs. 44-23—44-30. Reserved.

Article III. Land Use Regulations

- Sec. 44-31. Requirements.
- Sec. 44-32. Nonconformance.
- Sec. 44-33. Establishment of districts.
- Sec. 44-34. Table of land uses.
- Sec. 44-35. Land use standards.
- Secs. 44-36—44-40. Reserved.

Article IV. Administration

- Sec. 44-41. Administering bodies and agents.
- Sec. 44-42. Permits required.
- Sec. 44-43. Permit application.
- Sec. 44-44. Procedure for administering permits.
- Sec. 44-45. Expiration of permit.
- Sec. 44-46. Installation of public utility service.
- Sec. 44-47. Appeals.
- Sec. 44-48. Enforcement.

***Editor's note**—Sections 1—17 of an ordinance adopted at the Town Meeting on Dec. 15, 1993, did not specifically amend this Code; hence, codification of §§ 1—17 of said ordinance as §§ 44-1—44-48 herein was at the editor's discretion.

ARTICLE I. IN GENERAL**Sec. 44-1. Purposes.**

The purposes of this chapter 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.

(T.M. of 12-15-93, § 1; T.M. of 6-9-09(1))

Sec. 44-2. Authority.

This chapter has been prepared in accordance with the provisions of title 38, of the Maine Revised Statutes Annotated (M.R.S.A.) sections 435 through 449.

(T.M. of 12-15-93, § 2)

Sec. 44-3. Applicability.

This chapter applies to all land areas:

- Within 250 feet, horizontal distance, of the normal high-water line of any great pond, river or saltwater body, including all areas affected by tidal action;
- Within 250 feet, horizontal distance, of the upland edge of a coastal or freshwater wetland; and
- Within 75 feet, horizontal distance, of the normal high-water line of a stream. This chapter also applies to any structure built on, over or abutting a dock, wharf or pier, or other structure extending beyond the normal high-water line of a water body or within a wetland.

This ordinance 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.

(T.M. of 12-15-93, § 3; T.M. of 6-9-09(1))

Sec. 44-4. Definitions.

(See section 1-2).

Editor's note—A Town Meeting held on Nov. 6, 2001, art. 4, revised § 44-4, which pertained to definitions, and derived from T.M. of 12-15-93, § 17; T.M. of 3-27-99(1), § 2; T.M. of 3-27-99(2). Former provisions of this section can now be found in § 1-2 of this Code.

Sec. 44-5. Effective date of ordinance and ordinance amendments, repeal of formerly adopted ordinance, and repeal of timber harvesting standards.

This ordinance, which was adopted by Eliot Town Meeting on December 15, 1993, and amended on June 9, 2009, shall not be effective unless approved by the commissioner of the department of environmental protection. A certified copy of the ordinance, attested and signed by the municipal clerk, shall be forwarded to the commissioner for approval. If the commissioner fails to act on this ordinance or ordinance amendment, within 45 days of his/her receipt of the ordinance, or ordinance amendment, it shall be automatically approved. The shoreland zoning ordinance previously adopted on March 19, 1988, was repealed on December 15, 1993.

Any application for a permit submitted to the municipality within the 45-day period shall be governed by the terms of this ordinance, or ordinance amendment, if the ordinance, or ordinance amendment, is approved by the commissioner.

Automatic repeal of municipal timber harvesting provisions. The municipal regulation of timber harvesting is repealed on the statutory date established under 38 M.R.S.A. section 438-A(5), at which time the State of Maine Department of Conservation's Bureau of Forestry shall administer timber harvesting standards in the shoreland zone within the Town of Eliot. On the date established under 38 M.R.S.A. 438-A(5), the following provisions of this chapter are repealed or amended as follows:

- (1) Section 44-34, Table of Land Uses, delete the symbol "CEO" indicated in each district next to the use "Timber Harvesting*", and replace with the symbol "BFP." Amend the table key to indicate that "BFP" means "Permit Required from Maine Bureau of Forestry, with a copy of said permit application required to be submitted to the Code Enforcement Officer."
- (2) Subsection (o), Timber harvesting, repeal in its entirety.
- (3) Chapter 1, General provisions, section 1-2, repeal definitions of the following terms:
Harvest area;
Residual basal area;
Residual stand.

(T.M. of 12-15-93, § 4; T.M. of 6-9-09(1))

Sec. 44-6. 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.

(T.M. of 12-15-93, § 5)

Sec. 44-7. Severability.

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

(T.M. of 12-15-93, § 6)

Sec. 44-8. Conflicts with other provisions.

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

(T.M. of 12-15-93, § 7)

Sec. 44-9. Amendments.

This chapter may be amended by majority vote of Eliot Town Meeting. Copies of amendments, attested and signed by the municipal clerk, shall be submitted to the commissioner of the department of environmental protection following adoption at Eliot Town Meeting body 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.

(T.M. of 12-15-93, § 8)

Secs. 44-10—44-20. Reserved.**ARTICLE II. DISTRICT REGULATIONS****Sec. 44-21. Districts and zoning map.**

(a) *Official zoning map.* The areas to which this chapter is applicable are hereby divided into the following districts as shown on the official zoning map(s) which is (are) made a part of this chapter:

- (1) Resource protection;
- (2) Limited residential;
- (3) Limited commercial;
- (4) General development; and
- (5) Stream protection.

(b) *Scale of map.* The official zoning map shall be drawn at a scale of not less than one inch equals 2,000 feet. District boundaries shall be clearly delineated and a legend indicating the symbols for each district shall be placed on the map.

(c) *Certification of official zoning map.* The official zoning map shall be certified by the attested signature of the municipal clerk and shall be located in the municipal office.

(d) *Changes to the official zoning map.* If amendments, in accordance with section 44-9, are made in the district boundaries or other matter portrayed on the official zoning map, such changes shall be made on the official zoning map within 30 days after the amendment has been approved by the commissioner of the department of environmental protection.

(T.M. of 12-15-93, § 9; T.M. of 6-9-09(1))

Sec. 44-22. Interpretation of district boundaries.

Unless otherwise set forth on the official zoning map, district boundary lines are property lines, the centerlines of streets, roads and rights-of-way, and the boundaries of the shoreland area as defined herein. Where uncertainty exists as to the exact location of district boundary lines, the board of appeals shall be the final authority as to location.

Note: Specific written descriptions of district boundaries are incorporated into later sections of the chapter so disputes may be minimized.

(T.M. of 12-15-93, § 10; T.M. of 6-9-09(1))

Secs. 44-23—44-30. Reserved.

ARTICLE III. LAND USE REGULATIONS

Sec. 44-31. Requirements.

Except as hereinafter specified, no building, structure or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, expanded, moved, or altered and no new lot shall be created, except in conformity with all of the regulations herein specified for the district in which it is located, unless a variance is granted.

(T.M. of 12-15-93, § 11)

Sec. 44-32. Nonconformance.

(a) *Purpose.* It is the intent of this chapter to promote land use conformities, except that nonconforming conditions that existed before the effective date of this chapter shall be allowed to continue, subject to the requirements set forth in this section. Except as otherwise provided in this chapter, a nonconforming condition shall not be permitted to become more nonconforming.

(b) *General.*

- (1) *Transfer of ownership:* Nonconforming structures, lots, and uses may be transferred, and the new owner may continue the nonconforming use or continue to use the nonconforming structure or lot, subject to the provisions of this chapter.

- (2) *Repair and maintenance:* This chapter allows, without a permit, the normal upkeep and maintenance of nonconforming uses and structures including repairs or renovations which do not involve expansion of the 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.

(c) *Nonconforming structures.*

- (1) *Expansions:* A nonconforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the nonconformity of the structure and is in accordance with subparagraphs (a) and (b) below.

- a. 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 upland edge of a wetland, that portion of the structure shall not be expanded, as measured in floor area or volume, by 30 percent or more, during the lifetime of the structure. If a replacement structure conforms with the requirements of subsection 44-32(c)(3) and is less than the required setback from a water body, tributary stream or wetland, the replacement structure may not be expanded if the original structure existing on January 1, 1989 had been expanded by 30 percent in floor area and volume since that date.
- b. Whenever a new, enlarged, or replacement foundation is constructed under a nonconforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the planning board, basing its decision on the criteria specified, in subsection 44-32(c)(2) below. If the completed foundation does not extend beyond the exterior dimensions of the structure; except for expansion in conformity with subsection 44-32(c)(1)(a) above, and the foundation does not cause the structure to be elevated by more than three 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.
- c. 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.

- (2) *Relocation:* 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 sewage disposal system meets the requirements of state law and the State of Maine Subsurface Wastewater Disposal Rules (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.

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 system and other onsite 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:

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

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

- b. 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) *Reconstruction or replacement:* Any nonconforming structure which is located less than the required setback from the normal high-water line of a water body, tributary stream, or upland edge of a wetland and which is removed, or damaged or destroyed, regardless of the cause, by more than 50 percent 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 purposes of this chapter. In no case shall a structure be reconstructed or replaced so as to increase its nonconformity. If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to subsection 44-32(c)(1) above, as determined by the nonconforming floor area and volume of the reconstructed or replaced structure at its new location. If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with subsection 44-32(c)(2) above.

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 percent or less

of the market value, or damaged or destroyed by 50 percent or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place with a permit, from the code enforcement officer within one year of such damage, destruction, or removal.

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 paragraph (c)(2) above, the physical condition and type of foundation present, if any.

- (4) *Change of use among line entries of table 1, of a nonconforming structure:* The use of a nonconforming 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.

(d) *Nonconforming uses.*

- (1) *Expansions:* Expansions of nonconforming uses are prohibited, except that nonconforming residential uses may, after obtaining a permit from the planning board, be expanded within existing residential structures or within expansions of such structures as permitted in subsection 44-32(c)(1)a. above.
- (2) *Resumption prohibited:* A lot, building or structure in or on which a nonconforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a nonconforming use, except that the planning board may, for good cause shown by the applicant, grant up to a one year extension to that time period. This provision shall not apply to the resumption of a use of a residential structure provided that the structure has been used or maintained for residential purposes during the preceding five-year period.
- (3) *Change of use:* An existing nonconforming use may be changed to another nonconforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources, 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 subsection 44-32(c)(4) above.

(e) *Nonconforming lots.*

- (1) *Nonconforming lots:* A nonconforming lot of record as of the effective date of this chapter or amendment thereto may be built upon, without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot

in the same ownership, and that all provisions of this chapter except lot area, lot width and shore frontage can be met. Variances 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.

- (2) *Contiguous built lots:* If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption of this chapter, if all or part of the lots do not meet the dimensional requirements of this chapter, and if a principal use or structure exists on each lot, the nonconforming lots may be conveyed separately or together, provided that the state minimum lot size law and subsurface wastewater disposal rules are complied with.

If two or more principal uses or structures existed on a single lot of record on the effective date of this chapter, each may be sold on a separate lot provided that the above referenced law and rules are complied with. When such lots are divided each lot thus created must be as conforming as possible to the dimensional requirements of this chapter.

- (3) *Contiguous lots; vacant or partially built:* If two or more contiguous lots or parcels are in single or joint ownership of record at the time of or since adoption or amendment of this chapter, if any of these lots do not individually meet the dimensional requirements of this chapter or subsequent amendments, 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 two or more contiguous lots, at least one of which is nonconforming, owned by the same person or persons on the effective date of this chapter and recorded in the registry of deeds if the lot is served by a public sewer or can accommodate a subsurface sewage disposal system in conformance with the State of Maine Subsurface Wastewater Disposal Rules, and:

- a. Each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or
- b. Any lots that do not meet the frontage and lot size requirements of subparagraph a. above, are reconfigured or combined so that each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

(T.M. of 12-15-93, § 12; T.M. of 6-9-09(1))

Sec. 44-33. Establishment of districts.

(a) *Resource protection district* (as identified on zoning map). The resource protection district includes areas in which development would adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values. This district shall include the following areas when they occur within the limits of the shoreland zone, exclusive of the

stream protection district, except that areas which are currently developed and areas which meet the criteria for the limited commercial, or general development districts need not be included within the resource protection district.

- (1) Areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands, salt marshes and salt meadows, and wetlands associated with great ponds and rivers, which are rated "moderate" or "high" value waterfowl and wading bird habitat, including nesting and feeding areas, by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) that are depicted on a Geographic Information System (GIS) data layer maintained by either MDIF&W or the Department. For the purposes of this paragraph "wetlands associated with great ponds and rivers" shall mean areas characterized by non-forested wetland vegetation and hydric soils that are contiguous with a great pond or river, and have a surface elevation at or below the water level of the great pond or river during the period of normal high water. "Wetlands associated with great ponds or rivers" are considered to be part of that great pond or river.
- (2) Floodplains along rivers and floodplains along artificially formed great ponds along rivers, defined by the 100-year floodplain as designated on the federal emergency management agency's (FEMA) flood insurance rate maps or flood hazard boundary maps, or the flood of record, or in the absence of these, by soil types identified as recent floodplain soils. This district shall also include 100-year floodplains adjacent to tidal waters as shown on FEMA's flood insurance rate maps or flood hazard boundary maps.
- (3) Areas of two or more contiguous acres with sustained slopes of 20 percent or greater.
- (4) Areas of two or more contiguous acres supporting wetland vegetation and hydric soils, which are not part of a freshwater or coastal wetland as defined, and which are not surficially connected to a water body during normal high water. NOTE: These areas usually consist of forested wetlands abutting water bodies and non-forested wetlands.
- (5) Land areas along rivers subject to severe bank erosion, undercutting, or river bed movement and lands adjacent to tidal waters which are subject to severe erosion or mass movement, such as steep coastal bluffs.

(b) *Limited residential district* (as identified on zoning map). The limited residential district includes those areas suitable for residential and recreational development. It includes areas other than those in the resource protection district, or stream protection district, and areas which are used less intensively than those in the limited commercial district, or the general development district.

(c) *Limited commercial district* (as identified on zoning map). The limited commercial district includes areas of mixed, light commercial and residential uses, exclusive of the stream protection district, which should not be developed as intensively as the general development district. This district includes areas of two or more contiguous acres in size devoted to a mix of residential and low intensity business and commercial uses. Industrial uses are prohibited.

(d) *General development district* (as identified on zoning map). The general development district includes the following types of existing, intensively developed areas:

- (1) Areas of two or more contiguous acres devoted to commercial, industrial or intensive recreational activities, or a mix of such activities, including but not limited to the following:
 - a. Areas devoted to manufacturing, fabricating or other industrial activities;
 - b. Areas devoted to wholesaling, warehousing, retail trade and service activities, or other commercial activities; and
 - c. Areas devoted to intensive recreational development and activities, such as, but not limited to amusement parks, race tracks and fairgrounds.
- (2) Areas otherwise discernible as having patterns of intensive commercial, industrial or recreational uses.

Portions of the general development district may also include residential development. However, no area shall be designated as a general development district based solely on residential use.

In areas adjacent to great ponds classified GPA and adjacent to rivers flowing to great ponds classified GPA, the designation of an area as a general development district shall be based upon uses existing at the time of adoption of this chapter. There shall be no newly established general development districts or expansions in area of existing general development districts adjacent to great ponds classified GPA, and adjacent to rivers which flow to great ponds classified GPA.

(e) *Stream protection district* (as identified on zoning map). The stream protection district includes all land areas within 75 feet, horizontal distance, of the normal high-water line of a stream, exclusive of those areas within 250 feet, horizontal distance, of the normal high-water line of a great pond, river or saltwater body, or the upland edge of a freshwater or coastal wetland. Where a stream and its associated shoreland area are located within 250 feet, horizontal distance, of the above water bodies or wetlands, that land area shall be regulated under the terms of the shoreland district associated with that water body or wetland.

(T.M. of 12-15-93, § 13)

Sec. 44-34. Table of land uses.

All land use activities, as indicated in table 1, Land Uses in the Shoreland Zone, shall conform with all of the applicable land use standards in section 44-33. The district designated for a particular site shall be determined from the official zoning map.

Key to table 1:

Yes	-	Allowed (no permit required but the use must comply with all applicable land use standards)
No	-	Prohibited
SPR	-	Allowed with site plan review and approval by the planning board
CEO	-	Allowed with permit issued by the code enforcement officer
LPI	-	Allowed with permit issued by the local plumbing inspector
BFP	-	Permit required from Maine Bureau of Forestry, with a copy of said permit application required to be submitted to the code enforcement officer

Abbreviations:

RP	-	Resource protection
LR	-	Limited residential
LC	-	Limited commercial
GD	-	General development
SP	-	Stream protection

The following notes are applicable to the land uses table on the following page:

Note: The term "functionally water-dependent use" as defined, includes a very diverse group of uses ranging from large, industrial facilities that receive shipments by water or use water for cooling, to traditional commercial fishing enterprises, and public shorefront parks.

Table 1. Land Uses in the Shoreland Zone

<i>Land Uses</i>		<i>Districts</i>				
		<i>SP</i>	<i>RP</i>	<i>LR</i>	<i>LC</i>	<i>GD</i>
Uses or Activities Without Structures						
(1)	Clearing of vegetation for activities other than timber harvesting	CEO	CEO ¹	CEO	CEO	CEO
(2)	Emergency operations	yes	yes	yes	yes	yes
(3)	Fire prevention activities	yes	yes	yes	yes	yes
(4)	Forest management activities, except for timber harvesting and land management roads	yes	yes	yes	yes	yes
(5)	Mineral exploration	no	no	no	yes ²	yes ²
(6)	Mineral extraction, including sand and gravel extraction	no	no	no	SPR	SPR
(7)	Motorized vehicular traffic on existing roads and trails	yes	yes	yes	yes	yes
(8)	Nonintensive recreational uses not requiring structures such as hunting, fishing and hiking	yes	yes	yes	yes	yes

			Districts				
Land Uses			SP	RP	LR	LC	GD
(9)	Soil and water conservation practices		yes	yes	yes	yes	yes
(10)	Surveying and resource analysis		yes	yes	yes	yes	yes
(11)	Timber harvesting		BFP	BFP	yes	yes	yes
(12)	Wildlife management practices		yes	yes	yes	yes	yes
Principal Structures or Uses							
(13)	Principal structures and uses:						
	a.	One- and two-family residential	SPR ⁴	SPR ⁹	CEO	CEO	CEO
	b.	Multiunit residential	no	no	SPR	SPR	SPR
	c.	Commercial (not listed elsewhere)	no ¹³	no ¹³	no ¹³	SPR	SPR ⁵
	d.	Industrial	no	no	no	no	SPR
	e.	Governmental and institutional	no	no	no	SPR	SPR
	f.	Small nonresidential facilities for educational, scientific or nature interpretation purposes	SPR ⁴	SPR	CEO	CEO	CEO
(14)	Agriculture		CEO	SPR	CEO	CEO	CEO
(15)	Aquaculture		SPR ¹⁰	SPR ¹⁰	SPR ¹⁰	SPR	Yes
(16)	Bed and breakfast		no	no	SPR ¹⁰	SPR ¹⁰	SPR
(17)	Boardinghouse		no	no	SPR ¹⁰	SPR	SPR
(18)	Campgrounds		no	no ⁷	no	no	SPR
(19)	Conversions of seasonal residences to year-round residences		LPI	LPI	LPI	LPI	LPI
(19.1)	Fireworks sales		no ¹⁷	no ¹⁷	no ¹⁷	no ¹⁷	no ¹⁷
(20)	Gambling Casino		no	no	no	no	no
(21)	Marinas						
	a.	Full service	no	no	no	no	SPR
	b.	Limited	no	no	no	SPR	SPR
(21.1)	Nonprofit medical marijuana dispensary		no	no	no	no	no
(22)	Off-site parking		no	no ⁷	no	no	no
(23)	Public and private recreational areas involving minimal structural development		SPR	SPR	SPR	SPR	CEO
Accessory Structures or Uses							
(24)	Structures accessory to allowed uses, not otherwise listed		SPR ⁴	SPR	CEO	CEO	CEO
(25)	Essential services		SPR ⁶	SPR ⁶	SPR	SPR	SPR
	a.	Roadside distribution lines (34.5kV and lower)	CEO ⁶	CEO ⁶	yes ¹²	yes ¹²	yes ¹²

			<i>Districts</i>				
<i>Land Uses</i>			<i>SP</i>	<i>RP</i>	<i>LR</i>	<i>LC</i>	<i>GD</i>
	b.	Non-roadside or cross-country distribution lines involving ten poles or less in the shoreland zone	SPR ⁶	SPR ⁶	CEO	CEO	CEO
	c.	Non-roadside or cross-country distribution lines involving 11 or more poles in the shoreland zone	SPR ⁶	SPR ⁶	SPR	SPR	SPR
	d.	Other essential services	SPR ⁶	SPR ⁶	SPR	SPR	SPR
(26)	Fences		yes ^{11A}	yes ^{11A}	yes ^{11A}	yes ^{11A}	yes ^{11A}
(27)	Filling and earthmoving of <10 cubic yards		CEO	CEO	yes	yes	yes
(28)	Filling and earthmoving of >10 cubic yards		SPR	SPR	CEO	CEO	CEO
(29)	Home business		no ^{12A}	no ^{12A}	SPR ^{10A}	SPR ^{10A}	no
(30)	Home occupations; regular and water-dependent		no	no	no	no	no
(31)	Home Office		CEO	no	CEO	CEO	CEO
(32)	Individual, private campsites		CEO	CEO	CEO	CEO	CEO
(33)	Land management roads		yes	SPR	yes	yes	yes
(34)	Piers, docks, wharves, bridges and other structures and uses and extending over or below the normal high-water line or within a wetland:						
	a.	Temporary	CEO ¹¹	CEO ¹¹	CEO ¹¹	CEO ¹¹	CEO ¹¹
	b.	Permanent residential	SPR	SPR	SPR	SPR	SPR
	c.	Permanent commercial	SPR ¹⁴	SPR ¹⁴	SPR ¹⁴	SPR	SPR
	d.	Limited commercial	SPR ⁵	SPR ⁵	SPR ⁵	SPR	no
(35)	Private sewage disposal systems for allowed uses		LPI	LPI	LPI	LPI	LPI
(36)	Road and driveway construction		SPR	no ⁸	SPR	SPR	SPR
(37)	Service drops, as defined, to allowed uses		yes	yes	yes	yes	yes
(38)	Signs. See zoning ordinance		yes ^{9A}	yes ^{9A}	yes ^{9A}	yes ^{9A}	yes ^{9A}
(39)	Solar energy system		CEO ¹⁵	CEO ¹⁵	CEO ¹⁵	CEO ¹⁵	CEO ¹⁵
(40)	Small wind energy system		SPR ¹⁶	SPR ¹⁶	SPR ¹⁶	SPR ¹⁶	SPR ¹⁶
(41)	Uses similar to allowed uses		CEO	CEO	CEO	CEO	CEO
(42)	Uses similar to uses requiring a CEO permit		CEO	CEO	CEO	CEO	CEO
(43)	Uses similar to uses requiring a SPR permit		SPR	SPR	SPR	SPR	SPR
(44)	Waste containers		CEO ^{5A}	CEO ^{5A}	CEO ^{5A}	CEO ^{5A}	CEO ^{5A}

Footnotes:

- ¹ In RP not allowed within 75 feet horizontal distance, of the normal high-water line of great ponds, except to remove safety hazards.

- ² Requires permit from the code enforcement officer if more than 100 square feet of surface area, in total, is disturbed.
- ³ In RP not allowed in areas so designated because of wildlife value.
- ⁴ Provided that a variance from the setback requirement is obtained from the board of appeals.
- ⁵ Functionally water-dependent uses and uses accessory to such water dependent uses only (see note on previous page).
- ^{5A} Only as an accessory use to an allowed principal use on the lot. Must conform to the requirements of [section] 45-422, Waste containers.
- ⁶ See further restrictions in [sub)section 44-35(1)(2), Essential services.
- ⁷ Except when area is zoned for resource protection due to floodplain criteria in which case a site plan review is required from the planning board.
- ⁸ Except as provided in [sub)section 44-35(h).
- ⁹ Single family residential structures may be allowed by special exception only according to the provisions of [sub)section 44-44(f), Special exceptions. Two-family residential structures are prohibited.
- ^{9A} See sign ordinance section.
- ¹⁰ Except for commercial uses otherwise listed in this table, such as marinas and campgrounds, that are allowed in the respective district.
- ^{10A} Must conform to the requirements of section 45-456.1, Home business.
- ¹¹ Excluding bridges and other crossings not involving earthwork, in which case no permit is required.
- ^{11A} Must conform to the requirements of section 45-423, Fences.
- ¹² Permit not required, but must file a written "notice of intent to construct" with CEO.
- ^{12A} "No" except in conjunction with aquaculture, small nonresidential facilities for educational, scientific or nature interpretation purposes or limited commercial piers, docks, wharves, bridges and other structures and uses extending over or below the normal high-water line or within a wetland.
- ¹³ Use is "No" except when permitted under another specific land use entry.
- ¹⁴ Only commercial aquaculture allowed on piers in this zone, with no other commercial pier uses. Pier must meet the requirements of a residential pier in these zones.

Note: A person performing any of the following activities shall require a permit from the department of environmental protection, pursuant to title 38, M.R.S.A. section

480-C, if the activity occurs in, on, over or adjacent to any freshwater or coastal wetland, great pond, river, stream or brook and operates in such a manner that material or soil may be washed into them:

- a. Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials;
- b. Draining or otherwise dewatering;
- c. Filling, including adding sand or other material to a sand dune; or
- d. Any construction or alteration of any permanent structure.

¹⁵ Must conform to the requirements of section 45-462.

¹⁶ Must conform to the requirements of section 45-461.

¹⁷ See chapter 12 for additional regulations pertaining to the sale and use of fireworks.

(T.M. of 12-15-93, § 14; T.M. of 3-27-99(2); T.M. of 6-19-01, (art. 7); T.M. of 3-16-02, (art. 3, § 3), (art. 4); T.M. of 11-5-02; T.M. of 11-4-03; T.M. of 3-20-04; T.M. of 6-14-08; T.M. of 6-9-09(1); T.M. of 6-12-2010(1); T.M. of 6-12-2010(2); T.M. of 6-12-2010(3); T.M. of 6-18-2011(6); T.M. of 6-16-2012(2); T.M. of 6-11-2013(1))

Sec. 44-35. Land use standards.

All land use activities within the shoreland zone shall conform with the following provisions, if applicable.

(a) *Minimum lot standards.*

- (1) Lots will be equal to or greater in area than the minimum required for lots located in the nearest adjacent non-shoreland zoning district, as indicated on the Official Zoning Map. See section 45-405 of the Eliot Zoning Ordinance for the minimum lot area requirements for the zoning district.

Minimum shore frontage: The minimum shore frontage shall be equal to or greater than the minimum required street frontage of the nearest adjacent non-shoreland zoning district, as indicated on the Official Zoning Map, and as outlined in section 45-405 of the Eliot Zoning Ordinance.

Setbacks from property lines, streets and rights-of-way: The minimum setbacks from property lines, streets, and rights of way shall be defined as those required in the Eliot Zoning Ordinance for the nearest adjacent non-shoreland zoning district.

- (2) Land below the normal high-water line of a water body or upland edge of a wetland and land beneath roads rights-of-way serving more than two lots shall not be included toward calculating minimum lot area.
- (3) 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.
- (4) 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.
- (5) If more than one residential dwelling unit or more than one principal 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 or principal structure, or use.

(b) *Principal and accessory structures.*

- (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, except that in the general development district the setback from the normal high-water line shall be at least 25 feet, horizontal distance. 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. In addition:
 - a. The water body, tributary stream, or wetland setback provision shall neither 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.

- b. For principal structures, water and wetland setback measurements shall be taken from the top of a coastal bluff that has been identified on coastal bluff maps as being "highly unstable" or "unstable" by the Maine Geological Survey pursuant to its "Classification of Coastal Bluffs" and published on the most recent coastal bluff map. If the applicant and the permitting official(s) are in disagreement as to the specific location of a "highly unstable" or "unstable" bluff, or where the top of the bluff is located, the applicant may at his or her expense, employ a Maine Registered Professional Engineer, a Maine Certified Soil Scientist, a Maine State Geologist, or other qualified individual to make a determination. If agreement is still not reached, the applicant may appeal the matter to the board of appeals.
 - c. On a nonconforming lot of record on which only a residential structure exists, and 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 nor eight 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.
- (2) Principal or accessory structures and expansions of existing structures which are permitted in the resource protection, limited residential, limited commercial, and stream protection districts, shall not exceed 35 feet in height. This provision shall not apply to structures such as transmission towers, windmills, antennas, and similar structures having no floor area.
 - (3) The lowest floor elevation or openings of all buildings and structures, including basements, shall be elevated at least two feet 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 floodplain soils. When the Town of Eliot has 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.
 - (4) The total footprint area of all structures, parking lots and other nonvegetated surfaces, within the shoreland zone shall not exceed 20 percent of the lot or a portion thereof, located within the shoreland zone, including land area previously developed, except in the general development district, adjacent to tidal waters and rivers which do not flow to great ponds classified GPA, where lot coverage shall not exceed 70 percent.

[Note: The existing Spinney Creek developed aquaculture facility will be rezoned to Shoreland General Development, once the accompanying Official Zoning Map is adopted, negating the need for this sentence.]

- (5) Retaining walls that are not necessary for erosion control shall meet the structure setback requirement, except for low retaining walls and associated fill provided all of the following conditions are met:
- a. The site has been previously altered and an effective vegetated buffer does not exist;
 - b. The wall(s) is(are) at least 25 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland;
 - c. The site where the retaining wall will be constructed is legally existing lawn or is a site eroding from lack of naturally occurring vegetation, and which cannot be stabilized with vegetative plantings;
 - d. The total height of the wall(s), in the aggregate, are no more than 24 inches;
 - e. Retaining walls are located outside of the 100-year floodplain on rivers, streams, coastal wetlands, and tributary streams, as designated on the Federal Emergency Management Agency's (FEMA) flood insurance rate maps or flood hazard boundary maps, or the flood of record, or in the absence of these, by soil types identified as recent floodplain soils.
 - f. The area behind the wall is revegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the setback area, including patios and decks; and
 - g. A vegetated buffer area is established within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland when a natural buffer area does not exist. The buffer area must meet the following characteristics:
 - (i) The buffer must include shrubs and other woody and herbaceous vegetation. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch;
 - (ii) Vegetation plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of stormwater runoff;
 - (iii) Only native species may be used to establish the buffer area;
 - (iv) A minimum buffer width of 15 feet, horizontal distance, is required, measured perpendicularly to the normal high-water line or upland edge of a wetland;
 - (v) A footpath, not to exceed the standards in subsection 44-35(p)(2)a., may traverse the buffer;
- (6) Notwithstanding the requirements stated above, stairways or similar structures may be allowed with a permit from the code enforcement officer, to provide shoreline access in areas of steep slopes or unstable soils, provided that the structure is limited to a maximum of four feet in width, that the structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland, (unless permitted

by the department of environmental protection pursuant to the Natural Resources Protection Act, title 38, M.R.S.A. section 480-C), and that the applicant demonstrates that no reasonable access alternative exists on the property.

(c) *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.* (See note 1 below.)

- (1) Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.
- (2) The location shall not interfere with existing developed or natural beach areas.
- (3) The facility shall be located so as to minimize adverse effects on fisheries.
- (4) Facilities in nontidal waters shall be no larger in dimension than necessary to carry on the activity and be consistent with the dimensions of the surrounding facilities. A temporary pier, dock or wharf in nontidal waters shall not be wider than six feet for noncommercial uses.
- (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.
- (6) New permanent piers and docks on nontidal 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.
- (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.
- (8) Except in the general development district, 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.

Note 1: Permanent structures projecting into or over water bodies shall require a permit from the Department of Environmental Protection pursuant to the Natural Resources Protection Act, title 38, M.R.S.A. section 480-C.

- (9) In addition to meeting the requirements of paragraph (4) above, all piers in tidal waters shall comply with the following requirements:
 - a. Residential piers shall not extend beyond the mean low water mark and are limited to a maximum width of six feet. Commercial piers may extend beyond the low water mark subject to the limits of paragraphs (10) and (11) below and to all dimensional limits imposed by the Maine Department of Environmental Protection under the Natural Resources Protection Act.

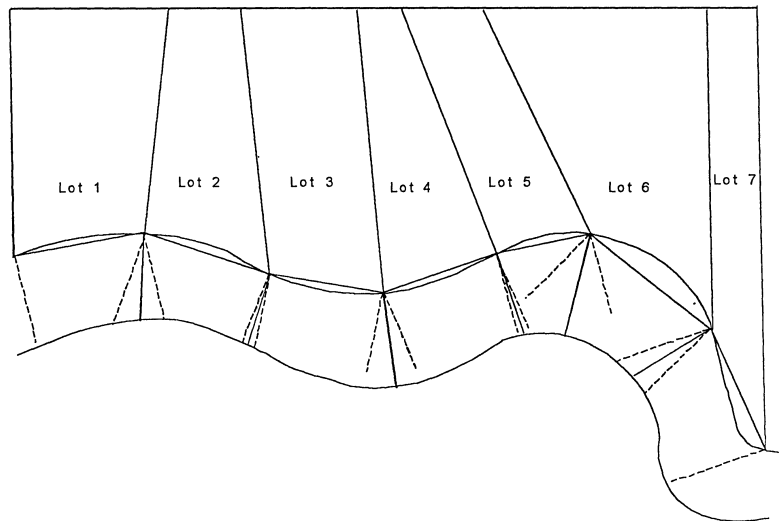
- b. All piers or continuous connected lengths of temporary floats in the limited residential (LR) and resource protection (RP) zones shall be restricted to an overall length (including appurtenant temporary ramps and floats and their positioning pilings) of 200 feet, measured from the normal high water line, or a length that will provide six feet of water depth at the outermost float at mean low water, whichever is shorter. In no case shall the structure extend more than halfway to the mean low water deep channel centerline.
 - c. All piers or continuous connected lengths of temporary floats in the limited commercial (LC) and general development (GD) zones shall be restricted to an overall length (including appurtenant temporary ramps and floats and their positioning pilings) of 330 feet, measured from the normal high water line, or a length that will provide six feet of water (12 feet for GD) depth at the outermost float at mean low water, whichever is shorter. In no case shall the structure extend more than halfway to the mean low water deep channel centerline.
- (10) No structure (including appurtenant temporary ramps and floats and their positioning pilings) shall extend more than halfway to the deep channel centerline [25 percent of the waterway width at mean low water]. (See note 2 below.)
 - (11) All parts of piers, wharves, floats, and pilings shall have side setbacks of at least 25 feet from riparian lines determined using the procedure described in note 4 below. If abutting property owners reach a mutual agreement regarding structures which have a lesser setback, that lesser setback may be approved if the applicant agrees to record any ensuing permit (having that agreement as a condition), in the York County Registry of Deeds. (See notes 3 and 4 below.)
 - (12) Temporary or seasonal floats which sit on the bottom at low tide must be constructed in accordance with the most current guidance provided by the Department of Environmental Protection so as to minimize harm to marsh grass or marine life living in the mud.
 - (13) All new and existing piers and floats, temporary or permanent, shall be affixed with a reflector not less than three inches in diameter located not more than 12 inches from each corner. For piers exceeding 40 feet in length reflectors shall also be affixed to each side of the pier at a frequency of one per 20 feet.

Note 2: The purpose of the limit of paragraph (10) is to maintain a reasonable area of open water in the public interest to sustain activities not specifically related to simple transiting of the area in safety. These activities include such things as cruising, fishing, sailboarding, swimming, water-skiing, etc., which require open unobstructed water and should not be eliminated for private interest. Limiting intrusion from either bank to 25 percent of the waterway width at mean low water or halfway to the deep channel centerline will maintain the central 50 percent of the available width as open water, an even split between public and private interest.

Note 3: The purpose of paragraph (11) is to avoid conflicts between neighboring waterfront property owners concerning the spacing of projects relative to "riparian"

lines. (Riparian lines refers to the demarcations of rights in the water associated with owning waterfront property.) The United States Army Corps of Engineers reports that these conflicts generally concern access to piers and floats for mooring vessels. To resolve these conflicts the Army Corps of Engineers requires a minimum setback from the riparian boundary of 25 feet. This is based on the fact that a median sized recreational vessel length is in the range of 32 feet. A minimum turning distance for such a vessel is 1.5 times the vessel length, or 48 feet, rounded off to 50 feet. Each adjacent facility then provides one-half the required turning distance which is an equitable distribution of the resource. Applying the standards of paragraph (11), the outside dimensions of floats and pilings located across the front of a pier will not usually exceed the effective lot frontage on the water body minus 50 feet.

Note 4: For the purpose of measuring setbacks of piers and appurtenant floats from adjacent lots in this section "riparian lines" are to be determined as follows: Draw a straight line (the baseline) between the two corners of each lot where the edge of the lot meets the high-water line. From these two corners extend parallel lines towards the water at right angles to the baseline. Usually the parallel lines from the lot corners on adjacent lots will not coincide, but will form a pie shape. An imaginary line drawn to bisect this pie shaped area is the riparian or boundary between each adjacent lot. These riparian lines should project on either side of the footprint of the pier and are the line from which the setbacks are to be measured. Where the location of the applicant's riparian lines is unclear due to the geography of the water body, they shall be determined by the planning board as part of the review of the proposed pier.



Method of Establishing Riparian Lines

(d) *Campgrounds.* Campgrounds shall conform to the minimum requirements imposed under state licensing procedures and the following:

- (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.
- (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.

(e) *Individual private campsites.*

- (1) One campsite per lot existing on the effective date of this chapter, or 30,000 square feet of lot area within the shoreland zone, whichever is less, may be permitted.
- (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.
- (3) Only one recreational vehicle shall be allowed on a campsite. The recreational vehicle shall not be located on any type of permanent foundation, except for a gravel pad, and no structure, except a canopy shall be attached to the recreational vehicle.
- (4) The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter in a resource protection district shall be limited to 1,000 square feet.
- (5) A written sewage disposal plan describing the proposed method and location of sewage disposal shall be required for each campsite and shall be approved by the local plumbing inspector. Where disposal is off-site, written authorization from the receiving facility or land owner is required.
- (6) When a recreational vehicle, tent or similar shelter is placed on-site for more than 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.

(f) *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:

- a. Auto washing facilities.
- b. Auto or other vehicle service and/or repair operations, including body shops.

- c. Chemical and bacteriological laboratories.
- d. Storage of chemicals, including herbicides, pesticides or fertilizers other than amounts normally associated with individual households or farms.
- e. Commercial painting, wood preserving, and furniture stripping.
- f. Dry cleaning establishments.
- g. Electronic circuit assembly.
- h. Laundromats, unless connected to a sanitary sewer.
- i. Metal plating, finishing, or polishing.
- j. 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.
- k. Photographic processing.
- l. Printing.
- m. Uses similar to above.

(g) *Parking areas.*

- (1) Parking areas shall meet the shoreline and tributary stream setback requirements for structures for the district in which such areas are located. The setback requirement for parking areas serving public boat launching facilities, in districts other than the general development and limited commercial districts, may be reduced to no less than 50 feet from the normal high-water line or upland edge of a wetland if the planning board finds that no other reasonable alternative exists.
- (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.
- (3) In determining the appropriate size of proposed parking facilities, the following shall apply:
 - a. Typical parking space: Approximately ten feet wide and 20 feet long, except that parking spaces for a vehicle and boat trailer shall be 40 feet long.
 - b. Internal travel aisles: Approximately 20 feet wide.

(h) *Roads and driveways.* The following standards shall apply to the construction of roads and/or driveways and drainage systems, culverts and other related features.

- (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 planning board may reduce the road and/or driveway setback requirement to 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.

On slopes of greater than 20 percent the road and/or driveway setback shall be increased by ten feet for each five-percent increase in slope above 20 percent.

This paragraph shall neither apply to approaches to water crossings nor to roads or driveways that provide access to permitted structures, and facilities located nearer to the shoreline due to an operational necessity, excluding temporary docks for recreational uses. Roads and driveways providing access to permitted structures within the setback area shall comply fully with the requirements of this paragraph except for that portion of the road or driveway necessary for direct access to the structure.

- (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.
- (3) New roads and driveways are prohibited in a resource protection district, except that the planning board may grant a permit 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.
- (4) 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 and sedimentation control contained in subsection (q).
- (5) Road and driveway grades shall be no greater than ten percent, except for segments of less than 200 feet.
- (6) 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.
- (7) 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:

- a. 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:

<i>Grade (Percent)</i>	<i>Spacing (Feet)</i>
0—2	250
3—5	200—135
6—10	100—80
11—15	80—60
16—20	60—45
21+	40

- b. Drainage dips may be used in place of ditch relief culverts only where the grade is ten percent or less.
- c. On sections having slopes greater than ten percent, ditch relief culverts shall be placed at approximately a 30-degree angle downslope from a line perpendicular to the centerline of the road or driveway.
- d. 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.
- (8) Ditches, culverts, bridges, dips, water turnouts and other stormwater runoff control installations associated with roads and driveways shall be maintained on a regular basis to assure effective functioning.
- (i) *Signs.* See zoning ordinance.
- (j) *Stormwater runoff.*
- (1) All new construction and development shall be designed to minimize stormwater runoff from the site in excess of the 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 stormwaters.
- (2) Stormwater runoff control systems shall be maintained as necessary to ensure proper functioning.
- (k) *Septic waste disposal.*
- (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 is not allowed for a first-time residential use in the shoreland zone.

Note: The Maine Subsurface Wastewater Disposal Rules require new systems, excluding fill extensions, to be constructed no less than 100 horizontal feet from the normal high-water line of a perennial water body. The minimum setback distances from water bodies for new subsurface sewage disposal systems shall not be reduced by variance.

- c. Replacement systems shall meet the standards for replacement systems as contained in the rules.

(l) *Essential services.*

- (1) Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.
- (2) The installation of essential services, other than road-side distribution lines, is not allowed in a resource protection or stream protection district, except to provide services to a permitted use within said district, or except where the applicant demonstrates that no reasonable alternative exists. Where allowed, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts.
- (3) Damaged or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit.

(m) *Mineral exploration and extraction.* 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. A permit from the code enforcement officer shall be required for mineral exploration which exceeds the above limitation. All excavations, including test pits and holes shall be immediately capped, filled or secured by other equally effective measures, so as to restore disturbed areas and to protect the public health and safety. Mineral extraction may be permitted under the following conditions:

- (1) A reclamation plan shall be filed with, and approved by the planning board before a permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of paragraph (m)(3) below.
- (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, and 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 50 feet, horizontal distance, of any property line, without written permission of the owner of such adjacent property.

- (3) 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:

- a. All debris, stumps, and similar material shall be removed for disposal in an approved location, or shall be buried on-site. Only materials generated on-site may be buried or covered on-site.

Note: The State of Maine Solid Waste Laws, title 38, M.R.S.A. section 1310 and chapter 404 of the Department of Environmental Protection's regulations may contain other applicable provisions regarding disposal of such materials.

- b. The final grade slope shall be two and one-half to one slope or flatter.
- c. Top soil or loam shall be retained to cover all disturbed land areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from offsite sources if necessary to complete the stabilization project.
- (4) In keeping with the purposes of this chapter, the planning board may impose such conditions as are necessary to minimize the adverse impacts associated with mineral extraction operations on surrounding uses and resources.

(n) *Agriculture.*

- (1) All spreading or disposal of manure shall be accomplished in conformance with the Manure Utilization Guidelines published by the Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7 M.R.S.A. sections 4201-4209).
- (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 must be constructed or modified such that the facility produces no discharge of effluent or contaminated stormwater.
- (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 chapter.

Note: Assistance in preparing a soil and water conservation plan may be available through the local soil and water conservation district office.

- (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 freshwater wetlands. Operations in existence on the effective date of this chapter and not in conformance with this provision may be maintained.

- (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 are not in conformance with the above setback provisions may continue, provided that such grazing is conducted in accordance with a soil and water conservation plan.

(o) *[Reserved.]*

(p) *Clearing or removal of vegetation for activities other than timber harvesting.*

- (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.

- (2) Except in areas as described in paragraph (1) 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:
- a. There shall be no cleared opening greater than 250 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 six 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. Adjacent to a great pond classified GPA, or stream or river flowing to a great pond classified GPA, the width of the foot path shall be limited to six feet.

- b. 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 this section 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 any 25-foot by 50-foot rectangular (1,250 square feet) area as determined by the following rating system.

<i>Diameter of Tree at 4¹/₂ Feet Above Ground Level (inches)</i>	<i>Points</i>
2 to < 4 inches	1
4 to < 8 inches	2
8 to < 12 inches	4
12 inches or greater	8

Adjacent to other water bodies, tributary streams, and wetlands, a "well-distributed stand of trees a" is defined as maintaining a minimum rating score of 16 per 25-foot by 50-foot rectangular area.

Note: As an example, adjacent to a great pond, if a 25-foot by 50-foot plot contains four trees between two and four inches in diameter, two trees between four and eight inches in diameter, three trees between eight and 12 inches in diameter, and two trees over 12 inches in diameter, the rating score is:

$$(4 \times 1) + (2 \times 2) + (3 \times 4) + (2 \times 8) = 36 \text{ points}$$

Thus, the 25-foot by 50-foot plot contains trees worth 36 points. Trees totaling 12 points ($36 - 24 = 12$) may be removed from the plot provided that no cleared openings are created.

The following shall govern in applying this point system:

- (i) The 25-foot by 50-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;
- (ii) Each successive plot must be adjacent to, but not overlap a previous plot;
- (iii) Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this ordinance;
- (iv) Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by is ordinance;
- (v) Where conditions permit, no more than 50 percent 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 this section, "other natural vegetation" is defined as retaining existing vegetation under three feet in height and other ground cover and retaining at least five saplings less than two inches in diameter at four and one-half feet above ground level for each 25-foot by 50-foot rectangle area. If five saplings do not exist, no woody stems less than two inches in diameter can be removed until five saplings have been recruited into the plot.

Notwithstanding the above provisions, no more than 40 percent of the total volume of trees four inches or more in diameter, measured at four and one-half feet above ground level may be removed in any ten-year period.

- c. In order to protect water quality and wildlife habitat, adjacent to great ponds classified GPA, and streams and rivers which flow to great ponds classified GPA, existing vegetation under three 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 as described in paragraphs (2) and (2)a. above.
- d. Pruning of tree branches, on the bottom one-third of the tree is allowed.
- e. 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.

The provisions contained in paragraph (2) above, 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.

- (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 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 ten-year period, selective cutting of not more than 40 percent of the volume of trees four inches or more in diameter, measured four and one-half feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the 40 percent 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 percent of the lot area or 10,000 square feet, whichever is greater, including land previously developed. This provision shall not apply to the general development district.

- (4) Legally existing nonconforming cleared openings may be maintained, but shall not be enlarged, except as allowed by this chapter.

- (5) Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of this section.

(q) *Erosion and sedimentation control.*

- (1) All activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and which require a permit shall also require a written soil erosion and sedimentation control plan. The plan shall be submitted to the permitting authority for approval and shall include, where applicable, provisions for:
 - a. Mulching and revegetation of disturbed soil.
 - b. Temporary runoff control features such as hay bales, silt fencing or diversion ditches.
 - c. Permanent stabilization structures such as retaining walls or riprap.
- (2) 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 slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.
- (3) 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.
- (4) 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 nine months of the initial date of exposure. In addition:
 - a. 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.
 - b. Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
 - c. Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.
- (5) Natural and manmade drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainageways shall be designed and constructed in order to carry water from a 25-year storm or greater, and shall be stabilized with vegetation or lined with riprap.

(r) *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.

(s) *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.

(t) *Archaeological sites.* Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on, or eligible to be listed on the national register of historic places, 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.

(T.M. of 12-15-93, § 15; T.M. of 3-23-96; T.M. of 3-27-99(2); T.M. of 3-24-01, (art. 48); T.M. of 11-7-06; T.M. of 6-9-09(1); T.M. of 6-11-2013(1))

Secs. 44-36—44-40. Reserved.

ARTICLE IV. ADMINISTRATION

Sec. 44-41. Administering bodies and agents.

(a) *Code enforcement officer.* A code enforcement officer shall be appointed or reappointed annually by July 1st.

(b) *Board of appeals.* A board of appeals shall be created in accordance with the provisions of title 30-A, M.R.S.A. section 2691.

(c) *Planning board.* A planning board shall be created in accordance with the provisions of state law.

(T.M. of 12-15-93, § 16A)

Sec. 44-42. Permits required.

After the effective date of this chapter no person shall, without first obtaining a permit, engage in any activity or use of land or structure requiring a permit in the district in which such activity or use would occur; or expand, change, or replace an existing use or structure; or

renew a discontinued nonconforming use. A person who is issued a permit pursuant to this ordinance shall have a copy of the permit on site while the work authorized by the permit is performed.

- (1) A permit is not required for the replacement of an existing road culvert as long as:
 - a. The replacement culvert is not more than 25 percent longer than the culvert being replaced;
 - b. The replacement culvert is not longer than 75 feet; and
 - c. Adequate erosion control measures are taken to prevent sedimentation of the water, and the crossing does not block fish passage in the watercourse.
 - (2) A permit is not required for an archaeological excavation as long as the excavation is conducted by an archaeologist listed on the state historic preservation officer's level 1 or level 2 approved list, and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.
 - (3) Any permit required by this ordinance shall be in addition to any other permit required by other law or ordinance.
- (T.M. of 12-15-93, § 16B; T.M. of 6-9-09(1))

Sec. 44-43. Permit application.

(a) Every applicant for a permit shall submit a written application, including a scaled site plan, on a form provided by the municipality, to the appropriate official as indicated in section 44-34. A fee in the amount established by the fee schedule in section 1-25 shall be submitted with the application.

(b) All applications shall be signed by an owner or individual who can show evidence of right, title or interest in the property or by an agent, representative, tenant, or contractor of the owner with authorization from the owner to apply for a permit hereunder, certifying that the information in the application is complete and correct.

(c) All applications shall be dated, and the code enforcement officer or planning board, as appropriate, shall note upon each application the date and time of its receipt.

(d) If the property is not served by a public sewer, a valid plumbing permit or a completed application for a plumbing permit, including the site evaluation approved by the plumbing inspector, shall be submitted whenever the nature of the proposed structure would require the installation of a subsurface sewage disposal system.

(T.M. of 12-15-93, § 16C; T.M. of 6-9-09(1); T.M. of 6-11-2013(3))

Sec. 44-44. Procedure for administering permits.

(a) Within 35 days of the date of receiving a written application, the planning board or code enforcement officer, as indicated in section 44-34, shall notify the applicant in writing either that the application is a complete application, or, if the application is incomplete, that specified additional material is needed to make the application complete.

(b) The planning board or code enforcement officer, as appropriate, shall approve, approve with conditions, or deny all permit applications in writing within 35 days of receiving a completed application. However, if the planning board has a waiting list of applications, a decision on the application shall occur within 35 days after the first available date on the planning board's agenda following receipt of a completed application, or within 35 days of the public hearing, if one is held, if the proposed use or structure is found to be in conformance with the purposes and provisions of this chapter.

(c) The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this chapter.

(d) After the submission of a complete application to the planning board, the board shall approve an application or approve it with conditions if it makes a positive finding based on the information presented that the proposed use:

- (1) Will maintain safe and healthful conditions;
- (2) Will not result in water pollution, erosion, or sedimentation to surface waters;
- (3) Will adequately provide for the disposal of all wastewater;
- (4) Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
- (5) Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
- (6) Will protect archaeological and historic resources as designated in the comprehensive plan;
- (7) Will avoid problems associated with floodplain development and use; and
- (8) Is in conformance with the provisions of section 44-35, land use standards.

(e) If a permit is either denied or approved with conditions, the reasons as well as conditions shall be stated in writing. No approval shall be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance or regulation or statute administered by the municipality.

(f) 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:

- (1) There is no location on the property, other than a location within the resource protection district, where the structure can be built.
- (2) The lot on which the structure is proposed is undeveloped and was established and recorded in the registry of deeds of the county in which the lot is located before the adoption of the resource protection district.

- (3) All proposed buildings, sewage disposal systems and other improvements are:
- Located on natural ground slopes of less than 20 percent; and
 - 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; all buildings, including basements, are elevated at least one foot above the 100-year floodplain elevation; and the development is otherwise in compliance with any applicable municipal flood-plain ordinance.
- If the floodway is not shown on the Federal Emergency Management Agency maps, it is deemed to be one-half the width of the 100-year floodplain.
- (4) The total ground-floor area, including cantilevered or similar overhanging extensions, of all principal and accessory structures is limited to a maximum of 1,500 square feet. This limitation shall not be altered by variance.
- (5) All structures, except functionally water-dependent structures, are set back from the normal high-water line of a water body, tributary stream or upland edge of a wetland to the greatest practical extent, but not less than 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.

(T.M. of 12-15-93, § 16D; T.M. of 6-9-09(1))

Sec. 44-45. Expiration of permit.

Permits shall expire one year from the date of issuance if a substantial start is not made in construction or in the use of the property during that period. If a substantial start is made within one year of the issuance of the permit, the applicant shall have one additional year to complete the project, at which time the permit shall expire.

(T.M. of 12-15-93, § 16E; T.M. of 6-8-04; T.M. of 6-9-09(1))

Sec. 44-46. Installation of public utility service.

A public utility, water district, sanitary district or any utility company of any kind may 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.

(T.M. of 12-15-93, § 16F; T.M. of 6-9-09(1))

Sec. 44-47. Appeals.

(a) *Powers and duties of the board of appeals.* The board of appeals shall have the following powers:

- Administrative appeals:* To hear and decide administrative appeals, on an appellate basis, where it is alleged by an aggrieved party that there is an error in any order,

requirement, decision, or determination made by, or failure to act by, the planning board in the administration of this chapter, and to hear and decide administrative appeals on a de novo basis where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by, or failure to act by, the code enforcement officer in his or her review of and action on a permit application under this ordinance. Any order, requirement, decision or determination made, or failure to act, in the enforcement of this ordinance is not appealable to the board of appeals.

- (2) *Variance appeals:* To authorize variances upon appeal, within the limitations set forth in this chapter.
- (b) *Variance appeals.* Variances may be granted only under the following conditions:
 - (1) Variances may be granted only from dimensional requirements including, but not limited to, lot width, structure height, percent of lot coverage, and setback requirements.
 - (2) Variances shall not be granted for establishment of any uses otherwise prohibited by this ordinance.
 - (3) The board shall not grant a variance unless it finds that:
 - a. The proposed structure or use would meet the provisions of section 44-35, except for the specific provision which has created the nonconformity and from which relief is sought; and
 - b. The strict application of the terms of this ordinance would result in undue hardship. The term "undue hardship" shall mean:
 - (i) That the land in question cannot yield a reasonable return unless a variance is granted;
 - (ii) That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
 - (iii) That the granting of a variance will not alter the essential character of the locality; and
 - (iv) That the hardship is not the result of action taken by the applicant or a prior owner.
 - (4) Notwithstanding the section above, the board of appeals may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time

that the person with the disability lives in the dwelling. The term "structures necessary for access to or egress from the property" shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure.

- (5) The board of appeals shall limit any variances granted as strictly as possible in order to ensure conformance with the purposes and provisions of this chapter to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.
- (6) 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 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.

(c) *Administrative appeals.* When the board of appeals reviews a decision of the code enforcement officer the board of appeals shall hold a "de novo" hearing. At this time the board may receive and consider new evidence and testimony, be it oral or written. When acting in a "de novo" capacity the board of appeals shall hear and decide the matter afresh, undertaking its own independent analysis of evidence and the law, and reaching its own decision.

When the board of appeals hears a decision of the planning board, it shall hold an appellate hearing, and may reverse the decision of the planning board only upon finding that the decision was contrary to specific provisions of the ordinance or contrary to the facts presented to the planning board. The board of appeals may only review the record of the proceedings before the planning board. The board appeals shall not receive or consider any evidence which was not presented to the planning board, but the board of appeals may receive and consider written or oral arguments. If the board of appeals determines that the record of the planning board proceedings are inadequate, the board of appeals may remand the matter to the planning board for additional fact finding.

(d) *Appeal procedure.*

(1) Making an appeal.

- (i) An administrative or variance appeal may be taken to the board of appeals by an aggrieved party from any decision of the code enforcement officer or the planning board, except for enforcement-related matters as described in section 44-48. Such an appeal shall be taken within 30 days of the date of the official, written decision appealed from, and not otherwise, except that the board, upon a showing of good cause, may waive the 30-day requirement.
- (ii) Applications for appeals shall be made by filing with the board of appeals a written notice of appeal which includes:
 - a. A concise written statement indicating what relief is requested and why the appeal or variance should be granted.

- b. A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.
 - (iii) Upon receiving an application for an administrative appeal or a variance, the code enforcement officer or planning board, as appropriate, shall transmit to the board of appeals all of the papers constituting the record of the decision appealed from.
 - (iv) The board of appeals shall hold a public hearing on an administrative appeal or a request for a variance within 35 days of its receipt of a complete written application, unless this time period is extended by the parties.
- (2) Decision by board of appeals:
- a. A majority of the full voting membership of the board shall constitute a quorum for the purpose of deciding an appeal.
 - b. The person filing the appeal shall have the burden of proof.
 - c. The board shall decide all administrative appeals and variance appeals within 35 days after the close of the hearing, and shall issue a written decision on all appeals.
 - d. The board of appeals shall state the reasons and basis for its decision, including a statement of the facts found and conclusions reached by the board. The board shall cause written notice of its decision to be mailed or hand-delivered to the applicant and to the Department of Environmental Protection within seven days of the board's decision. Copies of written decisions of the board of appeals shall be given to the planning board, code enforcement officer, and the municipal officers.

(e) *Appeal to superior court.* Except as provided by 30-A M.R.S.A. section 2691(3)(F), any aggrieved party who participated as a party during the proceedings before the board of appeals may take an appeal to superior court in accordance with state laws within 45 days from the date of any decision of the board of appeals.

(f) *Reconsideration.* In accordance with 30-A M.R.S.A. section 2691(3)(F), the board of appeals may reconsider any decision within 45 days of its prior decision. A request to the board to reconsider a decision must be filed within ten days of the decision that is being reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within 45 days of the date of the vote on the original decision. Reconsideration of a decision shall require a positive vote of the majority of the board members originally voting on the decision, and proper notification to the landowner, petitioner, planning board, code enforcement officer, and other parties of interest, including abutters and those who testified at the original hearing(s). The board may conduct additional hearings and receive additional evidence and testimony.

Appeal of a reconsidered decision to Superior Court must be made within 15 days after the decision on reconsideration.

(T.M. of 12-15-93, § 16G; T.M. of 11-8-05; T.M. of 6-9-09(1))

Sec. 44-48. Enforcement.

(a) *Nuisances.* Any violation of this chapter shall be deemed to be a nuisance.

(b) *Code enforcement officer:*

- (1) It shall be the duty of the code enforcement officer to enforce the provisions of this chapter. If the code enforcement officer shall find that any provision of this chapter is being violated, he or 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, including discontinuance of illegal use of land, buildings or structures, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be submitted to the municipal officers and be maintained as a permanent record.
- (2) The code enforcement officer shall conduct onsite inspections to ensure compliance with all applicable laws and conditions attached to permit approvals. The code enforcement officer shall also investigate all complaints of alleged violations of this chapter.
- (3) The code enforcement officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected. On a biennial basis, a summary of this record shall be submitted to the director of the bureau of land quality within the department of environmental protection.

(c) *Legal actions.* When the above action does not result in the correction or abatement of the violation or nuisance condition, the municipal officers, upon notice from the code enforcement officer, are hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this chapter in the name of the municipality. The municipal officers, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this chapter and recovering fines without court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized municipal official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage.

(d) *Fines.* Any person, including but not limited to a landowner, a landowner's agent or a contractor, who orders or conducts any activity in violation of this chapter shall be penalized in accordance with title 30-A, M.R.S.A. subsection 4452.

Note: Current penalties include fines of not less than \$100.00 nor more than \$2,500.00 per violation for each day that the violation continues. However, in a resource protection district the maximum penalty is increased to \$5,000.00.

(T.M. of 12-15-93, § 16H; T.M. of 6-9-09(1))

Cross reference—Code enforcement officer, 2-51 et seq.

Chapter 45

ZONING*

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§ 45-2

ARTICLE I. IN GENERAL

Sec. 45-1. Definitions.

(See section 1-2).

Editor's note—A Town Meeting held on Nov. 6, 2001, art. 4, revised § 45-1, which pertained to definitions. See the Code Comparative Table at the end of this Code for complete derivation. Former provisions of this section can now be found in § 1-2 of this Code.

Sec. 45-2. Purpose.

The purpose of this chapter is to:

- (1) Promote the health, safety and general welfare of the residents of the town.
 - (2) Promote a wholesome home environment.
 - (3) Encourage the formation of community units.
 - (4) Provide adequate light and air.
 - (5) Provide safety from fire and other elements.
 - (6) Promote traffic safety.
 - (7) Prevent development in unsanitary areas.
 - (8) Regulate population density.
 - (9) Conserve natural resources.
 - (10) Encourage the most appropriate use of land throughout the town.
 - (11) Regulate the location and use of real estate for industrial, commercial, residential and other purposes.
 - (12) Promote the coordinated development of unbuilt areas.
 - (13) Provide an allotment of land area in new developments sufficient to meet all the requirements of community life.
 - (14) Provide for adequate public services as an integral part of the comprehensive plan for municipal developments.
 - (15) Provide an adequate street system.
 - (16) Prevent overcrowding of real estate.
 - (17) Regulate the size of open spaces of real estate.
 - (18) Regulate the setbacks of structures along ways of public property.
 - (19) To provide general guidelines for the siting of telecommunications structures and antennas.
- (T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 102.2); T.M. of 3-27-99(1), § 4)

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§ 45-5

Sec. 45-3. Basic requirements.

(a) Except as provided in article II of this chapter, no new structures or uses may be erected or established, and no changes in structures and uses made, unless in conformity with the provisions of this chapter.

(b) All subdivisions shall be subject to planning board approval in accordance with subdivision regulations in chapter 41 of this Code.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 103))

Sec. 45-4. Reference to ordinances, resolutions.

The following ordinances or resolutions may be referenced herein, and must be considered since they contain the same force and effect as does this chapter:

- (1) Floodplain management, chapter 33 of this Code;
- (2) Street design and construction standards, division 2, article II of chapter 37 of this Code;
- (3) NFPA 101, Life Safety Code, which is on file in the office of the code enforcement officer;
- (4) Building code, chapter 21;
- (5) Electrical code, which is on file in the office of the code enforcement officer;
- (6) Plumbing code, which is on file in the office of the code enforcement officer;
- (7) Mass outdoor gathering ordinance, which is on file in the office of the code enforcement officer;
- (8) Growth management, chapter 29;
- (9) Ordinance prohibiting the discharge of treated wastewater or hazardous wastes into the waterbodies of the town, section 45-420;
- (10) Site review ordinance, article III of chapter 33 of this Code;
- (11) Solid waste and landfill ordinance, which is on file in the office of the code enforcement officer.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 104); T.M. of 6-14-05)

Sec. 45-5. Conflict with other provisions.

Whenever the requirements of this chapter and any other ordinance, code or statute conflict, the more restrictive requirements shall apply.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 105))

Sec. 45-6. Penalty.

(a) *Liability for violations.* Any person, including, but not limited to, a landowner, his agent or a contractor who violates a provision of the laws or ordinances shall, upon conviction, be punished as provided in subsection (b) of this section.

(b) *Civil penalties.* The following provisions shall apply to violations of the laws and ordinances set forth in this section, and all monetary penalties shall be civil penalties:

- (1) The minimum penalty for starting construction or undertaking a land use activity without a required permit shall be \$100.00 and the maximum penalty shall be \$2,500.00.
- (2) The minimum penalty for a specific violation shall be \$100.00 and the maximum penalty shall be \$2,500.00.
- (3) The violator may be ordered to correct or abate the violations. Where the court finds that the violation was willful, the violator shall be ordered to correct or abate the violation unless the abatement or correction will:
 - a. Result in a threat or hazard to public health or safety;
 - b. Result in a substantial environmental damage; or
 - c. Result in a substantial injustice.
- (4) Notwithstanding subsection (3) above, for violations of the laws and ordinances set forth in section 45-251 et seq., the violator shall be ordered to correct or mitigate the violation unless the correction or mitigation results in:
 - a. A threat or hazard to public health or safety;
 - b. Substantial environmental damage; or
 - c. A substantial injustice.
- (5) If the town is the prevailing party, it shall be awarded reasonable attorney fees, expert witness fees and costs, unless the court finds that special circumstances make the award of these fees and costs unjust. If the defendant is the prevailing party, he may be awarded reasonable attorney fees, expert witness fees and costs as provided by court rule.
- (6) In setting a penalty, the court shall consider, but shall not be limited to, the following:
 - a. Prior violations by the same party;
 - b. The degree of environmental damage that cannot be abated or corrected;
 - c. The extent to which the violation continued following a municipal order to stop;
 - d. The extent to which the town contributed to the violation by providing the violator with incorrect information or by failing to take timely action.
- (7) The maximum penalty may exceed \$2,500.00, but shall not exceed \$25,000.00, when it can be shown that there has been a previous conviction of the same party within the past two years of the same law or ordinance.

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§ 45-46

All proceedings arising under the provisions of locally administered laws and ordinances shall be brought in the name of the town, and those fines shall be paid to the town.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 506))

State law reference—Enforcement of land use laws and ordinances, 30-A M.R.S.A. § 4452.

Sec. 45-7. Compliance with applicable laws, rules, etc.; conflicts.

This chapter 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 chapter imposes greater restriction upon the use of land, buildings, or structures, the provisions of this chapter shall control.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 509))

Sec. 45-8. Amendments.

This chapter may from time to time be amended, changed or repealed in accordance with the provisions of 30-A M.R.S.A. § 4351 et seq., as amended; provided, however, that every petition for such action shall be referred to the planning board for report and recommendation at least 90 days prior to any town meeting held to consider the same. The planning board shall conduct a public hearing on any proposed amendment at least ten days prior to any town meeting. The department of environmental protection shall be notified by the town clerk of amendments to shoreland zoning provisions within 30 days after the effective date of such amendments.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 509))

Secs. 45-9—45-45. Reserved.

ARTICLE II. BOARD OF APPEALS*

Sec. 45-46. Established.

The board of appeals for the town is established pursuant to 30-A M.R.S.A. § 2691.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 507.1))

Cross reference—Appeals regarding site review to the board of appeals, § 33-82.

***Cross references**—Officers and employees, § 2-36 et seq.; appeals regarding orders of the code enforcement officer, § 21-5; appeal of the decision of the code enforcement officer regarding flood regulations, § 25-58; flood appeals and variances granted by the board of appeals, § 25-96 et seq.; appeals from the decisions regarding growth management, § 29-9; appeals regarding subdivision regulations, § 41-69; subdivision appeals to be filed with the board of appeals, § 41-178.

State law reference—Board of appeals, 30-A M.R.S.A. § 2691.

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Sec. 45-47. Appointment and composition.

(a) The board of appeals shall consist of five members and two associate members appointed by the board of selectmen serving staggered terms of three years. The board shall elect annually a chairman and secretary from its membership. The secretary shall provide for the keeping and maintaining of a permanent record of all board meetings of the board of appeals and shall show the vote of each member upon each question. All records of the board of appeals shall be a public record. A quorum shall consist of three members. All decisions shall be by a simple majority vote, except as noted in section 45-49(a).

(b) A municipal officer or spouse thereof shall not serve as a member.

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

(d) A member of the board of appeals may be dismissed for cause by the board of selectmen before the expiration of his term.

(e) The chairman shall designate the associate member to serve in the place of an absent member.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 507.2))

Sec. 45-48. Duties; proceedings.

The board of appeals shall adopt rules necessary to conduct of its affairs and in keeping with the provisions of this chapter. Meetings shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or in his absence, the acting chairman, may administer oaths and request the attendance of witnesses. All meetings shall be open to the public. The board shall keep minutes of its proceedings showing the vote of each member upon each question or of absence or failure to vote and shall keep records of its examinations and other official actions all of which shall be a public record and be immediately filed in the offices of the board.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 507.3))

Sec. 45-49. Powers.

(a) *Administrative appeals.* The board of appeals shall hear and decide where an aggrieved person or party alleges error in any permit, order, requirement, determination, or other action by the planning board or code enforcement officer. The board of appeals may modify or reverse action of the planning board or code enforcement officer by a concurring vote of at least three members, only upon a finding that the decision is clearly contrary to specific provisions of this chapter.

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(b) *Variance appeals.* The board of appeals shall hear and decide cases involving the relaxation of regulations affecting height, area, size of structures, size of yards or open spaces, or other types of variance specifically provided by this chapter. On a case-by-case basis the board of appeals may elect to hear cases involving establishment or change to a different nonconforming use. A variance shall be as limited as possible to relieve a hardship. The board of appeals shall grant a variance where a party establishes that the strict application of this chapter will cause undue hardship. The words "undue hardship" mean:

- (1) That the land in question cannot yield a reasonable return unless a variance is granted;
- (2) That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
- (3) That the granting of the variance will not alter the essential character of the neighborhood; and
- (4) That the hardship is not the result of action taken by the applicant or a prior owner. (T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 507.4); T.M. of 12-15-93)

Sec. 45-50. Appeal procedure.

(a) In all cases, a person or party aggrieved by a decision of the code enforcement officer or by a decision of the planning board shall file his appeal within 30 days after a decision is made. When computing the 30 days, the day of the decision shall not be counted. All Saturdays, Sundays and holidays within the period shall be counted. The last day of the period so computed shall be included unless it falls on a day that the town hall is closed for business, in which event the time period will run until the end of the next day that the town hall is open for business. The appeal shall be filed with the board of appeals on forms approved by the board, and the aggrieved person or party shall specifically set forth on the form the grounds for the appeal. The aggrieved shall bear the burden of expense incurred in providing the board of appeals with information as is reasonable for it to arrive at a decision. The town clerk is responsible for receiving, dating and distributing appeal forms.

(b) An aggrieved person or party is:

- (1) An owner of land whose property is directly or indirectly affected by the granting or denial of a permit, variance, waiver or administrative appeal under this chapter.
- (2) A person whose land abuts land for which a permit, variance, waiver, or appeal has been granted.
- (3) A group of five or more residents or taxpayers of the town who represent an interest adverse to the granting or denial of such permit variance, waiver, or appeal.

Municipal officials, and members of committees, boards, and commissions shall be granted the same rights as residents or taxpayers when filing appeals.

(c) Following the filing of an appeal with the board of appeals, and before taking action on any appeal, the board of appeals shall hold a public hearing on the appeal during their next regularly scheduled meeting or sooner at their discretion, provided sufficient time exists from the date of filing to the regularly scheduled meeting, to meet the notification requirements of subsection (a) and administration of the same. The board of appeals shall notify the code enforcement officer and the planning board, at least ten days in advance of the time and place of the hearing, and shall publish notice of the hearing at least ten days in advance in a newspaper of general circulation in the area.

(d) The board of appeals shall notify by mail the appellant and property owners abutting the property involved at least ten days in advance of the hearing, of the nature of the appeal and of the time and place of the public hearing. Abutting property shall include properties directly across a street or waterbody from the property for which the appeal is made. A fee in the amount established by the fee schedule set in section 1-25 shall be submitted by the appellant with the application.

(e) The owners of property shall be 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.

(f) At any hearing, a party may be represented by an agent or attorney. The board of appeals shall not continue hearings to other times except for good cause. A continuation of a hearing to a time and place certain, announced at the meeting, does not require a renotification of the abutters, officials, agencies, interested parties, etc.

(g) The code enforcement officer or his designated assistant shall attend all hearings and may present to the board of appeals all plans, photographs, or other material he deems appropriate for an understanding of the appeal.

(h) Within 30 days of the close of the public hearing, the board of appeals shall make a decision on an appeal. Within seven days of its decision it shall notify, in writing, the appellant, the code enforcement officer, the planning board, and municipal officers of its decision and its reasons for the decision.

(i) Upon notification of the granting of an appeal by the board of appeals, the code enforcement officer shall immediately issue a building permit in accordance with the conditions of approval, if any.

(j) A variance under the provisions of this chapter secured by vote of the board of appeals shall expire if the work or change involved is not commenced within one year of the date on which the appeal is granted, and if the work or change is not substantially completed within two years.

(k) Except where noted, the board of appeals shall act by affirmative vote of those present to reverse or modify any order, requirement, decision or determination of the code enforcement officer or planning board, or to decide other matters on which it is required to pass under this chapter or other ordinances. The failure of the board of appeals to reach a decision within 60

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days of the filing of the appeal constitutes a denial of the appeal, unless the board has already scheduled a meeting on the appeal, under which circumstance the 60 days begins on the date of the first meeting on the appeal. Appeals from the decision of the board of appeals may be taken to the superior court as provided in 30-A M.R.S.A. § 2691(3)(G).

(l) *Reconsideration.* Reconsideration of board of appeals action is administered in accordance with 30-A M.R.S.A. § 2691(3)(f). (Requests must be received within ten days of the original decision and if reconsideration is accepted, the board of appeals action must be completed within 45 days of the original decision.)

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 507.5); T.M. of 3-27-99, (art. 3, § 1); T.M. of 3-23-02, (art. 50); T.M. of 11-4-03; T.M. of 11-8-05)

State law references—Procedure for board of appeal reconsideration, 30-A M.R.S.A. § 2691(3)(F); variance, 30-A M.R.S.A. § 4353.

Secs. 45-51—45-75. Reserved.

ARTICLE III. ADMINISTRATION*

DIVISION 1. GENERALLY

Secs. 45-76—45-100. Reserved.

DIVISION 2. ENFORCEMENT

Sec. 45-101. Investigation of possible violations; action to abate.

(a) This chapter shall be enforced by a code enforcement officer appointed by the municipal officers. The code enforcement officer shall investigate instances of possible violations, with or without complaint, and take appropriate action if a violation exists.

(b) When the above action does not result in the correction or abatement of the violation or nuisance condition, the municipal officers, upon notice from the code enforcement officer, are hereby authorized and directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this chapter in the name of the town.

(c) Where the code enforcement officer cannot determine that a violation exists because of technical complexity or need to use equipment not available to the town, he may consult with such independent experts or agencies as necessary to determine whether a violation exists. If

***Cross references**—Administration, ch. 2; code enforcement officer, § 2-51 et seq.

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a violation exists, the code enforcement officer shall notify the violator of such violation, order appropriate corrective action, and require the violator to reimburse the town for any consulting services. If no violation exists, the town shall pay for consulting services.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 501))

Sec. 45-102. Remedial proceedings; prosecution.

(a) It shall be the duty of the code enforcement officer to take any appropriate action to prevent any unlawful use or development of any land, building or structure in violation of this chapter. It shall be the duty of the board of selectmen upon complaint of the code enforcement officer to institute abatement, injunction or other appropriate proceedings at law or in equity to restrain, prevent, enjoin, abate, collect or remove such violations; provided, however, that the remedies provided herein shall be cumulative and not exclusive, and shall be in addition to any other remedies provided by law.

(b) The person being the owner or occupant or having control, use or supervision of any land, building or structure, or part thereof who violates any of the provisions of this chapter shall be prosecuted according to the enforcement provisions of 30-A M.R.S.A. § 4452.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 506); T.M. of 12-15-93)

Sec. 45-103. Powers of code enforcement officer.

The code enforcement officer who is designated by ordinance or statute with the responsibility to enforce a particular law or ordinance set forth in this chapter shall have the following powers and duties:

- (1) To enter any property at reasonable hours and to enter any building with the consent of the property owner, occupant or agent, to inspect the property or structure for compliance with the laws or ordinances set forth in this chapter.
- (2) To issue a summons to any person who violates a law or ordinance which the official is empowered to enforce.
- (3) When specifically authorized by the municipal officers, to represent the town in district court in the prosecution of alleged violations of ordinances or laws which the official is empowered to enforce.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 506))

Secs. 45-104—45-124. Reserved.

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DIVISION 3. PERMITS*

Sec. 45-125. Building permits.

(a) No person shall erect, enlarge, move or materially alter a structure until he applies for a building and use permit from the code enforcement officer, and the code enforcement officer has issued a written permit. For the purpose of this chapter, an existing structure is considered materially altered if:

- (1) Two thousand dollars is expended.
- (2) The number of rooms is increased.
- (3) Any principal building dimensions change by more than three feet.
- (4) An apartment is created.

Note: No building permit is required for routine corrective or preventive maintenance such as replacing an existing roof, repainting the inside or outside of buildings, or resurfacing of an existing driveway.

(b) A building permit fee in the amount established by the fee schedule set in section 1-25 shall be submitted by the applicant to the code enforcement officer, by check payable to the town, before the code enforcement officer issues the building permit.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 502.1); T.M. of 11-4-03)

Cross reference—Building permits required, § 21-4.

Sec. 45-126. Use permits.

No person shall establish, add or change the use of any property or structure until he applies for a building and use permit from the code enforcement officer, and the code enforcement officer has issued a written permit. A person shall obtain a use permit for any permitted use, change of permitted use, conditional use, or change of conditional use as required by the table of land uses in sections 44-34 and 45-290. Application for a use permit shall be included as part of any building permit application.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 502.2))

Cross reference—Conditional use permits, § 33-59.

Sec. 45-127. Applications for building or use permits.

All applications for building or use permits shall be submitted in writing to the code enforcement officer on forms provided for the purpose. Application shall include such information as:

- (1) Shape, size and location of the lot to be built on.

***Cross references**—Flood hazard development permit required, § 25-56; all new dwelling units required to comply with the growth management requirements, § 29-4; growth permit required, § 29-41; permit required for certain excavations, § 37-55.

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- (2) Shape and location of the building to be erected, altered or removed.
- (3) Any building already on the lot.
- (4) Setback lines of buildings on adjoining lots.
- (5) Any other information required by the code enforcement officer in order to determine whether provisions of this chapter are being observed.
- (6) Dimensions shall be drawn to scale of one inch equals 20 feet.
(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 502.3))

Sec. 45-128. Refusal, expiration of permit.

Failure of the code enforcement officer to issue written notice of decision within 45 days of the date of filing of the application for a building permit shall constitute refusal of the permit. If start of construction, as defined in sec. 1-2, has not been made within one year beginning with the date the permit is issued, the permit shall expire.
(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 502.4); T.M. of 6-8-04)

Sec. 45-129. Reserved.

Editor's note—A Town Meeting held on Dec. 15, 1993, repealed § 45-129 in its entirety. Formerly, § 45-129 pertained to uses in the shoreland district and derived from Town Meeting of Nov. 2, 1982; Town Meeting of June 26, 1985; Town Meeting of Nov. 23, 1985; Town Meeting of Nov. 4, 1986; Town Meeting of April 21, 1987; Town Meeting of Mar. 19, 1988; and § 502.5 of a Town Meeting held on Dec. 20, 1989.

Sec. 45-130. Sign permit.

(a) Written application to the code enforcement officer shall be made for the installation of all signs, unless otherwise specified in this chapter.

(b) Unless otherwise specified in this chapter, it shall be unlawful to erect, construct, reconstruct, alter, paint, repaint or change the use of any sign as defined herein without first obtaining a sign permit from the code enforcement officer. No permit shall be required, however, to remove a sign for repair, repainting or replacement, providing the intent of the sign is the same as originally installed, and conforms in all respects with the provisions of this chapter.

(c) Persons engaged in the business of selling properties shall secure a blanket permit which will allow the display of more than one sign in more than one place, providing the sign complies with all other requirements of this chapter.
(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 503))

Sec. 45-131. Plumbing permit.

(a) Every person before doing any plumbing work, except the repairing of leaks and the opening of obstructed and frozen pipes and fixtures, shall obtain a permit from the town plumbing inspector. This requirement shall apply alike to new work and to modification, replacements, and extensions of existing work, with the exception of vendors of new appliances at retail or their employees, when engaged in connecting such appliances to an existing water supply system within a building. All applications for permits shall be filed with the plumbing inspector. Upon completion of the work set forth in the permit, the applicant shall notify the plumbing inspector of the date of the completion.

(b) No HHE200 form for sewage disposal permits will be approved unless the code enforcement officer or his alternate has been notified so he may inspect the pits before they are filled in.

(c) A fee in the amount established by the fee schedule in section 1-25 is required pursuant to state statutes.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 504); T.M. of 6-11-2013(3))

Cross reference—Building permits required, § 21-4.

Sec. 45-132. Electrical permit.

(a) All installations covered herein, excluding lighting fixtures, the value of which is in excess of \$200.00 shall require the issuance of a permit by the electrical inspector. The fee for an electrical permit shall be in the amount established by the fee schedule set in section 1-25. The person providing the installations shall receive the appropriate application forms for the same from the electrical inspector. Upon completion of the installations, the person providing the installations shall notify the electrical inspector who will record the date completed and final inspection.

(b) An electrical wiring permit shall be obtained prior to the issuance of a building permit for swimming pools and for the installation of metal siding on a building or structure.

(c) All public utilities are exempt from the terms of this chapter insofar as they are regulated by the state public utility commission and relevant state laws, codes and regulations.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 505); T.M. of 11-4-03)

Cross reference—Building permits required, § 21-4.

Sec. 45-133. Reserved.**Sec. 45-134. Reserved.**

Sec. 45-135. Telecommunication structure permit.*(a) Telecommunication structures less than 70 feet in height:*

- (1) A permit is required from the code enforcement officer (CEO) for any telecommunications structure less than 70 feet in height constructed after March 27, 1999 or for any expansion in the height or size of an existing telecommunication structure.
- (2) For an existing telecommunications structure less than 70 feet in height that was constructed and operational, an application shall be submitted to the code enforcement officer (CEO) within one year of March 27, 1999. The purpose of this application is to provide information on existing structures to the town.

(b) Telecommunication structures 70 feet and higher:

- (1) A permit is required from the Town of Eliot Planning Board for any new telecommunications structure 70 feet and higher constructed after March 27, 1999.
- (2) A permit is required from the code enforcement officer (CEO) for any telecommunication structure 70 feet and higher where the following occurs: an expansion in the height or size of structure or the number or size of structures on the tower is proposed, and any and all other circumstances similar to the above regarding a change in the construction or configuration of an existing telecommunication structure 70 feet or higher.

(c) Exemptions. The following uses do not require a permit:

- (1) Amateur (ham) radio stations licensed by the Federal Communications Commission (FCC).
 - (2) Parabolic antennas less than seven feet in diameter that are an accessory use of the property.
 - (3) Antennas that are an accessory use to a residential dwelling.
- (T.M. of 3-27-99(1), § 6)

Secs. 45-136—45-155. Reserved.**ARTICLE IV. RESERVED*****Secs. 45-156—45-190. Reserved.**

***Editor's note**—T.M. of 6-12-2010(3) repealed § Art. IV, §§ 45-156—45-163, which pertained to conditional uses and derived from T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89. See also the Code Comparative Table.

ARTICLE V. NONCONFORMANCE**Sec. 45-191. General rule.**

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

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 401))

Sec. 45-192. Expansion or extension of nonconforming use; accessory uses and structures.

(a) Application for extension or expansion of area or function shall be filed with the planning board in the same manner as for a conditional use permit. A nonconforming use may be expanded in area or function by building horizontally or vertically, adding to the volume of business, or increasing the range of goods or services by not more than 25 percent over any ten-year period. The planning board shall grant or deny such application for extension or expansion of a nonconforming use, with or without conditions, only after holding a public hearing on the matter. Such application, hearing and conditions shall be as set forth in article IV of this chapter.

(b) The code enforcement officer may permit accessory uses and structures for existing residential use in the commercial/industrial district. Dimensional standards shall be the same as those for the suburban district in section 45-405.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 402))

Sec. 45-193. Discontinuance of nonconforming use.

(a) *Generally.* A nonconforming use which is discontinued for a period of one year may not be resumed. The uses of the land, building or structure shall thereafter conform to the provisions of this chapter.

(b) *Rule of precedence.* Whenever a nonconforming use is superseded by a permitted use of a structure, or structure and land in combination, such structure or combination of land and structure shall thereafter conform to the provisions of this chapter and the nonconforming characteristic or use may not thereafter be resumed.

(c) *Transfer of ownership.* Ownership of land and structures which remain lawful but become nonconforming by the adoption or amendment of this chapter may be transferred, and the new owner may continue the nonconforming characteristics or uses subject to the provisions of this chapter.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 403))

Sec. 45-194. Nonconforming lots of record.

(a) If a single lot of record on the effective date of the adoption or amendment of this chapter does not meet the area, road frontage or setback requirements of the district in which it is located, it may be built on provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, that all other provisions of this chapter are met and it conforms with all state laws and regulations.

(b) If two or more contiguous lots or parcels are in single ownership of record at the time of adoption or amendment of this chapter and if all or part of the lots do not meet the dimensional requirements of this chapter, the lands involved shall be considered to be a single parcel for the purposes of this chapter, and no portion of such parcel shall be built upon which does not meet dimensional requirements of this chapter. This subsection shall not apply to any subdivision approved by the planning board for which an approved plan was recorded in the county registry of deeds prior to the adoption of the ordinance from which this chapter is derived.

(c) All setback, yard, residential density, lot coverage, height, use, and other basic requirements shall apply to nonconforming lots. In cases where it is not possible to comply with these and other zoning requirements, the following rules shall apply:

- (1) On lots smaller than 10,000 square feet, permitted lot coverage shall be at least 2,000 square feet or a maximum of 25 percent, whichever is greater in applicable cases.
- (2) The code enforcement officer is authorized to permit a 25 percent reduction in frontage, setback, and yard requirements only. Any other deviation in frontage, setback or yard requirements to a maximum 50 percent reduction may be permitted as a waiver after public hearing by the board of appeals. Any further reduction in frontage, setback or yard requirements shall be considered a variance. This section shall not apply to setbacks from the high water mark which is provided in section 45-195(c). In the shoreland zone the code enforcement officer shall not authorize reductions in frontage, setback or yard requirements. Such reduction can only be granted through the board of appeals.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 404))

Sec. 45-195. Nonconforming structures.

(a) A nonconforming building or structure may be repaired, maintained or improved, but the area in nonconformance may not be extended or expanded except in conformity with sections 45-192 and subsection (b) of this section.

(b) A building or structure not wholly nonconforming may be expanded in size along its conforming dimensions.

(c) No structure or use which is at or less than the required setback shall expand towards property lines. However, a structure to be built upon an existing lot of record may meet the same front yard setbacks as adjoining lots provided that adjoining structures are within 200 feet, the board of appeals may clearly identify such setback, and the structure conforms with other performance standards found in this chapter.

(d) Nothing in this chapter shall prevent any part of any building or structure declared unsafe by the code enforcement officer from being strengthened or restored to a safe condition.

(e) Nonconforming structures or uses may be replaced or reestablished if destroyed by fire, flood or other casualty, provided that reconstruction or replacement is initiated within 12 months of the original destruction. A structure should be rebuilt in conformance with applicable requirements as provided in section 45-405. Otherwise, a nonconforming structure shall be rebuilt to its original dimensions only and may not be expanded in dimensions of nonconformance.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 405); T.M. of 12-15-93)

Secs. 45-196—45-220. Reserved.

ARTICLE VI. DISTRICT REGULATIONS

DIVISION 1. GENERALLY

Sec. 45-221. Establishment of districts.

To implement the purposes of this chapter, the town is hereby divided into the following districts:

R	Rural District.
S	Suburban District.
V	Village District.
C/I	Commercial and Industrial District.
MHP	Mobile Home Park District.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 201); T.M. of 12-15-93)

Sec. 45-222. Location of districts.

Districts are located and bound as shown on the official zoning map entitled "Zoning Map of Eliot, Maine," which is on file in the office of the town clerk. Mobile home park districts are identified in section 41-276 et seq.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 202))

Sec. 45-223. Official zoning map.

The official zoning map, as revised to include shoreland zoning districts, shall be signed by the town clerk and chairperson of the planning board at the time of adoption of the ordinance from which this chapter is derived certifying the date of such adoption.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 202))

Sec. 45-224. Interpretation of boundaries.

The planning board shall determine the exact location of boundaries where uncertainty exists with respect to the boundaries of the various districts shown on the zoning map.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 203))

Sec. 45-225. Division of lots by district boundaries.

(a) Where a zoning district boundary line divides a lot between two residential districts, the requirements applicable to the more restrictive district shall apply to the lot.

(b) Where a zoning district boundary line divides a lot between a residential and commercial/industrial district, the requirements for the commercial/industrial district may extend not more than 50 feet in depth into the residential district. The extension shall be considered a conditional use, subject to planning board approval in accordance with standards for conditional use or site review, where appropriate.

(c) Where a shoreland district shares a boundary with any other district, the requirements for either district shall extend to the common boundary and shall not overlap on either side. (T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 204))

Secs. 45-226—45-250. Reserved.

DIVISION 2. RESERVED*

Secs. 45-251—45-285. Reserved.

DIVISION 3. OTHER DISTRICTS REGULATIONS†

Sec. 45-286. Rural district.

The purpose of the rural district is to:

- (1) Provide low density rural housing.

***Editor's note**—A Town Meeting held on Dec. 15, 1993, repealed §§ 45-251—45-255 in their entirety. Formerly, §§ 45-251—45-255 pertained to shoreland protection overlay district regulations and derived from Town Meeting of Nov. 2, 1982; Town Meeting of June 26, 1985; Town Meeting of Nov. 23, 1985; Town Meeting of Nov. 4, 1986; Town Meeting of April 21, 1987; Town Meeting of Mar. 19, 1988; §§ 202.1, 205.1, 207 and 336 of the Town Meeting held on Dec. 20, 1989; and Amend. of Mar. 25, 1995.

†Cross references—Site plan review requirements for motels, § 33-182; site review regulations regarding multifamily dwellings, § 33-183; dimensional standards for all districts, § 45-405.

- (2) Protect, from suburban development pressures, agricultural and forest land capable of economic production, so as to safeguard this sector of the town's economic base and to avoid the irretrievable loss of land well-suited for food and fiber production; and to help maintain the essentially rural and open character of the district.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 205.2))

Sec. 45-287. Suburban district.

The purpose of the suburban district is to:

- (1) Preserve the harmonious mixture of built-up and rural atmospheres existing within the suburban area.
- (2) Encourage growth that can best be served by existing highways and new subdivision streets with ready access to municipal services.
- (3) Provide space for both local and transient retail sales, commercial service, and office uses, which are needed or may be desirable and are in keeping with the scale and character of the neighborhood or area, while minimizing the traffic problems and interruptions created by such development.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 205.3))

Sec. 45-288. Village district.

The purpose of the village district is to:

- (1) Preserve the physical, aesthetic and social quality of the town's village area.
- (2) Provide for the location of residential uses close to the services provided by the town.
- (3) Provide space for small, local retail sales, commercial services, and office uses which are needed or may be desirable and are in keeping with the scale and character of the neighborhood, while minimizing the problems and interruption created by such development.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 205.4))

Sec. 45-289. Commercial and industrial district.

The purpose of the commercial and industrial district is to:

- (1) Provide for the public health and safety, environmental quality, and economic well-being of the community.
- (2) Encourage the location of commercial and industrial uses on those lands within the community where such uses are suitable and desirable.

(3) Provide effective controls on those uses which, by virtue of their size or external effects (waste discharge, noise, glare, fumes, smoke, dust, odors, or auto, truck or rail traffic) could otherwise create nuisances or unsafe conditions.

(4) Avoid the blight, congestion and inconvenience caused by inappropriate and poorly located development of commercial and industrial facilities.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 205.5))

Sec. 45-290. Table of permitted and prohibited uses.

The following table of land uses designates permitted uses by a yes and prohibited uses by a no. Any use not listed is a prohibited use. The letters CEO, SPR, and SD are explained in section 45-402.

Table of Land Uses

<i>Land uses</i>	<i>R</i>	<i>S</i>	<i>V</i>	<i>C/I</i>
Accessory dwelling unit	CEO	CEO	CEO	CEO
Agriculture, except animal breeding and care	yes	yes	yes	no
Animal breeding and care	yes ¹	12	SPR ^{1&8}	no
Apartment house, see multiple-family dwelling	—	—	—	—
Apartment, see single-family dwellings	—	—	—	—
Aquaculture	13	13	SPR ⁸	no
Assembly places	no	9	no	SPR
Assisted living facility	no	SPR/SD	SPR/SD	SPR/SD
Auto graveyards	SPR	no	no	no
Auto junkyard	no	no	no	no
Auto recycling business	9	9	no	SPR
Auto recycling operation	9	no	no	SPR
Auto recycling operation, limited	9	9	no	SPR
Auto repair garages	14	14	SPR ⁸	SPR
Auto service stations	no	9	no	SPR
Banks	no	no	SPR	SPR
Bathhouse	11	11	no	no
Bathing beach	yes	yes	yes	no
Bed and breakfasts	14	14	SPR ⁸	SPR
Boarding homes, see lodging businesses	—	—	—	—
Boarding kennel	no	no	no	SPR
Bulk oil fuel tanks	no	no	no	SPR ²
Business office	14	14	SPR ⁸	SPR
Campgrounds	SPR	no	no	no
Cemeteries	SPR	SPR	SPR	no
Churches	SPR	SPR	SPR	SPR

ZONING

§ 45-290

<i>Land uses</i>	<i>R</i>	<i>S</i>	<i>V</i>	<i>C/I</i>
Clearing	yes	yes	yes	yes
Clinics	no	no	no	SPR
Clustered housing	SPR	no	no	no
Commercial adult enterprise	no	no	no	SPR
Commercial establishment, 2 or more where allowed	—	9	no	SPR
Day nurseries	SPR	16	SPR ⁸	SPR
Earth material removal, less than 100 cubic yards	yes	yes	yes	yes
100 cubic yards or greater	SPR	SPR	SPR	SPR
Elderly housing	no	SPR/SD	SPR/SD	SPR/SD
Emergency operations	yes	yes	yes	yes
Equipment storage, trucks, 3 or more	no	no	no	yes
Essential services	yes	yes	yes	yes
Expansion of an existing telecommunication structure or collocation of antenna on a existing telecom- munication structure or alternate tower struc- ture	CEO	CEO	CEO	CEO
Farm equipment stores	SPR	10	no	SPR
Fences	yes ⁵	yes ⁵	yes ⁵	yes ⁵
Firewood sales	yes	13	SPR ⁸	no
Fireworks sales	no ²⁰	no ²⁰	no ²⁰	no ²⁰
Forest management, except timber harvesting	yes	yes	yes	yes
Funeral homes	no	no	SPR	SPR
Gambling casino	no	no	no	no
Gardening	yes	yes	yes	yes
Gasoline stations	no	9	no	SPR
Governmental buildings or uses	SPR	SPR	SPR	SPR
Grain or feed stores	SPR	10	no	SPR
Harvesting wild crops	yes	yes	yes	yes
Home business	SPR ⁸	SPR ⁸	SPR ⁸	no
Home occupations	10	10	no	no
Home office	CEO	CEO	CEO	CEO
Hospitals	no	no	no	SPR
Indoor commercial, recreational and amusement facilities	no	no	no	SPR
Industrial and business research laboratory	no	no	no	SPR
Industrial establishments and uses	no	no	no	SPR
Institutional buildings and uses, indoor	no	9	no	no
Junkyards	no	no	no	no
Landfill, dump	no	no	no	no
Libraries	SPR	SPR	SPR	SPR

<i>Land uses</i>	<i>R</i>	<i>S</i>	<i>V</i>	<i>C/I</i>
Life care facility	no	SPR/SD	SPR/SD	SPR/SD
Lodging businesses, including bed and breakfasts, boarding homes or houses, hotels, inns, lodginghouses, rooming homes, and the like	14	14	SPR ⁸	SPR
Manufacturing	SPR ⁸	SPR ⁸	SPR ⁸	SPR
Mobile home parks	SPR/ SD ⁷	SPR/ SD ⁷	SPR/ SD ⁷	no
Motel	no	no	no	SPR
Motorized vehicular traffic	yes	yes	yes	yes
Multiple-family dwelling	no	SPR	SPR	no
Museums	SPR	SPR	SPR	SPR
New construction of telecommunication structure 70 feet and higher	9	9	no	SPR
New construction of telecommunication structure less than 70 feet high	CEO	CEO	CEO	CEO
Nonprofit medical marijuana dispensary	no	no	no	SPR ¹⁹
Nurseries, plants	CEO	17	SPR ⁸	no
Nursing facility	no	SPR	SPR	SPR
Off-site parking	no	no	no	no
Parks	SPR	SPR	SPR	no
Playgrounds	SPR	SPR	SPR	no
Printing plant	14	14	SPR ⁸	SPR
Produce and plants raised locally, seasonal sales	yes	yes	yes	no
Professional offices	14	14	SPR ⁸	SPR
Public utility facilities	SPR	SPR	SPR	SPR
Recreational facilities, nonintensive	SPR	SPR	SPR	no
Recreational use not requiring structures	SPR	yes	yes	no
Restaurant	9	9	SPR ⁸	SPR
Restaurant, takeout	no	no	no	SPR
Retail stores, local, other	18	18	SPR ⁸	SPR
Road construction	CEO	CEO	CEO	SPR
Schools	SPR	SPR	SPR	SPR
Sewage disposal systems, private	CEO	CEO	CEO	CEO
Signs, 6 square feet	CEO	CEO	CEO	CEO
Signs, other	CEO	CEO	CEO	CEO
Single-family dwellings	CEO	CEO	CEO	no ⁶
Small wind energy system	SPR	SPR	SPR	SPR
Solar energy system	CEO	CEO	CEO	CEO
Surveying and resource analysis	yes	yes	yes	yes
Timber harvesting	yes	yes	yes	yes

<i>Land uses</i>	<i>R</i>	<i>S</i>	<i>V</i>	<i>C/I</i>
Truck terminals and storage	no	no	no	SPR
Two-family dwellings	CEO	CEO	CEO	no ⁶
Veterinary hospital	15	15	No	SPR
Warehouse	no	no	no	SPR
Waste containers	CEO ³	CEO ³	CEO ³	CEO ³
Wholesale	no	no	no	SPR
Wholesale business facilities	no	no	no	SPR
Uses similar to allowed uses	CEO	CEO	CEO	CEO
Uses similar to uses requiring a CEO permit	CEO	CEO	CEO	CEO
Uses similar to uses requiring a planning board permit	SPR	SPR	SPR	SPR

Notes:

1. Buildings housing animals shall be no less than 100 feet from property lines.
2. Each bulk oil fuel tank shall not exceed 50,000 gallons in size and use shall be limited to local use only.
3. Only as an accessory to an allowed principal use on the lot. Must conform to the requirements of 45-422, Waste containers.
4. Individual stores shall not have more than 2,500 square feet of gross floor area, except stores located on Route 236 may have up to 5,000 square feet. Customer sales areas shall be confined to one floor.
5. Must conform to the requirements of section 45-423.
6. See section 45-192(b) for an exception on accessory uses and structures.
7. See division 2 of article V of chapter 41 of this Code for specific areas where mobile home parks are allowed.
8. Must conform to the requirements of section 45-456.1 Home business.
9. Use is prohibited unless property abuts Route 236. If property abuts Route 236, use is "SPR" and must be visually screened from abutting (same street side) non-commercial properties.
10. Use is prohibited unless property abuts Route 236. If property abuts Route 236, use is "SPR" and must be visually screened from abutting (same street side) non-commercial properties.
11. Use is prohibited unless property abuts Route 236. If property abuts Route 236, use is "CEO" and must be visually screened from abutting (same street side) non-commercial properties.

12. Use is "SPR 1 & 8" unless property abuts Route 236. If property abuts Route 236, use is "SPR 1" and must be visually screened from abutting (same street side) non-commercial properties.

13. Use is "SPR 8" unless property abuts Route 236. If property abuts Route 236, use is "yes" and must be visually screened from abutting (same street side) non-commercial properties.

14. Use is "SPR 8" unless property abuts Route 236. If property abuts Route 236, use is "SPR" and must be visually screened from abutting (same street side) non-commercial properties.

15. Use is prohibited unless property abuts Route 236. If property abuts Route 236, use is "SPR" and must be visually screened from abutting (same street side) non-commercial properties in accordance with Sec. 33-175(a). Overnight boarding and outdoor kenneling of animals is prohibited in the rural and suburban zoning districts.

16. Use is "SPR 8" unless property abuts Route 236. If property abuts Route 236, use is "SPR" and must be visually screened from abutting (same street side) noncommercial properties.

17. Use is "SPR 8" unless property abuts Route 236. If property abuts Route 236, use is "CEO" and must be visually screened from abutting (same street side) noncommercial properties.

18. Use is "SPR 8" unless property abuts Route 236. If property abuts Route 236, use is "SPR 4" and must be visually screened from abutting (same street side) noncommercial properties.

19. Must conform to the requirements of section 33-189.

20. See chapter 12 for additional regulations pertaining to the sale and use of fireworks.
(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 207); T.M. of 12-15-93; Amend. of 3-25-95; T.M. of 3-27-99(1), § 5; Ord. of 3-25-00(1); T.M. of 3-16-02, (art. 3), (art. 4); T.M. of 6-19-01, (art. 6), (art. 7); T.M. of 11-5-02; T.M. of 11-4-03; T.M. of 11-4-03; T.M. of 3-20-04; T.M. of 6-14-08; T.M. of 6-12-2010(3); T.M. of 6-18-2011(6); T.M. of 11-8-2011; T.M. of 6-16-2012(1); T.M. of 6-16-2012(2))

Cross reference—Review procedures and standards for site review requirements in the zoning table of uses, § 33-56 et seq.

Secs. 45-291—45-310. Reserved.

ARTICLE VII. SUPPLEMENTARY DISTRICT REGULATIONS

DIVISION 1. GENERALLY

Secs. 45-311—45-335. Reserved.

DIVISION 2. RESERVED*

Secs. 45-336—45-355. Reserved.

***Editor's note**—A Town Meeting held on Dec. 15, 1993, repealed § 45-336 in its entirety. Formerly, § 45-336 pertained to requirements for harvesting timber and derived from T.M. of Nov. 2, 1982; T.M. of June 26, 1985; T.M. of Nov. 23, 1985; T.M. of Nov. 4, 1986; T.M. of Apr. 21, 1987; T.M. of Mar. 19, 1988; and § 336 of the T.M. held on Dec. 20, 1989.

DIVISION 3. RESERVED*

Secs. 45-356—45-375. Reserved.

DIVISION 4. ROAD CONSTRUCTION

Sec. 45-376. Standards.

In addition to the requirements of the street design standards in section 37-70, all roads constructed shall conform to the following standards:

- (1) Road crossings of watercourses shall be kept to the minimum number necessary.
- (2) Bottoms of culverts shall be installed at streambed elevation.
- (3) All cut or fill banks and areas of exposed mineral soil shall be revegetated or otherwise stabilized as soon as possible.
- (4) Bridges or culverts of adequate size and design shall be provided for all road crossings of watercourses.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 337))

Sec. 45-377. Reserved.

Editor's note—A Town Meeting held on Dec. 15, 1993, repealed § 45-377 in its entirety. Formerly, § 45-377 pertained to sedimentation control and derived from T.M. of Nov. 2, 1982; T.M. of June 26, 1985; T.M. of Nov. 23, 1985; T.M. of Nov. 4, 1986; T.M. of Apr. 21, 1987; T.M. of Mar. 19, 1988; and § 338 of the T.M. held on Dec. 20, 1989.

Secs. 45-378—45-400. Reserved.**ARTICLE VIII. PERFORMANCE STANDARDS†****Sec. 45-401. Purpose.**

The purpose of the standards in this article is to provide some means of reducing or eliminating potentially annoying, unhealthy, or unsafe characteristics of land uses. Such characteristics include, but are not limited to noise, odor, traffic, and other factors that affect one's neighbors or may affect the whole town. To provide for proper control of these external

***Editor's note**—A Town Meeting held on Dec. 15, 1993, repealed § 45-356 in its entirety. Formerly, § 45-356 pertained to clearing of vegetation and derived from T.M. of Nov. 2, 1982; T.M. of June 26, 1985; T.M. of Nov. 23, 1985; T.M. of Nov. 4, 1986; T.M. of Apr. 21, 1987; T.M. of Mar. 19, 1988; and § 336 of the T.M. held on Dec. 20, 1989.

†Cross reference—Performance standards for site plan review, § 33-151 et seq.

characteristics, this article provides three levels of review, consisting of the code enforcement officer, the planning board, and the planning board as site review board. This article shall explain the circumstances under which these forms of review shall apply.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 301))

Sec. 45-402. Land use review.

(a) *Basic requirements—All uses.* All land use shall conform to basic requirements. These shall apply to establishment of a new use, change of use, or construction requiring a building permit as provided in section 45-125. In addition, some specific activities must meet other standards as provided in section 45-405. Where the table of land uses as provided in sections 44-34 and 45-290 lists a use as yes, no permit is needed. Where the table of land uses lists a use as CEO, the code enforcement officer shall review and approve the use according to standards for basic requirements and specific activities.

(b) *Site plan review uses—Planning board.* Where the table of land uses in sections 44-34 or 45-290 lists a use as SPR, the use is a site plan review use which must be reviewed and approved by the planning board under chapter 33, article III, Site plan review. The use must also conform with the basic requirements in chapter 45, article VIII (Performance standards) and any applicable standards for specific activities in chapter 45, article IX.

(c) *Subdivisions.* Where the table of land uses in sections 44-34 and 45-290 lists a use as SPR/SD, specific requirements and procedures shall be in accordance with chapter 41 of this Code, in addition to those requirements and procedures of site plan review in chapter 33, article III.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 302); T.M. of 3-23-02, (art. 48); T.M. of 6-12-2010(3))

Cross references—Site review, § 33-56 et seq.; subdivision regulations, ch. 41.

Sec. 45-403. Professional assistance.

When the effects of use are uncertain, the code enforcement officer, after prior notification to and at the expense of the applicant, shall employ such independent recognized consultant as necessary to ensure compliance with all requirements of this Code specifically related to the public health, safety and welfare and the abatement of nuisances. The estimated costs of such studies shall be deposited with the town clerk prior to their undertaking.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 303))

Sec. 45-404. Basic requirements.

Proposed development and uses shall meet the requirements in sections 45-405 through 45-421.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 304))

Sec. 45-405. Dimensional standards.

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

	<i>Rural</i>	<i>Suburban</i>	<i>Village</i>	<i>C/I</i>	<i>MHP</i>
District					
Min. lot size (acres or ft. ²)	3	2	1	3	6,500 ft ² ⁿ 12,000 ft ² ⁿ 20,000 ft ² ⁿ
Min. yard dimensions (ft.)					
Front yard	30	30 ^p	30 ^p	50 ^{a,p} 30	20 ^o
Side yards	20	20 ^p	20 ^p	20 ^p 100 ^b	20 ^o
Rear yard	30	30 ^p	30 ^p	20 ^p 100 ^b	10 ^o
Accessory building ^c	10	10	10	—	5 ^o
Accessory dwelling unit	u	u	u	u	-
Max. height (ft.)	35	35	35	55 ^d	35
Max. lot coverage (%)	10	15 ^q	20 ^q	50 ^{e,q}	50 ^o
Setback-normal high water mark (feet)	75	75	75	75	75
Dwelling units:					
Min. size (sq. ft. per unit)	650 ^g	650 ^{g,r}	650 ^{g,r}	r	650
Min. area (acres):					
1 unit	3	2	1	—	o
2 units	6	4	2	—	—
each add'l unit	3	1	1/2 ^g	—	—
Assisted living facility	—	s	s	s	—
Elderly housing	—	g	g	g	—
Life care facility	—	t	t	t	—
Max. number of principal structures per lot	h	h	h	v	1
Signs (sq. ft.)	6	6	6	100	6
Commercial establishments only	12	12	12	100 ⁱ	12
New residential subdivisions	50 ^j	50 ^j	50 ^j		50 ^j
Min. setback (front lot line only)	8 ^k	8 ^k	8 ^k		8 ^k
Min. st. frontage (ft.) ^l	200	150	100	300	50/75/100 ⁿ
Backlots ^m					

Notes:

a. A front yard abutting a state or town road shall have a minimum depth of 50 feet from the right-of-way line. A front yard abutting an interior street within the proposed site shall have a minimum depth of 30 feet from the right-of-way line. All parking areas shall conform to setback requirements.

b. All side and rear yards abutting an existing residential use shall have a minimum depth of 100 feet from the side or rear lot lines.

c. Accessory buildings may meet this minimum requirement provided they are smaller in size than the principal use and are no less than 30 feet from any principal buildings on adjacent property. An accessory building shall not be located within a front yard.

d. Must conform to the requirements of section 33-174. Rooftop antennas and other telecommunications structures shall conform to the requirements of sections 33-185 and 45-460. Steeples and spires shall be exempt from maximum height requirements.

e. Maximum lot coverage shall include a 25 percent potential for expansion of floor space and 50 percent for expansion of parking areas.

f. (Reserved.)

g. The minimum acreage for elderly housing in all districts, where allowed, shall be one acre for the first dwelling unit and one quarter acre for each additional unit. Minimum acreage requirements shall revert back to dwelling unit requirements if elderly housing is discontinued. Dwelling unit minimum size (square feet per unit) requirements do not apply to federal or state elderly housing.

h. In the rural, suburban and village districts, more than one principal structure may be located on a single lot, provided each such structure is located in such a fashion that it could be separately conveyed on a separate lot in compliance with all dimensional requirements of the district (except that any lawfully existing structure which does not meet all minimum dimensional requirements may continue that nonconformity).

i. See section 45-528(c) for other requirements applicable to two or more commercial or industrial establishments under separate ownership on one parcel within the commercial/industrial district.

j. Signs identifying subdivisions of ten or more lots shall be posted at the entrance of the subdivision and shall be approved by the planning board. Signs shall contain only the name of the subdivision.

k. A sign shall not be located nearer than eight feet from the right-of-way boundary or nearer than eight feet from the edge of the travelled way. See section 45-532(h) for other requirements.

l. Street frontage shall be measured along one street. The planning board is authorized to vary frontage requirements for new subdivisions according to section 41-255(g). Such lots shall be treated as conforming lots for the purpose of this chapter.

m. Back lot requirements are contained in section 45-466.

n. Lots within a mobile home park shall be a minimum of:

6,500 feet² if served by public sewer. Minimum lot width is 50 feet.

12,000 feet² if served by central subsurface wastewater disposal approved by the state department of human services. Overall density of park, including road rights-of-way and buffer strips shall be 20,000 feet² per dwelling. Minimum lot width is 75 feet.

20,000 feet² if served by onsite subsurface wastewater disposal. Minimum lot width is 100 feet.

- o. See section 41-276 et seq. for specific requirements.
- p. Elderly housing, nursing facility, assisted living facility and life care facility shall have setbacks of 50 feet from lot line or 100 feet from residential dwelling unit, whichever is greater.
- q. Life care facility shall have a maximum lot coverage of 50 percent. Elderly housing, nursing facility or assisted living facility individually shall have a maximum lot coverage of 35 percent.
- r. Each dwelling unit in a assisted living facility shall have a minimum of 300 square feet.
- s. One acre for the first dwelling unit and then one-fifteenth acre for each additional dwelling unit provided all other dimensional requirements are met.
- t. One acre for the first dwelling unit and then one-fifteenth acre for each additional assisted living facility dwelling unit plus one-fourth acre for each additional elderly housing dwelling unit plus district acreage requirement (1-village, 2-surburban, 3-C/I) for each single family dwelling unit provided all other dimensional requirements are met.

Example: A 15-acre suburban district lot could contain three single family dwelling units (five acres) plus 61 assisted living facility dwelling units (five acres) plus 17 elderly housing dwelling units (five acres) plus a nursing facility (0 acres) provided all dimensional requirements are met.

- u. See section 45-459 for requirements.
- v. In the C/I district, more than one principal structure may be located on a single lot which meets the minimum lot size and street frontage requirements for the district. Each such structure must maintain required yards adjacent to the front, side, and rear lot lines and must be located no closer than 20 feet (as viewed from the front lot line) to any other such structure on the lot. Such structures need not comply separately with the minimum lot size and frontage requirements, but the aggregate of all the structures on the lot shall not exceed the maximum lot coverage requirement (see note e.). Nonconforming lots of record, with existing commercial structures, at the time of adoption of this section change may also contain more than one principal structure provided the setback and expansion requirements are met. Separation of structures shall not be less than 20 feet.
(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 305); T.M. of 12-15-93; Amend. of 3-26-94; Ord. of 3-25-00(1); T.M. of 6-19-01, (art. 8); T.M. of 3-16-02, (art. 4); T.M. of 11-5-02; T.M. of 6-14-05; T.M. of 6-18-2011(5))

Cross references—Requirements unique to mobile home park subdivisions, § 41-276 et seq.; other district regulations, § 45-286 et seq.

Sec. 45-406. Traffic.

(a) The proposed development shall provide for safe access to and from public and private roads. Safe access shall be assured by providing an adequate number and location of access points, with respect to sight distances, intersections, schools, and other traffic generators. The proposed development shall not have an unreasonable adverse impact on the town road system, and shall assure safe interior circulation within its site, by separating pedestrian and vehicular traffic and providing adequate parking and loading areas. Other than width requirements for roads, entrance and exit vehicle lanes shall be limited to widths of 15 to 20 feet per lane. This width requirement shall not apply to parcels for single-family or two-family dwellings. Curb cuts shall be limited to the width necessary for safe entering and exiting. All exit driveways shall be designed according to the following standards of safe sight distances:

<i>Posted Speed Limit</i>	<i>Sight Distances Minimum (feet)</i>
25 mph	250
30 mph	300
35 mph	350
40 mph	400
45 mph	450
50 mph	500
55 mph	550

(b) The police department shall be officially consulted on all applications reviewed under this chapter.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 306); T.M. of 6-14-05; T.M. of 6-16-2012(3))

Sec. 45-407. Noise.

(a) Excessive noise at unreasonable hours shall be required to be muffled so as not to be objectionable due to intermittence, beat frequency, shrillness or sound pressure level. The sound pressure level generated by any continuous, regular, or frequent source of sound measured at any point on any lot of the property on which the sound is generated (the "generating site") or on any other property the owner of which requests a sound pressure level measurement (the "receiving property") shall not exceed the following limits:

	<i>Sound Pressure Level Limit</i>	
	<i>7:00 a.m.—8:00 p.m.</i>	<i>8:00 p.m.—7:00 a.m.</i>
Measuring location in the commercial/industrial district	60 dbA	55 dbA
Measuring location in any other zoning district	50 dbA	45 dbA (except 50 dbA if generating site is in the commercial/industrial district.

However, if the sound pressure level of ambient sound at any measuring location is greater than the applicable sound pressure level specified above, then the ambient sound pressure level shall constitute the allowable level at that location. In applying this paragraph, ambient sound shall mean the composite of all sounds from sources near and far, exclusive of occasional and transient sounds and exclusive of the sound source which is being measured for compliance, and the ambient sound pressure level shall be averaged over a period of at least 15 minutes under conditions typical for the operation of the sound source being measured for compliance.

The following uses and activities shall be exempt from these sound pressure level limits:

- (1) Noises created by construction and maintenance activities between 7:00 a.m. and 8:00 p.m.
- (2) The noises of safety signals, warning devices, and emergency pressure relief valves, and other emergency activity.
- (3) Traffic noise on public roads, or noise created by airplanes and railroads.

(b) No person shall engage in, cause, or permit any person to be engaged in very loud construction activities on a site abutting any residential use between the hours of 8:00 p.m. of one day and 7:00 a.m. of the following day. Construction activities shall be subject to the maximum permissible sound level specified for the commercial/industrial district for the periods within which construction is to be completed pursuant to any applicable building permit.

(c) Sound pressure level is defined as 20 times the logarithm to the base of ten of the ratio of the sound pressure in question to the standard reference pressure of 0.00002 N/M² in decibel units. It is measured by a sound level meter using the A level frequency weighting network, as follows:

- (1) Sound pressure level readings shall be recorded on a form entitled "Eliot Noise Record Data Sheet" attached to this ordinance as addendum A [and referred to herein by reference], which may be revised from time to time by the board of selectmen.
- (2) Compliance with maximum sound pressure level limits of this section shall be determined solely by the use of a sound pressure level meter and meter set points identified on the Eliot Sound Pressure Record Data Sheet. Sound level measurements taken with any other model instrument or settings shall not be considered in determining compliance with this section.
- (3) All sound pressure level measurements shall be taken using the guidance in ANSI S1.13 (ASA 118) 1995 or later revision unless otherwise specified in this section.
- (4) Sound pressure levels shall be measured at one or more points on each major lot line (front, rear and sides) of the generating site and, upon request of the owner of a receiving site, at two locations on such receiving site, chosen by the owner of the receiving site. Sound pressure level measurements shall be made at a height of at least four feet above ground level.

(d) This section 45-407 shall apply to existing uses as well as to proposed development and uses, except that an existing use which does not comply with the sound pressure level limits of March 27, 1999 may apply to the code enforcement officer for a temporary waiver from those limits. The code enforcement officer may grant a waiver only upon finding that immediate application of the sound pressure level limits to the existing use would present practical difficulties or cause financial hardship, and that the owner or operator of the generating site will develop and implement a plan to achieve compliance within the shortest time frame which is technically and financially feasible. Any waiver so granted shall expire no later than six months after effective date of amendments.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 307); T.M. 3-27-99(4), § 1)

Sec. 45-408. Dust, fumes, vapors, gases.

Emission of dust, dirt, fly ash, fumes, vapors or gases which could damage human health, animals, vegetation or property or which could soil or stain persons or property at any point beyond the lot line of the commercial or industrial establishment creating that emission shall be prohibited. All such activities shall comply with applicable federal and state regulations.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 308))

Sec. 45-409. Odor.

No nonfarming land use or establishment shall be permitted to produce offensive or harmful odors perceptible beyond their lot lines, measured either at ground or habitable elevation. (T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 309))

Sec. 45-410. Glare.

No land use or establishment shall be permitted to produce a strong, dazzling light or reflection of that light beyond its lot lines onto adjacent properties, or onto any town way so as to impair the vision of the driver of any vehicle upon that town way. All such activities shall comply with applicable federal and state regulations.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 310))

Cross reference—Site plan glare requirements for industrial and commercial areas, § 33-180.

Sec. 45-411. Stormwater runoff.

Surface water runoff shall be minimized and detained on site if possible or practicable. If it is not possible to detain water on site, downstream improvements to the channel may be required of the developer to prevent flooding caused by his project. The natural state of watercourses, swales, floodways or rights-of-way shall be maintained as nearly as possible. The design requirement is a 50-year storm.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 311))

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Sec. 45-412. Erosion control.

Erosion of soil and sedimentation of watercourses and waterbodies shall be minimized by employing the following best management practices:

- (1) Stripping of vegetation, and regrading or other development shall be done in such a way as to minimize erosion.
- (2) The duration of exposure of the disturbed area shall be kept to a practical minimum.
- (3) Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development.
- (4) Permanent (final) vegetation and mechanical erosion control measures in accordance with the standards of the county soil and water conservation district or the state soil and water conservation commission shall be installed as soon as practical after construction ends.
- (5) Until a disturbed area is stabilized, sediment in runoff water shall be trapped by the use of debris basins, sediment basins, silt traps, or other acceptable methods as determined by the planning board.
- (6) The top of a cut or the bottom of a fill section shall not be closer than ten feet to an adjoining property, unless otherwise specified by the planning board.
- (7) During grading operations, methods of dust control shall be employed.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 312))

Sec. 45-413. Preservation of landscape.

The landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree removal. Any grade changes shall be in keeping with the general appearance of neighboring developed areas. Proposed structures shall be related harmoniously to the terrain. The achievement of such relationship may include the enclosure of space in conjunction with other existing buildings or other proposed buildings and the creation of focal points with respect to avenues of approach, terrain features or other buildings.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 313))

Cross references—Site plan requirements for commercial and industrial establishments, § 33-127; landscaping, § 33-175.

Sec. 45-414. Relation of buildings to environment.

In the village and suburban districts, the planning board may require new commercial construction to utilize exterior building materials which harmonize with surrounding properties, and to be designed so as not to be architecturally incompatible in terms of scale, height, window size and roof pitch.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 314))

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Sec. 45-415. Soil suitability for construction.

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, 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, prepared by a state-certified soils scientist or geologist based upon onsite investigation. Suitability considerations shall be based primarily on criteria employed in the National Cooperative Soil Survey as modified by onsite factors such as depth to water table and depth to refusal. The code enforcement officer or planning board may require the developer to submit written evidence that the soil will be able to support all proposed pavement, structures, and utilities. This report may include recommended measures to ensure that cracking, subsidence or other failure will not result. (T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 315))

Sec. 45-416. Sanitary standards for sewage.

All subsurface sewage disposal facilities shall be installed in conformance with the state plumbing code and the following:

- (1) All subsurface sewage disposal systems shall be located in areas of suitable soil of at least 1,000 square feet in size.
- (2) The minimum setback for subsurface sewage disposal facilities shall be no less than 100 horizontal feet from the normal high water mark of a waterbody. This requirement shall not be reduced by variance.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 317))

Sec. 45-417. Buffers and screening.

(a) Buffers and screening shall be provided for the purpose of eliminating any adverse effects upon the environmental or aesthetic qualities of abutting properties, visual quality, or any type of nuisance affecting the health, safety, welfare, and property values of the residents and landowners of the town.

(b) To ensure that abutting uses are compatible and to improve visual quality along roads, all loading and unloading operations, storage areas, vehicle parking, waste disposal and collection areas, sand and gravel extraction operations, and other uses as the code enforcement officer and board may determine shall have buffers and screening. To achieve this result, the following requirements shall apply:

- (1) Natural features shall be maintained wherever possible to provide a break between the proposed development and abutting properties.

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- (2) When natural features such as gullies, stands of trees, shrubbery, and rock outcrops do not exist or are insufficient to provide a buffer, the applicant shall submit for approval a landscape plan which may provide fencing or screening.
- (3) The property owner shall properly maintain buffers, fencing, and screening at all times.
- (4) Buffers, fencing and screening shall be so located within the owner's property line to allow access for maintenance on both sides without intruding upon abutting properties.
- (5) Fencing must conform to the requirements of section 45-423.
(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 318); T.M. of 3-20-04)

Sec. 45-418. Explosive materials.

No highly flammable or explosive liquids, solids, or gases shall be stored in bulk above ground, unless they are located in anchored tanks at least 75 feet from any lot line, town way or interior roadway. Underground tanks shall be at least 40 feet from lot lines and all relevant federal and state regulations shall also be met.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 319))

Sec. 45-419. Water quality.

(a) 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 run off, seep, percolate or wash into surface waters or groundwaters 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 to be harmful to human, animal, plant or aquatic life.

(b) All outdoor storage facilities for fuel, chemicals, chemical or industrial wastes, and potentially harmful raw materials shall be located on impervious pavement, and shall be completely enclosed by an impervious dike which shall be high enough to contain the total volume of liquid kept within the storage area, plus the rain falling into this storage area during a 50-year storm, so that such liquid shall not be able to spill onto or seep into the ground surrounding the paved storage area. Storage tanks for "home heating oil" and diesel fuel, not exceeding 275 gallons in size, may be exempted from this requirement, in situations where neither a high seasonal water table (within 15 inches of the surface) nor rapidly permeable sandy soils are involved.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 320))

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Sec. 45-420. Discharge of treated wastewater or hazardous wastes into waterbodies.

(a) *Purpose.* The purpose of this section is to clean up our waterbodies and aid in environmental protection of aquatic and plant life and, for the health and safety of the citizens of the town.

(b) *Definitions.* For the purposes of this section the following definitions shall apply:

Discharge means the means of disposal of wastewater.

Hazardous wastes means all substances, including industrial and commercial wastes, as defined by the Environmental Protection Agency (EPA) as hazardous materials.

Wastewater means the liquid and waterborne wastes derived from the ordinary living processes. It shall include liquid and waterborne wastes from residences, commercial buildings, industrial plants, and institutions that are free from industrial wastes.

Waterbody means a natural or artificial surface depression having standing or flowing water, intermittent or perennial. The term "waterbody" includes but is not limited to natural and artificial lakes, ponds, rivers, streams, brooks, swamps, marshes, bogs and tidal marshes. It usually discharges into a larger waterbody and has a definite channel, bed, banks and high water mark.

(c) *Offenses.* It shall be unlawful for any person, in the town, to discharge or allow to discharge from his property any wastewater or hazardous wastes into any waterbodies of the town.

(d) *Exemption for existing systems.* An existing system of discharging wastewater into a waterbody shall be in compliance with this section if the system was constructed/installed, and is maintained in accordance with the state statutes, codes and regulations in effect at the time of its installation, unless the system has been documented to be malfunctioning in accordance with the plumbing code.

(T.M. of 3-21-81, art. 36)

Sec. 45-421. Refuse disposal.

The applicant shall provide for the disposal of all solid and liquid wastes on a timely basis and in an environmentally safe manner. The code enforcement officer or planning board shall consider the impact of particular industrial or chemical wastes or byproducts upon the town's sanitary landfill (in terms of volume, flammability or toxicity) and may require the applicant to dispose of such wastes elsewhere, in conformance with all applicable state and federal regulations. The planning board or code enforcement officer may require the applicant to specify the amount and exact nature of all industrial or chemical wastes to be generated by the proposed operation.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 321))

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Sec. 45-422. Waste containers.

(a) *Setbacks and screening.*

- (1) As used in this article, waste containers are an accessory structure and must comply with applicable minimum yard dimensions for accessory buildings as provided in section 45-405. Waste containers shall not be located in the front yard.
- (2) All waste containers visible from a public way or located within 50 feet of a residential structure shall be enclosed or screened to obstruct view from abutting properties.

(b) *Hours of use.* No waste containers shall be emptied between the hours of 9:00 p.m. and 7:00 a.m., unless special circumstances are shown to the code enforcement officer, who then at his discretion may grant an extension of time. All waste containers must be covered by an attached lid or other secure covering at all times, except during the actual filling and emptying thereof.

(c) *Size.* Each waste container shall be of sufficient size and capacity, shall not be filled to overflowing and shall be designed and maintained so as to avoid offensive odors. The owner or occupant in control of the property on which the waste container is located must take appropriate action to cause the waste container to be emptied of its contents when full. The code enforcement officer may refuse or revoke a permit, if in his discretion, the size or capacity of the waste container does not fulfill the requirements of this section.

(d) *Obstruction of traffic.* Each waste container shall be situated so as not to obstruct the view of vehicular or pedestrian traffic. No waste container shall be placed or parked on a public way. If in the opinion of the code enforcement officer and the concurring approval of the following departments: highway department, police and fire, that a condition exists requiring temporary placement of a waste container on a public way, then a temporary permit may be issued.

If a temporary permit is issued for parking a waste container on a public way, then such waste container shall be clearly illuminated at night by lights or reflective materials.

(e) *Maintenance.* It shall be the responsibility of the owner or occupant in control of the property on which the waste container is located to maintain the waste container area free of odors, scattered debris, overflow and all other nuisances.

(f) *Permit required.* The owner or occupant in control of the property upon which a waste container is proposed to be located shall submit an application for a waste container permit for each waste container to be used upon his property prior to installation of the waste container. The applicant may be required to submit a plot plan indicating the location of the waste container(s) to the code enforcement officer for each waste container in use on the property. The applicant shall submit a fee with the application in the amount established by the fee schedule set in section 1-25.

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(g) *Temporary waste containers.* No permit shall be required for the placement of a temporary waste container (roll-off or gondola type) provided that the following circumstances apply:

- (1) The waste container will be utilized for no longer than 90 days in connection with construction or demolition. Fairs, carnivals or other similar temporary needs may utilize a waste container for no more than 30 days.
- (2) The waste container shall not be located on a public way or public property.
- (3) The owner or occupant in control of the property on which the waste container is located shall comply with all the provisions of this division that are applicable to the operation of the waste container.

(h) *Modifications, suspension, revocation of permit.* Permits may be modified, suspended, revoked or recalled by the code enforcement officer for failure of the owner or occupant in control of the property on which the waste container is located to comply with the provisions of this section.

(T.M. of 3-20-04)

Sec. 45-423. Fences

(a) *Fence heights.* No person, firm, corporation or other organization shall erect or cause to be erected a fence exceeding eight feet in height from ground level with the exception of those described in section 33-175.

(b) *Fence design and location.*

- (1) The finished side of a fence shall face outward from the property on which the fence is located. The side of a fence containing the posts or poles and other bracing appurtenances shall face inward to the property being fenced in or on which the fence is located. All fences and their supporting parts and appurtenances shall be set back at least two feet from all lot lines (unless adjoining property owners agree by written instrument recorded in the York County Registry of Deeds that a fence may be located on their common boundary). In addition, no fence and its supporting parts and appurtenances shall be located closer than four feet to the edge of pavement of a paved road or the edge of the traveled way on an unpaved road.
- (2) On a lot located at the intersection of two streets (corner lot), no fence or vegetal elements shall be erected or placed in such a manner as to impede vision between either street and a triangular portion of the lot bounded by the two street lines and a straight line joining two points, each of which is located along one of the street lines at a distance of 30 feet from their intersection. For corner lots that are located on the inside curve of streets and at intersections that are not within 15 degrees of perpendicular, adequate and safe sight distances in both directions, as determined by the code enforcement officer, shall be provided. Property owners shall maintain vegetation such that it does not grow to limit site distance.

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- (3) Fencing that will obstruct the required site distances of sections 37-70(d) and 45-406 is not allowed.
(T.M. of 3-20-04)

Secs. 45-424—45-450. Reserved.

ARTICLE IX. STANDARDS FOR SPECIFIC ACTIVITIES

Sec. 45-451. Compliance.

Proposed development and uses identified as specific activities shall meet the requirements listed under the applicable standard. Specific activities are found in this article.
(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 325))

Sec. 45-452. Accessory use or structure.

Accessory uses or structures may be located on front, side or rear yards, but must meet applicable setback requirements as provided in section 45-405.
(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 326))

Sec. 45-453. Reserved.

Editor's note—A Town Meeting held on Dec. 15, 1993, repealed § 45-453 in its entirety. Formerly, § 45-453 pertained to standards for agriculture and derived from Town Meeting of Nov. 2, 1982; Town Meeting of June 26, 1985; Town Meeting of Nov. 23, 1985; Town Meeting of Nov. 4, 1986; Town Meeting of Apr. 21, 1987; Town Meeting of Mar. 19, 1988; and § 327 of the Town Meeting held on Dec. 20, 1989.

Sec. 45-454. Campground construction.

Campgrounds shall conform to the minimum requirements imposed under state licensing procedures and the following:

Camping areas shall contain a minimum of 5,000 square feet of suitable land, not including roads and driveways, for each site.
(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 328); T.M. of 12-15-93)

Cross references—Campground site plan review requirements, § 33-172; campground license required, § 33-173.

Sec. 45-455. Home occupations.

(a) A home occupation or profession is defined as activity customarily carried on within a dwelling unit or accessory structure and clearly incidental to the use of the dwelling unit for residential purposes. It may include hairdressing, millinery, laundering, preserving and home cooking, or the office of a doctor, dentist, lawyer, musician, teacher, architect, real estate

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broker, computer programmer, or member of any recognized profession. It shall also include any occupation or trade carried on or away from the premises and not requiring outside storage of an inventory, stock in trade, or other equipment. This definition does not apply to farming and agriculture. A structure, use or activity not otherwise permitted within a district by this chapter shall not be permitted as a home occupation. A lodging business shall not be considered a home occupation.

(b) Except for signs as permitted by this chapter, there shall be no external evidence of the occupation. Outside storage of motor vehicles is limited to one business-related van, pickup truck or passenger car.

(c) At least one member of a family occupying the premises must be engaged in the occupation.

(d) There shall be no more than five employees engaged in the occupation, including family members.

(e) No more than 25 percent of the total area of the principal residential and other structures shall be used for the occupation.

(f) Retail or other sales of merchandise on the premises shall not be considered a home occupation.

(g) Except for residential requirements, parking for a home occupation shall not exceed ten spaces.

(h) Home occupations occupying separate buildings shall meet the minimum yard dimensions for principal buildings.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 330))

Sec. 45-456. Home office.

(a) A home office means a place within a dwelling unit or within a structure accessory to a dwelling unit where office activities take place. A home office may include desks, chairs, tables, telephones, file cabinets, computers, printers, facsimile machines, copy machines, and other equipment customarily found in an office environment.

(b) There shall be no external evidence of the home office other than one sign which shall not be larger than two square feet on each side.

(c) Only an occupant of the dwelling unit may operate a home office.

(d) A home office shall not exceed 200 square feet in floor area.

(e) No merchandise or inventory may be maintained or sold on the site.

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(f) The permit for a home office shall set forth the foregoing conditions and shall not be valid until the applicant agrees, by signing the permit, to operate the home office in compliance with those conditions. The permit shall list the names of the persons who will operate the home office and shall remain valid only so long as one or more of those listed persons continues to reside in the dwelling unit.

(T.M. of 6-19-01, (art. 7))

Sec. 45-456.1. Home businesses.

Home businesses are uses that provide space for commercial activity that is in scale and character with neighborhoods and areas that are primarily residential. Home businesses must comply with the following requirements:

- a. Home businesses must be clearly secondary to the residential use of the property. This means that there must be a dwelling unit on the property, and the dwelling unit must be occupied by an owner of each permitted home business during the months of the year that the business is in operation. (As used in this paragraph, the term owner includes a principal of a corporation, limited liability company or other legal entity that owns a business.)

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- b. A home business is not permitted in conjunction with a home occupation on the same lot. However, more than one home business may be located on the same lot as long as in the aggregate and cumulatively the home businesses on the lot comply with the requirements of this section.
- c. Home businesses cannot exceed 1,500 square feet in total area. The total area includes all portions of all structures used to support or conduct the home businesses.
- d. All structures used as part of a home business must meet minimum yard and set back requirements for principal structures.
- e. Any use that is not listed in the table of land uses, section 45-290 may be permitted as a home business provided both of the following requirements are met:
 - (1) The applicant must provide a rationale, acceptable to the planning board, substantiating that the proposed use is similar to a permitted use as allowed in the applicable zoning district.
 - (2) The application must be approved by a concurring vote of at least three members of the planning board as being similar to a use listed in the table of land uses as allowed in the applicable zoning district.
- f. At least one person engaged in the each permitted home business use must occupy the dwelling unit.
- g. No more than two persons not occupying the dwelling unit shall be employed on site in the home business. If more than one home business is located on the lot, the total number of employees not occupying the dwelling unit is still limited to two persons.
- h. Home businesses may engage in selling of merchandise and products as follows:
 - (1) On-site sales of merchandise and products that are created, grown, built, or substantially altered as part of the home businesses.
 - (2) On-site sales of merchandise and products that are customarily incidental to the services or products provided by the home businesses.
 - (3) Off-site, phone, mail, and internet, or similar sales of merchandise and products.
 - (4) On-site wholesale distribution of merchandise and products to dealer/sales representatives who sell the merchandise and products off site.
- i. In addition to the spaces required for parking by occupants of the dwelling unit, home businesses may provide customer and non-resident employee parking spaces, not to exceed four such additional spaces per lot. All requirements of article X of this chapter shall apply to all parking spaces on the lot, with the exception that a maximum of two parking spaces may be located within the front setback.
- j. Sign dimensions must meet section 45-405 residential (non-commercial) requirements. Only one sign is permitted regardless of the number of home businesses located on the lot.

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- k. Storage of material associated with the home business use and any other external evidence of the business, must be located or screened such that it is not visible from the street or neighboring residences. Signage, lobster traps, boat storage (in accordance with home businesses, water dependent) and one business related vehicle with a gross vehicle weight rating of 10,000 pounds or less shall be exempt from screening requirements.
 - l. Application must identify how all fluids, solids, and gases unique to the business are going to be used and stored. Location and quantity of highly flammable or explosive liquids, solids, or gases shall be identified on the application and referred to the Eliot Fire Chief for review and comment. Material safety data sheets (MSDS) shall be provided by the applicant as required by the planning board.
- (T.M. of 3-16-01, (art. 3); T.M. of 6-14-05)

Sec. 45-457. Mobile homes.

(a) A mobile home is a detached, totally self-contained and nonsectional, residential dwelling unit as originally constructed or designed for transportation by a motor vehicle upon a public way and designed, equipped and used primarily for sleeping, eating and living quarters or as intended to be so used after arriving at a site where it is to be occupied as a dwelling and includes any additions, attachment annexes, foundations and appurtenances. It shall not include any similarly prefabricated modular or unitized dwelling placed on permanent foundations nor shall it include travel trailers, campers, or similar units designed for recreation or other shortterm uses. A manufactured housing unit in a mobile home park is a single-story structure constructed in one or two sections, which are constructed in a manufacturing facility and are transportable to a building site and designed to be used as a dwelling when connected to the required utilities, including the plumbing, heating, air conditioning, and electrical systems contained therein. A mobile home is considered a manufactured housing unit.

(b) No mobile home or manufactured housing unit in a mobile home park shall contain less than 650 square feet of living space as originally constructed.

(c) No mobile home shall be occupied for other than a single-family dwelling.

(d) No more than one mobile home or manufactured housing unit in a mobile home park shall be placed on a single lot, and all dimensional requirements for a single-family dwelling within the district in which the mobile home is placed shall be met.

(e) Any mobile home shall be approved and certified by the state housing authority or a state-approved agent to September 1, 1974, state requirements, indicated as Identification Number A119.1, on each mobile home unit.

(f) All mobile home or manufactured housing units in a mobile home park shall be boxed or skirted with fire resistant materials. All material shall comply with the fire code of the town.

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(g) Concrete or other approved moisture barriers shall cover the entire earth area within the skirting walls, and adequate ventilation shall be provided for the crawl space. This subsection applies to mobile homes and manufactured housing units in mobile home parks.

(h) Suitable tiedowns shall be installed and secured to the mobile home or manufactured housing unit in a mobile home park.

(i) The code enforcement officer shall inspect and approve the tiedowns, foundation, sewerage, and water systems before a mobile home or manufactured housing unit in a mobile home park may be set in place and occupied.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 332))

Cross reference—Design standards and requirements unique to mobile home park subdivisions, § 41-276 et seq.

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Sec. 45-458. Reserved.

Editor's note—A Town Meeting held on Dec. 15, 1993, repealed § 45-458 in its entirety. Formerly, § 45-458 pertained to standards for piers, docks, bridges over 20 feet in length, and uses projecting into waterbodies and derived from Town Meeting of Nov. 2, 1982; Town Meeting of June 26, 1985; Town Meeting of Nov. 23, 1985; Town Meeting of Nov. 4, 1986; Town Meeting of Apr. 21, 1987; Town Meeting of Mar. 19, 1988; and § 334 of the Town Meeting held on Dec. 20, 1989.

Sec. 45-459. Accessory dwelling unit.

(a) An accessory dwelling unit (ADU) is a small apartment which is part of an existing or new single family owner-occupied home, and which is clearly secondary to the single family home. The accessory dwelling unit may be rented so that the owner-occupant may benefit from the additional income. The owner may also elect to occupy the accessory dwelling unit and rent the principal dwelling unit.

(b) Owner-occupied means that either the principal dwelling unit or the accessory dwelling unit is occupied by a person who has a legal or equitable ownership interest in the property and bears all or part of the economic risk of decline in value of the property and who receives all or part of the remuneration, if any, derived from the lease or rental of the dwelling unit.

(c) An accessory dwelling unit may be permitted as an accessory use to a single family home under the following conditions:

- (1) Only one accessory dwelling unit (ADU) is permitted per lot. The accessory dwelling unit shall be located in the same building as the principal dwelling unit or in a building accessory to the principal dwelling unit. Any structure containing an accessory dwelling unit must meet minimum yard and setback requirements for principal structures.
- (2) A building permit for the proposed construction of a new ADU or the creation of a new ADU within an existing building, must be issued by the CEO. Planning board approval is not required for an ADU.
- (3) A building permit for a new single family home may include an ADU as long as the provisions of this section are met and the building conforms to all of the dimensional requirements for the zone in which it is being built. An ADU may be included in a new home constructed on a lawful nonconforming lot of record which may be built upon pursuant to section 45-194.
- (4) The property owner must occupy either the principal dwelling unit or the ADU as their principal residence, and at no time receive rent for the owner-occupied unit. Principal residence must be proven by voter registration or other evidence acceptable to the CEO.
- (5) In no case shall an ADU be more than 650 square feet or less than 300 square feet, nor have more than two bedrooms. Area shall be measured using the interior dimensions of the ADU.

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- (6) A home occupation or home business may be conducted, subject to existing regulations, as an accessory use to either the ADU or the principal dwelling unit, but not both.
- (7) Apartments built prior to November 2, 1982 and existing on March 16, 2002, shall be considered lawful nonconforming uses which may continue pursuant to section 45-191. Any apartments existing on (effective date of section 45-459) and built on or after November 2, 1982 shall not be considered lawful nonconforming uses, unless the property owners applies for a building permit for the ADU and brings the unit up to the health and safety provisions of the minimum housing code standards. A grace period of one year from the adoption of this article will be allowed for homeowners to modify such unlawful non-conforming units. The CEO will have the authority to waive certain space and setback requirements for such unlawful nonconforming units where full compliance would be impractical. On March 16, 2003, all owners of unlawful nonconforming units who have not brought them up to the health and safety standards of the minimum housing code, will be in violation of this section and subject to fines per section 45-6 (b).
- (8) When any property containing an accessory dwelling unit is sold or transferred, the new owner must continue to meet the requirements of this Section in order to continue the use of the accessory dwelling unit. Should the new owner not meet the requirements of this section, the use of the unit must be discontinued. However, any lease in effect at the time of transfer may be continued until it expires or up to one year from the date of the transfer, whichever is shorter. This paragraph (8) does not apply to an apartment built before November 2, 1982 and existing on March 16, 2002.
- (9) To ensure continued compliance by current and subsequent owners, the applicant shall provide and record in the York County Registry of Deeds a covenant in a form acceptable to the town attorney that the existence of the accessory dwelling unit is predicated upon the occupancy of either the accessory dwelling unit or the principal dwelling by a person who owns the property. It is also required that any owner of the property must notify a prospective buyer of the limitations of this section.
- (10) New accessory dwelling units are not subject to the requirements of the Growth Management Ordinance, chapter 29. However, the number of accessory dwelling units that may be issued building permits within a calendar year is limited to a total of 12, to be issued on a first- come, first-served basis in the order in which the code enforcement officer receives completed applications for building permits under section 45-127. If two or more applications are received simultaneously (as in as a single mail delivery), the code enforcement officer shall determine their order by random selection. The provisions of this paragraph are retroactive to January 1, 2003.
- (11) This provision shall not prohibit the conversion of a single family dwelling to a multifamily dwelling so long as said conversion complies with all current zoning requirements. However, if such conversion is approved, any accessory dwelling unit previously allowed under this section must be incorporated into and meet all the requirements for one of the units of the multifamily dwelling. Multifamily dwellings shall not include accessory dwelling units as defined in this section.

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(12) Design criteria:

- a. An ADU shall be designed to maintain the architectural design, style, appearance, and character of the main building as a single-family residence. If an ADU extends beyond the existing footprint of the main building, such an addition must be consistent with the existing facade, roof pitch, siding, and windows.
- b. Exterior stairs are restricted to the rear or sides of the structure.

(13) Occupancy of an ADU shall be limited to the following: No more than two persons may occupy a unit of 300 to 400 square feet of gross floor area; no more than three persons in a unit ranging from 401 to 600 square feet of gross floor area; and no more than four persons in a unit of 601 square feet or greater of gross floor area.

(14) One off-street parking space must be provided for the accessory dwelling unit in addition to the off-street parking required for the principal dwelling unit.

(15) An occupancy permit must be issued by the CEO prior to occupancy of an accessory dwelling unit created or modified pursuant to this section 45-459.

(16) The CEO shall prepare a biennial report to the planning board on accessory dwelling units which will include: (a) the number of units established; (b) the geographic distribution of the units; and (c) the average size of the units. The planning board shall reassess the provisions of this section allowing accessory dwelling units every five years or sooner if records show that 20 percent of single family homes have ADUs.

(17) The code enforcement officer may inspect an accessory dwelling unit, with or without complaint with a minimum of 48 hours of receipt of notice of inspection to the property owner to ensure compliance with the section. Any property owner found in violation of this section shall have 30 days from the date of written notice to correct such violation. Failure to correct the violation shall result in the revocation of the accessory dwelling unit certificate of occupancy, as well as subjecting the property owner to the remedies and penalties provided in sections 45-101 and 45-102.

(T.M. of 3-16-02, (art. 4); T.M. of 6-10-03; T.M. of 6-14-05)

Sec. 45-460. New construction of telecommunication structures less than 70 feet, expansion of an existing structure or collocation of antenna on an existing structure or alternate tower structure.

Applications for new construction of a telecommunication structure less than 70 feet, expansion of an existing telecommunication structure or collocation of antenna on an existing telecommunication structure or alternate tower structure shall provide the following materials and information:

- (1) Documentation of the applicant's right, title, or interest in the property where structure is to be sited, including name and address of property owner, license holder, and applicant.
- (2) A copy of the applicant's FCC license and a signed statement from the applicant indicating that the facility will comply with FCC regulations.

- (3) Identification of any federally, state, or locally designated historic or archaeological resources, including districts, sites, and structures located on or abutting the proposed site.
- (4) Location and elevation drawings of the proposed facility showing color, and identifying materials. The drawings shall demonstrate that the proposed facility will comply with the following:
 - a. *Location and buffering.* The structure shall be located on the property to minimize its potential adverse visual impact to abutting property owners to the maximum extent practical.
 - b. *Height.* The structure shall be the minimum height necessary to allow its use and operation for the intended purpose.
 - c. *Multiple structures.* The number of structures shall be the minimum necessary to support the intended purpose. The applicant must justify why more than one structure is necessary on the same property and must explore options to merge operations on a single structure prior to any action on a permit to construct or operate a second or additional structure. An applicant who proposes to construct or operate three or more structures (new or existing structures) on a single property shall be subject to review under the requirements for telecommunication structures 70 feet and higher.
 - d. *Antenna finish.* Where an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.
 - e. *Signs prohibited.* The telecommunication structure or tower shall not display any permanent or temporary signs, writing, symbols, logos, or any graphic representation of any kind.
- (5) Certification that the structure shall be safely installed and supported in accordance with all federal, state, and local building code requirements. A new structure shall comply with the Electronic Industries Association/Telecommunications Industry Association (EIT/TIA) 222 Revision Standard entitled: "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures."
- (6) For proposed expansion of a facility, a signed statement that commits the owner of the facility, and his or her successors in interest to:
 - a. Respond in a timely, comprehensive manner to a request for information from a potential collocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;
 - b. Negotiate in good faith for shared use by third parties;
 - c. Allow shared use if an applicant agrees in writing to pay reasonable charges for collocation;

- d. Require no more than a reasonable charge for shared use, based on community rates and generally accepted accounting principles and supply-and-demand market conditions at the time of the proposed collocation. This charge may include, but not be limited to 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 cost of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference.
- e. Remove any abandoned structure not used for a period of 24 months or greater. (T.M. of 3-27-99(1), § 7)

Sec. 45-461. Small wind energy systems.

(a) *Purpose.* The purpose of this section is to promote the safe, effective and efficient use of small wind energy systems. This section describes the requirements for obtaining a permit to install a small wind energy system.

(b) *Setbacks.*

- (1) A tower for a small wind energy system shall be set back a distance equal to 110 percent of its small wind energy system height from:
 - a. Any public or private road right of way, unless written permission is granted by the town or state entity with jurisdiction over the road;
 - b. Any overhead utility lines, unless written permission is granted by the utility;
 - c. All property lines, unless written permission is granted from the affected landowner or neighbor;
 - d. The planning board may accept restrictive easements on abutting parcels to satisfy setback requirements.
- (2) Small wind energy systems must meet all setbacks for principal structures for the zoning district in which the system is located. However, notwithstanding such district regulations, no part of the small wind energy system, including guy wire anchors, may extend closer than ten feet to the property boundaries of the installation site.

(c) *Tower height.*

- (1) For property sizes up to one acre the tower height shall be limited to a maximum of 80 feet.
- (2) For property sizes of one acre or more there shall be no limitation on tower height except as imposed by FAA regulations and setback requirements.
- (3) The planning board may accept restrictive easements on abutting parcels to satisfy acreage requirements.
- (4) The applicant shall provide evidence that the proposed tower height does not exceed the height recommended by the manufacturer of the system.

(d) *Design requirements.*(1) *Access.*

- a. All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.
- b. The tower shall be designed and installed such that public access via step bolts or a ladder is prevented for a minimum of 12 feet above the ground.

(2) *Blade clearance.* For all systems the minimum distance between the ground and any protruding blades shall be 15 feet as measured at the lowest point of the arc of the blades.(3) *Appearance.* Towers shall maintain a galvanized steel finish unless FAA standards require otherwise or if owner is attempting to conform the tower to the surrounding environment and architecture, in which case it may be painted to reduce visual obtrusiveness.(4) *Signs.* Towers shall not display any permanent or temporary signs, writing, symbols, logos, or any graphic representation of any kind.(5) *Lighting.* No tower shall be lighted unless required by the FAA.(6) *Noise.* Small wind energy systems shall comply with the town noise requirements in section 45-407.(e) *Documents required.* The following documents must be submitted with the application for a small wind energy system:

(1) Plot plan showing:

- a. A title block showing date, scale and arrow pointing north;
- b. The zoning district in which the small wind energy system is proposed;
- c. The setbacks of all existing and proposed structures or uses;
- d. The location of all existing and/or proposed structures or uses; and
- e. Any overhead utility lines.

(2) Wind system specifications, including manufacturer and model, rotor diameter, tower height, tower type (freestanding or guyed).

(3) Tower foundation blueprints or drawings.

(4) Tower blueprint or drawing.

(5) Standard drawings and an engineering analysis of the systems tower, and certification by a professional engineer. This analysis shall include standards for ice and wind loading.

(6) A line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the current edition of the national electric code on file in the office of the code enforcement officer.

- (7) Data on approval from any small wind certification program that may apply.
- (8) Information showing that the generators and alternators to be used are constructed so as to prevent the emission of radio and television signals.
- (9) The applicant shall provide evidence that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

(f) *State and federal requirements.*

- (1) Small wind energy systems must comply with applicable FAA regulations, including any necessary approvals for installations close to airports. Evidence of compliance or non-applicability shall be submitted with the application.
- (2) Small wind energy systems must comply with applicable building code, national electric code, and other state and federal requirements.

(g) *Removal of unsafe small wind energy systems.* Any small wind energy system found unsafe by the code enforcement officer shall be shut down immediately and repaired by the owner to meet all federal, state, or local safety standards or removed within six months. If the owner fails to remove the system as directed the code enforcement officer may pursue legal action to have the system removed at the owner's expense.

(T.M. of 6-14-08)

Sec. 45-462. Solar energy systems.

Solar energy systems must comply with all applicable building, plumbing and electrical codes and with all applicable dimensional requirements of this chapter (Zoning) and chapter 44 (Shoreland Zoning).

(T.M. of 6-14-08)

Secs. 45-463, 45-464. Reserved.

Sec. 45-465. Assisted living and life care facilities.

Assisted living and life care facilities must have or comply with the following:

- (1) Primary provision for food supply to all dwelling units shall be central dining and/or food delivery from an on-site food preparation center.
- (2) Emergency call system to a staffed central site from each dwelling unit.
- (3) Maintenance plan, which specifies the person(s) responsible for the maintenance of buildings and grounds and lists the facilities to be maintained.
- (4) Prohibit seasonal usage and sub-letting.
- (5) Maximum of two permanent occupants per dwelling unit.
- (6) Housekeeping services.

(T.M. of 6-19-01(art. 8))

Sec. 45-466. Back lots.

The division of a tract or parcel of land into three or more lots within any five-year period will normally require subdivision review in accordance with chapter 41, with streets designed to subdivision standards. However, in non-subdivision situations, one or two new back lots may be created and used if they can be provided with an access way that connects with a "qualifying street," defined as either a public street or a privately owned street which meets the standards contained in chapter 37, streets and sidewalks. Back lots must meet the requirements contained in this section in addition to the other applicable requirements of the ordinances of the Town of Eliot. This section does not apply to lots within approved subdivisions, to lots that require subdivision approval or to lots in the C/I zone, where back lots are not allowed.

(a) *Access ways for back lots created after June 14, 2005.*

- (1) Access ways for new back lots shall be at least 50 feet wide and include a traveled way that is graveled or paved and at least 15 feet wide. Additionally, the access way to the back lots must allow for upgrade of the access way to meet chapter 37 requirements for a minor street if additional back lots are created in the future. This paragraph does not apply to back lots where no further development is possible (see subsection (d) below).
- (2) Access ways for new back lots shall either be owned in fee by the owner of the back lots or dedicated by permanent easement to the use of the owners of the back lots and shall be maintained by the owners of the back lots.
- (3) If the access way to a new back lot is an easement, the following conditions must be met:
 - a. The easement must be conveyed to the owner of the back lot by deed containing a metes and bounds description of the access way recorded in the York County Registry of Deeds and be a minimum of 50 feet in width.
 - b. A copy of the deed shall be attached to any building permit application for construction on the back lot.
 - c. The access way deed must be recorded in the York County Registry of Deeds at the time the back lot is first deeded out as a separate parcel.
 - d. Creation of the access way to serve the back lots cannot create a non-conforming front lot by reducing such lot's required street frontage below the minimum required in the zoning district or reduce the frontage of a front lot which is already below the minimum required in the zoning district. The land over which the access way is placed shall not be counted toward meeting street frontage requirements for the front lot.

(b) *Frontage equivalent for back lots created after June 14, 2005.* All new back lots must have at least one lot line which equals or exceeds the minimum street frontage requirement for the zoning district in which the lot is located. Such lot line may be any of the following, at the option of the landowner:

- (1) The lot line abutting the access way.

- (2) For first generation back lots, the lot line separating the back lot from the abutting front lot(s).
 - (3) For second generation back lots and later generation back lots, the lot line separating the back lot from the abutting back lot(s) nearest to the first generation back lot.
- (c) *Access way for more than two back lots created after June 14, 2005 considered a street.*
- (1) If more than two new back lots will utilize an access way, the access way shall be considered a street and be subject to the requirements of the streets and sidewalks ordinance, chapter 37 as follows:
 - a. The street may be a private street or it may be submitted to the town for acceptance as a public street. In either case, the street must meet all the requirements for a minor street as defined in chapter 37.
 - b. At the option of the owner, a back lot may retain its status as a back lot or it may be treated as a front lot if it has sufficient frontage on the new street as required for the zoning district in which it is located.
 - c. Any back lot landowner who creates later generation back lots such that the total number of back lots utilizing the original access way exceeds two is responsible for the cost of upgrading the original access way to the minimum requirements for a minor street as defined in chapter 37.
 - d. An access way serving more than two back lots must be provided with a cul-de-sac turnaround at the end of the street as specified in chapter 37.
- (d) *Exceptions for first and second generation back lots created after June 14, 2005 when further development is not possible.* Where one or two new back lots are created and neither the back lot(s) nor any remaining land from which the back lot(s) were divided can be further divided due to the creation of a legally enforceable deed restriction, a conservation easement, or the physical configuration of the land, the following exception shall apply:
- a. The access way shall be at least 30 feet in width with a traveled way that is graveled, or paved, and at least 15 feet wide.
- (e) *Treatment of existing legally non-conforming back lots and/or legally non-conforming access ways created prior to June 14, 2005.*
- (1) Existing non-conforming back lots of record, accessible only by an existing non-conforming access way, may be built upon only if the following conditions are met:
 - a. The access way is at least 30 feet in width with a traveled way that is graveled, or paved and at least 15 feet wide. The owners or residents of the back lots shall maintain access ways for existing back lots of record.
 - b. The right of the back lot(s) to use the access way must be legally enforceable and must appear in a deed recorded in the York County Registry of Deeds.

- c. A copy of the deed, including a legal description of the access way shall be attached to any building permit application for construction on the back lot. If the deed description is not by metes and bounds, a separate metes and bounds description shall also be attached.
- d. One or two new back lots may be created from an existing non-conforming back lot and built upon provided that the portions of the access way that cross over or adjoin the existing legally non-conforming back lot(s) are at least 30 feet in width with a traveled way that is graveled, or paved and at least 15 feet wide. If more than two additional back lots are proposed to be created from an existing non-conforming back lot then the whole length of the access way to the legally non-conforming back lot must be upgraded to a 50-foot access way to the nearest qualifying street.
- (f) *Lot size (All back lots).* In order to obtain a building permit, any back lot shall have an area equal to or greater than the minimum lot size required for the zoning district in which it is located, unless it is a legally non-conforming lot of record. The computation of minimum lot size area shall not include any portion of the lot devoted to the access way.
- (g) *Additional requirements for all back lots:*
 - (1) Back lot street numbering shall conform to the requirements of expanded 911.
 - (2) All other dimensional requirements shall apply to back lots.
 - (3) When an access way serves more than two back lots, the front lot shall use the access way as its driveway entrance if either (i) the access way is an easement or (ii) the street frontage of the front lot is located on a road functionally classified as an arterial or collector as defined in chapter 37, Streets and Sidewalks.
 - (4) The issuance of building permits for back lots shall not imply the acceptance of any access ways to back lots for purposes of maintenance, improvements, snow removal, or other support by the Town of Eliot.
 - (5) The distance between the closed end of a dead-end access way and the nearest nondead-end street shall not exceed 1,000 feet. That distance shall be measured using the dimensions of the access way, beginning at the outermost edge of the closed end and following centerlines to the nearest sideline (or extended sideline) of the nondead-end street, including any intervening streets or portions of streets that must be traversed to reach the nondead-end street.

(T.M. of 6-14-05)

Sec. 45-467. Open space developments.

A. *Purpose.* The purpose of these provisions is to encourage the preservation of the rural character of Eliot by preserving undeveloped land, including farmland, forest land, wildlife habitats, and other undeveloped lands. This is done by allowing an innovative type of development which permits homes to be built on lots which are smaller than normally allowed,

but requires undeveloped land to be preserved. open space development standards of this section shall be mandated in those parts of Eliot identified by the 2009 Comprehensive Plan and 2010 Open Space Plan, as high in conservation values, but shall be utilized at the discretion of the applicant elsewhere. The overall density of an open space development is no greater than a conventional subdivision development. In an open space development streets and utility lines are usually shorter, thus allowing development at a lower construction cost initially and lower maintenance costs in the future.

B. *Mandatory open space developments in the critical rural overlay.* The adoption of this section shall establish a critical rural overlay on the official Eliot Zoning Map. Upon adoption of this section, all subdivision projects, located in the critical rural overlay, as designated in the Future Land Use Map of the Eliot Comprehensive Plan, adopted in 2009, which involve five lots or more within any ten-year period, shall be designed as open space subdivisions. All other subdivision projects may be designed as open space developments at the discretion of the applicant.

C. *Application procedure.* In order for the applicant and the planning board to determine that the proposed open space development will not allow more dwelling units than a conventional development the applicant must either:

- (1) Submit two plans for the proposed development, one layout as a conventional development and the second as an open space development. Each lot in the conventional development must meet the minimum lot size and lot width requirements of section 45-405, have an area suitable for subsurface wastewater disposal according to the State of Maine Subsurface Wastewater Disposal Rules, and must exclude land which is undevelopable according to chapter 44. The number of lots in the open space development may in no case exceed the number of lots in the conventional development; or
- (2) Calculate the allowable number of lots by dividing the net residential acreage of the parcel of land by the minimum lot size of the district in which the development is located. The net residential acreage is calculated by taking the total area of the lot and subtracting, in order, the following:
 - (a) Fifteen percent of the area of the parcel to account for roads and parking.
 - (b) Portions of the lot which, because of existing land uses or lack of access, are isolated and undevelopable for building purposes or for use in common with the remainder of the lot, as determined by the planning board.
 - (c) Portions of the lot shown to be in the floodway as designated in the flood boundary and floodway map prepared by the Federal Emergency Management Agency.
 - (d) Portions of the lot which are unsuitable for development in their natural state due to topographical, drainage, or subsoil conditions such as, but not limited to:
 - [1] Slopes greater than 20 percent.
 - [2] Organic soils.

- [3] Wetland soils.
- [4] Fifty percent of the poorly drained soils.
- (e) Portions of the parcel subject to a right-of-way.
- (f) Portions of the parcel located in the resource protection district.
- (g) Portions of the parcel covered by surface waters.
- (h) Portions of the parcel utilized for stormwater management facilities.

D. Basic requirements for open space developments.

- (1) Open space developments must meet all requirements for a subdivision, the street acceptance requirements, and all other applicable town ordinances, including the applicable performance standards of this chapter and chapters 33, 37 and 41.
- (2) Each building must be an element of an overall plan for site development. The developer must specify the placement of buildings and the treatment of spaces, paths, roads, utility service, and parking, and in so doing must take into consideration all requirements of this section and of other relevant sections of this chapter and chapters 33, 37 and 41.
- (3) A high-intensity soil survey must be submitted. No building may be constructed on soil classified as being very poorly drained.
- (4) Except for in-ground homes, no building may be located or constructed on slopes steeper than 15 percent.
- (5) No building may be located or constructed within 100 feet of any water body or wetland.
- (6) No lot (or area of occupation, in the case of a condominium project) may be smaller in area than 20,000 square feet.
- (7) The total area of undeveloped land within the development must equal or exceed the sum of the areas by which any building lots are reduced below the minimum lot area normally required in the district.
- (8) The minimum area of the undeveloped common land, outside of lots or areas reserved for housing, and outside of roads, shall be equal to at least 50 percent of the net residential acreage, as defined and calculated above.
- (9) The setback standards of the district in which the buildings are located apply.
- (10) No individual lot or dwelling unit may have direct vehicular access onto a public road existing at the time of development.
- (11) Shore frontage may not be reduced below the minimum normally required in the shoreland district.
- (12) Where an open space development abuts a body of water, a usable portion of the shoreline, as well as access to it, must be a part of the undeveloped land.

- (13) Buildings must be oriented with respect to scenic vistas, natural landscape features, topography, solar energy, and natural drainage areas, in accordance with an overall plan for site development.
- (14) The applicant must demonstrate the availability of water adequate for domestic purposes as well as for fire safety. The planning board may require the construction of storage ponds and dry hydrants. The location of all wells must be shown on the plan.
- (15) The location of subsurface wastewater disposal systems and an equivalent reserve area for replacement systems must be shown on the plan. The reserve areas must be restricted so as not to be built upon. The report of a licensed site evaluator must accompany the plan. If the subsurface disposal system is an engineered system, approval from the department of human services, division of health engineering, must be obtained prior to planning board approval.
- (16) Utilities must be installed underground wherever possible. Transformer boxes, pumping stations, and meters must be located so as not to be unsightly or hazardous to the public.

E. Dedication and maintenance of the undeveloped land and any common facilities.

- (1) The undeveloped land is that area which is not included in the residential lots, which equals at least the total area by which all of the lots in the open space development are reduced below the normal minimum lot size in the district. There may be no further subdivision of the undeveloped land. This undeveloped land may be used only for agriculture, forestry, conservation, or noncommercial recreation. However, easements for public utilities, or structures accessory to noncommercial recreation, agriculture, or conservation, may be approved by the planning board.
- (2) The undeveloped land must be shown on the development plan and with appropriate notation on the face thereof to indicate:
 - (a) That the undeveloped land may not be used for future building lots; and
 - (b) The final disposition of the undeveloped land, which may be:
 - [1] Dedicated to the town for acceptance;
 - [2] Deeded to a land trust;
 - [3] Retained by the applicant; or
 - [4] Reserved for ownership by a homeowners' association made up of the owners of the lots in the open space development.
 - (c) If any or all of the undeveloped land is to be reserved for use by the residents as in subsection E.(2)(b)[4] above:
 - [1] A homeowners' association must be formed and the bylaws of the homeowners' association must specify maintenance responsibilities. The bylaws must be submitted to the planning board for its approval prior to approval of the development plan.

- [2] Covenants for mandatory membership in the association, setting forth the owners' rights and interest and privileges in the association and the undeveloped land, must be reviewed by the planning board and included in the deed for each lot.
 - [3] The homeowners' association has the responsibility of maintaining the undeveloped land and any common facilities until accepted by the town.
 - [4] The association must levy annual charges against all property owners to defray the expenses connected with the maintenance of the undeveloped land, other common and recreational facilities, and town assessments.
 - [5] The developer must maintain control of the undeveloped land and be responsible for its maintenance until development sufficient to support the association has taken place. Such determination is made by the planning board upon request of the homeowners' association or the developer.
- (d) If the undeveloped land is retained by the applicant, as in subsection E.(2)(b)[3] above:
- [1] The land may only be used for active agriculture or active forestry. The conditions of this use must be approved by the planning board and indicated on the development plan.
 - [2] The development rights of the undeveloped land must be deeded to either the town or other entity approved by the planning board and may not be deeded back to the owner of the undeveloped land.
 - [3] An area suitable for the noncommercial recreational use of the owners of the lots in the open space development must be reserved. This area must be either dedicated to the town or reserved for a homeowners' association as in subsection E.(2)(b)[4] above. This area must be equal in size to 2,500 square feet per lot in the open space development.
- (e) If the undeveloped land is deeded to a land trust as in subsection E.(2)(b)[2] above, the planning board must approve the land trust and the conditions of the deed.
- (f) If the undeveloped land is dedicated to the town as in subsection E.(2)(b)[1] above, the planning board, in consultation with the conservation commission, must approve the language of the dedication and the uses allowed in the undeveloped land.

F. Buffering.

- (1) That portion of the open space development which abuts a street not in the open space development and along the exterior boundaries of the open space development must be designed as a continuous landscaped buffer area not less than 50 feet in width. This buffer area may contain no structures or streets other than the streets providing access to the open space development. The first 25 feet of the buffer strip, as measured from the exterior boundaries of the development, must contain natural vegetation.

- (2) Along those boundaries of the open space development abutting either an agriculture, timber harvesting, or earth removal (>100 cubic yards) use, as listed in the land use table in section 45-290 of this ordinance, the continuous landscaped buffer shall be not less than 150 feet in width. This buffer area may contain no structures or streets other than the streets providing access to the open space development. The first 25 feet of the buffer strip, as measured from the exterior boundaries of the development, must contain natural vegetation.

(T.M. of 6-18-2011(7))

Secs. 45-468—45-485. Reserved.

ARTICLE X. OFFSTREET PARKING AND LOADING*

Sec. 45-486. Scope.

The standards in this article shall apply to all new uses or establishments which expand or increase their volume or intensity of usage. They shall also apply to all new or expanded offstreet parking facilities.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 333.1.1))

Sec. 45-487. Permitted parking as an accessory use.

As used in this article, parking is an accessory use. Parking is permitted in the front, rear and side of the premises, so long as it does not violate setback requirements for front, rear or side yards.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 333.1.2))

Sec. 45-488. Area, maneuvering room for parking spaces.

An area of 180 square feet shall be considered sufficient for each automobile parking space, excluding room for maneuvering and turning. Parking areas with more than two parking spaces shall be so arranged that it is unnecessary for vehicles to back into the street.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 333.1.3))

Sec. 45-489. Entrances; exits.

No offstreet parking area shall have more than one entrance and exit onto the same street, each lane to be 15 to 20 feet in width. This width requirement shall not apply to parcels for single-family or two-family dwellings.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 333.1.4))

***Cross reference**—Site plan requirements for commercial and industrial parking and loading areas, § 33-179.

Sec. 45-490. Proximity to principal building or facility.

Required offstreet parking for all land uses shall be located on the same lot as the principal building or facility or within 100 feet measured along lines of access.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 333.1.5))

Sec. 45-491. Prohibited within front setback; exception.

No offstreet parking or loading shall be permitted within the front setback adjoining a public street, except as provided in subsection 45-456.1(i).

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 333.1.6); T.M. of 6-14-05)

Sec. 45-492. Joint use.

The planning board may approve the joint use of a parking facility by two or more principal buildings or uses where it is clearly demonstrated that the parking facility would substantially meet the intent of the requirements by reasons of variation in the probable time of maximum use by patrons or employees of such establishments.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 333.1.7))

Sec. 45-493. Time limit for providing; construction by town.

Parking spaces shall be provided as required and made available for use before the final inspection is completed by the code enforcement officer. An extension of one year's time may be granted by the code enforcement officer provided a performance bond or its equivalent is posted equaling the cost to complete the improvements estimated by the code enforcement officer, and provided the parking space is not required for immediate use. If the improvements are not completed within the specified time, the bond or its equivalent shall be forfeited and the improvements thenceforth constructed under the direction of the town.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 333.1.8))

Sec. 45-494. Loading.

Loading facilities shall be located entirely on the same lot as the building or use to be served so that trucks, trailers, and containers shall not be located for loading or storage upon any town way. Specific loading requirements are listed below. The following minimum offstreet loading bays or berths shall be provided and maintained in the case of new construction, alterations, and changes of use:

- (1) Office buildings, hotels and motels with a gross floor area of more than 100,000 square feet require one bay.

- (2) Retail, wholesale, warehouse and industrial operations with a gross floor area of more than 2,000 square feet require the following:

a.	2,000 to 5,000 sq. ft.....	1 bay
b.	5,001 to 40,000 sq. ft.....	2 bays
c.	40,001 to 100,000 sq. ft.....	3 bays
d.	100,001 to 160,000 sq. ft.....	4 bays
e.	160,001 to 240,000 sq. ft.....	5 bays
f.	240,001 to 320,000 sq. ft.....	6 bays
g.	320,001 to 400,000 sq. ft.....	7 bays

- (3) Each 90,000 square feet over 400,000 square feet requires one additional bay.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 333.2))

Sec. 45-495. Schedule of minimum required offstreet parking spaces.

<i>Use</i>	<i>Standards</i>
(1) Dwelling units	alternately, 2 for the first unit, 3 for the second unit, 2 for the third unit, and so on
(2) Lodging business and motels	1 space for each sleeping room and for each person anticipated to be employed on the largest shift
(3) Home occupation	1 for each employee and customer up to 10 maximum, not counting residential use
(4) Camper park	1 space per site
(5) Takeout restaurant	minimum 25 parking spaces plus 1 space for each 50 square feet (or fraction thereof) of floor space in excess of 900 square feet, and 1 space for every exterior table
(6) Other restaurants or places serving food	1 space for each 3 seats, permanent or otherwise
(7) Wholesale or retail sales, or service establishment	1 space for each 150 square feet of retail floor area
(8) Automobile, truck and tractor repair and filling stations	1 parking space for each regular employee plus 1 space for each 50 square feet of floor area used for service work

<i>Use</i>	<i>Standards</i>
(9) Public building and professional offices (excluding medical and dental offices), nonprofit medical marijuana dispensaries	1 parking space for each 200 square feet, or major fraction thereof, of floor area exclusive of bulk storage areas
(10) Medical and dental offices	7 parking spaces for each physician, dentist or other medical practitioner
(11) Commercial and industrial uses not specifically enumerated	1 space for each person employed or anticipated to be employed on the largest shift
(12) Schools	Day nursery—2 parking spaces for each nursery room plus 1 space for each adult instructor Elementary and junior high schools—1 parking space for each adult employee plus 15 parking spaces for each 100 students, or major fraction thereof, of total enrollment
(13) Theaters, auditoriums, churches, arenas, and libraries	1 parking space for every 4 seats, or for every 100 square feet of assemblage space if no fixed seats
(14) Hospital, sanitariums or nursing homes	1 space for each 500 square feet (or major fraction thereof) of floor area, exclusive of basement
(15) Adequate spaces shall be provided to accommodate customers, patrons, and employees for permitted uses not listed above	

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 333.3); T.M. of 6-18-2011(6))

Secs. 45-496—45-525. Reserved.

ARTICLE XI. SIGNS

Sec. 45-526. Definitions.

(See section 1-2).

Editor's note—A Town Meeting held on Nov. 6, 2001, art. 4, revised § 45-526, which pertained to definitions. See the Code Comparative Table at the end of this Code for complete derivation. Former provisions of this section can now be found in § 1-2 of this Code.

Sec. 45-527. Sign area.

The aggregate area of all signs upon a lot or premises, except where otherwise provided in this article, shall not exceed the maximum area permitted in that district.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 335.2))

Sec. 45-528. Measurements.

(a) Sign measurements shall be based upon the entire area within a single continuous perimeter enclosing the extreme limits of the actual sign surface. It does not include any structural elements outside the limits of such perimeter which do not form an integral part of the display. In determining the area of a wall sign, the aggregate area of all characters shall be credited toward allowable sign area at one-half the measurement.

(b) Where a sign has two or more faces, the area of all faces shall be included in determining the area of the sign, except that where two such faces are placed back to back and are at no point more than two feet from one another, the area of the sign shall be taken as the area of one face if the two faces are of equal area, or as the area of the larger face if the two faces are of unequal area.

(c) In a commercial or industrial establishment under separate ownership on one parcel within the commercial/industrial district, a common freestanding structure shall be permitted adjacent to a town way or interior street, provided that such sign:

- (1) Identifies establishments located within the parcel;
- (2) Does not exceed one sign per use;
- (3) Does not exceed ten square feet per sign in area;
- (4) Does not exceed 100 square feet in size.

(d) On any parcel containing two or more commercial or industrial establishments, each establishment may have one wall-mounted identification sign not exceeding 50 square feet in size. The sign may be placed on the exterior of the building housing the establishment. Signs which are placed inside store windows shall be exempt from the maximum allowable area requirement and do not require a sign permit.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 335.3))

Sec. 45-529. Message.

Signs shall identify or advertise only a use or activity conducted on the lot in which they are placed, unless the appeals board, upon request, makes a determination that an offsite sign

conforming to those district regulations in which the sign is located is necessary to protect the interests of a use not occupying the same lot. Written authorization for such signs shall be required from the landowner of the lot in question.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 335.4))

Sec. 45-530. Illumination.

(a) The color or format of any sign shall not resemble or conflict with traffic signs or signals. Signs with flashing lights or moving parts shall be prohibited, and gas-filled light tubes shall be allowed only when used for indirect illumination and when placed in such a manner that light tubes are not exposed to public view. Illumination of signs shall be designed and conducted in such a manner as to reflect light away from residential properties and motorists' vision.

(b) Neon or tubular gas-filled signs shall be permitted in the commercial-industrial zone; provided they are located at least 200 feet from any existing residential use or are effectively screened from view of any existing residential use located less than 200 feet from such signs by trees, shrubs, fences, walls, berms or any combination thereof.

(c) Direct or indirect illuminated signs shall not be illuminated between the hours of 11:00 p.m. and 7:00 a.m. unless the appeals board, by variance, makes a determination that the nature of the businesses or services offered require that the sign be illuminated.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 335.5))

Sec. 45-531. Structural characteristics.

The following limitations shall apply to freestanding, projecting, parallel and wall signs:

- (1) Freestanding signs shall not exceed 20 feet in height.
- (2) Projecting signs shall not be higher than the eave line or parapet wall of the principal building and shall have a minimum clearance of eight feet above grade when located and adjacent to or projecting over a pedestrian way. Projecting signs shall not extend horizontally in excess of four feet from the building wall, except where such sign is an integral part of an approved canopy or awning.
- (3) Wall signs and parallel signs shall not be higher than the eave line or parapet wall of the principal building. No part of a wall sign, including cutout letters, shall project more than six inches from the building wall. No part of a parallel sign, including the display surface, shall project more than 12 inches from the building wall.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 335.6))

Sec. 45-532. Placement.

(a) Signs of a political or promotional nature shall be permitted, provided they do not exceed three square feet in area, and are not to be in place in excess of 90 days prior to the intended use or activity. Such signs shall be removed no later than eight days after the completion of the function for which they were intended.

(b) A sign and structure shall not be attached or placed closer than eight feet to a utility pole or structure which supports wires or cables. The owner of the utility pole or structures shall be exempt from this subsection.

(c) Temporary construction signs shall be permitted provided they are removed upon completion of the use or activity involved. Construction signs which also advertise buildings or space for sale or lease shall be removed no later than 12 months after completion unless an extension of time is granted by the planning board.

(d) Directional signs which are freestanding or projecting nonilluminated, conform to a standardized design, and do not exceed six inches by 30 inches in dimension may be erected in any district without a required permit.

(e) Residential identification signs which are freestanding, projecting, or wall signs may be erected on the same lot with any single-family dwelling. Such signs shall not exceed three square feet, shall not exceed two signs per premises, and shall not require a permit.

(f) Signs not exceeding two square feet in area and relating to trespassing and hunting shall be permitted in all districts and shall not require a permit.

(g) Sale or rental signs which are nonilluminated or wall signs shall be permitted in any district if not exceeding six square feet in area.

(h) A sign shall not be located nearer than eight feet from the right-of-way boundary or nearer than eight feet from the edge of the travelled way and 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 of, or be confused with any authorized traffic sign, signal, or device or otherwise constitute a hazard to pedestrian or vehicular traffic. All such signs shall be erected in accordance with the provisions of 23 M.R.S.A. ch. 21, pertaining to outdoor advertising.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 335.7))

Sec. 45-533. Discontinued or nonconforming signs.

(a) It is unlawful to maintain any sign for more than 30 days which has become obsolete because of the discontinuance of the business, service, or utility which it advertises; because of the removal of the activity from the location to which the sign directs; or for any other reason. The fact that an obsolete sign is nonconforming shall not be construed as modifying any of the requirements of this article.

(b) Nonconforming signs which were in existence at the time of the adoption or applicable amendment of this article shall be permitted to remain.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 335.8))

Sec. 45-534. Road signs.

All roads shall bear appropriate signs installed by the person proposing or requesting acceptance of the same by the town. The signs shall comply with all applicable local and state ordinances, statutes and regulations. The road commissioner or code enforcement officer shall approve the location and size of each sign so erected. The applicant shall bear all costs of providing and installing such sign and any related fees for the same.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 335.9))

CODE COMPARATIVE TABLE

ORDINANCES

This is a chronological listing of the town meetings in which the ordinance was adopted and, if applicable, the article of the agenda for the meeting of the town used in this Code. Repealed or superseded laws at the time of the codification and any omitted materials are not reflected in this table.

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3-24-73 art. 58	(§ 3)	21-2
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3-21-81 art. 36		45-420
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		33-63—33-67
		33-81, 33-82
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		33-126—33-131
		33-151—33-153
		33-171—33-183
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		41-91—41-94
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ELIOT CODE

Town Meeting Date and Agenda Article Number	Section	Section this Code
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		41-171—41-184
		41-211—41-224
		41-252—41-256
		41-276—41-287
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		45-47—45-50
		45-101
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