

CITY OF ELLSWORTH
PROPOSED HOUSEKEEPING AMENDMENTS
TO THE CITY CODE

Administrative Draft

PREPARED FOR JOINT CITY COUNCIL AND PLANNING BOARD WORKSHOP
FEBRUARY 2, 2026

NOTE: THIS IS A WORKING DRAFT. IT DOES NOT REPRESENT
THE POSITION OF THE CITY COUNCIL OR PLANNING BOARD.

Part 1. Chapter 1 of the City Code is proposed to be repealed in its entirety and replaced with the proposed Chapter 1 (General Provisions), attached hereto.

Code of Ordinances, City of Ellsworth

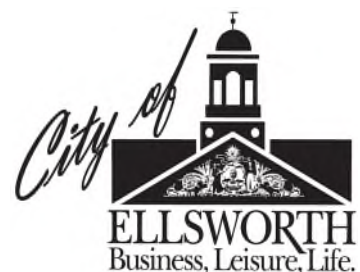
CHAPTER 1

GENERAL PROVISIONS

A true copy, attest:

Heidi-Noël Grindle
City Clerk

HISTORICAL NOTE: REPEALED AND REPLACED MARCH 18, 2013; AMENDED NOVEMBER 18, 2013; AMENDED APRIL 16, 2018; REPEALED AND REPLACED (ARTICLE 1, SECTION 5) MAY 21, 2018; AMENDED NOVEMBER 8, 2019; AMENDED DECEMBER 16, 2019; AMENDED APRIL 20, 2020; REPEALED AND REPLACED ***, 2026.



CHAPTER 1

GENERAL PROVISIONS

ARTICLE 1 THE CITY SEAL

101 THE CITY SEAL

101.1 The design set forth below is the device of the City Seal, and the inscription shall be as follows:

“CITY OF ELLSWORTH, STATE OF MAINE, 1869”



City Seal

101.2 A person may not use or display an imitation, likeness, imprint, representation, facsimile or copy of a seal of a municipality except by written permission of the municipality from the City Clerk.

STATE LAW REFERENCE—30-A M.R.S.A. § 2002 (MUNICIPALITY AS BODY CORPORATE); 30-A M.R.S.A. § 2006 (MISUSE OF MUNICIPAL SEAL).

ARTICLE 2 ADMINISTRATION

201 HOW IS THE CITY CODE DESIGNATED AND CITED?

201.1 City Code. The ordinances contained in the following chapters, articles, and sections constitute and are designated the “Code of Ordinances, City of Ellsworth” and may be cited as the “Code of Ordinances, City of Ellsworth,” the “Ellsworth City Code,” or the “City Code.”

201.2 Exclusions from City Code. The cover sheets, tables of contents, pagination, headers and footers, state law references, and historical notes contained throughout the City Code are included for convenience, have no legal effect, and may be altered by the City at any time.

201.3 UDO. Taken together, the provisions in Chapter 56 and the accompanying Official Land Use Map may be cited as the “Unified Development Ordinance, City of Ellsworth,” the “Unified Development Ordinance,” or the “UDO.”

201.4 Zoning Chapter. Taken together, the provisions in Chapter 33 (Floodplain Management) and Chapter 56, Articles 3 and 4, and the accompanying Official Land Use Map, may be cited as the “Zoning Chapter of the City Code” or the “Zoning Chapter.”

STATE LAW REFERENCE—30-A M.R.S.A. § 3004 (CODIFICATION AUTHORITY).

202 WHAT ACRONYMS ARE USED IN THE CITY CODE?

CEO	Code Enforcement Officer
DACF	Maine Department of Agriculture, Conservation and Forestry, and any successor state department or agency
DECD	Maine Department of Economic and Community Development
DEP	Maine Department of Environmental Protection, and any successor state department or agency
DHHS	Maine Department of Health and Human Services, and any successor state department or agency
MaineDOT	Maine Department of Transportation, and any successor state department or agency
MHPC	Maine Historic Preservation Commission
MUBEC	Maine Uniform Building and Energy Code, as adopted by the Maine Technical Building Codes and Standards Board pursuant to 10 M.R.S.A. § 9721, <i>et seq.</i>
FEMA	Federal Emergency Management Agency
LPI	Local Plumbing Inspector
MDIFW	Maine Department of Inland Fisheries and Wildlife, and any successor state department or agency
M.R.S.A.	The latest edition of the Maine Revised Statutes Annotated
NFPA	National Fire Protection Association
NRPA	The Natural Resources Protection Act, codified at 38 M.R.S.A. § 480-A <i>et seq.</i>
OCF	Maine Department of Administrative and Financial Services, Office of Cannabis Policy, and any successor state department or agency
UDO	The Unified Development Ordinance, City of Ellsworth, codified at Chapter 56, including the accompanying Official Land Use Map

203 HOW IS THE CITY CODE INTERPRETED?

203.1 Liberal Construction. All provisions of the City Code must be liberally construed to protect and preserve the health, safety, and welfare of the inhabitants of the City. “Liberally construed” means that if there is ambiguity with respect to the meaning of any of its provisions, the City Code must be broadly applied to effect its purposes rather than restrictively or technically applied according to its strict terms.

203.2 Rules of Construction. In construing the City Code, the following rules apply unless (i) such construction is inconsistent with the plain meaning of the affected provision of the City Code and the context clearly otherwise requires, or (ii) a definition is provided in the City Code:

1. **Administrator.** “Administrator” or “City Administrator” means the board, committee, official, or officer of the City responsible for administering the

provisions of the City Code, including reviewing and acting on applications for permits, licenses, or other approvals required by the City Code.

2. **Appellate Authority.** “Appellate Authority” means the board, committee, official, or officer of the City authorized to hear administrative appeals from any decision or failure to act of a City administrator or municipal board, officer, or official in the administration or enforcement of the City Code.
3. **Applicant.** “Applicant” means a person with sufficient right, title, or interest to submit an application for a permit or approval to a City administrator pursuant to the City Code, and includes any duly authorized designee or agent of the applicant.
4. **City.** “City,” “Ellsworth,” or “City of Ellsworth” means the City of Ellsworth, Maine, an incorporated municipality in the County of Hancock, State of Maine, and its municipal boards, officials, and officers.
5. **City Charter.** “Charter” or “City Charter” means the Charter of the City of Ellsworth and any amendments to it.
6. **City Code.** “Code” or “City Code” means the Ellsworth City Code and any amendments to it.
7. **City Council, Municipal Officers.** “Municipal Officers” or “City Council” means the duly elected Councilors of the City of Ellsworth.
8. **Computation of Time.** Whenever a notice is required to be given or an act to be done a certain length of time before any proceeding, the day on which such notice is given or such act is done is not counted in computing the time, but the day on which such proceeding is to be held is counted.
9. **Corporate or City Limits.** Reference to the corporate limits, City limits, territory, or geographic boundaries of the City, or the like, means the legal boundaries of the City of Ellsworth, Maine.
10. **Cross-References, References to Chapters, Articles, or Sections.** All references to chapters, articles, or sections are to the chapters, articles, or sections of the City Code, unless otherwise specified. Any chapters, articles, sections, or tables in the City Code that are not cross-referenced or are mis-referenced but that reasonably should be considered to be cross-referenced must be read to be cross-referenced.
11. **Delegation of Authority.** Whenever a provision of the City Code requires an official or officer of the City to do some act or perform some duty, reference to the official or officer authorizes the official or officer to designate, delegate, and authorize subordinates or deputies to perform the required act or duty, unless the provision specifies otherwise.
12. **Enforcement Authority.** “Enforcement Authority” means the official or officer of the City responsible for enforcing the provisions of the City Code. Unless otherwise expressly provided, the CEO is the enforcement authority.
13. **Including.** “Including” means “including, but not limited to.”
14. **Inhabitant, Resident.** “Inhabitant” or “resident” means a person having an established residence in the City.

15. **Oath.** “Oath” includes an affirmation, when affirmation is allowed. Affirmation is allowed when a person required to be sworn is conscientiously scrupulous of taking an oath.
16. **Or, And.** “Or” may be read “and,” and the word “and” may be read “or,” as the context dictates.
17. **Owner, Landowner, Property Owner.** “Owner,” “landowner,” or “property owner,” applied to a building, structure, or land, includes any part owner, joint owner, tenant in common, tenant in partnership, or joint tenant of the whole or of a part of the building, structure, or land.
18. **Person.** “Person” means any individual, firm, partnership, corporation, company, association, club, joint venture, estate, trust, governmental entity, municipality, quasi-municipal entity, other legal entity, or any group or combination acting as a unit and the individuals constituting the group or unit.
19. **Plural, Singular Numbers.** A word importing the singular number only includes the plural, and the plural number includes the singular.
20. **Professional Consultants.** All references to professional consultants, including arborists, engineers, foresters, geologists, hydrogeologists, land surveyors, and soil scientists, mean professionals that are licensed or registered by the Maine Office of Professional and Occupation Regulation and its licensing boards and programs in accordance with applicable Maine laws and rules.
21. **References to Maine Statutes and Rules.** References to Maine statutes and state department or agency rules include any amendments and successor provisions to them.
22. **Shall, Must, Will, May Not, May.** “Shall” and “must” and “will” and “may not” are mandatory and not discretionary. “May” is permissive.
23. **State.** “The state” or “this state” mean the State of Maine.
24. **Technical Words.** Unless specifically defined in the City Code, words and phrases must be construed according to their customary dictionary meanings, except that technical words and phrases that have acquired a peculiar meaning in law must be construed according to such meaning.
25. **Text Controls.** If there is any difference of meaning or implication between the text of the City Code and any figure or illustration, the text controls.

STATE LAW REFERENCE—FOR SIMILAR PROVISIONS, SEE 1 M.R.S.A. § 72 (RULES OF CONSTRUCTION; WORDS AND PHRASES).

204 WHAT ARE THE PURPOSES OF THE CITY CODE?

204.1 General Purposes. The general purposes of the City Code are to:

1. Promote and protect the health, safety, and general welfare of residents of and visitors to the City.
2. Ensure that commercial activities, including business activities, operate in the City with the highest professional and ethical standards.
3. Encourage the most appropriate use of land.

4. Promote traffic safety.
5. Preserve access to adequate light, air, water, and land.
6. Conserve natural resources and open space.
7. Protect archaeological, historic and scenic resources.
8. Allow for the strengthening of the economic base and the enhancement of the appearance of business and commercial zoning districts throughout the City.

204.2 Specific Purposes. In addition to the general purposes of the City Code, several of its chapters and articles set forth additional specific purposes.

205 TO WHICH ACTIVITIES DOES THE CITY CODE APPLY?

205.1 Applicability, Generally. Except as provided in the City Code or state or federal law, the City Code governs all buildings, structures, lands, waters, and activities within the City, regardless of ownership.

205.3 Applicability, Specifically. In addition to the general applicability of the City Code, several of its chapters and articles set forth additional specific applicability provisions.

205.2 Exception. Notwithstanding this Section 205 or any other provision of the City Code, the City Code does not apply to forest management activities, including timber harvesting activities, as defined in 12 M.R.S.A. § 8868(5).

STATE LAW REFERENCE—38 M.R.S.A. § 438-B(2) (TIMBER HARVESTING IN SHORELAND AREAS); 06-096 C.M.R. CH. 1000 (GUIDELINES FOR MUNICIPAL SHORELAND ZONING ORDINANCES).

206 WHICH ACTIVITIES REQUIRE A CITY PERMIT, LICENSE, OR APPROVAL?

206.1 Generally. A written permit, license, or approval from the appropriate City administrator is required before undertaking any activity to which the City Code applies, unless the activity is expressly exempted from the permit, license, or approval requirements by a provision of the City Code or applicable law.

206.2 Types of Permits, Licenses, or Approvals Required. The types of permits, licenses, or approvals required are set forth in the various chapters of the City Code, and include:

1. **Boat, Aeroplane Tags.** A boat or airplane permit and tag is required before launching any watercraft or aeroplane in Branch Lake, in accordance with Chapter 55.
2. **Building Permits.** A building permit from the CEO is required before undertaking any residential or non-residential development, unless the development is expressly identified as not requiring permits or approvals in Chapter 56, Section 103.
3. **Certificates of Occupancy.** Prior to the sale, lease, or occupancy of any new building, or use of a site, the holder of a valid building permit must secure a Certificate of Occupancy from the CEO, in accordance with Chapter 56, Section 105.
4. **Electrical Installation Permits.** An electrical installation permit from the Electrical Inspector is required before installing, altering, or adding to electrical

equipment in any building, structure or premises, as required by Chapter 41 (Electrical Installation and Inspection).

5. **Flood Hazard Development Permits.** A flood hazard development permit is required from the CEO before commencing construction or other development within any areas of special flood hazard established in Chapter 33 (Floodplain Management).
6. **Historic Preservation Certificate of Appropriateness.** A certificate of appropriateness is required from the Historic Preservation Commission before making material changes to the exterior appearance of a historic landmark, site, or building; commencing construction of a principal or accessory building; demolishing or moving a historic landmark; or demolishing any building, structure, or appurtenance in any designated historic district established in Chapter 39.
7. **Municipal Officers' License.** Licenses and approvals issued by the City Council or designated City administrators pursuant to Chapter 14 are required to start and continue to operate businesses and host certain events within the City, including:
 - (a) Adult use cannabis stores
 - (b) Amusement and special amusement establishments
 - (c) Arcades
 - (d) Businesses
 - (e) Carnivals / circuses
 - (f) Closing-out sales
 - (g) Consumer fireworks retail sales
 - (h) Driveway / street openings
 - (i) Junkyards / automobile graveyards / automobile recycling businesses
 - (j) Liquor sales
 - (k) Lodging houses
 - (l) Mass gatherings
 - (m) Medical cannabis dispensaries
 - (n) Mobile vending units
 - (o) Parades
 - (p) Poles and wires in the public way
 - (q) Sewer hook-ups
 - (r) Use of streets
 - (s) Taxicabs, taxi drivers, and taxi stands
 - (t) Towing services
 - (u) Transient sellers
 - (v) Tree work
 - (w) Victualers
8. **Plumbing and Subsurface Wastewater Disposal Permits.** A plumbing permit or a subsurface wastewater disposal permit is required from the LPI before installing plumbing into a building, erecting or expanding a structure that requires a subsurface wastewater disposal system, or converting a seasonal dwelling located in the shoreland zone to a year-round or principal dwelling, as required by state law.

9. **Site Development Plan Approval.** Site development plan approval from the CEO or Planning Board pursuant to Chapter 56, Article 6 is required before undertaking certain commercial, industrial, and non-residential development projects.
10. **Subdivision Approval.** Subdivision approval from the Planning Board pursuant to Chapter 56, Article 7, is required before selling, leasing, developing, building upon, or conveying for consideration any land in a subdivision, as defined in 30-A M.R.S.A. § 4401(4), except as set forth in Chapter 56, Article 7.
11. **Tree Permit on Public Property.** A permit issued by the Tree Warden is required for any activity related to public trees and landscaping plans on public property, in accordance with Chapter 43.

206.3 Reserved.

206.4 Waivers.

1. **Waivers of Submission Requirements.** The administrator may modify or waive any of the submission requirements contained in the City Code, other than the fee as provided in Chapter 1, Article 3, if the administrator finds that: (i) due to special circumstances of the application, the proposed activity, or the premises, the information is not applicable or necessary for the administrator to determine compliance with the standards governing its review of the application and (ii) granting a waiver would not adversely affect abutting properties or the general health, safety, and welfare of the residents of the City.
2. **Waivers of Review Criteria or Performance Standards.** The administrator may waive any review criterion or performance standard, other than those contained in the Zoning Chapter of the City Code, if the administrator finds that: (i) due to special circumstances of the application, the proposed activity, or the premises, the review criterion or performance standard is not applicable or necessary to protect the public health, safety, or welfare; (ii) granting the waiver will not have the effect of nullifying or deviating from the purposes of the City Code, the Comprehensive Plan, or applicable state or federal laws; and (iii) the proposal will comply with all other applicable review criteria and standards. The administrator may condition a permit, license, or approval as the administrator deems necessary to make these findings. Nothing in this Section 206.4.2 authorizes the administrator to waive zoning requirements.
 - (a) **Findings of Fact; Notations on Plans Required—Subdivisions, Site Development Plans.** When granting a waiver of any review criteria or performance standards related to Chapter 56, Article 7 (Subdivision Review) or Chapter 56, Article 6 (Site Development Plan Review), the administrator must make written findings of fact and indicate the waivers granted and the date on which they were granted on any final plans associated with such approvals.

STATE LAW REFERENCE—30-A M.R.S.A. § 4401 (SUBDIVISIONS; DEFINITIONS); 30-A M.R.S.A. § 4215 (REGULATION AND INSPECTION OF PLUMBING; PERMITS); 10-144 C.M.R. CH. 241 (SUBSURFACE WASTEWATER DISPOSAL RULE); 30-A M.R.S.A. CH. 181, 183 (REGULATION, LICENSES AND PERMITS; ECONOMIC REGULATION).

207 WHO IS RESPONSIBLE FOR ADMINISTERING THE CITY CODE?

The following City boards, officers, and officials are responsible for administering the City Code:

207.1 City Council. Without limiting, modifying, or abrogating any of the powers and duties of the City Council as set forth in the City Charter, the City Council is responsible for:

1. The administration of all municipal affairs of the City, including the appointment of City officials, boards, and committee, as set forth in the City Charter and the City Code.
2. Reviewing and acting on proposals to amend the City Code.
3. Establishing and maintaining a fee schedule in accordance with Article 3.
4. Reviewing and acting on license and permit applications requiring City Council approval as set forth in Chapter 14 (Licenses and Permits).
5. Reviewing and acting on requests for the City to accept a private road.
6. Reviewing and acting on special exception requests pursuant to Chapter 5 (Public and Private Sewers).
7. Administering the provisions of Chapter 49 (Cable Television).
8. Upon the written application of an aggrieved person, hearing and deciding administrative appeals from the following acts or omissions in the administration of the City Code:
 - (a) A decision of an enforcement authority to suspend or revoke, in accordance with Section 509, a right, privilege, permit, license, or approval granted pursuant to the City Code.
 - (b) A decision of the Tree Warden with respect to the administration of Chapter 43 (City Trees).
 - (c) A decision of the CEO with respect to the administration of Chapter 54 (Development Fee).
 - (d) Any other act or omission of a City administrator where the City Council is expressly designated in a provision of the City Code as the appellate authority.

207.2 Animal Control Officer. The Animal Control Officer, duly appointed in accordance with 7 M.R.S.A. § 3947, is responsible for the administration of Chapter 22 (Animal Control).

207.3 Board of Appeals. The Board of Appeals, duly established and organized pursuant to 30-A M.R.S.A. § 2691 and Chapter 38, is responsible for:

1. Serving as the City's Board of Assessment Review pursuant to Chapter 30 (Department of Tax Assessment).
2. Upon the written application of an aggrieved person, hearing and deciding administrative appeals from the following acts or omissions in the administration of the City Code:
 - (a) A decision of the City administrator to deny, revoke, or suspend an amusement permit or special amusement permit, as provided in Chapter 37 (Special Amusement Permits).

- (b) A decision of the City administrator to approve or deny a permit pursuant to Chapter 33 (Floodplain Management).
 - (c) A decision of the CEO to approve or deny a building permit or minor site development plan pursuant to Chapter 56 (UDO).
- 3. Reviewing and acting on variance requests in accordance with Section 211 or Chapter 33 (Floodplain Management).
- 4. Interpreting the location of land use zoning district and shoreland zoning district boundaries upon referral from the CEO.
- 207.4 City Assessor.** The City Assessor is responsible for carrying out the duties set forth in Section 10 of the City Charter (Assessors of Taxes).
- 207.5 City Clerk.** The City Clerk is responsible for:
 - 1. Carrying out the duties and responsibilities of the office of the City Clerk, as set forth in the City Charter, the City Code, and applicable law.
 - 2. Processing, reviewing, and acting on certain license applications, as provided in Chapter 14.
- 207.6 City Highway Foreman.** The City Highway Foreman is responsible for reviewing and acting on license applications for driveway and street opening licenses in accordance with Chapter 14.
- 207.7 City Manager.** The City Manager is responsible for:
 - 1. Carrying out the duties and responsibilities of the office of the City Manager, as set forth in the City Charter, the City Code, and applicable law.
 - 2. Reviewing and acting on certain license applications, as provided in Chapter 14 (Licenses and Permits).
 - 3. Managing the Ellsworth Transfer Station in accordance with Chapter 42 (Solid Waste Management).
- 207.8 Code Enforcement Officer (CEO).** The CEO, duly established pursuant to Chapter 13 (Office of Code Enforcement) is responsible for:
 - 1. Administering and enforcing the provisions of the MUBEC pursuant to Chapter 4 (Fire Protection and Prevention Ordinance), Chapter 56, Article 2 (Building Permits), and 10 M.R.S.A. § 9724.
 - 2. Reviewing and acting on all license and permit applications requiring CEO approval as set forth in Chapter 14 (Licenses and Permits).
 - 3. In the CEO's role as the local floodplain administrator, administering the provisions of Chapter 33 (Floodplain Management), including issuing flood hazard development permits.
 - 4. Administering and enforcing the provisions of Chapter 54 (Development Fee).
 - 5. Administering and enforcing the provisions of Chapter 55 (Water Supply Protection).

6. For applications and matters that are not within the jurisdiction of the Planning Board, administering and enforcing the provisions of Chapter 56 (UDO), including reviewing and acting on (i) building permit applications; (ii) shoreland zoning applications requiring CEO approval; (iii) minor site development plan applications; (iv) development applications in the Commerce Park zoning district, and (v) certificates of occupancy.
7. Interpreting the Official Land Use Map and the location of land use zoning district and shoreland zoning district boundaries.
8. Determining whether a proposed use, or any structure associated with or devoted to such use, is allowed pursuant to Chapter 56, Article 3 (Zoning Districts) and Chapter 56, Article 4 (Shoreland Zoning).
9. Determining whether uses, structures, and lots comply with Chapter 56, Article 5 (Non-Conforming Uses).
10. Enforcing the provisions of the UDO, and any other provisions of the City Code unless otherwise expressly stated in the City Code or in state law, by inspecting premises, investigating complaints, issuing notices of violation, suspending or revoking permits or approvals, participating in legal prosecution of violations as needed, and processing or acting on consent agreements, in accordance with Section 509.
11. Interpreting the provisions of the City Code, including the meaning of terms used in the City Code, when performing the duties in the preceding subsections.

207.9 Electrical Inspector. The Electrical Inspector is responsible for administering the provisions of Chapter 41 (Electrical Installation and Inspection).

207.10 Fire Chief. The Fire Chief is responsible for:

1. Administering and enforcing the NFPA codes and standards, as set forth in Chapter 4 (Fire Protection and Prevention).
2. Reviewing site and construction plans submitted pursuant to the UDO for fire and life safety details (including occupancy type, fire department access, fire hydrant location, construction type, and general fire and life safety) to advise the administrator whether the plans meet applicable fire and life safety codes and standards.

207.11 General Assistance Administrator; Fair Hearing Authority. The General Assistance Administrator and Fair Hearing Authority are responsible for administering the provisions of Chapter 36 (General Assistance).

207.12 Harbormaster; Harbor Commission. The Harbormaster and Harbor Commission are responsible for managing the City's harbors, coastal waters, and inland waters in accordance with Chapter 3 (Harbor Management).

207.13 Historic Preservation Commission. The Historic Preservation Commission is responsible for administering the provisions of Chapter 39 (Historic Preservation), including reviewing and acting on applications to designate historic districts, historic sites, and historic landmarks in the City and applications for certificates of appropriateness.

207.14 Local Plumbing Inspector (LPI). The LPI is responsible for issuing plumbing and subsurface wastewater permits and carrying out all other responsibilities set forth in 30-A

M.R.S.A. § 4221(3) and the state rules for appointment and administration of local plumbing inspectors, codified at 10-144 C.M.R. ch. 240, § 4.

207.15 Planning Board; City Planner.

1. **Planning Board.** The Planning Board, duly established pursuant to Chapter 18, is responsible for:
 - (a) Reviewing and acting on all applications for conditional uses pursuant to Chapter 33 (Floodplain Management).
 - (a) For applications and matters that are not within the jurisdiction of the CEO, administering the provisions of Chapter 56 (UDO), including reviewing and acting on (i) shoreland zoning applications requiring Planning Board approval; (ii) major site development plan applications; and (iii) subdivision applications.
 - (b) Serving as the municipal reviewing authority for purposes of holding public hearings pursuant to 30-A M.R.S.A. § 4352 concerning proposed amendments to the City Code or the Official Land Use Map.
 - (c) Recommending to the City Council whether or not an article to amend the City Code or the Official Land Use Map should be adopted.
 - (d) Interpreting the provisions of the City Code, including the meaning of terms used in the City Code, when performing the duties in the preceding subsections.
2. **City Planner.** The City Planner serves in an advisory capacity to the Planning Board and is responsible for providing guidance to applicants whose projects require Planning Board review. All applications requiring Planning Board approval shall be made to the City Planner.

207.16 Police Chief; Police Department.

1. Any officer of the City Police Department is responsible for enforcing the provisions of Chapter 7 (Traffic Code), Chapter 15 (Dumping), Chapter 23 (Noise), Chapter 24 (Regulation of Handbills), Chapter 25 (Discharge of Firearms), Chapter 29 (Regulation of City Owned Land), Chapter 46 (Paid Sexual Contact); Chapter 47 (Smoking); Chapter 48 (Rotational Towing); and Chapter 55 (Water Supply Protection).
2. The Police Chief is responsible for reviewing and acting on any parade permit in accordance with Chapter 27 (Parades).
3. The Police Chief is responsible for administering the provisions of Chapter 48 (Rotational Towing).

207.17 Recreation Commission. The Recreation Commission is responsible for administering the provisions of Chapter 31 (Recreation Commission).

207.18 Registration Appeals Board. The Recreation Commission is responsible for administering the provisions of Chapter 51 (Registration Appeals Board).

207.19 Road Commissioner. The Road Commissioner is responsible for administering the provisions of Chapter 44 (Maintenance of Certain Public Easements).

207.20 Superintendent, Wastewater. The Wastewater Superintendent is responsible for reviewing and acting on all applications for hookups to the City sewer system and enforcing the provisions of Chapter 5 (Public and Private Sewers).

207.21 Superintendent, Water. The Water Superintendent, together with the CEO, Police Department, and Branch Lake Steward, is responsible for enforcing the provisions of Chapter 55 (Water Supply Protection).

207.22 Technical Review Team (TRT). The TRT, composed of the Police Chief, the Fire Chief, the Highway Foreman, the Water Superintendent, the Wastewater Superintendent, the CEO, and the City Planner, is responsible for providing its professional review and expert opinion with respect to applications submitted pursuant to the requirements of Chapter 56 (UDO), including the completeness of any application, the quality of any application materials submitted, and the conformity of a proposal with review standards.

207.23 Tree Warden; Arbor Commission. The Tree Warden is responsible for reviewing and acting on all applications for tree work in accordance with Chapter 14 and for administering the provisions of Chapter 43 (City Trees) in coordination with the Arbor Commission.

STATE LAW REFERENCE—30-A M.R.S.A. § 4352 (MUNICIPAL REVIEWING AUTHORITY); 30-A M.R.S.A. § 2691 (BOARD OF APPEALS); 30-A M.R.S.A. § 4221 (PLUMBING INSPECTORS).

208 WHAT ARE THE GENERAL PROCEDURES FOR ADMINISTERING PERMITS, LICENSES, AND APPROVALS UNDER THE CITY CODE?

Unless otherwise expressly provided in the City Code, the following general procedures apply to the administration of permits, licenses, and other approvals pursuant to the City Code:

208.1 Written Application. An application for a permit, license, or approval required under the City Code must be submitted in writing to the City administrator on forms provided by the City for that purpose and signed and dated by the applicant. The application must be accompanied by the application submission requirements set forth in Section 208.2. All applications shall be dated, and the City administrator shall note upon each application the date of receipt.

1. **Dated Receipt—Subdivision Applications.** When a subdivision application is received, the City Clerk must give a dated receipt to the applicant.
2. **Application Deadline.** For applications requiring a review by a board or committee of the City, applications must be delivered to the City administrator no later than 4:00 P.M., at least 27 days prior to the next regularly scheduled meeting of the City administrator. For applications requiring a review by an individual officer of the City, this application deadline shall not apply.

208.2 Application Submission Requirements; Notice to Abutters. Each application must be accompanied by:

1. The name, address, and telephone number of the applicant and the name, address, and telephone number of the property owner, if different from the applicant.
2. Application and other applicable fees, including the fees set forth in Article 3 or in any other provision of the City Code.
3. Proof that the applicant holds right, title, or interest in the affected premises, business, or enterprise and, if the applicant is not the property owner, a letter of authorization from the owner

4. Copies of any notices required by the City Code to be given by the applicant.
5. Any submission requirements specific to the type of permit, license, or approval being sought, as provided by the City Code.
6. Such other information as may be required by the administrator to determine conformance with the applicable provisions of the City Code.

When required by the City Code, the applicant must give notice of the application to abutting property owners in accordance with Section 209.

208.2 Completeness Review. Prior to starting its review of an application, the administrator must determine that the application is complete for review by finding that (i) the application is accompanied by all fees required by the City Code, as provided in Article 3; (ii) the application contains sufficient documentation of right, title, or interest; (iii) notice has been given as required by the City Code, including Section 209, and (iv) the application contains sufficient information for the administrator to begin its review. “Sufficient information” means all application materials (including documents, legal instruments, reports, and analyses) and any other information required by the City Code, unless any such submittals have been waived by the administrator in accordance with Section 206.4, as well as such other information as may be required by the administrator to determine conformance with the applicable provisions of the City Code, including City department head reviews. If the application is found incomplete, the administrator must notify the applicant and direct the applicant to submit any omitted or incomplete information within a specified period of time. If the omitted or incomplete information has not been submitted by then, the administrator may return the application as incomplete and conclude its review. If the application is found complete for review, the administrator must begin its full evaluation of the application.

1. **Time Limits—Shoreland Zoning.** Within 35 days of receiving an application for activities requiring a permit or approval within the shoreland zone, the administrator must notify the applicant in writing that the application is complete or incomplete and must specify what additional information is needed to make the application complete.

208.3 Public Hearing. When required by the City Code, the administrator shall schedule a public hearing, cause notice of the hearing to be given in accordance with Section 209, and place the matter on the next available agenda for action by the City administrator.

208.4 Written Decision; Conditions of Approval. The administrator must issue a written decision to approve, approve with conditions, or deny each application permit or approval which is deemed complete for review. The administrator shall have the authority to impose such terms and conditions as the administrator reasonably deems necessary to protect the public health, safety, and welfare and to obtain compliance with requirements of the City Code. One copy of the written decision shall be returned to the applicant; a second copy shall be retained by the City administrator; and, for building permits, a third copy shall be delivered to the City Assessor.

1. **Decision; Time Limits—Subdivision Applications.** The Planning Board must issue a written decision on a subdivision application within 30 days of a public hearing or, if no hearing is held, within 60 days of finding the application complete for review.

2. **Decision; Time Limits—Shoreland Zoning Applications.** The administrator must issue a written decision on an application for activities requiring a permit or approval within the shoreland zone within 35 days of determining that the application is complete or, if the administrator has a waiting list of applications, within 35 days after (i) the date of a public hearing on the application or (ii) the first available date on the Planning Board’s agenda if no public hearing is held.
3. **Decision; Time Limits—Building Permit Applications.** The administrator must issue a written decision within 30 days of the date of filing of a building permit application. Failure to comply with this requirement shall constitute a denial of the building permit application.

208.5 Burden of Proof. The applicant has the burden of proving, by demonstrable evidence, that an application, proposal, petition, or request complies with the requirements of the City Code.

208.6 Access to Permits, Licenses and Approvals. The permit holder must have a copy of all written permits, licenses, and approvals on site while the authorized activity is performed, except that the permit holder must post any building permit issued in a conspicuous location on the property where the authorized activity will occur, in a location clearly visible from the access road unless other means of posting are authorized by the CEO.

STATE LAW REFERENCE—30-A M.R.S.A. § 4403(3) (NOTICE OF SUBDIVISION APPLICATIONS).

209 HOW MUST NOTICE TO ABUTTING PROPERTY OWNERS AND THE PUBLIC BE GIVEN?

Whenever a provision of the City Code requires the notification of owners of abutting properties and the public of an application submission, public meeting, public hearing, site visit, or other filing or event, the following requirements apply unless otherwise specified:

209.1 Notice to Abutters.

1. The applicant must send a notice, in form acceptable to the administrator, to the City Clerk and to the property owners affected by the proposal, as follows:
 - (a) If the lot or lots affected by the application are located entirely in the Urban Core, as shown on the Official Urban Core Map, attached and made a part of the City Code as Appendix 1-B, then notice must be sent to all property owners within 250 feet of the boundary of the lot or lots affected by the application.
 - (b) If the lot or lots affected by the application are located partially or entirely outside the Urban Core, then notice must be sent to all property owners within 500 feet of the boundary of the lot or lots affected by the application.

For purposes of this Section 209.1, the “property owners” are the persons listed in the most recent version of the *City of Ellsworth Real Estate Tax Commitment Book*.

2. The notice must contain a brief description of the application, the physical location, and a sketch plan, together with the date, time, and location of any public meeting, public comment deadline, public hearing, site visit, or other event (collectively, “event”).

3. The notice must be sent, using certified mail, return receipt requested, at least seven days before the date of the event.
- 209.2 The City administrator must publish notice of the date, time, and place of any public hearing in a newspaper of general circulation in the City at least two times, the date of the first publication to be at least seven days prior to the public hearing.
- 209.3 The City administrator must give notice of the date, time, and place of any public meeting, site visit, or other public proceeding in ample time to allow public attendance and disseminated in a manner reasonably calculated to notify the general public in the City.
- 209.4 In addition, for subdivision and site development plan applications, the City must send the notice described in Section 209.1 to (i) the City Clerk and the municipal reviewing authority of any neighboring political subdivision, and (ii) the public drinking water supplier if the subdivision or site development plan is within its source water protection area.

STATE LAW REFERENCE—30-A M.R.S.A. § 4403(3) (NOTICE OF SUBDIVISION APPLICATIONS); 1 M.R.S.A § 406 (PUBLIC RECORDS AND PROCEEDINGS; PUBLIC NOTICE).

210 WHAT IS THE PROCESS FOR REQUESTING RECONSIDERATION OR APPEALING A CITY ADMINISTRATOR'S DECISION?

210.1 Reconsideration.

1. **Board of Appeals.** The Board of Appeals may reconsider any decision in accordance with the provisions of 30-A M.R.S.A. § 2691(3).
2. **Other Administrators.** Any other City administrator may reconsider any decision within 45 days of its prior decision. A request to the administrator to reconsider a decision must be filed within 10 days of the decision that is to be reconsidered. A vote to reconsider and the action taken on that reconsideration, if any, must occur and be completed within 45 days of the date of the vote on the original decision. The administrator may conduct additional public hearings and receive additional evidence and testimony. Notwithstanding Section 210.3, appeal of a reconsidered decision to the Superior Court must be made within 15 days after the decision on reconsideration.

210.2 Administrative Appeal.

1. **No Right of Administrative Appeal; Exceptions.** No City administrator has jurisdiction to hear appeals from any decision or failure to act of any other administrator or municipal board, officer, or official in the administration or enforcement of the City Code—including from any notices of violation, enforcement orders, written determinations of no violation, or any other enforcement decisions issued by the enforcement authority—except as follows:
 - (a) An aggrieved person has the right to appeal to the City Council the acts or omissions of an administrator expressly set forth in Section 207.1.
 - (b) An aggrieved person has the right to appeal to the Board of Appeals the acts or omissions of an administrator expressly set forth in Section 207.3.
2. **Administrative Appeal Procedures.** When an aggrieved person has the right to appeal an act or omission of an administrator to an appellate authority, the following appeal procedures shall apply:

- (a) *Timing.* An appeal expressly authorized by a provision of the City Code may be taken to the appellate authority by an aggrieved person within 30 days of the date of the final decision appealed from, except that the appellate authority, upon a showing of good cause, may extend the 30-day deadline.
- (b) *Making an Appeal.* Applications for appeals must be made by filing with the appellate authority a written notice of appeal which must include a concise written statement indicating what relief is requested and why the appeal should be granted. The Board of Appeals shall forthwith notify the City administrator whose decision is being appealed of the appeal.
- (c) *Administrative Record.* Upon being notified of an administrative appeal, the City administrator or City Clerk shall transmit the decision of the administrator and all materials comprising the record of the decision appealed from to the appellate authority.
- (d) *Parties to the Proceeding.* In any administrative appeal, the City administrator whose decision is being appealed shall automatically be a party to the proceeding.
- (e) *De Novo Review.* Appeals from decisions of a City administrator made without conducting a public hearing, are de novo. The appellate authority must conduct a public hearing, after notice of the hearing is given pursuant to Section 209, at which all persons have the right to present additional testimony and documentary evidence within 30 days of the appellate authority's receipt of a complete application, unless this time period is extended by the appellate authority for good cause. At the public hearing, any party has the right to cross-examine witnesses. The standard of review is whether, on the basis of the evidence before the appellate authority, the application complies with the requirements of the City Code. The burden of proof is on the applicant. The appellate authority may grant or deny a permit, license, or approval or to remand the matter to the administrator for further proceedings.
- (f) *Appellate Review.* Appeals from decisions of a City administrator made after conducting a public hearing are purely appellate. The appellate authority must conduct a public proceeding at which all persons have the right to present legal argument concerning the decision of the administrator within 30 days of the appellate authority's receipt of a complete application, unless this time period is extended by the appellate authority for good cause. The appellate authority may not permit the introduction of additional testamentary or documentary evidence. The standard of review is whether the decision of the administrator was arbitrary or capricious, based on error of law, or based on findings of fact not supported by substantial evidence in the record. The appellate authority has authority to sustain or reverse a decision of the administrator or to remand the matter to the administrator for further proceedings.
- (g) *Written Decision.* A majority of the full voting membership of the appellate authority constitutes a quorum for the purpose of deciding an appeal. The appellate authority must issue a written decision, stating the reasons and basis for its decision, directed to the appellant, within 35 days

of the close of the public hearing or public proceeding. Copies of the written decision must be given to all parties to the proceeding, the City Manager and, if the appeal concerns any activities within the shoreland zone, to the DEP within seven days of the issuance of the written decision.

- (h) *Appeal to Superior Court.* Any aggrieved person may appeal a decision of the appellate authority to the Superior Court in accordance with 30-A M.R.S.A. §§ 2691 and 4353, and Rule 80B of the Maine Rules of Civil Procedure.

210.3 Appeal to Superior Court. Except as provided in Section 210.2, an aggrieved person may appeal an act or omission of an administrator directly to the Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure.

STATE LAW REFERENCE—30-A M.R.S.A. § 2691 (BOARD OF APPEALS); 30-A M.R.S.A. § 4353 (ZONING ADJUSTMENT).

211 WHAT IS THE PROCESS FOR SEEKING A VARIANCE?

211.1 Review Procedures. The Board of Appeals hears and decides variance requests in accordance with the following review procedures:

1. **Variance Application.** A request for a variance must be submitted in writing to the Board of Appeals on forms provided by the City for that purpose and signed and dated by the applicant. Each application must be accompanied by:
 - (a) The application submission requirements set forth in Section 208.2.
 - (b) A sketch drawn to scale showing lot lines, the location of existing and proposed buildings, and other physical features such as septic systems and wells.
 - (c) A concise statement of the nature of the variance sought.
 - (d) A written statement and other evidence demonstrating that the request for a variance satisfies each of the applicable variance criteria in Section 211.2, Section 211.3, Section 211.4, or Section 211.5.
2. **Copy of Variance Application to DEP.** For any variance request within the shoreland zone, the Board of Appeals must forward a copy of the variance request, including the application and all supporting information supplied by the applicant, to the DEP Commissioner at least 20 days prior to action by the Board of Appeals. Any comments received from the DEP Commissioner prior to the action by the Board of Appeals must be made part of the record and must be considered by the Board of Appeals prior to taking action on the variance request.
3. **Completeness Review.** Prior to starting its review of variance request, the Board of Appeals must determine that the application is complete for review in accordance with Section 208.2.
4. **Notice and Public Hearing.** The Board of Appeals must hold a public hearing on each variance request within 30 days of the receipt of a complete application. Notice of the public hearing must be given in accordance with Section 209. In addition, notice of the public hearing must be given to the City administrator. Failure of any property owner to receive notice of the public hearing will not necessitate another public hearing or invalidate any action of the Board of Appeals.

5. **Written Decision.** The Board of Appeals must state the reasons and basis for its decision in writing. The Board of Appeals must cause written notice of its decision to be mailed or hand-delivered within seven days of the decision to the applicant and, when a variance is issued for property located within shoreland zone, to the DEP Commissioner.
6. **Certificate; Recording.** If the Board of Appeals grants a variance pursuant to this Section 211, a certificate indicating the name of the current property owner, identifying the property by reference to the last recorded deed in its chain of title, and indicating the fact that a variance, including any conditions on the variance, has been granted and the date of the granting, must be prepared in recordable form. This certificate must be recorded by the applicant in the Hancock County Registry of Deeds within 90 days of the date of the final written approval of the variance or the variance is void. The variance is not valid until recorded as provided in this subsection. For the purpose of this subsection, the date of the final written approval is the date stated on the written approval.
7. **Conflict with State Law.** In the event of a conflict between this Section 211 and 30-A M.R.S.A. §§ 4353(4), 4353(5), 4353-A, or 38 M.R.S.A. § 438-A(6-A), the state law provision controls.

211.2 Undue Hardship. The Board of Appeals may grant a variance if a proposed structure or use complies with all of the provisions of the City Code except for the specific provisions from which relief is sought, and only when strict application of the City Code to the applicant and the applicant's property would cause undue hardship. The term "undue hardship" as used in this Section 211.2 means:

1. The land in question cannot yield a reasonable return unless a variance is granted;
2. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
3. The granting of the variance will not alter the essential character of the locality; and
4. The hardship is not the result of action taken by the applicant or a prior owner.

Within the shoreland zone, the specific provisions from which relief is sought are limited to dimensional standards. The establishment of a new use or the expansion of an existing use that is otherwise prohibited in the zoning district in which the use is located is not allowed by variance.

211.3 Variance from Dimensional Standards; Practical Difficulty.

1. The Board of Appeals may grant a variance from certain dimensional standards of the City Code when strict application of the dimensional standards to the applicant and the applicant's property would cause a practical difficulty and when the following conditions exist:
 - (a) The need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood;
 - (b) The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties;

- (c) The practical difficulty is not the result of action taken by the petitioner or a prior owner;
- (d) No other feasible alternative to a variance is available to the applicant;
- (e) The granting of a variance will not unreasonably adversely affect the natural environment; and
- (f) The property is not located in whole or in part within the shoreland zone.

2. As used in this Section 211.3:

- (a) “Dimensional standards” means and is limited to those provisions of the City Code relating to minimum lot size, maximum lot coverage, minimum road frontage, and minimum setback requirements.
- (b) “Practical difficulty” means that the strict application of the dimensional standards of the City Code to the property for which a variance is sought would preclude the ability of the applicant to pursue a use of the property which is allowed in the zoning district in which the property is located and would result in significant economic injury to the applicant.
- (c) “Significant economic injury” means the value of the property if the variance were denied would be substantially lower than its value if the variance were granted. To satisfy this standard, the applicant need not prove that denial of the variance would mean the practical loss of all beneficial use of the land.

211.4 Setback Variance for Single-Family Dwellings. Outside the shoreland zone, the Board of Appeals may grant a variance from the minimum setback requirements of the City Code for a single-family dwelling that is the primary year-round residence of the applicant only when the Board of Appeals determines that strict application of the City Code to the applicant and the applicant’s property would cause an undue hardship. A variance granted under this Section 211.4 may not exceed 20% of the applicable setback requirement and may not be granted if the variance would cause the area of the single-family dwelling to exceed the maximum lot coverage. For purposes of this Section 211.4, “undue hardship” means:

- 1. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
- 2. The granting of a variance will not alter the essential character of the locality;
- 3. The hardship is not the result of action taken by the applicant or a prior owner;
- 4. The granting of the variance will not substantially reduce or impair the use of abutting property; and
- 5. The granting of a variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.

211.5 Disability Variances.

- 1. **Disability Variance.** 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 of

Appeals shall restrict any variance granted under this Section 211.5 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 of Appeals 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 dwelling,” includes railing, wall, or roof systems necessary for the safety or effectiveness of the structure.

2. **Disability Vehicle Storage Variance.** Outside of the shoreland zone, the Board of Appeals may grant a variance to an owner of a dwelling unit who resides in the dwelling unit and who is a person with a permanent disability for the construction of a place of storage and parking for a noncommercial vehicle owned by that person and no other purpose. The width and length of the structure may not be larger than two times the width and length of the noncommercial vehicle. The owner must submit proposed plans for the structure with the request for the variance pursuant to this Section 211.5 to the Board of Appeals.

- (a) The person with the permanent disability must prove by a preponderance of the evidence that the person’s disability is permanent.
- (b) For purposes of this Section 211.5.2, “noncommercial vehicle” means a motor vehicle as defined in 29-A M.R.S.A. § 101(42) with a gross vehicle weight of no more than 6,000 pounds, bearing a disability registration plate issued pursuant to 29-A M.R.S.A. § 521, and owned by the person with the permanent disability.

3. **Confidentiality of Medical Records.** All medical records submitted to the Board of Appeals and any other documents submitted for the purpose of describing or verifying a person’s disability are confidential.

- B. **Limitation; Conditions.** The Board of Appeals must limit any variances granted pursuant to this Section 211 as strictly as possible to ensure conformance with the purposes and provisions of the City Code to the greatest extent possible. The Board of Appeals may impose conditions on any variance granted under this Section 211.

STATE LAW REFERENCE—30-A M.R.S.A. § 4353 (VARIANCE); 38 M.R.S.A. § 438-A(6-A) (VARIANCES IN THE SHORELAND ZONE); 06-096 C.M.R. CH. 1000 (GUIDELINES FOR MUNICIPAL SHORELAND ZONING ORDINANCES).

ARTICLE 3 FEE SCHEDULE AND SPECIAL FEES

302 FEE SCHEDULE

- 301.1 **Fee Schedule Established.** The City Council must establish and maintain a fee schedule which bears a substantial relationship to the cost of processing, reviewing, and administering applications, licenses, petitions, permits, and any other approvals required by the City Code (for purposes of this Article 3, collectively, “applications”). The fee schedule is attached to and made a part of this Chapter 1, Article 3 as Appendix 1-A.

- 301.2 **Other Information on the Fee Schedule.** For administrative ease, the fee schedule may also identify City-imposed fees, costs, rents, assessments, fines, and penalties other than those associated with the processing, review, and administration of applications (including fees, costs, rents, fines, and penalties related to cemetery plots, assessing records, parking tickets, public drains, common sewers, photocopying and printing, recreational

programming, facility rentals, and statutorily mandated fees) to which this Article 3 does not apply.

- 301.3 Amendment.** The fee schedule may be amended from time to time by order of the City Council as it deems necessary to ensure that the fee schedule sets reasonable and fair fees to recover costs associated with the City's exercise of its police powers in processing, reviewing, and administering applications.

303 SPECIAL FEE

- 302.1 Designation of Special Application; Assessment of Special Fee.** If an administrator determines that an application, by virtue of its size, uniqueness, complexity, or other factors, is likely to require a disproportionate share of City resources to process, review, or administer, the administrator may designate the application as a "special application" and may assess a special fee in addition to any applicable fees established by the fee schedule in Article 1, Section 2, or any other law or rule. The administrator may designate an application as a special application at any time during the processing of the application. The designation by the administrator of an application as a special application is final.

- 302.2 Special Fee Not To Exceed Actual Costs.** The special fee may not exceed the actual costs associated with processing, reviewing, and administering the special application. The special fee may include the actual fees and costs of (i) City personnel time, administration, supplies, advertising, legal notices, mailings, postage, or photocopies and other document reproductions; (ii) administering City meetings, referenda, public hearings, public information sessions, or workshops; (iii) specialized computer software or technical support necessary or advisable to process, review and administer the special application; (iv) in-house or third party attorneys' fees; (v) in-house or third party professional reviews of the special application or the record related thereto, or other expert or consulting fees, including the costs of services of state or federal reviewing agencies, professional consultants, planners, visual impact experts, traffic impact experts, and economic development and finance consultants.

302.3 Notice; Maintenance; Accounting.

1. The administrator must notify the applicant in writing of the special application designation and provide the applicant with an estimate of the special fee. The applicant must pay to the City the estimated special fee within 14 days of receipt of the notification; otherwise, the special application must be returned as incomplete. If the estimated special fee is depleted prior to the completion of processing, reviewing, and administering the special application, the administrator may provide the applicant with a revised estimate of the special fee from time to time, and the applicant must pay to the City the revised estimate, less any prior estimate already paid, within 14 days of receipt of the notification.
2. The City must deposit the special fee into an escrow account and may draw on the account to pay for the actual costs associated with processing the special application.
3. After the administrator renders its final decision on the special application, the City must provide the applicant with an accounting of the actual costs of processing the special application and must return any unspent portion of the special fee to the applicant within 60 days.

304 REFUNDS, WAIVERS

The administrator may refund, reduce, or waive any application fee or special fee assessed under this Chapter 1, Article 3 when the person requesting the refund, reduction, or waiver demonstrates to the satisfaction of the administrator that an extreme hardship or injustice would result from payment of the fee.

ARTICLE 4 DEVELOPMENT FEES

Development fees are administered in accordance with the requirements of Chapter 54 (Development Fee Ordinance).

STATE LAW REFERENCE—30-A M.R.S.A. § 4354 (IMPACT FEES).

ARTICLE 5 LEGAL

502 AUTHORITY, AVAILABILITY OF CITY CODE

501.1 Authority. The City Code is adopted pursuant to Article VIII, Part Second, of the Maine Constitution; 30-A M.R.S.A. §§ 2101-2109, 2691, 3001-3014, 4151-4174, 4311-4331, 4351-4362, and 4401-4408; 10 M.R.S.A. § 9724; 12 M.R.S.A. ch. 37; 22 M.R.S.A. §§ 2429-D, 2642; 28-B M.R.S.A. § 401; 38 M.R.S.A. §§ 1-13, 435-449, and 1301 *et seq.*; and any other enabling statutes, including those cited in support of specific chapters and articles.

501.2 Shoreland Zoning. Chapter 56, Article 4 of the City Code (Shoreland Zoning) and the Official Land Use Map do not become effective unless approved by the DEP Commissioner. A certified copy of Chapter 56, Article 4, attested and signed by the City Clerk, must be submitted by the City to the DEP Commissioner for approval, following adoption by the City Council. If the DEP Commissioner fails to act on any amendment to the shoreland zoning provisions of this Code within 45 days of the DEP Commissioner's receipt of the amendment, the amendment is automatically approved. Any application for a permit or approval submitted to the City within such 45-day period is governed by the City Code as if DEP Commissioner approval of the amendment has been granted. If amendments are made to the shoreland zoning district boundaries or any other matter portrayed on the Official Land Use Map with respect to the shoreland zone, such changes must be made on the Official Land Use Map within 30 days after the amendment has been approved by the DEP Commissioner.

STATE LAW REFERENCE—30-A M.R.S.A. § 3005 (ORDINANCES AVAILABLE); 38 M.R.S.A. § 438-A(3) (MANDATORY SHORELAND ZONING; COMMISSIONER APPROVAL).

503 EFFECTIVE DATE

502.1 In General. The City Code and any amendments to it becomes effective on the date specified by the City Council action, except as provided in Section 502.2 or as otherwise expressly provided.

502.2 Shoreland Zoning. Chapter 56, Article 4 of the City Code (Shoreland Zoning) and the Official Land Use Map do not become effective unless approved by the DEP Commissioner. A certified copy of Chapter 56, Article 4, attested and signed by the City Clerk, must be submitted by the City to the Commissioner for approval, following adoption by the City Council. If the Commissioner fails to act on any amendment to the shoreland zoning provisions of this Code within 45 days of the Commissioner's receipt of the amendment, the amendment is automatically approved. Any application for a permit or approval submitted to the City within such 45-day period is governed by the City Code as

if Commissioner approval of the amendment has been granted. If amendments are made to the shoreland zoning district boundaries or any other matter portrayed on the Official Land Use Map, such changes must be made on the Official Land Use Map within 30 days after the amendment has been approved by the Commissioner.

STATE LAW REFERENCE—38 M.R.S.A. § 438-A(3) (MANDATORY SHORELAND ZONING; COMMISSIONER APPROVAL).

504 DATE OF APPLICABILITY

Notwithstanding 1 M.R.S.A. § 302, except as otherwise expressly provided by law, the City Code applies to an action or proceeding, including a petition or application for permits, licenses, or approvals required by law at the time of their filing, when the City administrator has deemed the petition or application complete for review.

STATE LAW REFERENCE—1 M.R.S.A. § 302 (CONSTRUCTION AND EFFECT OF REPEALING AND AMENDING ACTS).

505 AMENDMENTS TO THE CITY CODE

The provisions of the City Code and the Official Land Use Map may be amended as follows:

504.1 Authority to Amend. The City Code and the Official Land Use Map may be amended by the City Council or the registered voters of the City in accordance with the City Charter.

504.2 Proposed Amendments. Amendments to the text of the City Code or the Official Land Use Map may be proposed by the City Council, by the Planning Board in accordance with 30-A M.R.S.A. § 4352, by the Historic Preservation Commission in accordance with Chapter 39, or upon the written petition of registered voters of the City pursuant to Article V of the City Charter.

504.3 Public Hearings, Notices.

1. A public hearing on any proposed amendments to the City Code must be conducted by the City Council. Notice of the hearing must be posted in City Hall at least 13 days before the hearing, and must be published newspaper of general circulation in the City twice, at least 12 days and at least 7 days before the hearing.
 - (a) A public hearing on any proposed amendments to the UDO or the Official Land Use Map must be conducted by the Planning Board, which serves as the municipal reviewing authority. Notice of the hearing must be given in accordance with 30-A M.R.S.A. § 4352 and, if property is being considered for placement in the Resource Protection (RP) shoreland zoning district, pursuant to 38 M.R.S.A. § 438-A(1-B). Following the public hearing, the Planning Board must make its official report to the City Council as to whether or not to amend the UDO or the Official Land Use Map at the next regularly scheduled meeting of the City Council. In making its report, the Planning Board may recommend amendments to the text of the City Code or the Official Land Use Map that deviate from the original proposed amendments. Planning Board action under this Section 504.3 is not a decision subject to any rights of appeal.
 - (b) A public hearing on any proposed amendments to Chapter 39 (Historic Preservation) must be conducted by the Historic Preservation Commission. Notice of the hearing must be given in accordance with Chapter 1, Section 209. Following the public hearing, the Historic Preservation Commission must make its official report to the City Council

as to whether or not to amend Chapter 37, Section 5 at the next regularly scheduled meeting of the City Council. In making its report, the Historic Preservation Commission may recommend amendments to the establishment of a historic district, historic site, or historic landmark that deviate from the original proposed amendments. Historic Preservation Commission action under this Section 504.3 is not subject to any rights of appeal.

- (c) The public hearings required to be held by the Planning Board, Historic Preservation Commission, and the City Council under this Section 504.3 or applicable law may be combined into a single consolidated hearing attended by both the Planning Board and City Council as long as the notice requirements applicable to both hearings are satisfied.

504.4 Shoreland Zoning Amendments. The DEP Commissioner must be notified of any amendments made to the shoreland zoning provisions of the City Code in accordance with Section 502.2.

504.5 Amendments to Official Land Use Map. Any amendments made to the district boundaries or any other feature portrayed on the Official Land Use Map must be (i) immediately shown on the Official Land Use Map or (ii) shown within 30 days after an amendment to the zoning district boundaries or other shoreland zoning features of the Official Land Use Map has been approved by the DEP Commissioner in accordance with Section 502.2. The amended Official Land Use Map must be certified by the attested signature of the City Clerk and filed with the City Clerk.

STATE LAW REFERENCE—30-A M.R.S.A. § 2522 (PETITION FOR ARTICLE IN WARRANT); 30-A M.R.S.A. § 2528(5) (SECRET BALLOT, REFERENDUM QUESTIONS); 30-A M.R.S.A. § 4352 (ZONING ORDINANCES, NOTICES; GENERAL REQUIREMENTS); 38 M.R.S.A. § 438-A(1-B) (SHORELAND ZONING; NOTIFICATION TO LANDOWNERS).

506 EFFECT OF REPEAL OR AMENDMENT

505.1 Whenever a provision of the City Code is repealed or amended, such repeal or amendment must not be construed to revive such former provision unless it is so expressly provided therein.

505.2 The repeal or amendment of a provision of the City Code will not affect any enforcement action or penalty incurred before the repeal or amendment took effect, nor any suit, prosecution, or proceeding to which the City Code applied at the time of the repeal or amendment, for an offense committed or cause of action arising under the repealed or amended provision.

507 CONFLICTING PROVISIONS

506.1 Whenever a section, paragraph, sentence, clause, or phrase of the City Code conflicts with or is inconsistent with a provision of the City Charter, the provision of the City Charter controls.

506.2 Whenever a section, paragraph, sentence, clause, or phrase of the City Code conflicts with or is inconsistent with another section, paragraph, sentence, clause, or phrase of the City Code or another ordinance, regulation, or rule administered by the City, the more restrictive section, paragraph, sentence, clause, or phrase controls.

508 VALIDITY AND SEVERABILITY

The chapters, articles, sections, paragraphs, sentences, clauses, and phrases of the City Code are severable. If any chapter, article, section, paragraph, sentence, clause, or phrase of the City Code is declared unconstitutional, invalid, or unenforceable by a court of competent jurisdiction, such unconstitutionality, invalidity, or unenforceability does not affect the validity of any remaining chapters, articles, sections, paragraphs, sentences, clauses, and phrases of the City Code.

509 COORDINATION WITH OTHER LAWS, RULES, AND ORDINANCES

All activities within the City are subject to all applicable laws, rules, and ordinances, whether or not such laws, rules, and ordinances are specifically referenced in the City Code. Any permits or approvals required by the City Code are in addition to any other permits or approvals required by other law, rule, or ordinance. The lack of a reference in the City Code to an applicable law, rule, or ordinance does not exempt the activity from such law, rule, or ordinance.

510 ENFORCEMENT; PENALTIES.

509.1 Nuisance. Any violation of the City Code is deemed to be a nuisance.

509.2 Enforcement Authority. The enforcement authority is responsible for enforcing the provisions of the City Code and the terms and conditions of any permit, license, or approval issued pursuant to the City Code. Unless otherwise expressly provided, the CEO is the enforcement authority. The CEO is appointed or reappointed annually and, if certified in accordance with 30-A M.R.S.A. § 4451, has all of the powers and authorities described in 30-A M.R.S.A. § 4452.

509.3 Inspections; Investigation of Complaints. The enforcement authority may conduct site inspections to ensure compliance with all applicable laws and all terms and conditions attached to permits, licenses, and approvals under the City Code. The enforcement authority may also investigate all complaints of alleged violations of the City Code.

509.4 Right of Entry. The enforcement authority has a right to enter any property or enter any building pursuant to 30-A M.R.S.A. § 4452(1) or any other applicable authority.

509.5 Notice of Violation. If, after investigation, the enforcement authority finds that any provision of the City Code or any terms or condition of a permit, license, or approval issued under the City Code has been violated, the enforcement authority must give written notice of the violation, in person or by certified mail return receipt requested, to the owner or occupant of the premises and to any other person responsible for the violation, indicating the nature of the violation, a citation to the provisions of the City Code that has been violated, and ordering any action necessary to correct it (including discontinuance of illegal use of structures or lots; discontinuance of work being done; removal or relocation of illegal structures; and abatement of nuisance conditions) within a designated reasonable time. A copy of each such notice of violation must be submitted to the City Manager.

509.6 Suspension and Revocation of Permits, Licenses, and Approvals. A permit, license, or approval granted under the City Code may be suspended or revoked by the enforcement authority if the enforcement authority determines that:

1. The permit, license, or approval was issued on materially incomplete or false or fraudulent information;
2. Continuation of the work or activities authorized under the permit, license, or approval would result in a violation of federal or state law, the City Code, or any other City ordinances, regulations, or rules;

3. Continuation of the work or activities authorized under the permit, license, or approval is endangering or may endanger the public health, safety, or welfare;
4. The permit holder exceeded the scope of the work or activities authorized under the permit, license, or approval;
5. A term, condition, or requirement of the permit, license, or approval issued under the City Code has been violated; or
6. The enforcement authority is unable to determine the continued validity of a permit, license, or approval.

A permit, license, or approval granted under the City Code may also be suspended or revoked by the enforcement authority if there is a judicial finding that the permit holder conducted work or activities in an unlawful manner or in such a manner as to constitute a breach of the peace or endanger the public health, safety, or welfare.

The enforcement authority must give written notice of suspension or revocation to the permit holder stating the reason for the suspension or revocation and, in the case of suspension, the measures that must be taken by a date certain to correct the violation.

A suspension remains in force until the enforcement authority determines that (i) the permit holder can and will pursue the work or activity authorized under the permit, license, or approval without continuing, extending, or creating a violation; (ii) the violation has been abated or otherwise discontinued; or (iii) a new permit, license, or approval has been issued. When cause for a suspension has been removed or corrected, the enforcement authority must so certify in writing. If, within the time specified for correction, cause for the suspension has not been removed or suspended, the enforcement authority may continue the suspension or revoke the permit, license, or approval.

No work or activity authorized under a suspended or revoked permit or approval may continue except work or activity that is necessary to protect the public health, safety, and welfare, as authorized in writing by the enforcement authority.

509.7 Fines and Penalties. Except where stricter penalties are provided for elsewhere in the City Code or under state or federal law, any person who violates any term or condition of a permit, license, or approval or who violates or continues to violate any provision of the City Code after receiving notice of such violation is subject to such fines, penalties, actions, and orders as are authorized by 30-A M.R.S.A. § 4452. A fine or penalty may be imposed for each violation. Each day that a violation continues constitutes a separate offense.

509.8 Legal Prosecution of Violations. If, after notice and demand, a violation has not been abated within the time specified in the notice of violation, the enforcement authority must refer the matter to the City Manager, who may institute in the name of the City any and all actions and proceedings, in law or in equity, including seeking injunctions of violations the imposition of fines, and the recovery of any expense, loss, damage, or cost (including attorneys' fees) that the City Manager determines are appropriate or necessary to prevent, correct, restrain, or abate any violation of the City Code or to prevent the occupancy of any building, structure, or land where such violation has occurred. All civil prosecutions under the City Code shall be prosecuted by the City Attorney pursuant to Article VI, Section 6.04, of the City Charter.

509.9 Consent and Settlement Agreements. The City Manager is authorized to enter into judicial consent agreements and administrative settlement agreements in the name of the

City for the purpose of resolving violations of the City Code and recovering fines with or without legal prosecution.

1. With regard to violations of the provisions of Chapter 56, Article 4 (Shoreland Zoning), an administrative consent agreement must 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 City official and there is no evidence that the owner or occupant acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health, safety, and welfare or will result in substantial environmental damage.
2. In determining what, if any, monetary penalty to impose as part of an administrative consent agreement, the City Manager must consider (i) how long the violation has existed; (ii) the nature and circumstances of the violation and the violator; (iii) whether a permit or approval was issued for the work; (iv) whether the violation was the result of survey work that caused a shift of boundary lines; (v) the statutory minimum and maximum penalties for land use violations set forth in 30-A M.R.S.A. § 4452; (vi) the recommendation of the enforcement authority, and (vii) such other facts and considerations as the City Manager deems relevant.

509.10 Report to City Council. The City Manager shall deliver annually, or at such interval as the City Council requests, a report to the City Council summarizing all actions and proceedings instituted by the City Manager and all consent and settlement agreements entered into pursuant to Section 509.8 and Section 509.9.

STATE LAW REFERENCE—30-A M.R.S.A. § 4452 (ENFORCEMENT OF LAND USE LAWS AND ORDINANCES); 38 M.R.S.A. § 441(3) (CEOS, POWERS AND DUTIES); 30-A M.R.S.A. § 4101 *ET SEQ.* (REGULATION OF CONSTRUCTION AND IMPROVEMENTS).

511 PERFORMANCE GUARANTEES

Whenever one or more performance guarantees are required by the City Code or as a condition of approval of a license, permit, or approval issued by an administrator pursuant to the City Code, the following requirements apply:

- 510.1 Review; Delegation.** The performance guarantee must be satisfactory to the City administrator as to scope, amount, form, sufficiency, manner of execution, conditions and stipulations, and surety. The administrator may delegate to the City Manager, in consultation with the Road Supervisor and Town Attorney, the review and acceptance of a performance guarantee in accordance with this Section 510.
- 510.2 Form.** The performance guarantee must be in the form of (i) a performance bond; (ii) a certified check payable to the City; (iii) an escrow account; (iv) an irrevocable letter of credit; or, (v) in the case of a subdivision, an offer of conditional approval limiting the number of units built or lots sold until all required improvements have been constructed.
 1. **Escrow Account.** A cash contribution to the establishment of an escrow account shall be made by either a certified check made out to the municipality, the direct deposit into a savings account, or the purchase of a certificate of deposit. For any account opened by the permit holder, the municipality shall be named as owner or co-owner, and the consent of the municipality shall be required for a withdrawal. Any interest earned on the escrow account shall be returned to the permit holder unless the municipality has found it necessary to draw on the account, in which

case the interest earned shall be proportionately divided between the amount returned to the permit holder and the amount withdrawn to complete the required improvements.

2. **Letter of Credit.** An irrevocable letter of credit from a bank or other lending institutions shall indicate that funds have been set aside for the construction of the project and may not be used for any other project or loan.
3. **Conditional Agreement--Subdivisions.** The City administrator may, in its sole discretion, provide for the subdivider to enter into a binding agreement with the City in lieu of another financial performance guarantees. Such an agreement shall provide for approval of the final plan on the condition that no more than four lots may be sold or built upon until either (i) it is certified by the enforcement authority that all of the required improvements have been installed in accordance with the City Code, approval conditions, and the regulations of applicable utilities; or (ii) a performance guarantee, acceptable to the City and in conformance with the requirements of this Section 510, is submitted in an amount necessary to cover the completion of the required improvements at an amount adjusted for inflation and prorated for the portions of the required improvements already installed. Notice of the agreement and any conditions shall be on the final, recorded subdivision plan. Release from the agreement shall follow the procedures in Section 510.6.

510.3 Scope; Amount. The performance guarantee must be of an amount sufficient to cover the full cost of all required infrastructure, reclamation of disturbed land, and decommissioning of any facilities or infrastructure associated with the proposed activity, as determined by the City administrator. Separate performance guarantees may be required by the administrator for any required site infrastructure, reclamation work, and decommissioning work.

1. For reclamation and decommissioning work, the permit holder must arrange for the costs to be recalculated by an engineer every five years, and the amount of the performance guarantee may be adjusted by the City administrator if the calculated cost of reclamation or decommissioning materially changes.

510.4 Schedule. The performance guarantee must contain (i) a schedule and cost estimates for each major phase of required site infrastructure, reclamation work, or decommissioning work, taking into account inflation; (ii) a basis for estimating costs; (iii) provision for the release of part or all of the performance guarantee to the permit holder; and (iv) a date after which the permit holder will be in default and the City must have access to the guaranteed funds to complete required site infrastructure, reclamation work, or decommissioning work. The City administrator may approve phased performance guarantees when activity is approved in separate and distinct phases.

1. **Time for Completing Required Site Infrastructure.** A period of one year, or such a period as the City administrator may determine appropriate and necessary, not to exceed three years, must be set forth in the performance guarantee as the time within which any required site infrastructure must be completed. The City administrator may extend this deadline by 12 months upon a showing of good cause.

510.5 Inspections.

1. **Escrow; Selection of Inspector.** At least seven days prior to commencing construction of any required site infrastructure, and at least 30 days prior to

commencing any reclamation work or decommissioning work, the permit holder must deposit in escrow with the City funds to cover the costs of site inspections to be conducted by an engineer mutually acceptable to the permit holder and the City administrator. The contractual rate and all indirect charges constitute the expenses for which the permit holder's escrow account will be charged. The City administrator must determine the type and frequency of inspections reasonably necessary to protect the environmental quality or general welfare of the City and the amount required to be placed in escrow. Any part of this escrow payment in excess of the final costs for inspections must be returned to the permit holder.

2. **Building Permits.** No building permits will be issued for any activity and no work will begin until an escrow payment has been made for the site inspections related to any required site infrastructure.
3. **Inspections; Addressing Deficiencies.** If the inspector finds, upon inspection of the required site infrastructure, reclamation work, or decommissioning work, that any of the site infrastructure or work has not been done in accordance with the plans and specifications filed by the permit holder, the reclamation plan, the decommissioning plan, or any applicable conditions of approval, the inspector must so report to the City Manager. The City Manager must then notify the permit holder. The City Manager may take any necessary steps to preserve the City's rights under the performance guarantee and to remedy any insufficiencies identified by the inspector. The City Manager may, in the City Manager's discretion, allow the permit holder a period of time not to exceed 90 days, to remedy any insufficiencies identified by the inspector.
4. **Certification.** Before a permit holder may be released from any performance guarantee obligation, the inspector must certify to the City that all required site infrastructure, reclamation work, and decommissioning work has been satisfactorily completed in accordance with conditions of approval, reclamation plans, decommissioning plans, long-term maintenance plan, and applicable state, federal, and local laws, rules, and regulations.

510.6 Release. Upon certification in accordance with Section 510.5, the permit holder may apply to the City Manager for the release of all or part of the performance guarantee. Prior to the release of any part of a performance guarantee, the City Manager must determine that the required site infrastructure, reclamation work, and decommissioning work comply with the requirements for that portion of the work for which a release is requested.

APPENDIX 1-A UNIFORM FEE SCHEDULE

ARTICLE 1 ADMINISTRATIVE FEES

Administrative Fees	Amount (\$)	Explanatory Note
Public Hearing Notice Fee	100.00	Per public hearing
Public Records—Searching for, retrieving, compilation	25.00	Per hour, after first 2 hours of staff time
Public Records—Photocopying	0.10	Per page for a standard 8 ½ x 11 inch black and white copy

STATE LAW REFERENCE—1 M.R.S.A § 408-A (PUBLIC RECORDS AVAILABLE FOR INSPECTION AND COPYING).

ARTICLE 2 HARBOR MANAGEMENT FEES (See Chapter 3)

If a mooring fee charged to nonresidents exceeds \$20 a year, the fee charged must be reasonable in relation to the costs involved in providing that mooring and must not exceed five times the amount charged to residents.

Harbor Management Fees	Amount (\$)	Explanatory Note
Mooring Waiting List Application Fee	10.00	Per year
Slip Waiting List Application Fee	25.00	Per year
Mooring/Slip Application Late Fee	50.00	Per application
Mooring Fee—Inner Harbor	150.00	Per mooring, per year
Mooring Fee—Outer Harbor	20.00	Per mooring, per year
Float Mooring Fee	25.00	Per year
Guest Mooring Fee	25.00	Per night
Dinghy Fee	None	
Dock Fee—Regular Season	2.00	Per foot, per day, after 4 hours or at Harbormaster's discretion
Dock Fee—Extended Season	154.00	Per month (prorated)
Dock Fee—Off Season	50.00	Per season
Floating Dock Fee	20.57	Per foot (based on overall length of vessel including bowsprit and swim platforms), per season
Dock "B" Extension Fee	36.30	Per foot, per season
Power Fee—Transient Vessels	5.00	Per night
City Harbor Slip Fee—30 ft.	1,936.00	Per season
City Harbor Slip Fee—25 ft.	1,633.50	Per season
City Harbor Slip Fee—½ Slip	1,000.00	Per season
City Harbor Slip Fee—Weekly	165.00	Per week

City Harbor Slip Fee—Transient Use	2.10	Per foot, per night
Harbor Park Event Fees	Amount (\$)	Explanatory Note
Harbor Park Event Fee—City Taxpayer, or Holder of Mooring or Slip Privilege	50.00	Per event
Harbor Park Event Fee—All Others	100.00	Per event
After Hours Events Fee	30.00	Per hour, minimum 2 hours

STATE LAW REFERENCE—38 M.R.S.A. § 7-A(2) (WAITING LISTS; NONRESIDENT MOORINGS; ALLOCATIONS TO NONRESIDENTS).

ARTICLE 3 FIRE PREVENTION AND LIFE SAFETY FEES (See Chapter 4)

Fire Prevention and Life Safety Fees	Amount (\$)	Explanatory Note
Fire and Life Safety Plan Review—Not to Exceed Amount	0.04	Per square foot of gross building area
Fire Protection and Prevention Inspection Fee	See Chapter 4, Article II, Section 2.2.1 for method to calculate the inspection fee	
Re-Inspection Fee—First Re-Inspection	None	No additional charge
Re-Inspection Fee—Each Additional Re-Inspection	Per re-inspection; same as original inspection fee (See Chapter 4, Article II, Section 2.2.1 for method to calculate the inspection fee)	
Pre-Inspection / Pre-Build Review	50.00	Mandatory Inspection
Site Inspection—Voluntary or Mandatory	50.00	Site inspections are conducted upon request or if required by the City Code or other applicable law
Occupancy Load Calculation	50.00	
Emergency Vehicle Access Evaluation	50.00	
Commercial Fire Alarm Plan Review and Application Fees	Amount (\$)	Explanatory Note
Fire Alarm Plan Review	100.00	Plus \$0.20 per square foot of building area
Initial Inspection Fee—Installation or modification of fire alarm/detection/smoke control system inspection	100.00	
Re-Inspection Fee—Installation or modification of fire alarm/detection/smoke control system inspection	100.00	
Initial Inspection Fee—Replacement or modification of fire alarm control panel with existing devices	200.00	
Re-Inspection Fee—Replacement or modification of fire alarm control panel with existing devices	100.00	

Commercial Sprinkler System Plan Review and Application Fees	Amount (\$)	Explanatory Note
Sprinkler Connection Fee	275.00	
Fire Pump Installation Fee	100.00	Per fire pump
Automatic Sprinkler System—Initial Installation or Modification	225.00	
Blasting Application Fees	Amount (\$)	Explanatory Note
Blasting Application Fee	100.00	Per day
Annual Inspection Fees	Amount (\$)	Explanatory Note
General Annual Inspection—For facilities required to submit Tier II reports	225.00	

ARTICLE 4 PUBLIC AND PRIVATE SEWER FEES, PLUMBING CHARGES (See Chapter 5)

The terms contained in this Article 5 have the same meanings given to them in the state rules for appointment and administration of local plumbing inspectors, codified at 10-144 C.M.R. ch. 240, and the state subsurface wastewater disposal rule, codified at 10-144 C.M.R. ch. 241.

Plumbing Permit Fees	Amount (\$)	Explanatory Note
Minimum plumbing permit fee	60.00	Includes up to four fixtures
Individual fixture fee	15.00	Per fixture, above four total
Installation of new water or drainage pipes	60.00	
New mobile home or modular home	60.00	
Hook-up to public sewer	24.00	When piping is installed beyond the jurisdiction of the sanitary district; else \$10.00
Hook-up to existing subsurface wastewater disposal system	10.00	
Late permit fee	Double the applicable permit fee.	
Re-inspection fee (upon failed inspection)	40.00	
Permit transfer	10.00	
Subsurface Wastewater Disposal System Fees	Amount (\$)	Explanatory Note
Complete engineered system	200.00	
Complete non-engineered system	250.00	
Primitive system	100.00	Includes one alternative toilet
Separate grey waste disposal field	35.00	
Seasonal conversion permit	50.00	
First-time system variance	20.00	
DEP disposal system surcharge	15.00	
Alternative toilet (only)	50.00	
Disposal field only—engineered system	150.00	

Disposal field only—non-engineered system	150.00	
Septic tank only—non-engineered	150.00	
Septic tank only—engineered	80.00	
Holding tank	100.00	
Advanced treatment unit—tank	150.00	
Advanced treatment unit—component	30.00	
Other components (complete pump station, piping, other)	30.00	
Re-inspection fee (when work has not been completed upon an inspection or was not in compliance with applicable law)	24.00	
Late permit fee	Double the applicable permit fee.	
Sewer Connection Fee	Amount (\$)	Explanatory Note
Residential	500.00	
Non-residential —For the first 270 gallons of design flow —For each additional gallon of design flow	500.00 5.00	Fee is based on the design flow of the building use, as set forth in the design flow table of the State Plumbing Code
Sewer Service Charges	Amount (\$)	Explanatory Note
Sewer Service Charge	[INSERT]	
Special Sewer Service Charge	[INSERT]	
Industrial and Non-domestic Cost Recovery Charge	[INSERT]	
Inflow Removal Surcharges	Amount (\$)	Explanatory Note
Inflow Removal Surcharge	50.00	Quarterly, per incidence of unauthorized public sewer connection

STATE LAW REFERENCE—10-144 C.M.R. CH. 240 (RULES FOR APPOINTMENT AND ADMINISTRATION OF LOCAL PLUMBING INSPECTORS); 10-144 C.M.R. CH. 241 (SUBSURFACE WASTEWATER DISPOSAL RULE).

ARTICLE 5 TRAFFIC VIOLATION FEES (See Chapter 7)

Traffic Violation Fees	Amount (\$)	Explanatory Note
Overtime Parking	10.00	See Chapter 7, Section 419
Handicapped Parking	50.00	See Chapter 7, Section 419
All Other Violations of Chapter 7	25.00	See Chapter 7, Section 419

ARTICLE 6 MUNIICIPAL LICENSE AND PERMIT FEES (See Chapter 14)

Municipal License and Permit Fees	Amount (\$)	Explanatory Note
Adult Use Cannabis Store	10,000.00	Per year

Amusement Establishment	40.00	Per year
Amusement Establishment, Special	40.00	Per year
Arcade—12 devices or less	25.00	Per year
Arcade—More than 12 devices	40.00	Per year
Business	20.00	Per year
Business—Renewal	10.00	Per year
Carnival / Circus	110.00	Per day
Class A Establishment	120.00	Per year
Class B Establishment	95.00	Per year
Class C Establishment—Small	75.00	Per year
Class C Establishment—Medium	115.00	Per year
Class C Establishment—Large	150.00	Per year
Closing-Out Sale	10.00	Valid for 60 days
Closing-Out Sale—Extension	10.00	Valid for additional 60 days
Consumer Fireworks Retail Sales	500.00	Per year
Driveway Opening	None	Valid for 30 days
Street Opening	See Chapter 14, Section 209	Valid for 30 days; fee is the greater of the base fee or 10% of total impact value, per City's Highway Road Opening / Location Permit Policy
Junkyard / Automobile Graveyard / Automobile Recycling Business—Within 100 feet from highway	200.00	Per year
Junkyard / Automobile Graveyard / Automobile Recycling Business—100 or more feet from highway	75.00	Per year
Liquor	50.00	Per year
Lodging House, other than bed & breakfast	60.00, plus \$3.00 per room	Per year
Lodging House—Bed & Breakfast, less than 5 rooms	35.00	Per year
Lodging House—Bed & Breakfast, 5 to 14 rooms	50.00	Per year
Lodging House—Bed & Breakfast, 15 or more rooms	60.00, plus \$3.00 per room	Per year
Mass Gathering	110.00	Per day
Medical Cannabis Dispensary	1,000.00	Per year
Mobile Vending Unit	65.00	Per year
Parade	0.00	Per event
Pole / Wire Permit	8.00	One-time filing fee
Sewer Hook-up	See Article 5	
Taxicab	40.00	Per taxi, per year
Taxi Driver	25.00	Per driver, per year

Taxi Stand	110.00	Per space, per year
Towing Service	110.00	Per year
Transient Seller	110.00	Valid for 30 days
Tree Work	25.00	Per event
Victualer's	75.00	Per year
Victualer's—Off-Premise Consumption	35.00	Per event

ARTICLE 7 DOG LICENSE FEES (See Chapter 22)

Dog License Fees	Amount (\$)	Explanatory Note
Dog Tag	[INSERT]	Per year, per dog

ARTICLE 8 ELECTRICAL INSTALLATION AND INSPECTION FEES (See Chapter 41)

Electrical Installation Permit Fees ¹	Amount (\$)	Explanatory Note
Signs	25.00	
Change in size of entrance	25.00	
Electrical Installation Permit Fee—Installation, addition, or alteration to single and two-family residence	50.00	
Non-Commercial Property	None	
Commercial Property	The greater of (i) \$100.00 and (ii) 1% of the estimated cost of the electrical work.	
Certificate of Acceptance Fees	Amount (\$)	Explanatory Note
Non-Commercial Property	None	
Commercial Property	The difference between the estimated and actual 1% of the cost of the electrical work, if any.	

ARTICLE 9 SOLID WASTE DISPOSAL CHARGES FOR TRANSFER STATION USE (See Chapter 42)

Solid Waste Disposal Fees	Amount (\$)	Explanatory Note
City-Provided Collection Service—Trash Sticker	4.00	Per sticker
Ellsworth Transfer Station—Trash Sticker	4.00	Per sticker
Ellsworth Transfer Station—Scale Tonnage Fee	160.00	Per ton (plus minimum point-of-service charge of \$8.00)
Ellsworth Recycling Center—Recyclable Materials other than E-Waste	None	

¹ A separate fee is assessed for each item listed below, even if the electrical work performed is located on the same job site.

Ellsworth Recycling Center—E-waste: TVs and computer monitors (15-34 inches)	5.00	Per item
Ellsworth Recycling Center—E-waste: TVs and computer monitors (35-100 inches)	10.00	Per item
Ellsworth Recycling Center—E-waste: Other (e.g., laptops, motherboards, desktop printers, fax machines, cellphones)	None	

ARTICLE 9 TOWING SERVICE RATES AND FEES (See Chapter 48)

Towing Fees—Light Duty Tows ²	Amount (\$)		Explanatory Note
	Standard	Accident	
Day Rate (8:00 am – 6:00 pm)	85.00	150.00	
Night Rate (6:00 pm – 8:00 am)	95.00	150.00	
Outside Storage ³	50.00	50.00	
Inside Storage ⁴	70.00	70.00	
Mileage	4.00	4.00	Per loaded mile
Time, after the first ½ hour ⁵	85.00 plus 20.00	150.00 plus 30.00	Per 15-minute increment
Day Service Call	85.00	85.00	
Night Service Call	95.00	95.00	
Accident Scene Clean-Up	---	75.00	
Equipment Clean-Up	50.00	---	

ARTICLE 10 DEVELOPMENT FEES (See Chapter 54)

Development fees shall be established in accordance with Chapter 54 (Development Fees).

ARTICLE 11 WATER SUPPLY PROTECTION FEES (See Chapter 55)

² Light duty tows with a gross vehicle weight (GVW) of less than 12,000 lbs. A dual rear wheel vehicle built on a full-sized chassis is not a light duty tow, regardless of GVW.

³ First day of storage may be charged if the vehicle is held in excess of 12 hours; subsequent storage may be charged after the initial 24-hour period for any part of each subsequent 24-hour period.

⁴ First day of storage may be charged if the vehicle is held in excess of 12 hours; subsequent storage may be charged after the initial 24-hour period for any part of each subsequent 24-hour period.

⁵ Time charges may be assessed for time at the scene only. Time may not be assessed for time spent going to or returning from a town, nor shall time be assessed in addition to mileage.

Water Supply Protection Fees	Amount (\$)	Explanatory Note
Aeroplane Tag	[INSERT]	See Chapter 55, Section 501
Boat Tag	[INSERT]	See Chapter 55, Section 401

ARTICLE 12 LAND USE PERMIT FEES

(See Chapter 56)

Building Permit Fees	Construction / Additions (\$, per building size, in sq. ft.)	Demolition (\$, per building size, in sq. ft.)	Alterations (\$, per \$1,000 est. construction cost)	Certificate of Occupancy (\$, flat fee)	Activity within Shoreland Zone Setbacks (\$, flat fee)
One-Story Buildings:					
—One- and Two-Family Dwellings	0.25	0.10	5.00	50.00	25.00
—Accessory Structures	0.25	0.10	5.00	50.00	25.00
—Other Buildings	0.30	0.10	5.00	50.00	25.00
Multi-Story Buildings	Calculate using Story Factor ⁶		5.00	50.00	25.00

Site Development Plan Review Fees	Amount (\$)	Explanatory Note
Site Development Plan—Minor	200.00	
Site Development Plan—Major; Sketch Plan	25.00	
Site Development Plan—Major; Preliminary Plan	200.00	
Site Development Plan—Major; Final Plan	Calculate using square footage and soil disturbance ⁷	

⁶ To calculate the fee for multi-story building construction, additions, or demolition, multiply the total building square footage by the above-identified fee rate and the following Story Factor. Do NOT use the Story Factor to calculate the fees for alterations, certificates of occupancy, or activities within the shoreland zone setback, as these are flat fees.

Number of Stories	Story Factor	Number of Stories	Story Factor
1.0	1.00	3.0	2.05
1.5	1.45	3.5	2.30
2.0	1.70	4.0	2.45
2.5	1.85		

⁷ Apply the cost per square footage of buildings and infrastructure as shown in Table 1, in addition to the cost of site disturbance as presented in Table 2:

Table 1. Cost Per sq. ft.	
Total Square Footage (sf)	Fee (\$)
Up to 5,000	250.00
5,001 – 10,000	500.00
10,001 – 20,000	750.00
20,001 – 30,000	1,000.00

Table 2. Site Disturbance Fees (excludes buildings and structures)	
Acres of Soil Disturbance	Fee (\$)
First Acre	0.00
More than One Acre (per acre or any part of an acre)	100.00

Subdivision Review Fees ⁸	Amount (\$)	Explanatory Note
Sketch Plan	25.00	
Minor Subdivision—Final Plan	25.00	Per lot or dwelling unit
Major Subdivision—Preliminary Plan	20.00	Per lot or dwelling unit
Major Subdivision—Final Plan	25.00	Per lot or dwelling unit
Subdivision of New or Existing Structure	Site Plan Review Fees apply	
Subdivision Revisions	100.00	

Rezoning Petition Fees	Amount (\$)	Explanatory Note
Rezoning Petition	100.00	

Flood Hazard Development Permit Fee	Amount (\$)	Explanatory Note
Flood Hazard Development Permit Fee	50.00	See Chapter 33, Article IV.

30,001 – 40,000	1,250.00
40,001 – 50,000	1,500.00
50,001 – 100,000 sf	2,000.00
100,000 and more	2,500.00

<i>Example:</i> <i>Disturbed area = 2.2 acres</i> <i>Fee = \$200 (1.2 acres more than 1 acre)</i>

⁸ Retained land and/or community space shall be counted as one lot or unit for the purpose of fee calculations.

**APPENDIX 1-B
OFFICIAL URBAN CORE MAP**

Part 2. Chapter 3 of the City Code (Harbor Management Ordinance), including the Harbor Fee Schedule, is proposed to be repealed in its entirety and replaced with proposed Chapter 3 (Harbor Management), attached hereto.

Code of Ordinances, City of Ellsworth

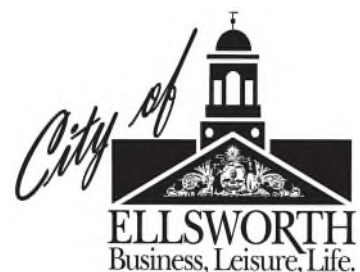
CHAPTER 3

HARBOR MANAGEMENT

A true copy, attest:

Heidi-Noël Grindle
City Clerk

HISTORICAL NOTE: REPEALED AND REPLACED MARCH 18, 2013; AMENDED NOVEMBER 18, 2013; AMENDED APRIL 16, 2018; REPEALED AND REPLACED (ARTICLE 1, SECTION 5) MAY 21, 2018; AMENDED NOVEMBER 8, 2019; AMENDED DECEMBER 16, 2019; AMENDED APRIL 20, 2020; REPEALED AND REPLACED ***
2026.



CHAPTER 3

HARBOR MANAGEMENT

ARTICLE 1 GENERAL PROVISIONS

101 PURPOSES

In addition to the general purposes of the City Code set forth in Chapter 1, Article 2, the purposes of this Chapter 3 are to:

- 101.1** Establish regulations for marine activities within the coastal waters (including harbors, waterways, and tidal waters) of the City to ensure safety to persons and property, and to promote availability and use of a valuable public resource.
- 101.2** Keep open convenient channels for the passage of vessels in the City's coastal waters.
- 101.3** Assign suitable portions of the City's coastal waters for anchorages.
- 101.4** Regulate and control nonwater-dependent floating structures in the City's coastal waters and inland waters.

STATE LAW REFERENCE—38 M.R.S.A. § 2 (RULES FOR CHANNEL LINES; ENFORCEMENT); 12 M.R.S.A. CH. 37 (NONWATER-DEPENDENT FLOATING STRUCTURES).

102 APPLICABILITY

This Chapter 3 applies to activities within the City's coastal waters and inland waters.

STATE LAW REFERENCE—38 M.R.S.A. § 2 (RULES FOR CHANNEL LINES; ENFORCEMENT); 12 M.R.S.A. CH. 37 (NONWATER-DEPENDENT FLOATING STRUCTURES).

103 INNER AND OUTER HARBOR LIMITS; CHANNELS AND ANCHORAGES

The City hereby establishes a channel in the Union River and the boundary for its harbor, which is divided into an inner and an outer harbor as follows:

- 103.1 Inner Harbor.** Beginning on the easterly side of the Union River at Tinker's Wharf so called, high water line; thence proceeding northerly along the shore to the Union River Bridge; thence proceeding westerly along said bridge to the westerly shore of the Union River; thence southerly along the high water mark of the western shore of the Union River to N 44° 31' .703", W 68° 25' .551"; thence proceeding easterly to the point of beginning.
- 103.2 Outer Harbor.** Beginning on the easterly side of Union River, at Tinker's Wharf so called, high water line; thence proceeding southerly along the shore to the Ellsworth City line; thence proceeding westerly to the Ellsworth/Surry line; thence northerly along the high water mark of the western shore of Union River to N 44° 31' .703", W 68° 25' .551"; thence proceeding easterly to the point of beginning.

The Harbormaster must designate and maintain the specific location of the channel within the Union River and any anchorages in the harbor.

STATE LAW REFERENCE—38 M.R.S.A. § 2 (RULES FOR CHANNEL LINES; ENFORCEMENT).

ARTICLE 2. ADMINISTRATION

201 ADMINISTRATION

This Chapter 3 is administered by the Harbormaster and Harbor Commission.

202 HARBORMASTER

202.1 Appointment. The Harbormaster is appointed by the City Manager, subject to confirmation by the City Council. The Harbormaster may, with the approval of the City Manager, appoint deputies who, under the Harbormaster's direction, must enforce and carry out the provisions of this Chapter 3. Any reference to the Harbormaster in this Chapter 3 includes any deputy harbormaster so appointed.

202.2 Term. The term of the Harbormaster is for one year and runs from July 1 through June 30.

202.3 Powers, Duties, and Liabilities.

1. The Harbormaster has all the duties and liabilities of that office as prescribed by state law, including 38 M.R.S.A. § 1 *et seq.*, and 12 M.R.S.A. § 3301 *et seq.*, whether or not such duties and liabilities are set forth in this Chapter 3.
2. The Harbormaster has the duty to administer and enforce the provisions of this Chapter 3.
3. The Harbormaster is the overseer of the City's waterfront facilities, including moorings, floats, docks, ramps, parking areas, picnic areas, and any buildings or structures in the City's harbor and City properties adjoining the harbor. In carrying out this duty, the Harbormaster may make recommendations to the Harbor Commission for maintenance and improvements to all City-owned waterfront facilities.
4. At the direction of the City Council or City Manager, the Harbormaster will provide technical assistance and submit periodic reports to the Harbor Commission.

202.4 Compensation. The compensation of the Harbormaster is established by the City Council.

202.5 Prohibition on Making Arrests or Carrying Firearm. The Harbormaster may not make arrests or carry a firearm.

202.6 Training. The Harbormaster must attend all training and continuing education required by 38 M.R.S.A. § 1-A to secure and maintain certification as a Harbormaster, and any other training and continuing education as may be directed by the City Manager upon the recommendation of the Harbor Commission.

202.7 Removal. The Harbormaster may be removed by the City Council, for cause declared in writing, after due notice to the Harbormaster and hearing, if requested.

STATE LAW REFERENCE—38 M.R.S.A. §§ 1-2 (APPOINTMENT; COMPENSATION; TRAINING; RULES FOR CHANNEL LINES; ENFORCEMENT); 12 M.R.S.A. § 13072 (HARBOR MASTERS ON INLAND WATERS).

203 HARBOR COMMISSION

203.1 Establishment. The Harbor Commission is established for the purpose of advising the City Manager and City Council on matters relating to management of the City's harbors and

waterways. The Harbor Commission shall consist of seven members and three alternate members.

- 203.2 Qualifications.** Harbor Commission members must be residents or real estate property owners of the City.
- 203.3 Appointment.** Harbor Commission members shall be appointed by the City Council upon nomination by the City Manager, and sworn in by the City Clerk or other person authorized to administer oaths. The Harbor Commission may make recommendations to the City Manager with respect to appointments.
- 203.4 Term.** Harbor Commission members hold three-year staggered terms, with two member terms expiring each year on June 30, except that every third year three member terms will expire. Alternate members hold one-year terms, which expire on June 30.
- 203.5 Rules of Procedure.** The Harbor Commission may adopt rules of procedure to govern its meetings.
- 203.6 Meetings.** Meetings of the Harbor Commission are public proceedings. Reasonable notice must be given to the public of any such meetings, and the public may attend such meetings. The Harbor Commission must keep a record of its meetings, which must be filed with the City Clerk upon approval of the Harbor Commission.
- 203.7 Alternate Members.** Alternate members of the Harbor Commission shall attend all meetings of the Commission and participate in its proceedings but may vote only when there are fewer than seven voting members present. Alternate members shall be designated by the presiding officer of the Harbor Commission to participate and vote when a member is unable to do so because of a conflict of interest, physical incapacity, absence, or any other reason satisfactory to the presiding officer. Designated participation by an alternate member shall be based on seniority.

STATE LAW REFERENCE—38 M.R.S.A. § 7 (RELATION TO OTHER LAWS).

204 PERMITS AND APPROVALS REQUIRED

- 204.1 Permit or Reservation Required.** No person may, without first obtaining a permit or reservation from the Harbormaster, engage in any activity requiring a permit or reservation under this Chapter 3, including:
1. Mooring and berthing in the harbor.
 2. Placing a mooring or float in the harbor.
 3. Docking in the City's marina during the regular season.
 4. Docking in the City's marina during the extended season.
 5. Anchoring in the outer harbor.
- 204.2 Procedures for Administering Permits.**
1. *Written Application.* Every applicant for a permit under this Chapter 3 must submit a written application, on a form provided by the City, to the Harbormaster.
 2. *Fee.* The application must be accompanied by a fee, as provided in Chapter 1, Article 3 (Fee Schedule and Special Fees). For mooring privilege permit applications, the fee must be paid on or before May 15 of each year. Failure to

comply with the fee payment deadline will cause the applicant to incur late fees and may result in the removal of mooring and loss of berthing privileges.

3. *Harbormaster Decision.* Upon receiving a complete application, the Harbormaster must approve, approve with conditions, or deny the application.
4. *Permit Expiration.* A permit granted under the authority of this Chapter 3 is valid only for such period as specified by the Harbormaster. Permits of unqualified duration or validity may not be granted.

204.3 City-Owned Mooring, Dock, or Slip Space Reservations. To reserve a City-owned mooring, dock, or slip space, the vessel owner or operator must call or stop by the Harbormaster's office during office hours. The Harbormaster will grant a reservation on a first-come, first-served basis, subject to the payment of any applicable fees and compliance with applicable provisions of this Chapter 3.

STATE LAW REFERENCE—38 M.R.S.A. §§ 7-A, 8 (WAITING LISTS; NONRESIDENT MOORINGS).

ARTICLE 3 GENERAL BOATING AND TRAFFIC CONTROL REQUIREMENTS

301 TRAFFIC CONTROL AUTHORITY

The Harbormaster has the authority to control waterborne traffic in any portion of the harbor (i) by use of authorized state regulatory markers, signals, orders, or directions; (ii) at any time before, during, and after any race, regatta, parade, or other special event held in any portion of the harbor; or (iii) at any time when the Harbormaster deems it necessary in the interest of safety of persons and vessels or other property.

302 BASIC SPEED LAWS

- 302.1** Except as provided in Section 302.2, no person may operate any vessel within the harbor in excess of posted speed limits or, in the absence of such limits, in a manner to create a wash which endangers persons or property.
- 302.2** Upon written application to the Harbormaster, the Harbormaster may grant permission for a person to conduct or engage in water sports or regattas in specific designated areas of the harbor, which may exceed posted speed limits.

303 LAUNCHING AND RECOVERY OF VESSELS

No one other than the driver may occupy a motor vehicle while it is on a public launching ramp.

304 DAMAGE TO HARBOR OR OTHER PROPERTY

No person may destroy, damage, disturb, or interfere with any public or private property in the harbor.

305 TAMPERING WITH OR BOARDING VESSELS WITHOUT PERMISSION

No person may board, break into, move, or tamper with any vessel, or part thereof, located within the harbor unless authorized by the owner of such vessel.

306 SIGNS AND MAINTENANCE

The Harbor Commission, through the Harbormaster, may place and maintain, cause to be placed and maintained, either on land or water such signs, notices, signal buoys or control devices as the Harbor Commission deems necessary to carry out the provisions of this Chapter 3, or to secure public safety and the orderly and efficient use of the harbor or any City facilities.

307 DERELICT AND ABANDONED WATERCRAFT

- 307.1** No person may bring into or maintain in the harbor any derelict watercraft or watercraft for salvage, or abandon any watercraft in the harbor, without a permit from the Harbormaster. Watercraft that are to be salvaged by firms licensed by the state to do salvage work are excluded from this prohibition.
- 307.2** The Harbor Commission shall be the sole determiner as to what constitutes a watercraft that is derelict or abandoned. For purposes of this determination, the Harbor Commission shall consider whether any of the following circumstances exist: (i) the vessel is fastened to neither a mooring nor an anchor; (ii) the vessel lacks any license or registration, from any authority, the possession of which is a prerequisite to the operation of such a vessel; (iii) the vessel is submerged to a level substantially above its normal water line, and remains so for a period of at least 14 consecutive days without reasonable explanation; and (iv) the vessel is damaged to such an extent that it cannot be moved under its own power.

STATE LAW REFERENCE—38 M.R.S.A. § 9 (ABANDONMENT OF WATERCRAFT).

308 SAFETY RESTRICTIONS

For the safety of the vessels and the general public, the following activities are not allowed in the harbor:

- 308.1** Casting stones, rocks or other material into the waters of the harbor.
- 308.2** Swimming from a float or from any watercraft that is secured to a float.
- 308.3** Fly fishing from a float. For all other types of fishing, fishing lines may not hamper a vessel's approach to a float or the tying up of a vessel to a float.
- 308.4** Using a public launching ramp for more than 20 minutes without the permission of the Harbormaster.
- 308.5** Tying a boat to a float or wharf for more than two hours on the front (western) side and four hours on the back (northeastern) side of the float or wharf without permission of the Harbormaster. The southeastern side is reserved for dinghies and tenders.
- 308.6** Grounding out, tying up or permitting to be grounded out, any watercraft on a public launching ramp.
- 308.7** Placing a skid, trailer, boat, or any other craft on the City's waterfront facilities other than in designated areas or by permission of the Harbormaster.

ARTICLE 4 CITY EQUIPMENT AND FACILITIES

309 HARBORMASTER'S BOAT

- 309.1** The City Manager may provide the Harbormaster with a vessel to carry out the Harbormaster's duties and responsibilities under this Chapter 3, including for the safety and maintenance of the harbor. Any other use is forbidden without the approval of the City Manager.
- 309.2** The Harbormaster's vessel must be under the direct control of the Harbormaster. No person may use the Harbormaster's vessel without express permission of the Harbormaster.

310 CITY HARBOR PARK AND MARINA

The City-owned and operated waterfront park and marina, located at 413 Water Street in Ellsworth and consisting of a land-based public park with a gazebo and open space and a full-service marina, shall be managed as follows:

- 310.1 Harbor Park and Marina Rules.** The Harbormaster may, from time to time and in consultation with the Harbor Commission and City Manager, establish rules for the public use and enjoyment of the harbor park and marina, including (i) dates and hours of operation of the harbor park and marina during the regular season and the extended season, and (ii) approval procedures for the use of the gazebo or open spaces in the harbor park, including security deposits. The harbor park and marina shall be closed outside of the designated hours of operation except for those vessel owners or operators staying on board overnight, loading or unloading boats, or with written permission of the Harbormaster.
- 310.2 Regular Season Dockage.** The Harbormaster shall, upon receipt of a reservation request, provide dockage in the marina to vessel owners or operators during the regular season. Vessels must be removed from the marina on or before October 22 of each year unless an extended season permit has been obtained from the Harbormaster.
- 310.3 Extended Season Dockage.**
1. The City Council may, but is not required to, authorize dockage in the marina to vessel owners or operators during the extended season in any given year.
 2. If the City Council so authorizes, the Harbormaster shall, upon receipt of a reservation request, provide dockage in the marina to vessel owners or operators during the extended season. Vessels with an extended season permit must be removed from the harbor on or before December 10 of each year.
 3. The use of moorings in the harbor during the extended season period shall not be permitted.
 4. Unless otherwise authorized by the City Manager, the Harbormaster will not have regular duty hours during the extended season but will be on-call as needed.
- 310.4 Insurance.** All vessels tied up to the City's docks or slips in the marina must carry valid insurance. Evidence of insurance must be provided upon request by the Harbormaster.
- 310.5 Duty to Inspect.** The owner or operator of a vessel in the marina must check on the vessel tied up to the City's docks or slips on a weekly basis, and must inform the Harbormaster each week of the condition of the vessel.
- 310.6 Right to Remove.** The Harbormaster at all times retains the right to require an owner or operator to remove a vessel tied up to the City's docks or slips.

ARTICLE 5 MOORING PRIVILEGES

501 PLACEMENT OF PRIVATE MOORINGS OR FLOATS, PERMIT REQUIRED

A person may not place any mooring or float in the harbor without a permit from the Harbormaster. No permit is required for the placement of a mooring or float in the City's inland waters.

502 ASSIGNMENT OF MOORING PRIVILEGES

502.2 The Harbormaster will assign mooring privileges to vessel owners by issuing a mooring privilege permit on a first-come, first-served basis, subject to the following requirements:

1. *Riparian Owners.* Whenever practicable, the Harbormaster will assign mooring privileges to riparian owners fronting their land, if so requested, but without encroaching upon any channel established by this Chapter 3. No more than one mooring may be assigned to any shorefront parcel of land under this privilege. The limitation of one mooring assigned under this privilege does not prevent the owner of a shorefront parcel from receiving additional mooring assignments under the allocation system set forth in this Section 502.2.
2. *Limitation on Number of Moorings.* A vessel owner or operator may only occupy either a slip or a mooring during any given season. Members of a household may not occupy or hold both a mooring and a slip. For the purposes of this paragraph, “household” means all persons residing in the same dwelling unit.
3. *Waiting List.* The Harbormaster must create and maintain a waiting list for mooring space within the harbor. To be placed on the waiting list, applicants must submit a mooring waiting list application, on a form provided by the City, to the Harbormaster. The mooring waiting list application must be accompanied by a fee, and applicant must pay an annual waiting list fee, as provided in Chapter 1, Article 3 (Fee Schedule and Special Fees), to remain on the waiting list until such time that a mooring space is available and the waiting list application is approved or denied by the Harbormaster.
4. *Allocations.* When there are more applicants for a mooring assignment than there are mooring spaces available, the Harbormaster must assign spaces as they become available from the waiting list, based on the following allocation provisions:
 - (a) Riparian owners shall be assigned mooring privileges as established in Section 502.2.1.
 - (b) If there are applicants who are nonresidents who wish to moor a vessel the principal use of which is noncommercial and less than 10% of the moorings are currently assigned to persons fitting this description, the next mooring available must be assigned to the first such person on the list.
 - (c) If there are applicants who are nonresidents who wish to moor a vessel the principal use of which is commercial and less than 10% of the assigned moorings are currently assigned to persons fitting this description, the next mooring available must be assigned to the first such person on the list.
 - (d) If both nonresident noncommercial and nonresident commercial assignments are below 10% and there are both types of applicants on the waiting list, the available space shall be assigned to an applicant in the category that is the farthest below 10%.
 - (e) The burden of proof in determining residence and the principal use of a vessel is upon the applicant.
 - (f) Each year, persons with mooring assignments must report to the Harbormaster their anticipated residency status for the next year and whether they anticipate the principal use of their vessel to be commercial

or noncommercial. The Harbormaster shall update the percentage of mooring holders in each category from this data.

This Section 502.2.4 must be construed broadly in order to accomplish the distribution of moorings to nonresidents as specified herein; *provided, however*, that it is not a requirement of this Section 502.2.4 that a person lose a current mooring assignment to meet these objectives.

5. *Failure to Pay Fees, Penalties.* The Harbormaster may refuse to assign mooring privileges to any vessel owner or operator who has not paid any fee, charge for services, forfeiture, or penalty levied by the City pursuant to this Chapter 3 or 38 M.R.S.A. § 1 *et seq.*, including from a previous season.

502.3 Assignment of mooring privileges by the Harbormaster does not confer any right, title, or interest in submerged or intertidal lands owned by the state.

502.4 The assignee of a mooring that has been set in the harbor may not sublet the mooring or mooring space to any other person, unless the provision for subletting or rental was part of the agreement when the mooring was assigned.

502.5 A mooring assignment may not be transferred, except as follows: the Harbormaster may transfer a mooring assignment used for commercial fishing purposes at the request or death of the assignee to a member of the assignee's family but only if the mooring assignment will continue to be used for commercial fishing purposes. For the purposes of this Section 502.5, "member of the assignee's family" means an assignee's parent, child or sibling, by birth or by adoption, including a relation of the half blood, or an assignee's spouse.

STATE LAW REFERENCE—38 M.R.S.A. § 3, 4, 7-A, 8 (MOORING SITES; MOORING TRANSFER PERMITTED BY ORDINANCE; WAITING LISTS; NONRESIDENT MOORINGS).

503 MINIMUM MOORING REQUIREMENTS

503.1 All mooring buoys must comply with the following dimensional requirements:

Size of Boat	Below 16'	17' to 25'	26' to 35'	Over 36'
Weight of Block	500#	1000#	1500#	2000#
Size of Chain 16	1/2"	1/2"	1/2"	1/2"
Size of Nylon	1/2"	1/2"	1/2"	3/4"

503.2 All mooring buoys must conform to Coast Guard regulations and must show at all tides. All mooring gear must be inspected by the Harbormaster before setting.

503.3 Vessels being moored or berthed in the harbor may not exceed a length overall (LOA) of 39.5 feet or a width (beam) of 12 feet.

503.4 The Harbormaster must maintain a plot plan of all mooring locations showing depth of water at mean low tide for each mooring and vessel owner assigned to each mooring.

503.5 The Harbormaster must record the number of days in each calendar year that each permitted vessel occupies a designated mooring or slip. Except by approval of the Harbormaster for good cause shown, the minimum number of days that a vessel must occupy the designated mooring or slip in any calendar year is 45 days. Any exceptions to the time requirement must be approved by the Harbormaster after consultation with the Harbor Commission. A

vessel owner's failure to satisfy this requirement may result in the loss of the mooring or slip space and a determination that the mooring or vessel has been abandoned.

STATE LAW REFERENCE—38 M.R.S.A. §§ 3, 3-A (MOORING SITES; MOORING TRANSFER PERMITTED BY ORDINANCE).

504 USE OF A CITY MOORING OR FLOATS

- 504.1** Permission may be granted by the Harbormaster for a private vessel to use a City-owned mooring in the harbor temporarily without charge for up to 24 hours. Private vessels docked at City facilities for a period in excess of 4 hours must pay the applicable docking fees.
- 504.2** Docking at any City facility is limited to 14 consecutive days followed by an absence of 14 consecutive days.
- 504.3** No person may store traps, bait, fishing gear, boats, or waste material on the floats at any time. Said gear may be loaded and unloaded only in a speedy fashion.

505 VESSELS MAKING FAST

- 505.1** No person may make fast or secure a vessel to any mooring already occupied by another vessel, or to a vessel already moored except a rowboat, dinghy, or yacht tender regularly used by such a larger vessel. If tied within a slip, such rowboat, dinghy, or tender shall not extend into the fairway beyond the larger vessel if such larger vessel is also occupying the slip or otherwise beyond the larger vessel if such larger vessel is also occupying the slip or otherwise beyond the slip itself.
- 505.2** The owner or operator of any vessel moored or anchored within the harbor must cause the vessel to be tied and secured with proper care and equipment and in such manner to prevent breakaway or dragging of the mooring or resulting in damage to other watercraft and property.

506 MANDATORY MOORING INSPECTIONS

- 506.1** The Harbormaster must inspect the placement and adjustment of each vessel's mooring in the harbor by August 1. In addition, every two years, the Harbormaster must visually inspect each vessel's mooring and the mooring's related equipment including floats, chains, and staples. If the mooring is assigned an odd number, that mooring will require inspection on an odd year. If the mooring is assigned an even number, that mooring will require inspection on an even year. It is the Harbormaster's responsibility to retain and maintain inspection documentation.
- 506.2** If an inspection has not been performed by August 1 as a result of any action or inaction by the vessel owner or operator, the vessel will be deemed illegally berthed and the Harbormaster may remove and take custody of the mooring in accordance with Article 9.

507 MOORING VESSELS TO BUOYS PROHIBITED

A person may not moor any watercraft to any buoy, beacon, or other marker placed in the harbor to mark and define the harbor channels, or in any manner to make the watercraft fast thereto or to willfully destroy any such buoy, beacon, or other marker.

508 SKIFFS AND DINGHIES

- 508.1** Skiffs and dinghies may be secured to designated areas provided they comply with the following requirements:

- 508.2** Each skiff or dinghy must be clearly and visibly marked with at least the corresponding mooring number.
- 508.3** Skiffs or dinghies may not be secured to the face of the harbor's main float.
- 508.4** All skiffs and dinghies must be properly secured, maintained, and bailed and must be secured at the bow only.
- 508.5** Skiffs and dinghies secured in the designated areas may not exceed a length overall (LOA) of 10 feet (LOA) or a width (beam) of 5 feet.
- 508.6** Dinghies must not be left on any City launching ramp, float, or pier.

509 MOORING REPLACEMENT

- 509.1** If the Harbormaster determines that a mooring needs to be removed or replaced with one of a different character, the Harbormaster may direct the owner of the vessel assigned to the affected mooring to do so.
- 509.2** If the owner or operator of the vessel neglects or refuses to comply with the Harbormaster's order, the Harbormaster may remove and take custody of the mooring in accordance with Article 9.

STATE LAW REFERENCE—38 M.R.S.A. § 4 (NEGLECTING TO REMOVE OR REPLACE MOORINGS).

ARTICLE 6 PROHIBITED ACTIVITIES

601 TYING UP AT CITY DOCK FOR COMMERCIAL PURPOSES

A person may not tie up or permit to be tied up to the City dock any watercraft for any commercial purpose except with the written permission of the Harbormaster.

602 NONWATER-DEPENDENT FLOATING STRUCTURES

Except as provided by 12 M.R.S.A. § 3303, a person may not place or use a nonwater-dependent floating structure in, on, or over the City's coastal waters or inland waters.

603 COMPLIANCE WITH REGULATORY MARKER, SIGNAGE, ORDER, DIRECTION OF HARBORMASTER

A person may not willfully fail or refuse to comply with any authorized state regulatory marker or signage utilized by the Harbormaster, or with any lawful order or direction of the Harbormaster.

604 HINDERING THE HARBORMASTER'S WORK

A person may not assault, intimidate or in any manner willfully obstruct, intimidate or hinder the Harbormaster in the lawful performance of the Harbormaster's duties.

ARTICLE 7 SANITATION REGULATIONS

701 DISCHARGE OF REFUSE

A person may not discharge or permit the discharge into the water of the harbor of any refuse, waste matter from toilets, petroleum or petroleum matter, paint, varnish, or any other foreign matter, including dead animals, fish and bait.

702 RESPONSIBILITY FOR SANITATION OF VESSELS

The owner, lessee, agent, captain or person in charge of a vessel within the harbor is responsible for any costs of clean-up of any discharge of refuse from the vessel into the water of the harbor.

703 FISHING GEAR

In the event fishing gear is within the boundary lines of a channel, the Harbormaster may issue a warning of navigational interference and may commence court action to order removal of that gear.

STATE LAW REFERENCE—38 M.R.S.A. § 2 (RULES FOR CHANNEL LINES; ENFORCEMENT).

ARTICLE 8 SAFETY REGULATIONS

801 FLAMMABLE AND COMBUSTIBLE MATERIALS, CONSUMER FIREWORKS

Within the harbor, including any associated parking areas, and within the City's harbor park and marina:

801.1 No person shall sell, offer for sale, or deliver in bulk any class of flammable liquid or combustible material, nor dispense any flammable or combustible liquids in the fuel tanks of a vessel, except in compliance with the NFPA 31 (*Standard for the Installation of Oil Burning Equipment*) and any other applicable laws or regulations, including any requirements of the Office of the State Fire Marshal.

801.2 No person shall use, possess, sell, possess with the intent to sell, or offer for sale any consumer fireworks, as that term is defined in 8 M.R.S.A. § 221-A(1-A).

802 OBSTRUCTING DOCKS AND WALKWAYS

A person may not cause docks and walkways within the harbor area to be obstructed by mooring lines, water hoses, electrical cables, boarding ladders, permanently fixed stairs, or any other materials.

803 MOTOR VEHICLES

Motor vehicles may not be left unattended on or near the launching ramp. All motor vehicles must be parked in designated areas, unless otherwise permitted by the Harbormaster. Motor vehicle operators must comply with all City parking regulations.

804 OBSTRUCTING CHANNELS AND ANCHORAGES

804.1 A person may not obstruct the free use of any channel or waterway or anchorage within the harbor. The owner or operator of a vessel must report to the Harbormaster any collision between vessels or other accident or incident causing damage to persons or property in the harbor.

804.2 Upon receiving a complaint from the master, owner, or agent of a vessel, the Harbormaster must cause any other vessel or vessels obstructing the free movement or safe anchorage of that vessel to remove to a position to be designated by the Harbormaster.

804.3 The Harbormaster must cause any vessels anchoring within the channel to remove to such anchorage as the Harbormaster may designate.

804.4 If a vessel has no crew on board or if the master or other person in charge neglects or refuses to move a vessel as directed by the Harbormaster, the Harbormaster may put a suitable crew on board and move the vessel to a suitable berth at a wharf or anchorage at the cost and risk of the owners of the vessel, and must charge \$100, to be paid by the master or owner of the vessel. The Harbormaster may collect the charge, together with the cost of the crew for removing that vessel, by civil action.

STATE LAW REFERENCE—38 M.R.S.A. §§ 2, 5 (RULES FOR CHANNEL LINES; ENFORCEMENT; REMOVAL OF VESSELS OBSTRUCTING AN ANCHORAGE).

805 UNSAFE BERTHING

If any vessel is, in the judgment of the Harbormaster, anchored or moored within the harbor in an unsafe or dangerous manner, or in such a way as to create a hazard to other vessels or to persons or property, the Harbormaster must order and direct measures to eliminate such unsafe or dangerous condition. Primary responsibility for compliance with such order and direction rests with the owner or operator of the improperly anchored or moored vessel. In an emergency situation in the absence of the vessel owner or operator, the Harbormaster must forthwith board such vessel and cause the emergency situation to be corrected, and the owner of the vessel will be liable for any costs incurred by the City in effecting such correction.

ARTICLE 9 REMOVAL AND TAKING CUSTODY OF MOORINGS AND VESSELS

901 REMOVAL AND TAKING CUSTODY OF ILLEGALLY BERTHED, DERELICT OR ABANDONED VESSELS

901.1 Removal of Vessel. The Harbormaster may assume custody of a vessel and cause it to be removed if any of the following circumstances arise:

1. An unattended vessel is secured, moored illegally, or moored without permission, reservation, or a permit within the harbor.
2. The mooring has not been inspected as a result of any action or inaction by the vessel owner or operator as set forth in Section 506.2.
3. The Harbormaster determines that a vessel is illegally berthed, derelict, or has been abandoned within the harbor. The Harbor Commission is the sole determiner as to what constitutes a watercraft that is abandoned.
4. The Harbormaster determines that a vessel poses an immediate threat to the health, safety, or welfare of persons using the harbor or lands adjoining the harbor, the Harbormaster has directed the master or owner of such vessel to immediately move the vessel, and the master or owner of such vessel has refused, cannot be timely reached, or ownership can be determined.
5. The Harbormaster has received a complaint from the owner of a vessel that another vessel is obstructing the free movement or safe anchorage or owner's vessel, the Harbormaster has directed the master or owner of such vessel to move the vessel to a position to be designated by the Harbormaster, and the master or owner of such has refused, cannot be timely reached, or ownership can be determined.

6. The Harbormaster finds any vessel anchoring within the channel, the Harbormaster has directed the master or owner of such vessel to remove such anchorage, and the master or owner of such vessel has refused, cannot be timely reached, or ownership can be determined.

902.2 Procedures for Impounding Vessels.

1. If a vessel has no crew on board or if the master or other person in charge neglects or refuses to move a vessel as directed by the Harbormaster, the Harbormaster may put a suitable crew on board and move that vessel to a suitable berth at a wharf or anchorage, at the cost and risk of the owners of the vessel and shall charge \$100 to be paid by the master or owner of that vessel, which charge, together with the cost of the crew for removing that vessel the Harbormaster may collect by civil action.
2. Within 24 hours of such action, the Harbormaster must notify the master or owner of the vessel, the City Manager, and the Harbor Commission of such action.

902 REMOVAL AND TAKING CUSTODY OF MOORINGS.

902.1 Removal of Mooring. The Harbormaster may assume custody of a mooring and cause it to be removed if the Harbormaster determines that:

1. The mooring is abandoned; or
2. The mooring needs to be removed or replaced pursuant to Section 509.

902.2 Procedures for Impounding Moorings.

1. Before removing a mooring or a buoy, the Harbormaster must notify the vessel owner or operator, if ownership can be determined, by mail at the last known address of the action desired of the owner or operator, the fact that the mooring will be removed, the reason for the removal, and the amount of any fine assessed. The Harbormaster must also notify the City Manager and the Harbor Commission of such intended action.
2. If the matter is not settled to the Harbormaster's satisfaction within two weeks, the Harbormaster may cause the entire mooring to be removed or the buoy removed and the chain dropped to the bottom or make such change in the character of the mooring as required by the provisions of Section 509, and collect by civil action from the master or owner of that boat or vessel the sum of \$100 for either of those services rendered and necessary expenses.

903 RECOVERY OF REMOVED VESSEL OR MOORING

Any vessel or mooring taken into custody pursuant to this Article 9 must be released to the owner by the Harbormaster after the owner provides satisfactory proof of ownership, pays all penalties, and reimburses the City for all costs incident to the recovery, movement, and storage of the vessel or mooring.

904 ABANDONED PROPERTY

An abandoned vessel or mooring becomes the property of the City after an attempt has been made to notify the owner in accordance with this Article 9. The abandoned mooring will be removed and disposed of in accordance with the City's policy on the sale of surplus property.

ARTICLE 10 ENFORCEMENT

The Harbormaster is responsible for enforcing the provisions of this Chapter 3 by inspecting premises, investigating complaints, issuing notices of violation, suspending or revoking permits or approvals, and participating in legal prosecution of violations as needed, in accordance with Chapter 1, Section 509 of the City Code.

ARTICLE 11 DEFINITIONS

For purposes of this Chapter 3, the following terms have the following meanings:

Anchorage: An area of the harbor set aside for permanent moorings or for the temporary anchoring of boats and vessels.

Coastal Waters: All waters of the City within the rise and fall of the tide and wholly or partially within the territorial limits of the City, except areas above any fishway or dam when the fishway or dam is the dividing line between tidewater and fresh water.

Commercial Purposes: Shall mean any vessel used or engaged for any type of commercial venture, including but not limited to fishing or carrying cargo and/or passengers for hire.

Emergency: A state of imminent or proximate danger to life or property in which time is of the essence.

Float: A floating structure normally used as a point of transfer for passengers and goods and/or for mooring purposes.

Harbor: The coastal waters of the City designated as a harbor in Section 103, consisting of the inner harbor and outer harbor.

Houseboat: A motorized vessel that is usually nonplaning and designed primarily for multipurpose accommodation spaces with low freeboard and little or no foredeck or cockpit.

Illegally Berthed: A vessel that is docked without a permit or approval from the Harbormaster.

Inland Waters: All waters within the City above the rise and fall of the tide and wholly or partially within the territorial limits of the City, except private ponds as defined in 12 M.R.S.A. § 10001(51).

Mooring: Equipment, such as anchors, chains and lines, for holding fast a vessel, aircraft, floating dock, or buoy.

Mooring, Abandoned: A mooring that remains unused for a year.

Nonwater-Dependent Floating Structure: A waterborne structure that (i) is located within the City's coastal waters or inland waters, (ii) is supported wholly or partially by the structure's own buoyancy, and (iii) supports a nonwater-dependent use, such as a floating home, as those terms are defined in 12 M.R.S.A. § 3301.

Resident: A person who is a registered voter of the City or who owns or rents real property in the City and uses that property for their residence at least six months of the year.

Riparian Owner: An owner of a parcel of land located in the City which borders upon the harbor.

Season, Extended: April 2 through May 14, and October 16 through December 5.

Season, Regular: May 15 through October 15.

Season, Off: December 6 through April 1.

Shore or Shoreland: That part of the land in immediate contact with a body of water, including the area between the high and low water lines.

To Anchor: To secure a vessel to the bottom within a body of water by dropping an anchor or anchors or some other ground tackle.

Vessel: Any watercraft or artificial contrivance used or capable of being used as a means of transportation on water.

Watercraft: Any type of vessel, boat, canoe, or houseboat, excluding a seaplane, capable of being used as a means of transportation on water, that satisfies all applicable laws and rules pertaining to navigation and safety equipment on watercraft. "Watercraft" includes motors, electronic and mechanical equipment and other machinery, whether permanently or temporarily attached, that are customarily used in the operation of the watercraft. "Watercraft" does not include a vessel, boat, canoe, or houseboat located and intended to be permanently docked in one location and not used as a means of transportation on water.

Waterway: Any water area providing access from one place to another, principally a water area providing a regular route for water.

Part 3. Chapter 4 of the City Code (Fire Protection and Prevention Ordinance) is proposed to be amended by adding the words shown in underline and by striking the words shown in strikethrough, as follows.

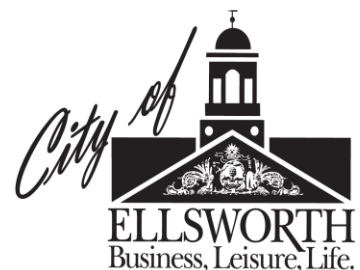
Code of Ordinances, City of Ellsworth

CHAPTER 4
FIRE PROTECTION AND PREVENTION

A true copy, attest:

Heidi-Noël Grindle
City Clerk

HISTORICAL NOTE: ADOPTED JULY 21, 2008 (EFFECTIVE DATE SEPTEMBER 1, 2008); AMENDED JUNE 20, 2011; AMENDED APRIL 15, 2013; AMENDED APRIL 17, 2017; AMENDED DECEMBER 21, 2020; AMENDED AUGUST 16, 2021; AMENDED MAY 19, 2025; AMENDED *** 2026.



CHAPTER 4

FIRE PROTECTION AND PREVENTION

ORDINANCE

Table of Contents

Art. I.	Ordinance Authority	Page 3
Art. II.	Adopted codes and references	Page 3
Art. III.	Fire Prevention	Page 8
Art. IV.	Ventilation and Fire Extinguishing Systems	Page 15
Art. V.	Fire Alarm Systems	Page 17
Art. VI.	Sprinkler Systems	Page 21
Art. VII.	Water Supplies for Fire Fighting	Page 26
Art. VIII.	Definitions	Page 29
Art. IX.	Penalties and fines	Page 31
Appendix		Page 32

Article I

~~Ordinance Authority~~Effective Date

Sec. 1.1 This ~~Ordinance~~Chapter 4 shall be effective September 1, 2008.

~~Sec. 1.2~~ Whenever the requirements of this ordinance conflict with the requirements of any other lawfully adopted rule, regulation, ordinance, the more restrictive requirements shall govern.

~~Sec. 1.3~~ If any section, subsection, clause or phrase of this Ordinance shall be held to be invalid or unconstitutional, such invalidity shall not affect the remaining provisions of this Ordinance and to that end, the provisions of this Ordinance are hereby declared to be severable.

Article II

~~Adopted State Codes, Standards, Rules, and Statutes~~ by Reference

Section 2.1

The City ~~of Ellsworth~~ hereby adopts ~~the following codes,~~ by reference pursuant to 30-A M.R.S.A. § 3003; ~~all current and future revisions of Codes, Standards, Rules, and Statutes, including all additions and omissions thereto, as formally adopted by the State of Maine Fire Marshal's Office and Title 25, Chapters 313 through 321 of the Maine Revised Statutes, as the regulatory basis for inspection, plans review, and enforcement pertaining to all buildings other than one and two family dwellings. This adoption is inclusive~~

~~of, and shall automatically incorporate, all subsequent amendments and revisions duly promulgated by the State of Maine.~~

~~Specifically included within this adoption are the following, as currently in effect and as hereafter amended and adopted by the State of Maine:~~

- National Fire Protection Association (NFPA) codes and standards set forth in Appendix 4-A to this Chapter 4.
- ~~Maine Uniform Building and Energy Code (MUBEC), as required by 10 M.R.S.A. § 9724, which encompasses is composed of the following International Codes as adopted by the State of Maine Technical Building Codes and Standards Board (codified at 16-642 C.M.R. ch. 1, § 6), except that the appendix to the MUBEC containing optional energy conservation and efficiency requirements, as provided by 10 M.R.S.A. § 9722(6)(O) and known as the MUBEC Stretch Code is not adopted.:~~
- ~~International Building Code.~~
- ~~International Residential Code.~~
- ~~International Energy Conservation Code.~~
- ~~International Existing Building Code.~~
- International Mechanical Code

A copy of the these codes adopted by reference, and any amendments thereto, must be on file with the City Clerk and available for public inspection during regular business hours.

~~(Note: The Standards, Rules, Codes, and Maine Revised Statutes adopted by the State Fire Marshal's Office are detailed in the appended document, which shall be understood to incorporate all subsequent amendments and revisions promulgated by the aforementioned State authority.)~~

Section 2.2: Review of Public Building Construction Projects

The City ~~of Ellsworth~~ shall review construction projects of public buildings as described in ~~Title 25, M.R.S.A. § Section 2468 of the Maine Revised Statutes.~~

Section 2.2.1: Fire & Life Safety Plan Review FeeProtection and Prevention Inspection Fee Schedule

A. ~~Fee Establishment:~~

~~Pursuant to the requirements of the Maine Administrative Procedure Act, t~~The City of Ellsworth hereby establishes the following methodology for calculating the fire protection and prevention inspection fee schedule for the examination of all plans for construction, reconstruction, or repairs submitted to the City ~~of Ellsworth~~ that require review for fire and life safety compliance.

B. ~~Fee Limitation:~~

~~The City of Ellsworth shall not charge a developer a fee fire and life safety plan review that exceeds \$0.04\$ per square foot of the gross building area.~~

C. ~~Other Fees:~~

~~This inspection fee limitation does not prevent the City of Ellsworth from charging other applicable~~is in addition to any other applicable fees for ~~other~~ construction-related permits,

inspections, or life safety-related projects, including those fees as established by separate ordinances or regulations Chapter 1, Articles 3 and 4.

...

Additional Fees

Satisfactory Re-inspection	No additional charge
Unsatisfactory re-inspection without a plan in place or noncompliance with the plan of correction.	Repeat the amount of the initial inspection fee
Second, unsatisfactory re-inspection without a plan in place or noncompliance with the plan of correction.	Double the amount of the original
Third, unsatisfactory re-inspection without a plan in place or noncompliance with the plan of correction.	Double the previous re-inspection fee and referral for possible citation. Citation Penalty \$100 minimum \$2500 maximum
Pre-inspections / pre-build review (This is a required local review and not a formal plans review conducted by the SFMO)	\$50
Site Inspections are conducted when requested by the contractor or required by code, ordinance, or statute.	\$50
Occupancy load calculation	\$50
Emergency vehicle access evaluation	\$70
Founded Complaints	\$100
Founded Serious Complaints	\$200
Repeat Complaints	Triple the original fee and referral for possible citation. Citation Penalty \$100 minimum \$2500 maximum

Commercial Fire Alarm Plan Review & Permit Fees

~~Fire Alarm Plan Review~~	~~Minimum \$100 plus 0.20/ square foot of building area~~
~~Installation and/or modification of fire alarm/detection, smoke control system inspection Fee (re-inspections)~~	~~\$100~~
~~Installation and/or medication of alarm/decoction/smoke control system inspection Fee (initial)~~	~~\$100~~
~~Replacement or modification of the Fire Alarm Control Panel with existing devices inspection fee (initial)~~	~~\$200~~
~~Replacement or modification of the Fire Alarm control Panel with existing Devices Inspection fee (re-inspections)~~	~~\$100~~

~~Commercial Sprinkler System Plan Review & Permit Fees~~

~~Sprinkler Connection Fee~~	~~\$275~~
~~Fire pump installations each~~	~~\$100~~
~~Installation and/or modification of automatic Sprinkler System (initial)~~	~~\$225~~

Penalties**~~False Alarm (per calendar Year) *~~**

~~First incident~~	~~No Charge~~
~~Second Incident~~	~~No Charge~~
~~Third Incident~~	~~\$250.00~~
~~Fourth Incident~~	~~\$250.00~~
~~Fifth Incident~~	~~\$500.00~~
~~All future incidents~~	~~\$1000.00~~

Article III Fire Prevention

...

Sec. 3.4 Permits and Approvals

...

D. Sprinkler Systems and Related Equipment

Installation of, replacement of, or modification to sprinkler systems and all related equipment; Required periodic maintenance performed in accordance with NFPA 25 and manufacturer's specifications is not considered a modification and does not require a permit.

Fire Protection in Accessory Dwelling Units. Fire suppression sprinklers are not required for an accessory dwelling unit unless the accessory dwelling unit is within or attached to a structure of more than two dwelling units, including accessory dwelling units. As used in this section, "accessory dwelling unit" has the same meaning as in Chapter 56 (UDO).

STATE LAW REFERENCE—25 M.R.S.A. § 2463-B (FIRE PROTECTION IN ACCESSORY DWELLING UNITS).

...

Article IX Penalties and Fines

Sec. 9.1 Authority

~~The Fire Chief may bring civil legal action on behalf of the city when voluntary compliance cannot be obtained.~~

The CEO and Fire Chief are responsible for enforcing the provisions of this Chapter 4 by inspecting premises, investigating complaints, issuing notices of violation, suspending or revoking permits, licenses, or approvals, and participating in legal prosecution of violations as needed, in accordance with Chapter 1, Section 509 of the City Code.

The CEO shall serve as the building official, as defined in 25 M.R.S.A. § 2371, for purposes of administering and enforcing the MUBEC, including performing the required building inspections, issuing building permits, and issuing certificates of occupancy.

~~Sec. 9.2 Code Violations~~

~~Any person, being the owner or tenant or having control of any property or structure or part thereof which violates any of the provisions of this Code or who fails to conform to any of the provisions thereof, after having received a ten-day notice of such violation, shall be subject to the penalty provisions of Section 9-4.~~

~~Sec. 9.3 Notice of Violation~~

~~The Fire Chief may cause a notice of violation or order to be served on the person responsible for a violation or non-compliance condition, in violation of the provisions hereof, or in violation of a plan of correction or of a detail statement made with a permit application.~~

~~A. Such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.~~

~~B. — If the notice is not complied with promptly, the Fire Chief may issue a Civil Summons, or may request that the City institute the appropriate proceedings, in law or in equity; to restrain, correct or abate such violation.~~

~~Sec. 9.4 Penalty~~

~~Whenever in this code no specific penalty is provided the violation of any such provision of this Code shall be punished by a penalty of not less than \$100.00 and not greater than \$250.00, plus costs. All penalties shall be recovered on complaint to the use of the city. Each day any violation of any provisions of this Code shall continue shall constitute a separate offense. In addition to the applicable civil penalty, a violator may be ordered to correct or abate violations. If the City is the prevailing party, the City must be awarded reasonable attorney fees, expert witness fees and costs.~~

~~Sec. 9.5 Licenses~~

~~No Liquor, Lodging, Victualer, Business or other City license will be granted without compliance with this ordinance.~~

~~Sec. 9.6 Appeals~~

~~The Ellsworth Board of Appeals is hereby established as the Board of Appeals to sit in judgment on matters concerning interpretation of NFPA Codes adopted by the City, and their enforcement. The Board of Appeals shall meet whenever directed by the appointing authority to interpret the provisions of this Code or to consider and rule on any properly filed appeal from a decision of the Fire Chief, giving at least five days' notice of hearing, but in no case shall it fail to meet on an appeal within 30 calendar days of the filing of notice of appeal. All of the meetings of the Board shall be open to the public.~~

~~Sec. 9.7 Means of Appeals~~

~~Any person shall be permitted to appeal a decision of the Fire Department to the Board of Appeals when it is claimed that any one or more of the following conditions exist:~~

- ~~A. — The codes or ordinances described in this Code have been incorrectly interpreted.~~
- ~~B. — The provisions of the codes or ordinances do not apply.~~
- ~~C. — A decision is unreasonable or arbitrary.~~

~~Sec. 9.8 Board of Appeals~~

~~An appeal shall be submitted to the Board of Appeals in writing within 30 calendar days of notification of violation outlining the Code provision from which relief is sought and the remedy proposed.~~

~~Appendix 4-A Code, Statutes, Rules~~

~~State of Maine~~

~~Adopted National Fire Prevention Association (NFPA) Standards And Maine Unified Building and Energy Code (MUBEC) Codes Adopted by Reference~~

~~...~~

- ~~• — Maine Uniform Building and Energy Code (MUBEC) as amended by the State of Maine (International Building Code / International Residential Code / International Energy Code / International Existing Building Code / International Mechanical Code~~

Part 4. Chapter 5 of the City Code (Public and Private Sewers) is proposed to be amended by adding the words shown in underline and by striking the words shown in strikethrough, as follows.

In addition, wherever the term “ordinance” appears in Chapter 5, it shall be replaced by the term “Chapter 5.”

Code of Ordinances, City of Ellsworth

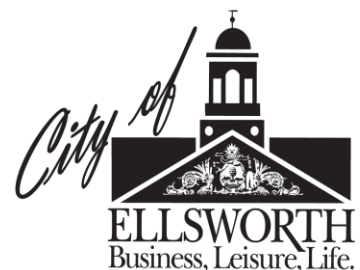
CHAPTER 5

PUBLIC AND PRIVATE SEWERS

A true copy, attest:

Heidi-Noël Grindle
City Clerk

HISTORICAL NOTE: ADOPTED APRIL 18, 2005; AMENDED JUNE 19, 2006; AMENDED JULY 17, 2006; AMENDED JUNE 18, 2007; AMENDED MAY 17, 2010; AMENDED APRIL 18, 2011; AMENDED MARCH 18, 2013; AMENDED APRIL 15, 2013; AMENDED NOVEMBER 18, 2013; AMENDED APRIL 17, 2017; AMENDED DECEMBER 18, 2017; AMENDED JANUARY 8, 2018; AMENDED *** 2026.



CHAPTER 5

PUBLIC AND PRIVATE SEWERS

In addition to the general purposes of the City Code set forth in Chapter 1, Article 2, the purposes of this Chapter 5 (Public and Private Sewers) are~~An ordinance~~ to promote the public's general health, safety and welfare; and to prevent disease by regulating the use of public and private sewers and drains, private sewage disposal, the installation and connection of building sewers, and the discharge of waters and wastes into the public sewer systems, and providing penalties for violations thereof in the City of Ellsworth, County of Hancock, State of Maine.

...

ARTICLE I – DEFINITIONS

...

“State Plumbing Code” shall mean the State of Maine ~~Plumbing Codes~~subsurface wastewater disposal rule, as amended, from time to time codified at 10-144 C.M.R. ch. 241.

...

Section 303 - The type, capacities, location, and layout of a private sewage disposal system shall comply with ~~all recommendations of the Department of Human Services, Bureau of Health, State of Maine~~the State Plumbing Code.

...

Section 402 –

A. There shall be two (2) classes of building sewer permits - (1) for residential service, and (2) for commercial, industrial, and other non-residential service. In either case, the owner or his agent shall make application on a form furnished by the City. The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the Superintendent.

*Sewer Connection fees shall be as ~~follows set forth in Chapter 1, Article 3 of the City Code~~ and paid to the City Treasurer at the time an application is filed: ~~Residential \$500; Non-residential connection fees shall be based on the design flow of the building use cited in the design flow table of the most recent edition of the sub-surface sewer rules of the State of Maine. The fee shall be \$500 for the first 270 gallons of design flow and \$5 per gallon of design flow thereafter. The connection fee will be reviewed annually at the January City Council meeting.~~

B. If a residential service is changed to commercial, industrial, or other non-residential service, the owner or agent shall make a new application for the new class of use in accordance with subsection (A). If the property owner paid a residential connection fee, the fee paid will be credited toward the new non-residential service fee calculated based on design flow.

...

ARTICLE IX - PENALTIES

Section 901 – The Superintendent is responsible for enforcing the provisions of this Chapter 5, except Section 701, by inspecting premises, investigating complaints, issuing notices of violation, suspending or revoking permits or approvals, and participating in legal prosecution of violations as needed, in accordance with Chapter 1, Section 509 of the City Code.~~Any person violating any provision of this ordinance except~~

~~Section 701 shall be served by the City with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in said notice, permanently cease all violations.~~

~~Section 902—Any person who fails to comply with the provisions of this ordinance other than those provisions pertaining to the payment of charges for services established herein, shall, be liable for a civil penalty not exceeding five hundred dollars (\$500.00) for each offense. The continued violation of any provision of any section of this ordinance, other than those pertaining to the payment of charges for services established herein, shall constitute a separate offense for each and every day such violation of any provision hereof shall continue.~~

~~Section 903—As an alternative, upon violation of this ordinance, the proper authorities of the City, in addition to other remedies, may institute any appropriate action or proceedings including an injunction to prevent such unlawful use, construction, or maintenance of cesspools, septic tanks, sewage disposal systems, pipes or drains, to restrain, correct or abate such violation, or to prevent the occupancy of any building structure or land where said violations of this ordinance are found.~~

~~Section 904—Any person violating any of the provisions of this ordinance shall become liable to the City for any expense, loss, or damage incurred by the City by reason of such violation. The City Manager is authorized to order that legal action be taken to enforce the provisions of this Ordinance pursuant to 30-A M.R.S.A. Section 4452.~~

...

ARTICLE XII INFLOW REMOVAL PROGRAM

In order to reduce unapproved inflow to the sewer collection system, the City ~~of Ellsworth~~ will charge a ~~\$50~~ quarterly inflow surcharge, in an amount determined by the City Council, against those contributing said inflows. This surcharge will be assessed for each incidence of unapproved connections to the sewer. This charge will be eliminated upon removal of the unapproved or illegal connection to the sewer service and a proven and viable method for ground water and surface water removal has been installed to the Wastewater Department's specifications. Illegal inflows include but are not limited to sump pumps, foundation drains, and basement drains. ~~This fee will commence 180 days after approval by the City Council.~~ This surcharge will be applied to all users; exemptions will be given by the Wastewater Superintendent if no illegal connection is found or if an illegal connection is satisfactorily removed per the above specifications. Sewer users should contact City Hall to schedule an appointment for inspection to determine exemption eligibility.

~~ARTICLE XIII—VALIDITY OF ORDINANCE~~

~~Section 1301—All ordinances or parts of ordinances in conflict herewith are hereby repealed.~~

~~Section 1302—The validity of any section, clause, sentence or provision of this ordinance shall not affect the validity of any part of this ordinance which can be given without such invalid part or parts.~~

~~ARTICLE XIIIIV - ORDINANCE IN FORCE~~APPLICABILITY

This ~~ordinance~~Chapter shall be in full force and effect from and after its passage, approval, and recording, except Section 204 is not applicable to any project, development or subdivision that has received final Planning Board approval ~~or other local review approval~~ or other local review approval prior to date of adoption of this ~~Ordinance~~Chapter by the ~~Ellsworth~~ City Council.

Part 5. Chapter 14 of the City Code (Licenses and Permits) is proposed to be repealed in its entirety and replaced with the proposed Chapter 14 (Licenses and Permits), attached hereto.

Code of Ordinances, City of Ellsworth

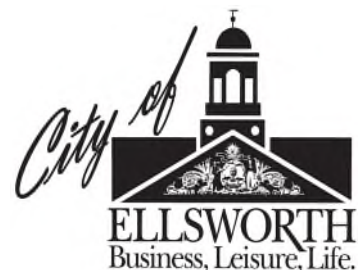
CHAPTER 14

LICENSES AND PERMITS

A true copy, attest:

Heidi-Noël Grindle
City Clerk

HISTORICAL NOTE: ADOPTED OCTOBER 21, 1996; AMENDED JANUARY 27, 1997; AMENDED FEBRUARY 24, 1007; AMENDED MARCH 17, 1997; AMENDED JULY 21, 1997; AMENDED AUGUST 18, 1997; AMENDED NOVEMBER 16, 1998; REPEALED AND REPLACED AUGUST 20, 2007 (EFFECTIVE SEPTEMBER 1, 2007); AMENDED JUNE 16, 2008; AMENDED AUGUST 17, 2009; AMENDED DECEMBER 13, 2010; AMENDED OCTOBER 17, 2011; AMENDED APRIL 16, 2012 (EFFECTIVE JUNE 16, 2012); AMENDED SEPTEMBER 15, 2014; AMENDED MAY 16, 2016; AMENDED MAY 19, 2025; REPEALED AND REPLACED *** 2026.



CHAPTER 14

LICENSES AND PERMITS

ARTICLE 1 GENERAL PROVISIONS

101 APPLICABILITY; EFFECTIVE DATE

This Chapter 14 applies to commercial activities that require, pursuant to state law, licenses, Permits, or other approvals of the City Council serving as the City's municipal officers.

This Chapter 14 is effective as of September 1, 2007.

102 LICENSE REQUIRED

No person may, without first obtaining a license from the applicable City administrator, engage in any activity requiring a license under this Chapter 14.

A business or activity may require more than one license under this Chapter 14, including a general business license as set forth in Article 3 and one or more of the activity-specific licenses set forth in Article 2.

Whenever a business or activity requires more than one license such that the business or activity is deemed a Class B establishment or a Class C establishment, the applicant may submit one written application and the administrator shall process the application in accordance with the requirements of Section 104, except that the activity-specific license requirements for each license type in Article 2 shall apply.

103 ADMINISTRATION

This Chapter 14 is administered by the City Council and the administrators identified in Appendix 14-A who are hereby expressly delegated the authority to process, review, and issue the licenses and approvals required by this Chapter 14.

104 PROCEDURES FOR ADMINISTERING LICENSES

104.1 Written Application. Any person required by this Chapter 14 to obtain a license must submit a written application as provided in Chapter 1, Section 208. The application must be accompanied by all applicable fees, as provided in Chapter 1, Article 3 (Fee Schedule and Special Fees).

104.2 Completeness Review; Department Head Review. The administrator shall review the license application for completeness in accordance with Chapter 1, Section 208. Upon receiving a complete application and prior to issuing the license, the administrator must obtain written recommendations for approval from City department heads with administrative oversight or expertise in the subject-matter of the application, including the Fire Chief, Police Chief, Code Enforcement Officer, and City Treasurer. The City department heads must base their recommendations on the applicable license review criteria set forth in this Chapter 14, including the general license review criteria in Section 105.

104.3 Inspections. When required by this Chapter 14, the City department heads named in Section 104.2 shall cause inspections to be made and a written report forwarded to the City administrator verifying that the premises to be used by the proposed activity complies with State plumbing and subsurface wastewater disposal rules, the Maine Food Code, and the City Code, including Chapter 4 (Fire Protection and Prevention), Chapter 5 (Public and

Private Sewers), Chapter 33 (Floodplain Management), Chapter 43 (Trees) Chapter 56 (UDO), Chapter 59 (Consumer Fireworks and Commercial Outdoor Public Fireworks/Pyrotechnics Display), and Chapter 67 (Unified Building Ordinance).

104.4 Public Notice and Hearing.

1. When required by this Chapter 14, the City Clerk shall schedule a public hearing in accordance with Chapter 1, Section 208.
2. For new license applications, the applicant or their authorized agent must be present at the public hearing. If the applicant or agent fails to attend, the administrator must deem the application incomplete and no action may be taken on the application until a new public hearing is scheduled.
3. For renewal license applications, the applicant and their authorized agent are not required to be present at the public hearing, unless the City administrator determines that:
 - (a) The application is incomplete;
 - (b) The premises are not in compliance with the City Code as required by Section 104.3;
 - (c) The applicant has failed to pay all City personal property taxes, solid waste fees, or any other obligations owed to the City, excluding real estate taxes and water and sewer charges; or
 - (d) The applicant is carrying out the activity pursuant to a license that has expired or has been suspended or revoked.

104.5 Decision; License Conditions. The City administrator may approve, approve with conditions, or deny the license application in accordance with Chapter 1, Section 208. Without limiting the foregoing sentence, the City administrator may impose conditions on any license reasonably necessary to ensure the protection of the public health, safety, and welfare, including conditions relating to insurance, parking, health and sanitation, hours of operation, permissible noise levels, and other public safety concerns.

104.6 Police and Fire Personnel Presence. As a condition of approval, the administrator may require the presence of City police or fire personnel before, during, or after an activity or event licensed pursuant to this Chapter 14, at the applicant's expense.

104.6 Term of License. Except as otherwise provided for by this Chapter 14, including in Appendix 14-A, or state law, or unless the license is issued for a lesser period, the term of all licenses and license renewals authorized under this Chapter 14 shall be for one year from the date of issuance and shall run concurrently.

104.7 License, Location Non-Transferable. No license issued under this Chapter 14 is assignable or transferable. No license shall apply to any location other than the location designated in the license application. When a business or enterprise is transferred or relocated, the prior owner's license shall immediately and automatically terminate unless otherwise provided by this Chapter 14 or state law and the new owner shall apply for a license in accordance with this Chapter 14. For the purposes of this Chapter 14, a new owner includes a business or enterprise formerly operated by a tenant or mortgagor, or in the case of a corporation, a new owner or a controlling interest in the corporation.

105 GENERAL LICENSE REVIEW CRITERIA

Prior to issuing a license under this Chapter 14, the City administrator must find that the proposed licensed activity complies with the following license review criteria:

- 105.1 Compliance with Applicable Law.** The premises to be used by the proposed licensed activity complies with State plumbing and subsurface wastewater disposal rules, the Maine Food Code, and the City Code, including Chapter 4 (Fire Protection and Prevention), Chapter 5 (Public and Private Sewers), Chapter 33 (Floodplain Management), Chapter 43 (Trees) Chapter 56 (UDO), Chapter 59 (Consumer Fireworks and Commercial Outdoor Public Fireworks/Pyrotechnics Display), and Chapter 67 (Unified Building Ordinance).
- 105.2 Arrearages Paid.** The applicant has paid all City personal property taxes, solid waste fees, or any other obligations owed to the City, including arrearages owed by a prior owners of the affected premises, business, or enterprise, but excluding real estate taxes and water and sewer charges.
- 105.3 License-Specific Review Criteria.** The proposed licensed activity complies with all applicable license-specific review criteria set forth in Article 2 and in other provisions of the City Code.
- 105.4 Permit, License Terms and Conditions.** The proposed licensed activity complies with the terms and conditions of approval as specified in any other licenses, permits, or approvals granted under the City Code, including building permits and development permits. Additionally, for license renewal applications, the proposed licensed activity complies with the terms and conditions of the prior license issued for the activity or enterprise.

ARTICLE 2 ACTIVITY-SPECIFIC LICENSES**201 ADULT USE CANNABIS STORE (RETAIL)**

- 201.1 State and City Licenses Required.** No person shall operate an adult use cannabis store within the City without first obtaining (a) a license in accordance with Article 1 and Section 201 and (b) an active license from the OCP pursuant to 28-B M.R.S.A Ch. 1.
- 201.2 Public Hearing.** A public hearing is required prior to action on a new City license application or renewal application.
- 201.3 Licensing Documents.** The following information shall be provided to the City Clerk as part of the initial and annual licensing process:
 - 1. For new license applications, a conditional state license issued by the OCP to operate an adult use cannabis store.
 - 2. A letter from the City Police Chief confirming that (a) the security plan required by Section 201.5 and the anti-diversion policy required by Section ***, and any amendments thereto, are on file and found to be acceptable; (b) the receipt of the summary report of incidents and illegal activities for the previous year; and (c) the semi-annual receipt of the employee lists and that the employees were found to be acceptable.
 - 3. A letter from the City Fire Chief confirming the receipt of the material safety data sheets and annual updates.

201.4 Limit on Number of Adult Use Cannabis Store License. The administrator shall issue no more than three adult use cannabis store licenses under this Chapter 14. Licenses shall be awarded using the lottery procedures set forth in Appendix 14-B. After the first three licenses are issued, the same lottery procedures shall apply at such time that a license becomes available as a result of license non-renewal, abandonment, or revocation. All persons or entities identified as the principal, partner, or member on the application are restricted to one application; applications that include persons or entities that are principals, partners, or members of another adult use cannabis store license applicant or licensee shall be denied.

201.5 Security Plan. An adult use cannabis store must have a security plan approved by and filed with the City Police Chief. The plan shall address means of preventing a continuing pattern of offenses against the public peace, drug-related criminal conduct within the premises of the adult use cannabis store or the immediate area surrounding the adult use cannabis store, and criminal conduct directly related to or arising from the operation of the adult use cannabis store. The policy shall include, at minimum, the following:

1. Devices or a series of devices, including a signal system interconnected with a radio frequency method such as cellular, private radio signals, or other mechanical or electronic device, to detect unauthorized intrusions.
2. The interior must be equipped with electronic monitoring, video cameras, and panic buttons.
3. Qualified security staff may be required by the City Police Chief.
4. The adult use cannabis store shall have a policy to consistently and systematically prevent loitering.
5. Surveillance records shall be kept for a minimum 30 days and be available to the City Police Chief upon request.
6. A service delivery plan.

201.6 Design Standards.

1. All glass windows and doors shall be opaque, tinted, or otherwise obscure view from outside the licensed premises.
2. All signage shall comply with Chapter 56, Article 12; Chapter 56, Section 827; and 28-B M.R.S.A Ch. 1, including limitations on advertising and marketing.

201.7 Performance Standards. An adult use cannabis store must comply with the requirements of Chapter 56, Section 827.

201.8 Operating Requirements. The licensee shall comply with the following requirements during the term of the license.

1. **Display of License.** The current license must be displayed at all times in a conspicuous location within the licensed premises.
2. **Hours of Operation.** An adult use cannabis store shall only operate between the hours of 8:00 AM and 8:00 PM.

3. **Location.**

- (a) All licensed premises shall be at fixed, permanent locations. Licensees shall not be permitted to operate adult use cannabis stores in temporary locations such as mall kiosks, readily removal structures, single and doublewide trailers, or farm stands.
- (b) Adult use cannabis stores shall only be located in zoning districts where such uses are permitted, including the Cannabis Overlay Zone, and shall not be located within 500 feet from the property line of an existing public or private school. For the purposes of this paragraph, “school” includes a public school, as defined in 20-A M.R.S.A. § 1(24), a private school, as defined in 20-A M.R.S.A. § 1(22), a public preschool program, as defined in 20-A M.R.S.A. § 1(23-A), or any other educational facility that serves children from prekindergarten to grade 12.
- (c) Adult use cannabis stores shall not be located within 1,000 feet of a drug-free zone designated by the City under 30-A M.R.S.A § 3253.

201.9 Incident Reporting. An adult use cannabis store shall submit to the City Police Chief a copy of the State of Maine incident report form on the next business day after the licensee discovers a violation of the requirements set out in the state rules applicable to the operation of an adult use cannabis store. The report must indicate the nature of the breach and the corrective actions taken by the adult use cannabis store.

201.10 Illegal Activity Reporting. Any suspected illegal activity involving the operation of an adult use cannabis store must be reported to the City Police Chief by the adult use cannabis store in a timely manner.

201.11 Employees. An adult use cannabis store shall semi-annually provide to the City Police Chief a list of all of its employees. Staff changes shall be reported to the City Police Chief or designee within 10 days of hiring.

201.12 Chemicals. An adult use cannabis store shall maintain a material safety data sheet file with the City Fire Chief for all chemical stored or used. The list of stored chemicals shall be reviewed and updated annually, and resubmitted to the City Fire Chief.

201.13 Unrestricted Access. The Code Enforcement Officer, Police Chief, or Fire Chief requesting access to the premises of an adult use cannabis store for the purpose of determining compliance with this Chapter 14 shall be given unrestricted access at reasonable times. Failure to cooperate with City inspectors may be grounds to revoke the adult use cannabis store license, as set forth in Chapter 1, Section 509.6.

201.14 Consumption. The consumption or inhalation of cannabis on or within the premises of an adult use cannabis store is prohibited. Cannabis social clubs are prohibited within the City.

201.15 Adult Use Cannabis Food Establishment. An adult use cannabis store must obtain a food establishment license from DHHS, pursuant to 22 M.R.S.A § 2167, and a victualer’s license from the City, pursuant to Section 224.

201.16 Compliance with Other Laws. An adult use cannabis store must comply with all operating and other requirements of state and City law and regulation. To the extent the state has adopted or will adopt any stricter law or regulation governing adult use cannabis stores, the stricter law or regulation shall control and shall apply to the adult use cannabis store at the time of license renewal.

201.17 Suspension or Revocation of License. The procedures in Chapter 1, Section 509.6 shall apply to the suspension or revocation of an adult use cannabis store license. If the enforcement authority revokes a license, the City Clerk shall notify the OCP of such revocation.

STATE LAW REFERENCE—28-B M.R.S.A. CH. 1. (CANNABIS LEGALIZATION ACT).

202 AMUSEMENT ESTABLISHMENT

No person shall operate any amusement establishment within the City without first obtaining a license in accordance with Article 1 and this Section 202. No public hearing is required prior to action on a new license application or renewal application for an amusement establishment.

203 AMUSEMENT ESTABLISHMENT, SPECIAL

203.1 No person shall operate any special amusement establishment within the City without first obtaining a license in accordance with Article 1 and this Section 203. Any such establishment must also comply with the requirements of Chapter 37 (Special Amusement Permit).

203.2 Public Hearing. A public hearing is required prior to action on a new license application or renewal application.

204 ARCADE

No person shall operate an arcade for public patronage in the City without first obtaining a license in accordance with Article 1 and this Section 204. No public hearing is required prior to action on a new license application or renewal application for an arcade.

STATE LAW REFERENCE—30-A M.R.S.A. § 3981 (LICENSING RECREATIONAL BUSINESS ACTIVITIES); 28-A M.R.S.A. § 1054 (PERMIT FOR MUSIC, DANCING OR ENTERTAINMENT).

205 BUSINESS

No person shall directly or indirectly conduct any business, or activity or use in connection therewith, or operate any vehicle, premises, machine, or device, in whole or in part, for which a license is required under this Chapter 14 without first obtaining a license in accordance with Article 3.

206 CARNIVAL / CIRCUS

No person shall operate a carnival or circus within the City without first obtaining a license in accordance with Article 1, this Section 206, and 8 M.R.S.A. § 51. A carnival / circus license must be obtained no less than 24 hours prior to the commencement of the carnival or circus event. No public hearing is required prior to action on a new license application or renewal application for a carnival or circus.

STATE LAW REFERENCE—8 M.R.S.A. § 51 (CIRCUSES—EQUIPMENT; RULES AND REGULATIONS).

207 CLOSING-OUT SALE

207.1 License Required. No person shall hold a closing-out sale within the City without first obtaining a license in accordance with Article 1 and this Section 207. No public hearing is required prior to action on a new license application or renewal application for a closing-out sale.

207.2 Inventory. The application must contain a complete inventory of all items to be included in the sale. The applicant must affirm, in writing and under oath, to the City administrator that no merchandise will be included in the stock offered for sale unless the merchandise

is in or at the place of business where the sale will take place when the sale opens. Any unusual purchases and additions to the stock of goods, wares or merchandise made within 60 days before the filing of an application for a license is prima facie evidence that the purchases and additions were made in contemplation of the sale. If the applicant has been in the same business for which the sale is being conducted for less than two years of continuous operation in the City, the applicant must also affirm, in writing and under oath, that none of the merchandise was purchased before the sale opened for the purpose of selling and disposing of that merchandise at the sale.

- 207.3 Term of License.** The license is valid for 60 days from the date of issuance, and may be extended for 60 additional days if the licensee provides an affidavit to the City administrator stating that all goods, wares, or merchandise listed in the inventory have not been disposed of within the original 60-day period.
- 207.4 License Issued; Records Preserved.** The City administrator shall immediately issue the license upon compliance with this Chapter 14. The City shall preserve all applications for licenses and other papers filed in connection with an application under this Section 207 as a public record for five years.
- 207.5 Revocation; Prior Violations; Suspension.** The enforcement authority shall revoke any license issued under this Section 207 if the licensee violates this Section 207, and the City administrator may refuse to issue another license to any applicant who has been adjudicated of violating this Section 207 before the date of application. If any person adjudicated of any violation of this Section 207 appeals the decision or sentence of the trial court, that person's license must be suspended while the appeal is pending in the appellate court.
- 207.6 Continuation of Business.** After the termination date of the closing-out sale and any extension granted under Section 207.3, the licensee may not continue the business under the same or a different name, at the same location, or elsewhere in the City, contrary to the designation of the sale.

STATE LAW REFERENCE—30-A M.R.S.A. § 3781 ET SEQ. (CLOSING-OUT SALES).

208 CONSUMER FIREWORKS RETAIL SALES

- 208.1 License Required.** No person shall operate any establishment or sell from any establishment consumer fireworks within the City without first obtaining a license in accordance with Article 1 and this Section 208.
- 208.2 Public Hearing.** A public hearing is required prior to action on a new license application or renewal application.
- 208.3 License-Specific Standards.** The license shall not be granted unless the applicant satisfies the following license-specific standards:
1. The applicant must be 21 years of age or older. The applicant must provide proof of age with birth date and one government issued picture identification as part of the license application.
 2. The applicant must possess a federal permit to sell fireworks pursuant to 18 U.S.C. § 843. A current valid federal license to sell fireworks must accompany the license application.
 3. A separate license is required for each location at which an applicant seeks to sell consumer fireworks.

208.4 State Fire Marshal License. The applicant must possess a state license to sell consumer fireworks pursuant to 8 M.R.S.A. § 223-A(3) prior to selling consumer fireworks within the City. Upon receipt of the state license, the applicant shall submit a copy of the current valid license to the City Fire Chief.

208.5 Fireworks within the City's Harbor Park and Marina Prohibited. No person shall use, possess, sell, possess with the intent to sell, or offer for sale any consumer fireworks within the City's harbor park and marina, as identified in Chapter 3, Section 310.

STATE LAW REFERENCE—8 M.R.S.A. § 223-A (SALE OF CONSUMER FIREWORKS).

209 DRIVEWAY / STREET OPENING

209.1 License Required. No person shall cause construction of a driveway within the City or grade, excavate, dig, or open along or upon any City street or road without first obtaining a license in accordance with Article 1 and this Section 209. The licensing requirements in this Section 209 apply to driveways and City streets only. State roads are subject to different rules through the MaineDOT.

209.2 City Administrator; Department Head Review. Any person required to obtain a license under this Section 209 shall apply to the CEO. The CEO shall act upon the license after consultation with the Highway Foreman, Public Works Director, Water and Wastewater Superintendents, and City Manager.

209.3 License-Specific Review Criteria. All work must comply with the following requirements:

1. The City's Highway Road Opening / Location Permit Policy.
2. The MaineDOT utility accommodation rules, codified at 17-229 CMR ch. 210, and all terms and conditions of a utility location permit issued under said rules.
3. The applicable provisions of Chapter 54, Article 9 (Street Design and Construction Standards).
4. Any other applicable state laws or rules and provisions of the City Code, including:
 - (a) Work zone traffic control standards, as set forth in the Federal Highway Administration's Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD);
 - (b) Occupational Safety & Health Administration (OSHA) trenching and excavation standards; and
 - (c) The "Dig Safe Law," as set forth in 23 M.R.S.A. § 3360-A.
5. The licensee must notify the City administrator at least 48 hours in advance of the start of any work.
6. The licensee is solely responsible for timely completing all final restoration of the affected area, which must be restored to the satisfaction to the City administrator. If satisfactory restoration or repairs are not done in a timely fashion and upon reasonable notice to the licensee to do the same, the City will accomplish the final restoration at the licensee's cost.
7. The work shall be done in a manner that protects the safety and welfare of the traveling public.

210 JUNKYARD / AUTOMOBILE GRAVEYARD / AUTOMOBILE RECYCLING BUSINESS

210.1 License Required. No person shall operate or allow operation of a junkyard, automobile graveyard, or automobile recycling business, as those terms are defined in 30-A M.R.S.A. § 3751, without first obtaining a license in accordance with 30-A M.R.S.A. §§ 3751-3755.

210.2 Public Hearing. A public hearing is required prior to action on a new license application or renewal application.

211 LIQUOR (MALT, VINOUS, SPIRITS)

211.1 License Required. No person shall operate any establishment within the City which offers or allows alcoholic beverages for sale or consumption, either on or off the premises, without obtaining a license in accordance with Article 1 and this Section 211.

211.2 Public Hearing. A public hearing is required prior to action on a new license application or renewal application for any establishment where alcohol is proposed to be consumed on premises.

211.3 License-Specific Review Criteria. Applications for licenses to sell or serve alcohol may be denied on any of the following grounds:

1. The applicant or owner of the establishment has been convicted of a Class A, B, or C crime.
2. Noncompliance of the establishment or the premises with State plumbing and subsurface wastewater disposal rules, the Maine Food Code, or the City Code.
3. There have been conditions of record regarding waste disposal, health or safety, or repeated traffic or parking violations on or in the vicinity of the establishment or premises, which were caused by employees or patrons.
4. There have been conditions of record caused by patrons or employees which unreasonably disturb, interfere with, or affect the ability of persons or businesses residing in the vicinity of the premises to use their property in a reasonable manner.
5. There have been repeated incidents of breaches of the peace, disorderly conduct, vandalism, or other violations of law in the vicinity of the establishment or premises, which were caused by employees or patrons.
6. The applicant has committed a violation of any provisions of Title 28-A M.R.S.A, or the Maine liquor enforcement rules and regulations.
7. Any other grounds for denial set forth in 28 M.R.S.A. § 653(2).
8. If the proposed use is within 300 feet of a public or private school, school dormitory, chapel, or parish house, unless one or more exceptions in 28-A M.R.S.A § 701 applies. The distance must be measured from the main entrance of the premises to the main entrance of the school, school dormitory, church, chapel, or parish house by the ordinary course of travel.

211.4 Investigation. The City Police Chief may cause an investigation to be made of the criminal record of the applicant, including its principal officers, shareholders, and members.

STATE LAW REFERENCE—28-A M.R.S.A. § 653 (LICENSES FOR SALE OF LIQUOR—HEARINGS; BUREAU REVIEW; APPEAL).

212 LODGING HOUSE

No person shall operate a lodging house in the City without first obtaining a license in accordance with Article 1. A public hearing is required prior to action on a new license application or renewal application for a lodging house.

213 MASS GATHERING

213.1 License Required. No person or group of persons may sponsor, promote, operate, or hold any mass gathering without first obtaining a license in accordance with Article 1 and this Section 213. No public hearing is required prior to action on a new mass gathering license application or renewal application.

213.2 Filing Deadline; Bond. The person or group of persons seeking a mass gathering license must file an application with the City Clerk's office no less than 45 days before the proposed commencement of the mass gathering event and secure a performance guarantee, in the form of a performance bond or event promotion surety, ensuring (i) prompt cleaning of the grounds after the close of the mass gathering event, (ii) compliance with applicable laws and license conditions, and (iii) prompt payment for all damages caused by an attendee or employee to public or private property in the vicinity resulting from or in connection with the event. The surety shall be to the benefit of the City, shall allow the City to draw on the funds if actions are not taken within three working days after the event, and shall be consistent with the provisions of Chapter 1, Section 511.

213.3 License-Specific Review Criteria.

1. The applicant must demonstrate, by means of a written descriptive plan, that adequate facilities will be provided at the site of the mass gathering event, in order to protect the health of the people who attend, including:
 - (a) Adequate waste disposal and wastewater facilities;
 - (b) Adequate firefighting equipment and personnel;
 - (c) Adequate water supplies;
 - (d) Adequate first aid facilities; and
 - (e) Adequate communication facilities.
2. The applicant must provide advance notice to City, county, and state officials, as named and instructed by the City Police Chief.
3. The applicant must file proof of authority from landowners whose property will be used in holding the mass gathering event.
4. The applicant must demonstrate, by filing a written descriptive plan, that adequate parking space will be available. Written permission from any property owner whose property will be used for parking must also be included.

213.3 Safety Personnel. As a condition of license approval, the City administrator may require that City Police Department or City Fire Department personnel be present before, during, or after the event, at the applicant's expense.

213.4 Exemptions. The following mass gatherings are exempt from the licensing requirements of this Section 213:

1. Mass gatherings sponsored and under the direct supervision of the City or the Ellsworth School Department.
2. Mass gatherings conducted as an auxiliary use to normal operation of a legally existing campground.

214 MEDICAL CANNABIS DISPENSARY

214.1 State and City Licenses Required. No person shall operate a medical cannabis dispensary within the City without first obtaining a license in accordance with Article 1 and Section 214.

214.2 Public Hearing. A public hearing is required prior to action on a new license application or renewal application.

214.3 Licensing Documents. The following information shall be provided to the City Clerk as part of the initial and annual licensing process:

1. State certificate of registration.
2. A letter from the City Police Chief confirming that (a) the security plan required by Section 214.4 and the anti-diversion policy required by Section 214.7 and any amendments thereto, are on file and found to be acceptable; (b) the receipt of the summary report of incidents and illegal activities for the previous year; and (c) the semi-annual receipt of the employee lists and that the employees were found to be acceptable.
3. A letter from the City Fire Chief confirming the receipt of the material safety data sheets and annual updates.

214.4 Security Plan. A medical cannabis dispensary must have a security plan approved by and filed with the City Police Chief. The plan shall address means of preventing a continuing pattern of offenses against the public peace, drug-related criminal conduct within the premises of the adult use cannabis store or the immediate area surrounding the adult use cannabis store, and criminal conduct directly related to or arising from the operation of the adult use cannabis store. The policy shall include, at minimum, the following:

4. Devices or a series of devices, including a signal system interconnected with a radio frequency method such as cellular, private radio signals, or other mechanical or electronic device, to detect unauthorized intrusions.
5. The interior must be equipped with electronic monitoring, video cameras, and panic buttons.
6. Qualified security staff may be required by the City Police Chief.
7. The adult use cannabis store shall have a policy to consistently and systematically prevent loitering.
8. Surveillance records shall be kept for a minimum 30 days and be available to the City Police Chief upon request.
9. A service delivery plan.

214.5 Incident Reporting. A medical cannabis dispensary shall submit to the City Police Chief a copy of the State of Maine incident report form on the next business day after the licensee discovers a violation of the requirements set out in the state rules applicable to the operation

of an adult use cannabis store. The report must indicate the nature of the breach and the corrective actions taken by the medical cannabis dispensary.

- 214.6 Illegal Activity Reporting.** Any suspected illegal activity involving the operation of a medical cannabis dispensary must be reported to the City Police Chief by the medical cannabis dispensary in a timely manner.
- 214.7 Anti-Diversion Policy.** A medical cannabis dispensary shall have an anti-diversion policy designed to prevent diversion of medical cannabis for non-medical uses approved by and filed with the City Police Chief.
- 214.8 Employees.** A medical cannabis dispensary shall semi-annually provide to the City Police Chief a list of all employees. Staff changes shall be reported to the City Police Chief within 10 days of hiring.
- 214.9 Chemicals.** A medical cannabis dispensary shall maintain a material safety data sheet file with the City Fire Chief for all chemical stored or used. The list of stored chemicals shall be reviewed and updated annually, and resubmitted to the City Fire Chief.
- 214.10 Unrestricted Access.** The Code Enforcement Officer, Police Chief, or Fire Chief requesting access to the premises of a medical cannabis dispensary for the purpose of determining compliance with this Chapter 14 shall be given unrestricted access at reasonable times. Failure to cooperate with City inspectors may be grounds to revoke the medical cannabis dispensary license, as set forth in Chapter 1, Section 509.6.
- 214.11 Handling of Product.**
1. A medical cannabis dispensary cultivation facility shall not possess more than six live cannabis plants for each qualifying patient who has designated the dispensary to cultivate cannabis for the qualifying patient's medical need.
 2. In addition to the six live cannabis plants per qualifying patient, the cultivation facility shall have plants in varying stages of processing or cultivation in order to ensure that the retail facility is able to meet the needs of its qualifying patients.
 3. When there is a decrease in the number of qualifying patient who have designated the cultivation facility to cultivate cannabis, the cultivation facility shall have ten business days to adjust to meet this intent of the State law.
 4. Prepared cannabis must be kept under double lock and inventoried daily by two qualified employee cardholders.
 5. Quantities of prepared cannabis must be weighted, logged in, and signed out by two qualified employee cardholders.
- 214.12 Consumption.** The consumption or inhalation of cannabis on or within the premises of a medical cannabis dispensary is prohibited.
- 214.13 Medical Cannabis Food Establishment.** A medical cannabis dispensary must obtain a food establishment license from DHHS, pursuant to 22 M.R.S.A § 2167, and a victualer's license from the City, pursuant to Section 224.

STATE LAW REFERENCE—28-B M.R.S.A. CH. 1. (CANNABIS LEGALIZATION ACT).

215 MOBILE VENDING UNIT

- 215.1** No person shall operate any mobile vending unit without first obtaining a license in accordance with Article 1 and this Section 215. No public hearing is required prior to action on a new license application or renewal application for a mobile vending unit.
- 215.2** Mobile vending units parked in one spot for seasonal sales must include in license renewal applications a date for removal of the vehicle upon the close of the season. This removal will be subject to inspection by the CEO. If the date for removal is not adhered to, it shall constitute a violation of this Chapter 14.
- 215.3** A license may not be issued if the mobile vending unit will inconvenience public travel.
- 215.4** If it is the intent of the mobile vending unit to set up business in one particular location, the City administrator will require a notarized statement of approval from the landowner.

STATE LAW REFERENCE—30-A M.R.S.A. § 3931 (LUNCH WAGONS).

216 PARADE

No person shall engage in, participate in, aid, form, or start any parade without first obtaining a license from the City Police Chief in accordance with Chapter 27 (Parade Ordinance). No public hearing is required prior to action on a new license application or renewal application for a parade.

217 POLE AND WIRE PERMIT

No person shall install or construct utility above or below ground, along or upon City streets or roads without first obtaining a permit in accordance with 35-A M.R.S.A § 2503. No public hearing is required prior to action on a new license application or renewal application for a pole and wire permit.

The City Council designates the City Manager as the licensing authority for the issuance of pole and wire permits for facilities located on, over, and under the surface of applicable public ways in the City. All such permits shall be issued in accordance with 35-A M.R.S.A. §§ 2501-2520.

STATE LAW REFERENCE—35-A M.R.S.A. CH. 25 (REGULATION OF FACILITIES IN THE PUBLIC WAY).

218 SEWER HOOK-UP

No person shall install or connect building sewers or discharge water or wastes into the public sewer system without first obtaining a sewer connection permit in accordance with Chapter 5 (Public and Private Sewers).

219 STREETS, USE OF

No person engaged in the sale of goods, wares, or merchandise shall deposit, pile, place, or display for purposes of sale or cause or permit to be deposited, piled, placed, or displayed for the purpose of sale, any such goods, wares, or merchandise upon or overhanging any sidewalk or street without first obtaining a license in accordance with Article 1, this Section 220, and Chapter 11 (Use of Streets).

220 TAXICABS, TAXI DRIVERS, AND TAXI STANDS

No person shall operate any business or vehicle intended for the transport or livery of persons for a fee within the City without first obtaining a license in accordance with Chapter 8 (Taxicab Ordinance). All drivers of taxicabs shall obtain a driver's license in accordance with Chapter 8. No parking space in the City shall be used exclusively as a taxi stand unless the owner of the taxicab shall first obtain a permit in accordance with Section 412 of Chapter 7 (Traffic Code).

221 TOWING SERVICE

No person shall operate any business or vehicle intended for the transport of other vehicles for a fee within the City without first obtaining a license in accordance with Article 1 and this Section 222. No public hearing is required prior to action on a new application or renewal application for a towing license.

222 TRANSIENT SELLER

222.1 License Required. No transient seller shall operate in the City without first obtaining a license in accordance with Article 1 and this Section 223. No public hearing is required prior to action on a new license application or renewal application for a transient seller.

222.2 Term of License. A transient seller license shall be valid for 30 days from the date of issuance, and the validity of such license may be extended for an additional 30 days if so approved by the City administrator.

222.3 License-Specific Review Criteria. Prior to issuing a license, the administrator must find that the proposed licensed activity complies with the following requirements:

1. The applicant must provide a statement containing: name of company, goods or services being sold, number of sellers in the City, names of sellers, and length of time to be in area, along with a copy of any applicable state licenses.
2. The administrator must obtain written recommendations for approval from the City Police Chief and the City Fire Chief.
3. If it is the intent of the transient seller to set up business in one particular location, the City will require a notarized statement of approval from the landowner.

222.4 Exemptions. This Section 222 shall not apply to:

1. Off-premises consumption of alcohol for a fee.
2. Persons selling by lists, catalog, or merchandise for future delivery.
3. Persons selling fish, farm, dairy, orchard, or garden products of their own production.
4. Persons selling bark, wood, manure, or forest products.
5. Persons selling newspapers or religious literature.

223 TREE WORK

No person shall remove, cut, prune, plant or cause root disturbance without obtaining a license in accordance with Article 1 and this Section 224. No public hearing is required prior to action on a new license application or renewal application for tree work.

224 VICTUALER'S

224.1 License Required. Except as provided in Section 224.2, no person shall operate any business preparing or serving, or intending to prepare or serve, food for consumption on or off the premises without first obtaining a license in accordance with Article 1 and this Section 224. A public hearing is required prior to action on a new victualer's license application or renewal application.

- 224.2 Exemption.** Charitable, religious, or fraternal organizations holding breakfasts, dinners, or suppers on an itinerant basis are exempt from the licensing requirement of this Section 224, but remain subject to inspections pursuant to Article 1.

ARTICLE 3 GENERAL BUSINESS LICENSES

300 BUSINESS LICENSE REQUIRED

- 300.1 License Required.** It shall be unlawful for any person to operate a business or to conduct a special event without first obtaining a business license from the City. The requirement to obtain a business license is in addition to any other activity-specific license, permit, or other approval required by Chapter 14 and the City Code. Non-business enterprises conducting business-like activities on a regular basis are required to obtain a business license in accordance with this Article 3.
- 300.2 Exception.** No business license is required for fundraising activities sponsored by schools, churches, athletic groups, or nonprofit organizations.
- 300.3 No Public Hearing.** No public hearing is required prior to action on a new business license application or renewal application.

301 GENERAL REQUIREMENTS

- 301.1** Business licenses shall be processed and issued in accordance with the procedures for administering licenses in Section 104.
- 301.2** A separate business license must be obtained for each branch establishment or location where a business is conducted.
- 301.3** When more than one business is operated, transacted, or practiced in the same location by the same person, then only one business license shall be required for such business.
- 301.4** When more than one business is operated, transacted, or practiced in one location by a person other than the primary person, a separate business license shall be required for each person conducting such business.
- 301.5** No licensee shall be allowed to operate in any congested area where the business activity or operations may impede or inconvenience the public.
- 301.6** The proposed business activity shall not adversely affect public safety or impede or inconvenience traffic flow.
- 301.7** As a condition of any license granted under this Chapter 14, the administrator may require a performance guarantee, in accordance with Chapter 1, Section 511.
- 301.6** No business activity shall be conducted in an area of the City where such activity is prohibited by the UDO.
- 301.7** For special events, only the sponsor of the primary event shall be required to obtain a business license unless the City administrator determines that all vendors participating in the special event must obtain business licenses to protect the general safety, health, and welfare of the public.

301.8 Every sponsor of a special event shall post its business license in a conspicuous location during all hours of the special event.

302 NO EXCLUSIVE RIGHT TO PUBLIC LOCATION

No holder of a business license shall have any exclusive right to any location in a public street.

ARTICLE 4 DEFINITIONS

For purposes of this Chapter 14, the following terms have the following meanings:

Adult Use Cannabis Store: A retail facility licensed by OCP to purchase adult use cannabis, immature cannabis plants and seedlings from a cultivation facility, to purchase adult use cannabis and adult use cannabis products from a products manufacturing facility and to sell adult use cannabis, adult use cannabis products, immature cannabis plants, seedlings and other products to consumers.

Alcoholic Beverage: All liquors, including wine, beer, and spirits.

Amusement Establishment: Live music, dancing, entertainment, exhibition, performances, shows, or diversions, other than sexual contact for pecuniary benefit, which is prohibited by Chapter 45.

Amusement Establishment, Special: Live music, dancing, entertainment, exhibition, performances, and shows, including diversions that include the offering of alcoholic beverages, other than sexual contact for pecuniary benefit, which is prohibited by Chapter 45.

Arcade: A building or area containing pinball, video, bagatelle games, pool and billiards, and the like. “Bagatelle games” are coin-operated device involving the rolling of balls into scoring areas.

Automobile Graveyard: “Automobile graveyard,” as defined in 30-A M.R.S.A. § 3752(1).

Automobile Recycling Business: “Automobile recycling business,” as defined in 30-A M.R.S.A. § 3752(1-A).

Bed and Breakfast: *Refer to “Lodging House.”*

Boarding Home: *Refer to “Lodging House.”*

Branch Establishment: A division of a business or other organization.

Business: Any trade, calling, profession, or occupation, which on a regular basis provides goods or services within the corporate limits of the City.

Cannabis: The leaves, stems, flowers and seeds of a cannabis plant, whether growing or not. “Cannabis” includes cannabis concentrate but does not include hemp, as defined in 7 M.R.S.A. § 2231(1-A)(D), or a cannabis product.

Class A Establishment: An establishment requiring a special amusement establishment, lodging house, liquor, or victualer’s license.

Class B Establishment: An establishment requiring a combination of three of the following licenses: special amusement establishment, lodging house, liquor, and victualer’s. Combinations may include:

- Lodging house, liquor, victualer’s
- Lodging house, liquor, special amusement establishment

- Lodging house, victualer's, special amusement establishment
- Victualer's, liquor, special amusement establishment

Class C Establishment: An establishment requiring a combination of two of the following licenses: special amusement establishment, lodging house, liquor, adult use cannabis store, and victualer's. Combinations may include:

- Special amusement establishment and victualer's
- Special amusement establishment and liquor
- Lodging house and victualer's
- Lodging house and liquor
- Special amusement establishment and lodging
- Liquor and victualer's
- Adult use cannabis store and victualer's

Closing-Out Sale: Any sale of a stock of goods, wares, or merchandise by a retail establishment under the designation of "closing-out sale," "going out of business sale," "discontinuance of business sale," "entire stock must go," "must sell to the bare walls," or other designation that states, either directly or by implication, that the intent of the seller is to dispose of the entire stock of goods with a view to permanently terminating further business after that disposal is complete. This definition does not include liquidation sales by public auction of not more than three days duration conducted by a licensed auctioneer; sales conducted or made by sheriffs, constables, collectors of taxes, executors, guardians, conservators, receivers, assignees under voluntary assignments for the benefit of creditors or insurers; or sales by any other person required by law to sell personal property.

Conditions of Record: A formal written complaint or written notice of violation issued by the enforcement authority.

Consumer Fireworks: "Consumer Fireworks," as defined in 8 M.R.S.A. § 221-A(1-A).

Eating Establishment: Refer to "Victualer's."

Exhibition: A public showing for which a fee may or may not be charged.

Highway: Any public way.

Highway Opening: Refer to "Street Opening."

Hotel: Refer to "Lodging House."

Inn or Innkeeper: Refer to "Lodging House."

Itinerant Vendor: Refer to "Transient Seller."

Junkyard: "Junkyard," as defined in 30-A M.R.S.A. § 3752(4).

Live Music: People performing live in a musical capacity.

Lodging House: A place providing sleeping accommodations, with or without meals, for a fee, including a bed and breakfast, boarding house, hotel, inn, or motel.

Lunch Wagon: An establishment selling foods of any sort for consumption on or off premises, mobile in design.

Mass Gathering: An outdoor event where more than 250 persons are reasonably expected to attend, including festival, exhibition, amusement show, fair, theatrical performance, music concert, parade, or other similar activity.

Medical Cannabis Cultivation Facility: A not-for-profit facility limited to the acquisition and possession of medical cannabis; cultivation or growing of medical cannabis; manufacturing of medical cannabis; and delivering, transporting, and transferring of medical cannabis to a medical cannabis retail facility.

Medical Cannabis Dispensary: A not-for-profit entity registered with the OCF that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies, or dispenses cannabis paraphernalia, cannabis plants, harvested cannabis, related supplies, or educational materials to qualifying patients and registered caregivers of those patients. A medical cannabis dispensary may consist of a medical cannabis cultivation facility, a medical cannabis retail facility, or a combination of the two.

Medical Cannabis Food Establishment: A dispensary that prepares goods containing cannabis for medical use by a qualifying patient.

Medical Cannabis Retail Facility: A not-for-profit facility limited to acquisition and possession of medical cannabis; the selling, supplying, or dispensing of medical cannabis and paraphernalia or related supplies and educational materials to qualifying patients who have designed the medical cannabis retail facility to dispense medical cannabis for their medical use and to registered caregivers of those qualifying patients.

Medical Use: The acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of cannabis or paraphernalia relating to the administration of cannabis to treat or alleviate a qualifying patient's debilitating medical condition or symptoms associated with the qualifying patient's debilitating medical condition.

Mobile Vending Unit: Any vehicle, including a lunch wagon, fixed mobile vending unit, roaming vending unit, or food truck, that is used for the sale of any prepared food. This definition includes a restaurant operating for a temporary period in connection with a fair, carnival, circus, or public exhibition, or in a seasonal capacity.

Non-Business: Any schools, churches, athletic groups, non-profit organizations, persons fulfilling work under a warranty, or professionals performing work within their profession, on an itinerant basis, within the City limits who are licensed by the State of Maine.

Premises: Any building, room, structure, mobile unit, or area wherein or whereat the activity takes place.

Public Exhibition: *Refer to "Exhibition."*

Qualified Employee Cardholder: A principal officer, board member, or employee of a medical cannabis dispensary who has been issued and possesses a valid registry identification card from the OCP.

Qualifying Patient: An individual who has been a resident of the state for at least 30 days and who possesses a valid written certification regarding medical use of cannabis in accordance with 22 M.R.S.A. Ch. 558-C.

Regular Basis: At least once a month.

Special Amusement Establishment: *Refer to "Amusement Establishment, Special."*

Special Event: An event that is operated as a temporary activity in a temporary structure or outside, including a circuses, fair, carnival, festival, religious revival, political rally, vehicle show and display, swap meet, rodeo, and similarly recognized temporary activities. “Special event” does not include wedding and funeral ceremonies, elections, private yard sales, fundraising car washes, or activities such as retail sales promotions conducted under an existing business license that could otherwise be lawfully conducted in accordance with the provisions of the City Code, including in the zoning district where such activities takes place.

Street Opening or Highway Opening: A method of excavation and destruction of pavement and its associated gravel surface (shoulders) within a public way.

Taxicab: A vehicle used for the conveyance of persons for a fee.

Taxicab Driver: A person with an active Maine driver’s license and legally permitted to operate a taxicab through the City.

Taxicab Stand: A parking place within and along the shoulder of a public road right- of-way, designated specifically and reserved for the temporary parking of taxicabs for the purpose of loading and unloading passengers and their property.

Traffic Trip Generation: Number of vehicles that visit a location in a peak hour.

Transient Seller: A person who provides goods or services for a fee with no business office or fixed location within the City passing through or by the City with only a brief stay.

Tree Work: Any removal, cutting, pruning, planting or root disturbance of City trees.

Vendor: A person who promotes or exchanges goods or services for money.

Victualer: A provider of prepared food, of any sort, for public consumption, either on or off premises, for a fee.

STATE LAW REFERENCE—22 M.R.S.A. CH. 558-C (MAINE MEDICAL USE OF CANNABIS ACT); 28-B M.R.S.A. CH 1 (CANNABIS LEGALIZATION ACT); 30-A M.R.S.A. CH. 183 (ECONOMIC REGULATION).

APPENDIX 14-A

LICENSE TERMS AND ADMINISTRATORS

Type of License	License Term	City Administrator
Adult Use Cannabis Store	One Year	City Council
Amusement Establishment	One Year	City Clerk
Amusement Establishment, Special	One Year	City Council
Arcade	One Year	City Clerk
Business	One Year	CEO
Carnival / Circus	One Time	City Manager
Class A Establishment	One Year	City Council
Class B Establishment	One Year	City Council
Class C Establishment	One Year	City Council
Closing-Out Sale	60 Days	City Manager
Closing-Out Sale—Extension	60 Days	City Manager
Consumer Fireworks Retail Sales	One Year	City Council
Driveway / Street Opening	30 Days	CEO
Junkyard/Automobile Graveyard/Automobile Recycling Business	One Year	City Council
Liquor	One Year	City Council
Lodging House	One Year	City Council
Mass Gathering	Per Day	CEO
Medical Cannabis Dispensary	One Year	City Council
Mobile Vending Unit	One Year	City Clerk
Parade	One Time	City Police Chief
Pole/Wire Permit	One Time	City Manager
Sewer Hook-up	One Time	Wastewater Superintendent
Streets, Use of	One Time	City Manager
Taxicab / Taxi Driver / Taxi Stand	One Year	City Clerk
Towing Service	One Year	City Clerk
Transient Seller	30 Days	City Clerk
Tree Work	One Time	Tree Warden
Victualer's	One Year	City Council

APPENDIX 14-B

ADULT USE CANNABIS STORE LICENSING LOTTERY

The number of adult use cannabis store local licenses shall be limited to three (3) adult use cannabis stores. Local licenses shall be awarded subject to the lottery process found in Appendix 14-B of this Chapter. Applications received within 30 days of May 14, 2026 that meet the license and application requirements shall be eligible to participate in a lottery drawing to determine which applicant(s) will be awarded any available local license. If there are three or less applicants for adult use cannabis store local licenses a lottery will not be required. When an adult use cannabis store local license remains or becomes available, the same 30-day application window and evaluation process shall apply.

Lottery Procedures

Applicants for an adult use cannabis store local license will have a 30-day window starting April 14, 2026 to submit applications.

In the event the City Council approves more than three (3) applications, all completed and approved applications will be assigned a unique identification number which will be sent to each applicant and posted on the City's website.

The City Manager and/or designees will draw the numbers.

The City will utilize a raffle drum and numbered balls to conduct the lottery. A numbered ball will be placed in the raffle drum for each unique identification number assigned to an approved application.

The lottery drawing will take place on the Monday following City Council conditional approval of the local licenses, at 6:30PM in the Council Chambers.

The City will prove out the numbered balls prior to the lottery, meaning it will confirm each numbered ball is present and ready for the lottery. The proving process will begin at 12:30PM, in the Council Chambers, on the day of the lottery. The proving process will involve the City Manager and/or designees calling out the number of each ball and staff checking off its presence on paper lists. This will confirm that all the required balls for the lottery are present and none are missing. The balls will be placed in buckets as they are proved out. The buckets will remain in the Council Chambers, in plain sight of all present or watching, until the lottery is complete.

The public is welcome to observe the proving process and the lottery in person, or remotely by watching on the City's livestream.

At 5:00PM, the balls for the lottery will be placed into the raffle drum. The drum will be turned no fewer than three times to sufficiently mix up the numbered balls. The City Manager and/or designees shall reach into the drum, mix the balls around before drawing one, or turn the drum again at any time during the lottery.

The first ball will be drawn from the drum and the ascribed number on the ball read aloud. The number will be recorded on paper by two different staff members. This first draw of three will be for the license invitation.

The order in which the remaining numbered balls are drawn will establish the waitlist order. A numbered ball will be drawn from the drum and read aloud, until the drum is empty.

The signed off lists will be posted on the City's website by the following business day. The lists will show the order in which the numbered balls were drawn. It will not have information about the applicant's name

or proposed location. Due to the number of applications and the time involved in transcribing the lottery results to the application lists, this information will not be posted until the week following the lottery.

Information about an applicant's assigned identification number will not be present at the lottery. The City will not be able to verify or confirm any names or addresses associated with the unique identification numbers at the time of the lottery. This ensures the lottery is conducted "blind".

The City will not be able to take or respond to audience questions or comments during the lottery. The audience is welcome to observe but not participate in the process of drawing numbers. The City reserves the right to remove an audience member if they are disruptive to the lottery process. Anyone removed may still observe the lottery remotely.

Lottery winners will receive a written invitation, from the City, to proceed with the licensing process in order to obtain a final local license.

Part 6. Chapter 18 of the City Code (Ellsworth Planning Board) is proposed to be amended by striking the words shown in strikethrough and adding the words shown in underline, as follows.

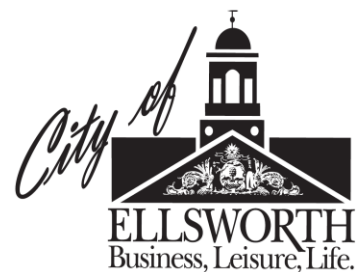
Code of Ordinances, City of Ellsworth

CHAPTER 18
PLANNING BOARD

A true copy, attest:

Heidi-Noël Grindle
City Clerk

HISTORICAL NOTE: ADOPTED APRIL 16, 2007; AMENDED JUNE 21, 2010; AMENDED
*** 2026.



CHAPTER 18

~~ELLSWORTH~~ PLANNING BOARD

ARTICLE 1. ~~ESTABLISHMENT~~

Pursuant to the Maine Constitution Article VII, pt. 2, Section 1 and 30-A M.R.S.A § 3001, the City of Ellsworth hereby establishes the Ellsworth Planning Board (the “Planning Board”).

ARTICLE 2. ~~APPOINTMENT~~

201 ~~A.~~ ~~APPOINTMENT~~:

Board members shall be appointed by the City Council and sworn in by the City Clerk or other person authorized to administer oaths.

202~~B.~~ ~~STRUCTURE~~:

The Board shall consist of five (5) Regular members and two (2) Alternate members. The term “member(s)” as used in this ~~ordinance~~ Chapter 18 shall refer to both members and alternate members unless otherwise expressly stated.

203~~C.~~ ~~TERM~~:

The terms of the Planning Board members shall expire in different years. The five (5) Regular Planning Board members shall have a 5-year term with one (1) seat expiring every year. The two (2) Alternate Planning Board members shall have a 2-year term with one (1) seat expiring every year. Individuals appointed to fill unfinished terms will serve for the remaining time of the respective terms.

204~~D.~~ ~~VACANCY~~:

Where there is a permanent vacancy, the ~~municipal officers~~ City Council shall, in a timely manner, appoint a person to serve the unexpired term. A vacancy shall occur upon the resignation or death of any member, when a member ceases to be a legal resident of the City (defined as eligible to vote in City elections) or when a member fails to attend four consecutive meetings or fails to attend at least 75-% of all meetings during the preceding twelve (12) month period. When a vacancy occurs, the chairperson of the Board shall immediately so advise the ~~municipal officers~~ City Council in writing. The Board may recommend to the ~~municipal officers~~ City Council that the attendance provision be waived for cause, in which case no vacancy will then exist until the ~~municipal officers~~ City Council disapproves the recommendation of the Board. The ~~municipal officers~~ City Council may remove members of the Board by a two-thirds majority vote, for cause, after notice and a hearing.

ARTICLE 3. ~~ORGANIZATION AND RULES~~

301 ~~A.~~ ~~OFFICERS~~:

The Board shall elect a chairperson, vice chairperson and secretary from among its members in January of each year. The term of each of these officers shall be for a maximum of one (1) year with eligibility for re-election.

302 ~~B.~~ ~~ALTERNATES~~:

Alternate members shall attend all meetings of the Board and participate in its proceedings, but may vote only when there are fewer than five (5) voting regular members present. Alternate members shall be designated by the chairperson to participate and vote when a member is unable to act because of a conflict of interest, physical incapacity, absence or any other reason satisfactory to the chairperson.

303 ~~C.~~ DISQUALIFICATION:

Any question of whether a member shall be disqualified from voting on a particular matter shall be decided by a majority of the members of the Board present.

304 ~~D.~~ MEETINGS:

The chairperson or designee shall call at least one regular meeting of the Board each month. The chairperson or designee may also call a special meeting. The Board or designee may impose a fee upon an applicant to cover extra advertising costs to the city for a special meeting requested for the convenience of the applicant.

305 ~~E.~~ QUORUM:

No meeting of the Board shall be held without a quorum consisting of at least four (4) members authorized to vote. The Board shall act by majority vote, calculated on the basis of the number of members present and voting. The lack of quorum for any agenda item shall not render the Board incapable of acting on that item at any meeting where there is a quorum present to hold that meeting. A tie vote by the Board shall be considered a denial of the request.

306 ~~F.~~ PUBLIC NOTICE:

The secretary, or designee, shall cause to be published, a notice for public hearings in a newspaper of general circulation in Ellsworth in accordance with the rules put forth in the Ellsworth Land Use/Subdivision Ordinances.

307 ~~G.~~ PUBLIC RECORD:

The secretary, or designee, shall keep a record of its resolutions, transactions, correspondence, findings and determinations.

308 ~~H.~~ RULES OF ORDER:

The Board shall conduct business according to Rules For The Conduct of Public Proceedings in ~~Section—Article 56—below~~. The Board shall adopt and affirm annually additional rules and procedures necessary for the transaction of its business.

309 MANDATORY TRAINING

Board members shall attend all trainings mandated by state law. Without limiting the foregoing sentence, Board members shall attend a training on land use planning offered by a state agency or a statewide association representing municipalities or a regional council or municipality within 180 days of appointment or, if a training is not available within the 180-day period, the next available training.

STATE LAW REFERENCE—30-A M.R.S.A. § 4364-C(4) (MANDATORY TRAINING).

ARTICLE 4. DUTIES AND POWERS

401 A.—The Board shall perform such duties and exercise such powers as are provided by the ~~Ordinances of the City of Ellsworth~~City Code and ~~the state laws of the State of Maine.~~

402 B.—The Board may obtain goods and services necessary to its proper function within the limits of appropriations made for that purpose by the City Council or as provided by ~~applicable the~~City ordinancesCode.

5. APPEALS

~~A. —An aggrieved party may appeal any Planning Board final decision made pursuant to the Ellsworth Land Use Ordinance to the City of Ellsworth Board of Appeals.~~

~~B. —An aggrieved party may appeal any Planning Board final decision made pursuant to the Ellsworth Subdivision Ordinance to the State of Maine Superior Court pursuant to the rules of that Court.~~

~~C. Any appeal made pursuant to this section must be submitted to the appropriate appellate authority within thirty (30) days of the Planning Board decision from which the appeal is taken.~~

ARTICLE 56. RULES FOR THE CONDUCT OF PUBLIC PROCEEDINGS**501 A. SCOPE OF RULES**

These rules govern the practice and conduct of Public Proceedings (including official meetings and hearings) held by the Planning Board of the City of Ellsworth hereinafter referred to as the “Planning Board.” These rules shall be liberally construed so as to enable the Planning Board to accomplish its duties and responsibilities.

502 B. PRESIDING OFFICER: The Presiding Officer at all public proceedings shall either be the Chairman or Vice-Chairman of the Planning Board or a member of the Planning Board who is selected by those members present at proceedings.

The Presiding Officer shall have authority to:

1. Participate in discussion, make or second a motion, and vote;
2. Regulate the course of proceedings;
3. Rule upon issues of evidence and procedure; and
4. Take such other actions that are necessary for efficient and orderly conduct of proceedings.

503 C. GENERAL RULES FOR PUBLIC PROCEEDINGS:

1. —503.1 Rules of Order:— To supplement the basic rules of order written in this Section 503, the Board shall adopt and ~~affirm~~ratify annually additional rules and procedures necessary for the transaction of public proceedings.

503.2. Regulation of Electronic Recordings: The placement and use of cameras or microphones for the purpose of recording Planning Board proceedings may be regulated by the Presiding Officer so as to avoid interference with the orderly conduct of the proceedings.

503.3. Public Record: The Planning Board shall make a record of proceedings by appropriate means. All documents, materials, and objects accepted into evidence during the meeting shall become part of the public record.

503.4. Objections. All objections to rulings of the Presiding Officer regarding evidence or procedure shall be timely made during the course of proceedings.

503.5. Corrections. If, after the close of proceedings and during its deliberations, the Planning Board determines that any ruling was in error, it may reopen proceedings to take such other action, as it deems appropriate to correct the error.

503.6. Continuances. All proceedings conducted pursuant to these rules may be continued for reasonable cause and reconvened from time to time and from place to place as may be determined by a majority of the Planning Board members present. Continuances may be granted at the request of any person participating in such proceedings if it is determined that a continuance is necessary. This provision shall not be used to cause unreasonable or needless delay in any proceedings. All orders for continuances shall specify the time and place at which such proceedings shall be reconvened. The Presiding Officer or designee shall notify interested persons and the public in such a manner as is appropriate to insure that reasonable notice will be given to the time and place of such reconvened proceedings.

504 ~~D.~~ SUBMITTALS

504.1. Submittal Requirements. Materials that are submitted during public proceedings may be accepted only if determined by the Presiding Officer to be relevant, necessary, brief enough to be quickly assimilated and copies are provided in sufficient number and of a type that is compatible with information technology currently available at City Hall.

504.2. Public Record Closed. Following the conclusion of proceedings, no further evidence or testimony will be allowed into the public record of that proceeding except as required by the Board as part of a conditional approval or a continuance.

504.3. Common Knowledge. The Planning Board may, at any time, take notice of judicially cognizable facts, generally recognized facts and physical, technical, or scientific facts within the knowledge of the Planning Board members whether or not these facts are submitted into the public record by presenters.

505 ~~E.~~ PRESENTATIONS

505.1. Introduction. The Presiding Officer shall open the proceedings by describing in general terms the purpose of the proceedings and the general procedures governing its conduct.

505.2. Speaker Instructions. All speakers shall be required to locate at a microphone and state for the record their name and residential address. The Chairperson may ask their business or professional affiliation, the nature of their interest in the proceedings, and whom they represent.

505.3. Allowable Testimony. The Presiding Officer may refuse to permit irrelevant, immaterial, or repetitious comments or questions or other remarks which do not advance or serve the purpose of the proceedings and shall state the basis for such refusal on the record when requested to do so by the party asking the question.

505.4. Time Limits for Speakers. The Presiding Officer may impose limitations on the length of testimony and questioning.

505.5. Applicant Presentation. The applicant, and such representatives as he chooses, shall present the proposal to the Board using duly submitted plans, documentary evidence, photographs, studies, reports, analyses, and other information as well as materials otherwise submitted according to this ordinance.

505.6- Public Hearing. Following the Applicant Presentation, the public shall be given an opportunity to comment on the proposal. Testimony and properly submitted material evidence shall be offered in the following order:

1. ~~Public Hearing Speaker Category:~~

~~2.1. 1)~~ Planning Board members

~~3.2. 2)~~ City staff and consultants

~~4.3. 3)~~ Other governmental representatives

~~5.4. 4)~~ ~~Ellsworth City~~ residents and ~~or~~ tax payers

~~6.5. 5)~~ Other interested persons

505.7- Varying Order of Appearance. When circumstances warrant, the Presiding Officer may vary the order in which speakers appear or are questioned.

505.8- Questioning of Speakers. The Presiding Officer may allow questioning of speakers by Planning Board members, staff, consultants, counsel and others at any time.

505.9- Follow-up Testimony. At the conclusion of direct testimony and questioning of each speaker or category of speaker as determined by the Presiding Officer, all persons shall have the opportunity to submit follow up testimony according to the Presentation Order provided above. The Presiding Officer shall allow as many rounds of follow-up testimony as are necessary to provide a full and impartial hearing.

6017.-6. COMPENSATION

It is customary that the members of the ~~Ellsworth~~ Planning Board receive no compensation for their services to the City. However, ~~Members~~ members may submit to the City Planner, evidence of personal expenses associated with their Planning Board duties including, ~~but not limited to,~~ travel mileage and training fees. ~~For administrative procedures,~~ The City Planner shall use applicable provisions pertaining to expense reimbursement in the City's Chapter 34 (-Personnel Ordinance).

Part 7. Chapter 37 of the City Code (Special Amusement Permit Ordinance) is proposed to be amended by striking the words shown in strikethrough and adding the words shown in underline, as follows.

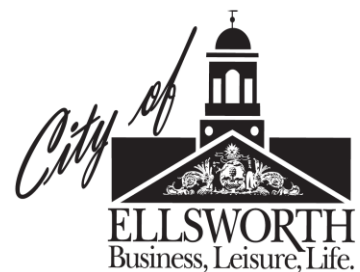
Code of Ordinances, City of Ellsworth

CHAPTER 37
SPECIAL AMUSEMENT PERMIT

A true copy, attest:

Heidi-Noël Grindle
City Clerk

HISTORICAL NOTE: EFFECTIVE JUNE 18, 1978; AMENDED FEBRUARY 26, 1979;
AMENDED *** 2026.



CHAPTER 37

SPECIAL AMUSEMENT PERMIT ~~ORDINANCE~~

...

ARTICLE II GENERAL

...

~~The~~ An application fee for a special amusement permit ~~shall be Ten Dollars (\$10.00); must be accompanied by a fee, as provided in Chapter 1, Article 3 (Fee Schedule and Mooring Fees).~~

...

Section 203. Suspension or Revocation of a Permit. The City Council may, ~~after a public hearing preceded by notice to interested parties,~~ suspend, or revoke any special amusement permits which have been issued under this ~~ordinance~~ Chapter 37 in accordance with the procedures in Chapter 1, Section 509 of the City Code, on the grounds that the music, dancing, or entertainment so permitted constitutes a detriment to the public health, safety or welfare, or violates any municipal ordinances, articles, bylaws, or rules or regulations.

~~Upon complaint or complaints of any person or persons that there are grounds to revoke said permit, and said complaint or complaints having been found by the City Council to be valid, after hearing as hereinbefore provided, the City Council may warn the licensee that unless the cause or causes of said complaints are removed forthwith, that said permit will be revoked or suspended after a subsequent hearing covering same.~~

...

Part 8. Chapter 38 of the City Code (Board of Appeals) is proposed to be amended by striking the words shown in strikethrough and adding the words shown in underline, as follows.

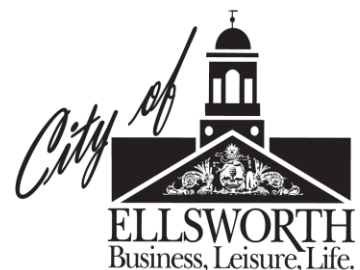
Code of Ordinances, City of Ellsworth

CHAPTER 38
BOARD OF APPEALS

A true copy, attest:

Heidi-Noël Grindle
City Clerk

HISTORICAL NOTE: EFFECTIVE JUNE 19, 1978; AMENDED *** 2026.



CHAPTER 38

~~CITY OF ELLSWORTH~~ BOARD OF APPEALS

The City of Ellsworth hereby ordains that an ordinance entitled "Ellsworth Board of Appeals" be hereby adopted as follows:

ARTICLE 1 ESTABLISHMENT:

Pursuant to the provisions of ~~30-A M.R.S.A. §§ 2691 and 4353 Title 30, Section 2411, MRSA, as amended,~~ there is hereby established a Board of Appeals for the City ~~of Ellsworth.~~

~~-ARTICLE 2. ORGANIZATION:~~

201 The Board of Appeals shall consist of five (5) members and one associate member, all of whom shall be residents of Ellsworth.

202 The members and associate member of the Board of Appeals shall be appointed by the City Council for terms of five (5) years each. The five (5) year terms of the members shall be staggered such that the term of one member will expire each year. The term of the associate member shall be five (5) years.

203 The associate member shall act in place of any member who may be unable to act due to conflict of interest, ~~or absence,~~ physical incapacity, or any other reason. ~~The~~

204 The members of the Board of Appeals shall annually elect one of their number to serve as; ~~eChairman to preside at all meetings of the Board~~ and one of their number to serve as Ssecretary.

205 Neither a municipal officer nor a spouse of a municipal officer may be a member or associate member of the Board of Appeals.

206 Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting on that issue shall be decided by a majority vote of the members of the Board of Appeals, excluding the member who is being challenged.

207 The City Council may dismiss a member of the Board of Appeals for cause before the member's term expires.

208 In the event that vacancy shall occur with respect to ~~said the~~ Board of Appeals by non-acceptance of appointment, resignation, abandonment, death, disability, incompetency, forfeiture, or failure to ~~to~~ qualify after written demand from the City Council, the City Council shall appoint a resident of Ellsworth to fill the unexpired term.

~~I. —~~ ARTICLE 3. PROCEDURES

The provisions of Chapter 1, Section 210 and 30-A M.R.S.A §§ 2691(3) and 4353(1) govern the procedures of the Board of Appeals. In addition:

301 Chair. The Chair shall call meetings as required or when requested to do so by a majority of the members of the Board of Appeals, by the City Council, or by the CEO. The Chair shall preside at all meetings of the Board of Appeals and shall serve as the official spokesperson of the Board of Appeals.

302 Secretary. The Secretary shall maintain a permanent record of all Board of Appeals meetings and all correspondence of the Board of Appeals. The Secretary is responsible for maintaining those records which are required as part of the proceedings which may be brought before the Board of Appeals. All records to be maintained or prepared by the Secretary are public records, must be filed in the office of the City Clerk, and may be inspected by the public at reasonable times.

303 Quorum. A quorum of the Board of Appeals is required to conduct any business of the Board of Appeals. A quorum shall consist of a majority of the members of the Board of Appeals.

304 Rules of Procedure. The Board of Appeals may establish by vote of its membership such other rules of procedure for hearings and proceedings before it as are not inconsistent with the procedures set forth in this Chapter 38, any other applicable provisions of the City Code, and state law.

ARTICLE 4. JURISDICTION.

The Board of Appeals shall have the following powers and duties:

401 Administrative Appeals

~~power to~~ To hear and decide any appeal by any aggrieved person, affected directly or indirectly, from any decision, order, act, rule or failure to act of any officer, board, agency or other body City administrator, as expressly set forth in Chapter 1, Section 207.3, in accordance with Chapter 1, Section 210 where such appeal is necessary, proper or required.

402 Variances

To authorize in specific cases variances from the terms of the City Code in accordance with Chapter 1, Section 211.

403 Limitation on Jurisdiction

The Board of Appeals shall not assert juris=diction over any matter unless the City ~~of Ellsworth~~ has, by charter or ordinance, specified the precise subject matter that may be appealed to the Board of Appeals and the official or officials whose action or nonaction may be appealed to the Board of Appeals. ~~The Board shall hear any appeal submitted to it in accordance with Title 28, Section 702, MRSA, as amended, and the "Special Amusement Permit Ordinance of the City of Ellsworth".~~

H. ~~ARTICLE 5. APPLICABILITY OF STATE LAW CONTROLS.~~

~~Except to the extent that they are inconsistent with the provisions of this Ordinance~~ Notwithstanding the provisions of this Chapter 38, all the provisions of Title 30, Section 2411, MRSA, as amended 30-A M.R.S.A. §§ 2691 and 4353, shall apply to and govern and control the organization, procedures, and jurisdiction of the Board of Appeals.

H. ~~ARTICLE 6. EFFECTIVE DATE.~~

This ~~ordinance~~ Chapter 38 shall become effective on June 19, 1978.

STATE LAW REFERENCE—30-A M.R.S.A. § 2691 (BOARD OF APPEALS); 30-A M.R.S.A. § 4353 (ZONING ADJUSTMENT).

Part 9. Chapter 39 of the City Code (Historic Preservation Ordinance) is proposed to be amended by adding the words shown in underline and by striking the words shown in strikethrough, as follows.

Code of Ordinances, City of Ellsworth

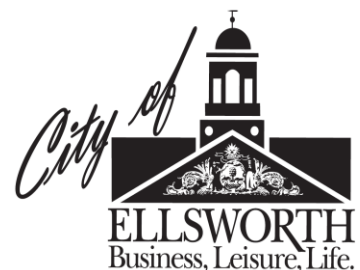
CHAPTER 39

HISTORIC PRESERVATION

A true copy, attest:

Heidi-Noël Grindle
City Clerk

HISTORICAL NOTE: ADOPTED JANUARY 15, 1979; AMENDED OCTOBER 15, 1984; REPEALED AND REPLACED (SECTION 12 ONLY) DECEMBER 20, 1993; AMENDED AUGUST 20, 2012; AMENDED (APPENDIX I ONLY) JUNE 20, 2016; AMENDED DECEMBER 16, 2024; AMENDED *** 2026.



CHAPTER 39

HISTORIC PRESERVATION ~~ORDINANCE~~

1. Intent and Purpose.

~~This ordinance is adopted in accordance with the Charter of the City of Ellsworth, and pursuant to the legislative authority vested in the City by virtue of Title 30, Maine Revised Statutes, Sections 1917 and 2151 (2) (G), and acts amendatory thereto.~~ In addition to the general purposes of the City Code set forth in chapter 1, Article 2, the purposes of this Chapter 37 are to ~~for the purposes of~~ preserving, protecting, and enhancing buildings and places or areas within the City which possess particular historic or architectural significance in order to promote the educational, cultural, and economic welfare of the residents and visitors to the City. To achieve these purposes, it is intended that this ~~ordinance~~ Chapter 39 be used to prevent inappropriate alterations and ~~or~~ destruction of designated historic properties and that any new construction be completed in a manner which is compatible with the character of those properties.

2. Definitions.

- 2.1 **Historic District.** Any area which includes or encompasses such historic sites, historic landmarks, buildings, signs, appurtenances, structures or objects as may be designated in accordance with this ~~Ordinance~~ Chapter 39 as appropriate for historical preservation.
- 2.2 **Historic Site.** Any parcel of land of special significance in the history of the City and its inhabitants, or upon which a historic event has occurred, and which has been designated as such in accordance with this ~~Ordinance~~ Chapter 39. The term “historic site” shall also include any improved parcel, archeological site, cemetery or part thereof, on which is situated a historic landmark, and any abutting improved parcel, or part thereof, used as and constituting part of the premises on which the historic landmark is situated as may be designated in accordance with this ~~Ordinance~~ Chapter 39.
- 2.3 **Historic Landmark.** Any improvement, building or structure of particular historic or architectural significance to the City relating to its heritage, cultural, social, economic or political history, or which exemplify historic personages or important events in local, state or national history as may be designated in accordance with this ~~Ordinance~~ Chapter 39.
- 2.4 **Cultural Resources.** Any one or group of buildings, sites, landmarks or districts listed with significance as determined by this ~~ordinance~~ Chapter 39. Cultural resources may also be referred to as “historic properties.”
- 2.5 **Designation.** The identification and registration of properties for protection that meet criteria established by the State or the locality for significant historic and prehistoric resources within the jurisdiction of a local government.
- 2.6 **Protection.** A local review process under State or local law for proposed demolition of, changes to, or other action that may affect historic properties designated pursuant to this subsection.
- 2.7 ¹**Archaeological Resources.** A bounded geographic location containing the physical evidence of previous human occupation including but not limited to structures, artifacts, graphics (paintings or drawings) and discarded material including plants or animals.

¹ Added 12/16/2024

3. Qualifications for Designation.

Cultural resources established in accordance with this ~~Ordinance~~Chapter 39 shall ~~have-meet~~ one or more of the following criteria. These criteria are generally based on the standards used for evaluating cultural resources for inclusion in the National Register of Historic Places.

- 3.1 Structures or sites at which events occur or have occurred that contribute to and are identified with or significantly represent or exemplify the broad cultural, political, economic, military, social, or sociological history of Ellsworth and the nation, including sites and buildings at which visitors may gain insight or see examples either of particular items or of larger patterns in the North American heritage.
- 3.2 Structures or sites importantly associated with persons significant to local, state, or national history.
- 3.3 Structures or structural remains and sites embodying examples of architectural types or specimens valuable for study of a period, style, or method of building construction, of community organization and living, or of landscaping; or a single notable structure or a single site representing the work of a master builder, master designer, architect, or landscape architect.
- 3.4 Structures contributing to the visual continuity of the historic district.
- 3.5 Those sites or areas on or eligible for listing on the National Register of Historic Places or National Historic Landmark.

4. Establishment of Designated Cultural Resources.

Historic districts, historic sites, or historic landmarks shall be established by amendment to Section 5 of this ~~Ordinance~~Chapter 39, in accordance with the requirements of Chapter 1, Section 504, and no property shall be included within a district without written notification to the property owner or owners, nor become an historic site or historic landmark without written consent of the property owner or owners. All such amendments shall be initiated by the Historic Preservation Commission or by the completion of an ~~A~~Application for ~~h~~Historic ~~p~~Preservation ~~d~~Designation directed to the Chair~~man~~ of the Historic Preservation Commission.

- 4.1 **Studies, Recommendations.** Before making its recommendation concerning the proposed establishment of a historic district, historic site or historic landmark, the Historic Preservation Commission may conduct studies and research on the proposal. The Historic Preservation Commission will make a report to the City Council on every request received. Drafts of the Historic Preservation Commission's report shall also be ~~mailed-delivered~~ to the ~~Maine Historic Preservation Commission~~MHPC for review and comment.
- 4.2 **Public Hearing, Final Report.** Before a final report is made to the City Council, the Historic Preservation Commission shall give notice of the proposed amendment and hold a public hearing on the ~~requestproposed amendment, after due notice in accordance with Chapter 1, Section 209 and Chapter 1, Section 504.3. Without limiting the requirements of Chapter 1,~~ wWritten notice of the proposal shall be given to the applicant, owners of all property abutting or to be included within the proposed designation, and all other persons found by the Historic Preservation Commission to have a special interest in the proposal. After ~~said~~ the public hearing, the Historic Preservation Commission shall submit a final report with its recommendations to the City Council, ~~not later than thirty (30) days after public hearing; in accordance with Chapter 1, Section 504.3.~~

- 4.3 **Action By City Council.** After receipt of the Historic Preservation Commission's recommendations, as provided above, the City Council ~~at its next regular meeting~~ shall consider ~~and take all appropriate action on said~~the proposed amendment ~~and may, in its discretion, adopt the proposed amendment~~ in accordance with the City Charter ~~and Chapter 1, Section 504 fo the City Code, the Council's rules of procedure adopted pursuant thereto, and the laws of the State of Maine.~~
- 4.4 **Designation, Notice to Affected Owners.** Within ten (10) days after the designation of any historic district, historic site, or historic landmark, the owner of each property so designated shall be given written notice of such designation by the City Clerk.
- 4.4 The Ellsworth Historic Preservation Commission shall maintain records of all cultural resources established by the City Council.
5. **Currently Designated Historic Sites, Districts and Landmarks.** The historic districts, historic sites, and historic landmarks designated by the City are set forth in the following appendices to Chapter 39:
- 5.1 Appendix 39-IA - Historic buildings, historic sites and landmarks designated by the City ~~of Ellsworth.~~
- 5.2 Appendix H-39-B – Historic Districts designated by the City ~~of Ellsworth~~
6. **Historic Preservation Commission.**
- 6.1 **Establishment.** The Historic Preservation Commission is established for the purposes of administering this Chapter 39.
- 6.2 **Appointment, Qualifications.**
- 6.2.1 Members of the Historic Preservation Commission shall be appointed by the City Council ~~which shall make such appropriations each year as may be necessary to fund the activities of the Commission and dependent on the availability of funds.~~
- 6.2.2 The Historic Preservation Commission shall consist of five (5) members and two (2) alternates, who shall be residents or property owners of the City ~~of Ellsworth.~~ Appointments shall be made on the basis of demonstrated interest, ability, experience and desire to promote historic preservation in the City ~~of Ellsworth~~ within the meaning of Section 1 of this ~~Ordinance~~Chapter 39. Where such professionals are available in the community, qualifications will conform to the Secretary of the Interior's² Historic Preservation Professional Qualifications Standards. Information on Historic Preservation Commission members credentials will be kept on file with the City Clerk and made available to the public. ~~Each commission member is encouraged to attend one informational/educational meeting per year, which will be sponsored by the MHPC or other historic preservation organization.~~
- 6.2.3 In addition to the regular members of the Historic Preservation Commission, the City Council may, at the request of the Historic Preservation Commission, appoint other persons, not necessarily residents ~~or property owners of Ellsworth~~the City, who shall serve on an advisory or consultant basis to assist the members of the Historic Preservation Commission in the performance of their functions.²

² Added 12/16/2024

6.2.4 Any vacancies will be filled within 60 days.

- 6.3 **Term.** The Historic Preservation Commission~~ers~~ members who are first appointed shall be designated to serve terms as follows; One for one (1) year, two for two (2) years, and two for three (3) years from the date of their appointment. Thereafter, ~~said commissioners~~members shall be appointed for terms of three (3) years, except in those instances in which the appointment is made to fill a vacancy in an unexpired term, in which case the appointment shall be for the remainder of the unexpired term. Alternates will be appointed by the City Council and will serve a one (1) year term. Alternates may be reappointed by the City Council. Members ~~of the Commission~~ shall serve without compensation. Persons appointed to serve in an advisory or consulting capacity shall hold office at the pleasure of the City Council.
- 6.4 **Officers.** ~~Such~~ The Historic Preservation Commission shall elect annually a chair~~man~~, vice chair~~man~~ and secretary from its ~~own~~ membership. A majority of the ~~number of~~ members appointed by the City Council shall constitute a quorum for the transaction of business.
- 6.5 ~~Said Commission for its purposes may from time to time propose to the City Council amendments to its rules and regulations consistent with the intention of this Ordinance and of the Maine Historic Preservation Commission.~~ Duties of the Historic Preservation Commission include administering this Chapter 39 and advising the City Manager and City Council on matters relating to the management of the City's cultural resources. In this advisory capacity, the duties of the Historic Preservation Commission shall include ~~but not be limited to the following:~~
- 6.5.1 Conducting, or causing to be conducted a continuing survey of cultural resources in the community according to guidelines established by the ~~Maine Historic Preservation Commission~~ MHPC;
 - 6.5.2 Making recommendations for designation of local landmarks and historic districts to the City Council;
 - 6.5.3 Establishing and using written guidelines for the conservation of designated local landmarks and historic districts in decisions on requests for permits for alterations, demolition, or additions to listed landmarks and buildings within historic districts;
 - 6.5.4 Acting in an advisory role to other officials and departments of ~~local~~ City government regarding the protection of ~~local~~ the City's cultural resources;
 - 6.5.5 Acting as liaison on behalf of the ~~local government~~ City to individuals and organizations concerned with historic preservation; and
 - 6.5.6 Working toward the continuing education of citizens of the City with the Certified Local Government's jurisdiction regarding historic preservation issues and concerns.
 - 6.5.7 Preparing a An annual report of the activities of the Historic Preservation C ~~ommission, which~~ must be submitted to the City Manager; and to the MHPC.
 - 6.5.8 ~~The Commission shall follow~~ Complying with the City of Ellsworth Chapter 40 (Code of Ethics/Conduct ~~(Chapter 40)~~).

6.5.9 Review~~ing~~ alterations, relocation, demolition, and other actions affecting designated historic properties under its jurisdiction.³

6.5.10 Review~~ing~~ all new construction affecting designated historic properties ~~and/or~~ historic districts within its jurisdiction to determine if locally designated historic properties will be affected.⁴

6.~~4~~5.11 Review~~ing~~ all proposed National Register nominations for properties within its jurisdiction.⁵

6.5.12 Proposing, from time to time, to the City Council amendments to this Chapter 39 consistent with the intent and purpose of this Chapter 39 and the rules of the MHPC.

6.6 The Historic Preservation Commission may, subject to appropriations by the City Council or other income, employ clerical and technical assistants or consultants, and may accept grants, money gifts, or gifts of service, and may hold or expand the same for all or any of the purposes of historic preservation in the City of Ellsworth. The Commission shall advise and assist owners of designated structures of historic sites with plans and assistance in complying with the requirement of this ~~Ordinance~~Chapter 39 to the extent possible under the funding available to the Commission, in an effort to further the accomplishment of this ~~Ordinance~~Chapter 39. The Commission may erect a suitable sign or marker indicating the historical fact of any designated site or building, subject to the City ~~ordinances~~Code, appropriations or other income available to the Commission.

7. Uses Permitted.

Uses permitted in historic districts, historic sites E, or historic landmarks shall be those set forth in the ~~City of Ellsworth Unified Development Ordinance~~UDO provisions for the zone in which such district, site, or landmark are located.

8. Certificate of Appropriateness.

In any designated historic district, and with respect to any historic site or historic landmark, no building permit shall be issued by the ~~Code Enforcement Officer~~CEO for any construction, alteration, or demolition until a ~~corresponding~~ Certificate of Appropriateness has been approved by the Historic Preservation Commission in accordance with this Section 8.

8.1 **Certificate of Appropriateness.** A Certificate of Appropriateness approved by the Historic Preservation Commission shall be required before a building permit is issued for any of the following:

8.1.1 Material change in the exterior appearances of a historic landmark, site or any building in a historic district by addition, reconstruction or alteration, including removal of trim, elements, facing material, or parts of the structure; moving a structure; addition or removal of a sign; and improvements to walkways, driveways, or landscape features.

8.1.2 New construction of a principal or accessory building or structure visible from a public street where such building or structure will be located in a historic district.

³ Added 12/14/2024

⁴ Added 12/14/2024

⁵ Added 12/14/2024

8.1.3 Demolition of a historic landmark or of any building, structure or appurtenance in a historic district.

8.1.4 Moving of a historic landmark or any building in a historic district.

8.2 **Applications.** Application for a Certificate of Appropriateness shall be obtained from the ~~Code Enforcement Officer~~CEO when requesting a building application, or when no building permit is required but when such activity must be approved by the Historic Preservation Commission. The Historic Preservation Commission may request additional materials including such items as photographs, architectural plans and construction bids.

9. Application Procedure.

Applicants shall submit to the Historic Preservation Commission a completed application for Certificate of Appropriateness. ~~Inclusion of all materials will assist the Commission in completing reviews. The Commission shall act on the application within thirty (30) days of submission. A thirty (30) day extension may be requested, if necessary. It shall be returned to the Code Enforcement Officer who shall then issue or deny permits as appropriate. In addition to the application submission requirements of Chapter 1, Section 208.2, t~~The application shall include:

~~9.1 The applicant's name and address and his interest in the subject property.~~

~~9.2 The owner's name and address, if different from the applicant's.~~

9.13 The location of the subject property.

9.24 The present use and zoning classification of the subject property.

9.35 A brief description of the construction, reconstruction, remodeling, alteration, maintenance, demolition or moving requiring the issuance of a Certificate of Appropriateness.

9.46 A drawing or drawings indicating the design, texture, color and location of any proposed alteration or new construction for which the Certificate is being applied. As used herein, drawings shall mean plans and exterior elevations drawn to scale, with sufficient detail to show as far as they relate to exterior appearances, the architectural design of the buildings, including materials, textures and colors, including samples of materials and colors.

9.57 Photographs of the building involved and of adjacent buildings.

9.68 A site plan indicating improvements affecting appearance such as walls, walks, terraces, plantings, accessory buildings, signs, lights, and other elements. The Historic Preservation Commission may waive the requirement for a site plan ~~if the change involved would not affect the site~~in accordance with Chapter 1, Section 206.4.

9.7 Evidence of notice given to abutting property owners in accordance with Chapter 1, Section 209.1.

10. Administrative procedures.

10.1 Completeness Review. The Historic Preservation Commission shall conduct a completeness review in accordance with Chapter 1, Section 208.2.

~~Notice of Owner.~~ Prior to issuance or denial of a Certificate of Appropriateness, the Commission shall take such action as may be reasonably required to inform, by U.S. Mail, the applicant, all persons owning abutting property and/or within 200 feet of the exterior boundaries of the real estate under consideration in the application and all such other

~~persons as the Commission may deem appropriate of the pendency of the application, and shall give such persons an opportunity to be heard. For purposes of the notice required hereunder, the owners of the property shall be considered to be those against whom municipal taxes for the real estate are assessed.~~

- 10.2 **Public Hearings.** At the request of the applicant, or any other person receiving notice under ~~S~~section 10.1 above, or where the Historic Preservation Ceommission deems it necessary, a public ~~meeting-hearing~~ on the application ~~may-shall~~ be conducted by the Historic Preservation Commission. Notice of the public hearing shall be given in accordance with Section 209.

- 10.3 **ApprovalWritten Decision.** The Historic Preservation Commission must issue a written decision each application for a Certificate of Appropriateness, in accordance with Chapter 1, Section 208.4 and the following:

10.3.1 Approval. If the Historic Preservation Commission determines that the proposed construction, reconstruction, alteration, moving, or demolition is ~~appropriate~~consistent with the standards of evaluation in Section 11, it shall approve a Certificate of Appropriateness and return it to the ~~Code Enforcement Officer for issuing of necessary permits~~CEO.

10.3.2 Disapproval. If the Historic Preservation Commission determines that a Certificate of Appropriateness ~~should not be issued~~is not consistent with the standards of evaluation in Section 11, it shall note in the official meeting minutes the reasons for such determination and furnish the applicant an attested copy of the reasons, and the recommendations, if any.

~~10.5 Appeals. An appeal from any final decision of the Commission as to any matter over which it has final authority may be taken by any party to the Board of Appeals within thirty (30) days of the date of the decision appealed from. The Board of Appeals may extend this time period only upon a showing by the person seeking an appeal that there was good cause for the failure to appeal within thirty (30) days of the decision.~~

~~10.5.1 An appeal shall be made by filing a written notice of appeal with the Board, which shall include the completed Certificate of Appropriateness, a concise statement of the relief requested and why it should be granted.~~

~~10.5.2 Upon being notified of an appeal, the Commission shall transmit all papers comprising the record of the decision appealed from to the Board.~~

~~10.5.3 The Board shall hold a public hearing on the appeal within thirty (30) days of its receipt of an appeal request. At least seven (7) days prior to the date of hearing on such appeal, the Board shall cause to be published in one issue of a newspaper of general circulation in the City, notice which includes:~~

- ~~a. The name of the person(s) appealing;~~
- ~~b. The location and description of the property involved;~~
- ~~c. A brief description of the decision from which an appeal is taken;~~
- ~~d. The time and place of the hearing.~~

~~10.5.4 The Board shall, in addition to the notice in subsection 10.5.3 above, give written notice by regular mail or its equivalent to all abutting property owners (notice to abutting property~~

~~owners shall be sent to the owner's address contained in the records of the City Tax Assessor), the person making the appeal, the Historic Preservation Commission and Code Enforcement Officer.~~

~~10.6 — Appeals to the Superior Court. Any party may appeal, within forty five (45) days after the decision is rendered, to the Superior Court from any order, relief or denial by the Board of Appeals. Such appeal shall be made in accordance with the Maine Rules of Civil Procedure, Rule 80B.~~

11. Standards of Evaluation.

The standards and requirements contained in this section, and the Secretary of the Interior's Standards for the Treatment of Historic Properties, [codified at 36 CFR Part 68 \(1995\)](#), shall be used for review of applications for Certificates of Appropriateness and specifically as to procedures before demolition can take place.

- 11.1 **Reconstruction, Alterations and Maintenance.** A building or structure classified as a historic landmark, or any part thereof, or any appurtenance related to such structures, including but not limited to walls, fences, light fixtures, steps, paving and signs shall not be removed, reconstructed, altered or maintained, and no Certificate of Appropriateness shall be issued for such actions, unless they will preserve or enhance its historical and architectural character.
- 11.2 **Demolition or Removal.** A historic landmark, or any appurtenance thereto, shall not be demolished or moved and a Certificate of Appropriateness shall not be approved until either (a) such building or structure has been identified by the Commission as incompatible with the historic district in which it is located, (b) the property owner can demonstrate that maintenance of the structure creates financial hardship, or c), that the property was properly offered for sale, after notices as required have been posted, that there have been no bona fide offers made, and that no contract for sale has been executed with interested parties. Proper notice shall include posting on the premises of the building or structure in a location clearly visible from the street, notice published in a newspaper of general local circulation at least three (3) times prior to demolition, the final notice of which shall not be less than fifteen (15) days prior to the date of the permit, and the first notice of which shall be published no more than fifteen (15) days after the application for permit is filed. The owner shall for the period of time set forth and at a price reasonably related to its face market value, make a bona fide offer to sell such building or structure and the land pertaining thereto to any person, firm, corporation, government or agency thereof, or political subdivision or agency thereof which gives reasonable assurance that it is willing to preserve and restore the building or structure and the land pertaining thereto. Prior to making such offer to sell, an owner shall first file a statement with the Historic Preservation Commission, identify the property, the offering price and the date the offer to sell shall begin. The time period set forth in this section shall not commence until such statement has been filed. The purpose of this section is to further the purposes of this ~~Ordinance~~[Chapter 39](#) by preserving historic buildings which are important to the education, culture, traditions, and the economic value of the City and to afford the City, interested persons, historic societies or organizations the opportunities to acquire or to arrange for the preservation of such buildings. The Commission may at any time during such stay approve a Certificate of Appropriateness in which event a permit shall be issued without further delay.
- 11.3 **Construction of New Buildings and Structures in Historic Districts.** The construction of a new building or structure within a historic district shall be generally of such design, form, proportion, mass, configuration, building material and location on a lot as will be compatible

with other buildings in the historic district and with streets and open spaces to which it is visually related and in keeping with the area.

- 11.4 **Visual Compatibility Factors.** Within historic districts, new construction and existing buildings and structures and appurtenances thereof which are moved, reconstructed, materially altered, repaired or changed in color shall be visually related generally in terms of the following factors:

11.4.1 **Height.** The height of proposed buildings shall be compatible with adjacent buildings.

11.4.2 **Proportion of Buildings Front Façade.** The relationship of the width of the buildings to the height of the front elevation shall be visually compatible with buildings, structures and open spaces where it is visually related.

11.4.3 **Proportion of Opening with the Façade.** The relationship of the width of the windows to height of windows and doors in a building shall be visually compatible with those of windows and doors of buildings to which the building is visually related.

11.4.4 **Rhythm of Solids to Voids in Front Facades.** The relationship of solids to voids in the front façade of a building shall be visually compatible with that of the buildings to which it is visually related.

11.4.5 **Rhythm of Spacing of Buildings on Streets.** The relationship of the building to open space between it and adjoining buildings shall be visually compatible to those prevailing in the area to which it is visually related.

11.4.6 **Rhythm of Entrance and/or Porch Projection.** The relationship of entrance and porch projections to sidewalks shall be visually compatible with buildings to which it is visually related.

11.4.7 **Relationship of Materials, Textures, and Color.** The relationship of materials, textures and color of the façade of a building shall be visually compatible with that of the predominant materials used in the buildings to which it is visually related.

11.4.8 **Roof Shapes.** The roof shape of a building shall be visually compatible with that of buildings to which it is visually related.

11.4.9 **Scale of Buildings.** The size of the building, the building mass of a building in relation to open spaces, the windows, door openings, porches and balconies shall be visually compatible with those characteristics of buildings and spaces to which it is visually related.

11.4.10 **Directional Expression of Front Elevation.** A building shall visually compatible with the building, squares, and places to which it is visually related in its directional character, whether this be vertical character, horizontal character or non-directional character.

12. **Ordinary Maintenance.**

~~Ordinary Maintenance.~~ No ordinary maintenance or repair of any exterior feature in a historic district or of any historic building shall occur unless a Certificate of Appropriateness is first issued for that maintenance and repair. A Certificate of Appropriateness shall be issued if either:

- 12.1 The maintenance or repair does not involve a change in the design, material or outer appearance of the feature; or
- 12.2 The Building Inspector certifies in writing that the repair is required in the interest of public safety because of an unsafe or dangerous condition on the premises. Any modification under this subsection shall be permitted only upon a finding of the Commission that the proposed modification is the least disruptive manner of addressing the public safety concerns.

13. **Penalties Enforcement.**

The CEO is responsible for enforcing the provisions of this Chapter 39 by inspecting premises, investigating complaints, issuing notices of violation, suspending or revoking permits or approvals, and participating in legal prosecution of violations as needed, in accordance with Chapter 1, Section 509 of the City Code.

- ~~13.1 — Violations. Any person who violates any provision of this Ordinance shall be guilty of a civil violation and shall be punished by a fine of not more than \$100 and not less than \$25. Each day that a violation continues shall be deemed a separate offense.~~
- ~~13.2 — Additional Remedies. In addition to the remedies provided herein, the Commission and/or the Code Enforcement Officer are specifically authorized to institute any and all actions and proceedings, in law or in equity, as they may deem necessary and appropriate to obtain compliance with the requirements of this Ordinance or to prevent a threatened violation thereof.~~

~~Revisions adopted by the City Council on August 20, 2012.~~

Part 10. Chapter 41 of the City Code (Electrical Installation and Inspection Ordinance) is proposed to be amended by adding the words shown in underline and by striking the words shown in strikethrough, as follows.

Code of Ordinances, City of Ellsworth

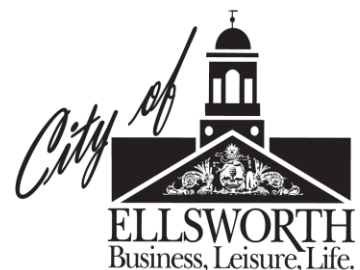
CHAPTER 41

ELECTRICAL INSTALLATION AND INSPECTION

A true copy, attest:

Heidi-Noël Grindle
City Clerk

HISTORICAL NOTE: ADOPTED JULY 17, 1989 (EFFECTIVE JUNE 19, 1989 AND SEPTEMBER 1, 1989); AMENDED JANUARY 14, 2002; AMENDED *** 2026.



CHAPTER 41

ELECTRICAL INSTALLATION AND INSPECTION-ORDINANCE

Section I. ~~ENACTMENT AUTHORITY AND SCOPE~~ APPLICABILITY

~~This Electrical Installation and Inspection Ordinance is enacted pursuant to 30-A M.R.S.A. ss4151 et seq. This Ordinance expressly~~Chapter 41 applies to ~~original-all~~ installations of electrical equipment, including and alterations ~~of -to and~~ addition to existing electrical equipment, within or on public and private buildings and premises, except the general exceptions set forth in 30-A M.R.S.A. § 4152(1)-(7).

STATE LAW REFERENCE—30-A M.R.S.A. § 4152 (APPLICABILITY OF PROVISIONS).

Section II. ELECTRICAL INSPECTOR

The provisions of ~~the Ordinance~~this Chapter 41 shall be administered and enforced by the Electrical Inspector or Deputy Electrical Inspector. The Electrical Inspector and the Deputy Electrical Inspector shall be appointed by the City Council. Whenever the term Electrical Inspector is used hereafter in ~~the Ordinance~~this Chapter, the term shall include the Deputy Electrical Inspector.

STATE LAW REFERENCE—30-A M.R.S.A. § 4171 (LOCAL INSPECTORS).

Section III. ELECTRICAL INSTALLATION PERMIT REQUIRED

- A. No electrical equipment shall be installed in, altered, or added to any building, structure, or premises within the ~~territorial limits of the City of Ellsworth~~ unless an Electrical Installation Permit had been issued in conformity with this ~~Ordinance~~Chapter 41.
- B. No permit shall be required to do minor repair work ~~such as, but not limited to, the following~~including:
 - i. The replacement of fuses;
 - ii. The installation of additional outlets;
 - iii. The replacement of existing switches, sockets, outlets, and lamps;
 - iv. Repairs to entrance service equipment; and
 - v. Repairs or installation of radio and low voltage equipment.
- C. Emergency work may be undertaken without first obtaining a permit. A permit must then be obtained as soon as is reasonably possible.
- D. No major deviation may be made from the installation described in the permit without the prior written approval of the Electrical Inspector.

STATE LAW REFERENCE—30-A M.R.S.A. § 4173 (PERMITS).

Section IV. APPLICATION FOR ELECTRICAL INSTALLATION PERMIT

An application for an Electrical Installation Permit shall be made in writing to the Electrical Inspector, in duplicated, and shall be signed by the applicant. Application shall be made on a form provided for that purpose by the Electrical Inspector. The application shall be accompanied by a general description of the electrical work to be done. The applicant must also file any additional plans, schedules, or specifications deemed by the

Electrical Inspector to be necessary to ~~i~~ensure that the proposed work complies with this ~~Ordinance~~Chapter 41.

- A. ~~In the event that~~If the proposed work is to be performed in a single-family structure, the application must be filed by the owner of that structure.
- B. In all other cases, the applicant shall be the licensed master electrician employed to do the proposed work; a holder of a limited license who may obtain a permit within such limited licensee's are of expertise; or the general contractor for the construction project of which the proposed work is a part, providing that the contractor shall provide as part of the application the name, address, and license number of the licensed electrician employed to do the proposed work.

Section V. INVALIDATION OF ELECTRICAL INSTALLATION PERMIT Any permit issued under this section shall become invalid if:

- A. The authorized work is not commenced within six (6) months after issuance of the permit;
- B. The authorized work is suspended or abandoned for a period of six (6) months after the time of commencing the work;~~;~~
- C. The authorized work is not completed within twenty-four (24) months after the issuance of the permit;~~;~~ or
- D. The permit holder fails to correct a violation of any provision of ~~the Ordinance~~this Chapter 41 within the time prescribed in ~~the a~~ Notice of Violation.

Section VI. PERMIT FEES

Refer to Chapter 1, Article 3.

~~Before an Electrical Installation Permit may be issued, the applicant shall pay a fee in accordance with the following schedule:~~

~~Proposed Work~~	~~Fee~~
~~Signs~~	~~\$25.00~~

~~Change in size of entrance~~ \$25.00

~~Installation, addition or alteration to single & two family residence~~ \$35.00

~~Commercial structures \$50.00 or $\frac{1}{2}$ of 1% of the cost of the job, but in no case less than \$50.00~~

~~There will be a separate charge for each item listed above, even if the work performed is located on same job site.²~~

~~2 Amended by the City Council 06/10/02~~

Section VII. CONFORMITY TO NFPA CODE

The minimum standards for electrical equipment and installations within ~~the territorial limits of~~ the City of ~~Ellsworth~~ shall be the standards contained in the most recent edition of the National Electric Code, designated as NFPA 70, as adopted by the State of Maine Electricians' Examining Board.

Section VIII. CERTIFICATE OF ACCEPTANCE

- A. The applicant, by obtaining a permit, consents to the inspection by the Electrical Inspector of work and equipment described in the permit at such reasonable times and as often as the Electrical Inspector deems reasonably necessary throughout the course of the authorized work so as to ensure compliance with this ~~Ordinance~~Chapter 41. A failure to permit such reasonable inspection is expressly made a violation of this ~~Ordinance~~Chapter 41.
- B. Prior to the sale, lease, use, or occupancy of any building, structure, portion of a structure, or premises for which an Electrical Installation Permit has been issued, the permit holder must secure a Certificate of Acceptance from the Electrical Inspector stating that the electrical equipment is in conformity with the standards set forth for electrical equipment in Section VII of this ~~Ordinance~~Chapter 41. Prior to the issuance of the Certificate of Acceptance, the Electrical Inspector will inspect the property to see that all requirements under this ~~Ordinance~~Chapter 41 have been met. A Certificate of Acceptance must be issued or denied within two (2) working days of application for inspection by the permit holder. A failure to issue a Certificate of Acceptance within two (2) working days shall be deemed a denial ~~of the request for certificate~~.
- ~~C. There shall be no charge for any such inspection, except in the case of inspection of commercial property. In the case of inspections of commercial property the permit holder may pay any difference between the $\frac{1}{2}$ of 1% of the total actual cost of the installation is less than or equal to the fee originally paid for the permit, there shall be no charge for the inspection. In no case shall any portion of the permit fee originally paid be refunded.~~

STATE LAW REFERENCE—30-A M.R.S.A. § 4172 (INSPECTIONS); 30-A M.R.S.A. § 4174 (INSPECTION AND CERTIFICATES OF APPROVAL).

Section IX. ENFORCEMENT

- A. **Complaint to State Electrical Inspector.** Upon the discovery of any electrical equipment, ~~which that~~ does not comply with ~~this ordinance~~the requirements of this Chapter 41, ~~any person having the power and duty to enforce the provisions of this Ordinance~~the Electrical Inspector or CEO may make a written complaint to the State Electrical Inspector in accordance with 32 M.R.S.A. ~~ss~~ § 1104.
- B. **City Enforcement Action.** In addition to the authority in subsection A, above, the Electrical Inspector or CEO is responsible for enforcing the provisions of this Chapter 41 in accordance with Chapter 1, Section 509. ~~Whenever any person having the power and duty to enforce the provisions of this Ordinance determines that there is a violation of any provision of this Ordinance, that a person shall give written notice of such violation to the property owner and the person making the installation, if known. Such written notice shall contain:~~
- ~~i. A description of the building, structure, or premises in question in sufficient detail to identify it;~~
 - ~~vi. A description of the violation found and a citation to the provisions of this Ordinance or the NFPA Code violated;~~
 - ~~vii. The remedial action required for correction of such violation; and~~
 - ~~viii. A date by which such violation must be corrected.~~
- ~~C. The Code Enforcement Officer and/or his authorized agent(s), including but not limited to the Electrical Inspector, shall have the power and duty to prosecute violations of the provisions of the Ordinance to the extent permitted by law.~~

~~D. Prosecution of violations of this Ordinance shall be made pursuant to 30-A M.R.S.A. ss4452. The penalties for violating this Ordinance are those set forth at ss4452 (3). These penalties include, but are not limited to, fines, injunctive relief and the reimbursement of the City's attorney's fees and costs.~~

~~STATE LAW REFERENCE—30-A M.R.S.A. § 4172 (INSPECTIONS).~~

Section X. EFFECTIVE DATE

~~Notwithstanding Chapter 1, Section 502, t~~The effective date of Section I, II, and X of this ~~Ordinance Chapter 41~~ is the date that the resolution adopting this ~~Ordinance Chapter 41~~ is adopted by the City Council, which is June 19, 1989. The effective date of Sections III through IX of this ~~Ordinance Chapter 41~~ is September 1, 1989. ~~The~~these effective dates may be amended by the City Council if the City Council determines that a later or earlier date is necessary to effectively implement this ~~Ordinance Chapter 41~~, or if public health, welfare and safety require a different effective date.

~~Adopted by the City Council July 17, 1989~~

~~With amendments through 1/14/02~~

Part 11. Chapter 42 of the City Code (Solid Waste Management Ordinance) is proposed to be amended by adding the words shown in underline and by striking the words shown in strikethrough, as follows.

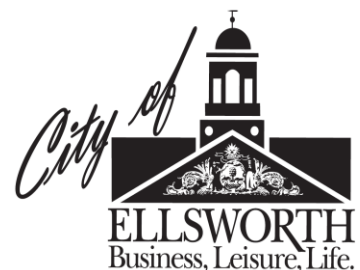
Code of Ordinances, City of Ellsworth

CHAPTER 42
SOLID WASTE MANAGEMENT

A true copy, attest:

Heidi-Noël Grindle
City Clerk

HISTORICAL NOTE: ADOPTED APRIL 15, 1991; REPEALED AND REPLACED JULY 31, 1995 (EFFECTIVE AUGUST 14, 1995); ADOPTED MAY 20, 1996 (EFFECTIVE JUNE 1, 1996); AMENDED OCTOBER 21, 2002; AMENDED NOVEMBER 10, 2003; AMENDED APRIL 21, 2008; REPEALED AND REPLACED OCTOBER 17, 2011; AMENDED MAY 20, 2013 (EFFECTIVE JULY 1, 2013); AMENDED *** 2026.



CHAPTER 42

SOLID WASTE MANAGEMENT ~~ORDINANCE~~

~~SECTION 1: AUTHORITY~~

~~This Ordinance is created under the authority to granted the City of Ellsworth by Title 38 M.R.S.A., 1301 et seq. (the Maine Hazardous Waste, Septage and Solid Waste Management Act) and Title 30-A M.R.S.A., 3001 et seq. (Ordinance of Municipalities and Counties).~~

SECTION 12: PURPOSE

In addition to the general purposes of the City Code set forth in Chapter 1, Article 2, the purposes of this Chapter 42 are:

- 2.01 To control the costs of solid waste management to the taxpayers of the City ~~of Ellsworth~~
- ~~2.02 To protect the health, safety and general well being of the citizens of Ellsworth~~
- 2.03 To enhance and maintain the quality of the environment, conserve natural resources, and prevent water and air pollution by providing a comprehensive, rational, and effective means of regulating the disposal of solid waste in the City in accordance with the provisions of ~~title 38 M.R.S.A., Section § 1304-B, as amended~~
- 2.04 To control solid waste material in the City by establishing limitations, prohibiting certain acts causing solid waste disposal problems, and ~~to provide~~ing for ~~finer for violations~~enforcement by the City of the provisions of this ~~Ordinance~~Chapter 42.
- 2.05 To encourage and expand solid waste recycling and waste reduction.

SECTION 23: DEFINITIONS

The definitions set forth in 38 M.R.S.A. § 1303-C apply to this ~~ordinance~~Chapter 42 and are incorporated herein. In addition, the following terms shall have the following meaning. Any word not otherwise defined shall have its dictionary meaning.

Refuse or Solid Waste - ~~a~~A broad term ~~and is synonymous with "Solid Waste" and shall be defined as meaning~~ any of a wide variety of solid materials, as well as some liquids in containers, which are discarded or rejected as being spent, useless, worthless, or in excess. ~~In order to be more specific, s~~Solid wastes ~~will be~~is classified in one of the following sub-classifications of refuse:

Agricultural Solid Wastes - ~~W~~wastes produced from the raising of plants and animals for food, including manure, plant stalks, hulls, and leaves.

Ashes - ~~R~~residue, including cinders and fly ash, from the burning of solid fuels for cooking and heating, and from on-site incineration of refuse materials.

Bulky Objects - ~~a~~Abandoned vehicles, stoves and refrigerators, large furniture, tree trunks, stumps and brush.

Commercial Solid Wastes - ~~w~~Wastes that originates in wholesale, retail, or service establishments, such as office buildings, stores, markets, theaters, hotels, and warehouses.

Construction and Demolition Debris (CDD) - ~~s~~Solid waste resulting from construction, remodeling, repair, and demolition of structures. ~~It, includ~~ing ~~es but is not limited to:~~ lumber, bricks, masonry, shingles, building materials, discarded furniture, asphalt, insulation, wall board, pipes,

metal structures, ~~and~~ metal conduits, and other similar materials. ~~It~~ “Construction and Demolition Debris” excludes: partially filled containers of glues, tars, solvents, resins, paints, or caulking compounds; friable asbestos; and other special wastes.

Garbage - ~~E~~every accumulation of waste (animal, vegetable, ~~and~~/or other matter) that results from the preparation, processing, consumption, dealing in, handling, packing, canning, storage, transportation, decay, or decomposition of meats, fish, fowl, birds, fruits, grains, or other animal or vegetable matter (including ~~but not by way of limitation~~, used tin cans and the food containers and all putrescible or easily decomposable waste animal or vegetable matter that is likely to attract flies or rodents), except (in all cases) any matter included in the definition of bulky waste, construction and demolition debris, dead animals, or hazardous waste, ~~rubbish or stable matter~~.

Green Wood - ~~L~~and clearing debris that is reasonably free of soil material and rock and bark, shavings, slash, and plant and vegetable matter from gardens and landscapes.

Hazardous Waste - ~~W~~waste which by reason of its composition, characteristics, or other inherent properties is dangerous to handle by ordinary means, or which may present a substantial endangerment to health or safety, "Hazardous Waste" shall also mean oil and petroleum products as well as waste which is defined as harmful, toxic, dangerous, or hazardous at any time pursuant to (i) the Solid Waste Disposal Act, 42 U.S.C. ~~Section § 6901 et seq., as amended~~; (ii) the Maine Hazardous Waste, Septage and Solid Waste Act, 38 M.R.S.A. ~~Section § 1301 et seq., as amended~~; (iii) any other federal, state, county, or local codes, statutes, regulations or ordinances; and (iv) regulations, orders or other actions promulgated or taken with respect to the items listed in (i) through (iv) above; *provided however*, that any such materials which are later determined not to be harmful, toxic, dangerous, or hazardous by any governmental agency or unit having appropriate jurisdiction shall not be considered "Hazardous Waste" unless a contrary determination has been or is made by any other governmental agency or unit having appropriate jurisdiction.

Industrial Waste - ~~W~~wastes generally discarded from industrial operations or derived from manufacturing processes but not including (ia) hazardous waste or (iib) special waste which by reason of its composition, characteristics, or other properties is not ordinarily acceptable for disposal at sites licensed for disposal of municipal solid waste ~~(such as Excluded special waste shall include, but not be limited to~~ friable asbestos and oil-contaminated soil).

Municipal Wastes - ~~T~~he combined residential and commercial wastes generated in ~~a given municipal area~~ the City.

Residential Wastes - ~~W~~wastes generated in houses and apartments, including paper, cardboard, beverage and food cans, plastics, food wastes, glass containers, and garden wastes.

Sewerage Treatment Wastes - ~~S~~screenings, grease, scum, and grit.

Special Wastes - ~~waste designated by the Maine Board of Environmental Protection as~~ Special Wastes as defined in 38 M.R.S.A. § 1303-C(34).

Wood Waste - ~~means b~~Brush, lumber, bark, wood chips, shavings, slabs, edgings, slash, sawdust, and wood from production rejects that are not mixed with other solid or liquid waste. For the purpose of this definition, “lumber” is entirely made of wood and is free from metal, plastics, and coatings. Wood Waste does not include painted wood or pressure treated wood. These would be included with Construction and Demolition Debris, as defined. Wood Waste also does not include Green Wood, as defined.

Non-Resident – ~~A~~a person who does not reside in or pay taxes to the City ~~of Ellsworth~~

Resident – ~~A~~a person who resides in or pays taxes to the City ~~of Ellsworth~~

Tipping Fee - ~~is that~~A fee charged to the City ~~of Ellsworth~~ by a disposal facility such as the Penobscot Energy Recovery Company (PERC) ~~(or some other disposal facility)~~.

SECTION 4: RULES AND REGULATIONS

4.0.0 General Requirements

- 4.0.1 All refuse shall be disposed in accordance with this ~~Ordinance~~Chapter 41.
- 4.0.2 The City Manager shall have the authority to restrict the disposal of all types and volumes of refuse, if deemed by the City Manager to be in the best interests of the City.
- 4.0.3 Use of the Ellsworth Transfer Station during non-operating hours without prior approval of the City Manager is prohibited.
- 4.0.4 No person, partnership, or corporation, shall dispose of any refuse on any public property or roads except as allowed by this ~~ordinance~~Chapter 41.
- 4.0.5 All loads coming into the Ellsworth Transfer Station shall be properly secured. This includes commercial and residential vehicles.

4.1.0 Materials Disposal Restrictions

- 4.1.1 All ~~m~~Materials or containers of materials classified as hazardous by the Environmental Protection Agency (EPA) are prohibited.
- 4.1.2 Ashes at a combustible temperature or other hot loads are prohibited.
- 4.1.3 Trees, limbs of trees, or tree trunks greater than 6 inches diameter and 3 foot lengths are prohibited.
- 4.1.4 All ~~Commercial Construction and~~ Demolition Debris (CDD) ~~as defined are is~~ prohibited.
- 4.1.5 All Special Waste ~~as defined are is~~ prohibited.
- 4.1.6 All Green Wood and Wood Waste ~~as defined are is~~ prohibited.

SECTION 5: DISPOSAL OF SOLID WASTE

- 5.1 Occupants of residential property shall dispose of regular municipal solid waste in one of the following methods:

- A. **City-provided collection service.**

Eligibility to the City-provided collection service shall be limited to seasonal and year-round dwellings and apartments or mobile home parks.

Residents who participate in the City provided collection service will be required to purchase and affix a solid waste disposal sticker to each bag. The cost of the disposal sticker shall be determined by the City Council. Bags of trash to which a sticker is affixed shall be limited to no more than fifty (50) pounds per bag. Bags exceeding fifty pounds will not be collected and may only be disposed of at the Ellsworth Transfer Station by paying to use dispose of the bag based on its exact weight.

Materials to be disposed of in bags shall be limited to solid waste acceptable to the regional waste incinerator. Residents will be responsible for trash from their bags that is strewn because of faulty bags, overweight bags, or animals.

Trash will be collected on a weekly basis. Bags are to be placed at curbside no sooner than 6:30 a.m. of the morning of the collection day. Stickered bags may be placed within garbage cans or containers.

Residents along private ways or public easements shall place their bags of trash at designated locations proximate to the private way or public easement.

B. Use of Ellsworth Transfer Station.

All residents and non-residents may take their trash to the Ellsworth Transfer Station for disposal. All trash to be disposed of shall be contained within bags. Bag weight limitation shall be fifty (50) pounds if a disposal sticker is attached, or the exact weight of the bag(s) shall be determined by the Transfer Station operator through the use of the scale and charged to the disposer. Disposal shall be limited to those hours the transfer station is open.

There is no charge for the disposal of recyclable material at the Ellsworth Recycling Center.

C. Hire a Private Hauler.

Residents of any dwelling may contract with a private hauler for disposal of residential solid waste. Residents shall be responsible for all costs associated with disposal.

SECTION 6: FEES

6.0 **Authority.** The City Council shall establish ~~by order~~ schedules of solid waste disposal charges to be charged for the use of the Ellsworth Transfer Station, in accordance with Chapter 1, Article 3 (Fee Schedule and Special Fees) which schedules may include different waste disposal charges for residents of the City, businesses located within the City, non-residents of the City, and commercial refuse collectors collecting solid waste within the City and may include different schedules for disposal of different kinds of solid waste.

~~6.1 **Charge Accounts.** All users of the Transfer Station will be required to establish a charge account for any items disposed of at the facility, excluding recyclable material and trash bags with a solid waste disposal sticker affixed to it.~~

~~6.2 **Late Fees.** Interest on late payments will be assessed at an interest rate of one and one-half percent (1½%), or \$1.00 minimum, per month for all such fees that are still unpaid after a period of thirty days from the date of billing.~~

SECTION 7: VIOLATIONS & PENALTIES ENFORCEMENT

The CEO is responsible for enforcing the provisions of this Chapter 42 by inspecting premises, investigating complaints, issuing notices of violation, suspending or revoking permits or approvals, and participating in legal prosecution of violations as needed, in accordance with Chapter 1, Section 509 of the City Code.

~~Violations of this ordinance shall be enforced under the provision of 30 A.M.R.S.A. §4452 as amended (Enforcement of land use laws and ordinances) as land use violations. The penalties set forth in the aforementioned statute shall apply to violations of this ordinance. (Currently these penalties include fines of not less than \$100 nor more than \$2,500 for each day of a violation.)~~

~~7.2 **Municipal Costs of Enforcement.** In addition to the foregoing penalty provisions, any person violating any provision of this ordinance shall be liable to reimburse the City for costs of~~

~~enforcement including reasonable attorney fees and court costs. This provision shall not preclude the City for seeking and obtaining equitable relief.~~

~~SECTION 8: SEVERABILITY~~

~~Each of these sections shall be construed as separate. If any section, sentence, clause, or phrase shall be held invalid for any reason, the remainder of that section and all other sections shall continue in force.~~

Part 12. Chapter 43 of the City Code (Tree Ordinance) is proposed to be amended by adding the words shown in underline and by striking the words shown in strikethrough, as follows.

Code of Ordinances, City of Ellsworth

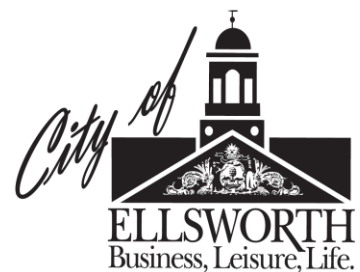
CHAPTER 43

CITY TREES

A true copy, attest:

Heidi-Noël Grindle
City Clerk

HISTORICAL NOTE: ADOPTED JULY 8, 1991; REPLACED APRIL 21, 2024; AMENDED
*** 2026.



CHAPTER 43

CITY TREES ORDINANCE

Article 1 Purpose and Applicability:

- 1.1 ~~In addition to the general purposes of the City Code set forth in Chapter 1, Article 2, the purpose of this Chapter 43 is to~~ advance and safeguard public health, safety, and general welfare through the regulation of trees and shrubs on City ~~of Ellsworth~~ property, including those in rights-of-way, and other public plantings.

Article 2 Definitions:

- 2.1 **Person:** Any individual, firm, corporation, association, partnership, or organization.
- 2.2 **Property Owner:** The person owning the property as shown by the City ~~of Ellsworth's~~ tax assessor's records.
- 2.3 **Public Hazard:** A condition of any tree or shrub that constitutes a hazard to persons or property.
- 2.4 **Public Property:** ~~All~~ property owned, leased, or occupied by the City ~~of Ellsworth~~.
- 2.5 **Public Trees:** ~~All~~ trees and shrubs on public property, including City rights-of-way.
- 2.6 **Tree Warden:** An official of the City ~~of Ellsworth~~ appointed by the City Council who shall have the care and control of all public shade trees upon and along City roads and public rights-of-way and in the parks and public lands of the City ~~of Ellsworth~~. ~~That official shall enforce all laws relating to the preservation and maintenance of public shade trees and public trees.~~
- 2.7 **ANSI:** American National Standards Institute A300 Tree Care Standards (2023), ~~tree planting and care standards used by tree experts nationally.~~

Article 3 Tree Warden:

- 3.1 The City Council shall annually appoint a Tree Warden ~~, if possible~~ with forestry ~~and/or~~ arborist credentials if practical. The Tree Warden oversees all work on public trees, including assessment and removal of public hazards, and works with the Arbor Commission to enforce and administer the provisions of this ~~ordinance~~ Chapter 43.
- 3.2 The Tree Warden shall make regular reports to the Arbor Commission.
- ~~3.3 Any person or organization, including the Arbor Commission, may appeal, in writing, any ruling or order issued by the Tree Warden by filing a notice of appeal with the Board of Appeals within in seven (7) days of the date of the ruling or order.~~

Article 4 ~~Ellsworth~~ Arbor Commission:

- 4.1 The Arbor Commission shall be consist of eight (8) full-time members and one alternate ~~ive~~ member appointed by City Council, the majority of which must be Ellsworth residents or property owners. Each full-time member will be appointed for a staggered number of years. Their appointment and term of office will expire on June 30 of each year.
- 4.2 All members of the Arbor Commission serve without compensation.

- 4.3 The Arbor Commission, ~~along-in consultation~~ with the Tree Warden, shall formulate arboriculture and forest management policy and oversee the implementation of this ~~ordinance-Chapter 43~~ and the City's Comprehensive Forestry Management Plan.
- 4.4 The Arbor Commission shall maintain a list of the City's Heritage and Ecologically Significant Trees and undertake to have them appropriately cared for and preserved.
- 4.5 The Arbor Commission shall administer the Ellsworth Tree Trust according to provisions laid out in the City's Comprehensive Forestry Management Plan.
- 4.6 The Arbor Commission shall ~~assist-advise the CEO, upon the CEO's request, with respect to the with-code~~ enforcement of the Unified Development Ordinance (Chapter 56) as it relates to the preservation, planting, and care of trees.
- 4.7 The Arbor Commission shall ~~assist-advise~~ the Planning Board, ~~upon the Planning Board's request,~~ with developing appropriate standards for arboriculture and assist the Technical Review Team in advising on and reviewing applications to the Planning Board.

Article 5 Permits:

- 5.1 ~~Except as provided in Section 5.2, a~~A permit issued by the Tree Warden is required for any activity related to public trees and landscaping plans on public property.
- 5.2 Exceptions: Any tree work done on public trees by volunteers or City employees under the supervision of the Tree Warden shall not require a permit ~~under this Chapter 43~~. Utility companies that subcontract tree trimming to teams that include Maine State licensed arborists shall not require a ~~City~~ permit ~~under this Chapter 43~~.

Article 6 Specifications and Standards:

- 6.1 ANSI Contract Specifications and Pruning Standards for Shade Trees, ~~the Tree Removal Standards in Appendix 43-A, and the Tree Removal Standards in Appendix 43-B~~ shall be followed.

Article 7 Tree Planting, Maintenance, and Removal:

- 7.1 Authority to Plant or Remove Trees on Public Property: Trees must be selected and located in accordance with this ~~ordinance-Chapter 43~~ and the City's Comprehensive Forestry Management Plan.

Article 8 Protection of Trees on Public Property:

- 8.1 During Excavation or Construction, trees must be guarded with a substantial barrier at a minimum 4 ~~feet~~² high.
- 8.2 No person shall deposit anything on the ground which may impede the free passage of water, air or fertilizer to the roots of any public tree.
- 8.3 Under no circumstance shall any person cut, carve, transplant, or remove any public tree; attach any rope, wire, nails, advertising posters, or other contrivance to any public tree; allow any substance harmful to trees to come in contact with any public tree; or set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of any public tree.
- 8.4 It shall be unlawful for any person to interfere with any ~~Ellsworth~~-employee, volunteer, or contractor hired ~~or retained~~ by the City ~~of Ellsworth~~, while engaging in tree care and maintenance authorized in accordance with this ~~ordinance~~Chapter 43.

Article 9 ~~**Violations and Penalties**~~**Enforcement:**

- 9.1 ~~The Tree Warden and CEO are responsible for enforcing the provisions of this Chapter 43 by inspecting premises, investigating complaints, issuing notices of violation, suspending or revoking permits or approvals, and participating in legal prosecution of violations as needed, in accordance with Chapter 1, Section 509 of the City Code. Violations of this ordinance may result in fines and penalties, pursuant to 30 A.M.R.S., section 4452.~~
- 9.2 ~~In addition to the fines and penalties set forth in Chapter 1, Section 509.7, if, as a result of the violation of any provision of this ordinance~~Chapter 43, the injury, mutilation, or death of a public tree occurs, the penalty shall include ~~, but not be limited to,~~ the replacement value of the tree, calculated as specified in the City's Forestry Management Plan.

Article 10 ~~**Severability**~~**Appeals:**

- 10.1 ~~Invalidity of any section, clause, or provision shall not affect the validity of the ordinance as a whole~~A person aggrieved by a decision of the Tree Warden to approve or deny a permit pursuant to this Chapter 43 may appeal the decision to the City Council in accordance with Chapter 1, Section 210.2.

APPENDIX ~~143-A~~

TREE REMOVAL APPROVAL STANDARDS

1. REMOVAL JUSTIFICATION & OBJECTIVES

Removal must serve at least one of the following approved purposes:

Public Safety & Risk Assessment:

- Tree poses a **hazard to pedestrians, vehicles, or structures**, as determined by a risk assessment.
- Tree is interfering with **utility lines** and cannot be managed through proper pruning.
- Tree has **compromised root stability** due to soil erosion, construction impact, or other environmental changes.
- Tree is blocking sightlines or traffic visibility in a way that cannot be mitigated through pruning.

Tree Health:

- Tree is **dead** or in irreversible decline.
- Tree has **significant structural defects** (e.g., large cavities, severe decay, extensive root damage) that pose a safety risk.
- Tree is **infested with pests or diseases** that cannot be effectively treated (e.g., Emerald Ash Borer, Dutch Elm Disease).
- Tree has sustained **storm damage** making it structurally unstable.

Urban Forest & Environmental Considerations:

- Removal aligns with the **City's Urban Forestry Plan** and tree canopy goals.
- Tree removal will not result in significant **environmental degradation**, such as increased erosion or habitat loss.
- Removal is part of a **city-approved development plan** where preservation alternatives have been explored.
- Tree species is **non-native, invasive, or otherwise unsuitable** for the location.

2. APPROVAL PROCESS~~:~~

Requests must specify the reason for removal.

3. REPLANTING & MITIGATION REQUIREMENTS

- Applicant must submit a **replanting plan** if removal is approved.
- If replanting is not feasible, the applicant must **contribute to the city's tree fund** to support new tree plantings elsewhere.
- Replacement trees should align with city-approved species lists and site suitability.

4. PUBLIC NOTIFICATION ~~& APPEALS~~

- Public notification is required for the removal of **significant, historic, or highly visible trees**.
- ~~Citizens may appeal tree removal decisions to the **Board of Appeals**.~~

APPENDIX 43-B2

TREE PRUNING APPROVAL STANDARDS

1. PRUNING JUSTIFICATION & OBJECTIVES

Pruning must serve at least one of the following approved purposes:

- **Public Safety:** Remove dead, broken, or hazardous branches that pose a risk to pedestrians, vehicles, buildings, or utilities.
- **Tree Health:** Address structural defects, diseased limbs, or pest-infested branches that threaten the tree's long-term viability.
- **Clearance & Visibility:** Maintain appropriate clearance for sidewalks, roads, traffic signs, streetlights, or buildings while preserving tree structure.
- **Structural Integrity:** Improve branch attachment, eliminate weak crotches, or reduce wind resistance to minimize storm damage.
- **Restoration Pruning:** Correct previous improper pruning practices, such as topping or lion-tailing.

2. PRUNING STANDARDS & BEST PRACTICES

All pruning must follow **ANSI A300 (Part 1) – Tree, Shrub, and Other Woody Plant Maintenance – Standard Practices (Pruning)** and adhere to **ISA Best Management Practices**:

- **No Topping:** The practice of cutting back large branches or the main trunk to stubs is strictly prohibited.
- **No Excessive Pruning:** Removal of live foliage should not exceed 25% of the tree's canopy within a single season unless necessary for health or safety.
- **Proper Cuts:** All cuts must be made just outside the branch collar, avoiding flush cuts or leaving stubs.
- **Seasonal Considerations:** Pruning should be done during the appropriate season for the species to minimize stress and prevent disease spread (e.g., avoid oak pruning during high-risk periods for oak wilt).

3. APPROVAL PROCESS

- Requests must specify the **reason for pruning, target branches, and pruning methods**.
- Pruning must be performed by a **qualified arborist** or tree care professional with experience in structural and corrective pruning.
- For mature trees, excessive canopy reduction or limb removal requires additional review by the **Tree Warden**.

4. SPECIAL CONSIDERATIONS

- **Historic & Landmark Trees:** Pruning requests for significant trees require additional evaluation and public notification.
- **Utility Line Clearance:** Pruning for utility lines must be coordinated with the appropriate utility company and comply with industry standards.

- **Public Trees on Private Property:** If a city-owned tree extends over private property, property owners may apply for pruning but must follow city guidelines and obtain approval.

5. POST-PRUNING COMPLIANCE & INSPECTIONS

- The **Tree Warden** may inspect work before, during, and after pruning to ensure compliance.
- Improper pruning may result in fines or requirements for corrective pruning at the permit holder's expense.
- Severe or unauthorized pruning that compromises a tree's health may require the permit holder to pay for mitigation or replanting.

Part 13. Chapter 48 of the City Code (Rotational Towing) is proposed to be amended by adding the words shown in underline and by striking the words shown in strikethrough, as follows.

In addition, wherever the term “this Ordinance” appears, it shall be amended to read “this Chapter 48.”

In addition, Appendix “A” (Towing Fees) is proposed to be stricken in its entirety.

Code of Ordinances, City of Ellsworth

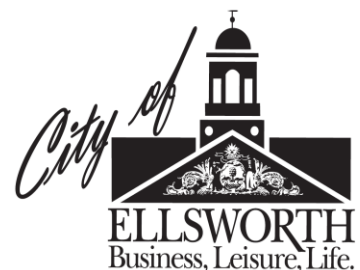
CHAPTER 48

ROTATIONAL TOWING

A true copy, attest:

Heidi-Noël Grindle
City Clerk

HISTORICAL NOTE: ADOPTED JANUARY 27, 1997; AMENDED FEBRUARY 23, 1998; AMENDED FEBRUARY 22, 1999; AMENDED AUGUST 12, 2002; AMENDED AUGUST 11, 2003; AMENDED SEPTEMBER 19, 2005; AMENDED DECEMBER 17, 2012; AMENDED *** 2026.



CHAPTER 48

ROTATIONAL TOWING-ORDINANCE

...

8. Administrative Provisions.

- 8.1. ~~The service rates and fee charges are established in the attached Appendix "A". This Chapter 48 shall be administered and enforced by the Chief of Police. Any dispute about charges shall be submitted to the City Manager for resolution. The decision of the City Manager is final. The owner/operator of a towed vehicle shall not be obligated to pay any charge unless they have been given a copy of the towing rotation list tow receipt as required by Section 6.4, above.~~
- 8.2. Service charges:
 - 8.2.1. ~~Upon recommendation of the Chief of Police, the City Council shall review and approve all fees pertaining to the towing ordinance. See Appendix "A" Service rates and fee charges shall be established by the City Council in accordance with Chapter 1, Article 3 (Fee Schedule and Special Fees).~~
- 8.3. The Chief of Police may suspend or remove any towing service from the towing rotation list in accordance with Chapter 1, Section 509.6. In addition to the grounds for suspension or revocation set forth in Chapter 1, Section 509.6, t~~The following shall be grounds for suspension or removal from the towing rotation list:~~
 - 8.3.1. The occurrence of any condition that would require the Chief of Police to deny an application for a Certificate of Qualification pursuant to Section 3.3;
 - 8.3.2. Violation of any provision of this ~~Ordinance-Chapter 48~~ during any towing rotation list tow;
 - 8.3.3. Violation of Sections 6.6 or 6.7 at any time; or
 - 8.3.4. A failure to comply with any provision of this ~~Ordinance-Chapter 48~~ that expressly contains a penalty of suspension or removal for non-compliance.
- 8.4. Suspension and removal shall be imposed in accordance with the requirements of Chapter 1, Section 509.6 and the following provisions:
 - 8.4.1. Any suspension imposed pursuant to Section 8.3.1 shall continue until the towing services re-applies for and receives a new Certificate of Qualification.
 - 8.4.2. Any suspension imposed pursuant to Section 8.3.4 shall continue as set forth in the provision-notice of violation imposing the a-suspension.
 - 8.4.3. Any suspension imposed pursuant to Section 8.3.3 shall be for:
 - 8.4.3.1. Thirty days (30) for a first violation within any 18-month period.
 - 8.4.3.2. Sixty days (60) for a second violation within any 18-month period.
 - 8.4.3.3. One hundred ~~and~~ twenty days (120) for a third violation within any 18-month period.

8.4.3.4. ~~Removal-Suspension~~ for at least one year for a fourth violation occurring within any 18-month period, or for a sixth violation occurring in any three-year period.

~~8.5. The City Manager shall serve as the hearing officer for the purposes of Section 8.3~~

8.6. Any towing service participating in the towing rotation list may appeal a suspension or removal from the towing rotation list to the ~~Ellsworth Board of Appeals~~City Council ~~within fifteen days of the suspension. There shall be a fee of one hundred dollars for this appeal in accordance with Chapter 1, Section 210.~~

8.7. Any suspension or removal imposed pursuant to Sections 8.3.2 or 8.3.3 shall be stayed during the pendency of the appeal. Any suspension imposed pursuant to Sections 8.3.1 or 8.3.4 shall not be stayed.

~~9. Severability.~~

~~In the event any provision or portion of this Ordinance is held to be unlawful or unconstitutional by any court of competent jurisdiction, the remaining provisions or portions of the Ordinance re declared to be severable and shall not be thereby invalidated.~~

...

Part 14. Chapter 55 of the City Code (Water Supply Protection) is proposed to be amended by adding the words shown in underline and by striking the words shown in strikethrough, as follows.

In addition, wherever the term “this Ordinance” appears, it shall be amended to read “this Chapter 55.”

Code of Ordinances, City of Ellsworth

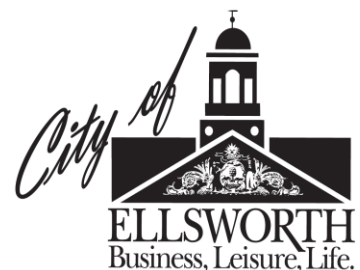
CHAPTER 55

WATER SUPPLY PROTECTION

A true copy, attest:

Heidi-Noël Grindle
City Clerk

HISTORICAL NOTE: ADOPTED JULY 18, 2005 (EFFECTIVE AUGUST 11, 2005);
AMENDED THROUGH MARCH 15, 2010; AMENDED AUGUST 16, 2010; AMENDED
JANUARY 14, 2013; AMENDED *** 2026.



CHAPTER 55

WATER SUPPLY PROTECTION ~~ORDINANCE~~

ARTICLE 1 GENERAL PROVISIONS

~~Section 1. Title~~

~~This Ordinance shall be known and cited as the “Public Water Supply Protection Ordinance” of the City of Ellsworth, Maine.~~

~~Section 2. Authority~~

~~This ordinance is adopted pursuant to Title 22 M.R.S.A. §2642.~~

101 PURPOSES

~~Section 3. Purpose and Intent~~

~~In addition to the general purposes of the City Code set forth in Chapter 1, Article 2, t~~The purpose of this ~~ordinance-Chapter 55~~ is to protect the water quality of Branch Lake, the Ellsworth drinking water supply and its sources, as well as the health, safety, and welfare of persons dependent upon such supplies. These supply sources include all perennial and intermittent streams, as well as the wetlands of ten (10) acres or more located within the Branch Lake Watershed Boundaries. ~~The ordinance~~This Chapter 55 is intended to protect the drinking water supply and its sources from pollution and development; chemical contamination; increased recreational and boating pressures; and invasive aquatic species.

The provisions of this ~~ordinance-Chapter 55~~ pertaining to surface water use and water-related activities include any activity in, on, or from the surface water or the frozen water of Branch Lake and its sources.

102 Section 4. EFFECTIVE DATE

This ~~ordinance-Chapter 55~~, enacted on the 18th day of July 2005 by the ~~Ellsworth~~ City Council, shall take effect August 15, 2005.

103 Section 5. APPLICABILITY AND MAP

This ~~ordinance-Chapter 55~~ shall apply to all surface water use on Branch Lake or it sources, as delineated on the ~~attached-Official City of Ellsworth~~ Public Water Supply Protection Area Mmap, ~~attached as Appendix 55-A. This area is considered to be essential to the protection of the existing water from the effect of possible contamination activities.~~

~~Section 6. Relationship with other Ordinances~~

~~Whenever a provision of this ordinance is inconsistent with another provision of the ordinance or any other ordinance, regulation, or statute, the more restrictive provision shall control.~~

~~Section 7. Validity and Severability~~

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

~~Section 8. Amendments~~

~~A. Initiation of Amendments~~

~~A proposal for an amendment to this ordinance may be initiated by one of the following:~~

- ~~1. Planning Board;~~
- ~~2. City Council;~~
- ~~3. City Manager;~~
- ~~4. Water Department Superintendent;~~
- ~~5. Ellsworth Water Supply Commission; or~~
- ~~6. An individual, through the petition process described in the Charter of the City of Ellsworth, Article IX, as amended on November 4, 1997.~~

~~B. Procedure for Amendments~~

~~Upon receipt of a proposed amendment, the City Planner shall take all action necessary to schedule a public hearing to be conducted by the Planning Board on the request;~~

~~The Planning Board shall hold a public hearing within forty five (45) days of receipt of a proposed amendment or repeal by the City Planner. At least thirteen (13) days before the hearing, the City shall advertise the date, time, place, and purpose of the Planning Board hearing in a newspaper of general circulation;~~

~~The Planning Board shall make its official report at the next meeting of the Ellsworth City Council, which is held at least ten (10) days after the public hearing; and~~

~~Before consideration of the proposed amendment or repeal by the Ellsworth City Council, it shall hold a public hearing. Said public hearing shall be published at least two (2) times in a newspaper having general circulation in the municipality, the date of the first publication must be at least seven (7) days before the hearing, and shall be posted in the municipal office at least fourteen (14) days before the public hearing.~~

104 ADMINISTRATION AND ~~Section 9-ENFORCEMENT~~

~~The CEO is responsible for administering this Chapter 55.~~

~~The CEO, aAny duly designated Ellsworth officer of the Police OfficerDepartment, the Water Department Superintendent, their designees, and the Branch Lake Steward are authorized and shall have the authority to responsible for enforcing all the provisions of this ordinanceChapter 55 by inspecting premises, investigating complaints, issuing notices of violation, suspending or revoking permits or approvals (including boating permits and boat tags), and participating in legal prosecution of violations as needed, in accordance with Chapter 1, Section 509 of the City Code. ,including the authority to deny or revoke, with cause, a Branch Lake Boating Permit and/or an Ellsworth Boat Tag.~~

~~Only the Branch Lake Steward, the Water Department Superintendent or designees are authorized to waive the inspection of a resident boat.~~

~~Ellsworth Boat Inspectors are authorized to issue, or deny, with cause, a Branch Lake Boating Permit and/or an Ellsworth Boat Tag to any boater.~~

Section 10. Appeal

~~Any person aggrieved by a decision of an Ellsworth Police Officer, the Branch Lake Steward, the Water Superintendent or designees, or an Ellsworth Boat Inspector may appeal said decision to the Ellsworth~~

~~Board of Appeals within seven (7) days after said decision. The Board of Appeals may affirm, modify, or reverse the decision in accordance with the terms of this ordinance.~~

~~Section 11. Civil Penalty~~

~~Any person violating the provisions of this ordinance shall be liable to a civil penalty in accordance with 30 A.M.R.S.A. §4452 as summarized below:~~

~~A) Monetary penalties may be assessed on a per day basis.~~

~~The minimum penalty for a specific violation is \$100;~~

~~The maximum penalty outside a resource protection zone is \$2,500;~~

~~The maximum penalty is \$5,000 for any violation within a resource protection zone;~~

~~The maximum penalty is increased to \$25,000 when it is shown that there has been a previous conviction of the same party within the past 2 years for a similar violation.~~

~~The maximum penalty may be increased if the economic benefit resulting from the violation exceeds the applicable penalties~~

~~In addition to penalties, legal fees may also be awarded as provided by court rule.~~

~~The violator may be ordered to correct, abate or mitigate the violations.~~

~~In setting a penalty, the following shall be considered:~~

~~Prior violations by the same party;~~

~~The degree of environmental damage that cannot be abated or corrected;~~

~~The extent to which the violation continued following an order to stop.~~

~~Section 12. Revenues~~

~~All revenues generated from this ordinance, including assessed penalties, shall only be used to support the administration of this ordinance and related programs to protect Ellsworth's public water supply, Branch Lake.~~

ARTICLE 2 ~~Section 13. DEFINITIONS~~

Aeroplane: An airplane that can land on or take off from water or ice.

All-Terrain Vehicle or ATV: Any recreation vehicle with three (3) or more wheels and weighing under ~~FF~~ fifteen hundred (1500) pounds.

Amphibious Aeroplane: An airplane that can take off and land using conventional runways and water.

Amphibious Vehicle: Any vehicle that can be used over land and water.

Arsenic-Treated Wood Products: Lumber, timber, poles, posts, plywood, shakes, shingles, or other wood or forest products intended for outdoor use that have been pressure treated to reduce decay with a wood preservative containing inorganic arsenic or inorganic arsenic compounds.

Aquatic Plants: As defined by Title 12 MRSA sec. 13001, a plant species that requires a permanently flooded freshwater habitat.

Dock: Floating or fixed structure located in, on, or over the waters of Branch Lake.

Boat Inspection: The inspection of boat, motor vehicle, trailer, marine engine, live well, bilge, bait bucket and all other related equipment to ensure that no aquatic invasive plants are introduced in Branch Lake and in its sources.

Boat: Any device capable of carrying one or more person in, on, or over the waters of Branch Lake. It does not include air mattresses, inner tubes, and beach and water toys.

Boat Launch: A facility designed primarily for the launching and landing of watercraft.

Creosote-Treated Wood: Lumber, timber, poles, posts, plywood, shakes, shingles, or other wood or forest products intended for outdoor use that have been treated with creosote.

Float Plane Base: On-water location designed for docking, mooring, or servicing three or more aeroplanes simultaneously.

Fuel Depot: Waterside fueling facility containing fuel storage in excess of 50 gallons.

Infested Water Bodies: Lakes, Ponds, Rivers, or Streams known or suspected to contain invasive aquatic plants. For the purposes of this ordinance, all water bodies beyond the borders of the state of Maine will be suspected to contain invasive aquatic plants. Known Maine infested water bodies are those listed in the most recent annual Maine Department of Environmental Protection (ME DEP) update.

Invasive Aquatic Plants: As defined by ~~Title 38 M.R.S.A. Chapter 3, Subchapter 1, Section~~ § 410-N, ~~a~~ species identified by the ME-DEP as an invasive aquatic plant, ~~or and one any~~ of the following species:

- (1) Eurasian water milfoil, *Myriophyllum spicatum*;
- (2) Variable-leaf water milfoil, *Myriophyllum heterophyllum*;
- (3) Parrot feather, *Myriophyllum aquaticum*;
- (4) Water chestnut, *Trapa natans*;
- (5) Hydrilla, *Hydrilla verticillata*;
- (6) Fanwort, *Cabomba caroliniana*;
- (7) Curly pondweed, *Potamogeton crispus*;
- (8) European naiad, *Najas minor*;
- (9) Brazilian elodea, *Egeria densa*;

(10) Frogbit, *Hydrocharis morsus-ranae*; and

(11) Yellow floating heart, *Nymphoides peltata*.

Mooring: Appliance used by a boat for anchoring purposes that is not carried aboard such boat when underway as regular equipment.

Motorbike: Any self-propelled two (2) wheeled motorcycle or motor-driven cycle designed for or capable of traveling off developed roadways and highways.

Motor Vehicles: A self-propelled wheeled conveyance, such as a car or truck.

Normal High-Water Line: The line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. In the case of wetlands adjacent to rivers and great ponds, the normal high-water line is the upland edge of the wetland.

No Wake Speed: Operation of a boat at the slowest possible speed to maintain steerage.

Personal Watercraft (PWC): A small, lightweight water jet propelled craft designed to be either sat-on or stood-on with motorcycle-like handlebars and squeeze throttle.

Resident Boat: A Boat or (s)-watercraft(s) belonging to a household-person owning property or right-of-way abutting Branch Lake.

Snowmobile: Any self-propelled vehicle under one thousand (1,000) pounds unladen gross weight, that is steered by tracks, skis, or runners.

Substantial Improvements: Any reconstruction, rehabilitation or other improvement of a launch, dock, or other structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed.

Watercraft: Any boat or other floating device of rigid or inflatable construction which is designated to carry people or cargo on the water, and which is propelled by machinery, oars, paddles or wind action on a sail; except: inner tubes, other floatable material not propelled by machinery, personal floating devices worn or held in hand, and other objects such as floating or swimming aids, including float tubes.

ARTICLE 3 SURFACE WATER USE REGULATIONS

301 ~~SECTION 1.~~ ESTABLISHMENT OF ZONES

The ~~Water Supply Protection Ordinance applies to three (3) following~~ zones, as depicted on the ~~Official~~ City of Ellsworth Public Water Supply Protection Area Map, are hereby established:

A301.1. Intake Zone

This 280,000 square feet rectangular zone encompasses the area of water around the Ellsworth public water supply point of intake in Branch Lake commencing at the northwest corner of the Ellsworth tax map 55 lot 14 at the normal high-water line of Branch Lake and extending one hundred and twenty-four (124) feet in a generally northwesterly direction along the shoreline; thence at a right angle in a northeasterly direction seven hundred (700) feet to a point; thence at a right angle in a southeasterly direction four hundred (400) feet to a point; thence at a right angle in a southwesterly direction seven hundred (700) feet to

a point; thence at a right angle in a northwesterly direction two hundred and seventy-six (276) feet along the shoreline to the point of beginning.

301.2 Recreation Zone

This zone encompasses all of the water surface of Branch Lake and its sources excluding the Intake Zone area ~~(as depicted on the Ellsworth Public Water Supply Protection map—Attachment A).~~

301.3 Aeroplane Landing & Takeoff Zone

This zone, located within the ~~R~~recreation ~~Z~~zone ~~listed in B above~~, encompasses waters in the “Upper Lake” section of Branch Lake north of a line running between the Branch View Drive peninsula and the 401 Phillips Way peninsula 200 feet North of so-called “Little John Island.” ~~as depicted on the Ellsworth Public Water Supply Protection map—Attachment A.~~

302 ~~Section 2.~~ RESTRICTIONS

The following restrictions apply to the following zones, as depicted on the Official City of Ellsworth Public Water Supply Protection Area Map:

302.A. 1 Intake Zone

1. All water-related activities in this area are prohibited; no trespassing is allowed.
2. The ~~Ellsworth City~~ Water Department shall have authority to place, at its discretion, signs and/or buoys in the lake delineating the zone and indicating the penalties to be imposed for trespassing.

~~B.~~ 302.2 Recreational Zone

~~Protection measures for the Recreation Zone are:~~

1. **No Wake.** It shall be unlawful to operate any boat at speeds faster than no wake speed within 200 feet of the shoreline.
2. **Motor Vehicles.** Motor vehicles are prohibited unless used for the express purpose of launching a boat.
3. **ATVs.** ATVs are prohibited unless used on the ice or used to launch a boat.
4. **Motorbikes.** Motorbikes are prohibited unless used on the ice or used to launch a boat.
5. **Snowmobiles.** Snowmobiles are allowed on the ice of Branch Lake.
6. **Amphibious Vehicles.** Amphibious vehicles are prohibited, including amphibious aeroplanes.
7. **Aeroplanes.** No person shall cause or permit any aeroplanes to land, operate, or take off except ~~under conditions outlined in Section 6 below~~ in accordance with Article 6.
8. **Diesel Engines.** All vessels with diesel engines are prohibited.

9. **House Boats.** No vessel fitted for use as a dwelling or residence or occupied as such shall be permitted.
10. **Engine Repairs.** Servicing or repair of engines is prohibited.
11. **Dumping of Wastes.** No person shall dump, cause to dump, or discard feces, ashes, food wastes, offal, or any waste or refuse.
12. **Ice Shacks and On-ice Activities.** ~~See~~ See Section 305 below.
13. **Overnight stay.** Overnight stays on the ice are prohibited.
14. **Moorings.** All mooring gear must be free of aquatic plants before being placed in Branch Lake or its sources.
15. **Fishing Equipment.** All fishing equipment must be free of aquatic plants before being placed in Branch Lake or its sources.

302.C-3 Aeroplane Landing and Takeoff Zone

~~Protection measures for the Aeroplane Landing & Takeoff Zone are:~~

1. **Aeroplanes.** No person shall cause or permit any aeroplanes to land, operate, or take off except ~~under conditions outlined in Section 6 below~~ in accordance with Article 6.
2. **No Wake.** It shall be unlawful to operate any aeroplane at speeds faster than no wake speed within 200 feet of the mainland or island shoreline.

303 ~~Section 3.~~ PROTECTION OF WATER SUPPLY, GENERALLY

- 303.1** It shall be unlawful for any person to pollute, threaten, jeopardize, or render impure, turbid, or offensive the waters of Branch Lake or its sources.
- 303.2** No person shall put filth, sewage, ashes, animal or vegetable matter, wood chips, compost, construction debris, herbicide, wood shavings, or any other substance or pollutant, whether solid or liquid, in the waters of Branch Lake or its sources.
- 303.3** The owner or operator of a motorized vehicle or aeroplane that sinks beneath the water or ice of Branch Lake or its sources must contact the ~~Ellsworth City~~ Water Department or City Police Department~~(s)~~ as soon as safety permits.

304 ~~Section 4.~~ BOAT LAUNCHES AND DOCKS

- ~~A.~~ **304.1** All new boat launches, docks, and other structures in, on, or over the waters of Branch Lake are prohibited with the exception of docks used for residential purposes and those structures listed under Section 304.5-E.
- ~~B.~~ **304.2** Boat launches, docks, and other structures in place before the effective date of this ordinance may continue unless the use is discontinued for a period of 12 consecutive months.
- ~~C.~~ **304.3** All new docks and other structures in, on, or over the waters of Branch Lake must meet the following specifications and restrictions:
 1. The structure shall be built no larger in dimension than necessary to carry on the activity and be consistent with existing conditions, use, and character of the area;

2. Habitable or enclosed structures are prohibited;
3. The use of metal drums is prohibited;
4. The use of any flotation devices that will sink when punctured are prohibited;
5. The use of creosote- and arsenic-treated wood products are prohibited;
6. The use of drums, barrels or containers of any type that have been previously used to store oil, petroleum products or hazardous materials of any type are prohibited;
7. Toilet facilities on boat docks are prohibited; and
8. Boat docks shall be free of any invasive aquatic plant before being placed in Branch Lake or its sources.

~~D.~~ 304.4 A dock or other structure in place in, on, or over the waters of Branch Lake before the effective date of this ~~ordinance-Chapter 55~~ must meet the specifications and restrictions set forth in Section ~~304.C3 of this ordinance~~ if substantial improvements take place.

~~E.~~ 304.5 Boat launches, docks, and other structures in, on, or over the waters of Branch Lake erected on City-owned or State owned property are allowed.

~~F.~~ 304.6 No structures in, on, or over the waters of Branch Lake shall be used for building, constructing, or repairing of any boat or aeroplane.

305 ~~Section 5.~~ ICE SHACKS AND ON-ICE ACTIVITIES

~~A.~~ 305.1 Ice shacks and other similar structures providing temporary protection are allowed. ~~Ellsworth Water Department or other applicable City Enforcement staff may inspect temporary structures on Branch Lake at any time for conformance with this ordinance.~~

~~B.~~ 305.2 Disposal or abandonment of bottles, cans, ash, trash, human waste, pet waste, building materials, or equipment on the ice or in the water is prohibited. Anything brought on the ice must be packed out.

~~C.~~ 305.3 Defecating ~~and/or~~ urinating on the ice or in the water is prohibited. ~~Please make provision for these basic needs beforehand.~~

~~D.~~ 305.4 Burning of trash on the ice is prohibited.

306 ~~Section 6.~~ AEROPLANE USE

~~A.~~ 306.1 Before a pilot operates an aeroplane on Branch Lake, the pilot must be certified as an "Aeroplane Self-inspector" by the City ~~of Ellsworth as outlined in~~ accordance with Article IV-B Section 502, Aeroplane Inspection.

~~B.~~ 306.2 The authorized aeroplane landing and take-off zone on Branch Lake is in the basin depicted as the Upper Lake north of a line running between the Branch View Drive peninsula and the 401 Phillips Way peninsula 200 feet north of so-called "Little John Island" as depicted on the Official City of Ellsworth Public Water Supply Protection Area Map—Attachment A. Because of the drinking water intake in the Lower Lake, only the taxiing of aeroplanes in the Lower Lake (southeast of the peninsulas) is allowed.

~~C.~~ 306.3 Aeroplane fly-in events are prohibited.

- ~~D.~~ **306.4** A 500 feet minimum altitude shall be maintained when not landing or taking off.
- ~~E.~~ **306.5** Self-inspection of an aeroplane, and therefore direct landing in Branch Lake, is prohibited if in the last twelve (12) months the aeroplane has been in an infested water body ~~as defined in Art. 1, Sec. 13~~. If the pilot of an aeroplane that has been in an infested water body within the last 12 months wishes to use Branch Lake, the pilot must contact the City ~~of Ellsworth~~ Water Department, and schedule an inspection conducted by the Water ~~Department~~ Superintendent, Branch Lake Steward, CEO, or ~~any~~ duly designated City Ellsworth Police Officer ~~for a City performed inspection~~.
- ~~F.~~ **306.6** No aeroplanes shall operate on Branch Lake in conjunction with any commercial use or business enterprise, including ~~but not limited to~~ flight training schools, guiding operations, tour operations, resorts or housing developments, whether or not such commercial uses or business enterprises are located in the Branch Lake watershed. No fuel depots or floatplane bases shall be operated on Branch Lake.
- ~~G.~~ **306.7** The owner or operator of an aeroplane that sinks beneath the water or ice or crashes onto the water or ice of Branch Lake or its sources must contact the ~~Ellsworth City~~ Water Department or City Police Department as soon as safety permits.

ARTICLE ~~III~~ **4. BOAT INSPECTION TAGS, INSPECTIONS, AND PERMITS (TIP)**

401 Section 1. TAGS, INSPECTION, PERMIT (TIP)S

Except as provided in Section 403, I launching of any watercraft in Branch Lake is prohibited unless: (i) the boat has a valid TAG (sticker), (ii) an INSPECTION was conducted, and (iii) a PERMIT has been issued, all in accordance with the following requirements:

401.1 A. TAG Tag

1. A Boat Tag consists of a City-supplied sticker applied to the left bow of the boat in plain view above the waterline.
2. Boat Tags are available at City Hall, at the City-operated Branch Lake Launch located off the Happytown Road, and may be available from ~~the~~ any City Manager appointed sub-station agents.
3. By the end of December of each year, the City Council shall establish the Boat Tag Fee Schedule for the next calendar year, in accordance with Chapter 1, Article 3.
4. Boat Tags are mandatory for all boats, with or without inspection waivers.
5. Should a Boat Tag become mutilated so that it cannot be read easily, it must be removed and be replaced with a new Boat Tag.

401.2 B. Boat Inspection

~~N~~No person shall be extended the privilege of boating, including canoeing and kayaking, on the waters of Branch Lake without a boat inspection conducted for the presence of aquatic plants, unless otherwise specified. If an aquatic plant fragment is discovered during a boat inspection, the aquatic plant fragment shall be handled as described in the Ellsworth Boat Inspection Guidelines, attached as Appendix 55-B, and shall be provided to the City ~~of Ellsworth~~ Police Department within 24 hours of discovery. The boat must be re-inspected and found to be free of aquatic plants before it will be permitted to enter Branch Lake.

1. **City Inspector.** Boat inspections are to be conducted by City Boat Inspectors at the City--operated Branch Lake Boat Launch off the Happytown Road. The City Manager may establish inspection substations in convenient locations and/or appoint inspection agents.
2. **Certified Boat Self-Inspector.**
 - ~~i.~~(a) Self-inspector Certification can be obtained by anyone 16 years of age or older after successful completion of the Ellsworth Boat Inspection Training course.
 - ~~ii.~~(b) Certified Boat Self-inspectors can inspect boats under the following conditions:
 - ~~1.~~(i) The subject boat has a valid Tag.
 - ~~2.~~(ii) The boat is inspected per the Ellsworth Boat Inspection Guidelines.

After these conditions have been met, the boater can be issued a valid permit by the Certified Boat Self-inspector.
 - ~~iii.~~(c) Self-inspection of boats is prohibited if in the last twelve (12) months the boat has been in an infested water body ~~as defined in Art. 1, Sec. 13.~~
 - ~~iv.~~(d) Self-inspection of personal watercraft (PWC) is prohibited.

3. Waiver

- ~~i. The requirements for inspections and permits are waived for boats belonging to a household owning property or right of way abutting Branch Lake herein referred to as a "resident boat," if all the following conditions are met:~~
 - ~~1. The resident boat has not been used in any other water body since it was last hauled out of Branch Lake;~~
 - ~~2. The resident boat has not been in any other water body within the last twelve (12) months; and~~
 - ~~3. The resident boat will not be used in any other water body during the year's boating season;~~
 - ~~4. The owner of property on, or abutting a right of way to, Branch Lake attests in writing on a City waiver application form that the above stipulations apply and will be followed.~~

392 C. PERMITS

- ~~i.~~ **402.1** Boating on Branch Lake is only allowed by permit. Boaters shall have their permits with them at all times, ~~with the exception of "resident boats."~~
- 402.2** Once a boat passes inspection and is found clear of any aquatic plants, a City Boat Inspector or a Certified Self-Inspector may issue a Branch Lake Boating Permit.

393 RESIDENT BOAT EXCEPTION

The tag, inspection, and permit requirements of Section 401 and Section 402 shall not apply to boats owned by and registered to a person owning property or right-of-way that abuts Branch Lake (a “resident boat”) as long as all the following conditions are met:

403.1 The resident boat has not been used in any other water body since it was last hauled out of Branch Lake;

403.2 The resident boat has not been in any other water body within the last twelve (12) months;

403.3 The resident boat will not be used in any other water body during the year’s boating season; and

403.4 The resident boat owner attests in writing on a form provided by the City that the above conditions have been met and will be followed.

ARTICLE ~~IV~~5. AEROPLANE INSPECTION TAGS, INSPECTIONS, & AND PERMITS (TIP)

Landing of any aeroplane in Branch Lake is prohibited unless: (i1) the craft has a valid TAG (sticker), (ii2) an INSPECTION has been conducted, and (iii3) a Self-inspection PERMIT LOG has been filled out, all in accordance with the following requirements:-

491 A. TAG

1. 501.1 An Aeroplane Tag consists of a City-supplied sticker applied to the left float of the aeroplane in plain view above the waterline.

2. 501.2 Aeroplane tags are available at City Hall for certified aeroplane self-inspectors, and are available from the Branch Lake Steward.

3. 501.3 By the end of December of each year, the City Council shall establish the Tag Fee Schedule for the next calendar year, in accordance with Chapter 1, Article 3.

4. 501.4 Should a Tag become mutilated so that it cannot be read easily, it must be removed and be replaced by a new Aeroplane Tag.

492 B. INSPECTION & AND PERMIT

No person shall be extended the privilege of operating an aeroplane on the waters of Branch Lake without an inspection conducted for the presence of aquatic plants. If an aquatic plant fragment is discovered during an inspection, the aquatic plant fragment shall be handled as described in the Ellsworth Aeroplane Inspection Guidelines, attached as Appendix 55-C, and shall be provided to the City ~~of Ellsworth~~ Police Department within 24 hours of discovery. The aeroplane must be re-inspected before it will be permitted to land on Branch Lake.

502.1 Certified Aeroplane Self-Inspector.

1. i. Self-inspector Certification can be obtained by anyone 16 years of age or older after successful completion of the Ellsworth Aeroplane Inspection Training course.

2. ii. Certified Aeroplane Self-inspectors can inspect aeroplanes under the following conditions:

(a) The subject aeroplane has a valid Tag.

- (b) The aeroplane is inspected per the Ellsworth Aeroplane Inspection Guidelines.

When these conditions have been met, the Aeroplane Self-inspector completes a permit (log) and keeps it with the aircraft.

3. ~~iii.~~ Self-inspection of an aeroplane is prohibited if in the last twelve (12) months the aeroplane has been in an infested water body ~~as defined in Art. 1, Sec. 13.~~ If the pilot of an aeroplane that has been in an infested water body within the last 12 months wishes to use Branch Lake, the pilot must contact the City ~~of Ellsworth~~ Water Department, and schedule an inspection to be conducted by the Water ~~Department~~ Superintendent, Branch Lake Steward, or any duly designated ~~Ellsworth City~~ Police Officer.

~~Ellsworth Ord55 approved 01-14-13~~

STATE LAW REFERENCE—22 M.R.S.A § 2642 (PUBLIC WATER SUPPLIES—MUNICIPAL REGULATION AUTHORIZED; PENALTY).

APPENDIX 55-A
OFFICIAL CITY OF ELLSWORTH PUBLIC WATER SUPPLY
PROTECTION AREA MAP

APPENDIX 55-B
ELLSWORTH BOAT INSPECTION GUIDELINES

[insert]

APPENDIX 55-C
ELLSWORTH AEROPLANE INSPECTION GUIDELINES

[insert]

Part 15. Chapter 56 of the City Code (Unified Development Ordinance) is proposed to be amended by adding the words shown in underline and by striking the words shown in strikethrough, as follows.

Code of Ordinances, City of Ellsworth

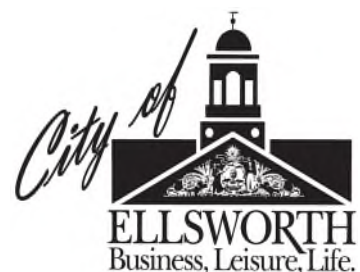
CHAPTER 56

UNIFIED DEVELOPMENT ORDINANCE

A true copy, attest:

Heidi-Noël Grindle
City Clerk

HISTORICAL NOTE: ADOPTED JUNE 18, 2012; AMENDED AUGUST 20, 2012; AMENDED NOVEMBER 19, 2012; AMENDED JANUARY 14, 2013; AMENDED JULY 15, 2013; AMENDED MARCH 17, 2014; AMENDED APRIL 21, 2014; AMENDED APRIL 19, 2016; AMENDED NOVEMBER 21, 2016; AMENDED MAY 21, 2018; AMENDED APRIL 20, 2020; AMENDED *** 2026.



CHAPTER 56

UNIFIED DEVELOPMENT ORDINANCE

ARTICLE 1 PURPOSE, APPLICABILITY AND ADMINISTRATION OF THE UDO

101 PURPOSES

In addition to the general purposes of the City Code set forth in Chapter 1, Article 2, the purposes of the UDO are as follows:

- 101.1 Implement the provisions of the *Comprehensive Plan*.
- 101.2 Promote the health, safety, and general welfare of residents.
- 101.3 Encourage the most appropriate use of land.
- 101.4 Promote traffic safety.
- 101.5 Preserve access to adequate light, air, water and land.
- 101.6 Conserve natural resources and open space.
- 101.7 Protect archaeological, historic and scenic resources.
- 101.8 Allow for the strengthening of the economic base and the enhancement of the appearance of business and commercial zoning districts throughout the City.
- 101.9 Affirmatively further the purposes of the Federal Fair Housing Act, codified at 42 U.S.C. ch. 45, and the Maine Human Rights Act, codified at 5 M.R.S.A. ch. 337, to achieve applicable statewide or regional production goals established by the DECD.

The UDO is enacted pursuant to and consistent with the general intent of the *Comprehensive Plan* and all other City Council-approved neighborhood, area, or specific plans referenced in this Chapter 56.

102 TO WHICH ACTIVITIES DOES THE UDO APPLY?

The UDO applies to any structure, or any part of a structure, that is proposed to be erected, altered, improved, renovated, enlarged, moved (including removed from, moved onto, or moved within a lot), or demolished; land that is used or occupied; any proposed use, or a change or expansion of a use; and the selling, leasing, developing, building upon, or conveying for consideration any land in a subdivision, as defined in 30-A M.R.S.A. § 4401(4), except as provided in Section 702.

103 WHICH ACTIVITIES DO NOT REQUIRE PERMITS OR APPROVALS UNDER THE UDO?

No permit or approval from the City administrator is required for the following activities or structures under the UDO, as long as the activities are conducted and the structures are constructed in compliance with applicable dimensional requirements and performance standards:

- 103.1 **Normal Maintenance and Repair.** Repair, maintenance, and improvement of a structure within the footprint of the structure, including insulation, plumbing, painting, re-roofing, and minor efficiency upgrades such as replacement doors or windows, but not replacement foundations.

- 103.2 Residential Gardening and Landscaping.** Non-structural residential gardening and landscaping activities. If in the shoreland zone, such activities must comply with any applicable dimensional and land use standards in Section 410 (Land Use Standards) and Section 411 (Performance Standards).
- 103.3 Agriculture and Forestry Uses.** Non-structural use of land for agricultural purposes, subject to the provisions of Section 802 (Backyard Livestock), or forestry purposes. If in the shoreland zone, such activities must comply with any applicable dimensional and land use standards in Section 410 (Land Use Standards) and Section 411 (Performance Standards). Note that forest management activities, including timber harvesting activities, are regulated by the DACF Bureau of Forestry pursuant to 12 M.R.S.A. §§ 8866 *et seq.*
- 103.4 Fencing.** Enclosure of a pasture or area with a fence.
- 103.5 Small Accessory Structures.** Outside of the shoreland zone, erection of free-standing structures that are accessory to residential uses, not more than 100 square feet in floor area and not exceeding 10 feet in height.
- 103.6 Farm and Fire Ponds.** Outside of the shoreland zone, construction of farm or fire ponds. Note that a NRPA permit may be required for such activities.
- 103.7 Division of Land; Exempt Subdivisions.** Creation or conveyance of a lot that is not part of a subdivision, as defined in 30-A M.R.S.A. § 4401(4), or which is exempt from subdivision review pursuant to Section 702.
- 103.8 Road Culvert Repair and Maintenance.** Repair and maintenance of an existing road culvert, or replacement of an existing road culvert as long as (a) the replacement culvert is not more than 25% longer than the culvert being replaced and not longer than 75 feet, (b) erosion control measures are taken to prevent sedimentation of the affected water body, and (c) the culvert does not block fish passage. Ancillary culverting activities, including excavation and filling, are included in this exemption. *See* Section 409.18 for applicable standards.
- 103.9 Archaeological Excavation.** Archaeological excavation, as long as the excavation is conducted by an archaeologist listed on Level 1 or Level 2 approved list in accordance with the State Historic Preservation Officer's Standards for Archaeological Work in Maine, 94-089 C.M.R. ch. 812, and adequate erosion control measures are taken to prevent sedimentation of any affected water body.
- 103.10 Sand and Salt Storage.** Outside of the shoreland zone, outdoor storage or stockpiles of winter abrasives (sand and salt) used for the maintenance of private or public roads, except for any storage or stockpiles associated with mineral extraction.
- 103.11 Utility Transmission and Distribution Lines Repair, Replacement.** Repair or replacement of damaged or destroyed public utility transmission and distribution lines and related equipment.

STATE LAW REFERENCE—30-A M.R.S.A. § 4401 (SUBDIVISIONS; DEFINITIONS); 38 M.R.S.A § 438-A (MANDATORY SHORELAND ZONING; MUNICIPAL AUTHORITY); 38 M.R.S.A. § 480-A *ET SEQ.* (NATURAL RESOURCES PROTECTION ACT); 94-089 C.M.R. CH. 812 (STATE HISTORIC PRESERVATION OFFICER'S STANDARDS FOR ARCHAEOLOGICAL WORK IN MAINE).

104 WHICH ACTIVITIES REQUIRE A PERMIT OR APPROVAL UNDER THE UDO?

A written permit or written approval from the City administrator is required before undertaking any of the following activities, unless the activity is expressly identified as not requiring a permit in Section 103:

- 104.1** Erecting, altering, improving, renovating, enlarging, moving (including removing from, moving onto, or moving within a lot), or demolishing a structure, or any part of a structure.
- 104.2** Establishing, changing, or expanding a land use, and any structures associated with or accessory to such use, which is identified as:
 - 1. Allowed in the Table of Use Regulations in Section 307.
 - 2. Allowed with a permit issued by the CEO, allowed with a permit issued by the LPI, or allowed with Planning Board approval in the Table of Land Uses for the Shoreland Zone in Section 409 (Shoreland Zoning).
- 104.3** Renewing a discontinued nonconforming use.
- 104.4** Creating a subdivision, as defined in 30-A M.R.S.A. § 4401(4), except as provided in Section 702, including selling, leasing, developing, building upon, or conveying any land in a subdivision.

STATE LAW REFERENCE—30-A M.R.S.A. § 4401 (SUBDIVISIONS; DEFINITIONS).

105 WHAT TYPES OF PERMITS OR APPROVALS ARE REQUIRED UNDER THE UDO?

Unless expressly identified as not requiring permits or approvals in Section 103, the following permits or approvals are required under the UDO:

- 105.1 Building Permit.** A building permit issued by the CEO is required for all residential and non-residential structural development, including the construction, reconstruction, expansion, or relocation of detached single-family dwellings and duplexes, residential accessory structures, and non-commercial structures. When development requires site development plan approval under the UDO, such approval shall be secured before applying for a building permit.
- 105.2 Site Development Plan Approval.** Site development plan approval issued by the CEO or the Planning Board pursuant to Article 6 is required for all non-residential development and for the division of a new or existing structure so as to create three or more dwelling units.
- 105.3 Subdivision Approval.** Subdivision approval issued by the Planning Board pursuant to Article 7 is required for the division of a tract or parcel of land into four or more lots.
- 105.4 Certificate of Occupancy.** Prior to the sale, lease, or occupancy of any new or altered building, the holder of a valid building permit must secure a certificate of occupancy from the CEO, in accordance with Chapter 56, Section 205.

STATE LAW REFERENCE—30-A M.R.S.A § 4352 (ZONING ORDINANCES); 25 M.R.S.A § 2353-A (DUTY TO INSPECT BUILDINGS UNDER CONSTRUCTION).

106 ADMINISTRATION

The CEO and the Planning Board are responsible for administering the UDO, as set forth in Chapter 1, Section 207.

107 ENFORCEMENT

The CEO is responsible for enforcing the provisions of the UDO by inspecting premises, investigating complaints, issuing notices of violation, suspending or revoking permits or approvals, and participating in legal prosecution of violations as needed, in accordance with Chapter 1, Section 509 of the City Code.

STATE LAW REFERENCE—30-A M.R.S.A § 4452 (ENFORCEMENT OF LAND USE LAWS AND ORDINANCES).

108 ADMINISTERING PERMITS AND APPROVALS, GENERALLY

108.1 Levels of Review By Project Type

Different levels of administrative review apply to uses and structures that are subject to the requirements of the UDO, based on the complexity, location, and impact of the project. In some cases more than one level of review may be required.

1. **Building Permits / Limited Scope Project Review.** Building permit applications require a basic level of review conducted by the CEO. This limited scope project review is appropriate for uses including one- and two-family residential units; home-occupation; demolition; certain activities within the Shoreland Zone; and for uses having received prior Planning Board approval. A limited scope project review does not require a public hearing. All building permit applications shall be reviewed by the CEO in accordance with Article 2.
2. **Site Development Plan Review.** There are two levels of site development plan review: minor use site development plan and major use site development plan. The CEO shall classify site development plan review applications as minor use or major use based on the classification criteria in Article 6, Section 604. All site development plan applications shall be reviewed by the CEO or the Planning Board in accordance with Chapter 56, Article 6 (Site Development Plan Review).
3. **Subdivision Plans.** There are two levels of subdivision review: minor and major. The City Planner shall classify subdivision applications as minor or major based on the number of proposed lots. All subdivision plans shall be reviewed by the Planning Board in accordance with Chapter 56, Article 7 (Subdivision Review).
4. **Certificate of Occupancy.** After securing a building permit and prior to the sale, lease, or occupancy of a building or site, the permit holder must secure a certificate of occupancy from the CEO in accordance with the requirements of Chapter 56, Section 205.

108.2 Third-Party Professional Review

1. **Request by City Planner.** When, in its advisory capacity to the Planning Board, the City Planner determines that the Technical Review Team does not have the expertise to evaluate whether an application is in compliance with the UDO, the City Planner may ask the applicant to submit the application to a third-party professional review. The applicant may comply with the request or decide to ask for a determination by the Planning Board.
2. **Designation by Planning Board.** When the Planning Board determines that the Planning Board or the Technical Review Team does not have the expertise to evaluate whether an application is in compliance with the UDO, the Planning Board may designate the application a special application and assess a special fee to retain one or more third parties to conduct professional reviews of the application, in accordance with Chapter 1, Section 303 (Special Fee).
3. **Designation by CEO.** When the CEO determines that the CEO does not have the expertise to evaluate whether an application is in compliance with the UDO, the CEO may designate the application a special application and assess a special fee

to retain one or more third parties to conduct professional reviews of the application, in accordance with Chapter 1, Section 303 (Special Fee).

4. **Request for Additional Studies.** In addition to or in lieu of securing a third-party professional pursuant to Section 205.3, the Planning Board may require the applicant to undertake one or more additional studies, which it deems reasonable and necessary to evaluate whether an application is in compliance with the requirements of the UDO. The costs of all such studies shall be borne by the applicant.

109 PERFORMANCE GUARANTEES

For any site development plan or subdivision that has been approved pursuant to the UDO, the City administrator may, as a condition of approval, require a performance guarantee in an amount sufficient to cover the cost of all or any part of the improvements, in accordance with the requirements of Chapter 1, Section 511.

110 EFFECT OF EXISTING VIOLATIONS

Planning Board approval shall not be granted for an application involving a structure if the structure is proposed to be located in an unapproved subdivision; the application is in violation of the provision of a previously approved plan; or the approval would violate any other provision of the City Code or state law which the City is responsible of enforcing.

Proposed Housekeeping Amendments | Page 56-1

Part 15. Chapter 56 of the City Code (Unified Development Ordinance) is proposed to be amended by adding the words shown in underline and by striking the words shown in strikethrough, as follows.

Code of Ordinances, City of Ellsworth

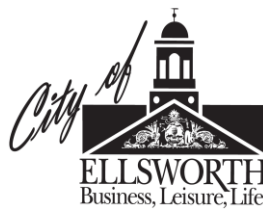
CHAPTER 56

UNIFIED DEVELOPMENT ORDINANCE

A true copy, attest:

Heidi-Noël Grindle
City Clerk

HISTORICAL NOTE: ADOPTED JUNE 18, 2012; AMENDED AUGUST 20, 2012; AMENDED NOVEMBER 19, 2012; AMENDED JANUARY 14, 2013; AMENDED JULY 15, 2013; AMENDED MARCH 17, 2014; AMENDED APRIL 21, 2014; AMENDED APRIL 19, 2016; AMENDED NOVEMBER 21, 2016; AMENDED MAY 21, 2018; AMENDED APRIL 20, 2020; AMENDED *** 2026.



CHAPTER 56 UNIFIED DEVELOPMENT ORDINANCE

ARTICLE 1 PURPOSE, ~~AND~~ ~~AUTHORITY~~ APPLICABILITY ~~AND~~ ADMINISTRATION OF THE UDO

101 PURPOSES

In addition to the general purposes of the City Code set forth in Chapter 1, Article 2, the purposes of the UDO are as follows:

- 101.1 Implement the provisions of the *Comprehensive Plan*.
- 101.2 Promote the health, safety, and general welfare of residents.
- 101.3 Encourage the most appropriate use of land.
- 101.4 Promote traffic safety.
- 101.5 Preserve access to adequate light, air, water and land.
- 101.6 Conserve natural resources and open space.
- 101.7 Protect archaeological, historic and scenic resources.
- 101.8 Allow for the strengthening of the economic base and the enhancement of the appearance of business and commercial zoning districts throughout the City.
- 101.9 Affirmatively further the purposes of the Federal Fair Housing Act, codified at 42 U.S.C. ch. 45, and the Maine Human Rights Act, codified at 5 M.R.S.A. ch. 337, to achieve applicable statewide or regional production goals established by the DECD.

The UDO is enacted pursuant to and consistent with the general intent of the *Comprehensive Plan* and all other City Council-approved neighborhood, area, or specific plans referenced in this Chapter 56.

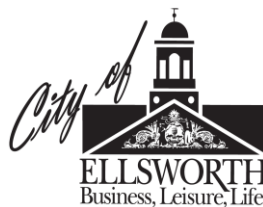
102 ~~TITLE TO WHICH ACTIVITIES DOES THE UDO APPLY?~~

~~The Ordinance and the accompanying Official Land Use Map(s) shall be known as the Unified Development Ordinance of the City of Ellsworth, Maine (UDO) and shall be referred to herein as this "Ordinance" or "UDO."~~The UDO applies to any structure, or any part of a structure, that is proposed to be erected, altered, improved, renovated, enlarged, moved (including removed from, moved onto, or moved within a lot), or demolished; land that is used or occupied; any proposed use, or a change or expansion of a use; and the selling, leasing, developing, building upon, or conveying for consideration any land in a subdivision, as defined in 30-A M.R.S.A. § 4401(4), except as provided in Section 702.

A true copy, attest:

Heidi-Noël Grindle
City Clerk

HISTORICAL NOTE: ADOPTED JUNE 18, 2012; AMENDED AUGUST 20, 2012; AMENDED NOVEMBER 19, 2012; AMENDED JANUARY 14, 2013; AMENDED JULY 15, 2013; AMENDED MARCH 17, 2014; AMENDED APRIL 21, 2014; AMENDED APRIL 19, 2016; AMENDED NOVEMBER 21, 2016; AMENDED MAY 21, 2018; AMENDED APRIL 20, 2020; AMENDED ***** 2026**.



103 WHICH ACTIVITIES DO NOT REQUIRE PERMITS OR APPROVALS UNDER THE UDO?

No permit or approval from the City administrator is required for the following activities or structures under the UDO, as long as the activities are conducted and the structures are constructed in compliance with applicable dimensional requirements and performance standards:

- 103.1 Normal Maintenance and Repair.** Repair, maintenance, and improvement of a structure within the footprint of the structure, including insulation, plumbing, painting, re-roofing, and minor efficiency upgrades such as replacement doors or windows, but not replacement foundations.
- 103.2 Residential Gardening and Landscaping.** Non-structural residential gardening and landscaping activities. If in the shoreland zone, such activities must comply with any applicable dimensional and land use standards in Section 410 (Land Use Standards) and Section 411 (Performance Standards).
- 103.3 Agriculture and Forestry Uses.** Non-structural use of land for agricultural purposes, subject to the provisions of Section 802 (Backyard Livestock), or forestry purposes. If in the shoreland zone, such activities must comply with any applicable dimensional and land use standards in Section 410 (Land Use Standards) and Section 411 (Performance Standards). Note that forest management activities, including timber harvesting activities, are regulated by the DACF Bureau of Forestry pursuant to 12 M.R.S.A. §§ 8866 *et seq.*
- 103.4 Fencing.** Enclosure of a pasture or area with a fence.
- 103.5 Small Accessory Structures.** Outside of the shoreland zone, erection of free-standing structures that are accessory to residential uses, not more than 100 square feet in floor area and not exceeding 10 feet in height.
- 103.6 Farm and Fire Ponds.** Outside of the shoreland zone, construction of farm or fire ponds. Note that a NRPA permit may be required for such activities.
- 103.7 Division of Land; Exempt Subdivisions.** Creation or conveyance of a lot that is not part of a subdivision, as defined in 30-A M.R.S.A. § 4401(4), or which is exempt from subdivision review pursuant to Section 702.
- 103.8 Road Culvert Repair and Maintenance.** Repair and maintenance of an existing road culvert, or replacement of an existing road culvert as long as (a) the replacement culvert is not more than 25% longer than the culvert being replaced and not longer than 75 feet, (b) erosion control measures are taken to prevent sedimentation of the affected water body, and (c) the culvert does not block fish passage. Ancillary culverting activities, including excavation and filling, are included in this exemption. See Section 409.18 for applicable standards.
- 103.9 Archaeological Excavation.** Archaeological excavation, as long as the excavation is conducted by an archaeologist listed on Level 1 or Level 2 approved list in accordance with the State Historic Preservation Officer's Standards for Archaeological Work in Maine, 94-089 C.M.R. ch. 812, and adequate erosion control measures are taken to prevent sedimentation of any affected water body.
- 103.10 Sand and Salt Storage.** Outside of the shoreland zone, outdoor storage or stockpiles of winter abrasives (sand and salt) used for the maintenance of private or public roads, except for any storage or stockpiles associated with mineral extraction.

103.11 Utility Transmission and Distribution Lines Repair, Replacement. Repair or replacement of damaged or destroyed public utility transmission and distribution lines and related equipment.

STATE LAW REFERENCE—30-A M.R.S.A. § 4401 (SUBDIVISIONS; DEFINITIONS); 38 M.R.S.A § 438-A (MANDATORY SHORELAND ZONING; MUNICIPAL AUTHORITY); 38 M.R.S.A. § 480-A *ET SEQ.* (NATURAL RESOURCES PROTECTION ACT); 94-089 C.M.R. CH. 812 (STATE HISTORIC PRESERVATION OFFICER’S STANDARDS FOR ARCHAEOLOGICAL WORK IN MAINE).

104 WHICH ACTIVITIES REQUIRE A PERMIT OR APPROVAL UNDER THE UDO?

A written permit or written approval from the City administrator is required before undertaking any of the following activities, unless the activity is expressly identified as not requiring a permit in Section 103:

104.1 Erecting, altering, improving, renovating, enlarging, moving (including removing from, moving onto, or moving within a lot), or demolishing a structure, or any part of a structure.

104.2 Establishing, changing, or expanding a land use, and any structures associated with or accessory to such use, which is identified as:

1. Allowed in the Table of Use Regulations in Section 307.
2. Allowed with a permit issued by the CEO, allowed with a permit issued by the LPI, or allowed with Planning Board approval in the Table of Land Uses for the Shoreland Zone in Section 409 (Shoreland Zoning).

Commented [AD1]: Confirm that everything with a “Y” in the Table of Use Regulations in Article 3 requires a permit.

104.3 Renewing a discontinued nonconforming use.

104.4 Creating a subdivision, as defined in 30-A M.R.S.A. § 4401(4), except as provided in Section 702, including selling, leasing, developing, building upon, or conveying any land in a subdivision.

STATE LAW REFERENCE—30-A M.R.S.A. § 4401 (SUBDIVISIONS; DEFINITIONS).

105 WHAT TYPES OF PERMITS OR APPROVALS ARE REQUIRED UNDER THE UDO?

Unless expressly identified as not requiring permits or approvals in Section 103, the following permits or approvals are required under the UDO:

105.1 Building Permit. A building permit issued by the CEO is required for all residential and non-residential structural development, including the construction, reconstruction, expansion, or relocation of detached single-family dwellings and duplexes, residential accessory structures, and non-commercial structures. When development requires site development plan approval under the UDO, such approval shall be secured before applying for a building permit.

105.2 Site Development Plan Approval. Site development plan approval issued by the CEO or the Planning Board pursuant to Article 6 is required for all non-residential development and for the division of a new or existing structure so as to create three or more dwelling units.

105.3 Subdivision Approval. Subdivision approval issued by the Planning Board pursuant to Article 7 is required for the division of a tract or parcel of land into four or more lots.

105.4 Certificate of Occupancy. Prior to the sale, lease, or occupancy of any new or altered building, the holder of a valid building permit must secure a certificate of occupancy from the CEO, in accordance with Chapter 56, Section 205.

~~STATE LAW REFERENCE—30-A M.R.S.A § 4352 (ZONING ORDINANCES); 25 M.R.S.A § 2353-A (DUTY TO INSPECT BUILDINGS UNDER CONSTRUCTION).~~

~~101 — AUTHORITY AND ADMINISTRATION~~

~~102.1 — Authority. The Ordinance has been prepared in accordance with the provisions of Title 30-A Maine Revised Statutes Annotated (M.R.S.A.), Title 38 M.R.S.A. Sections 435-449, as amended, and other sections as cited in support of specific articles.~~

~~102.2 — Administration. This Article shall be:~~

~~By the Planning Board for projects requiring Planning Board Approval as specifically authorized in this Ordinance.~~

~~The City Planner and its designee serve in advisory capacity to the Planning Board and are responsible to provide guidance to the applicant whose project requires Planning Board Review.~~

~~By the Code Enforcement Officer for all projects not requiring Planning Board and for projects in the Commerce Park zoning district. All enforcement of construction activities shall be the responsibility of the Code Enforcement Officer.~~

~~GENERAL PURPOSES —~~

~~103.1 — General Purposes. The general purposes of the Ordinance are to:~~

~~Implement the provisions of the City's Comprehensive Plan.~~

~~Promote the health, safety, and general welfare of residents.~~

~~Encourage the most appropriate use of land.~~

~~Promote traffic safety.~~

~~Preserve access to adequate light, air, water and land.~~

~~Conserve natural resources and open space.~~

~~Protect archaeological, historic and scenic resources.~~

~~Allow for the strengthening of the economic base and the enhancement of the appearance of business and commercial zoning districts throughout the City.~~

~~Specific Purposes. The specific purposes for individual articles of the Ordinance are stated within those articles, as applicable.~~

~~104 — APPLICABILITY —~~

~~The provisions of the Ordinance shall govern all buildings, structures, lands, and uses regardless of ownership. All government entities including the State of Maine, the County of Hancock, and the City of Ellsworth are subject to the Ordinance unless otherwise exempt. 105 — CONSISTENCY WITH PLANS~~

~~The Ordinance is consistent with the general intent of the *Comprehensive Plan* and other neighborhood, area, or specific plans, as referred herein, and adopted by the Ellsworth City Council.~~

~~106 — COORDINATION WITH OTHER REGULATIONS —~~

~~The use of building and land within the City of Ellsworth is subject to all other regulations as well as the Ordinance, whether or not such other provisions are specifically referenced in the Ordinance. References~~

"Liberally Interpreted" means that if there is ambiguity or conflict the Ordinance shall be broadly applied to affect its purposes rather than restrictively or technically applied according to its strict terms.

to other regulations or provisions of the Ordinance are for the convenience of the reader. The lack of a cross reference does not exempt a land, building, structure or use from regulations.

~~107 — CONFLICTS WITH OTHER REGULATIONS.~~

Whenever the requirements of the Ordinance are in conflict with the requirements of any other lawfully adopted rule, regulation, or ordinance, the more restrictive requirements shall govern.

~~108 — DEFINITIONS, UN TITLED AND UN-NUMBERED AIDS, CROSS REFERENCES~~

~~108.1 — Definitions.~~ The Ordinance shall be liberally interpreted in order to further its underlying purposes. The meaning of any and all words, terms, or phrases in the Ordinance shall be construed in accordance with Article 14 Definitions, or otherwise as found in the dictionary.

~~108.2 — Un-titled and Un-numbered Aids.~~ the Ordinance contains un-titled/un-numbered graphics, pictures, illustrations, and drawing in order to assist the reader in understanding and complying with the Ordinance. However, to the extent that there is any inconsistency between the text of the Ordinance and such graphic, picture, illustration, or drawing, the text controls unless otherwise provided in the specific section.

~~108.3 — Cross References.~~ Articles, sections, and tables in this ordinance are cross referenced for the convenience of the reader. Any omissions or mis-references shall not preclude projects from having to meet the requirements of applicable articles, sections, and tables in the ordinance.

~~109 — VALIDITY AND SEVERABILITY —~~

If any section, subsection, clause or phrase of the Ordinance shall be held to be invalid or unconstitutional, such invalidity shall not affect the remaining provisions of the Ordinance and to that end the provisions of the Ordinance are hereby declared to be severable.

~~110 — EFFECTIVE DATE —~~

The Ordinance and portions thereof shall become effective on the date specified by the enabling City Council action.

~~111 — AVAILABILITY~~

A certified copy of the Ordinance shall be filed with the City 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 in the Ellsworth City Hall.

~~112 — PENALTIES FOR VIOLATION~~

In accordance with Title 30 A.M.R.S.A. Section 4452, any person, including but not limited to a landowner, a landowner's agent or a contractor, violating any provision of this ordinance shall, upon conviction, be fined not less than \$100.00 or more than \$2,500.00 for each such offense. Each offense shall constitute a separate offense for each day the violation occurs. Any violation of this Article shall be deemed to be a nuisance.

~~113 — REMEDIES~~

If any project or system is erected, constructed, reconstructed, altered, repaired, converted, or maintained in violation of this Ordinance, the Administrator or any other person who would be damaged by such violation, in addition to other remedies, may seek injunctive or any other appropriate relief in a civil proceeding.

~~114 — APPEALS~~

~~114.1—Generally.~~ An appeal may be taken to the Board of Appeals by an aggrieved person from any decision of the Code Enforcement Officer or of the Planning Board with the exception of subdivision matters within 30 days of the date of the decision appealed from. The Board of Appeals may extend this time period only upon a showing by the person seeking an appeal that there was good cause for the failure to appeal within thirty (30) days of the decision.

~~114.2—Subdivisions.~~ An aggrieved party may appeal any decision of the Planning Board on subdivision matters under this Ordinance to the Hancock County Superior Court, within 30 days.

~~114.3—Sign Standards.~~ The Board of Appeals is only authorized to grant variances for sign set-back and location, not variances relating to sign dimension, height or the number of signs. An appealed sign permit decision shall include reasons for the request. An exception from compliance with Article 12 Sign Standards shall only be granted by the Board of Appeals if there are exceptional or unusual circumstances applying to the property involved which do not apply generally to properties in the vicinity with the same zoning. One of the following three conditions shall be met: 1) visual obstructions; 2) unusual building location on-site; and 3) unusual building design, architectural style, or historic significance. The Board of Appeals shall determine that the granting of the exception will not result in the project being inconsistent with the intent and purpose of Article 12 Sign Standards and will not constitute a grant of special privilege or entitlement inconsistent with limitations applied to other properties in the vicinity with the same zoning. And, that the granting of the exception is for superior design and will not result in visual clutter.

~~115—AMENDMENTS TO THE ORDINANCE~~

~~115.1—Authority.~~

The provisions of the Ordinance including the boundaries of the Zoning Districts shown on the Official Land Use Map(s) may from time to time be amended, or repealed in accordance with the provision of Title 30-A M.R.S.A. as amended.

~~115.2—Planning Board Reports to City Council.~~

~~A.—Proposed amendments or repeal must first be submitted to the Planning Board for their consideration.~~

~~B.—Within 20 days of receiving a proposal for an amendment or repeal, the Planning Board shall schedule a public hearing on the proposed amendment.~~

~~C.—The notice must be published at least 2 times in a newspaper that has a general circulation in the City of Ellsworth. The date of the first publication must be at least 13 days before the hearing and the date of the second publication must be at least 6 days before the hearing.~~

~~D.—The Planning Board shall make its official report at the next meeting of the Ellsworth City Council, which is held at least 10 days after the public hearing held by the Planning Board.~~

~~115.3—Procedure of Amendments by the City Council.~~

~~Public Hearing Notice.~~ Before adopting a new Official Land Use Map or amending the Ordinance or Official Land Use Map, including amendments to Shoreland Zoning, the Ellsworth City Council will post and publish notice of the public hearing to provide the public adequate time to comment, in accordance with the following provisions:

~~Contents.~~ The notice must be written in plain English, understandable by the average citizen and contain a copy of the Official Land Use Map indicating the portion of the City affected by the proposed amendment.

~~Posted.~~ The notice must be posted in the Ellsworth City Hall at least 13 days before the public hearing.

~~Published.~~ The notice must be published at least 2 times in a newspaper that has a general circulation in the City of Ellsworth. The date of the first publication must be at least 13 days before the hearing and the date of the second publication must be at least 6 days before the hearing.

~~Mailed.~~ For each parcel within the City that is in or abutting the portion of the City affected by the proposed amendment, the notice must be mailed by first class mail at least 13 days before the public hearing to the last known address of the person to whom property tax on each parcel is assessed. The City Planner shall prepare for the City Council and file with the City Clerk a written certificate indicating those persons to whom the notice was mailed and at what address, when it was mailed, by whom it was mailed and from what location it was mailed. This certificate constitutes prima facie evidence that notice was sent to those persons named in the certificate.

~~Additional _____ Notice _____ for _____ Particular _____ Circumstances.~~ Notice must be given to additional recipients in accordance with this subsection when the following described conditions occur.

~~Changes to Allowed Uses.~~ Notice must be sent to affected landowners when the City of Ellsworth proposes an amendment to the Ordinance or Official Land Use Map that has the effect of either prohibiting all industrial, commercial or retail uses where any of these uses are permitted or permitting any industrial, commercial or retail uses where any of these uses are prohibited. Notice must also be sent to a Public Drinking Water supplier if the area to be rezoned contains its Source Water Protection Area—refer to Title 30-A §4352.

~~Shoreland Zoning Resource Protection.~~ Notification to Landowners whose property is being considered for placement in a Resource Protection Zone shall comply with Title 38, §438-A public notice shall be given according to State Law

106 ADMINISTRATION

The CEO and the Planning Board are responsible for administering the UDO, as set forth in Chapter 1, Section 207.

107 ENFORCEMENT

The CEO is responsible for enforcing the provisions of the UDO by inspecting premises, investigating complaints, issuing notices of violation, suspending or revoking permits or approvals, and participating in legal prosecution of violations as needed, in accordance with Chapter 1, Section 509 of the City Code.

~~STATE LAW REFERENCE—30-A M.R.S.A § 4452 (ENFORCEMENT OF LAND USE LAWS AND ORDINANCES).~~

102108 PLAN APPROVAL AND PERMITTING PROCEDURESADMINISTERING PERMITS AND APPROVALS, GENERALLY

201. —PURPOSE

~~The purpose of this Article is to consolidate the procedures for filing and processing applications for development. The format is designed to allow users to ascertain the various steps needed to be able to build in Ellsworth.~~

202 —BUILDING PERMITS REQUIRED

~~It shall be unlawful to start any work for the purpose of construction, alteration, or removal of any building or engage in any other activity or use of land or structure requiring a permit in the zoning districts in which such activity or use would occur; or expand, change, or replace an existing use or structure; or renew a discontinued non-conforming use, unless a building~~

permit has been issued in conformity with this Ordinance. No building permit may be issued for an activity which requires review by the Planning Board until approval is granted by the Planning Board.

203 — GENERAL PROCEDURES

A building permit is required for all development, unless otherwise excepted, to ensure compliance with this Ordinance. For some projects, Planning Board approval is needed before a Building Permit can be issued. General procedural elements common to all development include, but are not limited to: a) the submittal of a complete application, including required fee payments and appropriate back up information and studies; b) the review of the submittal by the Administrator; and c) the decision to approve or deny.

108.1 Levels ~~Of~~ Review By Project Type

~~There are d~~ Different levels of administrative review associated with the implementation of this Ordinance apply to uses and structures that are subject to the requirements of the UDO, based on the complexity, location, and/or impact of the project. In some cases more than one level of review may be required.

1. **Building Permits / Limited Scope Project Review.** ~~This Building permit applications require~~ a basic level of review conducted by the ~~Code Enforcement Officer~~CEO. ~~This limited scope project review is appropriate~~ for uses ~~such as, but not limited to, including~~ one- and two-family residential units; home-occupation; demolition; ~~and many certain~~ activities within the Shoreland Zone; and for uses having received prior Planning Board approval. ~~A limited scope project review does not require a public hearing. All building permit applications shall be reviewed by the CEO in accordance with Article 2.~~
2. **Site Development Plan Reviews.** There are two levels of ~~s~~Site development pPlan review: ~~1) minor use site development plan; and 2) major use site development plan.~~ The ~~Code Enforcement Officer~~CEO shall classify site development plan review ~~levels~~ applications as minor use or major use based on the classification criteria in Article 6, Section 604. ~~The Code Enforcement Officer may classify a Minor Use Site Development Plan project as a Major Use Site Development Plan project after determination that it may have significant impact to the physical, social, or economic environment because of stormwater, traffic, erosion, dust, lighting, or other factors. All site development plan applications shall be reviewed by the CEO or the Planning Board in accordance with Chapter 56, Article 6 (Site Development Plan Review).~~
- ~~A. **Minor Use Site Development Plan Review.** This level of review shall include those projects that require a higher level of scrutiny than a Limited Scope Project but do not require a public hearing. Minor Use Site Development Plan reviews are conducted by the Code Enforcement Officer.~~
- ~~3. **Major Use Site Development Plan Review.** This level of review is for uses that are relatively large and have a potentially greater impact than Minor Use Site Development Plan, and where public comments are warranted. Major Use Site Development Plan reviews are conducted by the Planning Board.~~

- 4.3. Subdivision Plans. There are two levels of subdivision review: minor and major. The City Planner shall classify subdivision applications as minor or major based on the number of proposed lots. All subdivision plans shall be reviewed by the Planning Board in accordance with Chapter 56, Article 7 (Subdivision Review).
4. Certificates of Occupancy. After securing a building permit and prior to the sale, lease, or occupancy of a building or site, the permit holder must secure a certificate of occupancy from the CEO in accordance with the requirements of Chapter 56, Section 205.

108.2 REVIEWERS

~~Code Enforcement Officer. The Code Enforcement Officer issues Limited Scope Project permits, reviews and permits Minor Use Site Development Plans and is responsible for the enforcement of this Ordinance and the enforcement of Planning Board Approvals.~~

~~Fire Chief. The Fire Chief or his designee reviews the site and construction plans for fire and life safety details including but not limited to occupancy type, fire department access, fire hydrant location, construction type, and general fire and life safety. The reviews ensure that the plans meet the intent of applicable codes and standards for fire and life safety.~~

~~Planning Board. The Planning Board is responsible for reviewing and acting upon applications for Major Use Site Development Plan, Subdivision Plans, and some Shoreland Zoning proposals in accordance with the provisions of this Ordinance. The Planning Board also makes recommendations to the City Council on amendments to this ordinance and rezoning matters. Following Planning Board approval, the applicant shall apply to the Code Enforcement Officer for a Building Permit.~~

~~Public Hearings. Plan review by the Planning Board requires at least two public hearings with the exception of plan revisions and amendments, which require only one public hearing. The City Planner coordinates review processes on behalf of the Planning Board, recommends actions for project approvals, and maintains records.~~

~~TRT. All Planning Board projects are subject to review by the Technical Review Team (TRT). The TRT, made up of City Department heads, provides the Planning Board with an opinion on the completeness of the project proposal and on the quality of the information provided.~~

~~City Council. The City Council, the legislative body of the City of Ellsworth, decides on proposals to amend this Ordinance, including rezoning, to accept private roads as public roads, and has the authority to modify road standards and other decision as specified in this Ordinance. A public hearing is required prior to the City Council making decisions pertaining to this Ordinance.~~

~~Board of Appeals. In general, decisions of the Code Enforcement Officer or Planning Board may be taken to the Ellsworth Board of Appeals with the exception of Subdivision Plans which shall be taken directly to the Hancock County Superior Court, or as specifically stipulated in this Ordinance. The Code Enforcement Officer coordinates review processes on behalf of the Board of Appeals and maintains records. Refer to Article 1 section 114 and Article 13 Board of Appeals.~~

~~103 — 206. — PROCEDURES FOR BUILDING PERMIT AND MINOR USE PLAN REVIEW~~

~~206.2. Minor Use Site Development Plan Notice to Abutters. In consideration of a Minor Use Site Development Plan application, the Code Enforcement Officer shall send abutters notice by first class mail to property owners within 250 feet of any property line if the applicant's property is in the Urban Core Area, and within 500 feet elsewhere. The Code Enforcement Officer shall also send notice to the review authority of neighboring political divisions if any portion of a proposed~~

Commented [AD2]: We recommend holding one public hearing on each application. Note that this does not prevent the Planning Board from continuing a public hearing to a date certain, or reopening a public hearing to accept more evidence or supplemental filings from an applicant.

development is within 500 feet of the political boundary or unless otherwise specified in this Ordinance. This notice shall provide a brief description of the proposed project, the physical location, and announce a 10 day public comment period. The public comment period will commence upon the mailing of said notices to the address of record as maintained by the City Assessor. At the end of the public comment period, the Code Enforcement Officer will review the public comments and either grant Minor Use Site Development Approval and issue the building permit or move the proposed project up to Major Use Site Development Plan to be reviewed by the Planning Board. Agricultural and forestry activities pertaining to soil disturbance and addition of fill are exempt from public notices.

~~206.3 — Processing of Building Permit Applications. One copy of the building permit application shall be returned to the applicant by the Code Enforcement Officer who shall have marked such copy either approved or denied or approved with conditions and attested to same by the Code Enforcement Officer's signature on such copy. The second copy of such application, similarly marked, shall be retained by the Code Enforcement Officer and shall be kept on file as a public record. The third copy shall be given to the City Assessor. Failure of the Code Enforcement Officer to issue written notice of the decision within 30 days of the date of filing of the application shall constitute refusal of the permit.~~

~~1. — 206.4 — Posting of Building Permits. The applicant shall conspicuously post any permit issued, on the lot where the activity will occur, at a location clearly visible from the street unless other means of posting are authorized by the Code Enforcement Officer.~~

~~206.5 — Expiration of Building Permit. If no substantial start of construction has been made within 12 months beginning with the date the building permit is issued, the permit shall expire. If construction has not been completed within 36 months beginning with the date the permit is issued, the permit shall expire. The Code Enforcement Officer may grant a onetime extension for a building permit when a project is delayed by circumstances beyond the applicant's control.~~

~~206.6 — Expiration of Minor Use Site Development Plan Approval. Minor Use Site Development Plan approval shall remain in force for a period not to exceed 36 months. If the proposed use has not been established during that period or a building permit has not been obtained, said approval shall be deemed to have lapsed.~~

~~206.7 — Certificates of Occupancy and Site Compliance. Prior to the sale, lease, or occupancy of any new building, or use of a site, the builder or developer (person who received a valid building permit) shall secure a Certificate of Occupancy and/or a Certificate of Site Compliance, as applicable, from the Code Enforcement Officer. Prior to issuance of any certificates, the Code Enforcement Officer will check to see that all requirements under this Ordinance and other applicable City Ordinances have been met. Any person who sells, leases, or occupies a building or uses a site within the City of Ellsworth prior to securing the appropriate certificate(s) by the Code Enforcement Officer is in violation of this Ordinance and is subject to its penalties. The Code Enforcement Officer shall maintain a record of all certificates and copies shall be furnished upon request.~~

~~A. — Certificate of Occupancy. This is a document issued by the Code Enforcement Officer allowing the occupancy or use of a structure and certifying that the structure has been constructed or will be used in compliance with the applicable Code and Ordinances. Said Certificate shall be requested by the applicant within 15 days after the erection or alteration have been completed and approved.~~

~~Certificate of Site Compliance. This is a document issued by the Code Enforcement Officer~~

certifying that the proposed site work complies with the terms and provisions of this Ordinance and with applicable approvals and conditions. Certificate of Site Work Compliance shall be secured by the applicant within 6 months of securing a Certificate of Occupancy if applicable or prior to beginning of the activities for which approval is intended including but not limited to offering for sale.

~~104 207 PROCEDURES FOR MAJOR SITE DEVELOPMENT PLAN AND SUBDIVISION REVIEW~~

~~207.1 Applications in Writing. All applications for Major Use Site Development Plan, Subdivision, Revisions and/or other plan approval by the Planning Board, as specified shall be made in writing to the City Planner and include the completed Land Use Application form. All applications shall be made by the owner of the property or agent as designated in writing by the owner.~~

~~207.2 Application Deadline. Applications shall be delivered to the City Planner with all appropriate fees no later than 4:00 PM, 27 days before the scheduled Planning Board meeting. The Office of the City Planner shall post at City Hall a schedule of meetings each December for the coming calendar year.~~

~~207.3 Supplemental Application Materials.~~

~~A. City Planner. In general, no supplemental application materials shall be accepted by the City Planner after noon on the first Monday following the Regular Technical Review Team Meeting.~~

~~B. Planning Board. Supplemental application materials shall NOT be distributed by the applicant to the Planning Board members at the Planning Board meeting unless it is determined by the Chairman to be relevant, necessary, brief enough to be quickly assimilated, and ten copies are provided and of a type that is compatible with information technology currently available at the City of Ellsworth.~~

~~207.4 Application Completeness. The City Planner shall make an initial determination of the completeness of applications for inclusion on the Planning Board meeting agenda. Determination of completeness for approval purposes will be made by the Planning Board at a scheduled meeting. Any application which the City Planner initially determines to be incomplete shall not be placed on the agenda but shall be returned to the applicant with an indication of the additional information required. When this additional information has been supplied, the City Planner shall place the application on the Planning Board's agenda.~~

~~207.5 Planning Board Agenda. Complete applications shall be placed on the Planning Board's next regular monthly agenda for consideration. The Chairman may call a special meeting if the number of agenda items or other circumstances seem to require it.~~

~~207.6 Technical Review Team Regular Meeting. The City Planner shall call an Ellsworth Technical Review Team meeting consisting of the Police Chief, the Fire Chief, the Highway Foreman, the Water Superintendent, the Wastewater Superintendent, the Code Enforcement Officer, and the Planner, within 7 days of an application deadline. This meeting shall be referred to as the Regular Technical Review Team meeting. The City Planner, in coordination with the Technical Review Team, conducts a final qualitative review of the applications on the agenda and issues a memorandum of findings to the Planning Board and the applicants~~

~~207.7 Public Hearing. Prior to taking final action on any preliminary or final application, the Planning Board shall hold a hearing to afford the public the opportunity to comment on the application.~~

~~207.8 Notice to Abutters. In consideration of an application to the Planning Board, the City Planner shall send notice by first class mail to property owners within 250 feet of any property line if the applicant's property is in the Urban Core Area, and within 500 feet elsewhere. The City Planner shall also send notice to the review authority of neighboring political divisions if any portion of a proposed development is within 500 feet of the political boundary or unless otherwise specified in this Ordinance. This notice shall indicate the time, date, and place of the Planning Board meeting or site visit. Other notices may apply as specified in this Ordinance or applicable State laws.~~

~~207.9 Conditions. The Planning Board may attach reasonable conditions to plan approvals to ensure conformity with the standards and criteria of this Ordinance.~~

~~207.10 Planning Board Approval.~~

~~A. Major Use Site Development Plan Expiration. Approval shall remain in force for a period not to exceed 36 months. If the proposed use has not been established during that period or a building permit has not been obtained, said approval shall be deemed to have lapsed.~~

~~B. Subdivision Expiration. The plan shall be null and void if the period of time between Planning Approval and recording at the Hancock Registry of Deeds is greater than 100 days.~~

~~C. EXISTING VIOLATIONS. Planning Board approval shall not be granted for an application involving a structure if the structure would be located in an unapproved subdivision; the application is in violation of the provision of a previously approved plan; or the approval would violate any other local ordinance or regulation or any state law, which the City of Ellsworth is responsible of enforcing~~

~~209 PEER~~Third-Party Professional Review

~~A.1. Request by City Planner. When, in its advisory capacity to the Planning Board, the City Planner determines that the Ellsworth Technical Review Team does not have the expertise to ensure evaluate whether an application is in compliance with this Ordinance~~the UDO, the City Planner may ask the applicant for to submit the application to a peer-third-party professional review. The applicant may comply with the request or decide to ask for a determination by the Planning Board.

~~B.2. Request by the Designation by Planning Board. When the Planning Board determines that it the Planning Board and/or the Ellsworth Technical Review Team does not have the expertise to ensure evaluate whether an application is in compliance with this Ordinance~~the UDO, it the Planning Board may designate the application a special application and assess a special fee to retain one or more third parties to conduct professional reviews of the application, in accordance with Chapter 1, Section 303 (Special Fee).~~may require a peer review.~~

~~C.3. Request-Designation by Code Enforcement Officer~~CEO. When the Code Enforcement Officer~~CEO determines that it the CEO does not have the expertise to ensure evaluate whether an application is in compliance with this Ordinance~~the UDO, the CEO may designate the application a special application and assess a special fee to retain one or more third parties to conduct professional reviews of

the application, in accordance with Chapter 1, Section 303 (Special Fee) ~~it may require a peer review.~~

~~D. Hiring of Expert Consultant for Peer Review. Per the above sub-sections A through C, the City may choose to hire an expert consultant to review any submission of an application. The consultant shall report as to the compliance or non-compliance with this Article, and report, if applicable, of procedures which will result in compliance. The selected consultant shall estimate the cost of such review and the applicant shall deposit with the City the full estimated cost, which the City shall place in an escrow account. The City shall pay the consultant from the escrow account and reimburse the applicant if funds remain after payments are completed. To be selected, the consultant shall be fully qualified to provide the required information and shall be mutually acceptable to the Administrator or the City Planner and the applicant.~~

~~E.4. Hiring of Expert, Request for Additional Studies. In addition to or in lieu of securing a third-party professional pursuant to Section 205.3, ~~Only~~ the Planning Board may require the applicant to undertake ~~any one or more~~ additional studies, which it deems reasonable and necessary to ~~ensure~~ evaluate whether an ~~that~~ application is in compliance with the requirements of ~~this Ordinance are met~~, the UDO. The costs of all such studies shall be borne by the applicant.~~

240109 PERFORMANCE GUARANTEES

~~For any site development plan or subdivision that has been approved pursuant to the UDO, the City administrator may, as a condition of approval, require a p~~Performance guarantees ~~including surety bonds, money, or letters of credit may be required by the City Manager, the City Council, or the Planning Board~~ in an amount sufficient to cover the cost of all or any part of the improvements, ~~in accordance with the requirements of Chapter 1, Section 511.~~

110 EFFECT OF EXISTING VIOLATIONS

~~Planning Board approval shall not be granted for an application involving a structure if the structure is proposed to be located in an unapproved subdivision; the application is in violation of the provision of a previously approved plan; or the approval would violate any other provision of the City Code or state law which the City is responsible of enforcing.~~

ARTICLE 2 BUILDING PERMITS

201 MUBEC

In accordance with 30-A M.R.S.A. § 3003, the Maine Uniform Building and Energy Code (MUBEC) is hereby adopted and incorporated by reference as the minimum standard for the construction, alteration, addition, repair, removal, demolition, use, location, occupancy, and maintenance of all buildings and structures, existing and proposed, within the City.

STATE LAW REFERENCE—30-A M.R.S.A § 3003 (ADOPTION OF CODES BY REFERENCE).

202 ADMINISTRATION

The CEO is responsible for administering this Article 2.

203 ENFORCEMENT

The CEO is responsible for enforcing the provisions of this Article 2 by inspecting premises, investigating complaints, issuing notices of violation, suspending or revoking permits or approvals, and participating in legal prosecution of violations as needed, in accordance with Chapter 1, Section 509 of the City Code.

STATE LAW REFERENCE—30-A M.R.S.A § 4452 (ENFORCEMENT OF LAND USE LAWS AND ORDINANCES).

204 BUILDING PERMIT

204.1 Written Application. The applicant must submit a written application for a building permit on forms provided by the City, accompanied by the application submission requirements set forth in Chapter 1, Section 208.2 Notice to abutting property owners is not required for building permit applications.

204.2 Decision. Before issuing a permit, the CEO must determine that the application complies with all applicable requirements of the City Code, including:

1. Chapter 4 (Fire Prevention and Protection), including MUBEC.
2. Chapter 5 (Public and Private Sewers), including the State Plumbing Code.
3. Chapter 33 (Floodplain Management).
4. Chapter 56 (UDO).

204.3 A written notice of the decision shall be issued by the CEO within 30 days of receipt of the application.

STATE LAW REFERENCE—30-A M.R.S.A § 4103 (REGULATION OF BUILDINGS—PERMITS).

205 CERTIFICATE OF OCCUPANCY

After securing a building permit and prior to the sale, lease, or occupancy of any new or altered building, the holder of a valid building permit must secure a certificate of occupancy from the CEO, which shall allow the occupancy or use of a building and shall certify that the building has been constructed or will be used in compliance with applicable law. Prior to issuance of a certificate of occupancy, the CEO must determine that all requirements of this Chapter 56 and other applicable provisions of the City Code have been met. A permit holder must request a certificate of occupancy within 15 days after the erection of a new building or alteration of an existing building has been completed. Any person who sells, leases, or occupies a building within the City without first securing a certificate of occupancy is in violation of this Chapter 56. The CEO shall maintain a record of all certificates of occupancy, and copies shall be furnished upon request.

STATE LAW REFERENCE—30-A M.R.S.A § 4352 (ZONING ORDINANCES); 25 M.R.S.A § 2353-A (DUTY TO INSPECT BUILDINGS UNDER CONSTRUCTION).

ARTICLE 3 ZONING DISTRICTS

301 GENERAL

301.1 District Classification. In order to classify, regulate and restrict the locations of uses and locations of buildings designated for specific areas; and to regulate and determine the areas of yards and other open spaces within or surrounding such buildings, property is hereby classified into districts.

301.2 Establishment of Zoning Districts. For the purpose of this Ordinance, the City is hereby divided into General Land Use Zoning Districts including overlays and Shoreland Zoning Districts.

A. General Land Use Zoning Districts. These districts are regulated per this Article.

- Downtown (DT)
- Urban (U)
- Neighborhood (N)
- Commercial (C)
- Commerce Park (CP)
- Industrial (I)
- Business Park (BP)
- Rural (R)
- Drinking Water (DW)
- Well Overlay

B. Shoreland Zoning Districts. These districts are defined and regulated in Article 4 Shoreland Zoning.

- ~~Limited Commercial (LC)~~
- General Development (GD)
- Limited Residential (LR)
- Resources Protection (RP)
- Drinking Water Protection (DP)
- Stream Protection (SP)

302 OFFICIAL LAND USE MAP.

The boundaries of each zoning district are to be indicated upon the official Land Use Map, which, together with all notations and explanatory material thereon, is hereby adopted by reference and made a part of this ordinance, said map being entitled "Land Use Map, City of Ellsworth". The official Land Use Map shall be certified by the attested signature of the City Clerk and shall be located in the City Clerk's office. Any alteration in the location of the boundaries of a zoning district hereafter approved by the City Council, and by the Maine Department of Environmental Protection for the shoreland areas, shall be reflected in a corresponding alteration of the Map (including addendum).

The official Land Use Map shall be the final authority as to the current zoning status of the land and water area, buildings, and other structures in the city.

303 INTERPRETATION OF ZONING DISTRICT BOUNDARIES.

303.1 Where uncertainty exists as to the boundaries of districts as shown on the official Land Use Map, the following shall apply:

- A. Where boundaries are shown as approximately following the centerlines of streets or railroad right-of-ways, they shall be construed to follow such centerlines;
- B. Boundaries shown as approximately following the location of property, lot lines, or the municipal boundary shall be construed as following such lines;
- C. Boundaries shown as following shore lines or the center lines of streams, rivers, or water bodies shall be construed to follow such lines;
- D. Boundaries shown as parallel to or extensions of the features listed in section A through C above, shall be so construed and distances not specifically indicated shall be determined by the scale of the map;
- E. Where physical or cultural features existing on the ground differ from those shown on the official Land Use Map, or uncertainty exists with respect to the location of a boundary, the Board of Appeals shall interpret said map.

304 ZONING AFFECTS ALL STRUCTURES AND LAND.

Except as hereinafter specified, no structures or land hereafter shall be used or occupied and no structure or part thereof shall be erected, constructed, reconstructed, moved, or altered unless in conformity with all the regulations herein specified for the district in which it is located.

305 USE REGULATIONS

305.1 Generally. Those uses permitted as principal uses within each zoning district are those uses listed in the Table of Use Regulations presented below. Permitted accessory uses and structures and home occupations shall be allowed only if the use is permitted as a principal use in the zone and shall meet the performance standards for such use.

305.2 Interpretation – Materially Similar Uses. The Administrator shall determine if a use not mentioned can reasonably be interpreted to fit into a use category where similar uses are described. The Administrator shall only grant approval of a similar use after having found that the impact of the use will not be any greater than the impact of the use to which it is being compared. It is the intent of the Table of Use Regulations to group similar or compatible land uses into specific zoning districts as permitted uses. Uses not listed as a permitted use are presumed to be prohibited from the applicable zoning district. In the event that a particular use is not listed in the Table of Use Regulations, and such use is not listed as a prohibited use and is not otherwise prohibited by law, the Administrator shall determine whether a materially similar use exists in this section.

Should the Administrator determine that a materially similar use does exist, the regulations governing that use shall apply to the particular use not listed, and the Administrator's decision shall be recorded in writing.

305.3 Dimensional Requirements. The lot design (frontage, setback, coverage, etc.) and

building design (setback, coverage, height, etc.) requirements are established for each zoning district in the Table of Dimensional Requirements below. Additional dimensional requirements may apply as presented in Article 8 Performance Standards.

305.4 More Than One Principal Building on a Lot. Except for cluster subdivisions, if there is more than one principal building on a lot, the area, yard, height and density requirements of the applicable district shall apply separately to each building, but the combined area occupied by the total number of buildings on the lot shall not exceed the maximum lot coverage requirement of the district.

306. ZONE PURPOSE.

306.1 Through the establishment of zoning districts, the City seeks to encourage development; safeguard quality of life; encourage density in the growth area including networking, walkability, and enhancing the business climate; foster creativity in development; support sustainability including long-term economic prosperity; protect natural resources; and protect neighborhoods from incompatible uses.

- A. **Downtown (DT).** The heart of this zone is Main Street. It is what is special about Ellsworth. This zone allows a mixture of uses. Uses in this zone are concentrated, making it highly walkable and steering away from single-purpose automobile trips. Off-street parking requirements are flexible. It is the intent of this zone to provide for a mixture of uses such as commerce, culture, and residential.
- B. **Urban (U).** The purpose of this zone is to provide for a mix of commercial uses including retail business, professional offices, and dense residential.
- C. **Neighborhood (N).** The purpose of this zone is to recognize transitional areas and provide for a well-planned compatible mixed-use environment. It encourages a combination of land uses which might normally be regarded as incompatible. Uses locating in this zone shall be landscaped to ensure compatibility and screening. This purpose of this zone is to protect existing and attract new residential neighborhoods. It is either served or has the potential to be served by public water and sewer.
- D. **Commercial (C).** This is a high-traffic, automobile-oriented zone designed specifically to serve as an attractive retail trade area for the region. This zone will allow for dense residential.
- E. **Commerce Park (CP).** The purpose of this zone is to attract service businesses and light manufacturing. It aims to present an attractive environment for new employees in a business park-type setting.
- F. **Industrial (I).** The purpose of this zone is to provide for business, professional offices, and light and heavy industries with appropriate site design. Uses locating in this zone shall be landscaped to ensure compatibility and screening. The purpose of this zone is to provide space for existing industries, their

expansion, and future industrial development, and to prevent conflicts with residential and business uses.

- G. **Business Park (BP).** The purpose is to accommodate a mix of industrial uses including concentrated fabrication, manufacturing, and light/heavy industrial uses that are suitable based upon adjacent land uses, access to transportation and public services and facilities. It is the intent to provide an environment for industries that is unencumbered by nearby residential and commercial development.
- H. **Rural (R).** This zone offers a low-density rural area that is primarily for single family-homes, traditional rural occupations, agricultural activities, and forestry. Significant incentives are provided for the creation of cluster developments.
- I. **Drinking Water (DW).** The purpose of this zone is to protect the Branch Lake Watershed area from development that may threaten drinking water quality. It aims to protect areas with high natural resource value from incompatible development. The development that does occur in this area is intended to have a low environmental impact. In lieu of the creation of cluster development fees will be imposed.

307. Table of Use Regulations.		GROWTH AREAS						RURAL AREAS		
		DT Downtown	U Urban	N Neighborhood	C Commercial	CP Commerce Park ¹	I Industrial	BP Business Park	R Rural	DW Drinking Water
RESIDENTIAL/LODGING										
Accessory Dwelling		Y	Y	Y	Y	<u>NY</u>	N	<u>YN</u>	Y	Y
Boarding House/Congregate Housing/Assisted Living Facility		Y	Y	Y	N	N	N	N	Y	N
Campground		N	Y	N	N	N	N	N	Y	N
Campsite		N	Y	Y	Y	N	N	N	Y	Y
Dwelling	Single Family Detached/Attached	Y	Y	Y	N	<u>NY</u>	N	N	Y	Y
	Multi-Family - 3 to 6 units	Y	Y	Y	Y	<u>NY</u>	N	N	Y	Y
	Multi-Family ~~7-7~~ or more units	Y	Y	Y	Y	N	N	N	N	N
Homeless Shelter		Y	Y	Y	N	N	N	N	Y	N
Mobile Home		<u>NY</u>	Y	Y	Y	N	N	N	Y	Y
Mobile Home Park		N	Y	N	N	N	N	N	Y	N
Lodging	Bed and Breakfast	Y	Y	Y	Y	N	N	N	Y	Y
	Hotel/ ~~M~~ motel	Y	Y	N	Y	N	N	N	Y	Y
INSTITUTIONAL, SOCIAL & PUBLIC SERVICES/FACILITIES										
Business and Trade School		Y	Y	Y	N	Y	Y	Y	Y	Y
Cemetery, private		N	Y	Y	N	N	N	N	Y	Y
Day Care		Y	Y	Y	Y	N	Y	N	Y	Y
Educational Institution		Y	Y	Y	N	N	Y	N	Y	Y
Religious Institution		Y	Y	Y	N	N	N	N	Y	Y
Special Uses		Y	Y	Y	Y	Y	Y	Y	Y	Y
Telecommunication Tower		N	Y	Y	Y	N	Y	Y	Y	Y

¹ The ground floor of a building in the Commerce Park Zone is restricted to commercial use.

	Transmission	Y	Y	Y	Y	Y	Y	Y	Y	Y	PB	PB
	Facilities	Y	Y	Y	Y	Y	Y	Y	Y	Y	PB	PB/NO

307. Table of Use Regulations - continued		GROWTH AREAS						RURAL AREAS		Shoreland Zones 408.8		
		DT Downtown	U urban	N Neighborhood	C Commercial	CP Commerce Park	I Industrial	BP Business Park	R Rural	DW Drinking Water	RP OR SP	ALL OTHER SZ
Industrial Service		Y	Y	N	Y	N	Y	Y	Y	Y	N O	CEO/N O
Industry, Heavy		N	N	N	N	N	Y	Y	N	N	N O	CEO/N O
Industry, Light		N	Y	N	Y	Y	Y	Y	Y	Y	N O	CEO/N O
Laboratory, Research, and Development Facility		Y	Y	N	Y	Y	Y	Y	Y	N		
Personal Service Establishment		Y	Y	Y	Y	Y	Y	Y	Y	Y		
Medical Marijuana Primary Caregiver Operation (cultivation, production, dispensing, and all related activities) Outside the Primary Residence and collectives		N	N	N	N	N	N	N	N	N		
Processing, Fish Wholesale		Y	N	N	N	Y	Y	Y	Y	Y		
Professional Establishment		Y	Y	Y	Y	Y	Y	Y	Y	Y		
Restaurant/Bar and/or Cocktail Lounge		Y	Y	N	Y	N	N	N	Y	Y		
Shopping Center	Small	N	Y	N	Y	N	N	N	Y	N		
	Community	N	Y	N	Y	N	N	N	N	N		
	Big Box	N	N	N	Y	N	N	N	N	N		
Solar Energy System, Stand-alone*		N	Y	N	Y	N	Y	Y	Y	Y		
Warehouse		N	Y	N	Y	N	Y	Y	Y	Y		

* Accessory Uses are considered as part of the principal use for zoning purposes including allowable locations.

308. DIMENSIONAL REQUIREMENTS. The following table shall govern dimensional requirements in the various zoning districts:

Table of Dimensional Requirements ²									
Zoning Districts	Minimum Lot Size ³ (square feet)	Minimum Road Frontage (feet)	Minimum Lot Width (feet)	Minimum Building Setback			Maximum Height (feet)	Units per Acre	Other Requirements
				Front (feet)	Side (feet)	Bac k (feet)			
Downtown (DT)	NA	NA	NA	*No front setback requirements except buildings fronting on Main Street between the Union River and High Street shall have a minimum building height of 25 ft with 0 ft front setback (built at the property line) and a maximum building height of 60 ft. Building with a height greater than 25 ft shall benefit from an enclosure ratio of 1:1.5	0	0	*Maximum height of 48 ft except for buildings Main Street between the Union River and High Street shall have a minimum building height of 25 ft with 0 ft front setback (built at the property line) and a maximum building height of 60 ft. Building with a height greater than 25 ft shall benefit from an enclosure ratio of 1:1.5.	NA	1. Lot Landscaping 2. Focus on parking lot location Ch. 56 section 1102.5 and on Cross Access Ch. 56 Section 910.4. 3. Drive-in facilities shall be located behind the building and pedestrian circulation shall be protected from auto traffic.
Urban (U)	405,000	18	100	0	5	5	60	NA	
Neighborhood (N)	20,000 for commercial lots or 5,000 per dwelling unit	50	100	20	10	20	NA	N/A, if connected to water and sewer for the first four units. 10 for each unit thereafter. 10, if not connected to water and sewer	

² Within this table, “water” and “sewer” include: public, special district or other centrally managed water system and a public, special district or other comparable sewer system.

³ Notwithstanding the minimum lot size requirements in the Table of Dimensional Requirements, development must comply with the minimum lot size requirements of 12 M.R.S.A. ch. 423-A, as applicable.

Industrial (I)	0	0	100	0	0	0	65	NA	
Business Park (BP)	0	0	100	0	0	0	65	NA	
Rural (R)	40,000 <u>if not served by water and sewer</u> 5,000 <u>if served by water and sewer</u>	50	100	20	15	15	35	6 <u>units if not served by water and sewer</u> 9 <u>units if served by water and sewer</u>	
Drinking Water (DW)	80,000	50	100	50	15	20	48 feet except that there is a side and rear setback enclosure ratio of 10:1 for every foot of height over 35 feet.	0.5	
Commerce Park (CP)	40,000 <u>for commercial lots</u> or 5,000 <u>per dwelling unit</u>	100	100	40	20	20	65	NA	
Commercial (C)	20,000 <u>for commercial lots/ or if not served by water and sewer</u> or 5,000 <u>for dwelling units if served by water and sewer</u>	100	100	0	10	10	65	NA	75 % maximum impervious surface

*Exempts single family attached and detached

Projects shall meet State law for minimum lot size or requirements for smaller lots, and for subsurface wastewater disposal

Setbacks apply to structures, parking lots, stormwater retention facilities, and accessways, excluding driveways

The minimum frontage for a lot serviced by a subsurface wastewater disposal system is 100 feet.

An accessway serving two houses or fewer is referred to as a residential driveway and minimum road frontage does not apply.

Special Uses have to meet setbacks but do not have to meet the lot size.

Enclosure Ratio is the ratio of building height to the distance between building and the center of the right-of-way; for every foot of height you get 1.5 foot of setback.

309. WELL OVERLAY ZONE

309.1 Description and Purpose. The Well Overlay Zone encompasses properties having bedrock drinking water wells which have been demonstrated by the Maine Department of Environmental Protection to be impacted by hazardous substances. The intent of this overlay zone is to restrict bedrock ground water use and land use per the July 10, 2009, Portland-Bangor Waste Oil Company Site agreement between the City of Ellsworth and the Maine Department of Environmental Protection. The Well Overlay Zone consists of two separate and distinct areas referred to as Well Area A: Bedrock Well Restricted Area and Well Area B: Bedrock Well Treatment Area.

309.2 Uses in Well Area A: Bedrock Well Restricted Area shall be regulated as follows:

- A. Bedrock water users are required to connect to the Ellsworth public water system.
- B. Drilling for, or use of, bedrock ground water for any means, including residential wells is prohibited.
- C. Commercial blasting as part of any quarrying or mining operation is prohibited
- D. Bedrock ground water may be withdrawn for sampling to assess water quality by scientific analysis only from wells still in existence prior to July 10, 2009.
- E. Bedrock ground water may be withdrawn from wells installed on or after July 10, 2009, as part of a Maine Department of Environmental Protection hydrogeologic study or a City of Ellsworth approved hydrogeologic study.

309.3 Uses in Well Area B: Bedrock Well Treatment Area shall be regulated as follows: drilling for, or use of, bedrock groundwater for any means including residential wells is allowed but:

- A. All bedrock wells, both commercial and residential, must install a Point-of-Entry Treatment Systems(POETS) such as an activated carbon filter to ensure water-born, site-related contaminants are not ingested, discharged to a septic system, or otherwise discharged to the ground.
- B. The City of Ellsworth shall provide on a “first come, first serve basis” one (1) POETS per lot in existence as of April 1, 2009 unless such lot is required by another Ordinance of the City of Ellsworth to connect to the Ellsworth public water system. Any additional POETS shall be the responsibility of the property owner(s).
- C. Water extracted from any bedrock wells on any one parcel shall be limited to a maximum usage rate of 500 gallons per day.
- D. Water extraction from any bedrock well on any one parcel with a usage to exceed 500 gallons per day requires review by the Planning Board. The Planning Board shall determine whether the applicant has adequately demonstrated that the increased usage will not cause contaminated ground water to spread beyond Well Areas A and B.
- E. Commercial blasting as part of any quarrying or mining operation is prohibited.

ARTICLE 4 SHORELAND ZONING

401 SHORELAND ZONING PURPOSES AND APPLICABILITY

401.1 Purposes. In addition to the general purposes of the City Code set forth in Chapter 1, Article 2, Section 1, the purposes of this Article are to:

- A. Further the maintenance of safe and healthful conditions;
- B. Prevent and control water pollution;
- C. Protect fish spawning grounds, aquatic life, bird and other wildlife habitat;
- D. Protect buildings and lands from flooding and accelerated erosion;
- E. Protect archaeological and historic resources;
- F. Protect commercial fishing and maritime industries;
- G. Protect freshwater and coastal wetlands;
- H. Control building sites, placement of structures and land uses;
- I. Conserve shore cover, and visual and actual points of access to inland and coastal waters;
- J. Conserve natural beauty and open space; and
- K. Anticipate and respond to the impacts of development in shoreland areas.

401.2 Authority. This Article has been prepared in accordance with the provisions of 38 M.R.S.A §§ 435-449.

401.3 Applicability. This Article applies to:

- A. uses, structures, and lots located within 250 feet, horizontal distance, of:
 - i. The normal high-water line of any great pond or river;
 - ii. The upland edge of a coastal wetland, including all areas affected by tidal action; or
 - iii. The upland edge of a freshwater wetland; and
- B. Uses, structures, and lots located within 75 feet, horizontal distance, of the normal high-water line of a stream as defined and/or as identified on the Official Land Use Map; and
- C. 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.

All land uses, and any structures associated with or devoted to such uses, allowed within the shoreland zone, as indicated in Table 409, Table of Land uses in the Shoreland Zone, must conform with all applicable land use and performance standards in Sections 410 and 411.

401.4 Administration and Legal Provisions. Refer to Chapter 1.

402 AUTHORITY, ADMINISTRATION AND LEGAL PROVISIONS

402.1 Effective Date. Refer to Chapter 1, Section 503.

402.2 Availability. Refer to Chapter 1, Section 502.

402.3 Severability. Refer to Chapter 1, Section 508.

402.4 Conflicts with Other Ordinances. Refer to Chapter 1, Section 509.

402.5 Amendments. Refer to Chapter 1, Section 505.

403 SHORELAND ZONING ADMINISTRATION

403.1 Administration. This Article is administered by the Planning Board and the CEO.

403.1 Permits Required. After the effective date of this Article, no person shall, without first obtaining a permit, engage in any activity or use of land or structure requiring a permit as set forth in Section 409 (Table of Land Uses) in the shoreland zoning 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 Article shall have a copy of the permit on site while the work authorized by the permit is performed. Any permit required by this Article shall be in addition to any other permit required by other law or ordinance.

403.3 Permit Application Requirements.

- A. Application Form. Every applicant for a permit shall submit a written application on a form provided by the City of Ellsworth, with a scaled site plan, to the Administrator.
- B. Right, Title and Interest. 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. Date. All applications shall be dated, and the CEO or Planning Board, as appropriate, shall note upon each application the date and time of its receipt.
- D. Sewage Disposal Provisions. If the property is not served by a public sewer, a valid subsurface wastewater disposal permit or a completed application for a subsurface wastewater disposal permit, including the site evaluation approved by the City Plumbing Inspector, must be submitted whenever the nature of the proposed structure or use would require the installation of a subsurface sewage disposal system.
- E. Preconstruction and Postconstruction Photographs. Applications must be accompanied by preconstruction photographs of the shoreline vegetation and development site. No later than 20 days after completion of work authorized by a permit issued under this Article, the permit holder must submit to the CEO postconstruction photographs of the shoreline vegetation and development site.

403.4 Procedure for Administering Permits.

- A. Application Receipt. Within 35 days of the date of receiving a written application, the Administrator must notify the applicant in writing either that the application is a complete application; or if the application is incomplete, must specify additional material that is needed to make the application complete.
- B. Application Period. The Administrator must 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 the completed application, or within 35 days of the public hearing, if the proposed use or structure is found to be in conformance with the purposes and provisions of this Article.

- C. Planning Board Applications. Applications that require Planning Board review pursuant to Section 409 (Table of Land Uses) must comply with the administrative procedures of Chapter 54, Section 208.
- D. Burden of Proof. The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this Article, including the general review criteria in Section 404, the land use standards in Section 410, and the performance standards in Section 411.
- E. 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.

404 SHORELAND ZONING REVIEW CRITERIA AND SPECIAL EXCEPTIONS

404.1 General Review Criteria.

For structures and uses proposed to be located in the shoreland zone that are allowed with a permit, the CEO or the Planning 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, or structure associated with the use:

- A. Will maintain safe and healthful conditions;
- B. Will not result in water pollution, erosion, or sedimentation to surface waters;
- C. Will adequately provide for the disposal of all wastewater;
- D. Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
- E. Will conserve shore cover, visual and actual, points of access to inland and coastal waters;
- F. Will protect archaeological and historic resources as designated in the comprehensive plan;
- G. Will not adversely affect existing commercial fishing or maritime activities;
- H. Will avoid problems associated with floodplain development and use; and
- I. Is in conformance with the provisions of Section 409, Land Use Standards and Section 410 Performance Standards in the Shoreland Zone.

404.2 Special Exceptions in Resource Protection Districts (RP). The Planning Board may approve a permit for a single family residential structure in a Resource Protection Zoning District (RP) provided that the applicant demonstrates that all of the general review criteria in Section 404.1, excepting structure shoreline setback requirements, and the following conditions are met:

- (1) There is no location on the property, other than a location within the RP 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 Hancock County Registry of Deeds before the adoption of the RP district encompassing the lot.
- (3) All proposed buildings, sewage disposal systems, and other improvements are:
 - (a) Located on natural ground slopes of less than 20%; and

- (b) 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 for the City of Ellsworth; 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 Ellsworth Floodplain Ordinance.

If the floodway is not shown on the Federal Emergency Management Agency Maps, it is deemed to be 1/2 the width of the 100-year floodplain.

- (4) The total combined footprint, 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 100 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.

404.3 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 City permits required under this Article, any other provision of the City Code, any other ordinance, or any previous City ordinance has been issued by the CEO or other written arrangements have been made between City officials and the utility.

405 SHORELAND ZONING APPEALS AND VARIANCE REQUESTS

Refer to Chapter 1, Section 210 and Section 211.

406 SHORELAND ZONING ENFORCEMENT

Refer to Chapter 1, Section 510.

407 NON-CONFORMANCE IN THE SHORELAND ZONE

407.1 Purpose. It is the intent of this Article to promote land use conformities, except that non-conforming conditions that existed before the effective date of this Article or amendments thereto shall be allowed to continue, subject to the requirements set forth in Section 406. Except as otherwise provided in this Article, a non-conforming condition shall not be permitted to become more non-conforming.

407.2 Non-conformance, General.

- (1) Transfer of Ownership. Non-conforming structures, lots, and uses may be transferred, and the new owner may continue the non-conforming use or continue to use the non-conforming structure or lot, subject to the provisions of this Article.
- (2) Repair and Maintenance. This Article allows, without a permit, the normal upkeep and maintenance of non-conforming uses and structures including repairs or renovations that do not involve expansion of the non-conforming use or structure, and such other changes in a non-conforming use or structure as federal, state, or City building and safety codes may require.

407.3 Non-conforming Structures

(1) Expansions. A non-conforming 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 non-conformity of the structure, and is in accordance with subparagraphs (a), and (b) below.

(a) Legally existing non-conforming principal and accessory structures that do not meet the shoreline setback requirements may be expanded or altered as follows, as long as all other applicable standards contained in this Article are met.

- i. Expansion of any portion of a structure within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland is prohibited, even if the expansion will not increase nonconformity with the shoreline setback requirement.

Notwithstanding the above paragraph, if a legally existing nonconforming principal structure is entirely located less than 25 feet from the normal high-water line of a water body or upland edge of a wetland, that structure may be expanded as follows, as long as all other applicable standards are met and the expansion is not otherwise prohibited by this Section 407.3(1): The maximum total footprint for the principal structure may not be expanded to a size greater than 800 square feet. The maximum height of the principal structure may not be made greater than 15 feet or the height of the existing structure, whichever is greater.

- ii. Expansion of an accessory structure that is located closer to the normal high-water line of a water body, tributary stream, or upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the shoreline setback requirement.
- iii. For structures located less than 75 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, the maximum combined total footprint for all portions of those structures within that 75-foot distance is 1,000 square feet, and the maximum height of any portion of a structure that is within 75 feet, horizontal distance, of a water body, tributary stream or upland edge of a wetland is 20 feet or the height of the existing structure, whichever is greater. Any portion of those structures located less than 75 feet from the normal high-water line of a water body or upland edge of a wetland must meet the footprint and height limits in this paragraph.
- iv. For structures located less than 100 feet, horizontal distance, from the normal high-water line of a great pond or a river flowing to a great pond, the maximum combined total footprint for all portions of those structures within that 100-foot distance is 1,500 square feet, and the maximum height of any portion of a structure that is within 100 feet, horizontal distance, of a great pond is 25 feet or the height of the existing structure, whichever is greater, except that any portion of those structures located less than 75 feet, horizontal distance from the normal high-water line of a water body, tributary stream, or the upland edge of a wetland must meet the footprint and height limits of division (iii).

- v. In addition to the limitations in subparagraphs (iii) and (iv), for structures that are legally nonconforming due to their location within the Resource Protection District when located at less than 250 feet from the normal high-water line of a water body or the upland edge of a wetland, the maximum combined total footprint for all structures may

not be expanded to a size greater than 1,500 square feet. The maximum height of any structure may not be made greater than 25 feet or the height of the existing structure, whichever is greater, except that any portion of those structures located less than 75 feet from the normal high-water line of a water body or upland edge of a wetland must meet the footprint and height limits in paragraph (iii).

- (b) Notwithstanding the limitations on height imposed under paragraphs (iii), (iv), and (v), above, the height of a structure that is a legally existing nonconforming principal or accessory structure may be raised to, but not above, the minimum elevation necessary to be consistent with the floodplain management elevation requirement set forth in Chapter 33 (Floodplain Management) or to 3 feet above the base flood elevation, whichever is greater, as long as the structure is relocated, reconstructed, replaced, or elevated within the boundaries of the parcel so that the water body or wetland setback requirement is met to the greatest practical extent. This paragraph applies to structures that: (i) have been or are proposed to be relocated, reconstructed, replaced, or elevated to be consistent with the floodplain management elevation requirement, and (ii) are located in an area of special flood hazard.
- (c) Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the shoreline setback requirement is met to the greatest practical extent as determined by the Code Enforcement Officer, basing his/her decision on the criteria specified in Section 406.3(2) Relocation, below.
- (d) Notwithstanding subsection (1)(a) and (b):
 - (i) A deck is exempt from the otherwise applicable water or wetland setbacks if the following requirements are met: (1) the deck does not exceed 700 square feet in area; (2) the deck is cantilevered over a segment of a river that is located within the boundaries of a downtown revitalization project; and (3) the deck is attached to or accessory to a use in a structure that was constructed prior to 1971 and is located within a downtown revitalization project.
 - (ii) A pedestrian walkway or trail from the otherwise applicable water or wetland setbacks if the following requirements are met:
 - (1) The walkway or trail is adjacent to a segment of a river that is located within the boundaries of a downtown revitalization project;
 - (2) If cantilevered over a segment of river, the walkway or trail does not extend over the river more than 10 feet from the normal high-water line;
 - (3) If cantilevered over a segment of river, the walkway or trail is attached to a structure that was constructed prior to 1971 and is located within a downtown revitalization project; and
 - (4) If the walkway or trail is cantilevered over a segment of river, the municipal planning board has determined there is no other practical means to construct the walkway or trail without cantilevering over that segment of the river. If there are no other practical means to construct the walkway or trail, approaches to the cantilevered walkway or trail may also cantilever off adjacent retaining walls but no more than is necessary to access the cantilevered walkway or trail.

(iii) The expansion of a restaurant that is part of a marina that has been permitted in accordance with all applicable state and local requirements if the following requirements are met:

- (1) The restaurant expansion is not located over a water body or wetland;
- (2) The restaurant expansion is not located any closer to the water body or wetland than the existing restaurant; and
- (3) The restaurant and the marina that the restaurant is a part of have both been in existence as of January 1, 2021.

Except for the water and wetland setback requirements in subsection (1)(a) and (b), a deck, walkway, trail, or expansion of a restaurant that is part of a marina that meets the requirements of this subsection must meet all other state and local permit requirements and comply with all other applicable rules. A deck exempt under this subsection may be either privately or publicly owned and maintained.

For this subsection to take effect, the City Council must approve a project plan in which “downtown revitalization project” is defined.

Plans approved by the CEO for expansions under this Section 407.3(1) must be filed in the Hancock County Registry of Deeds within 90 days of approval.

- (2) Relocation. A non-conforming 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 shoreline setback requirements to the greatest practical extent as determined by the Code Enforcement Officer, 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 non-conforming.

In determining whether the building relocation meets the shoreline setback to the greatest practical extent, the CEO 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 on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation. When it is necessary to remove vegetation within the shoreline setback area in order to relocate a structure, the CEO may 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, 3 feet in height, for every tree removed. If more than 5 trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. 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 shoreline 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 non-conforming structure which is located less than the required shoreline setback from a water body, tributary stream, or wetland and which is removed, or damaged or destroyed, regardless of the cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within 18 months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the shoreline setback requirement to the greatest practical extent as determined by the Code Enforcement Officer in accordance with the purposes of this Article. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity. If the reconstructed or replacement structure is less than the required shoreline setback it shall not be any larger than the original structure, except as allowed pursuant to Section 406.3(1) above, as determined by the non-conforming footprint and height 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 shoreline setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the shoreline setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation may be replanted in accordance with Section 406.3(2) above.

Any non-conforming structure which is located less than the required shoreline setback from a water body, tributary stream, or wetland and which is removed by 50% or less of the market value, or damaged or destroyed by 50% or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place if a permit is obtained from the CEO within one year of such damage, destruction, or removal.

In determining whether the building reconstruction or replacement meets the shoreline setback to the greatest practical extent the CEO shall consider, in addition to the criteria in Section 406.3(2) above, the physical condition and type of foundation present, if any.

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

In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

STATE LAW REFERENCE: 38 M.R.S.A. § 439-A (ADDITIONAL MUNICIPAL POWERS, LIMITATIONS).

407.4 Non-conforming Uses.

- (1) Expansions. Expansions of non-conforming uses are prohibited, except that non-conforming residential uses may, after obtaining a permit from the Planning Board, be expanded within existing residential structures or within expansions of such structures as allowed in Section 406.3(1) above.
- (2) Resumption Prohibited. A lot, building or structure in or on which a non-conforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a non-conforming 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 5 year period.
- (3) Change of Use. An existing non-conforming use may be changed to another non-conforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources, including water dependent uses, 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 Section 406.3(4) above.

407.5 Non-conforming Lots

- (1) Non-conforming Lots: A non-conforming lot of record as of the effective date of this Article 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 Article 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 Article, if all or part of the lots do not meet the dimensional requirements of this Article, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (12 M.R.S.A. §§ 4807-A through 4807-D) and the Maine 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 Article, 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 Article.

- (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 Article, if any of these lots do not individually meet the dimensional requirements of this Article 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 2 or more contiguous lots, at least one of which is non-conforming, owned by the same person or persons on December 12, 1992 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 Section 406.5(3)(a) 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.

408 SHORELAND ZONING DISTRICTS AND THE LAND USE MAP

408.1 Shoreland Zoning Districts Established; Official Land Use Map.

To implement the provisions of this Article, the City is divided into the following districts as shown on the Official Land Use Map, which is made a part of this Article:

- A. Resource Protection (RP)
- B. Drinkingwater Protection (DP)
- C. Stream Protection (SP)
- D. Limited Residential (LR)
- E. General Development (GD)

408.2 Scale of Map.

The Official Land Use Map must be drawn at a scale of not less than one inch equals 2000 feet (1'' = 2000'). Shoreland zoning district boundaries must be clearly delineated and a legend indicating the symbols for each district must be placed on the map.

408.3 Certification of Official Land Use Map.

The Official Land Use Map must be certified by the attested signature of the City Clerk and shall be located in the Code Enforcement Office and in the City Planner's Office.

408.4 Amendments to the Official Land Use Map.

Amendments to the Official Land Use Map must be made in accordance with Chapter 1, Section 509. If such amendments are made in the boundaries of the shoreland zone or other shoreland zoning matter portrayed on the Official Land Use Map, such changes shall be made on the Official Land Use Map within 30 days after the amendment has been approved by the Commissioner of the DEP.

408.5 Interpretation of Shoreland Zoning District Boundaries.

- (1) Unless otherwise set forth on the Official Land Use Map, district boundary lines are property lines, the centerlines of accessways, and the boundaries of the shoreland area as defined herein.
- (2) The CEO has the initial authority to interpret the Official Land Use Map and the location of shoreland zoning district boundaries. Any minimum shoreland setback must be determined by actual site measurement. Where physical or natural features existing on the ground are at variance with those shown on the Official Land Use Map or in other circumstances where the CEO cannot definitely determine the location of a district boundary by the rules in 402.5, the CEO may refer the matter to the Board of Appeals. Referrals of the CEO and appeals from boundary interpretation decisions of the CEO are de novo. The Board of Appeals is the final administrative authority as to the location of district

408.6 Description of Shoreland Zoning District Boundaries.

- (1) The Resource Protection District (RP)** 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 or in the General Development District need not be included within the Resource Protection District.
- (a) Rated Wetlands. 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 (IF&W) that are depicted on a Geographic Information System (GIS) data layer maintained by either IF&W or the DEP as of January 1, 1973 for Coastal Wetlands and as of December 31, 2008 for Freshwater Wetlands. 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.
 - (b) 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 for the City of Ellsworth, 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.
 - (c) Steep Slopes. Areas of 2 or more contiguous acres with sustained slopes of 20% or greater.
 - (d) Hydric Soils. Areas of 2 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 the period of normal high water.
 - (e) Erodable Areas. 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.
 - (f) Significant Natural Areas. Areas designated by federal or state government or the City of Ellsworth as natural areas of significance to be protected from development; and
 - (g) Other significant areas which should be included in this district to fulfill the purposes of this Article, such as, but not limited to, existing public access areas and certain significant archaeological and historic sites deserving of long-term protection as determined by the City of Ellsworth after consultation with the Maine Historic Preservation Commission.
- (2) The Drinkingwater Protection District (DP)** includes all areas that lie within the Shoreland Zone of the watershed of Branch Lake that are not zoned Resource Protection. The DP zoning district has lot size, frontage and other environmental standards designed to protect Ellsworth's public drinking water supply. For regulation of surface water activities on Branch Lake, refer to Chapter 55 (Public Water Supply Protection).
- (3) The Stream Protection District (SP)** 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, or river, or within 250 feet, horizontal distance, of 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.

In addition to streams as defined, all perennial and intermittent streams within the watershed of Branch Lake have a 75-foot shoreland zone and are designated Stream Protection District as shown on the Official Land Use Map.

- (4) The Limited Residential District (LR)** 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 General Development District and Limited Commercial District.
- (5) The General Development District (GD)** 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 consistent with the Ellsworth Waterfront Master Plan and Waterfront Redevelopment Plan.
 - (2) Areas otherwise discernible as having patterns of intensive commercial, industrial or recreational uses.

409 TABLE OF LAND USES FOR THE SHORELAND ZONE

409.1 Key to Table 409, Schedule of Land Uses in the Shoreland Zone

Yes	The use, and any structures associated with or devoted to such use, is allowed without a permit but the use must comply with all applicable land use standards, including those set forth in Section 411.
No	The use, and any structures associated with or devoted to such use, is prohibited.
PB	The use, and any structures associated with or devoted to such use, is allowed with Planning Board approval, followed by CEO permit if applicable.
CEO	The use, and any structures associated with or devoted to such use, is allowed with a permit issued by the CEO.
LPI	The use, and any structures associated with or devoted to such use, is Allowed with permit issued by the City Plumbing Inspector.

409.2 Table of Land Uses in the Shoreland Zone

TABLE 409 LAND USES IN THE SHORELAND ZONE	SHORELAND ZONING DISTRICT					
	RP	DP	SP	LR		GD
Depth of Shoreland Zone (in feet)	250	250	75	250		250
LAND USE CATEGORY						
1. Non-intensive recreational uses w/o structures such as hunting, fishing and hiking	YES	YES	YES	YES		YES
2. Motorized vehicular traffic on existing accessways/trails	YES	YES	YES	YES		YES
5. Clearing or removal of vegetation for activities other than timber harvesting <i>¹ In RP not allowed within 75 feet horizontal distance, of the normal high-water line of Great Ponds, except to remove safety hazards.</i>	CEO ¹	CEO	CEO	CEO		CEO
6. Fire prevention activities	YES	YES	YES	YES		YES
7. Wildlife management practices	YES	YES	YES	YES		YES
8. Soil and water conservation practices	YES	YES	YES	YES		YES
9. Mineral exploration	NO	NO	NO	CEO		CEO
10. Mineral extraction (including sand and gravel extract.)	NO	NO	NO	PB		PB
11. Surveying and resource analysis	YES	YES	YES	YES		YES
12. Emergency operations	YES	YES	YES	YES		YES
13. Agricultural, Activities (as defined)	PB	NO	CEO	CEO		NO
14. Agricultural, Gardening	CEO	CEO	CEO	CEO		CEO
15. Agricultural, Feed Lot	NO	NO	NO	NO		NO
16. Agricultural <u>Activity and Processing</u> , Major	NO	NO	NO	NO		NO

17. Agricultural Processing, Minor	NO	NO	NO	NO		PB
LAND USES IN THE SHORELAND ZONE	RP	DP	SP	LR		GD
18. Processing, Fish Wholesale	NO	NO	NO	NO		PB
19. Principal structures and uses						
19.1. One & two family residential and driveways ² Single family structures may be allowed by special exception only according to the provisions of Section 403.5. ³ New structures with a footprint greater than 3,000 s. f. must be approved by the Planning Board. ⁴ Provided that a variance from the shoreline setback requirement is obtained from the Board of Appeals.	PB ²	CEO /PB ³	PB ⁴	CEO		NO
19.2 . Multi-unit residential	NO	NO	NO	PB		PB

LAND USES IN THE SHORELAND ZONE	RP	DP	SP	LR	GD
19.3. Commercial ⁵ Except for commercial uses otherwise listed in this Table, such as, but not limited to, marinas and campgrounds, that are allowed in the respective district. ⁶ Allowed commercial uses are limited to the ones allowed in land use zoning districts for adjacent upland with the exception of the uses, as listed and described in 411.4.	NO ⁵	NO ⁵	NO	NO ⁵	CEO ⁶
19.4 Industrial ⁷ Allowed industrial uses are limited to the ones allowed in land use zoning districts for adjacent upland with the exception of the uses, as listed and described in 411.4.	NO	NO	NO	NO	CEO ⁷
19.5 Special Uses , except as otherwise prohibited by this article	PB	PB	PB	PB	PB
19.6 Government and Institutional	NO	PB	NO	PB	PB
19.7. Small non-residential facilities for educational, scientific, or nature interpretation ⁴ Provided that a variance from the shoreline setback requirement is obtained from the Board of Appeals.	PB	PB	PB ⁴	CEO	CEO
20. Structures accessory to allowed uses ² Single family structures may be allowed by special exception only according to the provisions of Section 403.5, Special RP Exceptions. ³ New structures with a footprint greater than 3,000 s. f. must be approved by the Planning Board. ⁴ Provided that a variance from the shoreline setback requirement is obtained from the Board of Appeals.	PB ²	CEO /PB ³	PB ⁴	CEO	CEO
21. Piers, docks, wharfs, bridges, boat launching facilities and other structures and uses extending over or below the normal high-water line or within a wetland					
21.1. Temporary	CEO	CEO	CEO	CEO	CEO
21.2. Permanent, private - ⁸ See 411.1	PB ⁸	PB ⁸	PB ⁸	PB ⁸	PB ⁸

21.3.	Permanent, commercial - ⁸ See 411.1	NO	NO	PB ⁸	PB ⁸		PB ⁸
21.4.	Permanent, public facility - ⁸ See 411.1	NO	PB ⁸	PB ⁸	PB ⁸		PB ⁸
22.	Conversions of seasonal residences to year-round	LPI	LPI	LPI	LPI		LPI
23.	Home occupations	PB	PB	PB	PB		CEO
24.	Private sewage disposal systems for allowed uses	LPI	LPI	LPI	LPI		LPI

LAND USES IN THE SHORELAND ZONE	RP	DP	SP	LR		GD
25. Essential services						
25.1. Distribution	CEO ⁹	YES ¹⁰	CEO ⁹	YES ¹⁰		YES ¹⁰
25.2. Transmission	PB ⁹	PB	PB ⁹	PB		PB
25.3. Facilities	PB ⁹	NO	PB ⁹	PB		PB
⁹ Except buildings which shall not be permitted in the RP or SP unless a variance from shoreline setback is granted. See further restrictions in Section 411.10.						
¹⁰ Permit not required but must file a written "Notice of Intent to Construct" with CEO.						
26. Service drops, as defined, to allowed uses	YES	YES	YES	YES		YES
27. Public and private recreational areas involving minimal structural development	PB	PB	PB	PB		CEO
LAND USES IN THE SHORELAND ZONE	RP	DP	SP	LR		GD
28. Campgrounds	NO	NO	NO	PB		NO
29. Campsite, private individual. See 411.3	PB	PB	CEO	CEO		NO
30. Accessway, 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						
30.1. Construction of an accessway of more than 500 ft.	NO ¹¹	PB	PB	PB		PB
¹¹ Except as provided in Section 411.6.						
30.2. Construction of an accessway of less than 500 ft.	PB	CEO	PB	CEO		CEO
32. Parking Lot	NO	PB	PB	PB		PB
33. Marinas	NO	NO	NO	PB		PB
34. Filling and earth moving of <10 cubic yards	CEO	CEO	CEO	YES		YES
35. Filling and earth moving of >10 cubic yards	PB	CEO	PB	CEO		CEO
36. Creation of more than 20,000 s. f. of shoreland lot coverage area (in the aggregate) on one lot.	PB	PB	PB	CEO		CEO

37. Signs	CEO	CEO	CEO	CEO		CEO
38. Uses similar to uses requiring a CEO permit	CEO	CEO	CEO	CEO		CEO
39. Uses similar to uses requiring a PB permit	PB	PB	PB	PB		PB
40. Uses similar to allowed uses						

NOTE: A person performing any of the following activities shall require a permit from the DEP, pursuant to 38 M.R.S.A. § 480-C, if the activity occurs in, on, over or adjacent to a natural resource including but not limited to freshwater or coastal wetland, great pond, river, stream or tributary stream 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.

410 LAND USE STANDARDS IN THE SHORELAND ZONE

All land use activities within the shoreland zone shall conform to the following provisions, where applicable.

410.1 General Land Use Requirements. No building, structure or land shall be used or occupied, and no building or structure or part thereof shall be erected, constructed, expanded, moved, or altered and no new lot shall be created, except in conformity with all of the regulations specified for the district in which it is located, unless a variance is granted.

410.2 Minimum Lot Standards. All land use activities within the shoreland zone shall conform with the following provisions when applicable:

TABLE 410.2 Minimum Lot Area and Shore Frontage within the Shoreland Zone (SZ)

Residential Uses in SZ Adjacent to:	Min. Lot Area (sq. ft.)	Min. Shore Frontage (ft.)
Tidal Areas in the GD District	10,000 per dwelling unit	100 per dwelling unit
Tidal Areas in the LR District	40,000 per dwelling unit	150 per dwelling unit
Non-Tidal Areas except DP, SP & RP Districts	40,000 per dwelling unit	200 per dwelling unit
Governmental, Institutional, Commercial or Industrial Uses in SZ Adjacent to:	Min. Lot Area (sq. ft.)	Min. Shore Frontage (ft.)
Tidal Areas in the GD District	10,000 per principal structure	100 per principal structure
Tidal Areas in the LR District	40,000 per principal structure	200 per principal structure

Non-tidal areas except DP, SP & RP District	60,000 per principal structure	300 per principal structure
Public or Private Recreational Facilities:	Min. Lot Area (sq. ft.)	Min.Shore Frontage (ft.)
All SZ Areas except the DP & RP District	40,000 per principal structure	200 per principal structure
All Uses in:	Min. Lot Area (sq. ft.)	Min.Shore Frontage (ft.)
All Areas of DP District	90,000/unit or princ. structure	300/unit or princ. structure
All Areas of SP* & RP* District	60,000 per principal structure	300 per principal structure

*Structure permitting in RP and SP is very limited. See provisions in Sections 409, 410 and 411.

- A. Minimum Lot Area. Land below the normal high-water line of a water body or upland edge of a wetland and land beneath accessways serving more than 2 lots shall not be included toward calculating minimum lot area.
- B. Lots Split by Accessways. Lots located on opposite sides of a public or private accessway shall be considered each a separate tract or parcel of land unless such accessway was established by the owner of land on both sides thereof after September 22, 1971.
- C. 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.
- D. Multiple Uses. If more than one residential dwelling unit, principal governmental, institutional, commercial or industrial structure or use, or combination thereof, is constructed or established on a single parcel, all dimensional requirements shall be met for each additional dwelling unit, principal structure, or use.

410.3 Dimensional Standards for Structures.

- A. General Structure Setback. All new principal and accessory structures must be constructed in compliance with the dimensional requirements specified in Table 410.3, Structure and Lot Standards within the Shoreland Zone.
- B. Resource Protection District (RP) Shoreline Setback. In the RP district, the shoreline setback requirements shall be 250 feet, horizontal distance from the shoreline, except for structures, accessways, or other regulated objects specifically allowed in that district, in which case the setback requirements specified in Table 410.3, Structure and Lot Standards within the Shoreland Zone, shall apply.

TABLE 410.3 Structure and Lot Standards within the Shoreland Zone

STANDARD	Shoreland Zoning Districts – Dimensions in feet					
	RP*	DP	SP*	LR		GD
Minimum structure shoreline setback from the normal high-water line of great ponds and rivers, as defined.	100*	100	n/a	100		25

Minimum structure shoreline setback from fresh water bodies (other than above) tributary streams, tidal water bodies or the upland edge of a wetland, as defined.	75*	75	75*	75		25
Minimum structure setback from the edge of a right-of-way.	20*	20	20*	20		20
Minimum structure setback from a property line, as defined.	25*	25	25*	15		10
Minimum lot frontage along the edge of a right-of-way.	200	200	200	150		100
Maximum height of a structure, as defined.	35*	35	35*	35		45
Maximum shoreland lot coverage as defined below.	20%	20%	20%	20%		70%

**Structure permitting in RP and SP is very limited. See provisions in Sections 409, 410, and 411.*

C. Structure Shoreline Setback Exceptions.

- (i) The shoreline setback provision shall not apply to structures of functionally water-dependent uses, as defined.

D. Structure Shoreline Setbacks near Coastal Bluffs. For principal structures, shoreline 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 a copy of which is available in the Ellsworth Code Office. 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.

E. Structure Height. Principal or accessory structures and expansions of existing structures shall not exceed the heights listed in Table 410.3, Structure and Lot Standards within the Shoreland Zone. This provision shall not apply to structures such as transmission towers, windmills, antennas, and similar structures having no floor area.

F. Floodplain Elevation. The lowest floor elevation or openings of all buildings and structures, including basements, shall be elevated at least one foot above the elevation of the 100 year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent floodplain soils. However, accessory structures, as defined, may be placed in accordance with the standards of the Ellsworth Floodplain Management Ordinance even if they do not meet the elevation requirements of this paragraph.

G. Shoreland Lot Coverage: The total footprint area of all structures, parking lots and other non-vegetated surfaces, within the shoreland zone shall not exceed the requirements specified in Table 410.3 Structure and Lot Standards within the Shoreland Zone above for the lot or for a portion thereof that is located within the shoreland zone, including land area previously developed.

H. Retaining Walls that are not necessary for erosion control shall meet the structure shoreline 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 is 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, is 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 for the City of Ellsworth, 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 shoreline 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 Section 411.14(2)(a) may traverse the buffer;
- I. Shoreline Access. 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 (4) feet in width; that the structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland, (unless permitted by the DEP pursuant to the Natural Resources Protection Act, 38 M.R.S.A. § 480-C); and that the applicant demonstrates that no reasonable access alternative exists on the property.

411 PERFORMANCE STANDARDS IN THE SHORELAND ZONE

411.1 Piers, Docks, Wharves, Bridges, Boat Launching Facilities, and Other Structures and Uses Extending Over or Below the Normal High-Water Line of a Water Body or Within a Wetland.

- (1) No more than one pier, dock, wharf or similar structure extending or located below the normal high-water line of a water body or within a wetland is allowed on a single lot; except that when a single lot contains at least twice the minimum shore frontage as specified in

Section 410.2, a second structure may be allowed and may remain as long as the lot is not further divided.

- (2) Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.
- (3) The location shall not interfere with existing developed or natural beach areas.
- (4) The facility shall be located so as to minimize adverse effects on fisheries.
- (5) The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with the surrounding character and uses of the area. A temporary pier, dock or wharf in non-tidal waters shall not be wider than 6 feet for non-commercial uses.
- (6) No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending below 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.
- (7) New permanent piers and docks on non-tidal waters shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act.
- (8) No existing structures built on, over or abutting a pier, dock, wharf or other structure extending below the normal high-water line of a water body or within a wetland shall be converted to residential dwelling units in any district.
- (9) Except in the General Development Districts, structures built on, over or abutting a pier, wharf, dock or other structure extending below 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.
- (10) Vegetation may be removed in excess of the standards in Section 411.14 in order to conduct shoreline stabilization of an eroding shoreline, provided that a permit is obtained from the Planning Board. Construction equipment must access the shoreline by barge when feasible as determined by the Planning Board.
 - (a) When necessary, the removal of trees and other vegetation to allow for construction equipment access to the stabilization site via land must be limited to no more than 12 feet in width. When the stabilization project is complete the construction equipment accessway must be restored.
 - (b) Revegetation must occur in accordance with Section 411.17.
- (9) Boat launches and ramps shall only be permitted as permanent public facilities.

411.2 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 for each site, not including accessways and driveways. 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 or a river flowing to a great pond, and 100 feet, horizontal distance,

from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.

411.3 Campsites, Individual Private. Individual private campsites not associated with campgrounds are allowed provided the following conditions are met:

- A. One campsite per lot existing on the effective date of this Article, or one campsite per 30,000 square feet of lot area within the shoreland zone, whichever is less, may be permitted. A maximum of four campsites not to exceed a combined total of 20 individuals may be permitted on any one lot. If there is more than one campsite per lot each campsite shall have a minimum of 30,000 square feet.
- B. 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 or river flowing to a great pond, and 75 feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.
- C. 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.
- D. The clearing of vegetation for the siting of a recreational vehicle, tent or similar shelter in a Resource Protection District shall be limited to 1,000 square feet.
- E. 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 City Plumbing Inspector. Where disposal is off-site, written authorization from the receiving facility or land owner is required.
- F. 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.

411.4 Commercial and Industrial Uses. The following new commercial and industrial uses, and similar uses, are prohibited within the shoreland zone adjacent to great ponds and rivers and streams which flow to great ponds:

- (1) Auto washing facilities
- (2) Auto or other vehicle service and/or repair operations, including body shops
- (3) Chemical and bacteriological laboratories
- (4) Storage of chemicals, including herbicides, pesticides or fertilizers, other than amounts normally associated with individual households or farms
- (5) Commercial painting, wood preserving, and furniture stripping
- (6) Dry cleaning establishments
- (7) Electronic circuit assembly
- (8) Laundromats, unless connected to a sanitary sewer
- (9) Metal plating, finishing, or polishing

- (10) Petroleum or petroleum product storage and/or sale except storage on same property as use occurs and except for storage and sales associated with marinas
- (11) Photographic processing

411.5 (12) Printing**Parking Lots**

- (1) Parking lots shall meet the shoreline setback requirements for structures for the district in which such lots are located. The shoreline setback requirement for parking lots serving public boat launching facilities in shoreland zoning districts other than the General Development District shall be no less than 50 feet, horizontal distance, from the shoreline or tributary stream if the Planning Board finds that no other reasonable alternative exists further from the shoreline or tributary stream.
- (2) Parking lots 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 lots, parking and loading provisions of Chapter 56, Article *** shall apply.

411.6 Accessways. See Chapter 56, Article 9 (Street Design and Construction Standards) and Article 10 (Storm Water Management, Design and Construction Standards) for standards that apply to the construction of accessways and drainage systems, culverts, and other related features.

411.7 Signs. The following provisions shall govern the use of signs in the Resource Protection, Stream Protection, Limited Residential and Limited Commercial Districts; in all other districts, the provisions of City Code Chapter 9 shall apply.

- 1. Signs relating to goods and services sold on the premises shall be allowed, provided that such signs shall not exceed six (6) square feet in area and shall not exceed two (2) signs per premises. In the Limited Commercial District, however, such signs shall not exceed sixteen (16) square feet in area. Signs relating to goods or services not sold or rendered on the premises shall be prohibited.
- 2. Name signs are allowed, provided such signs shall not exceed two (2) signs per premises, and shall not exceed twelve (12) square feet in the aggregate.
- 3. Residential users may display a single sign not over three (3) square feet in area relating to the sale, rental, or lease of the premises.
- 4. Signs relating to trespassing and hunting shall be allowed without restriction as to number provided that no such sign shall exceed two (2) square feet in area.
- 5. Signs relating to public safety shall be allowed without restriction.
- 6. No sign shall extend higher than twenty (20) feet above the ground.
- 7. Signs may be illuminated only by shielded, non-flashing lights.

411.8 Storm Water Runoff. See Chapter 56, Article 10 (Storm Water Management, Design and Construction Standards) for standards to apply all new construction and development to minimize storm water runoff from the site.

411.9 Septic Waste Disposal.

All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules, and the following:

- (1) 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
- (2) a holding tank is not allowed for a first-time residential use in the shoreland zone.

411.10 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.
- (4) Essential services structures must meet the shoreline setback requirements in the shoreland zoning district in which they are located.

411.11 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 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 Section 411.11(3) below.
- (2) No part of any extraction operation, including drainage and runoff control features, shall be permitted within one 100 feet, horizontal distance, of the normal high-water line of a great pond or a river, 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.
- (b) The final graded slope shall be two and one-half to one (2½: 1) 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 off-site sources if necessary to complete the stabilization project.
- (4) In keeping with the purposes of this Article, 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.

411.12 Agricultural, Activities.

- (1) All spreading of manure shall be accomplished in conformance with the *Manure Utilization Guidelines* (latest version) published by the Maine Department of Agriculture and the Nutrient Management Law (7 M.R.S.A. §§ 4201-4209).
- (2) Manure shall not be stored or stockpiled within 100 feet, horizontal distance, of a great pond or a river, 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 storm water.
- (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 as defined to be filed with the Planning Board. Non-conformance with the provisions of said plan shall be considered to be a violation of this Article.
- (4) There shall be no new tilling of soil within 100 feet, horizontal distance, of the normal high-water line of a great pond; within 75 feet, horizontal distance, from other water bodies and coastal wetlands; nor within 25 feet, horizontal distance, of tributary streams and freshwater wetlands. Operations in existence on the effective date of this Article 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; 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 shoreline setback provisions may continue, provided that such grazing is conducted in accordance with a Conservation Plan as defined.

411.13 Reserved

411.14 Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting

- (1) Vegetation Cutting in the RP. In a Resource Protection District (RP) 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 hazard trees, as described in Section 411.15.

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) **Buffer Strip Preservation.** Except in areas as described in Section 411.14(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 or a river, 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 square feet in the forest canopy (or other existing woody vegetation if a forested canopy is not present) as measured from the outer limits of the tree or shrub crown. However, a footpath not to exceed 6 feet in width as measured between tree trunks and/or shrub stems is allowed provided that a cleared line of sight to the water through the buffer strip is not created.
 - (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 411.14(2)(b) a "well-distributed stand of trees" adjacent to a great pond or a river or stream flowing to a great pond, shall be defined as maintaining a rating score of 24 or more in each 25-foot by 50-foot rectangular (1250 square feet) area as determined by the following rating system.

Diameter of Tree at 4 ½ feet Above Ground Level (inches)	Points
2 - < 4 in.	1
4 - < 8 in.	2
8 - < 12 in.	4
12 in. or greater	8

Adjacent to other water bodies, tributary streams, and wetlands, a "well-distributed stand of trees" is defined as maintaining a minimum rating score of 16 per 25-foot by 50-foot rectangular area.

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 Article;
- (iv) Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by this Article;
- (v) Where conditions permit, no more than 50% of the points on any 25-foot by 50-foot rectangular area may consist of trees greater than 12 inches in diameter.

For the purposes of Section 411.14(2)(b) "other natural vegetation" is defined as retaining existing vegetation under 3 feet in height and other ground cover and retaining at least 5 saplings less than 2 inches in diameter at 4½ feet above ground level for each 25-foot by 50-foot rectangle area. If five saplings do not exist, no woody stems less than 2 inches in diameter can be removed until 5 saplings have been recruited into the plot.

Notwithstanding the above provisions, no more than 40% of the total volume of trees 4 inches or more in diameter, measured at 4 ½ feet above ground level may be removed in any 10-year period.

- (c) In order to protect water quality and wildlife habitat, existing vegetation under 3 feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered, or removed, except to provide for a footpath or other permitted uses as described in Section 411.14 paragraphs (2) and (2)(a) above.
- (d) Pruning of tree branches, on the bottom 1/3 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 in accordance with Section 411.17, unless existing new tree growth is present.
- (f) In order to maintain the vegetation in the shoreline buffer, clearing or removal of vegetation for allowed activities, including associated construction and related equipment operation, within or outside the shoreline buffer, must comply with the requirements of Section 411.14(2) ("Buffer Strip Preservation").

(3) Selective Cutting. At distances greater than 100 feet, horizontal distance, from a great pond or a river, 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 10-year period, selective cutting of not more than 40% of the volume of trees 4 inches or more in diameter, measured 4½ feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the 40% calculation. For the purposes of these standards volume may be considered to be equivalent to basal area.

In no event shall cleared openings for any purpose, including but not limited to, principal and accessory structures, driveways, lawns and sewage disposal areas, exceed in the aggregate, 25% of the lot area within the shoreland zone or 10,000 square feet, whichever is greater, including land previously cleared. This provision shall not apply to the General Development Districts.

- 4) Cleared Openings. Legally existing nonconforming cleared openings may be maintained, but shall not be enlarged, except as allowed by this Article.
- (5) Reverted Openings. Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of Section 411.14.

411.15 Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting

- (1) Hazard trees in the shoreland zone may be removed without a permit after consultation with the CEO if the following requirements are met:
 - (a) Within the shoreline buffer, if the removal of a hazard tree results in a cleared opening in the tree canopy greater than 250 square feet, replacement with native tree species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least 2 inches in diameter, measured at 4.5 feet above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least 4 feet in height, and be no less than 2 inches in diameter. Stumps may not be removed.

- (b) Outside of the shoreline buffer, when the removal of hazard trees exceeds 40 percent of the volume of trees 4 inches or more in diameter, measured at 4.5 feet above ground level in any 10 year period, and/or results in cleared openings exceeding 25 percent of the lot area within the shoreland zone, or 10,000 square feet, whichever is greater, replacement with native tree species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least 2 inches in diameter, measured at 4.5 feet above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least 2 inches in diameter, measured at 4.5 feet above the ground level.
- (c) The removal of standing dead trees, resulting from natural causes, is permissible without the need for replanting or a permit, as long as the removal does not result in the creation of new lawn areas, or other permanently cleared areas, and stumps are not removed. For the purposes of this provision dead trees are those trees that contain no foliage during the growing season.
- (d) The CEO may require the property owner to submit an evaluation from a licensed forester or arborist before any hazard tree can be removed within the shoreland zone.
- (e) The CEO may require more than a one-for-one replacement for hazard trees removed that exceed 8 inches in diameter measured at 4.5 feet above the ground level.
- (2) Storm-damaged trees in the shoreland zone may be removed without a permit after consultation with the CEO if the following requirements are met:
 - (a) Within the shoreline buffer, when the removal of storm-damaged trees results in a cleared opening in the tree canopy greater than 250 square feet, replanting is not required, but the area shall be required to naturally revegetate, and the following requirements must be met:
 - (i) The area from which a storm-damaged tree is removed does not result in new lawn areas, or other permanently cleared areas;
 - (ii) Stumps from the storm-damaged trees may not be removed;
 - (iii) Limbs damaged from a storm event may be pruned even if they extend beyond the bottom one-third (1/3) of the tree; and
 - (iv) If after one growing season, no natural regeneration or regrowth is present, replanting of native tree seedlings or saplings is required at a density of one seedling per every 80 square feet of lost canopy.
 - (b) Outside of the shoreline buffer, if the removal of storm damaged trees exceeds 40% of the volume of trees 4 inches or more in diameter, measured at 4.5 feet above the ground level in any 10 year period, or results, in the aggregate, in cleared openings exceeding 25% of the lot area within the shoreland zone or 10,000 square feet, whichever is greater, and no natural regeneration occurs within one growing season, then native tree seedlings or saplings shall be replanted on a one-for-one basis.

411.16 Exemptions to Clearing and Vegetation Removal Requirements

The following activities are exempt from the clearing and vegetation removal standards set forth in Section 411.14, provided that all other applicable requirements of this chapter are complied with, and the removal of vegetation is limited to that which is necessary:

- (1) The removal of vegetation that occurs at least once every 2 years for the maintenance of legally existing areas that do not comply with the vegetation standards in this chapter, such as but not

- limited to cleared openings in the canopy or fields. Such areas shall not be enlarged, except as allowed by this section. If any of these areas, due to lack of removal of vegetation every 2 years, reverts back to primarily woody vegetation, the requirements of Section 411.14 apply;
- (2) The removal of vegetation from the location of allowed structures or allowed uses, when the shoreline setback requirements of Section 410.3 are not applicable;
 - (3) The removal of vegetation from the location of public swimming areas associated with an allowed public recreational facility;
 - (4) The removal of vegetation associated with allowed agricultural uses, provided best management practices are utilized, and provided all requirements of Section 411.12 are complied with;
 - (5) The removal of vegetation associated with brownfields or voluntary response action program (VRAP) projects provided that the removal of vegetation is necessary for remediation activities to clean-up contamination on a site in a general development district, commercial fisheries and maritime activities district or other equivalent zoning district approved by the Commissioner that is part of a state or federal brownfields program or a voluntary response action program pursuant 38 M.R.S.A § 343-E, and that is located along:
 - (a) A coastal wetland; or
 - (b) A river that does not flow to a great pond classified as GPA pursuant to 38 M.R.S.A § 465-A.
 - (6) The removal of non-native invasive vegetation species, provided the following minimum requirements are met:
 - (a) If removal of vegetation occurs via wheeled or tracked motorized equipment, the wheeled or tracked motorized equipment is operated and stored at least twenty-five (25) feet, horizontal distance, from the shoreline, except that wheeled or tracked equipment may be operated or stored on existing structural surfaces, such as pavement or gravel;
 - (b) Removal of vegetation within 25 feet, horizontal distance, from the shoreline occurs via hand tools; and
 - (c) If applicable clearing and vegetation removal standards are exceeded due to the removal of non-native invasive species vegetation, the area shall be revegetated with native species to achieve compliance.
 - (7) The removal of vegetation associated with emergency response activities conducted by the Department, the U.S. Environmental Protection Agency, the U.S. Coast Guard, and their agents.

411.17 Revegetation Requirements

When revegetation is required in response to violations of the vegetation standards set forth in Section 411.14, to address the removal of non- native invasive species of vegetation, or as a mechanism to allow for development that may otherwise not be permissible due to the vegetation standards, including removal of vegetation in conjunction with a shoreline stabilization project, the revegetation must comply with the following requirements.

- (1) The property owner must submit a revegetation plan, prepared with and signed by a qualified professional, that describes revegetation activities and maintenance. The plan must include a scaled site plan, depicting where vegetation was, or is to be removed, where existing vegetation

- is to remain, and where vegetation is to be planted, including a list of all vegetation to be planted.
- (2) Revegetation must occur along the same segment of shoreline and in the same area where vegetation was removed and at a density comparable to the pre-existing vegetation, except where a shoreline stabilization activity does not allow revegetation to occur in the same area and at a density comparable to the pre-existing vegetation, in which case revegetation must occur along the same segment of shoreline and as close as possible to the area where vegetation was removed:
 - (3) If part of a permitted activity, revegetation shall occur before the expiration of the permit. If the activity or revegetation is not completed before the expiration of the permit, a new revegetation plan shall be submitted with any renewal or new permit application.
 - (4) Revegetation activities must meet the following requirements for trees and saplings:
 - (a) All trees and saplings removed must be replaced with native noninvasive species;
 - (b) Replacement vegetation must at a minimum consist of saplings;
 - (c) If more than 3 trees or saplings are planted, then at least 3 different species shall be used;
 - (d) No one species shall make up 50% or more of the number of trees and saplings planted;
 - (e) If revegetation is required for a shoreline stabilization project, and it is not possible to plant trees and saplings in the same area where trees or saplings were removed, then trees or sapling must be planted in a location that effectively reestablishes the screening between the shoreline and structures; and
 - (f) A survival rate of at least 80% of planted trees or saplings is required for a minimum 5-year period.
 - (5) Revegetation activities must meet the following requirements for woody vegetation and other vegetation under 3feet in height:
 - (a) All woody vegetation and vegetation under 3 feet in height must be replaced with native noninvasive species of woody vegetation and vegetation under 3 feet in height as applicable;
 - (b) Woody vegetation and vegetation under 3 feet in height shall be planted in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;
 - (c) If more than 3 woody vegetation plants are to be planted, then at least 3 different species shall be planted;
 - (d) No one species shall make up 50% or more of the number of planted woody vegetation plants; and
 - (e) Survival of planted woody vegetation and vegetation under three feet in height must be sufficient to remain in compliance with the standards contained within this chapter for minimum of 5 years.
 - (6) Revegetation activities must meet the following requirements for ground vegetation and ground cover:

- (a) All ground vegetation and ground cover removed must be replaced with native herbaceous vegetation, in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;
- (b) Where necessary due to a lack of sufficient ground cover, an area must be supplemented with a minimum 4-inch depth of leaf mulch and/or bark mulch to prevent erosion and provide for effective infiltration of stormwater; and
- (c) Survival and functionality of ground vegetation and ground cover must be sufficient to remain in compliance with the standards contained within this chapter for minimum of 5 years.

411.15 Erosion and Sedimentation Control

Acceptable measures shall be those specified in the Maine Erosion and Sediment Control Best Management Practices Manual (latest revision) by the DEP Bureau of Land and Water Quality and the following:

- A. Applicability. 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:
 - (i) Mulching and revegetation of disturbed soil.
 - (ii) Temporary runoff control features such as hay bales, silt fencing or diversion ditches.
 - (iii) Permanent stabilization structures such as retaining walls or riprap.
- B. Design Provisions. 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.
- C. All Construction Phases. 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.
- D. Stabilization. Any exposed ground area shall be temporarily or permanently stabilized within one (1) week from the time it was last actively worked, by use of riprap, sod, seed, and mulch, or other effective measures. In all cases permanent stabilization shall occur within 9 months of the initial date of exposure. In addition:
 - (i) Where mulch is used, it shall be applied at a rate of at least one (1) 30-pound bale per 300 square feet and shall be maintained until a catch of vegetation is established.
 - (ii) Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
 - (iii) 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.
- E. Drainageways. Natural and man-made 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.

- 411.16 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.
- 411.17 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.
- 411.18 Archaeological Site.** Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on, or eligible to be listed on the National Register of Historic Places, as determined by the permitting authority, shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least twenty (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.
- 411.19 Phosphorus Control.** Refer to Chapter 56, Article 10, Stormwater Management Design and Construction Standards.

412 SHORELAND ZONING DEFINITIONS

Accessway - Any public or private street, right-of way, or driveway used to enter or leave a public or private street or adjacent land using an on-road vehicle. All streets are considered accessways but not all accessways are considered streets. Within the Shoreland Zone, an accessway also includes 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 residential driveway less than 500 feet in length.

Accessory Use or Structure - A subordinate use or structure customarily incidental to and located on the same lot as the principal use or structure, such as a garage, workshop, or the like. Accessory uses, in the aggregate, shall not subordinate the principal use or structure on a 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.

Aggrieved Party - An owner of land whose property is directly or indirectly affected by the granting or denial of a permit or variance under this Article; 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.

Agricultural, Activity - Farming, including plowing, tillage, cropping, installation of best management practices, seeding, cultivating, or harvesting for the production of food and fiber products (except timber harvesting); grazing or raising of livestock (except in feedlot); aquaculture; sod productions; orchards.

Agricultural, Gardening – Consists of agricultural activities involving tillage of soil of 40,000 square feet or less.

Agricultural, Feedlot - A lot, structure, building, or confined area used intensively for the keeping of farm animals, including but not limited to, of bovine, equine, swine, ovine, or sheep species in close quarter for the purpose of fattening for market or slaughter and where animal waste may accumulate. Does not include a barn or similar structure.

Agricultural Processing, Major – Agricultural activities involving a variety of operations on crops or livestock which may generate dust, noise, odors, pollutants, or visual impacts that could adversely affect adjacent properties. These uses include but are not limited to slaughterhouse, mills, refineries, canneries, and milk processing plants.

Agriculture Processing, Minor - Agricultural activities not regulated as major agricultural processing which involve a variety of operations on crops after harvest to prepare them for market, or further processing and packaging at a distance from the agricultural area. Included activities are cleaning, milling, pulping, drying, roasting, storing, packing, selling and other similar activities.

Area of Special Flood Hazard – Land in a floodplain having a 1% or greater chance of flooding in any given year, as identified in the effective federal flood insurance study and corresponding flood insurance rate maps.

Aquaculture - The growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species.

Basal Area - The area of cross-section of a tree stem at 4 1/2 feet above ground level and inclusive of bark.

Basement - Any portion of a structure with a floor-to-ceiling height of 6 feet or more and having more than 50% of its volume below the existing ground level.

Boat Launching Facility - A facility designed primarily for the launching and landing of watercraft, and which may include an access ramp, docking area, and parking spaces for vehicles and trailers.

Campground - A business, public or private establishment operated as a recreational site for tents, camper, trailer, and travel trailer or other forms of temporary living shelter that can accommodate two or more parties.

Campsite, Individual Private – Private land for exclusive personal use not associated with a campground, but which is developed for repeated camping by only one group not to exceed 10 individuals and which involves site improvements which may include but not be limited to a gravel pad, parking area, fire place, or tent platform.

Canopy – The more or less continuous cover formed by tree crowns in a wooded area.

Commercial Use - 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.

Conservation Plan - A customized document that outlines the use and best management practices of the natural resources on public or private lands. Typically, the plan will include land use maps, soil information, inventory of resources, engineering notes, and other supporting information.

Development - Uses including but not limited to the construction of a new building or other structures on a lot or below the shoreline or in a wetland, the relocation of an existing building on another lot, or the use of open land for a new use; any man-made change to improved or unimproved real estate, including but not limited to parking, temporary uses, clearing of land or vegetation, mining, dredging, filling, grading, paving,

excavation, or drilling operations; it includes a building, a development site under the same ownership, a consolidated development, and phased development.

Dimensional Requirements - Numerical standards relating to spatial relationships including but not limited to setback, lot area, shore frontage and height.

Disability - 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.

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

Emergency Operations - Operations conducted for the public health, safety or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings, property and livestock from the threat of destruction or injury.

Essential Services, Distribution - Small-scale facilities serving a local area, including power lines, water and sewer lines, storm drainage facilities, transformers, pump stations and hydrants, switching boxes, and other buildings normally, but not always, found in a street right-of-way to serve adjacent properties.

Essential Services, Facilities - A building or other structure used or intended to be used by public or private utilities, including but not limited to gas tank and other storage facilities; water or sewer storage facilities; compost facility; and electrical transmission and distributions substations.

Essential Services, Transmission - Large-scale facilities serving the entire city or region such as power transmission lines, natural gas transmission lines, water storage tanks and reservoirs, major water transmission lines or sewer collectors and interceptors, solid waste disposal or processing facilities, excluding landfill, sewage or wastewater treatment plants, and generating facilities.

Expansion of a Structure – An increase in the footprint or height of a structure, including all extensions such as, but not limited to: attached decks, garages, porches and greenhouses.

Expansion of Use - The addition of one or more months to a use's operating season; or the use of more footprint of a structure or ground area devoted to a particular use.

Family - One (1) or more persons occupying a premises and living as a single housekeeping unit.

Floodway - The channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation by more than one foot in height.

Floor Area - 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.

Footprint – The entire area of ground covered by the structures on a premises, including cantilevered or similar overhanging extensions, as well as unenclosed structures, such as patios and decks.

Foundation - 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.

Frontage, Shore - The length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline.

Functionally Water-dependent Uses - 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 cannot be located away from these waters. The uses include, but are not limited to dams, 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 cannot reasonably be located or operated at an inland site; and uses that primarily provide general public access to coastal or inland waters. Recreational boat storage buildings are not considered to be a functionally water-dependent use.

Great Pond - 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. For the purposes of this Article, Ellsworth's Great Ponds are: Branch Lake, Graham Lake, Green Lake, Jesse Bog, Little Duck Pond, Little Rocky Pond, Lower Patten Pond, Upper Patten Pond, Wormwood Pond, and Leonard Lake.

Ground Cover – Small plants, fallen leaves, needles and twigs, and the partially decayed organic matter of the forest floor.

Hazard tree – A tree with a structural defect, combination of defects, or disease resulting in a structural defect that under the normal range of environmental conditions at the site exhibits a high probability of failure and loss of a major structural component of the tree in a manner that will strike a target. A normal range of environmental conditions does not include meteorological anomalies, such as, but not limited to: hurricanes; hurricane-force winds; tornados; microbursts; or significant ice storm events. Hazard trees also include those trees that pose a serious and imminent risk to bank stability. A target is the area where personal injury or property damage could occur if the tree or a portion of the tree fails. Targets include roads, driveways, parking areas, structures, campsites, and any other developed area where people frequently gather and linger.

Height of a Structure –

- (A) With respect to existing principal or accessory structures, including legally existing nonconforming structures, located within an area of special flood hazard that have been or are proposed to be relocated, reconstructed, replaced, or elevated to be consistent with the minimum elevation required by Chapter 56, Article 33 (Floodplain Management), the vertical distance between the bottom of the sill of the structure to the highest point of the structure, excluding chimneys, steeples, antennas and similar appurtenances that have no floor area; and
- (B) With respect to new principal or accessory structures and to existing principal or accessory structures other than those described in paragraph A, including legally existing nonconforming structures, 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 that have no floor area.

Home Occupation - An occupation or profession which is customarily conducted on or in a residential structure or property and which is (1) clearly incidental to and compatible with the residential use of the property and surrounding residential uses; and (2) which employs no more than two (2) persons other than family members residing in the home.

Increase in Nonconformity of a Structure - 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 shoreline 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 shoreline setback requirement if the expansion extends no further into the required shoreline 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.

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

Institutional – A non-profit or quasi-public use, or institution such as a church, library, public or private school, hospital, or City-owned or -operated building, structure or land used for public purposes.

Lot Area - The area of land enclosed within the boundary lines of a lot, minus land below the normal high-water line of a water body or upland edge of a wetland and areas beneath accessways serving more than two lots.

Lot, Minimum Width, Shoreland – The closest distance between the side lot lines of a lot. When only two lot lines extend into the shoreland zone, both lot lines shall be considered to be side lot lines.

Lot Coverage, Shoreland - The total footprint area of all structures, parking lots and other nonvegetated surfaces, within the shoreland zone for the lot or for a portion thereof that is located within the shoreland zone, including land area previously developed.

Marina - A use of waterfront land involved in the operation of a marina including structures and activities normally integral to the operation of a marina, such as servicing, fueling, pumping-out, chartering, launching, and dry-storage and boating equipment.

Market Value - The estimated price a property will bring in the open market and under prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

Mineral Exploration - Hand sampling, test boring, or other methods of determining the nature or extent of mineral resources which create minimal disturbance to the land and which include reasonable measures to restore the land to its original condition.

Mineral Extraction - Any operation within any 12 month period which removes more than 100 cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material from its natural location and to transport the product removed, away from the extraction site.

Minimum Lot Width - the closest distance between the side lot lines of a lot. When only two lot lines extend into the shoreland zone, both lot lines shall be considered to be side lot lines.

Multi-unit Residential - A residential structure containing three (3) or more residential dwelling units.

Native – Indigenous to the local forests.

Non-conforming Condition – non-conforming lot, structure or use which is allowed solely because it was in lawful existence at the time this Article or subsequent amendment took effect.

Non-conforming Lot - a single lot of record which, at the effective date of adoption or amendment of this Article, does not meet the area, frontage, or width requirements of the district in which it is located.

Non-conforming Structure - 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 Article or subsequent amendments took effect.

Non-conforming Use - use of buildings, structures, premises, land or parts thereof which is not allowed 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 Article or subsequent amendments took effect.

Normal High-water Line (non-tidal waters) - 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 non-forested 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 highwater are considered part of the river or great pond.

Parking Lot – An open area other than an accessway used for the parking of two or more vehicles, excluding an area associated with a residential driveway serving no more than two residential dwelling units.

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

Piers, docks, wharves, bridges and other structures and uses extending over or below the normal high-water line or within a wetland. Temporary: Structures which remain in or over the water for less than seven (7) months in any period of 12 consecutive months. Permanent: Structures which remain in or over the water for seven (7) months or more in any period of 12 consecutive months.

Principal Structure - A building other than one which is used for purposes wholly incidental or accessory to the use of another building or use on the same premises.

Principal Use - A use other than one which is wholly incidental or accessory to another use on the same premises.

Processing, Fish Wholesale - The loading, unloading, packing, processing, and packaging of edible fish and other seafood products but not including processing of fish wastes or fish by-products.

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

Recent Floodplain Soils - The following soil series as described and identified by the National Cooperative Soil Survey: Fryeburg, Hadley, Limerick, Lovewell, Medomak, Ondawa, Alluvia, Cornish, Charles, Podunk, Rumney, Saco, Suncook, Sunday, and Winooski.

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

Recreational Vehicle - 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.

Replacement System - A system intended to replace: (1) an existing system which is either malfunctioning or being upgraded with no significant change of design flow or use of the structure, or (2) any existing overboard wastewater discharge.

Residential Dwelling Unit - 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.

Riprap - Rocks, irregularly shaped, and at least six (6) inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes of two (2) units horizontal to one (1) unit vertical or less.

River - A free-flowing body of water including its associated floodplain wetlands. For the purposes of this Article, the City's only river is the Union River from the Graham Lake dam to Leonard Lake. The Union River below the Leonard Lake dam is a tidal estuary considered a coastal wetland.

Road – See Accessway.

Salt Marsh - Areas of coastal wetland (most often along coastal bays) that 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 - 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 threesquare occurs in fresher areas.

Service Drop - 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 an accessway right-of-way; and (b) the total length of the extension is less than 1,000 feet; and (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.

Setback - 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, accessway, parking space or other regulated object or area.

Setback, Shoreline - The 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, accessway, parking lot or other regulated object or area.

Setback from a Property Line - The horizontal distance from a side or rear property line to the nearest part of a structure or other regulated object or area.

Setback from the Edge of a Right-of-way - The horizontal distance from a right of way to the nearest part of a structure or other regulated object or area.

Shore Frontage – See “Frontage, Shore.”

Shoreland Zone - The land area located within 250 feet, horizontal distance, of the normal high-water line of any great pond 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 – The normal high-water line, or upland edge of a freshwater or coastal wetland.

Special Use - A governmental or public service use providing public health, safety, comfort, convenience, or the general welfare for the general benefit of the citizens funded in whole or in part by the City or a quasi-municipal organization, including by way of illustration, municipal buildings, schools, public parks and recreational facilities, cemetery, public art, museum, interpretation center, public parking, fire stations, ambulance services, highway garage, distribution and transmission of essential services; essential facilities, hospital, Federal Aviation Administration –designated commercial service airport, heliport.

Stream - A free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5 minute series topographic map, or a perennial or intermittent stream shown as such on the most recent edition of a United States Geological Survey 7.5 minute series topographic map and/or mapped on the Official Land Use Map, to the point where the body of water becomes a river or flows to another water body or wetland within the shoreland area.

Structure - Anything temporarily or permanently located, built, constructed, or erected for the support, shelter, or enclosure of persons, animals, goods, or property of any kind or anything constructed or erected with a fixed location on or in the ground. The term includes structures temporarily or permanently located, such as decks, patios, and satellite dishes. The term does not include fences; poles and wiring and other aerial equipment normally associated with service drops, including guy wires and guy anchors; subsurface wastewater disposal systems as defined in 30-A M.R.S.A. § 4201(5); geothermal heat exchange wells as defined in 32 M.R.S.A. § 4700-E(3-C); wells or water wells as defined in 32 M.R.S.A. § 4700-E(8); or retractable awnings or shades used solely to shade a door or window.

The following are not considered structures outside of shoreland zoning districts: parking lots, driveways, an awning or tent for a temporary event and backyard tents used for sleeping.

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

Subsurface Sewage Disposal System – 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. § 414, any surface waste water disposal system, or any municipal or quasi-municipal sewer or waste water treatment system.

Sustained Slope - A change in elevation where the referenced percent grade is substantially maintained or exceeded throughout the measured area.

Tidal Waters –All waters affected by tidal action during the highest annual tide.

Timber Harvesting - 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 (2) acres within the shoreland zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to Section 411.14, *Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting*.

Tree – A woody perennial plant with a well-defined trunk(s) at least 2 inches in diameter at 4.5 feet above the ground, with a more or less definite crown, and reaching a height of at least 10 feet at maturity.

Tributary Stream –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, and only applies to that portion of the tributary stream located within the shoreland zone of the receiving water body or wetland.

Upland Edge of a Wetland - 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 highest annual 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 6 meters (approximately 20 feet) tall or taller.

Vegetation - All live trees, shrubs, and other plants including without limitation, trees both over and under 4 inches in diameter, measured at 4.5 feet above ground level.

Velocity Zone - 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.

Volume of a Structure - 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.

Water Body - Any great pond, river or stream.

Water Crossing - 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 accessways, 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.

Wetland - A freshwater or coastal wetland.

Wetland, Forested - A freshwater wetland dominated by woody vegetation that is six (6) meters tall (approximately 20 feet) or taller.

Wetland, Freshwater - Freshwater swamps, marshes, bogs and similar areas, other than forested wetlands, which are: 1) Of ten or more contiguous acres; or of less than 10 contiguous acres and adjacent to a surface water body, excluding any river, stream, such that in a natural state, the combined surface area is in excess of 10 acres; and 2) Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils. Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition

Wetland, Coastal - 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 that 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.

Woody Vegetation - Live trees or woody, non-herbaceous shrubs.

ARTICLE 4 SHORELAND ZONING

401 SHORELAND ZONING PURPOSES AND APPLICABILITY

401.1 Purposes. In addition to the general purposes of the City Code set forth in Chapter 1, Article 2, Section 1, The purposes of this Article are to:

- A. Further the maintenance of safe and healthful conditions;
- B. Prevent and control water pollution;
- C. Protect fish spawning grounds, aquatic life, bird and other wildlife habitat;
- D. Protect buildings and lands from flooding and accelerated erosion;
- E. Protect archaeological and historic resources;
- F. Protect commercial fishing and maritime industries;
- G. Protect freshwater and coastal wetlands;
- H. Control building sites, placement of structures and land uses;
- I. Conserve shore cover, and visual and actual points of access to inland and coastal waters;
- J. Conserve natural beauty and open space; and
- K. Anticipate and respond to the impacts of development in shoreland areas.

401.2 Authority. This Article has been prepared in accordance with the provisions of ~~Title 38 sections M.R.S.A §§ 435-449 of the Maine Revised Statutes Annotated (M.R.S.A.).~~

401.3 Applicability. This Article applies to:

- A. ~~Within the City of Ellsworth, this Article applies to all land areas~~ uses, structures, and lots located within 250 feet, horizontal distance, of:
 - i. The normal high-water line of any great pond or river;
 - ii. The upland edge of a coastal wetland, including all areas affected by tidal action; or
 - iii. The upland edge of a freshwater wetland; and
- B. ~~This Article also applies to all land areas~~ Uses, structures, and lots located within 75 feet, horizontal distance, of the normal high-water line of a stream as defined and/or as identified on the Official Land Use Map ~~for the City of Ellsworth; and~~
- C. ~~This Article also applies to a~~ 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.

All land uses, and any structures associated with or devoted to such uses, allowed within the shoreland zone, as indicated in Table 409, Table of Land uses in the Shoreland Zone, must conform with all applicable land use and performance standards in Sections 410 and 411.

401.4 Administration and Legal Provisions. Refer to Chapter 1.

402 AUTHORITY, ADMINISTRATION AND LEGAL PROVISIONS

402.1 Effective Date. Refer to Chapter 1, Section 503.

~~A. This Article and future amendments, which are adopted by the Ellsworth City Council on May 17, 2009, shall not be effective unless approved by the Commissioner of the Department of Environmental Protection (DEP). A certified copy of the Article, or Amendment, attested and signed by the City Clerk, shall be forwarded to the Maine DEP Commissioner for approval. If the Commissioner fails to act on this Article or Amendment, within 45 days of the DEP Commissioner's receipt of the Article, or Amendment, it shall be automatically approved.~~

~~Any application for a permit submitted to the City of Ellsworth within the above mentioned 45-day period shall be governed by the terms of this Article, or Article Amendment, if the Article, or Article Amendment, is approved by the Commissioner.~~

~~B. Section 410.13. Section 410.13 is repealed on the statutory date established under 38 M.R.S.A. section 438 B(5), at which time 410.13-1 shall become effective. Until such time as Section 410.13 is repealed, 410.13-1 is not in effect.~~

~~NOTE: The statutory date established under 38 M.R.S.A. section 438 B(5) is the effective date of statewide timber harvesting standards. That date is "the first day of January of the 2nd year following the year in which the Commissioner of Conservation determines that at least 252 of the 336 municipalities identified by the Commissioner of Conservation as the municipalities with the highest acreage of timber harvesting activity on an annual basis for the period 1992-2003 have either accepted the state-wide standards or have adopted an ordinance identical to the statewide standards." 38 M.R.S.A. section 438 B(5) further provides that "the Commissioner of Conservation shall notify the Secretary of State in writing and advise the Secretary of the effective date of the statewide standards."~~

402.2 Availability. Refer to Chapter 1, Section 502.

~~A certified copy of this Article shall be filed with the City Clerk and shall be accessible to any member of the public. This Article shall also be posted on the City of Ellsworth web site. 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 Article shall be posted.~~

402.3 Severability. Refer to Chapter 1, Section 508.

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

402.4 Conflicts with Other Ordinances. Refer to Chapter 1, Section 509.

~~Whenever a provision of this Article conflicts with or is inconsistent with another provision of this Article or of any other ordinance, regulation or statute administered by the City of Ellsworth, the more restrictive provision shall control.~~

402.5 Amendments. Refer to Chapter 1, Section 505. ~~Refer to and use City of Ellsworth Code of Ordinance, Chapter 19 Land Use Ordinance, Article VIII Amendments Procedures. In addition to the procedures set forth in Chapter 19, copies of amendments, attested and signed by the Ellsworth City Clerk, shall be submitted to the DEP Commissioner of the Department of Environmental Protection following adoption by the Ellsworth City Council and shall not be effective unless approved by the DEP Commissioner. If the DEP 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 City of Ellsworth within the 45-day period shall be governed by the terms of the amendment, if such amendment is approved by the Commissioner.~~

403 SHORELAND ZONING ADMINISTRATION

~~403.1~~ **403.1 Administration.** This Article is administered ~~in general~~ by the Planning Board ~~or and~~ the Code Enforcement Officer CEO, ~~referred herein as the Administrator~~ and described below:

- ~~A. The Code Enforcement Officer (CEO) shall administer projects requiring CEO or LPI approval per Table 408.8 Land Uses in the Shoreland Zone. A CEO shall be appointed or reappointed annually by July 1st.~~
- ~~B. The Planning Board (PB) shall administer projects requiring PB approval per Table 408.8 Land Uses in the Shoreland Zone. The PB shall operate in accordance with the provisions of Ellsworth Code of Ordinances Chapter 18 and State law.~~

~~The City Planner and its designee(s) represent the Planning Board and are responsible to provide guidance to the applicant whose project requires Planning Board Review. The Board of Appeals (BOA) operates in accordance with the provisions of Ellsworth Code of Ordinances Chapter 38 and 30 A M.R.S.A. section 2691.~~

403.2403.1 Permits Required. After the effective date of this Article, no person shall, without first obtaining a permit, engage in any activity or use of land or structure requiring a permit as set forth in Section 409 (Table of Land Uses) in the shoreland zoning 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 Article shall have a copy of the permit on site while the work authorized by the permit is performed. Any permit required by this Article shall be in addition to any other permit required by other law or ordinance.

~~Culverts Exemption. A permit is not required for the replacement of an existing private accessway culvert if the conditions listed below are met. However, the CEO shall be notified before the replacement of any culvert. The CEO will notify the Water Dept. of any projects in the Branch Lake watershed:~~

~~The replacement culvert is not more than 25% longer than the culvert being replaced;~~

~~The replacement culvert is not longer than 75 feet; and~~

~~Adequate erosion control measures are taken to prevent sedimentation of the water, and the crossing does not block fish passage in the watercourse. See 409.18 for standards.~~

~~Archaeological Excavation Exemption. A permit is not required for an archaeological excavation as long as it is conducted by an archaeologist listed on the State Historic Preservation Officer's level 1 or level 2 approved lists, and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.~~ **403.3 P**

Permit Application Requirements.

- A. Application Form. Every applicant for a permit shall submit a written application on a form provided by the City of Ellsworth, with a scaled site plan, to the Administrator ~~per Table 408.8 Land Uses in the Shoreland Zone.~~
- B. Right, Title and Interest. 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. Date. All applications shall be dated, and the ~~Code Enforcement Officer~~ CEO or Planning Board, as appropriate, shall note upon each application the date and time of its receipt.

D. Sewage Disposal Provisions. If the property is not served by a public sewer, a valid ~~plumbing subsurface wastewater disposal~~ permit or a completed application for a ~~plumbing subsurface wastewater disposal~~ permit, including the site evaluation approved by the City Plumbing Inspector, ~~shall~~must be submitted whenever the nature of the proposed structure or use would require the installation of a subsurface sewage disposal system.

E. Preconstruction and Postconstruction Photographs. Applications must be accompanied by preconstruction photographs of the shoreline vegetation and development site. No later than 20 days after completion of work authorized by a permit issued under this Article, the permit holder must submit to the CEO postconstruction photographs of the shoreline vegetation and development site.

403.4 Procedure for Administering Permits.

- A. **Application Receipt.** Within 35 days of the date of receiving a written application, the Administrator ~~or designee shall~~must notify the applicant in writing either that the application is a complete application; or if the application is incomplete, ~~shall~~must specify additional material that is needed to make the application complete.
- B. **Application Period.** The Administrator ~~shall~~must 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 the completed application, or within 35 days of the public hearing, if the proposed use or structure is found to be in conformance with the purposes and provisions of this Article.
- C. **Planning Board Applications.** Applications that require Planning Board ~~r~~Review per this Article pursuant to Section 409 (Table of Land Uses) shall follow~~must comply with the general administrative procedures in the City of Ellsworth Land Use Ordinance and/or UDO of Chapter 54, Section 208.~~
- D. **Burden of Proof.** The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this Article, including the general review criteria in Section 404, the land use standards in Section 410, and the performance standards in Section 411.
- E. **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.

404 SHORELAND ZONING REVIEW CRITERIA AND SPECIAL EXCEPTIONS

404.1 Decision/Findings General Review Criteria.

For structures and uses proposed to be located in the shoreland zone that are allowed with a permit, the After the submission of a complete application to the Planning Board, the CEO or the Planning 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, or structure associated with the use:

- A. ~~(1)~~ Will maintain safe and healthful conditions;
- B. ~~(2)~~ Will not result in water pollution, erosion, or sedimentation to surface waters;

- C. ~~(3)~~ Will adequately provide for the disposal of all wastewater;
- D. ~~(4)~~ Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
- E. ~~(5)~~ Will conserve shore cover, visual and actual, points of access to inland and coastal waters;
- F. ~~(6)~~ Will protect archaeological and historic resources as designated in the comprehensive plan;
- G. ~~(7)~~ Will not adversely affect existing commercial fishing or maritime activities;
- H. ~~(8)~~ Will avoid problems associated with floodplain development and use; and
- I. ~~(9)~~ Is in conformance with the provisions of Section 409, Land Use Standards and Section 410 Performance Standards in the Shoreland Zone.

~~Conditions in Writing. If a permit is either denied or approved with conditions, the reasons as well as conditions shall be stated in writing.~~

~~Other Provisions May Apply. 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 Ordinance, or regulation or statute administered by the City of Ellsworth.~~

404.2 Special Exceptions in Resource Protection Zoning Districts (RP) ~~Exceptions.~~ ~~In addition to the criteria specified in Section 403.4 above, excepting structure shoreline setback requirements, t~~The Planning Board may approve a permit for a single family residential structure in a Resource Protection Zoning District (RP) provided that the applicant demonstrates that all of the general review criteria in Section 404.1, excepting structure shoreline setback requirements, and the following conditions are met:

- (1) There is no location on the property, other than a location within the RP 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 Hancock County Registry of Deeds before the adoption of the RP district encompassing the lot.
- (3) All proposed buildings, sewage disposal systems, and other improvements are:
 - (a) Located on natural ground slopes of less than 20%; and
 - (b) 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 for the City of Ellsworth; 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 Ellsworth Floodplain Ordinance.

If the floodway is not shown on the Federal Emergency Management Agency Maps, it is deemed to be 1/2 the width of the 100-year floodplain.
- (4) The total ground-floor-area combined footprint, 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 100 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.

~~403.3403.1~~ ~~**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.~~

404.3 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 City permits required under this Article, any other provision of the City Code, any other ~~Ordinance~~, or any previous ~~City ordinance of the City of Ellsworth~~ has been issued by the CEO or other written arrangements have been made between City ~~of Ellsworth~~ officials and the utility.

404405 SHORELAND ZONING APPEALS AND VARIANCE REQUESTS

Refer to Chapter 1, Section 210 and Section 211.

~~404.1~~ ~~**The Board of Appeals (BOA):** The BOA shall have the following powers and duties:~~

~~A. **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 Article; 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/her review of and action on a permit application under this Article. Any order, requirement, decision or determination made, or failure to act, in the enforcement of this Article is not appealable to the BOA.~~

~~A. **Variance Appeals:** To authorize variances upon appeal, within the limitations set forth in this Article.~~

~~404.1~~ ~~**Variance Appeals.** Variances may be granted only under the following conditions:~~

~~A. Variances may be granted only from dimensional requirements including, but not limited to, lot width, structure height, percent of lot coverage, and setback requirements.~~

~~A. Variances shall not be granted for establishment of any uses otherwise prohibited by this Article.~~

~~A. The Board shall not grant a variance unless it finds that:~~

~~(i) The proposed structure or use would meet the provisions of Sections 409 and 410 except for the specific provision which has created the non-conformity and from which relief is sought; and~~

~~(ii) The strict application of the terms of this Article would result in undue hardship. The term "undue hardship" shall mean:~~

~~a. That the land in question cannot yield a reasonable return unless a variance is granted;~~

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

~~c. That the granting of a variance will not alter the essential character of the locality; and~~

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

~~B. Notwithstanding Section 404.2 C(ii) above, the BOA 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 BOA 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 BOA 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 dwelling" shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure.~~

~~A. The BOA shall limit any variances granted as strictly as possible in order to ensure conformance with the purposes and provisions of this Article 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.~~

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

~~404.1~~ **Administrative Appeals**

~~When the BOA reviews a decision of the Code Enforcement Officer the BOA shall hold a "de novo" hearing. At this time the BOA may receive and consider new evidence and testimony, be it oral or written. When acting in a "de novo" capacity the BOA shall hear and decide the matter afresh, undertaking its own independent analysis of evidence and the law, and reaching its own decision.~~

~~When the BOA 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 Article or contrary to the facts presented to the Planning Board. The BOA 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 BOA may receive and consider written or oral arguments. If the BOA determines that the record of the Planning Board proceedings is inadequate, the BOA may remand the matter to the Planning Board for additional fact finding.~~

~~404.2~~ **Appeal Procedure**

~~A. 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 404.1(A) above. 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 City Planner on behalf of the 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.~~

~~B. Decision by Board of Appeals~~

~~(i) A majority of the full voting membership of the Board shall constitute a quorum for the purpose of deciding an appeal.~~

~~(ii) The person filing the appeal shall have the burden of proof.~~

~~(iii) 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.~~

~~(iv) 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 7 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 City Council.~~

~~404.3 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.~~

~~404.4 Reconsideration of Appeals.~~

~~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 10 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.~~

405406 SHORELAND ZONING ENFORCEMENT

Refer to Chapter 1, Section 510.

~~405.1 **Nuisances.** Any violation of this Article shall be deemed to be a nuisance.~~

~~405.1 **Code Enforcement Officer (CEO).** The CEO shall have the following powers and duties:~~

~~A. **Enforcement.** It shall be the duty of the CEO to enforce the provisions of this Article.~~

~~A. **On Site Inspections.** The CEO shall conduct on-site inspections to ensure compliance with all applicable laws and conditions attached to permit approvals. The CEO shall also investigate all complaints of alleged violations of this Article.~~

~~A. **Notice of Violation** If the CEO shall find that any provision of this Article is being violated, he/she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, 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 City Manager and City Council and be maintained as a permanent record.~~

~~A. **Records Kept.** The CEO 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 and Water Quality within the Department of Environmental Protection.~~

~~405.1 **Legal Actions.**~~

~~When the above action does not result in the correction or abatement of the violation or nuisance condition, the Ellsworth City Council, 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 Article in the name of the City of Ellsworth.~~

~~The City Council, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Article 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 Ellsworth 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.~~

~~405.2 **Fines.**~~

~~Any person, including but not limited to a landowner, a landowner's agent or a contractor, who violates any provision or requirement of this Article shall be penalized in accordance with 30-A, M.R.S.A. section 4452.~~

406407 NON-CONFORMANCE IN THE SHORELAND ZONE

407.1 Purpose. It is the intent of this Article to promote land use conformities, except that non-conforming conditions that existed before the effective date of this Article or amendments thereto shall be allowed to continue, subject to the requirements set forth in Section 406. Except as otherwise provided in this Article, a non-conforming condition shall not be permitted to become more non-conforming.

407.2 Non-conformance, General.

- (1) Transfer of Ownership. Non-conforming structures, lots, and uses may be transferred, and the new owner may continue the non-conforming use or continue to use the non-conforming structure or lot, subject to the provisions of this Article.
- (2) Repair and Maintenance. This Article allows, without a permit, the normal upkeep and maintenance of non-conforming uses and structures including repairs or renovations that do not involve expansion of the non-conforming use or structure, and such other changes in a non-conforming use or structure as federal, state, or City building and safety codes may require.

407.3 Non-conforming Structures

- (1) Expansions. A non-conforming 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 non-conformity of the structure, and is in accordance with subparagraphs (a), and (b) below.

- (a) Legally existing non-conforming principal and accessory structures that do not meet the shoreline setback requirements may be expanded or altered as follows, as long as all other applicable standards contained in this Article are met.

- i. Expansion of any portion of a structure within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland is prohibited, even if the expansion will not increase nonconformity with the shoreline setback requirement.

Notwithstanding the above paragraph, if a legally existing nonconforming principal structure is entirely located less than 25 feet from the normal high-water line of a water body or upland edge of a wetland, that structure may be expanded as follows, as long as all other applicable standards are met and the expansion is not otherwise prohibited by this Section 407.3(1): The maximum total footprint for the principal structure may not be expanded to a size greater than 800 square feet. The maximum height of the principal structure may not be made greater than 15 feet or the height of the existing structure, whichever is greater.

- ii. Expansion of an accessory structure that is located closer to the normal high-water line of a water body, tributary stream, or upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the shoreline setback requirement.

- iii. For structures located less than 75 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, the maximum combined total floor area/footprint for all portions of those structures within that 75-foot distance is 1,000 square feet, and the maximum height of any portion of a structure that is within 75 feet, horizontal distance, of a water body, tributary stream or upland edge of a wetland is 20 feet or the height of the existing structure, whichever is greater. Any portion of those structures located less than 75 feet from the normal high-water

line of a water body or upland edge of a wetland must meet the footprint and height limits in this paragraph.

- iv. For structures located less than 100 feet, horizontal distance, from the normal high-water line of a great pond or a river flowing to a great pond, the maximum combined total ~~floor area~~footprint for all portions of those structures within that 100-foot distance is 1,500 square feet, and the maximum height of any portion of a structure that is within 100 feet, horizontal distance, of a great pond is 25 feet or the height of the existing structure, whichever is greater, except that any portion of those structures located less than 75 feet, horizontal distance from the normal high-water line of a water body, tributary stream, or the upland edge of a wetland must meet the ~~floor area~~footprint and height limits of division (iii).

~~For the purposes of Section 406.3(1)(a), a basement is not counted toward floor area.~~

v. In addition to the limitations in subparagraphs (iii) and (iv), for structures that are legally nonconforming due to their location within the Resource Protection District when located at less than 250 feet from the normal high-water line of a water body or the upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,500 square feet. The maximum height of any structure may not be made greater than 25 feet or the height of the existing structure, whichever is greater, except that any portion of those structures located less than 75 feet from the normal high-water line of a water body or upland edge of a wetland must meet the footprint and height limits in paragraph (iii).

(b) Notwithstanding the limitations on height imposed under paragraphs (iii), (iv), and (v), above, the height of a structure that is a legally existing nonconforming principal or accessory structure may be raised to, but not above, the minimum elevation necessary to be consistent with the floodplain management elevation requirement set forth in Chapter 33 (Floodplain Management) or to 3 feet above the base flood elevation, whichever is greater, as long as the structure is relocated, reconstructed, replaced, or elevated within the boundaries of the parcel so that the water body or wetland setback requirement is met to the greatest practical extent. This paragraph applies to structures that: (i) have been or are proposed to be relocated, reconstructed, replaced, or elevated to be consistent with the floodplain management elevation requirement, and (ii) are located in an area of special flood hazard.

(b)c) Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the shoreline setback requirement is met to the greatest practical extent as determined by the Code Enforcement Officer, basing his/her decision on the criteria specified in Section 406.3(2) Relocation, below. ~~If the completed foundation does not extend beyond the exterior dimensions of the structure and the foundation does not cause the structure to be elevated by more than 3 additional feet, as measured from the uphill side of the structure, it shall not be considered to be an expansion of the structure.~~

(d) Notwithstanding subsection (1)(a) and (b):

- (i) A deck is exempt from the otherwise applicable water or wetland setbacks if the following requirements are met: (1) the deck does not exceed 700 square feet in area; (2) the deck is cantilevered over a segment of a river that is located within the boundaries of a downtown revitalization project; and (3) the deck is attached to or

accessory to a use in a structure that was constructed prior to 1971 and is located within a downtown revitalization project.

(ii) A pedestrian walkway or trail from the otherwise applicable water or wetland setbacks if the following requirements are met:

(1) The walkway or trail is adjacent to a segment of a river that is located within the boundaries of a downtown revitalization project;

(2) If cantilevered over a segment of river, the walkway or trail does not extend over the river more than 10 feet from the normal high-water line;

(3) If cantilevered over a segment of river, the walkway or trail is attached to a structure that was constructed prior to 1971 and is located within a downtown revitalization project; and

(4) If the walkway or trail is cantilevered over a segment of river, the municipal planning board has determined there is no other practical means to construct the walkway or trail without cantilevering over that segment of the river. If there are no other practical means to construct the walkway or trail, approaches to the cantilevered walkway or trail may also cantilever off adjacent retaining walls but no more than is necessary to access the cantilevered walkway or trail.

(iii) The expansion of a restaurant that is part of a marina that has been permitted in accordance with all applicable state and local requirements if the following requirements are met:

(1) The restaurant expansion is not located over a water body or wetland;

(2) The restaurant expansion is not located any closer to the water body or wetland than the existing restaurant; and

(3) The restaurant and the marina that the restaurant is a part of have both been in existence as of January 1, 2021.

Except for the water and wetland setback requirements in subsection (1)(a) and (b), a deck, walkway, trail, or expansion of a restaurant that is part of a marina that meets the requirements of this subsection must meet all other state and local permit requirements and comply with all other applicable rules. A deck exempt under this subsection may be either privately or publicly owned and maintained.

For this subsection to take effect, the City Council must approve a project plan in which "downtown revitalization project" is defined.

~~(1-A) Special expansion allowance. Existing principal and accessory structures that exceed the floor area or height limits set in Section 406.3(1)(a)(iii) and Section 406.3(1)(a)(iv) above, may not be expanded, except that the limits may be exceeded by not more than 500 square feet provided that all of the following requirements are met:~~

~~(a) The principal structure is set back at least 50 feet, horizontal distance, from the normal high water line of a water body, tributary stream or upland edge of a wetland.~~

~~(b) A well distributed stand of trees and other natural vegetation as defined in Section 410.14(2)(b), extends at least 50 feet, horizontal distance, in depth as measured from the normal high water line or upland edge for the entire width of the property.~~

~~If a well distributed stand of trees and other vegetation meeting the requirements of Section 410.14(2)(b) is not present, the 500 square foot special expansion allowance may be permitted only in conjunction with a written plan, including a sealed site drawing, by the property owner, and approved by the Planning Board or the Code Enforcement Officer, to reestablish a buffer of trees, shrubs, and other ground cover within 50 feet, horizontal distance, of the shoreline or tributary stream.~~

~~(c) Adjacent to great ponds and rivers flowing to great ponds, except for the allowable footpath, there exist complete natural ground cover, consisting of forest duff, shrubs and other woody and herbaceous vegetation within 50 feet, horizontal distance, of the normal high water line. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch and plantings of native shrubs, and other woody and herbaceous vegetation in quantities sufficient to retard erosion and provide for effective infiltration of stormwater.~~

~~(d) A written plan by the property owner, including a sealed site drawing, is approved by the Planning Board and is developed, implemented, and maintained to address the following mitigation measures for the property within the shoreland zone.~~

~~(i) Unstabilized areas resulting in soil erosion must be mulched, seeded, or otherwise stabilized and maintained to prevent further erosion and sedimentation to water bodies, tributary streams, and wetlands.~~

~~(ii) Roofs and associated drainage systems, driveways, parking areas, and other nonvegetated surfaces must be designed or modified, as necessary, to prevent concentrated flow of storm water runoff from reaching a water body, tributary stream or wetland. Where possible, runoff must be directed through a vegetated area or infiltrated into the soil through the use of a dry well, stone apron, or similar device.~~

~~(1 B) Planting requirements. Any planting or revegetation required as a condition to the Special Expansion Allowance must be in accordance with a written plan drafted by a qualified professional, be implemented at the time of construction, and be designed to meet the rating scores contained in paragraph (b) and the ground cover requirements of paragraph (c) when the vegetation matures within the 50 foot strip. At a minimum, the plan must provide for the establishment of a well distributed planting of saplings spaced so that there is at least one sapling per 80 square feet of newly established buffer. Planted saplings may be no less than 3 feet tall for coniferous species and no less than six feet tall for deciduous species. The planting plan must include a mix of at least three native tree species found growing in adjacent areas, with no one species making up more than 50% of the number of saplings planted unless otherwise approved by the Planning Board or the Code Enforcement Officer, based on adjacent stand comparison. All aspects of the implemented plan must be maintained by the applicant and future owners.~~

~~Plans approved by the CEO for expansions under this Section 407.3(1) must be filed in the Hancock County Registry of Deeds within 90 days of approval.~~

- ~~(2) Relocation. A non-conforming 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 shoreline setback requirements to the greatest practical extent as determined by the Code Enforcement Officer, 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 non-conforming.

In determining whether the building relocation meets the shoreline setback to the greatest practical extent, the CEO 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 on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation. When it is necessary to remove vegetation within the shoreline setback area in order to relocate a structure, the CEO may 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, 3 feet in height, for every tree removed. If more than 5 trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. 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 shoreline 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 non-conforming structure which is located less than the required shoreline setback from a water body, tributary stream, or wetland and which is removed, or damaged or destroyed, regardless of the cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within 18 months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the shoreline setback requirement to the greatest practical extent as determined by the Code Enforcement Officer in accordance with the purposes of this Article. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity. If the reconstructed or replacement structure is less than the required shoreline setback it shall not be any larger than the original structure, except as allowed pursuant to Section 406.3(1) above, as determined by the non-conforming floor area and volume footprint and height 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 shoreline setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the shoreline setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation may be replanted in accordance with Section 406.3(2) above.

Any non-conforming structure which is located less than the required shoreline setback from a water body, tributary stream, or wetland and which is removed by 50% or less of the market value, or damaged or destroyed by 50% or less of the market value of the

structure, excluding normal maintenance and repair, may be reconstructed in place if a permit is obtained from the CEO within one year of such damage, destruction, or removal.

In determining whether the building reconstruction or replacement meets the shoreline setback to the greatest practical extent the CEO shall consider, in addition to the criteria in Section 406.3(2) above, the physical condition and type of foundation present, if any.

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

In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

STATE LAW REFERENCE: 38 M.R.S.A. § 439-A (ADDITIONAL MUNICIPAL POWERS, LIMITATIONS).

407.4 Non-conforming Uses.

- (1) Expansions. Expansions of non-conforming uses are prohibited, except that non-conforming residential uses may, after obtaining a permit from the Planning Board, be expanded within existing residential structures or within expansions of such structures as allowed in Section 406.3(1) above.
- (2) Resumption Prohibited. A lot, building or structure in or on which a non-conforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a non-conforming 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 5 year period.
- (3) Change of Use. An existing non-conforming use may be changed to another non-conforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources, including water dependent uses, 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 Section 406.3(4) above.

407.5 Non-conforming Lots

- (1) Non-conforming Lots: A non-conforming lot of record as of the effective date of this Article 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 Article 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 Article, if all or part of the lots do not meet the dimensional requirements of this Article, and if a principal use or structure exists on each

lot, the non-conforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (12 M.R.S.A. ~~sections §§~~ 4807-A through 4807-D) and the ~~State of~~ Maine Subsurface Wastewater Disposal Rules are complied with.

If two or more principal uses or structures existed on a single lot of record on the effective date of this Article, 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 Article.

- (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 Article, if any of these lots do not individually meet the dimensional requirements of this Article 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 2 or more contiguous lots, at least one of which is non-conforming, owned by the same person or persons on December 12, 1992 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 Section 406.5(3)(a) 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.

407408 SHORELAND ZONING DISTRICTS AND THE LAND USE MAP

408.1 Shoreland Zoning Districts Established: Official Land Use Map.

~~To implement the provisions of this Article, the City is The areas to which this Article is applicable are hereby~~ divided into the following districts as shown on the Official Land Use Map, which is made a part of this Article:

- A. Resource Protection (RP)
- B. Drinkingwater Protection (DP)
- C. Stream Protection (SP)
- D. Limited Residential (LR)
- ~~E. Limited Commercial (LC)~~
- F.E. General Development (GD)

408.2 Scale of Map.

The Official Land Use Map ~~shall be available~~must be drawn at a scale of not less than one inch equals 2000 feet (1" = 2000'). ~~Shoreland z~~Zoning district boundaries ~~shall~~must be clearly delineated and a legend indicating the symbols for each district ~~shall~~must be placed on the map.

408.3 Certification of Official Land Use Map.

~~A one inch equals 2000 feet (1" = 2000') copy of the Official Land Use Map shall be~~The Official Land Use Map must be certified by the attested signature of the ~~Ellsworth~~ City Clerk and shall be located in the Code Enforcement Office and in the City Planner's Office.

408.4 ~~Changes~~ Amendments to the Official Land Use Map.

~~If a~~Amendments, to the Official Land Use Map must be made in accordance with ~~this Article~~Chapter 1, Section 509. If such amendments, are made in the boundaries of the ~~S~~Shoreland zZone or other shoreland zoning matter portrayed on the Official Land Use Map, such changes shall be made on the Official Land Use Map within 30 days after the amendment has been approved by the Commissioner of the ~~Department of Environmental Protection~~DEP.

408.5 Interpretation of Shoreland Zoning District Boundaries.

(1) Unless otherwise set forth on the Official Land Use Map, district boundary lines are property lines, the centerlines of accessways, and the boundaries of the shoreland area as defined herein.

~~(1)~~(2) The CEO has the initial authority to interpret the Official Land Use Map and the location of shoreland zoning district boundaries. Any minimum shoreland setback must be determined by actual site measurement. Where physical or natural features existing on the ground are at variance with those shown on the Official Land Use Map or in other circumstances where the CEO cannot definitely determine the location of a district boundary by the rules in 402.5, the CEO may refer the matter to the Board of Appeals. Referrals of the CEO and appeals from boundary interpretation decisions of the CEO are de novo. The Board of Appeals is the final administrative authority as to the location of district~~Where uncertainty exists as to the exact location of district boundary lines, the Board of Appeals shall be the final authority as to location, except, when applicable, a landowner complies with Section 407.6 Verification of Habitat Value.~~

~~408.6 Verification of IF&W Determination of Waterfowl and Wading Bird Habitat Value.~~

~~(1) Following the review of existing Maine Department of Inland Fisheries and Wildlife (IF&W) data and/or new documentation submitted to the IF&W regarding a moderate or high value habitat, the IF&W may modify the rating or boundary of the habitat. A landowner submitting documentation will receive a written determination from either the IF&W or the Maine Department of Environmental Protection (DEP). Upon determination that the habitat rating or boundary has changed, the landowner may then proceed to request an amendment to the Land Use Map by contacting the City Planner. Determination of habitat rating or boundary may be done by any of the following methods:~~

~~(a) — **Desktop Review.** A re-examination by the DEP of the aerial photography and other GIS data available may be sufficient documentation for determination. Should DEP find evidence that the habitat rating or boundary should be change, DEP will submit documentation to IF&W for determination.~~

~~(b) — **Field Verification by Department of Environmental Protection (DEP).** A landowner may submit to the DEP evidence that the wetland rating or~~

~~boundary is incorrect, such as photographs showing that the wetland is either not a wetland as defined by this Article or is an altered wetland. Should the evidence be convincing that the rating or boundary may be incorrect, the DEP may then conduct a field visit using the criteria in Section 407.6(1)(d). Following a field visit, DEP will write an advisory opinion regarding the presence or absence of a wetland with a moderate or high value to the IF&W for determination~~

- ~~(c) **Field Verification by a professional.** A landowner may submit documentation regarding the presence or absence of a wetland with a moderate or high value to the IF&W for determination. Such Documentation must be completed by an individual who has experience and training in either wetland ecology or wildlife ecology and therefore has qualifications sufficient to identify and document a moderate or high value habitat based on the criteria in Section 407.6(1)(d).~~
- ~~(d) **Moderate and high value habitat criteria.** A moderate or high value inland habitat is an inland wetland complex, and a 250-foot wide zone surrounding the wetland complex, that through a combination of dominant wetland type, wetland diversity, wetland size, wetland type interspersions, and percent open water, meets the IF&W guidelines or is an inland wetland complex that has documented outstanding use of waterfowl or wading birds. Determination of moderate or high value habitat is based on the following:~~
 - ~~i. Dominant wetland type is rated by the assigned score for the wetland type of greatest area in the wetland. Wetland type is determined using the classification system published by IF&W based on McCall, 1972, for waterfowl and wading bird habitat rating. A score for the value to waterfowl and wading birds is assigned to each type using the IF&W rating procedure; and/or~~
 - ~~ii. Wetland diversity is rated by assigning the wetland to one of the diversity categories based on the number of wetland types present in the wetland using the IF&W rating procedure; and/or~~
 - ~~iii. Wetland size is rated by assigning the wetland to one of three size categories based on the total area of the wetland using the IF&W rating procedure; and/or~~
 - ~~iv. Wetland type interspersions is rated by assigning the wetland to one of three interspersions categories using the Golet (1974) system, as modified for Maine in the IF&W rating procedure; and/or~~
 - ~~v. Percent open water is rated by assigning the wetland one of four categories, based on the percent of the wetland in open water using the IF&W rating procedure.~~

NOTE: The following are literature citations as referenced above:

McCall, C.A. 1972. Manual for Maine wetlands inventory. Maine Department of Inland Fisheries and Game, Augusta, Maine. 38pp.

Golet, F.C., and J.S. Larson. 1974. Classification of freshwater wetlands in the glaciated northeast. Resource Publication 116. U.S. Department of the Interior, Washington, D.C. 56pp.

~~408—Establishment of Shoreland Zoning Districts~~~~408.7~~408.6 Description of Shoreland Zoning District Boundaries.

- (1) **The Resource Protection District (RP)** 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 or in the General Development District need not be included within the Resource Protection District.
- (a) Rated Wetlands. 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 (IF&W) that are depicted on a Geographic Information System (GIS) data layer maintained by either IF&W or the DEP as of January 1, 1973 for Coastal Wetlands and as of December 31, 2008 for Freshwater Wetlands. 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.
 - (b) 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 for the City of Ellsworth, 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.
 - (c) Steep Slopes. Areas of 2 or more contiguous acres with sustained slopes of 20% or greater.
 - (d) Hydric Soils. Areas of 2 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 the period of normal high water.
 - (e) Erodable Areas. 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.
 - (f) Significant Natural Areas. Areas designated by federal or state government or the City of Ellsworth as natural areas of significance to be protected from development; and
 - (g) Other significant areas which should be included in this district to fulfill the purposes of this Article, such as, but not limited to, existing public access areas and certain significant archaeological and historic sites deserving of long-term protection as determined by the City of Ellsworth after consultation with the Maine Historic Preservation Commission.
- (2) **The Drinkingwater Protection District (DP)** includes all areas that lie within the Shoreland Zone of the watershed of Branch Lake that are not zoned Resource Protection. The DP zoning district has lot size, frontage and other environmental standards designed to protect Ellsworth's

public drinking water supply. For regulation of surface water activities on Branch Lake, refer to ~~the Ellsworth Code of Ordinances~~ Chapter 55 (Public Water Supply Protection ~~Ordinance~~).

- (3) **The Stream Protection District (SP)** 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, or river, or within 250 feet, horizontal distance, of 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.

In addition to streams as defined, all perennial and intermittent streams within the watershed of Branch Lake have a 75-foot shoreland zone and are designated Stream Protection District as shown on the Official Land Use Map.

- (4) **The Limited Residential District (LR)** 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 General Development District and Limited Commercial District.

~~(5) The Limited Commercial District (LC) includes areas of mixed, light commercial and residential uses exclusive of the Stream Protection District, which should not be developed as intensely 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.~~

- ~~(6)~~**(5) The General Development District (GD)** 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 consistent with the Ellsworth Waterfront Master Plan and Waterfront Redevelopment Plan.
- (2) Areas otherwise discernible as having patterns of intensive commercial, industrial or recreational uses.

409 TABLE OF LAND USES FOR THE SHORELAND ZONE

~~(7) The Shoreland Zoning Table of Land Uses. All land use activities, as indicated in Table 408.8 Land Uses in the Shoreland Zone, shall conform with all of the applicable land use standards in Sections 409 and 410. The district designation for a particular site shall be determined from the Official Land Use Map.~~

409.1 ——— Key to Table ~~408.8~~409, Schedule of Land Uses in the Shoreland Zone:****

Yes— ~~The use, and any structures associated with or devoted to such use, is a~~Allowed ~~(now without a permit required but the use must comply with all applicable land use standards, including those set forth in Section 411.)~~

- No—** The use, and any structures associated with or devoted to such use, is ~~P~~rohibited.
- PB—** The use, and any structures associated with or devoted to such use, is ~~A~~allowed with Planning Board approval, followed by CEO permit if applicable.
- CEO—** The use, and any structures associated with or devoted to such use, is ~~A~~allowed with a permit issued by the ~~Code Enforcement Officer~~CEO.
- LPI -** The use, and any structures associated with or devoted to such use, is ~~A~~Allowed with permit issued by the City Plumbing Inspector.

409.2 Table of Land Uses in the Shoreland Zone

~~———— District Abbreviations on Table 408.8 — Land Uses in the Shoreland Zone: ————~~

~~**RP — Resource Protection —**~~

~~**DP — Drinking water Protection**~~

~~**SP — Stream Protection**~~

~~**LC — Limited Commercial**~~

~~**GD — General Development**~~

~~**LR — Limited Residential ———**~~

~~————~~

TABLE ~~408.8409~~ LAND USES IN THE SHORELAND ZONE	More RESTRICTIVE less →					
	SHORELAND ZONING DISTRICT					
	RP	DP	SP	LR	~~LE~~	GD
SUMMARY OF DIMENSIONAL REQUIREMENTS						
Depth of Shoreland Zone (in feet)	250	250	75	250	~~250~~	250
LAND USE CATEGORY						
1. Non-intensive recreational uses w/o structures such as hunting, fishing and hiking	YES	YES	YES	YES	~~YES~~	YES
2. Motorized vehicular traffic on existing accessways/trails	YES	YES	YES	YES	~~YES~~	YES
~~3. Forest management activities except for timber harvesting & land mgmt. roads~~	~~YES~~	~~YES~~	~~YES~~	~~YES~~	~~YES~~	~~YES~~
~~4. Timber harvesting~~	~~CEO~~	~~YES~~	~~YES~~	~~YES~~	~~YES~~	~~YES~~
5. Clearing or removal of vegetation for activities other than timber harvesting ¹ In RP not allowed within 75 feet horizontal distance, of the normal high-water line of Great Ponds, except to remove safety hazards.	CEO ¹	CEO	CEO	CEO	~~CEO~~	CEO
6. Fire prevention activities	YES	YES	YES	YES	~~YES~~	YES
7. Wildlife management practices	YES	YES	YES	YES	~~YES~~	YES
8. Soil and water conservation practices	YES	YES	YES	YES	~~YES~~	YES
9. Mineral exploration	NO	NO	NO	CEO	~~CEO~~	CEO
10. Mineral extraction (including sand and gravel extract.)	NO	NO	NO	PB	~~PB~~	PB
11. Surveying and resource analysis	YES	YES	YES	YES	~~YES~~	YES
12. Emergency operations	YES	YES	YES	YES	~~YES~~	YES
13. Agricultural, Activities (as defined)	PB	NO	CEO	CEO	~~NO~~	NO
14. Agricultural, Gardening	CEO	CEO	CEO	CEO	~~CEO~~	CEO

15. Agricultural, Feed Lot	NO	NO	NO	NO	~~NO~~	NO
16. Agricultural <u>Activity</u> and Processing, Major	NO	NO	NO	NO	~~NO~~	NO
17. Agricultural Processing, Minor	NO	NO	NO	NO	~~PB~~	PB
LAND USES IN THE SHORELAND ZONE	RP	DP	SP	LR	~~LE~~	GD
18. Processing, Fish Wholesale	NO	NO	NO	NO	~~PB~~	PB
19. Principal structures and uses						
19.1. One & two family residential and driveways	PB ²	CEO /PB ³	PB ⁴	CEO	~~NO~~	NO
² Single family structures may be allowed by special exception only according to the provisions of Section 403.5, ~~Special RP Exceptions.~~						
³ New structures with a footprint greater than 3,000 s. f. must be approved by the Planning Board.						
⁴ Provided that a variance from the shoreline setback requirement is obtained from the Board of Appeals.						
19.2 . Multi-unit residential	NO	NO	NO	PB	~~NO~~	PB

LAND USES IN THE SHORELAND ZONE		RP	DP	SP	LR	~~LG~~	GD
19.3. Commercial		NO ⁵	NO ⁵	NO	NO ⁵	~~CEO~~ ⁶	CEO ⁶
⁵ Except for commercial uses otherwise listed in this Table, such as, but not limited to, marinas and campgrounds, that are allowed in the respective district.							
⁶ Allowed commercial uses are limited to the ones allowed in land use zoning districts for adjacent upland with the exception of the uses, as listed and described in ~~410411.4~~ .							
19.4 Industrial		NO	NO	NO	NO	~~NO~~	CEO ⁷
⁷ Allowed industrial uses are limited to the ones allowed in land use zoning districts for adjacent upland with the exception of the uses, as listed and described in ~~410411.4~~ .							
19.5 Special Uses , except as otherwise prohibited by this article		PB	PB	PB	PB	~~PB~~	PB
19.6 Government and Institutional		NO	PB	NO	PB	~~PB~~	PB
19.7. Small non-residential facilities for educational, scientific, or nature interpretation		PB	PB	PB ⁴	CEO	~~CEO~~	CEO
⁴ Provided that a variance from the shoreline setback requirement is obtained from the Board of Appeals.							
20. Structures accessory to allowed uses		PB ²	CEO /PB ³	PB ⁴	CEO	~~CEO~~	CEO
² Single family structures may be allowed by special exception only according to the provisions of Section 403.5, Special RP Exceptions. ³ New structures with a footprint greater than 3,000 s. f. must be approved by the Planning Board.							
⁴ Provided that a variance from the shoreline setback requirement is obtained from the Board of Appeals.							
21. Piers, docks, wharfs, bridges, boat launching facilities and other structures and uses extending over or below the normal high-water line or within a wetland							
21.1. Temporary		CEO	CEO	CEO	CEO	~~CEO~~	CEO
21.2. Permanent, private - ⁸ See ~~410411.1~~		PB ⁸	PB ⁸	PB ⁸	PB ⁸	~~PB~~ ⁸	PB ⁸

21.3. Permanent, commercial - ⁸ See ~~410~~ 411.1	NO	NO	PB ⁸	PB ⁸	~~PB⁸~~	PB ⁸
21.4. Permanent, public facility - ⁸ See ~~410~~ 411.1	NO	PB ⁸	PB ⁸	PB ⁸	~~PB⁸~~	PB ⁸
22. Conversions of seasonal residences to year-round	LPI	LPI	LPI	LPI	~~LPI~~	LPI
23. Home occupations	PB	PB	PB	PB	~~GEO~~	CEO
24. Private sewage disposal systems for allowed uses	LPI	LPI	LPI	LPI	~~LPI~~	LPI

LAND USES IN THE SHORELAND ZONE	RP	DP	SP	LR	~~LG~~	GD
25. Essential services						
25.1. Distribution	CEO ⁹	YES ¹ ₀	CEO ⁹	YES ¹ ₀	~~YES¹₀~~	YES ¹ ₀
25.2. Transmission	PB ⁹	PB	PB ⁹	PB	~~PB~~	PB
25.3. Facilities	PB ⁹	NO	PB ⁹	PB	~~PB~~	PB
⁹ Except buildings which shall not be permitted in the RP or SP unless a variance from shoreline setback is granted. See further restrictions in Section ~~410411~~ .10.						
¹⁰ Permit not required but must file a written "Notice of Intent to Construct" with CEO.						
26. Service drops, as defined, to allowed uses	YES	YES	YES	YES	~~YES~~	YES
27. Public and private recreational areas involving minimal structural development	PB	PB	PB	PB	~~CEO~~	CEO
LAND USES IN THE SHORELAND ZONE	RP	DP	SP	LR	~~LG~~	GD
28. Campgrounds	NO	NO	NO	PB	~~NO~~	NO
29. Campsite, private individual. See ~~410411~~ .3	PB	PB	CEO	CEO	~~NO~~	NO
30. Accessway, 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						
30.1. Construction of an accessway of more than 500 ft.	NO ¹¹	PB	PB	PB	~~PB~~	PB
¹¹ Except as provided in Section ~~410411~~ .6.						
30.2. Construction of an accessway of less than 500 ft.	PB	CEO	PB	CEO	~~CEO~~	CEO
~~31. Land management roads~~	~~PB~~	~~YES~~	~~YES~~	~~YES~~	~~YES~~	~~YES~~
32. Parking Lot	NO	PB	PB	PB	~~PB~~	PB
33. Marinas	NO	NO	NO	PB	~~NO~~	PB
34. Filling and earth moving of <10 cubic yards	CEO	CEO	CEO	YES	~~YES~~	YES
35. Filling and earth moving of >10 cubic yards	PB	CEO	PB	CEO	~~CEO~~	CEO

36. Creation of more than 20,000 s. f. of shoreland lot coverage area (in the aggregate) on one lot.	PB	PB	PB	CEO	~~GEO~~	CEO
37. Signs	CEO	CEO	CEO	CEO	~~GEO~~	CEO
38. Uses similar to uses requiring a CEO permit	CEO	CEO	CEO	CEO	~~GEO~~	CEO
39. Uses similar to uses requiring a PB permit	PB	PB	PB	PB	~~PB~~	PB
40. Uses similar to allowed uses	~~GEO to determine level of review needed~~					

NOTE: A person performing any of the following activities shall require a permit from the ~~Department of Environmental Protection~~ ~~DEP~~, pursuant to 38 M.R.S.A. ~~section §~~ 480-C, if the activity occurs in, on, over or adjacent to a natural resource including but not limited to freshwater or coastal wetland, great pond, river, stream or tributary stream 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.

~~409~~410 **LAND USE STANDARDS IN THE SHORELAND ZONE**

All land use activities within the shoreland zone shall conform to the following provisions, where applicable.

410.1 General Land Use Requirements. 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.

410.2 Minimum Lot Standards. All land use activities within the shoreland zone shall conform with the following provisions when applicable:

TABLE ~~409~~410.2 Minimum Lot Area and Shore Frontage within the Shoreland Zone (SZ)

Residential Uses in SZ Adjacent to:	Min. Lot Area (sq. ft.)	Min. Shore Frontage (ft.)
Tidal Areas in the GD ~~Zoning~~ District	10,000 per dwelling unit	100 per dwelling unit
Tidal Areas in the LR ~~Zoning~~ District	40,000 per dwelling unit	150 per dwelling unit
Non-Tidal Areas except DP, SP & RP ~~Zoning~~ Districts	40,000 per dwelling unit	200 per dwelling unit
Governmental, Institutional, Commercial or Industrial Uses in SZ Adjacent to:	Min. Lot Area (sq. ft.)	Min. Shore Frontage (ft.)
Tidal Areas in the GD ~~Zoning~~ District	10,000 per principal structure	100 per principal structure

Tidal Areas in the LR ~~Zoning~~ -District	40,000 per principal structure	200 per principal structure
Non-tidal areas except DP, SP & RP ~~Zoning~~ -District	60,000 per principal structure	300 per principal structure
Public or Private Recreational Facilities:	Min. Lot Area (sq. ft.)	Min.Shore Frontage (ft.)
All SZ Areas except the DP & RP ~~Zoning~~ District	40,000 per principal structure	200 per principal structure
All Uses in:	Min. Lot Area (sq. ft.)	Min.Shore Frontage (ft.)
All Areas of DP ~~Zoning~~ -District	90,000/unit or princ. structure	300/unit or princ. structure
All Areas of SP* & RP* ~~Zoning~~ -District	Apply lot and structure requirements of the most restrictive adjacent zoning district. 60,000 per principal structure	300 per principal structure

*Structure permitting in RP and SP is very limited. See provisions in Sections ~~408~~409, ~~409~~410 and ~~410~~411.

- A. Minimum Lot Area. Land below the normal high-water line of a water body or upland edge of a wetland and land beneath accessways serving more than 2 lots shall not be included toward calculating minimum lot area.
- B. Lots Split by Accessways. Lots located on opposite sides of a public or private accessway shall be considered each a separate tract or parcel of land unless such accessway was established by the owner of land on both sides thereof after September 22, 1971.
- C. 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.
- D. Multiple Uses. If more than one residential dwelling unit, principal governmental, institutional, commercial or industrial structure or use, or combination thereof, is constructed or established on a single parcel, all dimensional requirements shall be met for each additional dwelling unit, principal structure, or use.

410.3 Structure Dimensional Standards for Structures.

- A. General Structure Setback. All new principal and accessory structures ~~shall~~must be constructed ~~according to in compliance with~~ the dimensional requirements specified in Table ~~409~~410.3, Structure and Lot Standards within the Shoreland Zone ~~below~~.
- B. Resource Protection District (RP) Shoreline Setback. ~~In the RP district, the shoreline setback requirements shall be 250 feet, horizontal distance from the shoreline, except for structures, accessways, or other regulated objects specifically allowed in that district, in which case the setback requirements specified in Table 409410.3, Structure and Lot Standards within the Shoreland Zone, below shall apply.~~

TABLE ~~409~~410.3 Structure and Lot Standards within the Shoreland Zone

STANDARD	Shoreland Zoning Districts – Dimensions in feet					
	RP*	DP	SP*	LR	LC	GD
Minimum structure shoreline setback from the normal high-water line of great ponds and rivers, as defined.	100*	100	n/a	100	~~100~~	25
Minimum structure shoreline setback from fresh water bodies (other than above) tributary streams, tidal water bodies or the upland edge of a wetland, as defined.	75*	75	75*	75	~~75~~	25
Minimum structure setback from the edge of a right-of-way.	20*	20	20*	20	~~20~~	20
Minimum structure setback from a property line, as defined.	25*	25	25*	15	~~10~~	10
Minimum lot frontage along the edge of a right-of-way.	200	200	200	150	~~200~~	100
Maximum height of a structure, as defined.	35*	35	35*	35	~~35~~	45
Maximum shoreland lot coverage as defined below.	20%	20%	20%	20%	~~20%~~	70%

*Structure permitting in RP and SP is very limited. See provisions in Sections ~~408409~~, ~~409410~~, and ~~410411~~.

C. Structure Shoreline Setback Exceptions.

- (i) The shoreline setback provision shall not apply to structures of functionally water-dependent uses, as defined.

D. Structure Shoreline Setbacks near Coastal Bluffs. For principal structures, shoreline 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 a copy of which is available in the Ellsworth Code Office. 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.

E. Structure Height. Principal or accessory structures and expansions of existing structures shall not exceed the heights listed in Table ~~409410.3~~. Structure and Lot Standards within the Shoreland Zone. This provision shall not apply to structures such as transmission towers, windmills, antennas, and similar structures having no floor area.

F. Floodplain Elevation. The lowest floor elevation or openings of all buildings and structures, including basements, shall be elevated at least one foot above the elevation of the 100 year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent floodplain soils. However, accessory structures, as defined, may be placed in accordance with the standards of the Ellsworth Floodplain Management Ordinance even if they do not meet the elevation requirements of this paragraph.

G. Shoreland Lot Coverage: The total footprint area of all structures, parking lots and other non-vegetated surfaces, within the shoreland zone shall not exceed the requirements specified in Table ~~409410.3~~ Structure and Lot Standards within the Shoreland Zone above for the lot or for

a portion thereof that is located within the shoreland zone, including land area previously developed.

- H. Retaining Walls that are not necessary for erosion control shall meet the structure shoreline 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 is 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, is 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 for the City of Ellsworth, 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 shoreline 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 Section ~~410411~~.14(2)(a) may traverse the buffer;
- I. Shoreline Access. 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 (4) feet in width; that the structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland, (unless permitted by the ~~Department of Environmental Protection~~DEP pursuant to the Natural Resources Protection Act, 38 M.R.S.A. ~~section §~~ 480-C); and that the applicant demonstrates that no reasonable access alternative exists on the property.

410411 *PERFORMANCE STANDARDS IN THE SHORELAND ZONE***411.1 Piers, Docks, Wharves, Bridges, Boat Launching Facilities, and Other Structures and Uses Extending Over or Below the Normal High-Water Line of a Water Body or Within a Wetland.**

(1) No more than one pier, dock, wharf or similar structure extending or located below the normal high-water line of a water body or within a wetland is allowed on a single lot; except that when a single lot contains at least twice the minimum shore frontage as specified in Section 410.2, a second structure may be allowed and may remain as long as the lot is not further divided.

(+)(2)(+) Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.

(23) The location shall not interfere with existing developed or natural beach areas.

(34) The facility shall be located so as to minimize adverse effects on fisheries.

(45) The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with the surrounding character and uses of the area. A temporary pier, dock or wharf in non-tidal waters shall not be wider than 6 feet for non-commercial uses.

(56) No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending below 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.

(67) New permanent piers and docks on non-tidal waters shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act.

(8) No existing structures built on, over or abutting a pier, dock, wharf or other structure extending below the normal high-water line of a water body or within a wetland shall be converted to residential dwelling units in any district.

(98) Except in the General Development Districts, structures built on, over or abutting a pier, wharf, dock or other structure extending below 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.

(10) Vegetation may be removed in excess of the standards in Section 411.14 in order to conduct shoreline stabilization of an eroding shoreline, provided that a permit is obtained from the Planning Board. Construction equipment must access the shoreline by barge when feasible as determined by the Planning Board.

(a) When necessary, the removal of trees and other vegetation to allow for construction equipment access to the stabilization site via land must be limited to no more than 12 feet in width. When the stabilization project is complete the construction equipment accessway must be restored.

(b) Revegetation must occur in accordance with Section 411.17.

(9) Boat launches and ramps shall only be permitted as permanent public facilities.

411.2 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 for each site, not including accessways and driveways. 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 or a river flowing to a great pond, and 100 feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.

411.3 Campsites, Individual Private. Individual private campsites not associated with campgrounds are allowed provided the following conditions are met:

- A. One campsite per lot existing on the effective date of this Article, or one campsite per 30,000 square feet of lot area within the shoreland zone, whichever is less, may be permitted. A maximum of four campsites not to exceed a combined total of 20 individuals may be permitted on any one lot. If there is more than one campsite per lot each campsite shall have a minimum of 30,000 square feet.
- B. 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 or river flowing to a great pond, and 75 feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.
- C. 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.
- D. The clearing of vegetation for the siting of a recreational vehicle, tent or similar shelter in a Resource Protection District shall be limited to 1,000 square feet.
- E. 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 City Plumbing Inspector. Where disposal is off-site, written authorization from the receiving facility or land owner is required.
- F. 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.

411.4 Commercial and Industrial Uses. The following new commercial and industrial uses, and similar uses, are prohibited within the shoreland zone adjacent to great ponds and rivers and streams which flow to great ponds:

- (1) Auto washing facilities
- (2) Auto or other vehicle service and/or repair operations, including body shops
- (3) Chemical and bacteriological laboratories
- (4) Storage of chemicals, including herbicides, pesticides or fertilizers, other than amounts normally associated with individual households or farms

- (5) Commercial painting, wood preserving, and furniture stripping
- (6) Dry cleaning establishments
- (7) Electronic circuit assembly
- (8) Laundromats, unless connected to a sanitary sewer
- (9) Metal plating, finishing, or polishing
- (10) Petroleum or petroleum product storage and/or sale except storage on same property as use occurs and except for storage and sales associated with marinas
- (11) Photographic processing
- (12) Printing

411.5 Parking Lots

- (1) Parking lots shall meet the shoreline setback requirements for structures for the district in which such lots are located. The shoreline setback requirement for parking lots serving public boat launching facilities in shoreland zoning d Districts other than the General Development District shall be no less than 50 feet, horizontal distance, from the shoreline or tributary stream if the Planning Board finds that no other reasonable alternative exists further from the shoreline or tributary stream.
- (2) Parking lots 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 lots, parking and loading provisions of ~~the Ellsworth Land Use Ordinance shall be applied~~ Chapter 56, Article *** shall apply.

411.6 Accessways. See ~~Ellsworth Code of Ordinances~~ Chapter 56, Article 9 (Street Design and Construction Standards) and Article 10 (Storm Water Management, Design and Construction Standards) for standards that apply to the construction of accessways and drainage systems, culverts, and other related features.

411.7 Signs. ~~See Ellsworth Code of Ordinances Chapter 9 Sign Ordinance for standards to apply to the erection signs. Where a Shoreland Zone is not mentioned, provisions for the adjacent upland zone shall apply. The following provisions shall govern the use of signs in the Resource Protection, Stream Protection, Limited Residential and Limited Commercial Districts; in all other districts, the provisions of City Code Chapter 9 shall apply.~~

1. Signs relating to goods and services sold on the premises shall be allowed, provided that such signs shall not exceed six (6) square feet in area and shall not exceed two (2) signs per premises. In the Limited Commercial District, however, such signs shall not exceed sixteen (16) square feet in area. Signs relating to goods or services not sold or rendered on the premises shall be prohibited.

2. Name signs are allowed, provided such signs shall not exceed two (2) signs per premises, and shall not exceed twelve (12) square feet in the aggregate.

3. Residential users may display a single sign not over three (3) square feet in area relating to the sale, rental, or lease of the premises.

4. Signs relating to trespassing and hunting shall be allowed without restriction as to number provided that no such sign shall exceed two (2) square feet in area.

5. Signs relating to public safety shall be allowed without restriction.

6. No sign shall extend higher than twenty (20) feet above the ground.

7. Signs may be illuminated only by shielded, non-flashing lights.

411.8 Storm Water Runoff. See ~~Ellsworth Code of Ordinances~~ Chapter 56, Article 10 (Storm Water Management, Design and Construction Standards) for standards to apply all new construction and development to minimize storm water runoff from the site.

411.9 Septic Waste Disposal.

All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules, and the following:

- (1) 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
- (2) a holding tank is not allowed for a first-time residential use in the shoreland zone.

411.10 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.
- (4) Essential services structures must meet the shoreline setback requirements in the shoreland zoning district in which they are located.

411.11 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 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 Section ~~410411~~.11(3) below.

- (2) No part of any extraction operation, including drainage and runoff control features, shall be permitted within one 100 feet, horizontal distance, of the normal high-water line of a great pond or a river, 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.
 - (b) The final graded slope shall be two and one-half to one (2½: 1) 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 off-site sources if necessary to complete the stabilization project.
- (4) In keeping with the purposes of this Article, 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.

411.12 Agricultural, Activities.

- (1) All spreading of manure shall be accomplished in conformance with the *Manure Utilization Guidelines* (latest version) published by the Maine Department of Agriculture 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 or a river, 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 storm water.
- (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 as defined to be filed with the Planning Board. Non-conformance with the provisions of said plan shall be considered to be a violation of this Article.
- (4) There shall be no new tilling of soil within 100 feet, horizontal distance, of the normal high-water line of a great pond; within 75 feet, horizontal distance, from other water bodies and coastal wetlands; nor within 25 feet, horizontal distance, of tributary streams and freshwater wetlands. Operations in existence on the effective date of this Article 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; 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 shoreline setback provisions may continue, provided that such grazing is conducted in accordance with a Conservation Plan as defined.

411.13 Reserved**410.13 Timber Harvesting**

- ~~(1) In a Resource Protection District abutting a great pond, timber harvesting shall be limited to the following:

 - ~~(a) Within the strip of land extending 75 feet, horizontal distance, inland from the normal high-water line, timber harvesting may be conducted when the following conditions are met:

 - ~~(1) The ground is frozen;~~
 - ~~(2) There is no resultant soil disturbance;~~
 - ~~(3) The removal of trees is accomplished using a cable or boom and there is no entry of tracked or wheeled vehicles into the 75-foot strip of land;~~
 - ~~(4) There is no cutting of trees less than 6 inches in diameter; no more than 30% of the trees 6 inches or more in diameter, measured at 4 ½ feet above ground level, are cut in any 10-year period; and a well-distributed stand of trees and other natural vegetation remains; and~~
 - ~~(5) A licensed professional forester has marked the trees to be harvested prior to a permit being issued by the municipality.~~~~
 - ~~(b) Beyond the 75-foot strip referred to in Section 410.13(1)(a) above, timber harvesting is permitted in accordance with paragraph 2 below except that in no case shall the average residual basal area of trees over 4 ½ inches in diameter at 4 ½ feet above ground level be reduced to less than 30 square feet per acre.~~~~
- ~~(2) Except in areas as described in Section 410.13(1) above, timber harvesting shall conform with the following provisions:

 - ~~(a) Selective cutting of no more than 40 % of the total volume of trees 4 inches or more in diameter measured at 4 1/2 feet above ground level on any lot in any 10-year period is permitted. In addition:

 - ~~(i) Within 100 feet, horizontal distance, of the normal high-water line of a great pond or a river flowing to a great pond, and within 75 feet, horizontal distance, of the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland, there shall be no clearcut openings and a well-distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.~~
 - ~~(ii) At distances greater than 100 feet, horizontal distance, of a great pond or a river flowing to a great pond, and greater than 75 feet, horizontal distance, of the normal high-water line of other water bodies or the upland edge of a wetland, harvesting operations shall not create single clearcut openings greater than 10,000 square feet in the forest canopy. Where such openings exceed 5,000 square feet they shall be at least 100 feet, horizontal distance, apart. Such clearcut openings shall be included in the calculation of total volume removal. Volume may be considered to be equivalent to basal area.~~~~
 - ~~(b) Timber harvesting operations exceeding the 40% limitation in Section 410.13(2)(a) above, may be allowed by the Planning Board upon a clear showing, including a forest management plan signed by a Maine licensed professional forester, that such an exception is necessary for good forest management and will be carried out in accordance with the purposes of this Article. The planning board shall notify the Commissioner of the~~~~

~~Department of Environmental Protection of each exception allowed, within 14 days of the Planning Board's decision.~~

- ~~(c) No accumulation of slash shall be left within 50 feet, horizontal distance, of the normal high water line of a water body. In all other areas slash shall either be removed or disposed of in such a manner that it lies on the ground and no part thereof extends more than 4 feet above the ground. Any debris that falls below the normal high water line of a water body or tributary stream shall be removed.~~
- ~~(d) Timber harvesting equipment shall not use stream channels as travel routes except when:

 - ~~(i) Surface waters are frozen; and~~
 - ~~(ii) The activity will not result in any ground disturbance.~~~~
- ~~(e) All crossings of flowing water shall require a bridge or culvert, except in areas with low banks and channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged.~~
- ~~(f) Skid trail approaches to water crossings shall be located and designed so as to prevent water runoff from directly entering the water body or tributary stream. Upon completion of timber harvesting, temporary bridges and culverts shall be removed and areas of exposed soil re-vegetated.~~
- ~~(h) Except for water crossings, skid trails and other sites where the operation of machinery used in timber harvesting results in the exposure of mineral soil shall be located such that an unscarified strip of vegetation of at least 75 feet, horizontal distance, in width for slopes up to 10% shall be retained between the exposed mineral soil and the normal high water line of a water body or upland edge of a wetland. For each 10% increase in slope, the unscarified strip shall be increased by 20 feet, horizontal distance. The provisions of this paragraph apply only to a face sloping toward the water body or wetland, provided, however, that no portion of such exposed mineral soil on a back face shall be closer than 25 feet, horizontal distance, from the normal high water line of a water body or upland edge of a wetland.~~

~~410.13-1. Timber Harvesting — Statewide Standards [Effective on effective date established in Section 402.1.B]~~

- ~~(1) Shoreline integrity and sedimentation. Persons conducting timber harvesting and related activities must take reasonable measures to avoid the disruption of shoreline integrity, the occurrence of sedimentation of water, and the disturbance of water body and tributary stream banks, water body and tributary stream channels, shorelines, and soil lying within water bodies, tributary streams and wetlands. If, despite such precautions, the disruption of shoreline integrity, sedimentation of water, or the disturbance of water body and tributary stream banks, water body and tributary stream channels, shorelines, and soil lying within water bodies, tributary streams and wetlands occurs, such conditions must be corrected.~~
- ~~(2) Slash treatment. Timber harvesting and related activities shall be conducted such that slash or debris is not left below the normal high water line of any water body or tributary stream, or the upland edge of a wetland. This section [410.13-1(2)] does not apply to minor, incidental amounts of slash that result from timber harvesting and related activities otherwise conducted in compliance with this section.~~

- ~~(a) Slash actively used to protect soil from disturbance by equipment or to stabilize exposed soil, may be left in place, provided that no part thereof extends more than 4 feet above the ground.~~
- ~~(b) Adjacent to great ponds, rivers and wetlands:~~
 - ~~(i) No accumulation of slash shall be left within 100 feet, horizontal distance, of the normal high water line or upland edge of a wetland; and~~
 - ~~(ii) Between 100 feet and 250 feet, horizontal distance, of the normal high water line or upland edge of a wetland, all slash larger than 3 inches in diameter must be disposed of in such a manner that no part thereof extends more than 4 feet above the ground.~~
- ~~(3) Timber harvesting and related activities must leave adequate tree cover and shall be conducted per one of the three options presented below so that a well distributed stand of trees is retained.~~
 - ~~(a) Option #1—40% Volume Removal, as follows:~~
 - ~~(i) Harvesting of no more than 40% of the total volume on each acre of trees 4.5 inches DBH or greater in any 10 year period is allowed. Volume may be considered to be equivalent to basal area;~~
 - ~~(ii) A well distributed stand of trees which is windfirm, and other vegetation including existing ground cover, must be maintained; and,~~
 - ~~(iii) Within 75 feet, horizontal distance, of the normal high water line of rivers, streams, and great ponds, and within 75 feet, horizontal distance, of the upland edge of a freshwater or coastal wetlands, there must be no cleared openings. At distances greater than 75 feet, horizontal distance, of the normal high water line of a river or great pond or upland edge of a wetland, timber harvesting and related activities must not create single cleared openings greater than 14,000 square feet in the forest canopy. Where such openings exceed 10,000 square feet, they must be at least 100 feet, horizontal distance, apart. Such cleared openings will be included in the calculation of total volume removal. Volume may be considered equivalent to basal area.~~
 - ~~(b) Option # 2 (60 square foot basal area retention), as follows:~~
 - ~~(i) The residual stand must contain an average basal area of at least 60 square feet per acre of woody vegetation greater than or equal to 1.0 inch DBH, of which 40 square feet per acre must be greater than or equal to 4.5 inches DBH;~~
 - ~~(ii) A well distributed stand of trees which is windfirm, and other vegetation including existing ground cover, must be maintained; and,~~
 - ~~(iii) Within 75 feet, horizontal distance, of the normal high water line of water bodies and within 75 feet, horizontal distance, of the upland edge of wetlands, there must be no cleared openings. At distances greater than 75 feet, horizontal distance, of the normal high water line of a river or great pond, or upland edge of a wetland, timber harvesting and related activities must not create single cleared openings greater than 14,000 square feet in the forest canopy. Where such openings exceed 10,000 square feet, they must be at least 100 feet, horizontal distance, apart. Such cleared openings will be included in the calculation of the average basal area. Volume may be considered equivalent to basal area.~~

- ~~(c) Option #3 (Outcome-based), which requires: an alternative method proposed in an application, signed by a Licensed Forester or certified wildlife professional, submitted by the landowner or designated agent to the State of Maine Department of Conservation's Bureau of Forestry (Bureau) for review and approval, which provides equal or better protection of the shoreland area than this rule.~~

~~Landowners must designate on the Forest Operations Notification form required by 12 M.R.S.A. chapter 805, subchapter 5 which option they choose to use. If landowners choose Option #1 or Option #2, compliance will be determined solely on the criteria for the option chosen. If landowners choose Option 3, timber harvesting and related activities may not begin until the Bureau has approved the alternative method.~~

~~The Bureau of Forestry may verify that adequate tree cover and a well-distributed stand of trees is retained through a field procedure that uses sample plots that are located randomly or systematically to provide a fair representation of the harvest area.~~

- ~~(4) Skid trails, yards, and equipment operation. This requirement applies to the construction, maintenance, and use of skid trails and yards in shoreland areas.~~

- ~~(a) Equipment used in timber harvesting and related activities shall not use river, stream or tributary stream channels as travel routes except when surface waters are frozen and snow covered, and the activity will not result in any ground disturbance.~~

- ~~(b) Skid trails and yards must be designed and constructed to prevent sediment and concentrated water runoff from entering a water body, tributary stream, or wetland. Upon termination of their use, skid trails and yards must be stabilized.~~

- ~~(c) Setbacks:~~

- ~~(i) Equipment must be operated to avoid the exposure of mineral soil within 25 feet, horizontal distance, of any water body, tributary stream, or wetland. On slopes of 10% or greater, the shoreline setback for equipment operation must be increased by 20 feet, horizontal distance, plus an additional 10 feet, horizontal distance, for each 5% increase in slope above 10%. Where slopes fall away from the resource, no increase in the 25-foot shoreline setback is required.~~

- ~~(ii) Where such shoreline setbacks are impracticable, appropriate techniques shall be used to avoid sedimentation of the water body, tributary stream or wetland. Such techniques may include the installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed to avoid sedimentation of the water body, tributary stream, or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.~~

- ~~(5) Land Management Roads. Land management roads, including approaches to crossings of water bodies, tributary stream channels, and freshwater wetlands, ditches and other related structures, must be designed, constructed, and maintained to prevent sediment and concentrated water runoff from directly entering the water body, tributary stream or wetland. Surface water on or adjacent to water crossing approaches must be diverted through vegetative filter strips to avoid sedimentation of the watercourse or wetland. Because roadside ditches may not extend to the resource being crossed, vegetative filter strips must be established in accordance with the shoreline setback requirements in Section 410.13-1(7) of this rule.~~

- ~~(a) Land management roads and associated ditches, excavation, and fill must be set back at least:
 - ~~(i) 100 feet, horizontal distance, from the normal high water line of a great pond, river or freshwater or coastal wetland;~~
 - ~~(ii) 50 feet, horizontal distance, from the normal high water line of streams; and~~
 - ~~(iii) 25 feet, horizontal distance, from the normal high water line of tributary streams~~~~
- ~~(b) The minimum 100 foot shoreline setback specified in Section 410.13-1(5)(a)(i) above may be reduced to no less than 50 feet, horizontal distance, and the 50 foot shoreline setback specified in Section 410.13-1(5)(a)(ii) above may be reduced to no less than 25 feet, horizontal distance, if, prior to construction, the landowner or the landowner's designated agent demonstrates to the Planning Board's satisfaction that no reasonable alternative exists and 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 to avoid sedimentation of the water body, tributary stream or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.~~
- ~~(c) On slopes of 10% or greater, the land management road shoreline setback must be increased by at least 20 feet, horizontal distance, plus an additional 10 feet, horizontal distance, for each 5% increase in slope above 10%.~~
- ~~(d) New land management roads are not allowed in a Resource Protection District, unless, prior to construction, the landowner or the landowner's designated agent makes a clear demonstration to the Planning Board's satisfaction that no reasonable alternative route exists outside the shoreland zone, and that the new road must be set back as far as practicable from the normal high water line and screened from the river by existing vegetation.~~
- ~~(e) Ditches, culverts, bridges, dips, water turnouts and other water control installations associated with roads must be maintained on a regular basis to assure effective functioning. Drainage structures shall deliver a dispersed flow of water into an unscarified filter strip no less than the width indicated in the shoreline setback requirements in Section 410.13-1(7). Where such a filter strip is impracticable, appropriate techniques shall be used to avoid sedimentation of the water body, tributary stream, or wetland. Such techniques may include the installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed to avoid sedimentation of the water body, tributary stream, or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.~~
- ~~(f) Road closeout and discontinuance. Maintenance of the water control installations required in Section 410.13-1(5)(e) must continue until use of the road is discontinued and the road is put to bed by effective installation of water bars or other adequate road drainage structures at appropriate intervals, constructed to avoid surface water flowing over or under the water bar, and extending a sufficient distance beyond the traveled way so that water does not reenter the road surface.~~
- ~~(g) Upgrading existing roads. Extension or enlargement of presently existing roads must conform to the provisions of Section 410.13-1. Any nonconforming existing road may continue to exist and to be maintained, as long as the nonconforming conditions are not made more nonconforming.~~

- ~~(h) Exception. Extension or enlargement of presently existing roads need not conform to the shoreline setback requirements of Section 410.13-1(5)(a) if, prior to extension or enlargement, the landowner or the landowner's designated agent demonstrates to the Planning Board's satisfaction that no reasonable alternative exists and 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 to avoid sedimentation of the water body, tributary stream, or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.~~
- ~~(i) Additional measures. In addition to the foregoing minimum requirements, persons undertaking construction and maintenance of roads and river, stream and tributary stream crossings must take reasonable measures to avoid sedimentation of surface waters.~~
- ~~(6) Crossings of waterbodies. Crossings of rivers, streams, and tributary streams must allow for fish passage at all times of the year, must not impound water, and must allow for the maintenance of normal flows.~~
 - ~~(a) Determination of flow. Provided they are properly applied and used for the circumstances for which they are designed, methods including but not limited to the following are acceptable as a means of calculating the 10 year and 25 year frequency water flows and thereby determining water crossing sizes as required in Section 410.13-1: The United States Geological Survey (USGS) Methods; specifically: Hodgkins, G. 1999. Estimating the Magnitude of Peak Flows for Streams in Maine for Selected Recurrence Intervals. U.S. Geological Survey. Water Resources Investigations Report 99-4008. 45 pp.~~
 - ~~(b) Upgrading existing water crossings. Extension or enlargement of presently existing water crossings must conform to the provisions of Section 410.13-1. Any nonconforming existing water crossing may continue to exist and be maintained, as long as the nonconforming conditions are not made more nonconforming; however, any maintenance or repair work done below the normal high water line must conform to the provisions of Section 410.13-1.~~
 - ~~(c) Other Agency Permits. Any timber harvesting and related activities involving the design, construction, and maintenance of crossings on waterbodies other than a river, stream or tributary stream may require a permit from the Land Use Regulation Commission, the Department of Environmental Protection, or the US Army Corps of Engineers.~~
 - ~~(d) Any timber harvesting and related activities involving the design, construction, and maintenance of crossings of freshwater wetlands identified by the Department of Inland Fisheries and Wildlife as essential wildlife habitat require prior consultation with the Department of Inland Fisheries and Wildlife.~~
 - ~~(e) Notice to Bureau of Forestry. Written notice of all water crossing construction maintenance, alteration and replacement activities in shoreland areas must be given to the Bureau prior to the commencement of such activities. Such notice must contain all information required by the Bureau, including:

 - ~~(i) a map showing the location of all proposed permanent crossings;~~
 - ~~(ii) the GPS location of all proposed permanent crossings;~~
 - ~~(iii) for any temporary or permanent crossing that requires a permit from state or federal agencies, a copy of the approved permit or permits; and~~~~

- ~~(iv) a statement signed by the responsible party that all temporary and permanent crossings will be constructed, maintained, and closed out in accordance with the requirements of this Section.~~
- ~~(f) Water crossing standards. All crossings of rivers require a bridge or culvert sized according to the requirements of Section 410.13-16(g) below. Streams and tributary streams may be crossed using temporary structures that are not bridges or culverts provided:~~
- ~~(i) concentrated water runoff does not enter the stream or tributary stream;~~
 - ~~(ii) sedimentation of surface waters is reasonably avoided;~~
 - ~~(iii) there is no substantial disturbance of the bank, or stream or tributary stream channel;~~
 - ~~(iv) fish passage is not impeded; and,~~
 - ~~(v) water flow is not unreasonably impeded.~~
- ~~Subject to Section 410.13-1(6)(f)(i-v) above, skid trail crossings of streams and tributary streams when channels of such streams and tributary streams are frozen and snow covered or are composed of a hard surface which will not be eroded or otherwise damaged are not required to use permanent or temporary structures.~~
- ~~(g) Bridge and Culvert Sizing. For crossings of river, stream and tributary stream channels with a bridge or culvert, the following requirements apply:~~
- ~~(i) Bridges and culverts must be installed and maintained to provide an opening sufficient in size and structure to accommodate 10 year frequency water flows or with a cross sectional area at least equal to 2 ½ times the cross sectional area of the river, stream, or tributary stream channel.~~
 - ~~(ii) Temporary bridge and culvert sizes may be smaller than provided in Section 410.13-1(6)(g)(i) if techniques are effectively employed such that in the event of culvert or bridge failure, the natural course of water flow is maintained and sedimentation of the water body or tributary stream is avoided. Such crossing structures must be at least as wide as the channel and placed above the normal high water line. Techniques may include, but are not limited to, the effective use of any, a combination of, or all of the following:~~
 - ~~1. use of temporary skidder bridges;~~
 - ~~2. removing culverts prior to the onset of frozen ground conditions;~~
 - ~~3. using water bars in conjunction with culverts;~~
 - ~~4. using road dips in conjunction with culverts.~~
 - ~~(iii) Culverts utilized in river, stream and tributary stream crossings must:~~
 - ~~1. be installed at or below river, stream or tributary stream bed elevation;~~
 - ~~2. be seated on firm ground;~~
 - ~~3. have soil compacted at least halfway up the side of the culvert;~~
 - ~~4. be covered by soil to a minimum depth of 1 foot or according to the culvert manufacturer's specifications, whichever is greater; and~~

- ~~5. have a headwall at the inlet end which is adequately stabilized by riprap or other suitable means to reasonably avoid erosion of material around the culvert.~~
- ~~(iv) River, stream and tributary stream crossings allowed under Section 410.13-1, but located in flood hazard areas (i.e. A zones) as identified on a the Flood Insurance Rate Maps (FIRM) or Flood Hazard Boundary Maps (FHBM) for Ellsworth, must be designed and constructed under the stricter standards contained in the National Flood Insurance Program (NFIP) for Ellsworth. For example, a water crossing may be required to pass a 100-year flood event.~~
- ~~(v) Exception. Skid trail crossings of tributary streams within shoreland areas and wetlands adjacent to such streams may be undertaken in a manner not in conformity with the requirements of the foregoing subsections provided persons conducting such activities take reasonable measures to avoid the disruption of shoreline integrity, the occurrence of sedimentation of water, and the disturbance of stream banks, stream channels, shorelines, and soil lying within ponds and wetlands. If, despite such precautions, the disruption of shoreline integrity, sedimentation of water, or the disturbance of stream banks, stream channels, shorelines, and soil lying within ponds and wetlands occurs, such conditions must be corrected.~~
- ~~(h) Skid trail closeout. Upon completion of timber harvesting and related activities, or upon the expiration of a Forest Operations Notification, whichever is earlier, the following requirements apply:~~
- ~~(i) Bridges and culverts installed for river, stream and tributary stream crossings by skid trails must either be removed and areas of exposed soil stabilized, or upgraded to comply with the closeout standards for land management roads in Section 410.13-1(6)(i) below.~~
- ~~(ii) Water crossing structures that are not bridges or culverts must either be removed immediately following timber harvesting and related activities, or, if frozen into the river, stream or tributary stream bed or bank, as soon as practical after snowmelt.~~
- ~~(iii) River, stream and tributary stream channels, banks and approaches to crossings of water bodies and tributary streams must be immediately stabilized on completion of harvest, or if the ground is frozen and/or snow covered, as soon as practical after snowmelt. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.~~
- ~~(i) Land management road closeout. Maintenance of the water control features must continue until use of the road is discontinued and the road is put to bed by taking the following actions:~~
- ~~(i) Effective installation of water bars or other adequate road drainage structures at appropriate intervals, constructed to reasonably avoid surface water flowing over or under the water bar, and extending sufficient distance beyond the traveled way so that water does not reenter the road surface.~~
- ~~(ii) Water crossing structures must be appropriately sized or dismantled and removed in a manner that reasonably avoids sedimentation of the water body or tributary stream.~~
- ~~(iii) Any bridge or water crossing culvert in roads to be discontinued shall satisfy one of the following requirements:~~

- ~~1. it shall be designed to provide an opening sufficient in size and structure to accommodate 25 year frequency water flows;~~
- ~~2. it shall be designed to provide an opening with a cross-sectional area at least 3 ½ times the cross-sectional area of the river, stream or tributary stream channel; or~~
- ~~3. it shall be dismantled and removed in a fashion to reasonably avoid sedimentation of the river, stream or tributary stream.~~

~~If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.~~

~~(7) Slope Table~~

~~Filter strips, skid trail shoreline setbacks, and land management road shoreline setbacks must be maintained as specified in Section 410.13-1, but in no case shall be less than shown in the following table.~~

~~Average slope of land between exposed mineral soil and the shoreline (percent)~~	~~Width of strip between exposed mineral soil and shoreline (feet along surface of the ground)~~
~~0~~	~~25~~
~~10~~	~~45~~
~~20~~	~~65~~
~~30~~	~~85~~
~~40~~	~~105~~
~~50~~	~~125~~
~~60~~	~~145~~
	~~165~~

411.14 -Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting

- (1) Vegetation Cutting in the RP. In a Resource Protection District (RP) 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~~hazard trees, as described in Section 411.15.

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) Buffer Strip Preservation. Except in areas as described in Section 411.14(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 or a river, 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 square feet in the forest canopy (or other existing woody vegetation if a forested canopy is not present) as measured from the outer limits of the tree or shrub crown. However, a footpath not to exceed 6 feet in width as

measured between tree trunks and/or shrub stems is allowed provided that a cleared line of sight to the water through the buffer strip is not created.

- (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 ~~410411~~.14(2)(b) a "well-distributed stand of trees" adjacent to a great pond or a river or stream flowing to a great pond, shall be defined as maintaining a rating score of 24 or more in each 25-foot by 50-foot rectangular (1250 square feet) area as determined by the following rating system.

Diameter of Tree at 4 ½ feet Above Ground Level (inches)	Points
2 - < 4 in.	1
4 - < 8 in.	2
8 - < 12 in.	4
12 in. or greater	8

Adjacent to other water bodies, tributary streams, and wetlands, a "well-distributed stand of trees" is defined as maintaining a minimum rating score of 16 per 25-foot by 50-foot rectangular area.

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 Article;
- (iv) Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by this Article;
- (v) Where conditions permit, no more than 50% of the points on any 25-foot by 50-foot rectangular area may consist of trees greater than 12 inches in diameter.

For the purposes of Section ~~410411~~.14(2)(b) "other natural vegetation" is defined as retaining existing vegetation under 3 feet in height and other ground cover and retaining at least 5 saplings less than 2 inches in diameter at 4½ feet above ground level for each 25-foot by 50-foot rectangle area. If five saplings do not exist, no woody stems less than 2 inches in diameter can be removed until 5 saplings have been recruited into the plot.

Notwithstanding the above provisions, no more than 40% of the total volume of trees 4 inches or more in diameter, measured at 4 ½ feet above ground level may be removed in any 10-year period.

- (c) In order to protect water quality and wildlife habitat, existing vegetation under 3 feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered, or removed, except to provide for a footpath or other permitted uses as described in Section ~~410411~~.14 paragraphs (2) and (2)(a) above.

- (d) Pruning of tree branches, on the bottom 1/3 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 in accordance with Section 411.17, unless existing new tree growth is present.

(f) In order to maintain the vegetation in the shoreline buffer, clearing or removal of vegetation for allowed activities, including associated construction and related equipment operation, within or outside the shoreline buffer, must comply with the requirements of Section 411.14(2) ("Buffer Strip Preservation").

~~Section 410.14(2) does 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)

Selective Cutting. At distances greater than 100 feet, horizontal distance, from a great pond or a river, 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 10-year period, selective cutting of not more than 40% of the volume of trees 4 inches or more in diameter, measured 4½ feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the 40% calculation. For the purposes of these standards volume may be considered to be equivalent to basal area.

In no event shall cleared openings for any purpose, including but not limited to, principal and accessory structures, driveways, lawns and sewage disposal areas, exceed in the aggregate, 25% of the lot area within the shoreland zone or 10,000 square feet, whichever is greater, including land previously cleared. This provision shall not apply to the General Development Districts.

- 4) Cleared Openings. Legally existing nonconforming cleared openings may be maintained, but shall not be enlarged, except as allowed by this Article.
- (5) Reverted Openings. Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of Section ~~410~~411.14.

411.15 Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting

(1) Hazard trees in the shoreland zone may be removed without a permit after consultation with the CEO if the following requirements are met:

(a) Within the shoreline buffer, if the removal of a hazard tree results in a cleared opening in the tree canopy greater than 250 square feet, replacement with native tree species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least 2 inches in diameter, measured at 4.5 feet above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least 4 feet in height, and be no less than 2 inches in diameter. Stumps may not be removed.

(b) Outside of the shoreline buffer, when the removal of hazard trees exceeds 40 percent of the volume of trees 4 inches or more in diameter, measured at 4.5 feet above ground level in any 10 year period, and/or results in cleared openings exceeding 25 percent of the lot area within the shoreland zone, or 10,000 square feet, whichever is greater, replacement with native tree species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least 2 inches in diameter, measured at 4.5 feet above the ground level. If new growth is not

present, then replacement trees shall consist of native species and be at least 2 inches in diameter, measured at 4.5 feet above the ground level.

- (c) The removal of standing dead trees, resulting from natural causes, is permissible without the need for replanting or a permit, as long as the removal does not result in the creation of new lawn areas, or other permanently cleared areas, and stumps are not removed. For the purposes of this provision dead trees are those trees that contain no foliage during the growing season.
- (d) The CEO may require the property owner to submit an evaluation from a licensed forester or arborist before any hazard tree can be removed within the shoreland zone.
- (e) The CEO may require more than a one-for-one replacement for hazard trees removed that exceed 8 inches in diameter measured at 4.5 feet above the ground level.
- (2) Storm-damaged trees in the shoreland zone may be removed without a permit after consultation with the CEO if the following requirements are met:
 - (a) Within the shoreline buffer, when the removal of storm-damaged trees results in a cleared opening in the tree canopy greater than 250 square feet, replanting is not required, but the area shall be required to naturally revegetate, and the following requirements must be met:
 - (i) The area from which a storm-damaged tree is removed does not result in new lawn areas, or other permanently cleared areas;
 - (ii) Stumps from the storm-damaged trees may not be removed;
 - (iii) Limbs damaged from a storm event may be pruned even if they extend beyond the bottom one-third (1/3) of the tree; and
 - (iv) If after one growing season, no natural regeneration or regrowth is present, replanting of native tree seedlings or saplings is required at a density of one seedling per every 80 square feet of lost canopy.
 - (b) Outside of the shoreline buffer, if the removal of storm damaged trees exceeds 40% of the volume of trees 4 inches or more in diameter, measured at 4.5 feet above the ground level in any 10 year period, or results, in the aggregate, in cleared openings exceeding 25% of the lot area within the shoreland zone or 10,000 square feet, whichever is greater, and no natural regeneration occurs within one growing season, then native tree seedlings or saplings shall be replanted on a one-for-one basis.

411.16 Exemptions to Clearing and Vegetation Removal Requirements

The following activities are exempt from the clearing and vegetation removal standards set forth in Section 411.14, provided that all other applicable requirements of this chapter are complied with, and the removal of vegetation is limited to that which is necessary:

- (1) The removal of vegetation that occurs at least once every 2 years for the maintenance of legally existing areas that do not comply with the vegetation standards in this chapter, such as but not limited to cleared openings in the canopy or fields. Such areas shall not be enlarged, except as allowed by this section. If any of these areas, due to lack of removal of vegetation every 2 years, reverts back to primarily woody vegetation, the requirements of Section 411.14 apply;
- (2) The removal of vegetation from the location of allowed structures or allowed uses, when the shoreline setback requirements of Section 410.3 are not applicable;

- (3) The removal of vegetation from the location of public swimming areas associated with an allowed public recreational facility;
- (4) The removal of vegetation associated with allowed agricultural uses, provided best management practices are utilized, and provided all requirements of Section 411.12 are complied with;
- (5) The removal of vegetation associated with brownfields or voluntary response action program (VRAP) projects provided that the removal of vegetation is necessary for remediation activities to clean-up contamination on a site in a general development district, commercial fisheries and maritime activities district or other equivalent zoning district approved by the Commissioner that is part of a state or federal brownfields program or a voluntary response action program pursuant 38 M.R.S.A § 343-E, and that is located along:
 - (a) A coastal wetland; or
 - (b) A river that does not flow to a great pond classified as GPA pursuant to 38 M.R.S.A § 465-A.
- (6) The removal of non-native invasive vegetation species, provided the following minimum requirements are met:
 - (a) If removal of vegetation occurs via wheeled or tracked motorized equipment, the wheeled or tracked motorized equipment is operated and stored at least twenty-five (25) feet, horizontal distance, from the shoreline, except that wheeled or tracked equipment may be operated or stored on existing structural surfaces, such as pavement or gravel;
 - (b) Removal of vegetation within 25 feet, horizontal distance, from the shoreline occurs via hand tools; and
 - (c) If applicable clearing and vegetation removal standards are exceeded due to the removal of non-native invasive species vegetation, the area shall be revegetated with native species to achieve compliance.
- (7) The removal of vegetation associated with emergency response activities conducted by the Department, the U.S. Environmental Protection Agency, the U.S. Coast Guard, and their agents.

411.17 Revegetation Requirements

When revegetation is required in response to violations of the vegetation standards set forth in Section 411.14, to address the removal of non- native invasive species of vegetation, or as a mechanism to allow for development that may otherwise not be permissible due to the vegetation standards, including removal of vegetation in conjunction with a shoreline stabilization project, the revegetation must comply with the following requirements.

- (1) The property owner must submit a revegetation plan, prepared with and signed by a qualified professional, that describes revegetation activities and maintenance. The plan must include a scaled site plan, depicting where vegetation was, or is to be removed, where existing vegetation is to remain, and where vegetation is to be planted, including a list of all vegetation to be planted.
- (2) Revegetation must occur along the same segment of shoreline and in the same area where vegetation was removed and at a density comparable to the pre-existing vegetation, except where a shoreline stabilization activity does not allow revegetation to occur in the same area and at a density comparable to the pre-existing vegetation, in which case revegetation must

occur along the same segment of shoreline and as close as possible to the area where vegetation was removed:

- (3) If part of a permitted activity, revegetation shall occur before the expiration of the permit. If the activity or revegetation is not completed before the expiration of the permit, a new revegetation plan shall be submitted with any renewal or new permit application.
- (4) Revegetation activities must meet the following requirements for trees and saplings:
 - (a) All trees and saplings removed must be replaced with native noninvasive species;
 - (b) Replacement vegetation must at a minimum consist of saplings;
 - (c) If more than 3 trees or saplings are planted, then at least 3 different species shall be used;
 - (d) No one species shall make up 50% or more of the number of trees and saplings planted;
 - (e) If revegetation is required for a shoreline stabilization project, and it is not possible to plant trees and saplings in the same area where trees or saplings were removed, then trees or sapling must be planted in a location that effectively reestablishes the screening between the shoreline and structures; and
 - (f) A survival rate of at least 80% of planted trees or saplings is required for a minimum 5-year period.
- (5) Revegetation activities must meet the following requirements for woody vegetation and other vegetation under 3 feet in height:
 - (a) All woody vegetation and vegetation under 3 feet in height must be replaced with native noninvasive species of woody vegetation and vegetation under 3 feet in height as applicable;
 - (b) Woody vegetation and vegetation under 3 feet in height shall be planted in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;
 - (c) If more than 3 woody vegetation plants are to be planted, then at least 3 different species shall be planted;
 - (d) No one species shall make up 50% or more of the number of planted woody vegetation plants; and
 - (e) Survival of planted woody vegetation and vegetation under three feet in height must be sufficient to remain in compliance with the standards contained within this chapter for minimum of 5 years.
- (6) Revegetation activities must meet the following requirements for ground vegetation and ground cover:
 - (a) All ground vegetation and ground cover removed must be replaced with native herbaceous vegetation, in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;
 - (b) Where necessary due to a lack of sufficient ground cover, an area must be supplemented with a minimum 4-inch depth of leaf mulch and/or bark mulch to prevent erosion and provide for effective infiltration of stormwater; and

(c) Survival and functionality of ground vegetation and ground cover must be sufficient to remain in compliance with the standards contained within this chapter for minimum of 5 years.

410411.15 Erosion and Sedimentation Control

Acceptable measures shall be those specified in the Maine Erosion and Sediment Control Best Management Practices Manual (latest revision) by the DEP Bureau of Land and Water Quality and the following:

- A. Applicability. 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:
 - (i) Mulching and revegetation of disturbed soil.
 - (ii) Temporary runoff control features such as hay bales, silt fencing or diversion ditches.
 - (iii) Permanent stabilization structures such as retaining walls or riprap.
- B. Design Provisions. 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.
- C. All Construction Phases. 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.
- D. Stabilization. Any exposed ground area shall be temporarily or permanently stabilized within one (1) week from the time it was last actively worked, by use of riprap, sod, seed, and mulch, or other effective measures. In all cases permanent stabilization shall occur within 9 months of the initial date of exposure. In addition:
 - (i) Where mulch is used, it shall be applied at a rate of at least one (1) 30-pound bale per 300 square feet and shall be maintained until a catch of vegetation is established.
 - (ii) Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
 - (iii) 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.
- E. Drainageways. Natural and man-made 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.

411.16 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.

411.17 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.

411.18 Archaeological Site. Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on, or eligible to be listed on the National Register of Historic Places, as determined by the permitting authority, shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least twenty (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.

411.19 Phosphorus Control. Refer to ~~City of Ellsworth Code of Ordinance~~, Chapter 56, ~~Unified Development Ordinance~~, Article 10~~2~~, Stormwater Management Design and Construction Standards.

411.12 SHORELAND ZONING DEFINITIONS.

Accessway - Any public or private street, right-of way, or driveway used to enter or leave a public or private street or adjacent land using an on-road vehicle. All streets are considered accessways but not all accessways are considered streets. Within the Shoreland Zone, an accessway also includes 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 residential driveway less than 500 feet in length.

Accessory Use or Structure - A subordinate use or structure customarily incidental to and located on the same lot as the principal use or structure, such as a garage, workshop, or the like. Accessory uses, in the aggregate, shall not subordinate the principal use or structure on a 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.

Aggrieved ~~p~~Party - ~~A~~an owner of land whose property is directly or indirectly affected by the granting or denial of a permit or variance under this Article; 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.

Agricultural, Activity - Farming, including plowing, tillage, cropping, installation of best management practices, seeding, cultivating, or harvesting for the production of food and fiber products (except timber harvesting); grazing or raising of livestock (except in feedlot); aquaculture; sod productions; orchards.

Agricultural, Gardening – Consists of agricultural activities involving tillage of soil of 40,000 square feet or less.

Agricultural, Feedlot - A lot, structure, building, or confined area used intensively for the keeping of farm animals, including but not limited to, of bovine, equine, swine, ovine, or sheep species in close quarter for the purpose of fattening for market or slaughter and where animal waste may accumulate. Does not include a barn or similar structure.

Agricultural Processing, Major – Agricultural activities involving a variety of operations on crops or livestock which may generate dust, noise, odors, pollutants, or visual impacts that could adversely affect adjacent properties. These uses include but are not limited to slaughterhouse, mills, refineries, canneries, and milk processing plants.

Agriculture Processing, Minor - Agricultural activities not regulated as major agricultural processing which involve a variety of operations on crops after harvest to prepare them for market, or further processing and packaging at a distance from the agricultural area. Included activities are cleaning, milling, pulping, drying, roasting, storing, packing, selling and other similar activities.

Area of Special Flood Hazard – Land in a floodplain having a 1% or greater chance of flooding in any given year, as identified in the effective federal flood insurance study and corresponding flood insurance rate maps.

Aquaculture - The growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species.

Basal Area - The area of cross-section of a tree stem at 4 1/2 feet above ground level and inclusive of bark.

Basement - Any portion of a structure with a floor-to-ceiling height of 6 feet or more and having more than 50% of its volume below the existing ground level.

Boat Launching Facility - A facility designed primarily for the launching and landing of watercraft, and which may include an access ramp, docking area, and parking spaces for vehicles and trailers.

~~***Bureau*** – State of Maine Department of Conservation's Bureau of Forestry~~

Campground - A business, public or private establishment operated as a recreational site for tents, camper, trailer, and travel trailer or other forms of temporary living shelter that can accommodate two or more parties.

Campsite, Individual ~~***Private***~~ – Private land for exclusive personal use not associated with a campground, but which is developed for repeated camping by only one group not to exceed 10 individuals and which involves site improvements which may include but not be limited to a gravel pad, parking area, fire place, or tent platform.

Canopy – The more or less continuous cover formed by tree crowns in a wooded area.

Commercial Use - 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.

Conservation Plan - A customized document that outlines the use and best management practices of the natural resources on public or private lands. Typically, the plan will include land use maps, soil information, inventory of resources, engineering notes, and other supporting information.

~~***Cross-sectional area*** – 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.~~

~~***DBH*** – the diameter of a standing tree measured 4.5 feet from ground level~~

Development - Uses including but not limited to the construction of a new building or other structures on a lot or below the shoreline or in a wetland, the relocation of an existing building on another lot, or the use of open land for a new use; any man-made change to improved or unimproved real estate, including but not limited to parking, temporary uses, clearing of land or vegetation, mining, dredging, filling, grading, paving, excavation, or drilling operations; it includes a building, a development site under the same ownership, a consolidated development, and phased development.

Dimensional Requirements - Numerical standards relating to spatial relationships including but not limited to setback, lot area, shore frontage and height.

Disability - 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.

~~**Disruption of shoreline integrity** — 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.~~

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

Emergency Operations - Operations conducted for the public health, safety or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings, property and livestock from the threat of destruction or injury.

Essential Services, Distribution - Small-scale facilities serving a local area, including power lines, water and sewer lines, storm drainage facilities, transformers, pump stations and hydrants, switching boxes, and other buildings normally, but not always, found in a street right-of-way to serve adjacent properties.

Essential Services, Facilities - A building or other structure used or intended to be used by public or private utilities, including but not limited to gas tank and other storage facilities; water or sewer storage facilities; compost facility; and electrical transmission and distributions substations.

Essential Services, Transmission - Large-scale facilities serving the entire city or region such as power transmission lines, natural gas transmission lines, water storage tanks and reservoirs, major water transmission lines or sewer collectors and interceptors, solid waste disposal or processing facilities, excluding landfill, sewage or wastewater treatment plants, and generating facilities.

Expansion of a Structure — An increase in the floor area or volume footprint or height of a structure, including all extensions such as, but not limited to: attached decks, garages, porches and greenhouses.

Expansion of Use - The addition of one or more months to a use's operating season; or the use of more floor area footprint of a structure or ground area devoted to a particular use.

Family - One (1) or more persons occupying a dwelling unit premises and living as a single non-profit housekeeping unit whether or not related to each other by birth, marriage or adoption, but not to consist of more than five (5) unrelated persons.

Floodway - The channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation by more than one foot in height.

Floor Area - 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.

~~**Forest management activities** – 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 accessways and land management roads.~~

~~**Forest Stand** – 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.~~

Footprint – The entire area of ground covered by the structures on a premises, including cantilevered or similar overhanging extensions, as well as unenclosed structures, such as patios and decks.

Foundation - 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.

Frontage, Shore - The length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline.

Functionally ~~Water-dependent~~ Uses - 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 cannot be located away from these waters. The uses include, but are not limited to dams, 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 cannot reasonably be located or operated at an inland site; and uses that primarily provide general public access to coastal or inland waters. Recreational boat storage buildings are not considered to be a functionally water-dependent use.

Great Pond - 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. For the purposes of this Article, Ellsworth's Great Ponds are: Branch Lake, Graham Lake, Green Lake, Jesse Bog, Little Duck Pond, Little Rocky Pond, Lower Patten Pond, Upper Patten Pond, Wormwood Pond, and Leonard Lake.

Ground Cover – Small plants, fallen leaves, needles and twigs, and the partially decayed organic matter of the forest floor.

~~**Harvest Area** – the area where timber harvesting and related activities, including the cutting of trees, skidding, yarding, and associated accessways and land management roads construction take place. The area affected by a harvest encompasses the area within the outer boundaries of these activities, excepting unharvested areas greater than 10 acres within the area affected by a harvest.~~

Hazard tree – A tree with a structural defect, combination of defects, or disease resulting in a structural defect that under the normal range of environmental conditions at the site exhibits a high probability of failure and loss of a major structural component of the tree in a manner that will strike a target. A normal range of environmental conditions does not include meteorological anomalies, such as, but not limited to: hurricanes; hurricane-force winds; tornados; microbursts; or significant ice storm events. Hazard trees also include those trees that pose a serious and imminent risk to bank stability. A target is the area where personal injury or property damage could occur if the tree or a portion of the tree fails. Targets include roads,

driveways, parking areas, structures, campsites, and any other developed area where people frequently gather and linger.

Height of a ~~s~~Structure —

- (A) With respect to existing principal or accessory structures, including legally existing nonconforming structures, located within an area of special flood hazard that have been or are proposed to be relocated, reconstructed, replaced, or elevated to be consistent with the minimum elevation required by Chapter 56, Article 33 (Floodplain Management), the vertical distance between the bottom of the sill of the structure to the highest point of the structure, excluding chimneys, steeples, antennas and similar appurtenances that have no floor area; and
- (B) With respect to new principal or accessory structures and to existing principal or accessory structures other than those described in paragraph A, including legally existing nonconforming structures, 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 that have no floor area.

~~**High and moderate value waterfowl and wading bird habitat** — High and moderate value waterfowl and wading bird habitats are significant wildlife habitats. Waterfowl are members of the family Anatidae including but not limited to brant, wild ducks, geese, and swans. Wading birds include but are not limited to herons, glossy ibis, bitterns, rails, coots, common moorhens, and sandhill cranes. High and moderate value waterfowl and wading bird habitats are depicted on a GIS data layer maintained by the Maine Department of Inland Fisheries and Wildlife (IF&W) and available from either IF&W or the Maine Department of Environmental Protection. The IF&W rating procedure and list of waterfowl and wading bird species was created December 22, 1993, updated September 1, 2005, and is available at IF&W offices.~~

Home Occupation - ~~A~~a n occupation or profession which is customarily conducted on or in a residential structure or property and which is (1) clearly incidental to and compatible with the residential use of the property and surrounding residential uses; and (2) which employs no more than two (2) persons other than family members residing in the home.

Increase in ~~n~~Nonconformity of a ~~S~~tructure - ~~A~~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 shoreline 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 shoreline setback requirement if the expansion extends no further into the required shoreline 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.

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

Institutional - ~~A~~a non-profit or quasi-public use, or institution such as a church, library, public or private school, hospital, or City-owned or -operated building, structure or land used for public purposes.

~~**Land Management Road** — 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.~~

~~**Licensed Forester** – a forester licensed under 32 M.R.S.A. Chapter 76.~~

Lot ~~a~~Area - The area of land enclosed within the boundary lines of a lot, minus land below the normal high-water line of a water body or upland edge of a wetland and areas beneath accessways serving more than two lots.

Lot, ~~M~~inimum ~~w~~Width, ~~S~~horeland – ~~T~~he closest distance between the side lot lines of a lot. When only two lot lines extend into the shoreland zone, both lot lines shall be considered to be side lot lines.

Lot Coverage, Shoreland - The total footprint area of all structures, parking lots and other nonvegetated surfaces, within the shoreland zone for the lot or for a portion thereof that is located within the shoreland zone, including land area previously developed.

Marina - A use of waterfront land involved in the operation of a marina including structures and activities normally integral to the operation of a marina, such as servicing, fueling, pumping-out, chartering, launching, and dry-storage and boating equipment.

Market ~~v~~Value - ~~t~~he 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.

Mineral ~~E~~xploration - ~~H~~and sampling, test boring, or other methods of determining the nature or extent of mineral resources which create minimal disturbance to the land and which include reasonable measures to restore the land to its original condition.

Mineral ~~E~~xtraction - ~~A~~ny 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.

Minimum Lot Width - the closest distance between the side lot lines of a lot. When only two lot lines extend into the shoreland zone, both lot lines shall be considered to be side lot lines.

Multi-unit ~~R~~esidential - ~~A~~a residential structure containing three (3) or more residential dwelling units.

Native – ~~I~~ndigenous to the local forests.

Non-conforming ~~C~~ondition – non-conforming lot, structure or use which is allowed solely because it was in lawful existence at the time this Article or subsequent amendment took effect.

Non-conforming ~~L~~ot - a single lot of record which, at the effective date of adoption or amendment of this Article, does not meet the area, frontage, or width requirements of the district in which it is located.

Non-conforming ~~S~~tructure - 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 Article or subsequent amendments took effect.

Non-conforming ~~U~~se - use of buildings, structures, premises, land or parts thereof which is not allowed 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 Article or subsequent amendments took effect.

Normal ~~h~~High-water ~~L~~ine (non-tidal waters) - 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 non-forested 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 highwater are considered part of the river or great pond.

Parking Lot – An open area other than an accessway used for the parking of two or more vehicles, excluding an area associated with a residential driveway serving no more than two residential dwelling units.

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

Piers, docks, wharves, bridges and other structures and uses extending over or below the normal high-water line or within a wetland. Temporary: Structures which remain in or over the water for less than seven (7) months in any period of 12 consecutive months. Permanent: Structures which remain in or over the water for seven (7) months or more in any period of 12 consecutive months.

Principal ~~s~~Structure - ~~a~~A building other than one which is used for purposes wholly incidental or accessory to the use of another building or use on the same premises.

Principal ~~u~~Use - ~~a~~A use other than one which is wholly incidental or accessory to another use on the same premises.

Processing, ~~F~~fish ~~w~~Wholesale - The loading, unloading, packing, processing, and packaging of edible fish and other seafood products but not including processing of fish wastes or fish by-products.

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

Recent ~~F~~floodplain ~~S~~soils - ~~t~~The following soil series as described and identified by the National Cooperative Soil Survey: Fryeburg, Hadley, Limerick, Lovewell, Medomak, Ondawa, Alluvia, Cornish, Charles, Podunk, Rumney, Saco, Suncook, Sunday, and Winooski.

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

Recreational ~~v~~Vehicle - 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.

Replacement ~~S~~ystem - ~~a~~A system intended to replace: (1) an existing system which is either malfunctioning or being upgraded with no significant change of design flow or use of the structure, or (2) any existing overboard wastewater discharge.

Residential ~~D~~dwelling ~~U~~unit - 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.

~~Residual basal area—the average of the basal area of trees remaining on a harvested site.~~

~~Residual Stand—a stand of trees remaining in the forest following timber harvesting and related activities~~

Riprap - ~~r~~Rocks, irregularly shaped, and at least six (6) inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes of two (2) units horizontal to one (1) unit vertical or less.

River - ~~a~~ free-flowing body of water including its associated floodplain wetlands. For the purposes of this Article, ~~Ellsworth's the City's~~ only ~~R~~river is the Union River from the Graham Lake dam to Leonard Lake. The Union River below the Leonard Lake dam is a tidal estuary considered a coastal wetland.

Road - See Accessway.

Salt Marsh - Areas of coastal wetland (most often along coastal bays) that 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 - 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 threesquare occurs in fresher areas.

Service ~~D~~rop - ~~a~~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 an accessway right-of-way; and (b-) the total length of the extension is less than 1,000 feet; and (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.

Setback - 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, accessway, parking space or other regulated object or area.

Setback, ~~S~~shoreline - ~~T~~he 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, accessway, parking lot or other regulated object or area.

Setback from a ~~P~~roperty ~~L~~ine - The horizontal distance from a side or rear property line to the nearest part of a structure or other regulated object or area.

Setback from the ~~E~~dge of a ~~R~~ight-of-way - The horizontal distance from a right of way to the nearest part of a structure or other regulated object or area.

Shore Frontage - See "Frontage, Shore."

Shoreland ~~Z~~one - ~~T~~he 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, ~~as defined, and/or streams mapped on the Official Land Use Map.~~

Shoreline - ~~T~~he normal high-water line, or upland edge of a freshwater or coastal wetland.

~~Skid Road or Skid Trail~~ - ~~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~~ - ~~the residue, e.g., treetops and branches, left on the ground after a timber harvest.~~

Special Use - A governmental or public service use providing public health, safety, comfort, convenience, or the general welfare for the general benefit of the citizens funded in whole or in part by the City ~~of Ellsworth~~ or a quasi-municipal organization, including by way of illustration, municipal buildings, schools,

public parks and recreational facilities, cemetery, public art, museum, interpretation center, public parking, fire stations, ambulance services, highway garage, distribution and transmission of essential services ; essential facilities, hospital, Federal Aviation Administration –designated commercial service airport, heliport.

Stream - ~~A~~ free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5 minute series topographic map, or a perennial or intermittent stream shown as such on the most recent edition of a United States Geological Survey 7.5 minute series topographic map and/or mapped on the Official Land Use Map, to the point where the body of water becomes a river or flows to another water body or wetland within the shoreland area.

Structure - Anything temporarily or permanently located, built, constructed, or erected for the support, shelter, or enclosure of persons, animals, goods, or property of any kind, ~~together with or~~ anything constructed or erected with a fixed location on or in the ground. The term includes structures temporarily or permanently located, such as decks, ~~and~~ patios, and satellite dishes. The term does not include fences; poles and wiring and other aerial equipment normally associated with service drops, including guy wires and guy anchors; subsurface wastewater disposal systems as defined in 30-A M.R.S.A. § 4201(5); geothermal heat exchange wells as defined in 32 M.R.S.A. § 4700-E(3-C); wells or water wells as defined in 32 M.R.S.A. § 4700-E(8); or ~~Only structures covering more than 10 square feet must comply with the requirements of zoning districts, exclusive of shoreland zoning districts, where all structures, regardless of size, must comply with the shoreland zoning requirements.~~

~~The following are not considered structures: fences, poles, wiring and other aerial equipment normally associated with service drops as well as guying and guy anchors, a retractable awnings or shades used solely to shade a door or window.~~

The following are not considered structures outside of shoreland zoning districts: parking lots, driveways, an awning or tent for a temporary event and backyard tents used for sleeping.

Substantial ~~S~~start - ~~ce~~ompletion of 30 percent of a permitted structure or use measured as a percentage of estimated total cost.

Subsurface ~~S~~sewage ~~D~~disposal ~~S~~system – ~~A~~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 ~~S~~slope - ~~a~~A change in elevation where the referenced percent grade is substantially maintained or exceeded throughout the measured area.

Tidal ~~W~~waters –~~a~~All waters affected by tidal action during the highest annual tide.

Timber ~~H~~arvesting - ~~T~~he 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 (2) acres within the shoreland zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to Section ~~410411~~.14, *Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting*.

~~Timber harvesting and related activities — timber harvesting, the construction and maintenance of accessways and land management roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting.~~

Tree – A woody perennial plant with a well-defined trunk(s) at least 2 inches in diameter at 4.5 feet above the ground, with a more or less definite crown, and reaching a height of at least 10 feet at maturity.

Tributary Stream – ~~means a~~ 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 Article~~, and only applies to that portion of the tributary stream located within the shoreland zone of the receiving water body or wetland.

Upland Edge of a Wetland - 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 highest annual 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 6 meters (approximately 20 feet) tall or taller.

Vegetation - All live trees, shrubs, and other plants including without limitation, trees both over and under 4 inches in diameter, measured at 4½-5 feet above ground level.

Velocity Zone - 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.

Volume of a Structure - 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.

Water Body - Any great pond, river or stream.

Water Crossing - 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 accessways, 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.

Wetland - A freshwater or coastal wetland.

Wetland, Forested - A freshwater wetland dominated by woody vegetation that is six (6) meters tall (approximately 20 feet) or taller.

Wetland, Freshwater - Freshwater swamps, marshes, bogs and similar areas, other than forested wetlands, which are: 1) Of ten or more contiguous acres; or of less than 10 contiguous acres and adjacent to a surface water body, excluding any river, stream, such that in a natural state, the combined surface area is in excess of 10 acres; and 2) Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils. Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition

Wetland, Coastal - a 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 that 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.

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

Woody Vegetation - Live trees or woody, non-herbaceous shrubs.

ARTICLE 6 SITE DEVELOPMENT PLAN REVIEW

601 PURPOSES

In addition to the general purposes of the City Code set forth in Chapter 1, Article 2, Section 1, the purposes of this Article 6 are to (a) provide an adequate level of review for projects of greater scope and magnitude than limited scope projects; (b) prevent undue adverse impact upon the natural and man-made environment; the present and future facilities and services of the City; the abutters, the neighborhood, and the community; and (c) sustain the comfort, health, and contentment of residents.

602 APPLICABILITY

Unless a proposed activity is expressly identified as not requiring a permit in Article 1, Section 103, site development plan approval issued by the CEO or the Planning Board pursuant to this Article 6 is required for all non-residential development, including:

- A. Erecting, altering, improving, renovating, enlarging, moving (including removing from, moving onto, or moving within a lot), or demolishing a structure, or any part of a structure.
- B. Establishing, changing, or expanding a land use, and any structures associated with or accessory to such use, which is identified as:
 - 1. Allowed in the Table of Use Regulations in Section 307; or
 - 2. Allowed with a permit issued by the CEO, allowed with a permit issued by the LPI, or allowed with Planning Board approval in the Table of Land Uses for the Shoreland Zone in Section 409 (Shoreland Zoning).
- C. Renewing a discontinued nonconforming use.
- D. In addition, site development plan approval is required for the division of a new or existing structure so as to create three or more dwelling units. The Planning Board hereby determines that this Article 6 meets the requirements of 30-A M.R.S.A. § 4402(6)(A) and therefore such development is exempt from the requirements of Article 7 (Subdivision Review).

STATE LAW REFERENCE—30-A M.R.S.A. § 4402(6) (DIVISION OF NEW OR EXISTING STRUCTURES).

603 ADMINISTRATION

This Article 6 is administered by the CEO and the Planning Board.

604 CLASSIFICATION OF SITE DEVELOPMENT PLAN REVIEW APPLICATIONS

The CEO shall classify site development plan review applications as a minor use or a major use based on the following general criteria:

- 1. **Minor Use Site Development Plan Review.** This level of review comprises those projects that require a higher level of scrutiny than a Limited Scope Project but, by virtue of their smaller size and lack of complexity, are not likely to generate significant public interest. Minor Use Site Development Plan reviews are conducted by the CEO, and do not require a public hearing. Without limiting the foregoing, the following projects shall be classified as a minor use:
 - A. New construction or expansion of gross non-residential floor area of less than 5,000 square feet in any five-year period.
 - B. The creation of impervious area 10,000 square feet or greater, and less than 40,000 square feet of gross non-residential floor area.

- C. A change of use within an existing building or structure of less than 20,000 square feet.
- D. A project not requiring a MaineDOT traffic movement permit or a modification or change to an existing MaineDOT traffic movement permit.
- E. Any soil disturbance, extraction industries, commercial earth moving and mining activities affecting an area 20,000 square feet or greater, and less than 40,000 square feet.
- F. All non-residential projects located within the Commerce Park zoning district regardless of size.
- G. The creation of three or four dwelling units within a single structure on a single tract of land.
- H. The creation of three or four dwelling units in multiple structures on a single tract of land.

STATE LAW REFERENCE—30-A M.R.S.A. § 4364-A(5-A) (RESIDENTIAL AREAS, GENERALLY; UP TO 4 DWELLING UNITS ALLOWED—PLANNING BOARD APPROVAL NOT REQUIRED).

2. **Major Use Site Development Plan Review.** This level of review is for uses that, by virtue of their size, uniqueness, complexity, or other factors, have a significant impact on the physical, social, or economic environment because of stormwater, traffic, erosion, dust, phosphorus loading, sediments, lighting, or other factors, and are likely to generate significant public interest. Major Use Site Development Plan reviews are conducted by the Planning Board. The CEO may also classify a minor use site development plan as a major use site development plan when the use is categorized as a high pollutant land uses impacts for the same reasons as above described. The CEO shall classify as a major use site development all projects involving the consumption, generation, or handling of hazardous wastes as defined in 38, M.R.S.A. § 1303, radioactive wastes, as defined in 38, M.R.S.A. § 1451. Without limiting the foregoing, the following projects shall be classified as a major use:
 - A. New construction or expansion of gross non-residential floor area 5,000 square feet or greater in any five-year period.
 - B. The creation of impervious area 40,000 square feet or greater of gross non-residential area.
 - C. A change of use within an existing building or structure of 20,000 square feet or greater.
 - D. A project requiring a MaineDOT traffic movement permit or a modification or change to an existing MaineDOT traffic movement permit.
 - E. Any soil disturbance, extraction industries, commercial earth moving and mining activities affecting an area 40,000 square feet or greater.
 - F. Any activity involving the consumption, generation, or handling of hazardous wastes as defined in 38 M.R.S.A. § 1303 or radioactive wastes as defined in 38 M.R.S.A. § 1451.
 - G. Subdivision of a new or existing structure so as to create five or more dwelling units. Any such division shall be recorded in the Hancock County Registry of Deeds in accordance with the requirements of Article 7.

605 REVIEW PROCEDURES

In addition to the general procedures set forth in Chapter 1, Section 208 and Chapter 56, Article 2, the following procedures apply to applications for site plan development review.

605.1 PREAPPLICATION / SKETCH PLAN (OPTIONAL)**1. Procedures**

- A. **Minor Use.** Before submitting a minor use site development plan application, the applicant is encouraged to meet with the CEO to informally discuss the proposal. The pre-application meeting is informal and informational in nature, and the purposes of the pre-application meeting are to (i) allow the CEO to understand the nature of the proposed subdivision, (ii) allow the applicant to understand the review process and required submissions, and (iii) identify issues that need to be addressed in future submissions.
- B. **Major Use.** Before submitting a major use site development plan application, the applicant may, at the applicant's option, appear at a regular or special meeting of the Planning Board to informally discuss the proposal. The pre-application meeting is informal and informational in nature, and the purposes of the pre-application meeting are to (i) allow the Planning Board to understand the nature of the proposed subdivision, (ii) allow the applicant to understand the review process and required submissions, and (iii) identify issues that need to be addressed in future submissions.
 - a. The applicant must give notice of the pre-application meeting in accordance with Chapter 1, Section 209.
 - b. The applicant or a duly authorized representative must present to the Planning Board at the pre-application meeting, for informal review and comment, a sketch plan and other information relevant to the proposal.
 - c. The applicant may identify and discuss any requests for waivers pursuant to Chapter 1, Section 206.4.
- C. **No Vested Rights.** No binding commitments may be made between the applicant and the City administrator at this stage. No vested interests will attach or accrue as a result of any pre-application meeting, and such meeting will not cause an application to be deemed complete for review pursuant to Chapter 1, Section 208.2.

2. Submission Requirements

The preapplication sketch plan shall show, in simple sketch form, the proposed layout of proposed development and other features in relation to existing conditions. The sketch plan, which may be a free-hand penciled sketch, should be supplemented with general information to describe or outline the existing conditions of the site and the proposed development, including:

- A. The names and addresses of the owner of record and the applicant.
- B. The names and addresses of all consultants working on the project.
- C. Proportionate scale plan of the parcel showing at a minimum:

- i. The name of the development, north arrow, date, and bar scale;
- ii. The boundaries of the parcel;
- iii. Tax map and lot numbers;
- iv. Size of the property;
- v. Existing restrictions, easements, or conditions on the site;
- vi. Description of proposed drinking water and sewage disposal methods.
- vii. Location, orientation, height, square footage, dimensions of the existing and proposed structures on the property;
- viii. Proposed use of each structure;
- ix. Existing and proposed impervious surface area; and
- x. Existing and proposed gross floor area.

It is recommended that the sketch plan be superimposed on or accompanied by a copy of the Assessor's Map(s) on which the land is located. The sketch plan shall also contain a locus map in the upper right hand corner showing where the subdivision is located within the City, in what zoning district, and contain the Assessor's Map Number and Lot Number.

The applicant shall provide a location map showing the project within the City and a preapplication sketch plan (free hand sketch is acceptable) on a map

3. **Site Visit**

The City administrator may hold a site visit of the property at any time during the review process. Notice of a site visit held by the Planning Board must be given in accordance with Chapter 1, Section 209. Prior to the site visit and upon request of the administrator, the applicant shall place "flagging" at the centerline of any proposed streets, at the approximate intersections of the street center and lot corners, and at the location of other important proposed structures and features as may be requested by the administrator.

605.2 **PRELIMINARY AND FINAL SITE DEVELOPMENT PLANS**

1. **Procedures.** The following procedures shall apply to any proposed major or minor site development plan application.

A. **Minor Use**

Application. The application shall submit a site development plan application containing the application materials set forth in subsection 2, below to the CEO. Notice that an application has been submitted shall be given in accordance with Chapter 1, Section 209.

Public Comment Period. The CEO shall accept written public comments on any minor use site development plan application and associated building permit for a period of ten days from the date that notice of the application was mailed in accordance with Chapter 1,

Section 209. The public comment period will commence upon the mailing of the notices.

Written Decision. At the end of the public comment period, the CEO shall review the public comments and evaluate the application against the applicable review criteria, and either grant minor use site development plan approval and issue the associated building permit or classify the application as a major use site development plan project to be reviewed by the Planning Board. Agricultural and forestry activities pertaining to soil disturbance and addition of fill are exempt from the public comment period requirement in this section.

Permit Expiration.

1. **Expiration of Building Permit.** If no substantial start of construction has been made within 12 months beginning with the date a building permit associated with a minor use site development plan approval is issued, the building permit shall expire. If construction has not been completed within 36 months beginning with the date the building permit is issued, the building permit shall expire. The CEO may grant a one-time extension for such a building permit when a project is delayed due to circumstances beyond the permit holder's control.
2. **Expiration of Minor Use Site Development Plan Approval.** Minor Use Site Development Plan approval shall remain in force for a period not to exceed 36 months. If the proposed use has not been established during that period or if a building permit has not been obtained during that period, the Minor Use Site Development Plan approval shall be deemed to have lapsed.

B. Major Use

Application. The applicant shall submit a site development plan application containing the application materials set forth in subsection 2, below, at least 27 days prior to a scheduled meeting of the Planning Board. Notice that an application for a major use site development plan has been submitted shall be given in accordance with Chapter 1, Section 209.

Special Fee Designation. Notwithstanding Chapter 1, Section 302.1, all applications for approval of a preliminary plan for a major subdivision are designated special applications and a special fee shall be assessed in accordance with Chapter 1, Section 302.

Mandatory Preliminary Plan and Final Plan Meetings. It is mandatory for any application to come before the Planning Board at least twice; once for a preliminary plan review and a second time for a final plan review. Sketch plan reviews do not count toward the mandatory meeting requirements. The applicant or a duly authorized representative shall attend the meetings of the Planning Board.

Initial Completeness Review by City Planner. Notwithstanding the requirements of Chapter 1, Section 208.2, the City Planner shall make an

initial determination of the completeness of applications for inclusion on the Planning Board meeting agenda. Any application which the City Planner initially determines to be incomplete shall not be placed on the agenda but shall be returned to the applicant with an indication of the additional information required. When this additional information has been supplied, the City Planner shall place the application on the Planning Board's agenda.

Technical Review Team—Regular Meeting. The City Planner shall call a Technical Review Team meeting within seven days prior to an application being placed on the Planning Board's agenda. This meeting shall be referred to as the Regular Meeting of the Technical Review Team. The City Planner, in coordination with the Technical Review Team, shall conduct a final qualitative review of the applications on the agenda and issue a memorandum of preliminary findings, which shall be made available to the Planning Board, the applicant, and any interested parties.

Planning Board Agenda. Applications determined to be complete by the City Planner shall be placed on the Planning Board's next regular monthly agenda for consideration. The Chair of the Planning Board may call a special meeting if the number of agenda items or other circumstances seem to require it.

Preliminary Plan Meeting—Completeness Determination. The intent of the Preliminary Plan Meeting is for the Planning Board to make a determination of completeness of material submission, as well as identify issues and constraints that must be addressed in the Final Plan meeting.

The Planning Board shall conduct a preliminary plan review at a regular or special meeting. At such a meeting, the Planning Board shall accept written and oral public comments on the application, which shall be made part of the record of the proceeding.

As part of its preliminary plan review, the Planning Board must determine that the application is complete for review in accordance with Chapter 1, Section 208.2, and shall schedule a public hearing on the application.

Supplemental Application Materials.

- (a) **City Planner.** In general, no supplemental application materials shall be accepted by the City Planner after noon on the first Monday following the Technical Review Team meeting.
- (b) **Planning Board.** Supplemental application materials shall NOT be distributed by the applicant to the Planning Board members at the Planning Board meeting unless it is determined by the Chair of the Planning Board to be

relevant, necessary, and brief enough to be quickly assimilated, and if adequate copies are provided and of a type that is compatible with information technology currently available at the City.

Final Plan Meeting—Substantive Review; Public Hearing Required.

The intent of the Final Plan Meeting is for the Planning Board to evaluate if the project meets applicable criteria and performance standards. Prior to taking final action on any major use site plan development application, the Planning Board shall hold a public hearing to afford the public the opportunity to testify on the application. Notice of the public hearing must be given in accordance with Chapter 1, Section 209.

Written Decision. Within 30 days after the date of the public hearing, the Planning Board shall issue a written decision in accordance with Chapter 1, Section 208.4

Permit Expiration. Approval of a major use site development plan shall remain in force for a period not to exceed 36 months. If the proposed use has not been established during that period or a building permit has not been obtained during that period, the major use site development plan approval shall be deemed to have lapsed.

- C. **Subsequent Applications.** If a site development plan is denied by the Administrator, a new site plan proposing the same development for the same property shall not be filed within six months after a final decision.

2. Submission Requirements.

Minor Use Site Development Plan and Major Use Site Development Plan require the submission of the same materials and shall be held to the same performance standards.

Submittal to Administrator. The site development plan information shall be presented in a narrative form and plan formats. All written materials shall be dated and contained in a bound report.

Certifications. Where applicant, professional or Planning Board certification and/or signatures are required, the signature lines shall be provided in the lower right-hand corner of the plans or other required documents.

Approved Plan Requirements. The applicant shall submit two approved durable, permanent, transparent material (mylar) final site development plans and one paper copy for each approved site development plan. These plans shall be signed by the reviewing authority. A digital plan shall also be submitted. Unlike the hard-copy plan, which represents a legal document, the digital plan has no legal significance.

Number of Copies Needed for Plan Review. In general, the number of copies shall be provided as stipulated below. The City Planner and the Administrator

reserve the right to request a greater or lesser number of copies as may be needed.

- A. **Code Enforcement Officer.** Submission materials shall include: one copy of the application form, one copy of required submittal information, one copy of the responses demonstrating compliance with the criteria and performance standards, and two sets of all final plans and drawings. Digital copies of all approved material shall be provided to the Code Enforcement Officer.
- B. **Planning Board.** Prior to the TRT meeting, two complete hard copies of the application (including application form, required submittal information, responses showing compliance with the criteria and performance standards, and plans and drawings), along with three additional copies of the site plan sheets only, shall be provided to the City Planner. Digital copies of all approved material shall be provided to the City Planner. After the TRT meeting, the applicant shall provide eight complete hard copies of the application and a digital copy of the amended materials.

Scale. Accurate scale plan of the parcel or drawings shall be provided at a scale sufficient to allow review of the information and make determination of consistency with the regulations and standards, but in no case shall the scale be more than 100 feet to the inch for that portion of the tract of land being proposed for development.

Submission Requirements. The applicant must submit, in addition to the general application submission requirements in Chapter 1, Section 208.2, an application on forms provided by the City and containing the following materials.

Waiver Process. Waivers of submission requirements and criteria and performance standards shall be governed by Chapter 1, Section 206.4. When granting waivers, the Administrator shall set conditions as needed so the purposes of Chapter 56 are met. Granted waivers and imposed conditions, as well as the date these actions were taken, shall be indicated on a signed final site development plan.

Schedule of construction. Anticipated beginning and completion dates.

Cost. Statement of overall project cost. Statement of cost for all work to take place within a public or private right-of-way and evidence of financial capacity to complete it. This evidence should be in the form of a letter from a bank or other source of financing indicating the name of the project, amount of financing proposed, and interest in financing the project.

Base Plan. In general, the Base Plan information shall be shown on all other plans as the base layer and shall include.

- A. The name of the development.
- B. The names and addresses of the owner of record and of the developer.
- C. The name, address and registration number and seal of the designers (land surveyor, architect, engineer and/or similar professional who prepared the plan).

- D. True and magnetic north arrows, date and bar scale.
- E. Vicinity map inset.
- F. The boundaries of the parcel and size.
- G. The bearings and distances of all property lines of the property to be developed and the source of this information.
- H. All monuments erected and concerns established in the field. The material of which the monuments, corners or other points are made shall be noted by legend.
- I. Boundaries of all contiguous property under the control of the owner or applicant regardless of whether all or part is being developed at this time.
- J. The topography of the site at an appropriate contour interval of 2-foot to 5-foot depending on the nature of the uses and character of the site.
- K. Major natural features of the site including wetlands, streams, ponds, floodplains, groundwater aquifers, significant wildlife habitats or other important natural features.
- L. Location of burial grounds, right-of-ways, and other major features.
- M. Areas with sustained slopes greater than 25% covering more than one acre of land.
- N. The tax map and lot number of the parcel(s).
- O. The location of all zoning district boundary (ies) including shoreland zones, flood hazard areas, and the 100-year flood elevation.
- P. The location of dimensional requirements required by this ordinance including but not limited to building setbacks.
- Q. Depiction of existing deed restrictions, conditions, or easements on the site.
- R. In tabular form, the zoning classification(s) of the property and dimensional requirements.

Existing and Proposed Site Conditions Plan(s). The Existing and Proposed Site Conditions should be presented on one plan and include a signature block and may be supplemented by a stand-alone individual Existing Conditions Plan and a Proposed Conditions Plan if necessary.

Existing Site Conditions

- A. Location and size of any existing sewer infrastructure and water mains within 600 feet of the project property line or remainder of land.

- B. Location and size of well and septic system on the property and located within 100 feet of the development (on and off property).
- C. Location and size of culverts and drains on the property and of any that will serve the development from abutting streets or land.
- D. Location, names, and present widths of existing streets and rights-of-ways within or adjacent to the proposed development. The name, location and dimensions of existing streets, right-of-ways, driveways, parking and loading areas and walkways within or adjacent to the proposed development.
- E. Location of intersecting roads or driveways within 200 feet of the site.
- F. The location of open drainage courses, wetlands, stands of trees, and other important natural features.
- G. The direction of existing surface water drainage across the site.
- H. The location, front view and dimensions of existing signs.
- I. Dimension, height, location and orientation of existing structures on the property and the use.
- J. Copy of maintenance agreements for any privately owned stormwater management facilities, parks or open space, and right-of-way.
- K. Tabulation of the number of acres in the existing development including square footage of all buildings and structures; square footage of all paved or otherwise hard-surfaces streets, parking facilities, including curb and gutters, walks, loading areas and asphalt or concrete aprons for solid waste containers, or outdoor mechanical equipment.
- L. Copy of the portion of the Hancock County Soil Survey covering the project. When the medium intensity soil survey shows soils which are unsuitable for the uses proposed, the Administrator may require the submittal of a high intensity soil survey or a report by a registered soil scientist or registered professional engineer experienced in geotechnics, indicating the sustainability of soil conditions for those uses.
- M. The location and methods of disposing for land clearing and construction debris.
- N. Emergency vehicle access on the property to and/or around the building.

Proposed Site Conditions.

- A. **General.** The location, dimensions, and ground floor elevations of all proposed buildings on the site; the location and dimensions of proposed right-of-ways, driveways, and walkways; the dimension and location of the area to be used for snow storage.

B. Lots.

- i. All lots shall meet the minimum requirements of Article 3 Zoning Districts for the zoning district in which they are located.
- ii. If a lot on one side of a stream, tidal water, road, utility easement or wetland fails to meet the minimum requirements for lot size, it may not be combined with a lot on the other side of the stream, tidal water, or road to meet the minimum lot size.
- iii. The ratio of lot length to width shall not be more than five to one. Flag lots and other odd shaped lots in which narrow strips are joined to other parcels in order to meet minimum lot size requirements are prohibited.

Sign. Location, front view, and dimensions of proposed signs.

Septic System. Soils information if on-site sewage disposal is proposed. This information should be detailed enough to allow those portions of the site not suitable for on-site disposal systems to be identified.

Lighting. A Lighting Plan per Article 8, Section 812 (Lighting Plan Submittal Contents).

Traffic. Traffic and Street Design information per Article 9, Section 902.1 (Plan Submissions).

Parking. Off street parking and loading areas and structures, including the number of spaces, dimensions of spaces and aisles, and landscaping of parking areas.

Bike and Pedestrian. Pedestrian circulation system, including walkways and bicycle paths where applicable.

Stormwater Management Plan.

- i. Stormwater information per Article 10, Section 1002 (Plan Submittals).
- ii. Low Impact Design information statement shall be submitted to the Administrator documenting suitable low impact design for the site, which will help to reduce stormwater volumes and help to enhance stormwater quality. Low impact design includes, but is not limited to green roofs, rain gardens, tree wells, infiltration basins, and permeable pavement.

Utility Plan. A utility plan showing the location and dimension of water and sewer improvement, including force-mains and pump stations, electric and telephone lines, and any other utility services to be installed on the site.

Wastewater Disposal.

- i. Indication of the type of sewage disposal to be used.
- ii. When sewage disposal is to be accomplished by connection to the public sewer, a written statement from the Sewer Department indicating the Department has reviewed and approved the sewerage system design compliant with Chapter 5, Sewer Ordinance shall be submitted.

Drinking Water.

- iii. Indication of the type of water supply system(s) to be used.
- iv. When water is to be supplied by a public water supply any proposed development where the property line is located within 600 feet at its closest point to a water line must connect to the public water system. The developer shall provide a written statement from the Water Department that adequate water for both domestic and fire fighting purposes can be provided without placing an undue burden on the source, treatment facilities or distribution system involved. The developer shall be responsible for paying the costs of system improvements necessary to serve the development. The size and location of mains, gate valves, hydrants, and service connections shall be reviewed and approved in writing by the Water Department Superintendent and the Fire Chief.
- v. When water is to be supplied by private well, evidence of adequate ground water supply and quality shall be submitted by a well driller or a hydrogeologist familiar with the area.

Hydrogeology. A groundwater impact analysis prepared by a groundwater hydrologist, or designed and prepared by a professional engineer registered in the State of Maine for projects involving:

- vi. Common on-site water supply or sewage disposal facilities with a capacity of 2,000 gallons or more per day.
- vii. Any part of a project located over a significant sand and gravel aquifer by the Maine Geological Survey.

Groundwater Impact Analysis. The groundwater impact analysis shall contain at least the following information:

- a. A map showing the basic soils types.
- b. The depth to the water table at representative points throughout the site.
- c. Drainage conditions throughout the site.

- d. Data on the existing groundwater quality, either from test wells on the site or from existing wells on neighboring properties.
- e. Projections of groundwater quality based on the assumption of drought conditions (assuming 60% of annual average precipitation).
- f. An analysis and evaluation of the effect of the development on groundwater resources. In the case of residential development, the evaluation shall, at a minimum, include a projection of post-development nitrate-nitrogen concentrations at any wells within the site, at the boundaries and at a distance of 1,000 feet from potential contamination sources, whichever is a shorter distance.
- g. A map showing the location of any subsurface wastewater disposal systems and drinking water wells within the site and within 200 feet of the site.

Fire Suppression. Letter from the Ellsworth Fire Department stating the applicant has met with the Fire Department to discuss the project and the type of fire suppression system to be used, as well as emergency vehicle access. Provide all hydrant locations, as well as information on other fire protection measures.

Landscaping. The location, dimension, and type of walls, fences and landscaping. A planting schedule keyed to the plan and indicating the general varieties and sizes of trees, shrubs, and other plants to be planted on the site.

Park and Open Space.

- viii. Any areas reserved as a park or open space shall be indicated on the application. A park and open space provision and maintenance plan shall be submitted as part of the application for development approval. This plan shall designate and indicate the type and boundaries of all proposed parks and open space.
- ix. The following areas are not considered park or open space:
 - a. Areas covered by buildings, parking lots, or other impervious surfaces accessible to automobiles;
 - b. Utility easement, drainage easements, or street right-of-ways, unless such areas are usable for public recreational purposes and will not be permanently converted to a street or trench;
 - c. Land underneath overhead utility lines.

Critical Natural Area. Identify areas within or in close proximity to the project which have been identified by the State of Maine as High or

Moderate Value Wildlife Habitat or is part of the Maine Natural Area's Program.

National Register of Historic Places. Identify all areas within or in close proximity to the project which are either listed or have the potential to be listed in the National Register of Historic Places, or are indentified in the Comprehensive Plan or in Chapter 39 Historic Preservation Ordinance as having historic significance.

Tabular Information. Provide in table format the number of acres in the existing development including square footage of all buildings and structures; square footage of all paved or otherwise hard-surfaces: streets, parking facilities including curb and gutters, walks, loading areas and asphalt or concrete aprons for solid waste containers, or outdoor mechanical equipment.

Easements. For any proposed easement, the developer shall submit the proposed easement language with a signed statement certifying that the easement will be executed upon approval of the development.

Owner's Association. Evidence that all requirements relative to establishment of a maintenance association or owner's association have been met. The submission shall include copies of the by-laws of any association charged with maintaining common spaces, infrastructures and lands. The association's documents shall clearly state that the association shall properly maintain the infrastructure or land serving the development after the developer has legally relinquished that responsibility and/or until such time as the City may accept ownership. The existence of this association and its purpose shall be noted on the plan.

Signature Block. Space shall be provided on the plan on the bottom right hand corner or the signature of the Administrator and date together with the following: "Approved" or "Approved with Conditions."

606 STANDARDS AND CRITERIA GOVERNING SITE DEVELOPMENT PLAN REVIEW – FINAL PLAN MEETING.

State and Federal Permits. Prior to the review of criteria and performance standards compliance by the Administrator, the developer shall show written proof that applications have been filed for all state and federal permits including, but not limited to:

- x. Maine Department of Environmental Protection Site Location of Development Act; Great Ponds Act; Alteration of Coastal Wetlands; Freshwater Wetland Act; Alteration of Stream and Rivers; Wastewater Discharge License; Stormwater; Natural Resources Protection Act.
- xi. Maine Department of Human and Health Services applications for central water supply system and centralized or shared subsurface sewage disposal system.
- xii. U.S. Army Corps of Engineers under section 404 of the Clean Water Act.
- xiii. Maine Department of Transportation Driveway and Entrance Permit; and Traffic Movement Permit

Criteria and Standards. The following criteria and standards shall be utilized by the Administrator in reviewing applications for site development plan approval. The criteria and standards are not intended to discourage creativity, invention and innovation.

A. Conformance with Comprehensive Plan. All proposed projects shall be in conformity with the Comprehensive Plan, and with other applicable provisions in the City Code and state law.

B. Land Not Suitable For Development

- i. The following lands shall not be included in the calculations of the minimum lot area: Land which is situated below the normal high water mark of any water body.
- ii. Land which is located within the 100-year floodplain as identified by the Federal Emergency Management Agency or the Department of Housing and Urban Development, Flood Insurance Administration, unless the developer shows proof through the submittal of materials prepared by a Registered Land Surveyor which show that the property in question lies at least two feet above the 100-year flood level. The elevation of filled or man-made land shall not be considered.
- iii. Wetlands.

C. Lots.

- i. Lot configuration and lot area shall be designed to provide for adequate off-street parking and service facilities based upon the type of development contemplated.
- ii. Wherever possible, side lot lines shall be perpendicular to the street.

D. Shoreland Standards. Projects which propose structures or uses located within the shoreland zone, as defined in Article 4 (Shoreland Zoning) may be reviewed concurrently with site development plans. It may be approved, or approved with conditions if the Administrator makes a positive finding based on the application and its supporting information that, in addition to any requirements imposed by this Article, the proposed use:

- i. Will maintain safe and healthful conditions;
- ii. Will not result in water pollution, erosion, or sedimentation to surface waters;
- iii. Will adequately provide for the disposal of all wastewater;
- iv. Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitats;
- v. Will conserve shore cover and visual, as well as actual, points of access to inland and shoreland waters;
- vi. Will protect archaeological and historic resources as designated in the comprehensive plan;
- vii. Will not adversely affect existing commercial fishing or maritime activities in the General Development Zoning District;
- viii. Will avoid problems associated with floodplain development and use; and
- ix. Is in conformance with the provisions of Article 4.

E. Landscaping.

- i. The landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal, retaining existing vegetation where desirable, and keeping any grade changes in character with the general appearance of neighboring areas. Scenic vistas should be preserved.
- ii. Environmentally sensitive areas such as wetlands, steep slopes, floodplains and unique natural features shall be maintained and preserved to the greatest extent possible. Natural drainage areas shall be preserved to the maximum extent.
- iii. Landscaping shall meet Article 8 Section 813 (Buffers, Screening, and Landscaping Standards).

F. Accessways, Traffic Impacts and Access.

- i. Provisions shall be made for vehicular access to the development and circulation within the development in such a manner as to safeguard against hazards to traffic and pedestrians in existing streets and within the development site, to avoid traffic congestion on any accessways and to provide safe and convenient circulation on and off-site.
- ii. All projects shall provide an estimate of the amount and type of vehicular traffic to be generated on a daily basis and at peak hour. Where applicable provide a traffic impact analysis demonstrating the impact of the proposed project on the capacity, level of service and safety of adjacent City and or State-owned streets.
- iii. Where a development abuts or contains an existing or proposed State- or City-owned road, permits must be obtained from the appropriate agency for entrance/driveway. This requirement shall be noted on the Plan and in the deed.
- iv. Vehicular access to and into the site shall meet the standards of Article 9 Street Design and Construction Standards, as applicable:
 - a. 907 - Street Design Standards;
 - b. 909 – Street System Design Standards;
 - c. 910 – Access Management;
 - d. 915 – Accessways in the Shoreland Zone; and
 - e. 916 – Accessway Constructions Standards.
- v. The layout of the site shall provide for the safe movement of passenger, service and emergency vehicles through the site.
 - a. Non-residential projects shall provide a clear route for delivery vehicles with appropriate geometric design to allow turning and backing for vehicles expected to use the facility.
 - b. Clear routes of access shall be provided and maintained for emergency vehicles to all portions of the site and shall be posted with appropriate language.
 - c. The layout and design of parking areas shall provide for safe and convenient circulation of vehicles throughout the site and should prohibit vehicles from backing out onto a street.

- d. All streets and accessways shall be designed to follow the topographic and natural features of the site. The road network shall provide for vehicular and pedestrian safety, all season emergency access, snow storage, and delivery and collection services.
- vi. Where the street is designed to a private road design standard or where the street is to remain a private way until it is duly adopted by the City Council, the following words shall appear on the recorded plan & within the deed.

"The roads in this development shall remain private roads to be maintained by the developer or the lot owners until and if it meets the standards of a public road and it is duly adopted by the City Council"

- G. **Bike/Pedestrian Access and Circulation.** The development plan shall provide for safe pedestrian circulation within the development. This pedestrian circulation system shall connect with existing sidewalks if they exist in the vicinity of the project. The pedestrian network may be located either in the street right-of-way and/or outside of the right-of-way in open space or recreation areas. The system shall be designed to link residential units with recreational and commercial facilities, other common facilities, school bus stops and existing sidewalks in the neighborhood. Pedestrian and bike access to the site shall also meet the standards of Article 9, Section 912 (Sidewalks and Bikeways) and Section 916.5.G (Sidewalk Materials).
- H. **Parking.** The plan shall meet the criteria of Article 11 (Parking Standards).
- I. **Environmental Standards.** The development plan shall be designed in accordance with applicable standards designed to protect the environment.
 - i. Stormwater. The development shall be designed to meet Article 10 (Stormwater Management Design and Construction Standards). Maintenance responsibilities shall be reviewed to determine their adequacy.
 - ii. Low Impact Design. The applicant shall submit technical documentation about the suitability of low impact design features which will help to reduce stormwater volumes and help to enhance stormwater quality. If non-low impact design features are selected, the applicant shall provide a statement explaining the reason why. Each applicant is required to submit a statement to the Planning Board documenting proposed Low Impact Design (LID) for the site.
 - iii. Erosion and Sediment control. The development shall preserve salient natural features, keep cut-fill operations to a minimum and ensure conformity with the topography so as to create the least erosion potential and so as to adequately handle surface water runoff. The disturbed area shall be kept to a practical minimum. Any activity on a stream, watercourse or swale or upon a floodway or right-of-way shall comply with the State's Natural Resources Protection Act, Title 38 M.R.S.A. Sections 480(A)-480(S). Any such activity shall also be conducted in such a manner so as to maintain as nearly as possible the present state of the stream, watercourse, swale, floodway or right-of-way for the duration of the activity and shall be returned to its original or equal condition after such activity is completed.
- J. **Parks, Open Space, Natural or Historical Features.**
 - i. To the greatest extent possible common open space areas shall be contiguous.

- ii. Parks and open spaces, as shown on any approved development plan, shall contain a notation that these areas shall not be further developed for any other use.
- iii. Parks and open spaces should include irreplaceable natural features located on the tract (such as, but not limited to, stream beds, significant stands of trees, individual trees of significant size, and rock outcroppings).
- iv. If the proposed development contains any identified historical or archaeological sites, or any areas identified in the Comprehensive Plan or by the Maine Critical Areas Program as rare and irreplaceable natural areas, these areas shall be protected through inclusion in an open space plan, and suitably protected by appropriate covenants and management plans.
- v. Any public rights of access to the shoreline of a water body shall be maintained by means of easements or rights-of-way, or should be included in the open space plan, with provisions made for continued public access.

K. Drinking Water Supply.

- i. The development shall be provided with a system of water supply that provides each use with an adequate supply of water meeting the standards of the State of Maine for drinking water.
- ii. Groundwater Protection. The proposed site development and use shall not adversely impact either the quality or quantity of groundwater available to abutting properties or public water supply systems. Projects involving common on-site water supply or sewage disposal systems with a capacity of 2,000 gallons per day or greater shall demonstrate that the groundwater at the property line will comply, following development, with the standards for safe drinking water as established by the State of Maine. Subsurface waste water 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 Final Plan, and as restrictions in the deed.

L. Sewage Disposal.

- i. Public Sewer. Any proposed development shall connect to the existing or proposed public sewer if said sewer is located within 600 feet of the development property line.
- ii. Private Systems.
 - a. The developer shall submit evidence of soil suitability for subsurface sewage disposal prepared by a Maine Licensed Site Evaluator or Soil Scientist in full compliance with the requirements of the State of Maine Subsurface Wastewater Disposal Rules.
 - b. In no instance shall a disposal area be permitted on soils or on a lot which requires a New System Variance from the Subsurface Wastewater Disposal Rules.

- M. Utilities.** Any utility installations above ground shall be located so as not to be unsightly or hazardous to the public and shall be landscaped or otherwise buffered so as to screen the components from public view.

- N. **Construction Debris.** If on-site disposal of the street or right-of-way construction stumps and debris is proposed, the disposal site shall be suitably covered with fill and topsoil, lined, fertilized, and seeded.
- O. **Street Names and Traffic Signs.** Streets which join and are in alignment with streets of abutting or neighboring properties shall bear the same name. Names of new streets shall not duplicate, nor bear phonetic resemblance to the names of existing streets within the City, and shall be subject to the approval of the City Assessor's Office. The developer shall reimburse the City for the costs of installing street names, traffic safety and traffic devices.
- P. **Advertising Features.** The size, location, texture and lighting of all exterior signs and outdoor advertising structures or features shall not detract from the layout of the property and the design of proposed buildings and structures and the surrounding properties, and shall not constitute hazards to vehicles and pedestrians.
- Q. **Special Features.** Exposed storage areas, exposed machinery installations, service areas, truck loading areas, utility buildings and structures, and similar accessory areas and structures, shall be subject to such setbacks, screen plantings or other screening methods as shall reasonably be required to prevent their being incongruous with the existing or contemplated environment and the surrounding properties.
- R. **Exterior Lighting.** All exterior lighting shall be designed to ensure safe movement of people and vehicles, and to minimize adverse impact on neighboring properties and public ways. Lighting shall be arranged to minimize glare and reflection on adjacent properties and the traveling public and comply with Article 8, Section 812 (Exterior Lighting).
- S. **Emergency Vehicle Access.** Provisions shall be made for adequate emergency vehicle access to buildings and structures in compliance with Chapter 4 Fire Protection and Prevention Ordinance.
- T. **Fire Suppression.** The proposed development shall comply with the applicable sections of Chapter 4 Fire Protection and Prevention Ordinance relating to fire suppression.
- U. **Waste Disposal.** The proposed development shall provide for adequate disposal of solid wastes and hazardous wastes; all solid waste shall be disposed of at a licensed disposal facility having adequate capacity to accept the project's wastes; and all hazardous wastes shall be disposed of at a licensed hazardous waste disposal facility and evidence of a contractual arrangement with the facility shall be submitted.

ARTICLE 6 SITE DEVELOPMENT PLAN REVIEW**601 PURPOSES.**

In addition to the general purposes of the City Code set forth in Chapter 1, Article 2, Section 1, the purposes of site development plan review this Article 6 is are to (a) provide an adequate level of review for projects of greater scope and magnitude than limited scope projects; (b);

Informational Meeting. Applicants are encouraged to schedule an optional, informal meeting with the City Planning staff and/or with the Technical Review Team to discuss their plans and gain an understanding of the review procedures, requirements and standards. Call 207-669-6608

601.1 ~~P~~prevent undue adverse impact upon:

~~A.~~ ~~T~~he natural and man-made environment;

~~B.~~ ~~T~~he present and future facilities and services of the City;

~~C.~~ ~~T~~he abutters, the neighborhood, and the community; and (c)

Sustain the comfort, health, and contentment of residents.

602 APPLICABILITY

Unless a proposed activity is expressly identified as not requiring a permit in Article 1, Section 103, site development plan approval issued by the CEO or the Planning Board pursuant to this Article 6 is required for all non-residential development, including:

A. Erecting, altering, improving, renovating, enlarging, moving (including removing from, moving onto, or moving within a lot), or demolishing a structure, or any part of a structure.

B. Establishing, changing, or expanding a land use, and any structures associated with or accessory to such use, which is identified as:

1. Allowed in the Table of Use Regulations in Section 307; or

2. Allowed with a permit issued by the CEO, allowed with a permit issued by the LPI, or allowed with Planning Board approval in the Table of Land Uses for the Shoreland Zone in Section 409 (Shoreland Zoning).

C. Renewing a discontinued nonconforming use.

D. In addition, site development plan approval is required for the division of a new or existing structure so as to create three or more dwelling units. The Planning Board hereby determines that this Article 6 meets the requirements of 30-A M.R.S.A. § 4402(6)(A) and therefore such development is exempt from the requirements of Article 7 (Subdivision Review).

STATE LAW REFERENCE—30-A M.R.S.A. § 4402(6) (DIVISION OF NEW OR EXISTING STRUCTURES).

603 ADMINISTRATION

This Article 6 is administered by the CEO and the Planning Board.

604 CLASSIFICATION OF SITE DEVELOPMENT PLAN REVIEW APPLICATIONS

The CEO shall classify site development plan review applications as a minor use or a major use based on the following general criteria:

1. **Minor Use Site Development Plan Review.** This level of review comprises those projects that require a higher level of scrutiny than a Limited Scope Project but, by virtue of their smaller size and lack of complexity, are not likely to generate significant public interest. Minor Use Site

Development Plan reviews are conducted by the CEO, and do not require a public hearing. Without limiting the foregoing, the following projects shall be classified as a minor use:

- A. New construction or expansion of gross non-residential floor area of less than 5,000 square feet in any five-year period.
- B. The creation of impervious area 10,000 square feet or greater, and less than 40,000 square feet of gross non-residential floor area.
- C. A change of use within an existing building or structure of less than 20,000 square feet.
- D. A project not requiring a MaineDOT traffic movement permit or a modification or change to an existing MaineDOT traffic movement permit.
- E. Any soil disturbance, extraction industries, commercial earth moving and mining activities affecting an area 20,000 square feet or greater, and less than 40,000 square feet.
- F. All non-residential projects located within the Commerce Park zoning district regardless of size.
- G. The creation of three or four dwelling units within a single structure on a single tract of land.
- H. The creation of three or four dwelling units in multiple structures on a single tract of land.

STATE LAW REFERENCE—30-A M.R.S.A. § 4364-A(5-A) (RESIDENTIAL AREAS, GENERALLY; UP TO 4 DWELLING UNITS ALLOWED—PLANNING BOARD APPROVAL NOT REQUIRED).

2. **Major Use Site Development Plan Review.** This level of review is for uses that, by virtue of their size, uniqueness, complexity, or other factors, have a significant impact on the physical, social, or economic environment because of stormwater, traffic, erosion, dust, phosphorus loading, sediments, lighting, or other factors, and are likely to generate significant public interest. Major Use Site Development Plan reviews are conducted by the Planning Board. The CEO may also classify a minor use site development plan as a major use site development plan when the use is categorized as a high pollutant land uses impacts for the same reasons as above described. The CEO shall classify as a major use site development all projects involving the consumption, generation, or handling of hazardous wastes as defined in 38, M.R.S.A. § 1303, radioactive wastes, as defined in 38, M.R.S.A. § 1451. Without limiting the foregoing, the following projects shall be classified as a major use:

- A. New construction or expansion of gross non-residential floor area 5,000 square feet or greater in any five-year period.
- B. The creation of impervious area 40,000 square feet or greater of gross non-residential area.
- C. A change of use within an existing building or structure of 20,000 square feet or greater.
- D. A project requiring a MaineDOT traffic movement permit or a modification or change to an existing MaineDOT traffic movement permit.
- E. Any soil disturbance, extraction industries, commercial earth moving and mining activities affecting an area 40,000 square feet or greater.
- F. Any activity involving the consumption, generation, or handling of hazardous wastes as defined in 38 M.R.S.A. § 1303 or radioactive wastes as defined in 38 M.R.S.A. § 1451.

- G. Subdivision of a new or existing structure so as to create five or more dwelling units. Any such division shall be recorded in the Hancock County Registry of Deeds in accordance with the requirements of Article 7.

605 REVIEW PROCEDURES

In addition to the general procedures set forth in Chapter 1, Section 208 and Chapter 56, Article 2, the following procedures apply to applications for site plan development review.

605.1 PREAPPLICATION / SKETCH PLAN (OPTIONAL)

1. Procedures

- A. **Minor Use.** Before submitting a minor use site development plan application, the applicant is encouraged to meet with the CEO to informally discuss the proposal. The pre-application meeting is informal and informational in nature, and the purposes of the pre-application meeting are to (i) allow the CEO to understand the nature of the proposed subdivision, (ii) allow the applicant to understand the review process and required submissions, and (iii) identify issues that need to be addressed in future submissions.
- B. **Major Use.** Before submitting a major use site development plan application, the applicant may, at the applicant's option, appear at a regular or special meeting of the Planning Board to informally discuss the proposal. The pre-application meeting is informal and informational in nature, and the purposes of the pre-application meeting are to (i) allow the Planning Board to understand the nature of the proposed subdivision, (ii) allow the applicant to understand the review process and required submissions, and (iii) identify issues that need to be addressed in future submissions.
- a. The applicant must give notice of the pre-application meeting in accordance with Chapter 1, Section 209.
- b. The applicant or a duly authorized representative must present to the Planning Board at the pre-application meeting, for informal review and comment, a sketch plan and other information relevant to the proposal.
- c. The applicant may identify and discuss any requests for waivers pursuant to Chapter 1, Section 206.4.
- C. **No Vested Rights.** No binding commitments may be made between the applicant and the City administrator at this stage. No vested interests will attach or accrue as a result of any pre-application meeting, and such meeting will not cause an application to be deemed complete for review pursuant to Chapter 1, Section 208.2.

2. Submission Requirements

The preapplication sketch plan shall show, in simple sketch form, the proposed layout of proposed development and other features in relation to existing conditions. The sketch plan, which may be a free-hand penciled sketch, should be supplemented with general information to describe or

outline the existing conditions of the site and the proposed development, including:

- A. The names and addresses of the owner of record and the applicant.
- B. The names and addresses of all consultants working on the project.
- D. Proportionate scale plan of the parcel showing at a minimum:
 - i. The name of the development, north arrow, date, and bar scale;
 - ii. The boundaries of the parcel;
 - iii. Tax map and lot numbers;
 - iv. Size of the property;
 - v. Existing restrictions, easements, or conditions on the site;
 - vi. Description of proposed drinking water and sewage disposal methods.
 - vii. Location, orientation, height, square footage, dimensions of the existing and proposed structures on the property;
 - viii. Proposed use of each structure;
 - ix. Existing and proposed impervious surface area; and
 - x. Existing and proposed gross floor area.

It is recommended that the sketch plan be superimposed on or accompanied by a copy of the Assessor's Map(s) on which the land is located. The sketch plan shall also contain a locus map in the upper right hand corner showing where the subdivision is located within the City, in what zoning district, and contain the Assessor's Map Number and Lot Number.

The applicant shall provide a location map showing the project within the City and a preapplication sketch plan (free hand sketch is acceptable) on a map

3. Site Visit

The City administrator may hold a site visit of the property at any time during the review process. Notice of a site visit held by the Planning Board must be given in accordance with Chapter 1, Section 209. Prior to the site visit and upon request of the administrator, the applicant shall place "flagging" at the centerline of any proposed streets, at the approximate intersections of the street center and lot corners, and at the location of other important proposed structures and features as may be requested by the administrator.

605.2 PRELIMINARY AND FINAL SITE DEVELOPMENT PLANS

- 1. Procedures.** The following procedures shall apply to any proposed major or minor site development plan application.

A. Minor Use

Application. The application shall submit a site development plan application containing the application materials set forth in subsection 2, below to the CEO. Notice that an application has been submitted shall be given in accordance with Chapter 1, Section 209.

Public Comment Period. The CEO shall accept written public comments on any minor use site development plan application and associated building permit for a period of ten days from the date that notice of the application was mailed in accordance with Chapter 1, Section 209. The public comment period will commence upon the mailing of the notices.

Written Decision. At the end of the public comment period, the CEO shall review the public comments and evaluate the application against the applicable review criteria, and either grant minor use site development plan approval and issue the associated building permit or classify the application as a major use site development plan project to be reviewed by the Planning Board. Agricultural and forestry activities pertaining to soil disturbance and addition of fill are exempt from the public comment period requirement in this section.

Permit Expiration.

1. **Expiration of Building Permit.** If no substantial start of construction has been made within 12 months beginning with the date a building permit associated with a minor use site development plan approval is issued, the building permit shall expire. If construction has not been completed within 36 months beginning with the date the building permit is issued, the building permit shall expire. The CEO may grant a one-time extension for such a building permit when a project is delayed due to circumstances beyond the permit holder's control.
2. **Expiration of Minor Use Site Development Plan Approval.** Minor Use Site Development Plan approval shall remain in force for a period not to exceed 36 months. If the proposed use has not been established during that period or if a building permit has not been obtained during that period, the Minor Use Site Development Plan approval shall be deemed to have lapsed.

B. Major Use

Application. The applicant shall submit a site development plan application containing the application materials set forth in subsection 2, below, at least 27 days prior to a scheduled meeting of the Planning Board. Notice that an application for a major use site development plan has been submitted shall be given in accordance with Chapter 1, Section 209.

Special Fee Designation. Notwithstanding Chapter 1, Section 302.1, all applications for approval of a preliminary plan for a major subdivision are designated special applications and a special fee shall be assessed in accordance with Chapter 1, Section 302.

Mandatory Preliminary Plan and Final Plan Meetings. It is mandatory for any application to come before the Planning Board at least twice; once for a preliminary plan review and a second time for a final plan review. Sketch plan reviews do not count toward the mandatory meeting requirements. The applicant or a duly authorized representative shall attend the meetings of the Planning Board.

Initial Completeness Review by City Planner. Notwithstanding the requirements of Chapter 1, Section 208.2, the City Planner shall make an initial determination of the completeness of applications for inclusion on the Planning Board meeting agenda. Any application which the City Planner initially determines to be incomplete shall not be placed on the agenda but shall be returned to the applicant with an indication of the additional information required. When this additional information has been supplied, the City Planner shall place the application on the Planning Board's agenda.

Technical Review Team—Regular Meeting. The City Planner shall call a Technical Review Team meeting within seven days prior to an application being placed on the Planning Board's agenda. This meeting shall be referred to as the Regular Meeting of the Technical Review Team. The City Planner, in coordination with the Technical Review Team, shall conduct a final qualitative review of the applications on the agenda and issue a memorandum of preliminary findings, which shall be made available to the Planning Board, the applicant, and any interested parties.

Planning Board Agenda. Applications determined to be complete by the City Planner shall be placed on the Planning Board's next regular monthly agenda for consideration. The Chair of the Planning Board may call a special meeting if the number of agenda items or other circumstances seem to require it.

Preliminary Plan Meeting—Completeness Determination. The intent of the Preliminary Plan Meeting is for the Planning Board to make a determination of completeness of material submission, as well as identify issues and constraints that must be addressed in the Final Plan meeting.

The Planning Board shall conduct a preliminary plan review at a regular or special meeting. At such a meeting, the Planning Board shall accept written and oral public comments on the application, which shall be made part of the record of the proceeding.

As part of its preliminary plan review, the Planning Board must determine that the application is complete for review in accordance with Chapter 1, Section 208.2, and shall schedule a public hearing on the application.

Supplemental Application Materials.

(a) **City Planner.** In general, no supplemental application

materials shall be accepted by the City Planner after noon on the first Monday following the Technical Review Team meeting.

- (b) **Planning Board.** Supplemental application materials shall NOT be distributed by the applicant to the Planning Board members at the Planning Board meeting unless it is determined by the Chair of the Planning Board to be relevant, necessary, and brief enough to be quickly assimilated, and if adequate copies are provided and of a type that is compatible with information technology currently available at the City.

Final Plan Meeting—Substantive Review; Public Hearing Required.

The intent of the Final Plan Meeting is for the Planning Board to evaluate if the project meets the applicable criteria and performance standards—finding of facts and conclusion of law. These are either written or orally read into the record to explain the rationale for the final decision. Prior to taking final action on any major use site plan development application, the Planning Board shall hold a public hearing to afford the public the opportunity to testify on the application. Notice of the public hearing must be given in accordance with Chapter 1, Section 209.

Written Decision. Within 30 days after the date of the public hearing, the Planning Board shall issue a written decision in accordance with Chapter 1, Section 208.4

Permit Expiration. Approval of a major use site development plan shall remain in force for a period not to exceed 36 months. If the proposed use has not been established during that period or a building permit has not been obtained during that period, the major use site development plan approval shall be deemed to have lapsed.

- C. **Subsequent Applications.** If a site development plan is denied by the Administrator, a new site plan proposing the same development for the same property shall not be filed within six months after a final decision.

2. Submission Requirements.

Minor Use Site Development Plan and Major Use Site Development Plan require the submission of the same materials and shall be held to the same performance standards.

602—GENERALLY

- 602.1 Applications.** Applications for site development plan review shall include a completed application form provided by the Administrator. The filled out application form, required fees, and the required plans and other related information shall be submitted to the Code Enforcement Officer or to the City Planner, as applicable. The City Planner shall forward the application to the

~~Planning Board and place the application on the Planning Board agenda per Article 2 Approval and Permitting section 207 Procedures for Major Site Development Plan and Subdivision Review.~~

~~**602.2 Processing.** No application for site development plan review shall be considered complete, and the Administrator and/or the City Planner shall not process any application for site development plan approval, unless all the information required is included. The City Administrator and/or the City Planner shall not delay the processing of any application for site development plan approval if it contains the required information.~~

~~**602.3 Submittal to Administrator.** The site development plan information shall be presented in a narrative form and plan formats. All written materials shall be dated and contained in a bound report.~~

~~**602.4 Certifications.** Where applicant, professional or Planning Board certification and/or signatures are required, the signature lines shall be provided in the lower right-hand corner of the plans or other required documents.~~

~~**602.5 Approved Plan Requirements.** The applicant shall submit two approved durable, permanent, transparent material (mylar) final site development plans and one paper copy for each approved site development plan. These plans shall be signed by the reviewing authority. A digital plan shall also be submitted. Unlike the hard-copy plan, which represents a legal document, the digital plan has no legal significance.~~

~~**602.6 Administrator Site Visit.** The Administrator may schedule a site visit at any time in the review process. Prior to the site visit and upon request of the administrator, the applicant shall place "flagging" at the centerline of any proposed streets, at the approximate intersections of the street center and lot corners, as well as at the location of other important proposed structures and features as may be requested by the Administrator.~~

~~**602.7 Number of Copies Needed for Plan Review.** In general, the number of copies shall be provided as stipulated below. The City Planner and the Administrator reserve the right to request a greater or lesser number of copies as may be needed.~~

A. **Code Enforcement Officer.** Submission materials shall include: one copy of the application form, one copy of required submittal information, one copy of the responses demonstrating compliance with the criteria and performance standards, and two sets of all final plans and drawings. Digital copies of all approved material shall be provided to the Code Enforcement Officer.

B. **Planning Board.** Prior to the TRT meeting, two ~~Thirteen~~complete hard copies of ~~all material~~the application (including ~~but not limited to~~ application form, required submittal information, responses showing compliance with the criteria and performance standards, and plans and drawings), ~~along with three additional copies of the site plan sheets only~~, shall be provided to the City Planner. Digital copies of all approved material shall be provided to the City Planner. After the TRT meeting, the applicant shall provide eight complete hard copies of the application and a digital copy of the amended materials. Only three hard copies of the following are needed: stormwater calculations graphs, and state and federal permit applications and approvals.

~~602.8~~ **Scale.** Accurate scale plan of the parcel or drawings shall be provided at a scale sufficient to allow review of the information and make determination of consistency with the regulations and standards, but in no case shall the scale be more than 100 feet to the inch for that portion of the tract of land being proposed for development.

Submission Requirements. The applicant must submit, in addition to the general application submission requirements in Chapter 1, Section 208.2, an application on forms provided by the City and containing the following materials.

Waiver Process. Waivers of submission requirements and criteria and performance standards shall be governed by Chapter 1, Section 206.4. When granting waivers, the Administrator shall set conditions as needed so the purposes of Chapter 56 are met. Granted waivers and imposed conditions, as well as the date these actions were taken, shall be indicated on a signed final site development plan.

~~**Application Form.** A completed and signed City of Ellsworth Land Development Application.~~

~~**Right, Title or Interest.** A copy of the deed to the property, option to purchase the property or other documentation to demonstrate right, title or interest in the property on the part of the applicant.~~

Schedule of construction. Anticipated beginning and completion dates.

Cost. Statement of overall project cost. Statement of cost for all work to take place within a public or private right-of-way and evidence of financial capacity to complete it. This evidence should be in the form of a letter from a bank or other source of financing indicating the name of the project, amount of financing proposed, and interest in financing the project.

Base Plan. In general, the Base Plan information shall be shown on all other plans as the base layer and shall include.

- A. The name of the development.
- B. The names and addresses of the owner of record and of the developer.
- C. The name, address and registration number and seal of the designers (land surveyor, architect, engineer and/or similar professional who prepared the plan).
- D. True and magnetic north arrows, date and bar scale.
- E. Vicinity map inset.
- F. The boundaries of the parcel and size.
- G. The bearings and distances of all property lines of the property to be developed and the source of this information.

- H. All monuments erected and concerns established in the field. The material of which the monuments, corners or other points are made shall be noted by legend.
- I. Boundaries of all contiguous property under the control of the owner or applicant regardless of whether all or part is being developed at this time.
- J. The topography of the site at an appropriate contour interval of 2-foot to 5-foot depending on the nature of the uses and character of the site.
- K. Major natural features of the site including wetlands, streams, ponds, floodplains, groundwater aquifers, significant wildlife habitats or other important natural features.
- L. Location of burial grounds, right-of-ways, and other major features.
- M. Areas with sustained slopes greater than 25% covering more than one acre of land.
- N. The tax map and lot number of the parcel(s).
- O. The location of all zoning district boundary (ies) including shoreland zones, flood hazard areas, and the 100-year flood elevation.
- P. The location of dimensional requirements required by this ordinance including but not limited to building setbacks.
- Q. Depiction of existing deed restrictions, conditions, or easements on the site.
- R. In tabular form, the zoning classification(s) of the property and dimensional requirements.

Existing and Proposed Site Conditions Plan(s). The Existing and Proposed Site Conditions should be presented on one plan and include a signature block and may be supplemented by a stand-alone individual Existing Conditions Plan and a Proposed Conditions Plan if necessary.

Existing Site Conditions

- A. Location and size of any existing sewer infrastructure and water mains within 600 feet of the project property line or remainder of land.
- B. Location and size of well and septic system on the property and located within 100 feet of the development (on and off property).
- C. Location and size of culverts and drains on the property and of any that will serve the development from abutting streets or land.
- D. Location, names, and present widths of existing streets and rights-of-ways within or adjacent to the proposed development. The name, location and dimensions of existing streets, right-of-ways,

driveways, parking and loading areas and walkways within or adjacent to the proposed development.

- E. Location of intersecting roads or driveways within 200 feet of the site.
- F. The location of open drainage courses, wetlands, stands of trees, and other important natural features.
- G. The direction of existing surface water drainage across the site.
- H. The location, front view and dimensions of existing signs.
- I. Dimension, height, location and orientation of existing structures on the property and the use.
- J. Copy of maintenance agreements for any privately owned stormwater management facilities, parks or open space, and right-of-way.
- K. Tabulation of the number of acres in the existing development including square footage of all buildings and structures; square footage of all paved or otherwise hard-surfaces streets, parking facilities, including curb and gutters, walks, loading areas and asphalt or concrete aprons for solid waste containers, or outdoor mechanical equipment.
- L. Copy of the portion of the Hancock County Soil Survey covering the project. When the medium intensity soil survey shows soils which are unsuitable for the uses proposed, the Administrator may require the submittal of a high intensity soil survey or a report by a registered soil scientist or registered professional engineer experienced in geotechnics, indicating the sustainability of soil conditions for those uses.
- M. The location and methods of disposing for land clearing and construction debris.
- N. Emergency vehicle access on the property to and/or around the building.

Proposed Site Conditions.

- A. **General.** The location, dimensions, and ground floor elevations of all proposed buildings on the site; the location and dimensions of proposed right-of-ways, driveways, and walkways; the dimension and location of the area to be used for snow storage.
- B. **Lots.**
 - i. All lots shall meet the minimum requirements of Article 3 Zoning Districts for the zoning district in which they are located.
 - ii. If a lot on one side of a stream, tidal water, road, utility easement or wetland fails to meet the minimum requirements

for lot size, it may not be combined with a lot on the other side of the stream, tidal water, or road to meet the minimum lot size.

- iii. The ratio of lot length to width shall not be more than five to one. Flag lots and other odd shaped lots in which narrow strips are joined to other parcels in order to meet minimum lot size requirements are prohibited.

Sign. Location, front view, and dimensions of proposed signs.

Septic System. Soils information if on-site sewage disposal is proposed. This information should be detailed enough to allow those portions of the site not suitable for on-site disposal systems to be identified.

Lighting. A Lighting Plan per Article 8, Section 812 (Lighting Plan Submittal Contents).

Traffic. Traffic and Street Design information per Article 9, Section 902.1 (Plan Submissions).

Parking. Off street parking and loading areas and structures, including the number of spaces, dimensions of spaces and aisles, and landscaping of parking areas.

Bike and Pedestrian. Pedestrian circulation system, including walkways and bicycle paths where applicable.

Stormwater Management Plan.

- i. Stormwater information per Article 10, Section 1002 (Plan Submittals).
- ii. Low Impact Design information statement shall be submitted to the Administrator documenting suitable low impact design for the site, which will help to reduce stormwater volumes and help to enhance stormwater quality. Low impact design includes, but is not limited to green roofs, rain gardens, tree wells, infiltration basins, and permeable pavement.

Utility Plan. A utility plan showing the location and dimension of water and sewer improvement, including force-mains and pump stations, electric and telephone lines, and any other utility services to be installed on the site.

Wastewater Disposal.

- i. Indication of the type of sewage disposal to be used.
- ii. When sewage disposal is to be accomplished by connection to the public sewer, a written statement from the Sewer Department indicating the Department has reviewed and approved the sewerage system design compliant with Chapter 5, Sewer Ordinance shall be submitted.

Drinking Water.

- iii. Indication of the type of water supply system(s) to be used.
- iv. When water is to be supplied by a public water supply any proposed development where the property line is located within 500-600 feet at its closest point to a water line must connect to the public water system. The developer shall provide a written statement from the Water Department that adequate water for both domestic and fire fighting purposes can be provided without placing an undue burden on the source, treatment facilities or distribution system involved. The developer shall be responsible for paying the costs of system improvements necessary to serve the development. The size and location of mains, gate valves, hydrants, and service connections shall be reviewed and approved in writing by the Water Department Superintendent and the Fire Chief.
- v. When water is to be supplied by private well, evidence of adequate ground water supply and quality shall be submitted by a well driller or a hydrogeologist familiar with the area.

Hydrogeology. A groundwater impact analysis prepared by a groundwater hydrologist, or designed and prepared by a professional engineer registered in the State of Maine for projects involving:

- vi. Common on-site water supply or sewage disposal facilities with a capacity of 2,000 gallons or more per day.
- vii. Any part of a project located over a significant sand and gravel aquifer by the Maine Geological Survey.

Groundwater Impact Analysis. The groundwater impact analysis shall contain at least the following information:

- a. A map showing the basic soils types.
- b. The depth to the water table at representative points throughout the site.
- c. Drainage conditions throughout the site.
- d. Data on the existing groundwater quality, either from test wells on the site or from existing wells on neighboring properties.
- e. Projections of groundwater quality based on the assumption of drought conditions (assuming 60% of annual average precipitation).

- f. An analysis and evaluation of the effect of the development on groundwater resources. In the case of residential development, the evaluation shall, at a minimum, include a projection of post-development nitrate-nitrogen concentrations at any wells within the site, at the boundaries and at a distance of 1,000 feet from potential contamination sources, whichever is a shorter distance.
- g. A map showing the location of any subsurface wastewater disposal systems and drinking water wells within the site and within 200 feet of the site.

Fire Suppression. Letter from the Ellsworth Fire Department stating the applicant has met with the Fire Department to discuss the project and the type of fire suppression system to be used, as well as emergency vehicle access. Provide all hydrant locations, as well as information on other fire protection measures.

Landscaping. The location, dimension, and type of walls, fences and landscaping. A planting schedule keyed to the plan and indicating the general varieties and sizes of trees, shrubs, and other plants to be planted on the site.

Park and Open Space.

- viii. Any areas reserved as a park or open space shall be indicated on the application. A park and open space provision and maintenance plan shall be submitted as part of the application for development approval. This plan shall designate and indicate the type and boundaries of all proposed parks and open space.
- ix. The following areas are not considered park or open space:
 - a. Areas covered by buildings, parking lots, or other impervious surfaces accessible to automobiles;
 - b. Utility easement, drainage easements, or street right-of-ways, unless such areas are usable for public recreational purposes and will not be permanently converted to a street or trench;
 - c. Land underneath overhead utility lines.

Critical Natural Area. Identify areas within or in close proximity to the project which have been identified by the State of Maine as High or Moderate Value Wildlife Habitat or is part of the Maine Natural Area's Program.

National Register of Historic Places. Identify all areas within or in close proximity to the project which are either listed or have the potential to be listed in the National Register of Historic Places, or are identified in the Comprehensive Plan or in Chapter 39 Historic Preservation Ordinance as having historic significance.

Tabular Information. Provide in table format the number of acres in the existing development including square footage of all buildings and structures; square footage of all paved or otherwise hard-surfaces: streets, parking facilities including curb and gutters, walks, loading areas and asphalt or concrete aprons for solid waste containers, or outdoor mechanical equipment.

Easements. For any proposed easement, the developer shall submit the proposed easement language with a signed statement certifying that the easement will be executed upon approval of the development.

Owner's Association. Evidence that all requirements relative to establishment of a maintenance association or owner's association have been met. The submission shall include copies of the by-laws of any association charged with maintaining common spaces, infrastructures and lands. The association's documents shall clearly state that the association shall properly maintain the infrastructure or land serving the development after the developer has legally relinquished that responsibility and/or until such time as the City may accept ownership. The existence of this association and its purpose shall be noted on the plan.

Signature Block. Space shall be provided on the plan on the bottom right hand corner or the signature of the Administrator and date together with the following: "Approved" or "Approved with Conditions."

606 STANDARDS AND CRITERIA GOVERNING SITE DEVELOPMENT PLAN REVIEW – FINAL PLAN MEETING.

State and Federal Permits. Prior to the review of criteria and performance standards compliance by the Administrator, the developer shall show written proof that applications have been filed for all state and federal permits including, but not limited to:

- x. Maine Department of Environmental Protection Site Location of Development Act; Great Ponds Act; Alteration of Coastal Wetlands; Freshwater Wetland Act; Alteration of Stream and Rivers; Wastewater Discharge License; Stormwater; Natural Resources Protection Act.
- xi. Maine Department of Human and Health Services applications for central water supply system and centralized or shared subsurface sewage disposal system.
- xii. U.S. Army Corps of Engineers under section 404 of the Clean Water Act.
- xiii. Maine Department of Transportation Driveway and Entrance Permit; and Traffic Movement Permit

Criteria and Standards. The following criteria and standards shall be utilized by the Administrator in reviewing applications for site development plan approval. The criteria and standards are not intended to discourage creativity, invention and innovation.

A. **Conformance with Comprehensive Plan.** All proposed projects shall be in conformity with the Comprehensive Plan, ~~policy statements of the City of Ellsworth,~~ and with other ~~pertinent~~ applicable provisions ~~and ordinances in the City Code and state law.~~

B. **Land Not Suitable For Development**

- i. The following lands shall not be included in the calculations of the minimum lot area:
Land which is situated below the normal high water mark of any water body.
- ii. Land which is located within the 100-year floodplain as identified by the Federal Emergency Management Agency or the Department of Housing and Urban Development, Flood Insurance Administration, unless the developer shows proof through the submittal of materials prepared by a Registered Land Surveyor which show that the property in question lies at least two feet above the 100-year flood level. The elevation of filled or man-made land shall not be considered.
- iii. Wetlands.

C. Lots.

- i. Lot configuration and lot area shall be designed to provide for adequate off-street parking and service facilities based upon the type of development contemplated.
- ii. Wherever possible, side lot lines shall be perpendicular to the street.

D. Shoreland Standards. Projects which propose structures or uses located within the shoreland zone, as defined in Article 4 (Shoreland Zoning) may be reviewed concurrently with site development plans. It may be approved, or approved with conditions if the Administrator makes a positive finding based on the application and its supporting information that, in addition to any requirements imposed by this Article, the proposed use:

- i. Will maintain safe and healthful conditions;
- ii. Will not result in water pollution, erosion, or sedimentation to surface waters;
- iii. Will adequately provide for the disposal of all wastewater;
- iv. Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitats;
- v. Will conserve shore cover and visual, as well as actual, points of access to inland and shoreland waters;
- vi. Will protect archaeological and historic resources as designated in the comprehensive plan;
- vii. Will not adversely affect existing commercial fishing or maritime activities in the General Development Zoning District;
- viii. Will avoid problems associated with floodplain development and use; and
- ix. Is in conformance with the provisions of Article 4-Shoreland Zoning.

E. Landscaping.

- i. The landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal, retaining existing vegetation where desirable, and keeping any grade changes in character with the general appearance of neighboring areas. Scenic vistas should be preserved.
- ii. Environmentally sensitive areas such as wetlands, steep slopes, floodplains and unique natural features shall be maintained and preserved to the greatest extent possible. Natural drainage areas shall be preserved to the maximum extent.

- iii. Landscaping shall meet Article 8 Section 813 (Buffers, Screening, and Landscaping Standards).

F. Accessways, Traffic Impacts and Access.

- i. Provisions shall be made for vehicular access to the development and circulation within the development in such a manner as to safeguard against hazards to traffic and pedestrians in existing streets and within the development site, to avoid traffic congestion on any accessways and to provide safe and convenient circulation on and off-site.
- ii. All projects shall provide an estimate of the amount and type of vehicular traffic to be generated on a daily basis and at peak hour. Where applicable provide a traffic impact analysis demonstrating the impact of the proposed project on the capacity, level of service and safety of adjacent City and or State-owned streets.
- iii. Where a development abuts or contains an existing or proposed State- or City-owned road, permits must be obtained from the appropriate agency for entrance/driveway. This requirement shall be noted on the Plan and in the deed.
- iv. Vehicular access to and into the site shall meet the standards of Article 9 Street Design and Construction Standards, as applicable:
 - a. 907 - Street Design Standards;
 - b. 909 – Street System Design Standards;
 - c. 910 – Access Management;
 - d. 915 – Accessways in the Shoreland Zone; and
 - e. 916 – Accessway Constructions Standards.
- v. The layout of the site shall provide for the safe movement of passenger, service and emergency vehicles through the site.
 - a. Non-residential projects shall provide a clear route for delivery vehicles with appropriate geometric design to allow turning and backing for vehicles expected to use the facility.
 - b. Clear routes of access shall be provided and maintained for emergency vehicles to all portions of the site and shall be posted with appropriate language.
 - c. The layout and design of parking areas shall provide for safe and convenient circulation of vehicles throughout the site and should prohibit vehicles from backing out onto a street.
 - d. All streets and accessways shall be designed to follow the topographic and natural features of the site. The road network shall provide for vehicular and pedestrian safety, all season emergency access, snow storage, and delivery and collection services.
- vi. Where the street is designed to a private road design standard or where the street is to remain a private way until it is duly adopted by the City Council, the following words shall appear on the recorded plan & within the deed.

"The roads in this development shall remain private roads to be maintained by the developer or the lot owners until and if it meets the standards of a public road and it is duly adopted by the City Council"

- G. **Bike/Pedestrian Access and Circulation.** The development plan shall provide for safe pedestrian circulation within the development. This pedestrian circulation system shall connect with existing sidewalks if they exist in the vicinity of the project. The pedestrian network may be located either in the street right-of-way and/or outside of the right-of-way in open space or recreation areas. The system shall be designed to link residential units with recreational and commercial facilities, other common facilities, school bus stops and existing sidewalks in the neighborhood. Pedestrian and bike access to the site shall also meet the standards of Article 9, Section 912 (Sidewalks and Bikeways) and Section 916.5.G (Sidewalk Materials).
- H. **Parking.** The plan shall meet the criteria of Article 11 (Parking Standards).
- I. **Environmental Standards.** The development plan shall be designed in accordance with applicable standards designed to protect the environment.
 - i. Stormwater. The development shall be designed to meet Article 10 (Stormwater Management Design and Construction Standards). Maintenance responsibilities shall be reviewed to determine their adequacy.
 - ii. Low Impact Design. The applicant shall submit technical documentation about the suitability of low impact design features which will help to reduce stormwater volumes and help to enhance stormwater quality. If non-low impact design features are selected, the applicant shall provide a statement explaining the reason why. Each applicant is required to submit a statement to the Planning Board documenting proposed Low Impact Design (LID) for the site.
 - iii. Erosion and Sediment control. The development shall preserve salient natural features, keep cut-fill operations to a minimum and ensure conformity with the topography so as to create the least erosion potential and so as to adequately handle surface water runoff. The disturbed area shall be kept to a practical minimum. Any activity on a stream, watercourse or swale or upon a floodway or right-of-way shall comply with the State's Natural Resources Protection Act, Title 38 M.R.S.A. Sections 480(A)-480(S). Any such activity shall also be conducted in such a manner so as to maintain as nearly as possible the present state of the stream, watercourse, swale, floodway or right-of-way for the duration of the activity and shall be returned to its original or equal condition after such activity is completed.
- J. **Parks, Open Space, Natural or Historical Features.**
 - i. To the greatest extent possible common open space areas shall be contiguous.
 - ii. Parks and open spaces, as shown on any approved development plan, shall contain a notation that these areas shall not be further developed for any other use.
 - iii. Parks and open spaces should include irreplaceable natural features located on the tract (such as, but not limited to, stream beds, significant stands of trees, individual trees of significant size, and rock outcroppings).
 - iv. If the proposed development contains any identified historical or archaeological sites, or any areas identified in the Comprehensive Plan or by the Maine Critical Areas Program as rare and irreplaceable natural areas, these areas shall be protected through

inclusion in an open space plan, and suitably protected by appropriate covenants and management plans.

- v. Any public rights of access to the shoreline of a water body shall be maintained by means of easements or rights-of-way, or should be included in the open space plan, with provisions made for continued public access.

K. Drinking Water Supply.

- i. The development shall be provided with a system of water supply that provides each use with an adequate supply of water meeting the standards of the State of Maine for drinking water.
- ii. **Groundwater Protection.** The proposed site development and use shall not adversely impact either the quality or quantity of groundwater available to abutting properties or public water supply systems. Projects involving common on-site water supply or sewage disposal systems with a capacity of 2,000 gallons per day or greater shall demonstrate that the groundwater at the property line will comply, following development, with the standards for safe drinking water as established by the State of Maine. Subsurface waste water 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 Final Plan, and as restrictions in the deed.

L. Sewage Disposal.

- i. Public Sewer. Any proposed development shall connect to the existing or proposed public sewer if said sewer is located within 500-600 feet of the development property line. ~~Only the City Council may waive this standard.~~
- ii. Private Systems.
 - a. The developer shall submit evidence of soil suitability for subsurface sewage disposal prepared by a Maine Licensed Site Evaluator or Soil Scientist in full compliance with the requirements of the State of Maine Subsurface Wastewater Disposal Rules.
 - b. In no instance shall a disposal area be permitted on soils or on a lot which requires a New System Variance from the Subsurface Wastewater Disposal Rules.

M. **Utilities.** Any utility installations above ground shall be located so as not to be unsightly or hazardous to the public and shall be landscaped or otherwise buffered so as to screen the components from public view.

N. **Construction Debris.** If on-site disposal of the street or right-of-way construction stumps and debris is proposed, the disposal site shall be suitably covered with fill and topsoil, lined, fertilized, and seeded.

O. **Street Names and Traffic Signs.** Streets which join and are in alignment with streets of abutting or neighboring properties shall bear the same name. Names of new streets shall not duplicate, nor bear phonetic resemblance to the names of existing streets within the City, and shall be subject to the approval of the City Assessor's Office. The developer shall reimburse the City for the costs of installing street names, traffic safety and traffic devices.

- P. **Advertising Features.** The size, location, texture and lighting of all exterior signs and outdoor advertising structures or features shall not detract from the layout of the property and the design of proposed buildings and structures and the surrounding properties, and shall not constitute hazards to vehicles and pedestrians.
- Q. **Special Features.** Exposed storage areas, exposed machinery installations, service areas, truck loading areas, utility buildings and structures, and similar accessory areas and structures, shall be subject to such setbacks, screen plantings or other screening methods as shall reasonably be required to prevent their being incongruous with the existing or contemplated environment and the surrounding properties.
- R. **Exterior Lighting.** All exterior lighting shall be designed to ensure safe movement of people and vehicles, and to minimize adverse impact on neighboring properties and public ways. Lighting shall be arranged to minimize glare and reflection on adjacent properties and the traveling public and comply with Article 8, Section 812 (Exterior Lighting).
- S. **Emergency Vehicle Access.** Provisions shall be made for adequate emergency vehicle access to buildings and structures in compliance with Chapter 4 Fire Protection and Prevention Ordinance.
- T. **Fire Suppression.** The proposed development shall comply with the applicable sections of Chapter 4 Fire Protection and Prevention Ordinance relating to fire suppression.
- U. **Waste Disposal.** The proposed development shall provide for adequate disposal of solid wastes and hazardous wastes; all solid waste shall be disposed of at a licensed disposal facility having adequate capacity to accept the project's wastes; and all hazardous wastes shall be disposed of at a licensed hazardous waste disposal facility and evidence of a contractual arrangement with the facility shall be submitted.

ARTICLE 7 SUBDIVISION REVIEW**701 PURPOSES**

In addition to the general purposes of the City Code set forth in Chapter 1, Section 1, the purposes of this Article 7 are to ensure the comfort, convenience, safety, health and welfare of the people of the City, to protect the environment and to promote the development of an economically sound and stable community.

702 APPLICABILITY

This Article 7 applies to the selling, leasing, developing, building upon, or conveying for consideration any land in a subdivision, as defined in 30 A M.R.S.A. § 4401(4), except that it does not apply to:

- 702.1** Subdivisions approved by the City administrator before September 23, 1971, in accordance with laws then in effect.
- 702.2** Subdivisions in actual existence on September 23, 1971, that did not require approval under prior law.
- 702.3** A subdivision, a plan of which has been legally recorded in the Hancock County Registry of Deeds before September 23, 1971.
- 702.4** Any airport with an airport layout plan that has received final approval from the airport sponsor, MaineDOT, and Federal Aviation Administration.
- 702.5** A subdivision in violation of this Article 7 or 30-A M.R.S.A. § 4401 *et seq.* that has been in existence for 20 years or more, except as provided in 30-A M.R.S.A. § 4402(5).
- 702.6** The division of a new or existing structure so as to create three more dwelling units, which shall be subject to site development plan review pursuant to Article 6. The Planning Board hereby determines that Article 6 meets the requirements of 30-A M.R.S.A. § 4402(6)(A) and therefore such development is exempt from the requirements of this Article 7 (Subdivision Review).

STATE LAW REFERENCE—30-A M.R.S.A. § 4402 (SUBDIVISIONS; EXCEPTIONS).

703 ADMINISTRATION

This Article 7 is administered by the Planning Board.

704 CLASSIFICATION OF SUBDIVISION APPLICATIONS

The City Planner shall classify subdivision applications as a minor subdivision or a major subdivision as follows:

- 1. Minor Subdivision: The division of a tract or parcel of land into four or fewer lots.
- 2. Major Subdivision: The division of a tract or parcel of land into more than four lots.

705 REVIEW PROCEDURES

In addition to the general procedures set forth in Chapter 1, Section 208 and Chapter 56, Article 2, the following procedures apply to applications for subdivision review.

704.1 PREAPPLICATION / SKETCH PLAN (OPTIONAL)**1. Procedures**

- A. Before submitting a subdivision application, the applicant may, at the

applicant's option, appear at a regular or special meeting of the Planning Board to informally discuss the proposed subdivision. The pre-application meeting is informal and informational in nature, and the purposes of the pre-application meeting are to (i) allow the Planning Board to understand the nature of the proposed subdivision, (ii) allow the applicant to understand the review process and required submissions, and (iii) identify issues that need to be addressed in future submissions.

- B. The applicant must give notice of the pre-application meeting in accordance with Chapter 1, Section 209.
- C. The applicant must present to the Planning Board at the pre-application meeting, for informal review and comment, a sketch plan and other information relevant to the proposed subdivision.
- D. The applicant may identify and discuss any requests for waivers pursuant to Chapter 1, Section 206.4.
- E. No binding commitments may be made between the applicant and the Planning Board at this stage. No vested interests will attach or accrue as a result of any pre-application meeting, and such meeting will not cause an application to be deemed complete for review pursuant to Chapter 1, Section 208.2.

2. **Submission Requirements**

The preapplication sketch plan shall show, in simple sketch form, the proposed layout of streets, lots, buildings and other features in relation to existing conditions. The sketch plan, which may be a free-hand penciled sketch, should be supplemented with general information to describe or outline the existing conditions of the site and the proposed development. It is recommended that the sketch plan be superimposed on or accompanied by a copy of the Assessor's Map(s) on which the land is located. The sketch plan shall also contain a locus map in the upper right hand corner showing where the subdivision is located within the City, in what zoning district, and contain the Assessor's Map Number and Lot Number. The sketch plan submission must contain the materials set forth in Appendix 56.7-A.

3. **Site Visit**

The Planning Board may hold a site visit of the property at any time during the review process. Notice of the site visit must be given in accordance with Chapter 1, Section 209. The applicant shall place "flagging" at the centerline of any proposed streets, at the approximate intersections of the street center and lot corners, and at the location of other important proposed structures and features as may be requested by the Planning Board.

STATE LAW REFERENCE—30-A M.R.S.A. § 4403 (SUBDIVISIONS; MUNICIPAL REVIEW AND REGULATION),

704.2 MINOR SUBDIVISIONS

- 1. **Procedures.** The following procedures shall apply to any proposed minor subdivision.
 - A. **No Preliminary Plan.** Preliminary plans are not required for minor

subdivisions.

- B. **Final Plan Required.** The applicant shall submit an application for approval of a final plan containing the information set forth in Section 7.2 at least 27 days prior to a scheduled meeting of the Planning Board.
- C. **Notice.** Notice that an application for final plan approval of a minor subdivision has been submitted shall be given in accordance with Chapter 1, Section 209.
- D. **Initial Completeness Review by City Planner.**

Notwithstanding the requirements of Chapter 1, Section 208.2, the City Planner shall make an initial determination of the completeness of applications for inclusion on the Planning Board meeting agenda. Any application which the City Planner initially determines to be incomplete shall not be placed on the agenda but shall be returned to the applicant with an indication of the additional information required. When this additional information has been supplied, the City Planner shall place the application on the Planning Board's agenda.

Prior to starting its review of the final subdivision plan application, the Planning Board must determine that the application is complete for review in accordance with Chapter 1, Section 208.2. Upon determination that a complete application has been submitted for review, the Board shall issue a dated receipt to the applicant and shall determine whether to hold a public hearing on the application.

- E. **Meeting Attendance Required.** The applicant, or duly authorized representative, shall attend a meeting of the Board to discuss the final plan application. Failure to attend the meeting to present the final plan application shall result in a delay of the Board's review of the plan until the next meeting that the project is on the agenda and that the applicant, or his duly authorized representative, is in attendance.
- F. **Public Hearing Discretionary.** The Planning Board may, but is not required, to hold a public hearing on a final plan application for a minor subdivision. If the Board decides to hold a public hearing, it shall hold the hearing within thirty (30) days of receipt of a complete application. Notice of the hearing shall be given in accordance with Chapter 1, Section 209.
- G. **Written Decision.** The Planning Board shall issue a written decision in accordance with Chapter 1, Section 208.4.

2. **Submission Requirements**

The applicant must submit, in addition to the general application submission requirements in Chapter 1, Section 208.2, an application on forms provided by the City for the approval of a minor subdivision. The application must contain the materials set forth in Appendix 56.7-A.

STATE LAW REFERENCE—30-A M.R.S.A. § 4403 (SUBDIVISIONS; MUNICIPAL REVIEW AND REGULATION),

704.3 **MAJOR SUBDIVISIONS: PRELIMINARY PLAN**

- 2. **Procedures.** The following procedures shall apply to any proposed preliminary

plan for a major subdivision.

1. **Preliminary Plan Required.** The applicant shall submit an application for approval of a Preliminary Plan for a major subdivision, containing the information set forth in Section 8.2, at least 27 days prior to a scheduled meeting of the Board. The Preliminary Plan shall approximate the layout shown on the Sketch Plan, if submitted. Notice that an application for preliminary plan approval of a major subdivision has been submitted shall be given in accordance with Chapter 1, Section 209.
2. **Special Fee Designation.** Notwithstanding Chapter 1, Section 302.1, all applications for approval of a preliminary plan for a major subdivision are designated special applications and a special fee shall be assessed in accordance with Chapter 1, Section 302.
3. **Initial Completeness Review by City Planner.** Notwithstanding the requirements of Chapter 1, Section 208.2, the City Planner shall make an initial determination of the completeness of applications for inclusion on the Planning Board meeting agenda. Any application which the City Planner initially determines to be incomplete shall not be placed on the agenda but shall be returned to the applicant with an indication of the additional information required. When this additional information has been supplied, the City Planner shall place the application on the Planning Board's agenda.
4. **Technical Review Team—Regular Meeting.** The City Planner shall call a Technical Review Team meeting within seven days prior to an application being placed on the Planning Board's agenda. This meeting shall be referred to as the Regular Meeting of the Technical Review Team. The City Planner, in coordination with the Technical Review Team, shall conduct a final qualitative review of the applications on the agenda and issue a memorandum of preliminary findings, which shall be made available to the Planning Board, the applicant, and any interested parties.
5. **Planning Board Agenda.** Applications determined to be complete by the City Planner shall be placed on the Planning Board's next regular monthly agenda for consideration. The Chair of the Planning Board may call a special meeting if the number of agenda items or other circumstances seem to require.
6. **Planning Board Completeness Determination.** Prior to starting its review of the application, the Planning Board must determine that the application is complete for review in accordance with Chapter 1, Section 208.2. Upon determination that a complete application has been submitted for review, the Board shall issue a dated receipt to the applicant and shall determine whether to hold a public hearing on the application.
7. **Meeting Attendance Required.** The applicant, or his duly authorized representative, shall attend the meeting of the Board to discuss the Preliminary Plan. Failure to attend the meeting to present the preliminary plan application shall result in a delay of the Board's review of the plan until the next meeting that the project is on the agenda and that the applicant, or his duly authorized representative, is in attendance.

8. **Supplemental Application Materials.**

- (a) **City Planner.** In general, no supplemental application materials shall be accepted by the City Planner after noon on the first Monday following the Technical Review Team meeting.
- (b) **Planning Board.** Supplemental application materials shall NOT be distributed by the applicant to the Planning Board members at the Planning Board meeting unless it is determined by the Chair of the Planning Board to be relevant, necessary, and brief enough to be quickly assimilated, and if adequate copies are provided and of a type that is compatible with information technology currently available at the City.

9. **Public Hearing Discretionary.** The Planning Board may, but is not required, to hold a public hearing on a preliminary plan application for a major subdivision. If the Board decides to hold a public hearing, it shall hold the hearing within thirty (30) days of receipt of a complete application. Notice of the hearing shall be given in accordance with Chapter 1, Section 209. **Written Decision.** The Planning Board shall issue a written decision in accordance with Chapter 1, Section 208.4. **Conditions of Approval.** When granting approval to a Preliminary Plan, the Board shall state the conditions of such approval, if any, with respect to:

- (a) The specific changes which it will require in the Final Plan;
- (b) The character and extent of the required improvements for which waivers may have been requested and which in the Board's opinion may be waived without jeopardy to the public health, safety, and general welfare; and
- (c) The amount of all performance guarantees which it will require as prerequisite to the approval of the Final Plan;

Approval of a Preliminary Plan shall not constitute approval of the Final Plan or intent to approve the Final Plan, but rather it shall be deemed an expression of approval of the design of the Preliminary Plan as a guide to the preparation of the Final Plan. The Final Plan shall be submitted for approval of the Board upon fulfillment of the requirements of these regulations and the conditions of preliminary approval, if any. Prior to the approval of the Final Plan, the Board may require additional changes as a result of the further study of the subdivision or as a result of new information received.

12. **Permit Expiration.** The preliminary plan shall be null and void if the period of time between Planning Board approval and submittal of a final plan exceeds six months, unless the Planning Board in its discretion extends the period of time for good cause shown.

2. **Submission Requirements.**

The applicant must submit, in addition to the general application submission requirements in Chapter 1, Section 208.2, an application on forms provided by the City for the approval of a minor subdivision. The application must contain the

materials set forth in Appendix 56.7-A.

- (a) Any proposed subdivision located within 600 feet at its closest point to a water line must connect to the public system as approved by the Water Department Supervisor.
- (b) When water is to be supplied by private wells, evidence of adequate ground water supply and quality shall be submitted by a well driller or a hydrogeologist familiar with the area.

704.4 MAJOR SUBDIVISIONS—FINAL PLAN

1. **Procedures.** The following procedures shall apply to any proposed final plan for a major subdivision.
 1. **Final Plan within Six Months.** The subdivider shall, within six months after the approval of the Preliminary Plan, file with the Board an application for approval of the Final Plan at least 27 days prior to a scheduled meeting of the Planning Board. If the application for the Final Plan is not submitted within six months after Preliminary Plan approval, the Board may, in its discretion, refuse to act on the Final Plan and require resubmission of the Preliminary Plan. The Final Plan shall approximate the layout shown on the Preliminary Plan and shall incorporate any conditions of approval of the Preliminary Plan imposed by the Board.
 1. **Initial Completeness Review by City Planner.** Notwithstanding the requirements of Chapter 1, Section 208.2, the City Planner shall make an initial determination of the completeness of applications for inclusion on the Planning Board meeting agenda. Any application which the City Planner initially determines to be incomplete shall not be placed on the agenda but shall be returned to the applicant with an indication of the additional information required. When this additional information has been supplied, the City Planner shall place the application on the Planning Board's agenda.
 2. **Technical Review Team—Regular Meeting.** The City Planner shall call a Technical Review Team meeting within seven days prior to an application being placed on the Planning Board's agenda. This meeting shall be referred to as the Regular Meeting of the Technical Review Team. The City Planner, in coordination with the Technical Review Team, shall conduct a final qualitative review of the applications on the agenda and issue a memorandum of preliminary findings, which shall be made available to the Planning Board, the applicant, and any interested parties. The memorandum include comment upon the adequacy of each City Department's existing capital facilities to service the proposed subdivision.
 3. **Planning Board Agenda.** Applications determined to be complete by the City Planner shall be placed on the Planning Board's next regular monthly agenda for consideration. The Chair of the Planning Board may call a special meeting if the number of agenda items or other circumstances seem to require.
 4. **Planning Board Completeness Determination.** Prior to starting its review of the application, the Planning Board must determine that the

application is complete for review in accordance with Chapter 1, Section 208.2. Upon determination that a complete application has been submitted for review, the Board shall issue a dated receipt to the applicant and shall determine whether to hold a public hearing on the application.

5. **Meeting Attendance Required.** The applicant, or his duly authorized representative, shall attend the meeting of the Board to discuss the final plan. Failure to attend the meeting to present the preliminary plan application shall result in a delay of the Board's review of the plan until the next meeting that the project is on the agenda and that the applicant, or his duly authorized representative, is in attendance. If the subdivision is located in more than one municipality, the Board shall have a joint meeting with the Planning Board of the adjacent municipality to discuss the Plan.
6. **Supplemental Application Materials.**
 - (c) **City Planner.** In general, no supplemental application materials shall be accepted by the City Planner after noon on the first Monday following the Technical Review Team meeting.
 - (d) **Planning Board.** Supplemental application materials shall NOT be distributed by the applicant to the Planning Board members at the Planning Board meeting unless it is determined by the Chair of the Planning Board to be relevant, necessary, and brief enough to be quickly assimilated, and if adequate copies are provided and of a type that is compatible with information technology currently available at the City.
7. **Public Hearing Discretionary** A public hearing may be held by the Board within thirty (30) days after the issuance of a receipt for the submittal of a complete application. Notice of the hearing shall be given in accordance with Chapter 1, Section 208.4.
8. **Performance Guarantee.** Before the Planning Board grants approval of the Final Plan, the subdivider shall meet the performance guarantee requirements contained in Chapter 1, Section 511.
9. **Written Decision.** The Planning Board shall issue a written decision in accordance with Chapter 1, Section 208.4 within thirty (30) days from the public hearing or within sixty (60) days of receiving a complete application, if no hearing is held, The written decision must contain findings of fact and conclusions of law relative to the subdivision review criteria in Section 705. The reasons for any conditions of approval shall be stated in the records of the Board.
10. **Final Plan Expiration.** The final plan shall be null and void if the period of time between Planning Board approval and recording at the Hancock County Registry of Deeds is greater than 90 days.

2. **Submission Requirements.**

The applicant must submit, in addition to the general application submission requirements in Chapter 1, Section 208.2, an application on forms provided by the City for the approval of a minor subdivision. The application must contain the

materials set forth in Appendix 56.7-A, and the following materials:

- a. **Evidence of State Applications.** Prior to submittal of the Final Plan application, the applicant shall show written proof that applications have been filed for the following, where appropriate:
 - i. Maine Department of Environmental Protection, under the Site Location of Development Act, Alteration of Coastal Wetlands Act, Great Ponds Act, Fresh Water Wetland Act, Alteration of Streams and Rivers Act, or if a Wastewater Discharge License is needed.
 - ii. Maine Department of Human Services, if the subdivider proposes to provide a central water supply system.
 - iii. Maine Department of Human Services, if a centralized or shared subsurface sewage disposal system is to be utilized.
 - iv. Maine Department of Environmental Protection, under the Natural Resources Protection Act or if a storm water management permit or a waste water discharge license is needed.
 - v. U.S. Army Corps of Engineers, if a permit under Section 404 of the Clean Water Act is required.

704.5 FINAL PLAN APPROVAL AND FILING

The following final plan approval and filing provisions apply to major subdivisions and minor subdivisions:

- A. No final plan shall be approved by the Planning Board as long as the subdivider is in violation of the provisions on a previously approved plan.
- B. Upon findings of fact and determination that all applicable standards in Section 705 have been met, and upon voting to approve the subdivision, the Planning Board shall sign the Final Plan. One copy of the signed final plan shall be retained by the Planning Board as part of its permanent records. One copy of the signed plan shall be forwarded to the Tax Assessor. One copy of the signed plan shall be forwarded to the CEO.
- C. Any subdivision final plan that is not recorded in the Hancock County Registry of Deeds within ninety (90) days of the date upon which the final plan is approved and signed by the Planning Board shall become null and void.
- D. At the time the Planning Board grants Final Plan approval, it may permit the Plan to be divided into two or more phases, subject to any conditions the Board deems necessary in order to ensure the orderly development of the subdivision. If any City department head notified of the proposed subdivision informs the Board that their department or district does not have adequate capital facilities to service the subdivision, the Board shall require the Plan to be divided into two or more phases subject to any conditions the Board deems necessary in order to allow the orderly planning, financing and provision of public services to the subdivision.
- E. No changes, erasures, modifications, or revisions shall be made in any Final Plan after approval has been given by the Board and endorsed in writing on the Plan, unless the revised Final Plan is first submitted and the Board approves any modifications, except in accordance with Section 704.5. In the event that a Plan is recorded without complying with

this requirement, it shall be considered null and void, and the CEO shall institute proceedings to have the Plan stricken from the records of the Registry of Deeds.

- F. The approval by the Board of a subdivision plan shall not be deemed to constitute or be evidence of any acceptance by the City of any street, easement, or other open space shown on such plan. When a park, playground, or other recreation area shall have been shown on the plan to be dedicated to the City, approval of the plan shall not constitute an acceptance by the City of such areas. The Board shall require the Plan to contain appropriate notes to this effect. The Board may also require the filing of a written agreement between the applicant and the City Council covering future deed and title, dedication, and provision for the cost of grading, development, equipment, and maintenance of any such dedicated area.
- G. Except in the case of a phased subdivision development plan, failure to complete substantial construction of the subdivision within five years of the date of approval and signing of the Plan shall render the Plan null and void. Upon determining that a subdivision's approval has expired under this paragraph, the Board shall cause a notice placed in the Hancock County Registry of Deeds to that effect.

704.5 REVISIONS TO APPROVED PRELIMINARY AND FINAL PLANS

1. Procedure.

An applicant for a revision to a previously approved preliminary or final plan shall, at least 27 days prior to a scheduled meeting of the Board, request to be placed on the Board's agenda. If the revision involves the creation of additional lots or dwelling units, the procedures for preliminary plan approval shall be followed. If the revision involves only modifications of the approved plan, without the creation of additional lots or dwelling units, the procedures for final plan approval shall be followed.

2. Submission Requirements.

The applicant must submit, in addition to the general application submission requirements in Chapter 1, Section 208.2, an application on forms provided by the City for the approval of a minor subdivision. The application must contain a copy of the approved plan, as well the proposed revisions and other submission materials in such quantities and containing such information as are required for a preliminary plan or final plan. The application must also include enough supporting information to allow the Board to make a determination that the proposed revisions meet the standards of Section 705.

The revised plan shall indicate that it is the revision of a previously approved and recorded plan and shall show the title of the subdivision and the book and page or cabinet and sheet on which the original plan is recorded at the Registry of Deeds.

3. Scope of Review.

The Board's scope of review shall be limited to those portions of the plan which are proposed to be changed.

705 SUBDIVISION REVIEW CRITERIA

705.1 STATUTORY REVIEW CRITERIA

When reviewing any subdivision within the City, the Planning Board shall consider the following statutory review criteria and before granting approval must determine that:

- 1.1 **Pollution.** The proposed subdivision will not result in undue water or air pollution. In making this determination, the Planning Board shall at least consider the elevation of the land above sea level and its relation to the flood plains; the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for disposal of effluents; and the applicable state and local health and water resource rules and regulations.
- 1.2 **Sufficient Water.** The proposed subdivision has sufficient water available for the reasonably foreseeable needs of the subdivision.
- 1.3 **City Water Supply.** The proposed subdivision will not cause an unreasonable burden on an existing water supply, if one is to be utilized.
- 1.4 **Erosion.** The proposed subdivision will not cause an unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.
- 1.5 **Traffic.** The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highways or public roads existing or proposed.
- 1.6 **Sewage Disposal.** The proposed subdivision will provide for adequate solid waste and sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized.
- 1.7 **Solid Waste Disposal.** The proposed subdivision will not cause unreasonable burden on the City's ability to dispose of solid waste if municipal services are to be utilized.
- 1.8 **Aesthetic, Cultural and Natural Values.** The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the MDIFW or the City, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.
- 1.9 **Conformity with Local Ordinances and Plans.** The proposed subdivision conforms with this Article 7 and any duly adopted comprehensive plan, development plan or land use plan. In making this determination, the Planning Board may interpret this Article 7 and plans.
- 1.10 **Financial and Technical Capacity.** The subdivider had adequate financial and technical capacity to meet the standards of this Section 704.
- 1.11 **Surface Waters.** Whenever situated entirely or partially within the watershed of any pond or lake, or within 250 feet of any wetland, great pond, or river as defined in 38 M.R.S.A. § 436-A, the proposed subdivision will not adversely affect the quality of the body of water or unreasonably affect the shoreline of that body of water.
- 1.12 **Ground Water.** The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.
- 1.13 **Flood Areas.** If the subdivision, or any part of it, is in a flood prone area, as determined based on the FEMA Flood Boundary and Floodway Maps and Flood Insurance Rate Maps and information presented by the applicant, the subdivider shall determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision plan must include a condition of plan approval requiring that all principal structures within the

subdivision shall be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation.

- 1.14 **Freshwater Wetlands.** All freshwater wetlands within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of freshwater wetlands may be done with the help of the local soil and water conservation district.
- 1.15 **River, Stream or Brook.** Any river, stream or brook within or abutting the proposed subdivision has been identified on any maps submitted as part of the application. For purposes of this section, “river, stream or brook” has the same meaning as in 38 M.R.S.A. § 480-B(9).
- 1.16 **Storm Water.** The proposed subdivision will provide for adequate storm water management.
- 1.17 **Spaghetti Lot Prohibited.** If any lots in the proposed subdivision have shore frontage on a river, stream, brook, great pond or coastal wetland as these features are defined in 38 M.R.S.A. § 480-B, none of the lots created within the subdivision have a lot depth to shore frontage ratio greater than 5 to 1.
- 1.18 **Lake Phosphorus Concentration.** The long-term cumulative effects of the proposed subdivision will not unreasonably increase a great pond’s phosphorus concentration during the construction phase and life of the proposed subdivision.
- 1.19 **Impact on Adjoining Municipalities.** For any proposed subdivision that crosses municipal boundaries, the proposed subdivision will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located.
- 1.20 **Lands Subject to Liquidation Harvesting.** Timber on the parcel being subdivided has not been harvested in violation of rules adopted pursuant to 12 M.R.S.A. § 8869(14). If a violation of rules adopted by the DACF Bureau of Forestry to substantially eliminate liquidation harvesting has occurred, the City administrator must determine prior to granting approval for the subdivision that five years have elapsed from the date the landowner under whose ownership the harvest occurred acquired the parcel. The administrator may request technical assistance from DACF Bureau of Forestry to determine whether a rule violation has occurred, or the administrator may accept a determination certified by a forester licensed pursuant to 32 M.R.S.A. Ch. 76. If the administrator requests technical assistance from the DACF Bureau of Forestry, the Bureau must respond within five working days regarding its ability to provide assistance. If the Bureau notifies the administrator that the Bureau will not provide assistance, the administrator may require the applicant to provide a determination certified by a licensed forester. For the purposes of this subsection, “liquidation harvesting” has the same meaning as in 12 M.R.S.A. § 8868(6) and “parcel” means a contiguous area within one municipality, township, or plantation owned by one person or a group of persons in common or joint ownership.

STATE LAW REFERENCE—30-A M.R.S.A. § 4404 (SUBDIVISIONS; REVIEW CRITERIA).

705.2 GENERAL STANDARDS

In reviewing applications for a subdivision, the Board shall consider the following general standards and make findings that each has been met prior to the approval of a Final Plan. In all instances the burden of proof shall be upon the applicant.

12.1 CONFORMANCE WITH COMPREHENSIVE PLAN

All proposed subdivisions shall be in conformity with the Comprehensive Plan or policy statement of the municipality and with the provisions of all pertinent state and local codes and ordinances.

Adequate Technical and Financial Capacity. The applicant must have adequate technical and financial capacity to develop the subdivision in compliance with all applicable review standards. Evidence of adequate technical capacity may include a written statement identifying the consultants and contractors involved in designing and constructing the subdivision development and their respective expertise and experience with comparable projects. Evidence of adequate financial capacity may include a written statement from the lender or financing partner identifying the estimated project cost and confirming that the subdivider has funds to cover the cost.

12.2 RETENTION OF OPEN SPACES AND NATURAL OR HISTORIC FEATURES

- A. If the proposed subdivision contains any identified historical or archaeological sites, or any areas identified in the Comprehensive Plan or by the Maine Critical Areas Program as rare and irreplaceable natural areas, these areas shall be included in the open space, and suitably protected by appropriate covenants and management plans.
- B. Any public rights of access to the shoreline of a water body shall be maintained by means of easements or rights-of-way, or should be included in the open space, with provisions made for continued public access.

12.3 LAND NOT SUITABLE FOR DEVELOPMENT

The following lands shall not be included in the calculations of lot area for the purpose of meeting the requirements of the Minimum Lot Size Law.

- A. Land which is situated below the normal high-water mark of any water body.
- B. Land which is located within the 100 year frequency floodplain as identified by the Federal Emergency Management Agency or the Department of Housing and Urban Development, Flood Insurance Administration, unless the subdivider shows proof though the submittal of materials prepared by a Registered Land Surveyor which show that the property in question lies at least two (2) feet above the 100 year flood level. The elevation of filled or made land shall not be considered.
- C. Land which is part of a right-of-way, or easement, including utility easements.
- D. Land that has been created by filling or draining a pond ~~or~~ or wetland.
- E. Wetlands.

12.5 LOTS

- A. All lots shall meet the minimum requirements of the Land Use Ordinance for the zoning district in which they are located. The lot configuration should be designed to maximize access to solar energy on building sites with suitable orientation.
- B. Lot configuration and area shall be designed to provide for adequate off-street parking and service facilities based upon the type of development contemplated. Wherever possible, parking ~~areas~~ lots shall be laid out to coincide with building locations to maximize solar energy gain.

- C. Lots with multiple frontages shall be avoided wherever possible. When lots do have frontage on two or more roads, the plan, and deed restrictions shall indicate vehicular access on the less traveled way. See Ellsworth Code of Ordinances, Article 9 – Street Design and Construction Standards 910.3.
- D. Wherever possible, side lot lines shall be perpendicular to the street.
- E. The subdivision of tracts into parcels with more than twice the required minimum lot size shall be laid out in such a manner as either to provide for or preclude future resubdivision. Where public utilities could be extended to the subdivision in the foreseeable future, the subdivision shall be designed to accommodate the extensions of utilities.
- F. If a lot on one side of a stream, tidal water, road, utility easement or wetland fails to meet the minimum requirements for lot size, it may not be combined with a lot on the other side of the stream, tidal water, or road to meet the minimum lot size.
- G. The ratio of lot length to width shall not be more than three to one. Flag lots and other odd shaped lots in which narrow strips are joined to other parcels in order to meet minimum lot size requirements are prohibited.
- H. Lots shall be numbered in such a manner as to facilitate mail delivery. Even numbers shall be assigned to lots on one side of the street, and odd numbers on the opposite side. Where the proposed subdivision contains the extension of an existing street or street approved by the Board, but not yet constructed, the lot numbers shall correspond with the existing lot numbers. The lot numbering shall be reviewed by the Postmaster and his comments considered by the Board.
- I. Where a major subdivision abuts or contains an existing or proposed State-owned street, permits must be obtained from the Maine Department of Transportation for entrance/driveway. This requirement shall be noted on the Plan and in the deed of any lot with frontage on the State-owned street.

12.6 UTILITIES

- A. Utilities, with the exception of electric, telephone and television cable, shall be installed underground except as otherwise approved by the Board.
- B. Underground utilities shall be installed prior to the installation of the final gravel base of the road.
- C. The size, type and location of street lights, electric and gas lines, telephone, and other utilities shall be shown on the plan and approved by the Board.

12.7 REQUIRED IMPROVEMENTS

The following improvements are required for all subdivisions unless waived by the Board in accordance with provisions of these regulations.

- A. Monuments
 - 1. Stone monuments shall be set at all street intersections and points of curvature or minimum 4' rebar, but no further than 750 feet apart along street lines without

curves or intersections.

2. Stone monuments shall be set at all corners and angle points of the subdivision boundaries where the interior angle of the subdivision boundaries is 135 degrees or less or minimum 4' rebar.
3. Stone monuments shall be a minimum of four inches square at the top and four feet in length or minimum 4' rebar , and set in the ground at final grade level. After they are set, drill holes, ½ inch deep shall locate the point or points described above.
4. All other subdivision boundary corners and angle points, as well as all lot boundary corners and angle points shall be marked by suitable monumentation.

B. Water Supply

1. Any proposed subdivision located within 600 feet at its closest point to a water line must connect to the public water supply.
 - a. The subdivider shall provide a written statement from the Water Superintendent that adequate water for both domestic and firefighting purposes can be provided without placing an undue burden on the source, treatment facilities or distribution system involved. The subdivider shall be responsible for paying the costs of system improvements necessary to serve the subdivision.
 - b. The size and location of mains, gate valves, hydrants, and service connections shall be reviewed and approved in writing by the Water Superintendent and the Fire Chief.
2. When the location of a subdivision does not allow for a financially reasonable connection to a public water system, the Planning Board may allow the use of individual wells or a private community water system.

C. Sewage Disposal

1. Public System
 - a. Any proposed subdivision located within 600 feet at its closest point to a sewer line must connect to the public sewer system.
 - b. A sanitary sewer system shall be installed at the expense of the subdivider when there is a public sanitary sewer line located within 600 feet of the proposed subdivision at its nearest point. The Wastewater Superintendent shall certify that providing service to the proposed subdivision is within the capacity of the system's collection and treatment system.
2. Private Systems
 - a. The developer shall submit evidence of soil suitability for subsurface sewage disposal prepared by a Maine Licensed Site Evaluator or Soil Scientist in compliance with the requirements of the State of Maine Subsurface Wastewater Disposal Rules. In addition, on lots in which the limiting factor has been identified as being within 24 inches of the surface, a second site with suitable soils shall be shown as a reserve area

for future replacement of the disposal area. The reserve area shall be shown on the plan and restricted so as not to be built upon.

- b. In no instance shall a disposal area be permitted on soils or on a lot which requires a New System Variance from the Subsurface Wastewater Disposal Rules.

D. Surface drainage per the Ellsworth Code of Ordinance – Chapter 56, Article 10 Stormwater Management, Design and Construction Standards.

12.8 LAND FEATURES

- A. Topsoil shall be considered part of the subdivision and shall not be removed from the site except for surplus topsoil from roads, parking areas, lots, and building excavations.
- B. Except for normal thinning, landscaping, and cutting trees to provide to direct sunlight, existing vegetation shall be left intact to prevent soil erosion and to minimize storm water runoff.
- C. To prevent soil erosion in shoreline areas, tree cutting in the strip extending one hundred feet inland from the normal high-water mark of any waterbody shall be limited in accordance with Article 10, Section 1, Subsection C.11.

12.9 CLUSTER DEVELOPMENTS

- A. Purpose.

The purpose of these provisions is to allow for innovative concepts of housing development where maximum variations of design may be allowed, provided that the net residential density shall be no greater than is permitted in the Zoning District in which the development is proposed. To this end, the layout, and dimensional requirements of the UDO may be altered without restriction except height limitations.

- B. Basic Requirements

- 1. All the requirements and standards of these regulations, except those dealing with lot layout and dimensions shall be met.
- 2. The minimum area of land in a cluster development shall be ten acres, except where there is public water and sewer.
- 3. The plan shall indicate the location of all proposed roads, structures, parking lots, footpaths and common open space.
- 4. No building shall be constructed on soil types classified by the S.C.S. as being poorly or very poorly drained.
- 5. Where a cluster development abuts a waterbody, a portion of the shoreline, as well as reasonable access to it, shall be part of the common land.
- 6. In cluster developments with individual lot sizes of 20,000 sq.ft. or less, all dwelling units shall be connected to a common water supply and distribution system, either public or private.
- 7. In cluster developments with individual lot sizes of 20,000 sq.ft. or less, all dwelling units shall be connected to a public sewer system or to a central

collection and treatment system.

8. Buildings shall be oriented with respect to scenic vistas, natural landscape features, topography, south-facing slopes, and natural drainage areas, in accordance with an overall plan for site development and landscaping.

12.10 DEDICATION AND MAINTENANCE OF COMMON OPEN SPACE AND SERVICES

- A. The developer or subdivider shall be responsible for the maintenance of common open space until development sufficient to support a homeowners' association has taken place.
- B. The by-laws of the proposed homeowners association shall specify maintenance responsibilities and shall be submitted to the Board prior to Final Plan approval.
- C. Covenants for mandatory membership in a homeowners association setting forth the owner's rights, interests, and privileges in the association and the common property, shall be included in the deed for each lot or dwelling.

12.11 CONSTRUCTION IN FLOOD HAZARD AREAS

When any part of a subdivision is located in a special FEMA Flood Hazard Area, the plan shall indicate that all principal structures on lots in the subdivision shall be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation. Such a restriction shall be included in the deed to any lot which is included or partially included in the flood hazard area.

12.12 IMPACT ON GROUND WATER

- A. When a hydrogeologic assessment is submitted, the assessment 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 subdivision.
 3. Drainage conditions throughout the subdivision.
 4. Data on the existing ground water quality, either from test wells in the subdivision or from existing wells on neighboring properties.
 5. An analysis and evaluation of the effect of the subdivision on groundwater resources. In the case of residential developments, the evaluation shall, at a minimum, include a projection of post development nitrate-nitrogen concentrations at any wells within the subdivision, at the subdivision boundaries and at a distance of 1,000 feet from potential contamination sources, whichever is a shorter distance. For subdivisions within the watershed of a lake, projections of the subdivision'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 subdivision and within 200 feet of the subdivision boundaries.
- B. Projections of groundwater quality shall be based on the assumption of drought conditions (assuming 60% of annual average precipitation).

- C. No subdivision shall increase any contaminant concentration in the groundwater to more than one half of the Primary Drinking Water Standards. No subdivision shall increase any contaminant concentration in the ground water to more than the Secondary Drinking Water Standards.
- D. If groundwater contains contaminants in excess of the Primary Drinking Water Standards, and the subdivision is to be served by on-site groundwater supplies, the applicant shall demonstrate how water quality will be improved or treated.
- E. If groundwater contains contaminants in excess of the Secondary Drinking Water Standards, the subdivision shall not cause the concentration of the parameters, in question to exceed 150% of the ambient concentration.
- F. Subsurface waste water 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 Final Plan, and as restrictions in the deeds to the affected lots.

12.13 ACCESS CONTROL AND TRAFFIC IMPACTS

- A. General
 - 1. Provision shall be made for vehicular access to the subdivision and circulation within the subdivision in such a manner as to safeguard against hazards to traffic and pedestrians in existing streets and within the subdivision, to avoid traffic congestion on any accessways and to provide safe and convenient circulation on public streets and within the subdivision.
 - 2. Access and circulation shall comply with the requirements of Chapter 56, Article 9 (Street Design and Construction Standards).

705.3 STREET AND STORM DRAINAGE DESIGN AND CONSTRUCTION STANDARDS

13.1 GENERAL REQUIREMENTS

- A. The Board shall not approve any subdivision plan unless proposed streets and storm water management systems are designed in accordance with Chapter 56, Article 9 (Street Design and Construction Standards) and Article 10 (Stormwater Management Design and Construction Standards).
- B. Approval of the Final Plan by the Board shall not be deemed to constitute or be evidence of acceptance by the City of any street or easement.
- C. Where the subdivision streets are to remain private roads, the following words shall appear on the recorded plan & within the deed:

"All roads in this subdivision shall remain private roads to be maintained by the developer or the lot owners and shall not be accepted or maintained by the City of Ellsworth even if they meet the city street design & construction standards."

13.7 ADDITIONAL IMPROVEMENTS AND REQUIREMENTS

- A. Erosion Control. The procedures outlined in the erosion and sedimentation control plan shall be implemented during the site preparation, construction, and clean-up stages.
- B. Cleanup. Following street construction, the developer or contractor shall conduct a

thorough clean-up of stumps and other debris from the entire street right-of-way. If on-site disposal of the stumps and debris is proposed, the site shall be indicated on the plan, and be suitably covered with fill and topsoil, lined, fertilized, and seeded.

- C. Street Names, Signs and Lighting. Streets which join and are in alignment with streets of abutting or neighboring properties shall bear the same name. Names of new streets shall not duplicate, nor bear phonetic resemblance to the names of existing streets within the Municipality, and shall be subject to the approval of the City Assessor's Office. No street name shall be the common given name of a person. The developer shall reimburse the Municipality for the costs of installing street names, traffic safety and control signs. Street lighting shall be installed as approved by the Board.

706 POST-APPROVAL REQUIREMENTS

706.1 INSPECTION OF REQUIRED IMPROVEMENTS

- A. At least five days prior to commencing each major phase of construction of required improvements, the subdivider or builder shall:
 - 1. Notify the CEO in writing of the time when he/she proposes to commence construction of such improvements, so that the CEO can cause inspection to be made to ensure that all specifications and requirements shall be met during the construction of required improvements, and to ensure the satisfactory completion of improvements and utilities required by the Planning Board.
 - 2. Show proof of a signed agreement between the subdivider and a Licensed Civil Engineer that the Engineer will accept responsibility for on-site inspection and certification that all specifications have been met. Such agreement will contain a fee schedule and dates for which the agreement is valid.
- B. If the inspecting official finds upon inspection of the improvements that any of the required improvements have not been constructed in accordance with the plans and specifications filed by the subdivider, the official shall so report in writing to the CEO, Planning Board, and the subdivider or builder. The subdivider shall take prompt action to cure any construction defects.
- C. **Minor Modifications to Improvements.** If at any time before or during the construction of the required improvements, it becomes necessary to modify the required improvements due to unforeseen circumstances such as encountering hidden outcrops of bedrock or natural springs, the CEO is authorized to approve minor modifications to the final plan. The CEO shall issue any approval under this section in writing and shall transmit a copy of the approval to the Planning Board. Revised plans shall be filed with the City. For major modifications, such as relocation of rights-of-way, property boundaries, or changes of grade by more than 1%, the subdivider shall request on-site inspection and approval from the Planning Board.
- D. At the close of each summer construction season, the City shall, at the expense of the subdivider, have the site inspected by a third party qualified inspector. By December 1st of each year during which construction was done on the site, the inspector shall submit a report to the Planning Board based on that inspection, addressing whether storm water and erosion control measures (both temporary and permanent) are in place, are properly installed, and appear adequate to do the job they were designed for. The report shall also include a discussion and recommendations on any problems which were encountered.

- E. Prior to the sale of any lot, the subdivider shall provide the Planning Board with a letter from a Registered Land Surveyor, stating that all monumentation shown on the plan has been installed.
- F. The subdivider or builder shall be required to maintain all improvements and provide for snow removal on streets and sidewalks until such time, if ever, of acceptance of the improvements by the City.

706.2 RECORDING, CONVEYANCE OF LOTS

- A. No plan of a division of land within the City which would constitute a subdivision shall be recorded in the Hancock County Registry of Deeds until a Final Plan has been approved by the Planning Board in accordance with this Article 7.
- B. No person, firm, corporation or other legal entity 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 Deeds.
- C. No person, firm, corporation or other legal entity may convey, offer or agree to convey any land in an approved subdivision which is not shown on the Final Plan as a separate lot.
- D. No public utility, water district, sanitary district, or 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.
- E. No development of a subdivision may occur without Planning Board approval. Development includes grading or construction of roads, grading of land or lots, or construction of buildings which require a Final Plan approved as provided in this Article 7 and recorded in the Hancock County Registry of Deeds.
- F. No lot in a subdivision may be sold, leased, or otherwise conveyed before the street upon which the lot fronts is completed in accordance with the requirements of this Article 7, up to and including the entire frontage of the lot. No unit in a multi-family development shall be occupied before the street upon which the unit is accessed is completed in accordance with this Article 7.

708 DEFINITIONS

Accessory Use or Structure: A subordinate use or structure customarily incidental to and located on the same lot as the principal use or structure, such as a garage, workshop, or the like. Accessory uses, in the aggregate, shall not subordinate the principal use or structure on the lot.

Accessway: Any public or private street, right-of way, or driveway used to enter or leave a public or private street or adjacent land using an on-road vehicle. All streets are considered accessways but not all accessways are considered streets. Within the Shoreland Zone, an accessway also includes 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 residential driveway less than 500 feet in length.

Acre: A measure of land containing 43,560 square feet.

Aggrieved Party: An owner of land whose property is directly or indirectly affected by the granting or denial of a permit or variance under this Ordinance; a person whose land abuts land for which a permit or variance has been granted; or 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: The cultivation of soil for the production or raising of food, crops, or other valuable or useful products including commercial gardening, and the growing of nursery stock.

Alteration: A change, addition, or modification requiring construction, including any change in the location of structural members of buildings such as bearing walls, columns, beams, or girders, but not including cosmetic or decorative changes.

Apartment, Accessory: A separate dwelling unit which is located within and subordinate to a single family detached dwelling.

Automobile Junk Yard: A place occupied by three or more unregistered, unserviceable, discarded, or junked automotive vehicles, or bodies, engines, or other parts thereof sufficient in bulk to equal two vehicles or bodies, also referred to as a motor junk yard. (But excluding vehicle repair garages where autos are being overhauled or held temporarily pending insurance claims, etc.)

Automobile-Oriented Business: A business establishment which serves its customers while they remain in their motor vehicles such as a drive-in restaurant, drive-up bank teller and a car wash.

Automobile Repair Shop: A business establishment where motor vehicles and/or their related parts are repaired, reconditioned, painted, or rebuilt.

Boarding, Rooming, or Lodging House: Any dwelling in which lodging is offered for compensation to three or more persons either individually or as families with or without meals.

Building Height: The vertical distance measured from the average elevation of the finished grade within twenty (20) feet of a building to the highest point of the building.

Bureau: State of Maine Department of Conservation's Bureau of Forestry.

Campground: A business, public or private establishment operated as a recreational site for tents, campers, trailers, and travel-trailers, or other forms of temporary shelter that can accommodate two or more parties.

Campsite, Individual private: Private land for exclusive personal use not associated with a campground, but which is developed for repeated camping by only one group not to exceed 10 individuals and which involves site improvements which may include but not be limited to a gravel pad, parking area, fire place, or tent platform.

Camper: For the purpose of this ordinance, a "camper" shall be defined as a travel trailer or a recreational vehicle equipped with sleeping accommodations

Cemetery: A burial ground for the interment of the dead.

Change in Use: The change from an existing use to another use, including without limitation, the addition of a new use to an existing use.

Church: A building or group of buildings arranged, designed, intended, or used for the conduct of religious services, and accessory uses associated therewith.

Club: Any voluntary association of persons organized for fraternal, social, religious, benevolent, recreational, literary, patriotic, scientific, or political purposes whose facilities are open to members but not the general public, and which is principally engaged in activities which are not customarily carried on for pecuniary gain.

Cluster Subdivision: A subdivision in which the lot sizes are reduced below those normally required in the zoning district in which the development is located in return for the provision of permanent open space

owned in common by lot unit owners, the City, or a land conservation organization.

Code Enforcement Officer: A person appointed by the Municipal Officers to administer and enforce this Ordinance. Reference to the Code Enforcement Officer shall include the Building Inspector, Plumbing Inspector, Electrical Inspector, and the like, where applicable.

Commercial Recreation - Indoor: A business establishment providing indoor recreation facilities such as a bowling alley, skating rink, swimming pool, tennis or racquet ball courts, but not including mechanical, electronic, or video game arcades.

Commercial Recreation - Outdoor: A business establishment providing recreational facilities such as a golf course, tennis courts, swimming pool, ice skating rink, or riding stables, but not including campgrounds, drive-in movie theaters, race tracks, water slides or mechanical or motorized rides.

Community Building: A building owned by a non-profit organization available to the community for purposes of public assembly and community activities.

Community Use: A governmental or public service use for the general benefit of the citizens funded in whole or in part by the City of Ellsworth or a quasi-public organization, including by way of illustration and without limitation, municipal buildings, schools, public parks and recreational facilities, fire stations, ambulance services and sewage treatment plants.

Complete Application: An application shall be considered complete upon submission of the required fee and all information required by these regulations for a Final Plan, or by a vote by the Board to waive the submission of required information. The Board shall issue a receipt to the applicant upon its determination that an application is complete.

Complete Substantial Construction: The completion of a portion of the improvements which represents no less than thirty percent of the costs of the proposed improvements within a subdivision. If the subdivision is to consist of individual lots to be sold or leased by the subdivider, the cost of construction of buildings on those lots shall not be included. If the subdivision is a multifamily development, or if the applicant proposes to construct the buildings within the subdivision, the cost of building construction shall be included in the total costs of proposed improvements.

Comprehensive Plan or Policy Statement: Any part or element of the overall plan or policy for development of the municipality, as defined in Title 30 M.R.S.A., 4961.

Conservation Easement: A non-possessory interest in real property imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural, scenic or open space values of real property; assuring its availability for agricultural, forest, recreational or open space use; protecting natural resources; or maintaining air or water quality.

Conditional Use: A use permitted by the Planning Board subject to certain conditions and standards consistent with the General Purposes section for each zoning district. In addition to the specific uses listed for each zoning district, a conditional use may include uses similar to those listed. The Board shall only grant approval of a similar use after having found that the impact of the use will not be any greater than the impact of the use to which it is being compared.

Contiguous Lots: Lots which adjoin at any line or point, or are separated at any point by a body of water less than fifteen feet wide.

Customary Home Occupation: Any occupation or profession, which is accessory to a residential use, and provided that:

1. The home occupation is to be conducted by a member of the family residing in the dwelling;

2. All activity associated with the home occupation is conducted wholly within the dwelling unit or wholly within a structure accessory to a dwelling unit in order that no external structural change or alteration or external activities are required which change the residential character or appearance of the dwelling;
3. No machinery or equipment which emits audible sounds, air pollutants or other wastes apparent from outside the dwelling will be utilized in the home occupation;
4. The home occupation will not involve retail sales as a primary activity, but articles may be sold from the dwelling, which are incidental to the providing of the service involved in the home occupation;
5. The family member conducting the home occupation may employ at the dwelling no more than two (2) additional persons who are not members of the immediate family residing in the dwelling to assist in the home occupation (maximum of five (5) people including family members);
6. Adequate off-street parking will be provided within the lot upon which the dwelling is located in accordance with the requirements in Chapter 56, Unified Development ordinance, Article 11 Parking Standards.

Deck: A level structure adjacent to a building elevated above the surface of the ground which may have a railing but no roof, awning, or other covering.

Decorative Changes: Repainting, residing, reroofing; adding, removing or replacing trim, railing, or other non-structural architectural details; or adding, removing or changing the location of windows and doors.

Developed Area: Any area on which a site improvement or change is made, including buildings, landscaping, parking lots, and streets.

Development: Uses including but not limited to the construction of a new building or other structures on a lot or below the shoreline or in a wetland, the relocation of an existing building on another lot, or the use of open land for a new use; any man-made change to improved or unimproved real estate, including but not limited to parking, temporary uses, clearing of land or vegetation, mining, dredging, filling, grading, paving, excavation, or drilling operations; it includes a building, a development site under the same ownership, a consolidated development, and phased development.

Driveway, Commercial: Any accessway serving a commercial use generating less than 50 average daily traffic (ADT).

Driveway, Residential: A means of access from a public or private road which will serve no more than two dwelling units.

Dwelling: Any building or structure or portion thereof containing one or more dwelling units, but not including a motel, hotel, inn, or similar use

- a. **Single-Family Dwelling** - A building designed or intended to be used exclusively for residential occupancy by one (1) family only and containing only one (1) dwelling unit.
- b. **Two Family Dwelling or Duplex** – A building designed or intended to be used exclusively for residential occupancy by no more than two (2) families and containing two (2) separate dwelling units in one (1) structure.
- c. **Multiple Dwelling:** A building designed or intended to be used, or used exclusively for residential occupancy by three (3) or more families living independently of one another and containing three

(3) or more dwelling units, including apartment buildings and condominiums, but excluding single-family and two-family dwellings.

Dwelling Unit: Any building or portion thereof which contains living facilities, including provisions for sleeping, eating, cooking, and sanitation, as required by the State of Maine and/or the City of Ellsworth, for not more than one household, or a congregate residence for 6 or less persons. A dwelling unit shall have minimum of 500 square feet.

Earth: Topsoil, sand, gravel, clay, peat, rock, or other minerals.

Emergency Mobile Home Park: A parcel of land used to accommodate several mobile homes for a temporary period.

Emergency Operations: Operations conducted for the public health, safety or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings and livestock from the threat of destruction or injury. (Am 4/03)

Essential Services: Facilities for the transmission or distribution of water, gas, electricity or communication or for the collection, treatment or disposal of wastes, including, without limitation, towers, poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm and police call boxes, traffic signals, hydrants and similar accessories, but not buildings.

Family: One or more persons occupying a dwelling unit as a single non-profit housekeeping unit whether or not related to each other by birth, marriage, or adoption, but not to consist of more than five (5) unrelated persons.

Farmstand: A roadside stand not exceeding 400 square feet in floor area selling only farm, garden, greenhouse, or nursery products, and between Labor Day and Christmas, cut Christmas trees, garlands, wreaths, and wreath materials.

Final Plan: The final drawings on which the applicant's plan of subdivision is presented to the Board, for approval and which, if approved, must be recorded at the Registry of Deeds.

Fishing Equipment: Personal property designed, intended, or used in connection with commercial and/or recreational fishing activities including boats, nets, buoys, traps, and line.

Fish Processing: The loading, unloading, packing, processing and packaging of edible fish and other seafood products but not including processing of fish wastes or fish by-products.

Floor Area: 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.

Foundation: The supporting substructure of a building or other structure, excluding wooden sills and post supports, but including but not limited to basements, slabs, frostwalls, or other base consisting of concrete, block, brick or similar material.

Forestry: See "Timber Harvesting" and "Timber Management Activities."

Frontage - Street: The horizontal distance measured in a straight line between the intersections of the side lot lines of a lot with the right-of-way of a street.

Frontage - Shore: The length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline.

Functionally Water-Dependent Uses: 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 cannot be located away from these waters. The uses include, but are not limited to dams, 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 cannot reasonably be located or operated at an inland site; and uses that primarily provide general public access to coastal or inland waters.

Gasoline Service Station: A business establishment selling fuel and related products for motor vehicles.

Great Pond: Any inland body of water which in a natural state has a surface area in excess of 10 acres, and any inland body of water artificially formed or increased which has a surface area in excess of 30 acres. For the purposes of this Ordinance, Ellsworth's Great Pond are Branch Lake, Graham Lake, Green Lake, Jesse Bog, Little Duck Pond, Little Rocky Pond, Lower Patten Pond, Upper Patten Pond, Wormwood Pond, and Leonard Lake.

Half Story: That portion of a building immediately beneath a sloping roof when there is less than four feet vertically between the floor and the intersections of the bottoms of the rafters at the plate with the interior faces of the walls. A half story may be as completely used for any purpose as a full story.

Hand Crafts: The manufacturing of handcrafted articles, such as ceramics, leather goods, and jewelry.

Health Institution: A hospital, nursing home; boarding care facility or any other place for the treatment or diagnosis of human ailments, excluding professional offices.

Height: See "Building Height."

High Intensity Soil Survey: A map prepared by a certified Soil Scientist, identifying the soil types down to 1/8 acre or less at a scale equivalent to the subdivision plan submitted. The soils shall be identified in accordance with the National Cooperative Soil Survey. The map shall show the location of all test pits used to identify the soils, and shall be accompanied by a log of each sample point identifying the textural classification and the depth to seasonal high water table or bedrock at that point. Single soil test pits and their evaluation for suitability for subsurface wastewater disposal systems shall not be considered to constitute high intensity soil surveys.

Home Occupation: See "Customary Home Occupation."

Hotel: A building or group of buildings having ten (10) or more guest rooms in which lodging, or meals and lodging, are offered for compensation, including motels, tourist courts, motor lodges, and cabins.

Impervious Area: The total area of a principal and accessory structures and areas that will be covered with a low-permeability material such as asphalt, concrete and compacted gravel used for parking and roadways. A natural or man-made waterbody is not considered an impervious area except for the purpose of stormwater calculations.

Industrial Park or Development: A subdivision in an area zoned exclusively for industrial uses, or a subdivision planned for industrial uses and developed and managed as a unit usually with provisions for common service for the users.

Inn: A business establishment having nine (9) or less guest rooms in which lodging is offered to guests for compensation, and meals may be offered for compensation only to the lodgers.

Institutional: A non-profit 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.

Junkyard:

- a. **Automobile Graveyard** - a yard, field, or other area used as a place of storage for three (3) or more unserviceable, discarded worn-out or junked automobiles.
- b. **Junkyard** - a yard, field, or other area used as a place of storage for discarded, worn-out or junked plumbing, heating supplies, household appliances, furniture, discarded scrap and junked lumber, old or scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, waste and scrap iron, steel and other ferrous and non-ferrous material, including garbage dumps, waste dumps, and sanitary landfills.

Kennel: Any commercial establishment where dogs and/or cats are kept or boarded for a fee or where animal grooming is performed for a fee.

Lot: A parcel of land occupied or capable of being occupied by one (1) building and the accessory buildings or uses customarily incidental to it, including such open spaces as are required by ordinances and having frontage upon a public street, right-of-way, or private way.

Lot Area: The area of land enclosed within the boundary lines of a lot, minus land below the normal high-water line of a water body or upland edge of a wetland and areas beneath accessways serving more than two lots.

Lot - Corner: A lot with at least two contiguous sides abutting upon a street or right-of-way.

Lot Coverage: The percentage of the lot covered by structures.

Lot Coverage, Shoreland: The total footprint area of all structures, parking lots and other non- vegetated surfaces, within the shoreland zone for the lot or for a portion thereof that is located within the shoreland zone, including land area previously developed.

Lot Frontage: The horizontal distance measured in a straight line connecting the intersections of the front lot line with the side lot lines.

Lot - Interior: Any lot other than a corner lot.

Lot Lines: The property lines bounding a lot as defined below:

- a. **Front Lot Line** - On an interior lot, the line separating the lot from the street or right-of- way. On a corner or through lot, the line separating the lot from each street or right-of - way.
- b. **Rear Lot Line** - 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 (10) feet long, lying furthest from the front lot line. On a corner lot, the rear lot line shall be opposite-the front lot line of least dimension.
- c. **Side Lot Line** - Any lot line other than the front lot line or rear lot line.

Lot Minimum Area: The lot area, less the area of any land subject to rights-of-way or easements, other than utility easements servicing the lot, and also excluding lands which are below the normal high-water mark or which are covered with water for at least three months per year.

Lot, Minimum Width, Shoreland: The closest distance between the side lot lines of a lot. When only two lot lines extend into the shoreland zone, both lot lines shall be considered to be side lot lines.

Lot Width: The width of any lot as measured wholly within the lot at the required front setback along a line parallel to a straight line connecting the intersections of the front lot line with the side lot line.

Lot of Record: A parcel of land, a legal description of which or the dimensions of which are recorded on a document or map on file with the Hancock County Register of Deeds.

Manufactured Housing: A structural unit or units designed for occupancy and constructed in a manufacturing facility and transported, by the use of its own chassis or an independent chassis, to a building site. The term includes any type of building that is constructed at a manufacturing facility and transported to a building site where it is used for housing and may be purchased or sold by a dealer in the interim. For purposes of this section, two (2) types of Manufactured Housing are included. Those two (2) types are:

(1) Those units constructed after June 15, 1976, commonly called "newer mobile homes," that the manufacturer certifies are constructed in compliance with the United States Department of Housing and Urban Development standards, meaning structures transportable in one or more sections, that in the traveling mode are 14 body feet or more in width and are 750 or more square feet, and that are built on a permanent chassis and designed to be used as dwellings, with or without permanent foundations, when connected to the required utilities including the plumbing, heating, air conditioning or electrical systems contained in the unit.

(2) This term also includes any structure that meets all the requirements of this subparagraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the United States Department of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, United States Code, Title 42, Section 5401, et seq.; and

Those units commonly called "modular homes" that the manufacturer certifies are constructed in compliance with Title 10, chapter 951, and rules adopted under that chapter, meaning structures, transportable in one or more sections, that are not constructed on a permanent chassis and are designed to be used as dwellings on foundations when connected to required utilities, including the plumbing, heating, air-conditioning or electrical systems contained in the unit.

Mobile Home: Housing units that comply with the "newer mobile home" standards of the United States Department of Housing and Urban Development, as defined herein under "Manufactured Housing." Substandard housing units shall not be installed in a Mobile Home Park or elsewhere in the City of Ellsworth.

Marina: A use of waterfront land involved in the operation of a marina including structures and activities normally integral to the operation of a marina, such as servicing, fueling, pumping-out, chartering, launching, and dry-storage and boating equipment.

Mineral Extraction: Any operation within any 12-month period which removes more than ~~one~~ 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 Pad: That portion of a mobile home site reserved for the placement of a mobile home, appurtenant structures or additions.

Mobile Home Site [aka mobile home park lot]: An area of land in a Manufactured Housing Park used for installation of a mobile home and the exclusive use of its occupants that shall be designated on the Mobile Home Park plan meeting all of the requirements of this Section.

Mobile Home Park: A parcel of land under unified ownership approved the City for the placement of three (3) or more Manufactured Housing units.

Motel: See "Hotel."

Multifamily Development: A subdivision which contains three or more dwelling units on land in common ownership, such as apartment buildings, condominiums, or mobile home parks. (Am 4/03)

Municipal Officers: Municipal Officers shall mean the Ellsworth City Council.

Net Residential Acreage: The total acreage available for the subdivision as shown on the proposed subdivision plan, minus the area for streets or accessways and the areas which are unsuitable for development.

Non-conforming Structure or Building: A structure or accessory facility, such as parking areas lots or other conditions to which the requirements of this ordinance apply, which does not meet any one or more of the following dimensional requirements: setback, height, or lot coverage, or other standards contained in this ordinance, but which is allowed solely because it was in lawful existence at the time this ordinance or subsequent amendments took effect.

Nonconforming Use: Any activity on the premises or in a structure not permitted as a land use in the district in which it lies, which existed prior to the passage of the district requirements prohibiting it. For the purpose of this Ordinance, a Conditional Use, as a permitted use, is not a nonconforming use.

Normal High-Water Line (*non-tidal waters*): 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 non-forested 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.

Nursing Home: Any dwelling in which three or more aged, chronically ill or incurably ill persons, or persons convalescing from an illness are housed and furnished with meals and nursing care for compensation.

Official Submittal Date: The date upon which the Board issues a receipt, indicating that a complete application has been submitted.

Open Space: The portion of a lot or site which is maintained in its natural state or planted with grass, shrubs, trees, or other vegetation and which is not occupied by buildings, structures, or other impervious surfaces.

Patio: A level area adjacent to a dwelling unit constructed of stone, cement or other material located at ground level, with no railing or other structure above the level of the ground.

Parking lot, private: Parking for the exclusive use of the owners, tenant, lessees, or occupants of the lot on which the parking area is located or their customers, employees or whomever else they permit to use the parking area.

Parking lot, public: Parking available to the public, with or without payment or fee.

Parking Lot: An open area other than an accessway used for the parking of two or more vehicles, excluding an area associated with a residential driveway serving no more than two residential dwelling units.

Parking, commercial: Parking or storage of motor vehicles as a commercial enterprise for which any fee is charged independently of any other use of the premise.

Parking, excess: Required parking which has been demonstrated as being unused by an existing land use or exceeds the minimum ordinance requirements.

Parking, Satellite: Parking not located on a parcel or lot that is contiguous or adjacent to the parcel or a lot not containing the use for which the parking is intended.

Parking, Shared: A public or private parking area used jointly by two or more users.

Parking, Valet: Parking of vehicles by an attendant provided by the establishment for which the parking is provided.

Piers, Docks, Wharves, Breakwaters, Causeways, Marinas, Bridges, and Uses Projecting Into Water Bodies:

- a. **Temporary** - Structures which remain in the water for less than seven (7) months in any period of twelve (12) consecutive months.
- b. **Permanent** - Structures which remain in the water for seven (7) months or more in any period of twelve (12) consecutive months.

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

Planned Unit Development: A development controlled by a single developer for a mix of residential commercial, and industrial uses. A PUD is undertaken in a manner that treats the developed area in its entirety to promote the best use of land, including the creation of open space, a reduction in the length of road and utility systems, and the retention of the natural characteristics of the land.

Planning Board: The Planning Board of the City of Ellsworth created by the Ellsworth City Charter in accordance with State Statutes.

Preliminary Subdivision Plan: The preliminary drawings indicating the proposed layout of the subdivision to be submitted to the Board for its consideration.

Principal Building: The building in which the primary use of the lot is conducted.

Principal Use: A use other than one which is wholly incidental or accessory to another use on the same premises.

Privy: A pit in the ground in which human excrement is placed.

Professional and Business Offices: The place of business, other than a residential unit, of doctors, lawyers, accountants, financial, architects, surveyors, real estate and insurance agents, psychiatrists, psychologists, counselors, and the like, or in which a business conducts its administrative, financial and clerical operations and also including providers of personal services such as barbers, hairdressers, and beauticians.

Public Utility: Any person, municipal department or other entity organized to furnish water, gas, electricity, waste disposal services, communication facilities, or transportation to the public.

Public Water System: A water supply system that provides water to at least 15 service connections or services water to at least 25 individuals daily for at least 30 days a year.

Recent Floodplain Soils: The following soil series as described and identified by the National Cooperative Soil Survey: Fryeburg; Hadley; Limerick; Lovewell; Medomak; Ondawa; Alluvia; Cornish; Charles; Podunk; Rumney; Saco; Suncook; Sunday; and Winooski.

Recording Plan: A copy of the Final Plan which is recorded at the Registry of Deeds and which need not show information not relevant to the transfer of an interest in the property, such as sewer and water line location and sizes, culverts, and building lines.

Recreational Vehicle: 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.

Residual Basal Area: The average of the basal area of trees remaining on a harvested site.

Restaurant: An establishment where food and drink are prepared and served to the public and where no food or beverages are served directly to occupants of motor vehicles.

Resubdivision: The division of an existing subdivision or any change in the plan for an approved subdivision which affects the lot lines, including land transactions by the subdivider not indicated on the approved plan.

Retail Business: A business establishment engaged in the sale of goods or services to an ultimate consumer for direct use or consumption, and not for resale, not including automobile-oriented businesses and, not including electronic, mechanical, or video game arcades.

River: A free-flowing body of water including its associated floodplain wetlands. For the purposes of this Ordinance Ellsworth's only River is the Union River from the Graham Lake dam to Leonard Lake. The Union River below the Leonard Lake dam is a tidal estuary considered a coastal wetland.

Road: this word is used interchangeably with the word Street.

Rubbish: Any discarded, worn-out abandoned, or non-functioning article or articles or materials including but not limited to tin cans, bottles, used wood products, junk appliances, junk automobiles, or parts thereof, old clothing, or household goods. The word "rubbish" shall include the words "trash," "waste materials," and "refuse."

School: An institution for education or instruction including a college, university, and public or private school conducting classes pursuant to a program approved by the State Board of Education or similar governmental agency, but not including commercially operated schools such as schools of beauty, culture, business, dancing, driving, music or recreation which shall be deemed retail business.

Setback: The horizontal distance from a lot line to the nearest part of a structure.

Setback, Shoreline: The 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, accessway, parking lot or other regulated object or area.

Shoreland Zone: 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, as defined in Chapter 56, Article 4. Shoreland Zoning Regulations and/or streams mapped on the Official Land Use Map.

Sign: An object, device or display, or part thereof, situated outdoors or indoors, which is directed at persons outside the premises, used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including words, letters, figures, design, symbols, fixtures, colors, illumination, or projected images.

Sketch Plan: Conceptual maps, renderings, and supportive data describing the project proposed by the applicant for initial review prior to submitting an application for subdivision approval.

Solar Collector: A device, or combination of devices, structure, or part of a device or structure that transforms direct solar energy into thermal, chemical, or electrical energy and that contributes to a building's energy supply.

Solar Energy System: A complete design or assembly consisting of a solar energy collector, an energy

storage facility (when used), and components for the distribution of transformed energy.

Story: That portion of a building contained between any floor and the floor or roof next above it, but not including any portion so contained if more than one half of such portion vertically is below the average mean finished grade of the ground adjoining such building.

Street: A public or private way including but not limited to roads, alley, and other rights- of-way for vehicular and/or pedestrian use.

Structure: 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. The term includes structures temporarily or permanently located, such as decks and patios. Only structures covering more than 10 square feet must comply with the requirements of zoning districts, exclusive of shoreland zoning districts, where all structures, regardless of size, must comply with the shoreland zoning requirements.

The following are not considered structures: fences, poles, wiring and other aerial equipment normally associated with service drops as well as guying and guy anchors, a retractable awning or shade used solely to shade a door or window.

The following are not considered structures outside of shoreland zoning districts: parking lots, driveways, an awning or tent for a temporary event and backyard tents used for sleeping.

Subdivision: "Subdivision," as that term is defined in 30-A M.R.S.A. § 4401(4).

Subdivision – Major: The division of a tract or parcel of land into more than four lots. .

Subdivision - Minor: The division of a tract or parcel of land into four or fewer lots.

Subsurface Sewage Disposal System also referred to as Subsurface Wastewater Disposal System: 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.

Terrace: See "Patio."

Theater: A fully enclosed building used for-display or presentation to the public of films, plays, or other kinds of performances.

Timber Harvesting: 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 (2) acres within the shoreland zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to Chapter 56, Article 4, Section 410.14, *Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting*.

Timber Harvesting and Related Activities: Timber harvesting, the construction and maintenance of accessways used primarily for timber harvesting and other activities conducted to facilitate timber harvesting.

Tract (or Parcel) of Land: All contiguous land in the same ownership, whether or not the tract is separated at any point by an intermittent or non-navigable stream, tidal waters where there is no flow at low tide, or a private road established by the abutting land owners.

Trailer: A vehicle without motive power and not intended for human occupancy, designed to be towed by

a motor vehicle including a utility trailer, boat trailer, horse trailer, or snowmobile trailer.

Travel Trailer: See "Recreational Vehicle."

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 Chapter 56, Article 4, and only applies to that portion of the tributary stream located within the shoreland zone of the receiving water body or wetland.

Upland edge of a wetland: 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 highest annual 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 6 meters (approximately 20 feet) tall or taller.

Use: The purpose for which land or a building or structure is arranged, designed or intended, or for which it is occupied.

Variance: A realization of the terms of the zoning ordinance which impose restrictions of lot coverage, lot size, or setback as permitted by Article VII of the Ordinance.

Warehouse: A structure or building used primarily for the storage of articles, goods or materials.

Water Body: Any great pond, river, or stream.

Water Crossing: 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 accessways, 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.

Water Dependent Use: A use which, by its nature, requires a shorefront or surface water location, including, without limitation, boat yards, marinas, boat houses, boat launching ramps, ship chandleries and commercial fishing facilities. The location of a use, which does not by its nature require a shorefront or surface water location, on a pier, boat, or barge, shall not qualify it as a water dependent use.

Wetland: A freshwater or coastal wetland.

Wetland, Forested: A freshwater wetland dominated by woody vegetation that is six (6) meters tall (approximately 20 feet) or taller.

Wetland, Freshwater: Freshwater swamps, marshes, bogs and similar areas, other than forested wetlands, which are:

- 1) Of ten or more contiguous acres; or of less than 10 contiguous acres and adjacent to a surface water body, excluding any river, stream or brook, such that in a natural state, the combined surface area is in excess of 10 acres; and
- 2) Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils. Freshwater wetlands may contain small stream channels or inclusions of land

that do not conform to the criteria of this definition.

Wetland, Coastal: 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 that 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.

Wholesaling: A business establishment engaged in the bulk sale of goods or materials not manufactured or processed on the premises.

Yard: On the same lot with a principal building, a space which is open to the sky and unoccupied by any structures except a fence not more than six (6) feet in height.

Yard Sale: Display and sale of property owner's possessions (may include multi-families and their possessions). Yard sales exceeding three (3) consecutive days and/or held more frequently than (3) times in any calendar year will be considered a commercial use and require Site Plan Review.

APPENDIX 56.7-A

SUBMISSION REQUIREMENTS

SUBMISSION REQUIREMENT		PREAPPLICATION MEETING —SKETCH PLAN	MINOR SUBDIVISION —FINAL PLAN	MAJOR SUBDIVISION —PRELIMINARY PLAN	MAJOR SUBDIVISION —FINAL PLAN ¹
Number and Format of Submissions					
	One digital copy of all submissions, in such form as the City Planner requests.	X	X	X	X
	<u>Prior to the Technical Review Team meeting:</u> Five copies of the sketch plan or subdivision plan sheets, no larger than 24 by 36 inches in size, with a margin of two inches outside of the border line on the left side for binding and a one-inch margin outside the border along the remaining sides. <u>After the Technical Review Team meeting:</u> Eight copies of the sketch plan or subdivision plan sheets, in conformance with the above requirements.	X	X	X	X
	One copy of the sketch plan subdivision plan sheets reduced to a size of 8 ½ by 11 inches or 11 by 17 inches.	X	X	X	X
	Two sets of reproducible, stable base transparent originals of the subdivision plan (one for recording, one for City records).	---	X	---	X
	<u>Prior to the Technical Review Team meeting:</u> Five copies of all other submission requirements. <u>After the Technical Review Team meeting:</u> Eight copies of all other submission requirements.	X	X	X	X
Sketch Plan / General Intent / Deviations from Prior Plans					
	All information provided as part of the sketch plan or, if no sketch plan was submitted, a description of the general intent of the subdivision and the site including its area, shape, and proposed features	---	X	X	---
	A statement clearly identifying all proposed adjustments or modifications from the sketch plan or preliminary plan, if submitted.	---	X	X	X
Location Map					
	A location map drawn to scale and at a size adequate to show the relationship of the proposed subdivision to adjacent properties, and including: — Existing subdivisions in the proximity of the proposed subdivision	X	X	X	---

¹ Include all Planning Board conditions from preliminary plan.

SUBMISSION REQUIREMENT		PREAPPLICATION MEETING —SKETCH PLAN	MINOR SUBDIVISION —FINAL PLAN	MAJOR SUBDIVISION —PRELIMINARY PLAN	MAJOR SUBDIVISION —FINAL PLAN ¹
	— Locations and names of existing and proposed streets — Boundaries and designations of zoning districts — An outline of the proposed subdivision and any remaining portion of the owner's property if the plan submitted covers a portion of the owner's holdings				
Existing Conditions Map					
	One or more maps drawn at a scale of not more than 100 feet to the inch² showing the relation of the proposed subdivision to adjacent properties and the surrounding area and including: — Field surveyed boundaries of the proposed subdivision and all lot lines, giving complete descriptive data by bearings and distances, made and certified by a licensed land surveyor. — The date that the plan was prepared, a north point, and a graphic map scale. — The location of all zoning district boundaries. — The locations, widths, and names of existing roads, streets, highways, paper streets, easements, and rights-of-way. — The locations of all existing structures and buildings. — The locations of all existing sewer lines, water mains, culverts, and drainage ways. — The locations, widths, and names of open spaces, parks, public spaces, and public improvements, including those shown upon the Official Land Use Map and the Comprehensive Plan. — The location of all rivers, streams, brooks, great ponds, water bodies, wetlands, watercourses, farmland, significant wildlife habitat, rare and irreplaceable natural areas, other protected natural resources, and other essential physical features. — Areas within or adjacent to the proposed subdivision which have been identified as High or Moderate Value Wildlife Habitat by the Maine Department of Inland Fisheries and Wildlife or the Comprehensive Plan. — Areas designated as a critical natural area by the Maine Natural Areas Program or the Comprehensive Plan. — The location of mapped aquifers and aquifer recharge areas. — Known archaeological sites.	X	X	X	X

² Plans for subdivisions containing more than 100 acres may be drawn at a scale of not more than two 200 feet to the inch provided all necessary detail can easily be read.

SUBMISSION REQUIREMENT		PREAPPLICATION MEETING —SKETCH PLAN	MINOR SUBDIVISION —FINAL PLAN	MAJOR SUBDIVISION —PRELIMINARY PLAN	MAJOR SUBDIVISION —FINAL PLAN ³
	— All areas within or adjacent to the proposed subdivision which are either listed on or eligible to be listed on the Local Register of Historic Places, or have been identified in the Comprehensive Plan as sensitive or likely to contain such sites. — Areas with public rights for physical or visual access to the shoreline. — If any portion of the subdivision is in a flood-prone area, the boundaries of any flood hazard areas and the 100-year flood elevation. — Topographic contour lines at elevation intervals specified by the Planning Board.				
Subdivision Plan					
	A subdivision plan, drawn at a scale of not more than 100 feet to the inch³ including: — The proposed name or identifying title of the subdivision, City tax map and lot numbers, and the name of the City. — The date that the plan was prepared, a north point, and a graphic map scale — Names and addresses of the record owner and subdivider — The name, registration number, signature, and seal of the professional consultant who prepared the plan. The Planning Board may not accept or approve a final subdivision plan that is not sealed and signed by the professional consultant under whose responsible charge it was completed. — The number of acres within the proposed subdivision. — Field surveyed boundaries of the proposed subdivision and all lot lines, giving complete descriptive data by bearings and distances, made and certified by a licensed land surveyor. The corners of the tract shall be located on the ground and marked by monuments. The plan shall indicate the type of monument to be set or found at each lot corner. — Names, tax map/lot, and deed references of adjoining property owners — Proposed lot dimensions, lot numbers, lot area (in square feet), buildable area, and minimum setback lines applicable to each proposed lot	---	X	X	X

³ Plans for subdivisions containing more than 100 acres may be drawn at a scale of not more than two 200 feet to the inch provided all necessary detail can easily be read.

SUBMISSION REQUIREMENT		PREAPPLICATION MEETING —SKETCH PLAN	MINOR SUBDIVISION —FINAL PLAN	MAJOR SUBDIVISION —PRELIMINARY PLAN	MAJOR SUBDIVISION —FINAL PLAN ¹
	— If any portion of the subdivision is in a flood-prone area, the boundaries of any flood hazard areas and the 100-year flood elevation. — The locations, widths, and names of existing and proposed roads, easements, and rights-of-way. — The locations of existing and proposed structures and buildings. — The locations of existing and proposed sewer lines, water mains, culverts, and drainage ways. — The locations of existing and proposed vegetative cover, berms, hedges, fencing, and screening. — Locations of trees/vegetation to be preserved or replaced. — The location and dimensions of on-site pedestrian and vehicular access ways, parking areas, loading and unloading facilities, design of entrances and exits of vehicles to and from the site onto public roads, and curb and sidewalk lines. — All parcels of land proposed to be dedicated to public use and the conditions of such dedication. — The location of open space to be preserved and a description of proposed improvements and its management. — Proposed public rights of access to the shoreline of a water body, if any. — Topographic contour lines at elevation intervals specified by the Planning Board, but no less than two feet. — Areas with sustained slopes greater than 25% cover more than one acre. — Space for insertion of conditions of approval and for the Planning Board's endorsement				
Abutting Property Owners					
	The names and addresses of owners of record of adjacent property, including any property directly across an existing public street from the subdivision.	X	---	X	---
Roads / Easements / Utilities / Water Crossings					
	All existing and proposed roads, easements, utility lines (water, sewer), and drainage, including detailed road geometry (length, angles, radii, curves, tangent distances, and bearings).	---	X	X	X
	Typical cross-sections of the proposed grading for roads and sidewalks including width, type of pavement, elevations and grades.	---	X	X	X
	Preliminary designs of any proposed bridges or culverts.				

SUBMISSION REQUIREMENT		PREAPPLICATION MEETING —SKETCH PLAN	MINOR SUBDIVISION —FINAL PLAN	MAJOR SUBDIVISION —PRELIMINARY PLAN	MAJOR SUBDIVISION —FINAL PLAN ¹
A description of the road system proposed to serve the subdivision, and an indication of the future probable road system of the remaining portion of the tract if the preliminary subdivision plan submitted covers only part of the applicant's entire holding		---	X	X	X
Waste Disposal					
The location and method of disposal for land clearing and construction debris.		---	X	---	X
The limits of construction disturbance.		---	---	X	X
Water Supply					
Indication of the type of water supply system(s) to be used in the subdivision. — When water is to be supplied by public water supply, a written statement from the Water Department indicating there is adequate supply and pressure for the subdivision and approving the plans for extensions where necessary. — Where the Water Department's supply line is to be extended, a written statement from the Fire Chief, stating approval of the location of fire hydrants, if any, and a written statement from the Water Department approving the design of the extension. — When water is to be supplied by private wells, evidence of adequate ground water supply and quality shall be submitted by a well driller or a hydrogeologist familiar with the area.		---	X	X	---
Sewage / Wastewater Disposal					
Indication of the type of sewage disposal to be used in the subdivision. — When sewage disposal is to be accomplished by connection to the public sewer, a written statement from the City Sewer Department stating it has the capacity to collect and treat the wastewater. — When sewage disposal is to be accomplished by subsurface wastewater disposal systems, an on-site soils investigation report by a licensed site evaluator or engineer. The report must contain the types of soil, a map showing the location of all test pits and proposed location and design of the subsurface wastewater disposal system for the proposed development. — If an engineered system is proposed to serve the subdivision, designs prepared by an engineer and approved by the LPI and DHHS.		---	X	X	---

SUBMISSION REQUIREMENT		PREAPPLICATION MEETING —SKETCH PLAN	MINOR SUBDIVISION —FINAL PLAN	MAJOR SUBDIVISION —PRELIMINARY PLAN	MAJOR SUBDIVISION —FINAL PLAN ¹
Soil Survey					
	A copy of the portion of the Hancock County Soil Survey covering the subdivision. When the medium intensity soil survey shows soils which are generally unsuitable for the uses proposed, the Planning Board may require the submittal of a Class A (high intensity) or Class B (medium-high intensity) soil survey or a report by a Registered Soil Scientist or Registered Professional Engineer experienced in geotechnics indicating the suitability of soil conditions for the proposed uses.	---	X	X	---
	A soil survey (including a soils map, location of soil test pits, soil narrative report, and soil profile log description) of existing soil conditions, conducted by a professional consultant according to the <i>Guidelines for Maine Certified Soil Scientists for Soil Identification and Mapping</i> (Maine Association of Professional Soil Scientists, Mar. 2009). The intensity level of the soil survey within the buildable area of each lot must be based on the land use proposed, the acreage of proposed lots, and whether on-site subsurface wastewater disposal will be used.		---	X	---
Stormwater Management / Erosion & Sedimentation Control					
	A soil erosion and sedimentation control plan prepared in accordance with the <i>Maine Erosion and Sediment Control Best Management Practices (BMPs): Manual for Designers and Engineers</i> (DEP, Oct. 2016)	---	X	X	X
	A stormwater management plan and erosion control management plan prepared in accordance with Article 10 (Stormwater Management Design and Construction Standards).	---	X	X	X
Phosphorus Control					
	A determination as to whether any portion of the proposed subdivision is located, in whole or in part, in the direct watershed of a great pond, indicate which great pond.	---	X	X	X
	If any portion of the proposed subdivision is located in the direct watershed of Branch Lake, a phosphorus control plan.	---	---	X	X
	A phosphorus impact analysis and control plan conducted using the procedures set forth in the Maine Stormwater Management Design Manual: Phosphorus Control Manual, Vol. II (DEP, Mar. 2016).	---	---	X	X
	A long-term maintenance plan for all phosphorus control measures, in accordance with Chapter 56, Article 10 (Stormwater Management Design and Construction Standards).	---	---	X	X
Critical Natural Areas					

SUBMISSION REQUIREMENT		PREAPPLICATION MEETING —SKETCH PLAN	MINOR SUBDIVISION —FINAL PLAN	MAJOR SUBDIVISION —PRELIMINARY PLAN	MAJOR SUBDIVISION —FINAL PLAN ¹
If any portion of the proposed subdivision is within an area designated as a critical natural area by the Comprehensive Plan or the Maine Natural Areas Program, indicate appropriate measures that are proposed to preserve the values that qualify the site for such designation.		---	X	X	X
Hydrogeologic Assessment					
A hydrogeologic assessment prepared by a certified Geologist or Registered Professional Engineer, experienced in hydrogeology, when (i) the subdivision is not served by public sewer; (ii) any part of the subdivision is located over a sand and gravel aquifer, as shown on a map entitled “Hydrogeologic Data for Significant Sand and Gravel Aquifer,” by the Maine Geological Survey, 1981; and (iii) the subdivision has an average density of less than 100,000 square feet per dwelling unit. The Planning Board may require a hydrogeologic assessment in other cases where site considerations or development design indicate greater potential of adverse impacts on ground water quality.		---	X	X	---
Traffic Impact Analysis					
An estimate of the amount and type of vehicular traffic to be generated on a daily basis and at peak hours.		---	X	---	---
Proposed general mitigation, access management, and consideration of pedestrian and non-automotive needs.		---	---	X	---
A traffic impact analysis, upon Planning Board request.		---	---	---	---
Landscaping Plan					
A landscaping plan showing all graded contours and the approximate placement and types of existing and proposed vegetation, berms, hedges, tree lines, fencing, and screening. The plan must identify which existing trees and other vegetation will be preserved and what trees and other vegetation will be replaced.		---	---	X	X
Community Services / Infrastructure Impact					
An evaluation of the availability and suitability of off-site public facilities and services, including public road maintenance and snow removal, police and fire protection, solid waste disposal, recreational facilities, on-site and off-site drainage facilities, and public schools. The analysis must identify (i) the construction and infrastructure elements that will be completed by the applicant prior to the sale of lots, and (ii) the construction and infrastructure elements that are proposed to be borne by the public.		---	---	X	---
Fire Protection Plan					

SUBMISSION REQUIREMENT		PREAPPLICATION MEETING —SKETCH PLAN	MINOR SUBDIVISION —FINAL PLAN	MAJOR SUBDIVISION —PRELIMINARY PLAN	MAJOR SUBDIVISION —FINAL PLAN ¹
A plan for fire protection services, including an evaluation of the availability and suitability of fire hydrants, fire ponds, and other fire protection services, consistent with applicable provisions of NFPA.		---	X	X	---
Construction Schedule					
A construction schedule identifying all major stages of construction and including an estimate of the date when construction will start and be substantially completed.		---	---	X	---
Long-Term Maintenance Plan					
A long-term maintenance plan providing for ongoing monitoring and inspections of all infrastructure. The plan must provide a legally binding method for maintaining sufficient financial and technical resources for performing ongoing maintenance and repair of all infrastructure.		---	X	X	X
Deeds, Restrictive Covenants, Easements, Open Space					
A copy of the deed from which the survey is based, and any existing easements, encumbrances, or other restrictions currently affecting the property.		---	X	X	X
Proposed restrictive covenants, lot deed restrictions, and encumbrances intended to cover all or part of the lots in the subdivision.		---	X	X	X
Homeowners' association bylaws.		---	X	X	X
A description and location of all parcels of land proposed to be dedicated to public use and the conditions of such dedication.		---	X	X	X
Written offers of cession to the City of all public open spaces shown on the subdivision plan, and copies of agreements or other documents showing the manner in which open spaces to be retained by the developer or lot owners. If open space or other land is to be offered to the City, written evidence that the City Council is satisfied with the legal sufficiency of the written offer of cession.		---	X	---	X
Performance Guarantees					
If public utilities are used, a performance guarantee in compliance with the requirements of Section 706.		---	X	---	X
Certification / Engineer & Surveyor					
Certification by an engineer or a land surveyor that all surveys, deeds, restrictive covenants, and supporting information accurately reflect the true conditions existing within the proposed subdivision		---	X	X	X
Governmental Approvals					

SUBMISSION REQUIREMENT		PREAPPLICATION MEETING —SKETCH PLAN	MINOR SUBDIVISION —FINAL PLAN	MAJOR SUBDIVISION —PRELIMINARY PLAN	MAJOR SUBDIVISION —FINAL PLAN ¹
	Copies of all applicable state and federal approvals associated with the proposed subdivision, including MDEP (Site Location, NRPA, stormwater), MaineDOT (Access Management), DHHS (engineered subsurface wastewater/water) approvals.	---	X	X	X

ARTICLE 7 SUBDIVISION REVIEW**Article 701 PURPOSES**

~~In addition to the general purposes of the City Code set forth in Chapter 1, Section 1, the purposes of these regulations this Article 7 are to assure-ensure the comfort, convenience, safety, health and welfare of the people, of the City of Ellsworth, to protect the environment and to promote the development of an economically sound and stable community. To this end, in approving subdivisions within the City of Ellsworth, Maine, the Planning Board of the City Ellsworth shall consider the following criteria and before granting approval shall make findings of fact that the provisions of these regulations have been met and that the proposed subdivision will meet the guidelines of Title 30-A, M.R.S.A. Section 4404.~~

702 APPLICABILITY

~~This Article 7 applies to the selling, leasing, developing, building upon, or conveying for consideration any land in a subdivision, as defined in 30-A M.R.S.A. § 4401(4), except that it does not apply to:~~

- ~~702.1 Subdivisions approved by the City administrator before September 23, 1971, in accordance with laws then in effect.~~
- ~~702.2 Subdivisions in actual existence on September 23, 1971, that did not require approval under prior law.~~
- ~~702.3 A subdivision, a plan of which has been legally recorded in the Hancock County Registry of Deeds before September 23, 1971.~~
- ~~702.4 Any airport with an airport layout plan that has received final approval from the airport sponsor, MaineDOT, and Federal Aviation Administration.~~
- ~~702.5 A subdivision in violation of this Article 7 or 30-A M.R.S.A. § 4401 *et seq.* that has been in existence for 20 years or more, except as provided in 30-A M.R.S.A. § 4402(5).~~
- ~~702.6 The division of a new or existing structure so as to create three more dwelling units, which shall be subject to site development plan review pursuant to Article 6. The Planning Board hereby determines that Article 6 meets the requirements of 30-A M.R.S.A. § 4402(6)(A) and therefore such development is exempt from the requirements of this Article 7 (Subdivision Review).~~

~~STATE LAW REFERENCE—30-A M.R.S.A. § 4402 (SUBDIVISIONS; EXCEPTIONS).~~

703 ADMINISTRATION

~~This Article 7 is administered by the Planning Board.~~

ARTICLE 704 CLASSIFICATION OF SUBDIVISION APPLICATIONS

~~The City Planner shall classify subdivision applications as a minor subdivision or a major subdivision as follows:~~

- ~~1. Minor Subdivision: The division of a tract or parcel of land into four or fewer lots.~~
- ~~2. Major Subdivision: The division of a tract or parcel of land into more than four lots.~~

705 REVIEW PROCEDURES

~~In addition to the general procedures set forth in Chapter 1, Section 208 and Chapter 56, Article 2, the following procedures apply to applications for subdivision review.~~

704.1 PREAPPLICATION / SKETCH PLAN (OPTIONAL)**1. Procedures**

- ~~A. Applicant presentation and submission of sketch plans. Twelve (12) copies of all information accompanying the plan shall be submitted. (Am 4/03)~~
- ~~B. Question and answer period. Board makes specific suggestions to be incorporated by the applicant into subsequent submissions.~~
- ~~C. Scheduling of on-site inspection.~~
- A. Before submitting a subdivision application, the applicant may, at the applicant's option, appear at a regular or special meeting of the Planning Board to informally discuss the proposed subdivision. The pre-application meeting is informal and informational in nature, and the purposes of the pre-application meeting are to (i) allow the Planning Board to understand the nature of the proposed subdivision, (ii) allow the applicant to understand the review process and required submissions, and (iii) identify issues that need to be addressed in future submissions.
- B. The applicant must give notice of the pre-application meeting in accordance with Chapter 1, Section 209.
- C. The applicant must present to the Planning Board at the pre-application meeting, for informal review and comment, a sketch plan and other information relevant to the proposed subdivision.
- D. The applicant may identify and discuss any requests for waivers pursuant to Chapter 1, Section 206.4.
- E. No binding commitments may be made between the applicant and the Planning Board at this stage. No vested interests will attach or accrue as a result of any pre-application meeting, and such meeting will not cause an application to be deemed complete for review pursuant to Chapter 1, Section 208.2.

2. Submission Requirements

- ~~D. Subdivision of New or Existing Structures: The preapplication Sketch Plan shall show the name of the property owner, address of structure to be subdivided, including tax map, lot number and zoning district; lot size; outline and dimensions (width, length, height) of existing building; outline and dimensions of proposed addition, if applicable; proposed floor plan indicating entrances and exits; parking spaces for additional dwelling units; type and availability of water supply; and the location and capacity of sewer/septic facilities.~~

Major and Minor Subdivisions: The Preapplication Sketch Plan shall show, in simple sketch form, the proposed layout of streets, lots, buildings and other features in relation to existing conditions. The sketch plan, which may be a free-hand penciled sketch, should be supplemented with general information to describe or outline the existing conditions of the site and the proposed development. It is recommended that the sketch plan be superimposed on or accompanied by a copy

of the Assessor's Map(s) on which the land is located. The ~~S~~sketch ~~p~~Plan shall also contain a locus map in the upper right hand corner showing where the subdivision is located within the City ~~of Ellsworth~~, in what zoning ~~district~~, and contain the Assessor's Map Number and Lot Number. The sketch plan submission must contain the materials set forth in Appendix 56.7-A.

3. ~~ON-SITE INSPECTION~~Site Visit

~~Within 30 days of submission, the Planning Board or designee may hold an on-site inspection.~~ a site visit of the property at any time during the review process. Notice of the site visit must be given in accordance with Chapter 1, Section 209. The applicant shall place "flagging" at the centerline of any proposed streets, and at the approximate intersections of the street center and lot corners, and at the location of other important proposed structures and features as may be requested by the Planning Board prior to the on-site inspection. The board shall not conduct on-site inspection when there is more than one foot of snow on the ground.

STATE LAW REFERENCE—30-A M.R.S.A. § 4403 (SUBDIVISIONS; MUNICIPAL REVIEW AND REGULATION),

5.2 — RIGHTS NOT VESTED

~~The submittal or review of the preapplication sketch plan shall not be considered the initiation of the review process for the purpose of bringing the plan under the protection of Title 1, M.R.S.A. section 302.~~

Article VI Subdivision of New and Existing Structures

GENERAL

~~The Board may require, where it deems necessary, for the protection of public health, safety, and welfare, that a subdivision of a new or existing structure comply with all or any of the submission requirements for a minor or major subdivision.~~

PROCEDURE

~~A. — Within 30 days of receipt of a preapplication, the Board will notify the applicant of any further information which will be needed for a complete application for Subdivision of new and existing structures or if, for the protection of public health, safety, and welfare, the applicant will be required to comply with all or any of the submission requirements for a Minor or Major Subdivision. Unless otherwise directed by the Board, a complete application will be considered when all the questions on the application form have been answered and supporting documentation attached. The application must be signed by the applicant or his/her agent. Twelve (12) copies of all information accompanying the plan shall be submitted.~~

~~B. — At the time the application is accepted as complete, the Board shall notify in writing all owners of abutting property that an application for subdivision approval has been submitted.~~

~~C. — Upon determination that a complete application has been submitted, the Board shall issue a dated receipt to the subdivider.~~

~~D. — The Board shall hold a public hearing within thirty (30) days of receipt of a complete application and shall publish notice of the date, time and place of hearing in a newspaper of general circulation in the municipality at least once, the date of the first publication to be at least fourteen (14) days prior to the hearing.~~

~~E. — Within thirty (30) days of a public hearing, the Board shall make findings of fact on the~~

~~application and approve, approve with conditions, or deny the application. The Board shall specify in writing its findings of facts and reasons for any conditions or denial.~~

ARTICLE VH704.2 -MINOR SUBDIVISIONS

GENERAL

~~The Board may require, where it deems it necessary for the protection of public health, safety, and welfare, that a Minor Subdivision comply with all or any of the submission requirements for a Major Subdivision.~~

1. Procedures. The following procedures shall apply to any proposed minor subdivision.

A. **No Preliminary Plan.** Preliminary plans are not required for minor subdivisions. ~~—Within six months after the on-site inspection by the Board, the subdivider~~

B. **Final Plan Required.** The applicant shall submit an application for approval of a ~~f~~Final Plan ~~containing the information set forth in Section 7.2~~ at least ~~fourteen (14)~~27 days prior to a scheduled meeting of the Planning Board. ~~Failure to do so shall require resubmission of the Sketch Plan to the Board. The Final Plan shall approximate the layout shown on the Sketch Plan, plus any recommendations made by the Board. Twelve (12) copies of all information accompanying plan shall be submitted.~~

~~B. —All applications for Final Plan approval for Minor Subdivision shall be accompanied by an application fee of \$100.00 payable by check to the municipality. If a public hearing is deemed necessary by the Board, an additional fee shall be required to cover the additional costs of advertising and postal notification.~~

C. **Notice.** Upon receipt of an application for Final Plan approval of a minor subdivision, ~~the Board shall notify in writing all owners of abutting property~~ Notice that an application for final plan approval of a minor subdivision approval has been submitted ~~shall be given in accordance with Chapter 1, Section 209.~~

D. Initial Completeness Review by City Planner.

Notwithstanding the requirements of Chapter 1, Section 208.2, the City Planner shall make an initial determination of the completeness of applications for inclusion on the Planning Board meeting agenda. Any application which the City Planner initially determines to be incomplete shall not be placed on the agenda but shall be returned to the applicant with an indication of the additional information required. When this additional information has been supplied, the City Planner shall place the application on the Planning Board's agenda.

Prior to starting its review of the final subdivision plan application, the Planning Board must determine that the application is complete for review in accordance with Chapter 1, Section 208.2. Upon determination that a complete application has been submitted for review, the Board shall issue

a dated receipt to the subdivider applicant and ~~The Board shall determine whether to hold a public hearing on the Final Plan application.~~

- E. Meeting Attendance Required.** The subdivider applicant, or his duly authorized representative, shall attend the a meeting of the Board to discuss the Final pPlan application. Failure to attend the meeting to present the preliminary-final plan application shall result in a delay of the Board's receipt-review of the plan until the next meeting that the project is on the agenda and that the applicant, or his duly authorized representative, is in attendance.

~~Upon determination that a complete application has been submitted for review, the Board shall issue a dated receipt to the subdivider. The Board shall determine whether to hold a public hearing on the Final Plan application.~~

- F. Public Hearing Discretionary.** The Planning Board may, but is not required, to hold a public hearing on a final plan application for a minor subdivision. If the Board decides to hold a public hearing, it shall hold the hearing within thirty (30) days of receipt of a complete application. Notice of the hearing shall be given in accordance with Chapter 1, Section 209., and shall publish notice of the date, time, and place of the hearing in a newspaper of general circulation in the municipality at least two times, the date of the first publication to be at least seven days prior to the hearing. (Am 4/03)

- G. Written Decision.** ~~Within thirty (30) days of a public hearing, or within sixty (60) days of receipt of a complete application, if no hearing is held, or within another time limit as may be otherwise mutually agreed to by the Board and the subdivider, the Board shall make findings of fact on the application, and approve, approve with conditions, or deny the Final Plan. The Board shall specify in writing its findings of facts and reasons for any conditions or denial.~~ The Planning Board shall issue a written decision in accordance with Chapter 1, Section 208.4.

2. Submission Requirements

The applicant must submit, in addition to the general application submission requirements in Chapter 1, Section 208.2, an application on forms provided by the City for the approval of a minor subdivision. The application must contain the materials set forth in Appendix 56.7-A.

~~A. The subdivision plan for a Minor Subdivision shall consist of two reproducible, stable-based transparent originals, one to be recorded at the Registry of Deeds, the other to be filed at the Municipal Office and twelve (12) copies of one or more maps or drawings drawn to a scale of not more than one hundred (100) feet to the inch. Plans for subdivisions containing more than one hundred (100) acres may be drawn at a scale of not more than two hundred (200) feet to the inch provided all necessary detail can easily be read. Plans shall be no larger than 24 by 36 inches in size, and shall have a margin of two inches outside of the border lines on the left side for binding and a one inch margin outside the border along the remaining sides. Space shall be provided for endorsement by the Board. Twelve (12) copies of all information accompanying the plan shall be submitted.~~

The application for approval of a Minor Subdivision shall include the following information:

~~1. Location Map: The location map shall be drawn at a size adequate to show the relationship of the proposed subdivision to the adjacent properties, and to allow the Board to locate the subdivision within the municipality. The~~

~~location map shall show:~~

- ~~a. Existing subdivisions in the proximity of the proposed subdivision.~~
- ~~b. Locations and names of existing and proposed streets.~~
- ~~c. Boundaries and designations of zoning districts.~~
- ~~d. An outline of the proposed subdivision and any remaining portion of the owner's property if the final plan submitted covers only a portion of the owner's entire contiguous holding.~~
- ~~2. Proposed name of the subdivision, or identifying title, and the name of the municipality in which it is located, plus the Assessor's Map and Lot numbers.~~
- ~~3. Verification of right, title, or interest in the property.~~
- ~~4. A field survey of the boundary lines of the tract, giving complete descriptive data by bearings and distances, made and certified by a licensed land surveyor. The corners of the tract shall be located on the ground and marked by monuments. The plan shall indicate the type of monument to be set or found at each lot corner. A copy of the deed from which the survey was based. A copy of all deed restrictions, easements, rights of way, or other encumbrances currently affecting the property.~~
- ~~5. A copy of any deed restrictions intended to cover all or part of the lots in the subdivision.~~
- ~~6. Indication of the type of sewage disposal to be used in the subdivision.~~
 - ~~a. When sewage disposal is to be accomplished by connection to the public sewer, a written statement from the Sewer Department stating the Department has the capacity to collect and treat the wastewater shall be provided.~~
 - ~~b. Any proposed subdivision located within 200' at its closest point to a sewer line must connect to the public system as approved by the Sewer Department Supervisor.~~
 - ~~c. When sewage disposal is to be accomplished by subsurface wastewater disposal systems, test pit analyses, prepared by a licensed Site Evaluator shall be provided. A map showing the location of all test pits dug on the site shall be submitted.~~
- ~~7. Indication of the type of water supply system(s) to be used in the subdivision.~~
 - ~~a. When water is to be supplied by public water supply, a written statement from the Water Department shall be submitted indicating there is adequate supply and pressure for the subdivision and approving the plans for extensions where necessary. Where the Water Department's supply line is to be extended, a written statement from the Fire Chief, stating approval of the location of fire hydrants, if any, and a written statement from the Water Department approving the design of the extension shall be submitted.~~
 - ~~b. Any proposed subdivision located within 200' at its closest point to a water line must connect to the public system as approved by the Water Department Supervisor.~~
 - ~~c. When water is to be supplied by private wells, evidence of adequate ground water supply and quality shall be submitted by a well driller or a hydrogeologist familiar with the area.~~
- ~~8. The date the Plan was prepared, north point, graphic map scale, names and addresses of the record owner, subdivider, and individual or company who prepared the plan, and the names of adjoining property owners. If the subdivider is not the owner of the property, evidence of the subdivider's right, title or interest to the property.~~
- ~~9. A copy of the portion of the Hancock County Soil Survey covering the subdivision. When the medium-intensity soil survey shows soils which are generally unsuitable for the uses proposed, the Board may require the submittal of a high intensity soil survey or a report by a Registered Soil Scientist or Registered Professional Engineer experienced in geotechnics, indicating the suitability of soil conditions for those uses.~~

~~10. The number of acres within the proposed subdivision, location of property lines, existing buildings, watercourses, vegetative cover type, and other essential existing physical features.~~

~~11. Contour lines at the interval specified by the Planning Board, showing elevation in relation to Mean Sea Level.~~

~~12. If any portion of the subdivision is in a flood-prone area, the boundaries of any flood hazard areas and the 100-year flood elevation shall be delineated on the plan.~~

~~13. A hydrogeologic assessment prepared by a certified Geologist or Registered Professional Engineer, experienced in hydrogeology, when the subdivision is not served by public sewer, and:~~

~~a. Any part of the subdivision is located over a sand and gravel aquifer, as shown on a map entitled "Hydrogeologic Data for Significant Sand and Gravel Aquifer," by the Maine Geological Survey, 1981; and~~

~~b. The subdivision has an average density of less than 100,000 square feet per dwelling unit.~~

~~14. An estimate of the amount and type of vehicular traffic to be generated on a daily basis and at peak hours.~~

~~15. The location of all rivers, streams and brooks within or adjacent to the proposed subdivision. If any portion of the proposed subdivision is located in the direct watershed of a great pond, the application shall indicate which great pond.~~

~~16. A storm water management plan and erosion control management plan, per City of Ellsworth Code of Ordinance chapter 56, Article 10 Stormwater Management and Construction Standards.~~

~~17. Areas within or adjacent to the proposed subdivision which have been identified as High or Moderate-Value Wildlife Habitat by the Maine Department of Inland Fisheries and Wildlife or within the Ellsworth Comprehensive Plan. If any portion of the subdivision is located within an area designated as a critical natural area by the comprehensive plan or the Maine Natural Areas Program the plan shall indicate appropriate measures for the preservation of the values, which qualify the site for such designation.~~

~~18. All areas within or adjacent to the proposed subdivision which are either listed on or eligible to be listed on the Local Register of Historic Places, or have been identified in the comprehensive plan as sensitive or likely to contain such sites.~~

~~The location and method of disposal for land clearing and construction debris.~~ STATE LAW REFERENCE—30-A M.R.S.A. § 4403 (SUBDIVISIONS; MUNICIPAL REVIEW AND REGULATION).

704.3 ARTICLE VIII PRELIMINARY PLAN FOR MAJOR SUBDIVISIONS: **PRELIMINARY PLAN**

8.1 Submissions

(a) A. Location Map:

The Preliminary Plan shall be accompanied by a location map adequate to show the relationship of the proposed subdivision to the adjacent properties, and to allow the Board to locate the subdivision within the municipality. The Location Map shall show:

- ~~1. Existing subdivisions in the proximity of the proposed subdivision.~~
- ~~2. Locations and names of existing and proposed street.~~
- ~~3. Boundaries and designation of zoning districts.~~

- ~~4. An outline of the proposed subdivision and any remaining portion of the owner's property if the Preliminary Plan submitted covers only a portion of the owner's entire contiguous holding.~~

~~B. Preliminary Plan.~~

~~The Preliminary Plan shall be submitted in twelve (12) copies of one or more maps or drawings which may be printed or reproduced on paper, with all dimensions shown in feet or decimals of a foot. The Preliminary Plan shall be drawn to a scale of not more than one hundred feet to the inch. The Board may allow plans for subdivisions containing more than one hundred acres to be drawn at a scale of not more than two hundred feet to the inch provided all necessary details can easily be read. In addition, one copy of the Plan(s) reduced to a size of 8 1/2 by 11 inches or 11 by 17 inches, and all accompanying information shall be mailed to each Board member no less than fourteen days prior to the meeting. The following information shall either be shown on the Preliminary Plan or accompany the application for preliminary approval:~~

- ~~A. Proposed name of the subdivision and the name of the municipality in which it is located, plus the Tax Assessor's Map and Lot numbers.~~
- ~~B. Verification of right, title, or interest in the property.~~
- ~~C. An actual field survey of the boundary lines of the tract, giving complete descriptive data by bearings and distances, made and certified by a licensed land surveyor. The corners of the tract shall be located on the ground and marked by monuments.~~
- ~~D. A copy of the deed from which the survey was based. A copy of all covenants or deed restrictions, easements, rights of way, or other encumbrances currently affecting the property.~~
- ~~E. A copy of any covenants or deed restrictions intended to cover all or part of the lots in the subdivision.~~
- ~~F. Contour lines showing elevations in relation to Mean Sea Level.~~
- ~~G. The number of acres within the proposed subdivision, location of property lines, existing buildings, watercourses, vegetation cover type, and other essential existing physical features.~~
- ~~H. Indication of the type of sewage disposal to be used in the subdivision.~~
 - ~~1. When sewage disposal is to be accomplished by connection to the public sewer, a letter from the Sewer Department indicating there is adequate capacity within the Sewer Department system to transport and treat the sewage shall be submitted.~~
 - ~~2. Any proposed subdivision located within 200' at its closest point to a sewer line must connect to the public system as approved by the Sewer Department Supervisor.~~
 - ~~3. When sewage disposal is to be accomplished by subsurface sewage disposal systems, test oil analyses, prepared by a licensed Site Evaluator~~

~~shall be provided. A map showing the location of all test pits dug on the site shall be submitted.~~

~~I. _____ Indication of type of water supply system(s) to be used in the subdivision.~~

~~1. _____ When water is to be supplied by public water supply, a letter from the servicing Water Department shall be submitted indicating there is adequate supply and pressure for the subdivision.~~

~~Any proposed subdivision located within 200' at its closest point to a water line must connect to the public system as approved by the Water Department Supervisor.~~

~~(b) _____ The date the Plan was prepared, magnetic north point, true north, graphic map scale, names and addresses of the record owner, subdivider, and individual or company who prepared the plan. If the subdivider is not the owner of the property, evidence of the subdivider's right, title or interest to the property.~~

~~or have been identified in the Comprehensive Plan as sensitive or likely to contain such sites.~~

~~Show the limits of construction disturbance.~~

2. **Procedures.** The following procedures shall apply to any proposed preliminary plan for a major subdivision.

~~2.1. **Preliminary Plan Required.** Within six months after the on-site inspection by the Board, the subdivider~~The applicant shall submit an application for approval of a Preliminary Plan for a major subdivision, containing the information set forth in Section 8.2, at least fourteen~~27~~(14) days prior to a scheduled meeting of the Board. ~~Failure to do so shall require resubmission of the Sketch Plan to the Board.~~ The Preliminary Plan shall approximate the layout shown on the Sketch Plan, if submitted plus any recommendations made by the Board. Twelve (12) copies of all information accompanying plan shall be submitted.Notice that an application for preliminary plan approval of a major subdivision has been submitted shall be given in accordance with Chapter 1, Section 209.

~~3.2. **Special Fee Designation.** Notwithstanding Chapter 1, Section 302.1, all applications for approval of a preliminary plan for a major subdivision are designated special applications and a special fee shall be assessed in accordance with Chapter 1, Section 302. All applications for Preliminary Plan approval for a Major Subdivision shall be accompanied by an application fee of \$15.00 per lot or dwelling unit, payable by check to the municipality. In addition, the applicant shall pay a fee of \$25.00 per lot or dwelling unit to be deposited in a special account designated for that subdivision application, to be used by the Planning Board for hiring independent consulting services to review the application. If the balance in this special account shall be drawn down by 75% of the original deposit, the Board shall notify the applicant, and require that an additional \$10.00 per lot or dwelling unit be deposited as necessary. Any balance in the account remaining after a decision on the Final Pan application by the~~

~~Board shall be returned to the applicant. If a public hearing is deemed necessary by the Board, an additional fee shall be required to cover the costs of advertising and postal notification.~~

3. **Initial Completeness Review by City Planner.** Notwithstanding the requirements of Chapter 1, Section 208.2, the City Planner shall make an initial determination of the completeness of applications for inclusion on the Planning Board meeting agenda. Any application which the City Planner initially determines to be incomplete shall not be placed on the agenda but shall be returned to the applicant with an indication of the additional information required. When this additional information has been supplied, the City Planner shall place the application on the Planning Board's agenda.
4. **Technical Review Team—Regular Meeting.** The City Planner shall call a Technical Review Team meeting within seven days prior to an application being placed on the Planning Board's agenda. This meeting shall be referred to as the Regular Meeting of the Technical Review Team. The City Planner, in coordination with the Technical Review Team, shall conduct a final qualitative review of the applications on the agenda and issue a memorandum of preliminary findings, which shall be made available to the Planning Board, the applicant, and any interested parties.
5. **Planning Board Agenda.** Applications determined to be complete by the City Planner shall be placed on the Planning Board's next regular monthly agenda for consideration. The Chair of the Planning Board may call a special meeting if the number of agenda items or other circumstances seem to require.
6. **Planning Board Completeness Determination.** Prior to starting its review of the application, the Planning Board must determine that the application is complete for review in accordance with Chapter 1, Section 208.2. Upon determination that a complete application has been submitted for review, the Board shall issue a dated receipt to the applicant and shall determine whether to hold a public hearing on the application.
7. **Meeting Attendance Required.** The applicant, or his duly authorized representative, shall attend the meeting of the Board to discuss the Preliminary Plan. Failure to attend the meeting to present the preliminary plan application shall result in a delay of the Board's ~~receipt~~ review of the plan until the next meeting that the project is on the agenda and that the applicant, or his duly authorized representative, is in attendance.
8. **Supplemental Application Materials.**
 - (a) **City Planner.** In general, no supplemental application materials shall be accepted by the City Planner after noon on the first Monday following the Technical Review Team meeting.
 - (b) **Planning Board.** Supplemental application materials shall NOT be distributed by the applicant to the Planning Board members at the Planning Board meeting unless it is determined by the Chair of the Planning Board to be relevant, necessary, and brief enough

to be quickly assimilated, and if adequate copies are provided and of a type that is compatible with information technology currently available at the City.

4. ~~Upon receipt of an application for Preliminary Plan approval of a Major Subdivision, the Board shall notify in writing all owners of abutting property that an application for subdivision approval has been submitted.~~
- J. ~~Within thirty (30) days of receipt of a Preliminary Plan application form and fee, the Board shall notify the applicant in writing whether or not the application is complete, and what, if any, additional submissions are required for a complete application.~~

1. ~~**Public Hearing Discretionary.** Upon determination that a complete application has been submitted for review, the Board shall issue a dated receipt to the subdivider. The Planning Board may, but is not required, to hold a public hearing on a preliminary plan application for a major subdivision. shall determine whether to hold a public hearing on the Preliminary Plan application. If the Board decides to hold a public hearing, it shall hold the hearing within thirty (30) days of receipt of a complete application. Notice of the hearing shall be given in accordance with Chapter 1, Section 209, and shall publish notice of the date, time and place of the hearing in a newspaper of general circulation in the municipality at least two times, the date of the first publication to be at least seven days prior to the hearing.~~

2. ~~**Written Decision.** The Planning Board shall issue a written decision in accordance with Chapter 1, Section 208.4. The Board shall, within thirty (30) days of a public hearing, or within sixty (60) days of receipt of a complete application, if no hearing is held, or within another time limit as may be otherwise mutually agreed to by the Board and the subdivider, make findings of fact on the application, and approve, approve with conditions, or deny the Preliminary Plan. The Board shall specify in writing its findings of facts and reasons for any conditions or denial.~~

- 3.9. **Conditions of Approval.** When granting approval to a Preliminary Plan, the Board shall state the conditions of such approval, if any, with respect to:

- (a) The specific changes which it will require in the Final Plan;
- (b) ~~_____~~ The character and extent of the required improvements for which waivers may have been requested and which in the Board's opinion may be waived without jeopardy to the public health, safety, and general welfare; and
- (c) ~~_____~~ The amount of all performance guarantees which it will require as prerequisite to the approval of the Final Plan;

4. ~~_____~~

Approval of a Preliminary Plan shall not constitute approval of the Final Plan or intent to approve the Final Plan, but rather it shall be deemed an expression of approval of the design of the Preliminary Plan as a guide to

the preparation of the Final Plan. The Final Plan shall be submitted for approval of the Board upon fulfillment of the requirements of these regulations and the conditions of preliminary approval, if any. Prior to the approval of the Final Plan, the Board may require additional changes as a result of the further study of the subdivision or as a result of new information received.

12. **Permit Expiration.** The preliminary plan shall be null and void if the period of time between Planning Board approval and submittal of a final plan exceeds six months, unless the Planning Board in its discretion extends the period of time for good cause shown.

2. **Submission Requirements.**

The applicant must submit, in addition to the general application submission requirements in Chapter 1, Section 208.2, an application on forms provided by the City for the approval of a minor subdivision. The application must contain the materials set forth in Appendix 56.7-A.

- (a) Any proposed subdivision located within 600 feet at its closest point to a water line must connect to the public system as approved by the Water Department Supervisor.
- (b) When water is to be supplied by private wells, evidence of adequate ground water supply and quality shall be submitted by a well driller or a hydrogeologist familiar with the area.

704.4 **ARTICLE IX FINAL PLAN FOR MAJOR SUBDIVISIONS—FINAL PLAN**

1. **Procedures.** The following procedures shall apply to any proposed final plan for a major subdivision.

- 1. **Final Plan within Six Months.** The subdivider shall, within six months after the approval of the Preliminary Plan, file with the Board an application for approval of the Final Plan at least ~~fourteen~~ 27(14) days prior to a scheduled meeting of the Planning Board. If the application for the Final Plan is not submitted within six months after Preliminary Plan approval, the Board may, in its discretion, refuse ~~without prejudice~~ to act on the Final Plan, and require resubmission of the Preliminary Plan. The Final Plan shall approximate the layout shown on the Preliminary Plan, plus any recommendations and shall incorporate any conditions of approval of the Preliminary Plan imposed ~~made~~ by the Board.
- ~~2. All applications for Final Plan approval for Major Subdivision shall be accompanied by an application fee of \$20.00 per lot or dwelling unit payable by check to the municipality. If a public hearing is deemed necessary by the Board, an additional fee shall be required to cover the costs of advertising and postal notification.~~
- ~~3. Prior to submittal of the Final Plan application, the applicant shall show written proof that applications have been filed for the following, where appropriate:~~
 - ~~• Maine Department of Environmental Protection, under the Site Location of Development Act, Alteration of Coastal Wetlands~~

~~Act, Great Ponds Act, Fresh Water Wetland Act, Alteration of Streams and Rivers Act, or if a Wastewater Discharge License is needed.~~

- ~~• Maine Department of Human Services, if the subdivider proposes to provide a central water supply system.~~
- ~~• Maine Department of Human Services, if a centralized or shared subsurface sewage disposal system is to be utilized.~~
- ~~• Maine Department of Environmental Protection, under the Natural Resources Protection Act or if a storm water management permit or a waste water discharge license is needed.~~
- ~~• U.S. Army Corps of Engineers, if a permit under Section 404 of the Clean Water Act is required.~~

1. **Initial Completeness Review by City Planner.** Notwithstanding the requirements of Chapter 1, Section 208.2, the City Planner shall make an initial determination of the completeness of applications for inclusion on the Planning Board meeting agenda. Any application which the City Planner initially determines to be incomplete shall not be placed on the agenda but shall be returned to the applicant with an indication of the additional information required. When this additional information has been supplied, the City Planner shall place the application on the Planning Board's agenda.
2. **Technical Review Team—Regular Meeting.** The City Planner shall call a Technical Review Team meeting within seven days prior to an application being placed on the Planning Board's agenda. This meeting shall be referred to as the Regular Meeting of the Technical Review Team. The City Planner, in coordination with the Technical Review Team, shall conduct a final qualitative review of the applications on the agenda and issue a memorandum of preliminary findings, which shall be made available to the Planning Board, the applicant, and any interested parties. The Board memorandum include shall notify the Road Supervisor, Police Chief, and Fire Chief of the proposed subdivision, the number of dwelling units proposed, the length of roadways, and the size and construction characteristics of any multi family, commercial or industrial buildings. The Board shall request that these officials comment upon the adequacy of their each City Department's existing capital facilities to service the proposed subdivision.
3. **Planning Board Agenda.** Applications determined to be complete by the City Planner shall be placed on the Planning Board's next regular monthly agenda for consideration. The Chair of the Planning Board may call a special meeting if the number of agenda items or other circumstances seem to require.
4. **Planning Board Completeness Determination.** Prior to starting its review of the application, the Planning Board must determine that the application is complete for review in accordance with Chapter 1, Section 208.2. Upon determination that a complete application has been submitted for review, the Board shall issue a dated receipt to the applicant and shall

determine whether to hold a public hearing on the application.

5. **Meeting Attendance Required.** The applicant, or his duly authorized representative, shall attend the meeting of the Board to discuss the final plan. Failure to attend the meeting to present the preliminary plan application shall result in a delay of the Board's review of the plan until the next meeting that the project is on the agenda and that the applicant, or his duly authorized representative, is in attendance. If the subdivision is located in more than one municipality, the Board shall have a joint meeting with the Planning Board of the adjacent municipality to discuss the Plan.

6. **Supplemental Application Materials.**

(c) **City Planner.** In general, no supplemental application materials shall be accepted by the City Planner after noon on the first Monday following the Technical Review Team meeting.

(d) **Planning Board.** Supplemental application materials shall NOT be distributed by the applicant to the Planning Board members at the Planning Board meeting unless it is determined by the Chair of the Planning Board to be relevant, necessary, and brief enough to be quickly assimilated, and if adequate copies are provided and of a type that is compatible with information technology currently available at the City.

~~4. **7. Public Hearing Discretionary** AThe subdivider, or his duly authorized representative, shall attend the meeting of the Board to discuss the Final Plan.~~

~~5. Upon determination that a complete application has been submitted for review, the Board shall issue a dated receipt to the subdivider. The Board shall determine whether to hold a public hearing on the Final Plan application.~~

~~6. A public hearing may be held by the Board within thirty (30) days after the issuance of a receipt for the submittal of a complete application. This hearing shall be advertised in a newspaper of local circulation at least two times. The date of the first publication to be at least seven days before the hearing and the notice of the hearing shall be posted in at least three prominent places at least seven days prior to the hearing. When a subdivision is located within 500 feet of a municipal boundary, and a public hearing is to be held, the Board shall notify the Clerk and the Planning Board of the adjacent municipality involved, at least ten days prior to the hearing. (Am 4/03)Notice of the hearing shall be given in accordance with Chapter 1, Section 208.4.~~

~~7. **Performance Guarantee**The Board shall notify the Road Supervisor, Police Chief, and Fire Chief of the proposed subdivision, the number of dwelling units proposed, the length of roadways, and the size and construction characteristics of any multi-family, commercial or industrial buildings. The Board shall request that these officials comment upon the adequacy of their department's existing capital facilities to service the proposed subdivision.~~

8. Before the Planning Board grants approval of the Final Plan, the subdivider shall meet the performance guarantee requirements contained in ~~Article XIV~~ Chapter 1, Section 511.
- ~~9. If the subdivision is located in more than one municipality, the Board shall have a joint meeting with the Planning Board of the adjacent municipality to discuss the Plan.~~ **Written Decision.**
- ~~8.9. The Planning Board shall issue a written decision in accordance with Chapter 1, Section 208.4 The Board, within thirty (30) days from the public hearing or within sixty (60) days of receiving a complete application, if no hearing is held, shall The written decision must contain make findings of fact, and conclusions of law relative to the standards contained in Title 30-A, section 4404 subdivision review criteria in Section 705 and in these regulations. If the Board finds that all standards of the Statute and these regulations have been met, they shall approve the Final Plan. If the Board finds that any of the standards of the Statute or these regulations have not been met, the Board shall either deny the application or approve the application with conditions to ensure all of the standards will be met by the subdivision. The reasons for any conditions of approval shall be stated in the records of the Board.~~
10. **Final Plan Expiration.** The final plan shall be null and void if the period of time between Planning Board approval and recording at the Hancock County Registry of Deeds is greater than 90 days.

2. SUBMISSIONS **Submission Requirements.**

The applicant must submit, in addition to the general application submission requirements in Chapter 1, Section 208.2, an application on forms provided by the City for the approval of a minor subdivision. The application must contain the materials set forth in Appendix 56.7-A, and the following materials:

- a. **Evidence of State Applications.** Prior to submittal of the Final Plan application, the applicant shall show written proof that applications have been filed for the following, where appropriate:
 - i. Maine Department of Environmental Protection, under the Site Location of Development Act, Alteration of Coastal Wetlands Act, Great Ponds Act, Fresh Water Wetland Act, Alteration of Streams and Rivers Act, or if a Wastewater Discharge License is needed.
 - ii. Maine Department of Human Services, if the subdivider proposes to provide a central water supply system.
 - iii. Maine Department of Human Services, if a centralized or shared subsurface sewage disposal system is to be utilized.
 - iv. Maine Department of Environmental Protection, under the Natural Resources Protection Act or if a storm water management permit or a waste water discharge license is needed.
 - v. U.S. Army Corps of Engineers, if a permit under Section 404 of the Clean Water Act is required.

~~The Final Plan shall consist of twelve (12) maps drawn to a scale of not more than one hundred feet to the inch. Plans for subdivisions containing more than one hundred acres may be drawn at a scale of not more than two hundred feet to the inch provided all necessary detail can easily be read. Plans shall be no larger than 24 by 36 inches in size, and shall have a margin of two inches outside of the border line on the left side for~~

~~binding and a one inch margin outside the border along the remaining sides. Space shall be reserved on the plan for endorsement by the Board. Two reproducible, stable-based transparent originals, one to be recorded at the Registry of Deeds, the other be filed at the Municipal Offices, shall be submitted. In addition, one copy of the Final Plan, reduced to a size of 8 ½ by 11 inches or 11 by 17 inches, and all accompanying documents shall be mailed to each Board member no less than fourteen days prior to the meeting. (Am 4/03)~~

~~The application for approval of the Final Plan shall include the following information:~~

- ~~A. Proposed name of the subdivision and the name of the municipality in which it is located, plus the Assessor's Map and Lot numbers.~~
- ~~B. An actual field survey of the boundary lines of the tract, giving complete descriptive data by bearings and distances, made and certified by a licensed land surveyor. The corners of the tract shall be located on the ground and marked by monuments. The plan shall indicate the type of monument set or found at each lot corner.~~
- ~~C. The number of acres within the proposed subdivision, location of property lines, existing buildings, and essential existing physical features.~~
- ~~D. Indication of the type of sewage disposal to be used in the subdivision. When sewage disposal is to be accomplished by connection to the public sewer, a written statement from the Sewer Department indicating the Department has reviewed and approved the sewerage design shall be submitted. (Am 4/03)~~
- ~~E. Indication of the type of water supply system(s) to be used in the subdivision.~~
 - ~~1. When water is to be supplied by public water supply, a written statement from the Water Department shall be submitted indicating the Department has reviewed and approved the water system design. A written statement shall be submitted from the Fire Chief approving all hydrant locations or other fire protection measures deemed necessary.~~
 - ~~2. When water is to be supplied by private wells, evidence of adequate ground water supply and quality shall be submitted by a well driller or a hydrogeologist familiar with the area.~~
 - ~~3. Any proposed subdivision located within 200' at its closest point to a water line must connect to the public water system as approved by the Water Department Supervisor.~~
- ~~F. The date the Plan was prepared, magnetic and true north point, graphic map scale, names and addresses of the record owner subdivider, and individual or company who prepared the plan.~~
- ~~G. The location of any zoning boundaries affecting the subdivision.~~
- ~~H. The location and size of existing and proposed sewers, water mains, culverts, and drainage ways on or adjacent to the property to be subdivided.~~
- ~~I. The location, names, and present widths of existing and proposed streets, highways, easements, building lines, parks and other open spaces on or adjacent to the subdivision.~~

~~The plan shall contain sufficient data to allow the location, bearing and length of every street line, lot line, and boundary line to be readily determined and be reproduced upon the ground. These lines shall be tied to reference points previously established. The length of all straight lines, the deflection angles radii, length of curves and central angles of curves, tangent distances and tangent bearings for each street shall be included.~~

- ~~J. The width and location of any streets or public improvements shown upon the Official Land Use Map and the Comprehensive Plan, if any, within the subdivision.~~
- ~~K. All parcels of land proposed to be dedicated to public use and the conditions of such dedication. Written offers of cession to the municipality of all public open spaces shown on the Plan, and copies of agreements or other documents showing the manner in which open spaces to be retained by the developer or lot owners are to be maintained shall be submitted. If open space or other land is to be offered to the municipality, written evidence that the Municipal Officers are satisfied with the legal sufficiency of the written offer of cession shall be included.~~
- ~~L. If any portion of the subdivision is in a flood prone area, the boundaries of any flood hazard areas and the 100-year flood elevation shall be delineated on the plan.~~
- ~~M. Any proposed subdivision located within 200' at its closest point must connect to the public sewer system as approved by the Sewer Department Supervisor.~~
- ~~N. A storm water management plan and an Erosion and Sedimentation Control Plan, prepared by a registered professional engineer in accordance with the Ellsworth Code of Ordinance — Chapter 56, Article 10 Stormwater Management, Design and Construction Standards.~~
- ~~O. A phosphorus impact analysis and control plan conducted using the procedures set forth in *Phosphorus Control in Lake Watersheds*. A long-term maintenance plan for all phosphorus control measures, per Ellsworth Code of ordinance Chapter 56, Article 10 — Stormwater Management, Design, and Construction Standards.~~
- ~~P. The contour lines shown on the plan shall be at an interval of no less than two feet.~~
- ~~Q. Areas with sustained slopes greater than 25% covering more than one acre shall be delineated.~~

~~R. The location and method of disposal for land clearing and construction debris.~~

704.5 FINAL PLAN APPROVAL AND FILING

The following final plan approval and filing provisions apply to major subdivisions and minor subdivisions:

- A. No final plan shall be approved by the Planning Board as long as the subdivider is in violation of the provisions on a previously approved ~~P~~plan.
- ~~B.~~ Upon findings of fact and determination that all applicable standards in ~~Title 30-A, M.R.S.A. section 4404, and these regulations~~Section 705 have been met, and upon voting to approve the subdivision, the Planning Board shall sign the Final Plan. ~~The Board shall specify in writing its findings of facts and reasons for any conditions or denial.~~ One copy of the signed final plan shall be retained by the Planning Board as part of its permanent records. One copy of the signed plan shall be forwarded to the Tax Assessor. One copy of the signed plan shall be forwarded to the ~~Code Enforcement Officer~~CEO.
- ~~B.C.~~ Any subdivision final plan that is not recorded in the Hancock County Registry of Deeds within ninety (90) days of the date upon which the final plan is approved and signed by the Planning Board shall become null and void.
- ~~C.D.~~ At the time the Planning Board grants Final Plan approval, it may permit the Plan to be divided into two or more ~~sections-phases~~, subject to any conditions the Board deems necessary in order to ~~e~~insure the orderly development of the ~~Plansubdivision~~. If any ~~municipal or quasi-municipal~~City department head notified of the proposed subdivision informs the Board that their department or district does not have adequate capital facilities to service the subdivision, the Board shall require the Plan to be divided into two or more ~~section-phases~~ subject to any conditions the Board deems necessary in order to allow the orderly planning, financing and provision of public services to the subdivision.
- ~~D.E.~~ No changes, erasures, modifications, or revisions shall be made in any Final Plan after approval has been given by the Board and endorsed in writing on the Plan, unless the revised Final Plan is first submitted and the Board approves any modifications, except in accordance with ~~Article IX~~Section 704.5. ~~The Board shall make findings that the revised plan meets the standards of Title 30-A, M.R.S.A. section 4404, and these regulations.~~ In the event that a Plan is recorded without complying with this requirement, it shall be considered null and void, and the ~~Board~~CEO shall institute proceedings to have the Plan stricken from the records of the Registry of Deeds.
- ~~E.F.~~ The approval by the Board of a subdivision plan shall not be deemed to constitute or be evidence of any acceptance by the ~~municipality~~City of any street, easement, or other open space shown on such plan. When a park, playground, or other recreation area shall have been shown on the plan to be dedicated to the ~~municipality~~City, approval of the plan shall not constitute an acceptance by the ~~municipality~~City of such areas. The Board shall require the Plan to contain appropriate notes to this effect. The Board may also require the filing of a written agreement between the applicant and the ~~Municipal Officers~~City Council covering future deed and title, dedication, and provision for the cost of grading, development, equipment, and maintenance of any such dedicated area.
- ~~F.G.~~ Except in the case of a phased subdivision development plan, failure to complete substantial construction of the subdivision within five years of the date of approval and signing of the Plan shall render the Plan null and ~~v~~Void. Upon determining that a

subdivision's approval has expired under this paragraph, the Board shall ~~have cause~~ a notice placed in the Hancock County Registry of Deeds to that effect.

704.5 ~~ARTICLE X~~ REVISIONS TO APPROVED PRELIMINARY AND FINAL PLANS

1. ~~PROCEDURE~~Procedure.

An applicant for a revision to a previously approved preliminary or final plan shall, at least ~~fourteen~~ 27 days prior to a scheduled meeting of the Board, request to be placed on the Board's agenda. If the revision involves the creation of additional lots or dwelling units, the procedures for preliminary plan approval shall be followed. If the revision involves only modifications of the approved plan, without the creation of additional lots or dwelling units, the procedures for final plan approval shall be followed.

2. ~~SUBMISSIONS~~Submission Requirements.

The applicant must submit, in addition to the general application submission requirements in Chapter 1, Section 208.2, an application on forms provided by the City for the approval of a minor subdivision. The application must contain a ~~The applicant shall submit a~~ copy of the approved plan, as well ~~as twelve (12) copies of the proposed revisions and other submission materials in such quantities and containing such information as are required for a preliminary plan or final plan.~~ The application ~~shall~~ must also include enough supporting information to allow the Board to make a determination that the proposed revisions meet the standards of ~~these regulations and the criteria of the statute~~ Section 705.

The revised plan shall indicate that it is the revision of a previously approved and recorded plan and shall show the title of the subdivision and the book and page or cabinet and sheet on which the original plan is recorded at the Registry of Deeds.

3. ~~Scope Of~~ Review.

The Board's scope of review shall be limited to those portions of the plan which are proposed to be changed.

705 SUBDIVISION REVIEW CRITERIA

705.1 STATUTORY REVIEW CRITERIA

~~To this end, in approving~~ When reviewing any subdivisions within the City of Ellsworth, Maine, the Planning Board of the City of Ellsworth shall consider the following statutory review criteria and before granting approval shall make findings of fact that the provisions of these regulations have been met and that the proposed subdivision will meet the guidelines of Title 30-A, M.R.S.A. Section 4404. The subdivision must determine that:

The subdivision:

- 1.1 **Pollution.** ~~The proposed subdivision w~~Will not result in undue water or air pollution. In making this determination, the Planning Board ~~of the City of Ellsworth~~ shall at least consider the elevation of the land above sea level and its relation to the flood plains; the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for disposal of effluents; and the applicable state and

- local health and water resource rules and regulations. ~~(Am 4/03)~~
- 1.2 **Sufficient Water.** The proposed subdivision ~~h~~Has sufficient water available for the reasonably foreseeable needs of the subdivision.
 - 1.3 **City Water Supply.** The proposed subdivision ~~W~~will not cause an unreasonable burden on an existing water supply, if one is to be utilized.
 - 1.4 **Erosion.** The proposed subdivision ~~W~~will not cause an unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.
 - 1.5 **Traffic.** The proposed subdivision ~~W~~will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highways or public roads existing or proposed.
 - 1.6 **Sewage Disposal.** The proposed subdivision ~~W~~will provide for adequate solid waste and sewage waste disposal ~~and will not cause an unreasonable burden on municipal services if they are utilized.~~
 - 1.7 **Solid Waste Disposal.** The proposed subdivision ~~W~~will not cause unreasonable burden on the ~~City's~~ ~~ability of a municipality~~ to dispose of solid waste ~~and sewage~~ if municipal services are to be utilized.
 - 1.8 **Aesthetic, Cultural and Natural Values.** The proposed subdivision ~~w~~Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the MDIFW or the City, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.
 - 1.9 **Conformity with Local Ordinances and Plans.** The proposed subdivision conforms ~~Is in conformance~~ with this Article 7 and any a duly adopted ~~subdivision regulation or ordinance,~~ comprehensive plan, development plan or land use plan, ~~if any.~~ In making this determination, the Planning Board may interpret this Article 7 and plans.
 - 1.10 **Financial and Technical Capacity.** The subdivider had adequate financial and technical capacity to meet the ~~above stated~~ standards of this Section 704.
 - 1.11 **Surface Waters.** Whenever situated entirely or partially within the watershed of any pond or lake, or within 250 feet of any wetland, great pond, or river as defined in 38 M.R.S.A. § 436-A, ~~the proposed subdivision in whole or in part, within 250 feet of the watershed of any pond, lake river or tidal waters,~~ will not adversely affect the quality of the body of water or unreasonably affect the shoreline of that body of water.
 - 1.12 **Ground Water.** The proposed subdivision ~~W~~will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.
 - 1.13 **Flood Areas.** ~~Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant whether the subdivision is in a flood prone area.~~ If the subdivision, or any part of it, is in a flood prone area, as determined based on the FEMA Flood Boundary and Floodway Maps and Flood Insurance Rate Maps and information presented by the applicants~~such an area~~, the subdivider shall determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision plan must include a condition of plan approval requiring that all principal structures within the subdivision shall be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation.

- 1.14 **Freshwater Wetlands.** All freshwater wetlands within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of freshwater wetlands may be done with the help of the local soil and water conservation district.
- 1.15 **River, Stream or Brook.** Any river, stream or brook within or abutting the proposed subdivision has been identified on any maps submitted as part of the application. For purposes of this section, “river, stream or brook” has the same meaning as in ~~Title 38, M.R.S.A. § Section~~ 480-B(~~Subsection~~9).
- 1.16 **Storm Water.** The proposed subdivision will provide for adequate storm water management.
- 1.17 **Spaghetti Lot Prohibited.** If any lots in the proposed subdivision have shore frontage on a river, stream, brook, great pond or coastal wetland as these features are defined in ~~Title 38 M.R.S.A. § Section~~ 480-B, none of the lots created within the subdivision have a lot depth to shore frontage ratio greater than 5 to 1.
- 1.18 **Lake Phosphorus Concentration.** The long-term cumulative effects of the proposed subdivision will not unreasonably increase a great pond’s phosphorus concentration during the construction phase and life of the proposed subdivision.
- 1.19 **Impact on Adjoining Municipalities.** For any proposed subdivision that crosses municipal boundaries, the proposed subdivision will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located.
- 1.20 **Lands Subject to Liquidation Harvesting.** Timber on the parcel being subdivided has not been harvested in violation of rules adopted pursuant to 12 M.R.S.A. § 8869(14). If a violation of rules adopted by the DAFB Bureau of Forestry to substantially eliminate liquidation harvesting has occurred, the City administrator must determine prior to granting approval for the subdivision that five years have elapsed from the date the landowner under whose ownership the harvest occurred acquired the parcel. The administrator may request technical assistance from DAFB Bureau of Forestry to determine whether a rule violation has occurred, or the administrator may accept a determination certified by a forester licensed pursuant to 32 M.R.S.A. Ch. 76. If the administrator requests technical assistance from the DAFB Bureau of Forestry, the Bureau must respond within five working days regarding its ability to provide assistance. If the Bureau notifies the administrator that the Bureau will not provide assistance, the administrator may require the applicant to provide a determination certified by a licensed forester. For the purposes of this subsection, “liquidation harvesting” has the same meaning as in 12 M.R.S.A. § 8868(6) and “parcel” means a contiguous area within one municipality, township, or plantation owned by one person or a group of persons in common or joint ownership.

STATE LAW REFERENCE—30-A M.R.S.A. § 4404 (SUBDIVISIONS; REVIEW CRITERIA).

~~Article II Authority and Administration~~

~~AUTHORITY~~

~~These standards have been prepared in accordance with the provisions of Title 30-A M.R.S.A. sections 4403 and 3001.~~

~~A. —These standards shall be known and may be cited as "Subdivision Regulations of the City of Ellsworth, Maine."~~

ADMINISTRATION

~~B. The Planning Board of the City of Ellsworth, hereinafter call the Board, shall administer these standards.~~

~~C. The provisions of these standards shall pertain to all land proposed for subdivision, within the boundaries of the City of Ellsworth.~~

ARTICLE ~~XH~~705.2 GENERAL STANDARDS

In reviewing applications for a subdivision, the Board shall consider the following general standards and make findings that each has been met prior to the approval of a Final Plan. In all instances the burden of proof shall be upon the applicant.

12.1 CONFORMANCE WITH COMPREHENSIVE PLAN

All proposed subdivisions shall be in conformity with the Comprehensive Plan or policy statement of the municipality and with the provisions of all pertinent state and local codes and ordinances.

Adequate Technical and Financial Capacity. The applicant must have adequate technical and financial capacity to develop the subdivision in compliance with all applicable review standards. Evidence of adequate technical capacity may include a written statement identifying the consultants and contractors involved in designing and constructing the subdivision development and their respective expertise and experience with comparable projects. Evidence of adequate financial capacity may include a written statement from the lender or financing partner identifying the estimated project cost and confirming that the subdivider has funds to cover the cost.

12.2 RETENTION OF OPEN SPACES AND NATURAL OR HISTORIC FEATURES

- A. If the proposed subdivision contains any identified historical or archaeological sites, or any areas identified in the Comprehensive Plan or by the Maine Critical Areas Program as rare and irreplaceable natural areas, these areas shall be included in the open space, and suitably protected by appropriate covenants and management plans.
- B. Any public rights of access to the shoreline of a water body shall be maintained by means of easements or rights-of-way, or should be included in the open space, with provisions made for continued public access.

12.3 LAND NOT SUITABLE FOR DEVELOPMENT

The following lands shall not be included in the calculations of lot area for the purpose of meeting the requirements of the Minimum Lot Size Law.

- A. Land which is situated below the normal high-water mark of any water body.
- B. Land which is located within the 100 year frequency floodplain as identified by the Federal Emergency Management Agency or the Department of Housing and Urban Development, Flood Insurance Administration, unless the subdivider shows proof though the submittal of materials prepared by a Registered Land Surveyor which show that the property in question lies at least two (2) feet above the 100 year flood level. The elevation of filled or made land shall not be considered.
- C. Land which is part of a right-of-way, or easement, including utility easements.

- D. Land that has been created by filling or draining a pond ~~of~~ or wetland.
- E. Wetlands.

12.5 LOTS

- A. All lots shall meet the minimum requirements of the Land Use Ordinance for the zoning district in which they are located. The lot configuration should be designed to maximize access to solar energy on building sites with suitable orientation.
- B. Lot configuration and area shall be designed to provide for adequate off-street parking and service facilities based upon the type of development contemplated. Wherever possible, parking ~~areas~~ lots shall be laid out to coincide with building locations to maximize solar energy gain.
- C. Lots with multiple frontages shall be avoided wherever possible. When lots do have frontage on two or more roads, the plan, and deed restrictions shall indicate vehicular access on the less traveled way. See Ellsworth Code of Ordinances, Article 9 – Street Design and Construction Standards 910.3.
- D. Wherever possible, side lot lines shall be perpendicular to the street.
- E. The subdivision of tracts into parcels with more than twice the required minimum lot size shall be laid out in such a manner as either to provide for or preclude future resubdivision. Where public utilities could be extended to the subdivision in the foreseeable future, the subdivision shall be designed to accommodate the extensions of utilities.
- F. If a lot on one side of a stream, tidal water, road, utility easement or wetland fails to meet the minimum requirements for lot size, it may not be combined with a lot on the other side of the stream, tidal water, or road to meet the minimum lot size.
- G. The ratio of lot length to width shall not be more than three to one. Flag lots and other odd shaped lots in which narrow strips are joined to other parcels in order to meet minimum lot size requirements are prohibited.
- H. Lots shall be numbered in such a manner as to facilitate mail delivery. Even numbers shall be assigned to lots on one side of the street, and odd numbers on the opposite side. Where the proposed subdivision contains the extension of an existing street or street approved by the Board, but not yet constructed, the lot numbers shall correspond with the existing lot numbers. The lot numbering shall be reviewed by the Postmaster and his comments considered by the Board.
- I. Where a major subdivision abuts or contains an existing or proposed State-owned street, permits must be obtained from the Maine Department of Transportation for entrance/driveway. This requirement shall be noted on the Plan and in the deed of any lot with frontage on the State-owned street.

12.6 UTILITIES

- A. Utilities, with the exception of electric, telephone and television cable, shall be installed underground except as otherwise approved by the Board.

- B. Underground utilities shall be installed prior to the installation of the final gravel base of the road.
- C. The size, type and location of street lights, electric and gas lines, telephone, and other utilities shall be shown on the plan and approved by the Board.

12.7 REQUIRED IMPROVEMENTS

The following improvements are required for all subdivisions unless waived by the Board in accordance with provisions of these regulations.

A. Monuments

1. Stone monuments shall be set at all street intersections and points of curvature or minimum 4' rebar, but no further than 750 feet apart along street lines without curves or intersections.
2. Stone monuments shall be set at all corners and angle points of the subdivision boundaries where the interior angle of the subdivision boundaries is 135 degrees or less or minimum 4' rebar.
3. Stone monuments shall be a minimum of four inches square at the top and four feet in length or minimum 4' rebar , and set in the ground at final grade level. After they are set, drill holes, ½ inch deep shall locate the point or points described above.
4. All other subdivision boundary corners and angle points, as well as all lot boundary corners and angle points shall be marked by suitable monumentation.

B. Water Supply

1. Any proposed subdivision located within ~~200~~600 feet² at its closest point to a water line must connect to the public water ~~systems~~supply.
 - a. The subdivider shall provide a written statement from the ~~servicing water department or district~~Water Superintendent that adequate water for both domestic and ~~fire fighting~~firefighting purposes can be provided without placing an undue burden on the source, treatment facilities or distribution system involved. The subdivider shall be responsible for paying the costs of system improvements necessary to serve the subdivision.
 - b. The size and location of mains, gate valves, hydrants, and service connections shall be reviewed and approved in writing by the Water ~~Department~~Superintendent and the Fire Chief.
2. When the location of a subdivision does not allow for a financially reasonable connection to a public water system, the ~~Planning~~ Board may allow the use of individual wells or a private community water system.

C. Sewage Disposal

1. Public System
 - a. Any proposed subdivision located within ~~200~~600 feet² at its closest point to a

sewer line must connect to the public sewer system.

- b. A sanitary sewer system shall be installed at the expense of the subdivider when there is a public sanitary sewer line located within ~~200-600~~ feet of the proposed subdivision at its nearest point. The ~~Sewer Wastewater Department Superintendent~~ shall certify that providing service to the proposed subdivision is within the capacity of the system's collection and treatment system.

2. Private Systems

- a. The developer shall submit evidence of soil suitability for subsurface sewage disposal prepared by a Maine Licensed Site Evaluator or Soil Scientist in ~~full~~ compliance with the requirements of the State of Maine Subsurface Wastewater Disposal Rules. In addition, on lots in which the limiting factor has been identified as being within 24 inches of the surface, a second site with suitable soils shall be shown as a reserve area for future replacement of the disposal area. The reserve area shall be shown on the plan and restricted so as not to be built upon.
- b. In no instance shall a disposal area be permitted on soils or on a lot which requires a New System Variance from the Subsurface Wastewater Disposal Rules.

D. Surface ~~D~~rainage per the Ellsworth Code of Ordinance – Chapter 56, Article 10 Stormwater Management, Design and Construction Standards.

12.8 LAND FEATURES

- A. Topsoil shall be considered part of the subdivision and shall not be removed from the site except for surplus topsoil from roads, parking ~~areas~~, ~~lots~~, and building excavations.
- B. Except for normal thinning, landscaping, and cutting trees to provide to direct sunlight, existing vegetation shall be left intact to prevent soil erosion and to minimize storm water runoff.
- C. To prevent soil erosion in shoreline areas, tree cutting in the strip extending one hundred feet inland from the normal high--water mark of any waterbody shall be limited in accordance with Article 10, Section 1, Subsection C.11.

12.9 CLUSTER DEVELOPMENTS

A. Purpose.

The purpose of these provisions is to allow for innovative concepts of housing development where maximum variations of design may be allowed, provided that the net residential density shall be no greater than is permitted in the Zoning District in which the development is proposed. To this end, the layout, and dimensional requirements of the ~~Land Use Ordinance~~ UDO may be altered without restriction except height limitations.

B. Basic Requirements

1. All the requirements and standards of these regulations, except those dealing with lot layout and dimensions shall be met.

2. The minimum area of land in a cluster development shall be ten acres, except where there is public water and sewer.
3. The plan shall indicate the location of all proposed roads, structures, parking lots, footpaths and common open space.
4. No building shall be constructed on soil types classified by the S.C.S. as being poorly or very poorly drained.
5. Where a cluster development abuts a waterbody, a portion of the shoreline, as well as reasonable access to it, shall be part of the common land.
6. In cluster developments with individual lot sizes of 20,000 sq.ft. or less, all dwelling units shall be connected to a common water supply and distribution system, either public or private.
7. In cluster developments with individual lot sizes of 20,000 sq.ft. or less, all dwelling units shall be connected to a public sewer system or to a central collection and treatment system.
8. Buildings shall be oriented with respect to scenic vistas, natural landscape features, topography, south-facing slopes, and natural drainage areas, in accordance with an overall plan for site development and landscaping.

12.10 DEDICATION AND MAINTENANCE OF COMMON OPEN SPACE AND SERVICES

- A. The developer or subdivider shall be responsible for ~~its-the~~ maintenance of common open space until development sufficient to support ~~the-a~~ homeowners' association has taken place.
- B. The by-laws of the proposed ~~h~~Homeowners ~~a~~Association shall specify maintenance responsibilities and shall be submitted to the Board prior to Final Plan approval.
- C. Covenants for mandatory membership in ~~the-a~~ Hhomeowners ~~a~~Association setting forth the owner's rights, interests, and privileges in the association and the common property, shall be ~~reviewed by the Board and~~ included in the deed for each lot or dwelling.

12.11 CONSTRUCTION IN FLOOD HAZARD AREAS

When any part of a subdivision is located in a special FEMA Flood Hazard Area ~~as identified by the Federal Emergency Management Agency~~, the plan shall indicate that all principal structures on lots in the subdivision shall be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation. Such a restriction shall be included in the deed to any lot which is included or partially included in the flood hazard area.

12.12 IMPACT ON GROUND WATER

- A. When a hydrogeologic assessment is submitted, the assessment 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 subdivision.
 3. Drainage conditions throughout the subdivision.

4. Data on the existing ground water quality, either from test wells in the subdivision or from existing wells on neighboring properties.
 5. An analysis and evaluation of the effect of the subdivision on groundwater resources. In the case of residential developments, the evaluation shall, at a minimum, include a projection of post development nitrate-nitrogen concentrations at any wells within the subdivision, at the subdivision boundaries and at a distance of 1,000 feet from potential contamination sources, whichever is a shorter distance. For subdivisions within the watershed of a lake, projections of the subdivision'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 subdivision and within 200 feet of the subdivision boundaries.
- B. Projections of groundwater quality shall be based on the assumption of drought conditions (assuming 60% of annual average precipitation).
 - C. No subdivision shall increase any contaminant concentration in the groundwater to more than one half of the Primary Drinking Water Standards. No subdivision shall increase any contaminant concentration in the ground water to more than the Secondary Drinking Water Standards.
 - D. If groundwater contains contaminants in excess of the Primary Drinking Water Standards, and the subdivision is to be served by on-site groundwater supplies, the applicant shall demonstrate how water quality will be improved or treated.
 - E. If groundwater contains contaminants in excess of the Secondary Drinking Water Standards, the subdivision shall not cause the concentration of the parameters, in question to exceed 150% of the ambient concentration.
 - F. Subsurface waste water 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 Final Plan, and as restrictions in the deeds to the affected lots.

12.13 ACCESS CONTROL AND TRAFFIC IMPACTS

A. General

1. Provisions shall be made for vehicular access to the subdivision and circulation within the subdivision in such a manner as to safeguard against hazards to traffic and pedestrians in existing streets and within the subdivision, to avoid traffic congestion on any accessways and to provide safe and convenient circulation on public streets and within the subdivision.
2. ~~More specifically, a~~ Access and circulation shall ~~conform to the Ellsworth Code of Ordinance—~~ comply with the requirements of Chapter 56, Article 9 (~~—Street Design and Construction Standards~~).

~~705.3~~ ~~ARTICLE XII~~ STREET AND STORM DRAINAGE DESIGN AND CONSTRUCTION STANDARDS

13.1 GENERAL REQUIREMENTS

~~A.~~ The Board shall not approve any subdivision plan unless proposed streets and storm water management systems are designed in accordance with Chapter 56, Article 9 ~~(– Street Design and Construction Standards)~~ and Article 10 ~~–(Stormwater Managements, Design, and Construction Standards)~~.

~~A.B.~~ Approval of the Final Plan by the Board, shall not be deemed to constitute or be evidence of acceptance by the ~~municipality~~ City of any street or easement.

C. Where the subdivision streets are to remain private roads, the following words shall appear on the recorded plan & within the deed:

"All roads in this subdivision shall remain private roads to be maintained by the developer or the lot owners and shall not be accepted or maintained by the City of Ellsworth even if they meet the city street design & construction standards."

13.7 ADDITIONAL IMPROVEMENTS AND REQUIREMENTS

A. Erosion Control. The procedures outlined in the erosion and sedimentation control plan shall be implemented during the site preparation, construction, and clean-up stages.

B. Cleanup. Following street construction, the developer or contractor shall conduct a thorough clean-up of stumps and other debris from the entire street right-of- way. If on-site disposal of the stumps and debris is proposed, the site shall be indicated on the plan, and be suitably covered with fill and topsoil, lined, fertilized, and seeded.

C. Street Names, Signs and Lighting. Streets which join and are in alignment with streets of abutting or neighboring properties shall bear the same name. Names of new streets shall not duplicate, nor bear phonetic resemblance to the names of existing streets within the Municipality, and shall be subject to the approval of the City Assessor's Office. No street name shall be the common given name of a person. The developer shall reimburse the Municipality for the costs of installing street names, traffic safety and control signs. Street lighting shall be installed as approved by the Board.

ARTICLE XIV PERFORMANCE GUARANTEES

~~1. TYPES OF GUARANTEES~~

~~With submittal of the application for Final Plan approval, the subdivider shall provide one of the following performance guarantees for an amount adequate to cover the total construction costs of all required improvements, taking into account the time span of the construction. Performance Guarantees shall be required only when public utilities are used. (Am 4/03)~~

~~A. Either a certified check payable to the City or a savings account or certificate of deposit naming the Town as owner, for the establishment of an escrow account;~~

~~B. A performance bond payable to the City issued by a surety company, approved by the Municipal Officer, or City Manager;~~

~~C. An irrevocable letter of credit from a financial institution establishing funding for the construction of the subdivision, from which the City may draw if construction is inadequate, approved by the Municipal Officers, or City Manager; or~~

~~D. An offer of conditional approval limiting the number of units built or lots sold until all required improvements have been constructed.~~

~~The conditions and amount of the performance guarantee shall be determined by the Board with the advice of the Road Supervisor, Municipal Officers, and/or Town Attorney.~~

~~2. CONTENTS OF GUARANTEE~~

~~The performance guarantee shall contain a construction schedule, cost estimates for each major phase of construction taking into account inflation, provisions for inspections of each phase of construction, provisions for the release of part or all of the performance guarantee to the developer, and a date after which the developer will be in default and the City shall have access to the funds to finish construction.~~

~~3. ESCROW ACCOUNT~~

~~A cash contribution to the establishment of an escrow account shall be made by either a certified check made out to the municipality, the direct deposit into a savings account, or the purchase of a certificate of deposit. For any account opened by the subdivider, the municipality shall be named as owner or co-owner, and the consent of the municipality shall be required for a withdrawal. Any interest earned on the escrow account shall be returned to the subdivider unless the municipality has found it necessary to draw on the account, in which case the interest earned shall be proportionately divided between the amount returned to the subdivider and the amount withdrawn to complete the required improvements.~~

~~4. PERFORMANCE BOND~~

~~A performance bond shall detail the conditions of the bond, the method for release of the bond or portions of the bond to the subdivider, and the procedures for collection by the municipality. The bond documents shall specifically reference the subdivision for which approval is sought.~~

~~5. LETTER OF CREDIT~~

~~An irrevocable letter of credit from a bank or other lending institutions shall indicate that funds have been set aside for the construction of the subdivision and may not be used for any other project or loan.~~

~~CONDITIONAL AGREEMENT~~

~~The Board, at its discretion may provide for the subdivider to enter into a binding agreement with the municipality in lieu of the other financial performance guarantees. Such an agreement shall provide for approval of the Final Plan on the condition that no more than four lots may be sold or built upon until either:~~

~~A. It is certified by the Board or its agent, that all of the required improvements have been installed in accordance with these regulations and the regulations of the appropriate utilities; or~~

~~B. A performance guarantee, acceptable to the municipality, is submitted in an amount necessary to cover the completion of the required improvements at an amount adjusted for inflation and prorated for the portions of the required improvements already installed.~~

~~Notice of the agreement and any conditions shall be on the Final Plan which is recorded at the Registry of Deeds. Release from the agreement shall follow the procedures for release of the performance guarantees contained in Section 13.8.~~

~~12.14 PHASING OF DEVELOPMENT~~

~~The Board may approve plans to develop a major subdivision in separate and distinct phases. This may be accomplished by limiting final approval to those lots abutting that section of the proposed subdivision street which is covered by a performance guarantee. When development is phased, road construction shall commence from an existing public way. Final approval of lots in subsequent phases shall be given only upon satisfactory completion of all requirements pertaining to previous phases.~~

~~12.15 — RELEASE OF GUARANTEE~~

~~Prior to the release of any part of the performance guarantee, the Board shall determine to its satisfaction, in part upon the report of the Registered Civil Engineer, the Code Enforcement Officer, and other agencies and departments involved, that the proposed improvements meet or exceed the design and construction requirements for that portion of the improvements for which the release is requested.~~

~~12.16 — DEFAULT~~

~~If, upon inspection, the Registered Civil Engineer or the Code Enforcement Officer finds that any of the required improvements have not been constructed in accordance with the plans and specifications filed as part of the application, he/she shall so report in writing to the Municipal Officers, the Board, and the subdivider or builder. The Municipal Officers shall take any steps necessary to preserve the City's rights.~~

~~12.17 — IMPROVEMENTS GUARANTEE~~

~~Performance guarantees shall be tendered for all improvements required by Section 11.7 of these regulations and for the construction of the streets.~~

~~ARTICLE XV WAIVERS~~~~15.1 — WAIVERS AUTHORIZED~~

~~Where the Board makes written findings of fact that there are special circumstances of a particular lot proposed to be subdivided, it may waive portions of the submission requirements, unless otherwise indicated in the regulations, provided the applicant has demonstrated that the performance standards of these regulations and the criteria of the subdivision statute have been or will be met, the public health, safety, and welfare are protected, and provided the waivers do not have the effect of nullifying the intent and purpose of the Comprehensive Plan, the Land use ordinance, or these regulations.~~

~~15.2 — FINDING OF FACTS~~

~~Where the Board makes written findings of fact that due to special circumstances of a particular lot proposed to be subdivided, the provision of certain required improvements is not requisite to provide for the public health, safety or welfare, or is inappropriate because of inadequate or lacking connecting facilities adjacent to or in proximity of the proposed subdivision, it may waive the requirement for such improvements, subject to appropriate conditions provided the waivers do not have the effect of nullifying the intent and purpose of the Comprehensive Plan, the Land use ordinance, or these regulations, and further provided the performance standards of these regulations and the criteria of the subdivision statute have been or will be met by the proposed subdivision.~~

~~15.3 — CONDITIONS~~

~~When granting waivers to any of these regulations in accordance with Sections 14.1 and 14.2, the Board shall set conditions so the purposes of these regulations are met.~~

~~15.4 — WAIVERS TO BE SHOWN ON FINAL PLAN~~

~~When the Board grants a waiver to any of the improvements required by these regulations, the Final Plan, to be recorded at the Registry of Deeds, shall indicate the waivers granted and the date on which they were granted.~~

~~ARTICLE XI 706 — ENFORCEMENT POST-APPROVAL REQUIREMENTS~~~~11.1 706.1 — INSPECTION OF REQUIRED IMPROVEMENTS~~

- A. At least five days prior to commencing each major phase of construction of required improvements, the subdivider or builder shall:
 1. Notify the ~~Code Enforcement Officer~~CEO in writing of the time when he/she proposes to commence construction of such ~~i~~improvements, so that the ~~Municipal Officers~~CEO can cause inspection to be made to ~~as~~ensure that all ~~municipal~~ specifications and requirements shall be met during the construction

- of required improvements, and to ~~en~~assure the satisfactory completion of improvements and utilities required by the Planning Board.
2. Show proof of a signed agreement between the subdivider and a Licensed Civil Engineer that the Engineer will accept responsibility for on-site inspection and certification that all specifications have been met. Such agreement will contain a fee schedule and dates for which the agreement is valid.
- B. If the inspecting official finds upon inspection of the improvements that any of the required improvements have not been constructed in accordance with the plans and specifications filed by the subdivider, ~~he-the official~~ shall so report in writing to the ~~Municipal Officers~~CEO, Planning Board, and the subdivider or builder. The ~~Municipal Officers shall take any steps necessary to preserve the municipality's rights. subdivider shall take prompt action to cure any construction defects.~~
 - C. **Minor Modifications to Improvements.** If at any time before or during the construction of the required improvements, it ~~appears to be~~comes necessary ~~or desirable~~ to modify the required improvements due to unforeseen circumstances such as encountering hidden outcrops of bedrock or natural springs, the ~~Code Enforcement Officer~~CEO is authorized to approve minor modifications ~~due to, unforeseen circumstances such as encountering hidden outcrops of bedrock, natural springs, eteto the final plan.~~ The ~~Code Enforcement Officer~~CEO shall issue any approval under this section in writing and shall transmit a copy of the approval to the Planning Board. Revised plans shall be filed with the City. For major modifications, such as relocation of rights-of-way, property boundaries, or changes of grade by more than 1%, ~~etc.~~, the subdivider shall request on-site inspection and approval from the Review-Planning Board.
 - D. At the close of each summer construction season, the City shall, at the expense of the subdivider, have the site inspected by a third party qualified ~~individual~~inspector. By December 1st of each year during which construction was done on the site, the inspector shall submit a report to the Planning Board based on that inspection, addressing whether storm water and erosion control measures (both temporary and permanent) are in place, are properly installed, and appear adequate to do the job they were designed for. The report shall also include a discussion and recommendations on any problems which were encountered.
 - E. Prior to the sale of any lot, the subdivider shall provide the Planning Board with a letter from a Registered Land Surveyor, stating that all monumentation shown on the plan has been installed.
 - F. The subdivider or builder shall be required to maintain all improvements and provide for snow removal on streets and sidewalks until such time, if ever, of acceptance of the improvements by the ~~municipality~~City.

11.2 706.2 VIOLATIONS AND ENFORCEMENT RECORDING, CONVEYANCE OF LOTS

- A. No plan of a division of land within the ~~municipality~~City which would constitute a subdivision shall be recorded in the Hancock County Registry of Deeds until a Final Plan has been approved by the Planning Board in accordance with ~~these regulations~~this Article 7.
- B. No person, firm, corporation or other legal entity 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 Deeds.

C. No person, firm, corporation or other legal entity may convey, offer or agree to convey any land in an approved subdivision which is not shown on the Final Plan as a separate lot.

~~D. Any person, firm, corporation or other legal entity who conveys, offers or agrees to convey any land in a subdivision which has not been approved as required by these regulations shall be punished by a fine of not less than \$100, and not more than \$2500 for each such conveyance, offering or agreement. The Municipality may institute proceedings to enjoin the violation of this section, and may collect attorneys' fees and court costs if it is the prevailing party.~~

E.D. No public utility, water district, sanitary district, ~~and~~/or 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.

F.E. ~~No development of a subdivision may occur without Planning Board approval shall be a violation of law.~~ Development of a subdivision may occur without Planning Board approval ~~shall be a violation of law~~. Development includes grading or construction of roads, grading of land or lots, or construction of buildings which require a Final Plan approved as provided in ~~these regulations~~this Article 7 and recorded in the Hancock County Registry of Deeds.

G.F. No lot in a subdivision may be sold, leased, or otherwise conveyed before the street upon which the lot fronts is completed in accordance with ~~these regulations~~the requirements of this Article 7, up to and including the entire frontage of the lot. No unit in a multi-family development shall be occupied before the street upon which the unit is accessed is completed in accordance with ~~these regulations~~this Article 7.

~~ARTICLE XVI APPEALS~~

~~16.1 An aggrieved party may appeal any decision of the Board under these regulations to Hancock County Superior Court, within thirty days.~~

~~708705~~ DEFINITIONS

Accessory Use or Structure: A subordinate use or structure customarily incidental to and located on the same lot as the principal use or structure, such as a garage, workshop, or the like. Accessory uses, in the aggregate, shall not subordinate the principal use or structure on the lot.

Accessway: Any public or private street, right-of way, or driveway used to enter or leave a public or private street or adjacent land using an on-road vehicle. All streets are considered accessways but not all accessways are considered streets. Within the Shoreland Zone, an accessway also includes 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 residential driveway less than 500 feet in length.

Acre: A measure of land containing 43,560 square feet.

Aggrieved Party: An owner of land whose property is directly or indirectly affected by the granting or denial of a permit or variance under this Ordinance; a person whose land abuts land for which a permit or variance has been granted; or 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: The cultivation of soil for the production or raising of food, crops, or other valuable or useful

products including commercial gardening, and the growing of nursery stock.

Alteration: A change, addition, or modification requiring construction, including any change in the location of structural members of buildings such as bearing walls, columns, beams, or girders, but not including cosmetic or decorative changes.

Apartment, Accessory: A separate dwelling unit which is located within and subordinate to a single family detached dwelling.

Automobile Junk Yard: A place occupied by three or more unregistered, unserviceable, discarded, or junked automotive vehicles, or bodies, engines, or other parts thereof sufficient in bulk to equal two vehicles or bodies, also referred to as a motor junk yard. (But excluding vehicle repair garages where autos are being overhauled or held temporarily pending insurance claims, etc.)

Automobile-Oriented Business: A business establishment which serves its customers while they remain in their motor vehicles such as a drive-in restaurant, drive-up bank teller and a car wash.

Automobile Repair Shop: A business establishment where motor vehicles and/or their related parts are repaired, reconditioned, painted, or rebuilt.

Boarding, Rooming, or Lodging House: Any dwelling in which lodging is offered for compensation to three or more persons either individually or as families with or without meals.

Building Height: The vertical distance measured from the average elevation of the finished grade within twenty (20) feet of a building to the highest point of the building.

Bureau: State of Maine Department of Conservation's Bureau of Forestry.

Campground: A business, public or private establishment operated as a recreational site for tents, campers, trailers, and travel-trailers, or other forms of temporary shelter that can accommodate two or more parties.

Campsite, Individual private: Private land for exclusive personal use not associated with a campground, but which is developed for repeated camping by only one group not to exceed 10 individuals and which involves site improvements which may include but not be limited to a gravel pad, parking area, fire place, or tent platform.

Camper: For the purpose of this ordinance, a "camper" shall be defined as a travel trailer or a recreational vehicle equipped with sleeping accommodations

Cemetery: A burial ground for the interment of the dead.

Change in Use: The change from an existing use to another use, including without limitation, the addition of a new use to an existing use.

Church: A building or group of buildings arranged, designed, intended, or used for the conduct of religious services, and accessory uses associated therewith.

Club: Any voluntary association of persons organized for fraternal, social, religious, benevolent, recreational, literary, patriotic, scientific, or political purposes whose facilities are open to members but not the general public, and which is principally engaged in activities which are not customarily carried on for pecuniary gain.

Cluster Subdivision: A subdivision in which the lot sizes are reduced below those normally required in the zoning district in which the development is located in return for the provision of permanent open space owned in common by lot unit owners, the City, or a land conservation organization.

Code Enforcement Officer: A person appointed by the Municipal Officers to administer and enforce this

Ordinance. Reference to the Code Enforcement Officer shall include the Building Inspector, Plumbing Inspector, Electrical Inspector, and the like, where applicable.

Commercial Recreation - Indoor: A business establishment providing indoor recreation facilities such as a bowling alley, skating rink, swimming pool, tennis or racquet ball courts, but not including mechanical, electronic, or video game arcades.

Commercial Recreation - Outdoor: A business establishment providing recreational facilities such as a golf course, tennis courts, swimming pool, ice skating rink, or riding stables, but not including campgrounds, drive-in movie theaters, race tracks, water slides or mechanical or motorized rides.

Community Building: A building owned by a non-profit organization available to the community for purposes of public assembly and community activities.

Community Use: A governmental or public service use for the general benefit of the citizens funded in whole or in part by the City of Ellsworth or a quasi-public organization, including by way of illustration and without limitation, municipal buildings, schools, public parks and recreational facilities, fire stations, ambulance services and sewage treatment plants.

Complete Application: An application shall be considered complete upon submission of the required fee and all information required by these regulations for a Final Plan, or by a vote by the Board to waive the submission of required information. The Board shall issue a receipt to the applicant upon its determination that an application is complete.

Complete Substantial Construction: The completion of a portion of the improvements which represents no less than thirty percent of the costs of the proposed improvements within a subdivision. If the subdivision is to consist of individual lots to be sold or leased by the subdivider, the cost of construction of buildings on those lots shall not be included. If the subdivision is a multifamily development, or if the applicant proposes to construct the buildings within the subdivision, the cost of building construction shall be included in the total costs of proposed improvements.

Comprehensive Plan or Policy Statement: Any part or element of the overall plan or policy for development of the municipality, as defined in Title 30 M.R.S.A., 4961.

Conservation Easement: A non-possessory interest in real property imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural, scenic or open space values of real property; assuring its availability for agricultural, forest, recreational or open space use; protecting natural resources; or maintaining air or water quality.

Conditional Use: A use permitted by the Planning Board subject to certain conditions and standards consistent with the General Purposes section for each zoning district. In addition to the specific uses listed for each zoning district, a conditional use may include uses similar to those listed. The Board shall only grant approval of a similar use after having found that the impact of the use will not be any greater than the impact of the use to which it is being compared.

Contiguous Lots: Lots which adjoin at any line or point, or are separated at any point by a body of water less than fifteen feet wide.

Customary Home Occupation: Any occupation or profession, which is accessory to a residential use, and provided that:

1. The home occupation is to be conducted by a member of the family residing in the dwelling;
2. All activity associated with the home occupation is conducted wholly within the dwelling unit or wholly within a structure accessory to a dwelling unit in order that no external structural change or alteration or external activities are required which change the residential character or appearance

of the dwelling;

3. No machinery or equipment which emits audible sounds, air pollutants or other wastes apparent from outside the dwelling will be utilized in the home occupation;
4. The home occupation will not involve retail sales as a primary activity, but articles may be sold from the dwelling, which are incidental to the providing of the service involved in the home occupation;
5. The family member conducting the home occupation may employ at the dwelling no more than two (2) additional persons who are not members of the immediate family residing in the dwelling to assist in the home occupation (maximum of five (5) people including family members);
6. Adequate off-street parking will be provided within the lot upon which the dwelling is located in accordance with the requirements in Chapter 56, Unified Development ordinance, Article 11 Parking Standards.

Deck: A level structure adjacent to a building elevated above the surface of the ground which may have a railing but no roof, awning, or other covering.

Decorative Changes: Repainting, residing, reroofing; adding, removing or replacing trim, railing, or other non-structural architectural details; or adding, removing or changing the location of windows and doors.

Developed Area: Any area on which a site improvement or change is made, including buildings, landscaping, parking lots, and streets.

Development: Uses including but not limited to the construction of a new building or other structures on a lot or below the shoreline or in a wetland, the relocation of an existing building on another lot, or the use of open land for a new use; any man-made change to improved or unimproved real estate, including but not limited to parking, temporary uses, clearing of land or vegetation, mining, dredging, filling, grading, paving, excavation, or drilling operations; it includes a building, a development site under the same ownership, a consolidated development, and phased development.

Driveway, Commercial: Any accessway serving a commercial use generating less than 50 average daily traffic (ADT).

Driveway, Residential: A means of access from a public or private road which will serve no more than two dwelling units.

Dwelling: Any building or structure or portion thereof containing one or more dwelling units, but not including a motel, hotel, inn, or similar use

- a. **Single-Family Dwelling** - A building designed or intended to be used exclusively for residential occupancy by one (1) family only and containing only one (1) dwelling unit.
- b. **Two Family Dwelling or Duplex** – A building designed or intended to be used exclusively for residential occupancy by no more than two (2) families and containing two (2) separate dwelling units in one (1) structure.
- c. **Multiple Dwelling:** A building designed or intended to be used, or used exclusively for residential occupancy by three (3) or more families living independently of one another and containing three (3) or more dwelling units, including apartment buildings and condominiums, but excluding single-family and two-family dwellings.

Dwelling Unit: Any building or portion thereof which contains living facilities, including provisions for sleeping, eating, cooking, and sanitation, as required by the State of Maine and/or the City of Ellsworth, for not more than one household, or a congregate residence for 6 or less persons. A dwelling unit shall have minimum of 500 square feet.

Earth: Topsoil, sand, gravel, clay, peat, rock, or other minerals.

Emergency Mobile Home Park: A parcel of land used to accommodate several mobile homes for a temporary period.

Emergency Operations: Operations conducted for the public health, safety or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings and livestock from the threat of destruction or injury. (Am 4/03)

Essential Services: Facilities for the transmission or distribution of water, gas, electricity or communication or for the collection, treatment or disposal of wastes, including, without limitation, towers, poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm and police call boxes, traffic signals, hydrants and similar accessories, but not buildings.

Family: One or more persons occupying a dwelling unit as a single non-profit housekeeping unit whether or not related to each other by birth, marriage, or adoption, but not to consist of more than five (5) unrelated persons.

Farmstand: A roadside stand not exceeding 400 square feet in floor area selling only farm, garden, greenhouse, or nursery products, and between Labor Day and Christmas, cut Christmas trees, garlands, wreaths, and wreath materials.

Final Plan: The final drawings on which the applicant's plan of subdivision is presented to the Board, for approval and which, if approved, must be recorded at the Registry of Deeds.

Fishing Equipment: Personal property designed, intended, or used in connection with commercial and/or recreational fishing activities including boats, nets, buoys, traps, and line.

Fish Processing: The loading, unloading, packing, processing and packaging of edible fish and other seafood products but not including processing of fish wastes or fish by-products.

Floor Area: 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.

Foundation: The supporting substructure of a building or other structure, excluding wooden sills and post supports, but including but not limited to basements, slabs, frostwalls, or other base consisting of concrete, block, brick or similar material.

Forestry: See "Timber Harvesting" and "Timber Management Activities."

Frontage - Street: The horizontal distance measured in a straight line between the intersections of the side lot lines of a lot with the right-of-way of a street.

Frontage - Shore: The length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline.

Functionally Water-Dependent Uses: 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 cannot be located away from these waters. The uses include, but are not limited to dams, 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 cannot reasonably be located or operated at an inland site; and uses that primarily provide general public access to coastal or inland waters.

Gasoline Service Station: A business establishment selling fuel and related products for motor vehicles.

Great Pond: Any inland body of water which in a natural state has a surface area in excess of 10 acres, and any inland body of water artificially formed or increased which has a surface area in excess of 30 acres. For the purposes of this Ordinance, Ellsworth's Great Pond are Branch Lake, Graham Lake, Green Lake, Jesse Bog, Little Duck Pond, Little Rocky Pond, Lower Patten Pond, Upper Patten Pond, Wormwood Pond, and Leonard Lake.

Half Story: That portion of a building immediately beneath a sloping roof when there is less than four feet vertically between the floor and the intersections of the bottoms of the rafters at the plate with the interior faces of the walls. A half story may be as completely used for any purpose as a full story.

Hand Crafts: The manufacturing of handcrafted articles, such as ceramics, leather goods, and jewelry.

Health Institution: A hospital, nursing home; boarding care facility or any other place for the treatment or diagnosis of human ailments, excluding professional offices.

Height: See "Building Height."

High Intensity Soil Survey: A map prepared by a certified Soil Scientist, identifying the soil types down to 1/8 acre or less at a scale equivalent to the subdivision plan submitted. The soils shall be identified in accordance with the National Cooperative Soil Survey. The map shall show the location of all test pits used to identify the soils, and shall be accompanied by a log of each sample point identifying the textural classification and the depth to seasonal high water table or bedrock at that point. Single soil test pits and their evaluation for suitability for subsurface wastewater disposal systems shall not be considered to constitute high intensity soil surveys.

Home Occupation: See "Customary Home Occupation."

Hotel: A building or group of buildings having ten (10) or more guest rooms in which lodging, or meals and lodging, are offered for compensation, including motels, tourist courts, motor lodges, and cabins.

Impervious Area: The total area of a principal and accessory structures and areas that will be covered with a low-permeability material such as asphalt, concrete and compacted gravel used for parking and roadways. A natural or man-made waterbody is not considered an impervious area except for the purpose of stormwater calculations.

Industrial Park or Development: A subdivision in an area zoned exclusively for industrial uses, or a subdivision planned for industrial uses and developed and managed as a unit usually with provisions for common service for the users.

Inn: A business establishment having nine (9) or less guest rooms in which lodging is offered to guests for compensation, and meals may be offered for compensation only to the lodgers.

Institutional: A non-profit 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.

Junkyard:

- a. **Automobile Graveyard** - a yard, field, or other area used as a place of storage for three (3) or more unserviceable, discarded worn-out or junked automobiles.

- b. **Junkyard** - a yard, field, or other area used as a place of storage for discarded, worn-out or junked plumbing, heating supplies, household appliances, furniture, discarded scrap and junked lumber, old or scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, waste and scrap iron, steel and other ferrous and non-ferrous material, including garbage dumps, waste dumps, and sanitary landfills.

Kennel: Any commercial establishment where dogs and/or cats are kept or boarded for a fee or where animal grooming is performed for a fee.

Lot: A parcel of land occupied or capable of being occupied by one (1) building and the accessory buildings or uses customarily incidental to it, including such open spaces as are required by ordinances and having frontage upon a public street, right-of-way, or private way.

Lot Area: The area of land enclosed within the boundary lines of a lot, minus land below the normal high-water line of a water body or upland edge of a wetland and areas beneath accessways serving more than two lots.

Lot - Corner: A lot with at least two contiguous sides abutting upon a street or right-of-way.

Lot Coverage: The percentage of the lot covered by structures.

Lot Coverage, Shoreland: The total footprint area of all structures, parking lots and other non- vegetated surfaces, within the shoreland zone for the lot or for a portion thereof that is located within the shoreland zone, including land area previously developed.

Lot Frontage: The horizontal distance measured in a straight line connecting the intersections of the front lot line with the side lot lines.

Lot - Interior: Any lot other than a corner lot.

Lot Lines: The property lines bounding a lot as defined below:

- a. **Front Lot Line** - On an interior lot, the line separating the lot from the street or right-of- way. On a corner or through lot, the line separating the lot from each street or right-of - way.
- b. **Rear Lot Line** - 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 (10) feet long, lying furthest from the front lot line. On a corner lot, the rear lot line shall be opposite-the front lot line of least dimension.
- c. **Side Lot Line** - Any lot line other than the front lot line or rear lot line.

Lot Minimum Area: The lot area, less the area of any land subject to rights-of-way or easements, other than utility easements servicing the lot, and also excluding lands which are below the normal high water mark or which are covered with water for at least three months per year.

Lot, Minimum Width, Shoreland: The closest distance between the side lot lines of a lot. When only two lot lines extend into the shoreland zone, both lot lines shall be considered to be side lot lines.

Lot Width: The width of any lot as measured wholly within the lot at the required front setback along a line parallel to a straight line connecting the intersections of the front lot line with the side lot line.

Lot of Record: A parcel of land, a legal description of which or the dimensions of which are recorded on a document or map on file with the Hancock County Register of Deeds.

Manufactured Housing: A structural unit or units designed for occupancy and constructed in a manufacturing facility and transported, by the use of its own chassis or an independent chassis, to a

building site. The term includes any type of building that is constructed at a manufacturing facility and transported to a building site where it is used for housing and may be purchased or sold by a dealer in the interim. For purposes of this section, two (2) types of Manufactured Housing are included. Those two (2) types are:

(1) Those units constructed after June 15, 1976, commonly called "newer mobile homes," that the manufacturer certifies are constructed in compliance with the United States Department of Housing and Urban Development standards, meaning structures transportable in one or more sections, that in the traveling mode are 14 body feet or more in width and are 750 or more square feet, and that are built on a permanent chassis and designed to be used as dwellings, with or without permanent foundations, when connected to the required utilities including the plumbing, heating, air conditioning or electrical systems contained in the unit.

(2) This term also includes any structure that meets all the requirements of this subparagraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the United States Department of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, United States Code, Title 42, Section 5401, et seq.; and

Those units commonly called "modular homes" that the manufacturer certifies are constructed in compliance with Title 10, chapter 951, and rules adopted under that chapter, meaning structures, transportable in one or more sections, that are not constructed on a permanent chassis and are designed to be used as dwellings on foundations when connected to required utilities, including the plumbing, heating, air-conditioning or electrical systems contained in the unit.

Mobile Home: Housing units that comply with the "newer mobile home" standards of the United States Department of Housing and Urban Development, as defined herein under "Manufactured Housing." Substandard housing units shall not be installed in a Mobile Home Park or elsewhere in the City of Ellsworth.

Marina: A use of waterfront land involved in the operation of a marina including structures and activities normally integral to the operation of a marina, such as servicing, fueling, pumping-out, chartering, launching, and dry-storage and boating equipment.

Mineral Extraction: Any operation within any ~~12-month~~ 12-month period which removes more than ~~one~~ 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 Pad: That portion of a mobile home site reserved for the placement of a mobile home, appurtenant structures or additions.

Mobile Home Site [aka mobile home park lot]: An area of land in a Manufactured Housing Park used for installation of a mobile home and the exclusive use of its occupants that shall be designated on the Mobile Home Park plan meeting all of the requirements of this Section.

Mobile Home Park: A parcel of land under unified ownership approved the City for the placement of three (3) or more Manufactured Housing units.

Motel: See "Hotel."

Multifamily Development: A subdivision which contains three or more dwelling units on land in common ownership, such as apartment buildings, condominiums, or mobile home parks. (Am 4/03)

Municipal Officers: Municipal Officers shall mean the Ellsworth City Council.

Net Residential Acreage: The total acreage available for the subdivision as shown on the proposed subdivision plan, minus the area for streets or accessways and the areas which are unsuitable for development.

Non-conforming Structure or Building: A structure or accessory facility, such as parking areas lots or other conditions to which the requirements of this ordinance apply, which does not meet any one or more of the following dimensional requirements: setback, height, or lot coverage, or other standards contained in this ordinance, but which is allowed solely because it was in lawful existence at the time this ordinance or subsequent amendments took effect.

Nonconforming Use: Any activity on the premises or in a structure not permitted as a land use in the district in which it lies, which existed prior to the passage of the district requirements prohibiting it. For the purpose of this Ordinance, a Conditional Use, as a permitted use, is not a nonconforming use.

Normal High-Water Line (*non-tidal waters*): 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 non-forested 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.

Nursing Home: Any dwelling in which three or more aged, chronically ill or incurably ill persons, or persons convalescing from an illness are housed and furnished with meals and nursing care for compensation.

Official Submittal Date: The date upon which the Board issues a receipt, indicating that a complete application has been submitted.

Open Space: The portion of a lot or site which is maintained in its natural state or planted with grass, shrubs, trees, or other vegetation and which is not occupied by buildings, structures, or other impervious surfaces.

Patio: A level area adjacent to a dwelling unit constructed of stone, cement or other material located at ground level, with no railing or other structure above the level of the ground.

Parking lot, private: Parking for the exclusive use of the owners, tenant, lessees, or occupants of the lot on which the parking area is located or their customers, employees or whomever else they permit to use the parking area.

Parking lot, public: Parking available to the public, with or without payment or fee.

Parking Lot: An open area other than an accessway used for the parking of two or more vehicles, excluding an area associated with a residential driveway serving no more than two residential dwelling units.

Parking, commercial: Parking or storage of motor vehicles as a commercial enterprise for which any fee is charged independently of any other use of the premise.

Parking, excess: Required parking which has been demonstrated as being unused by an existing land use or exceeds the minimum ordinance requirements.

Parking, Satellite: Parking not located on a parcel or lot that is contiguous or adjacent to the parcel or a lot not containing the use for which the parking is intended.

Parking, ~~shared~~Shared: A public or private parking area used jointly by two or more users.

Parking, Valet: Parking of vehicles by an attendant provided by the establishment for which the parking

is provided.

Piers, Docks, Wharves, Breakwaters, Causeways, Marinas, Bridges, and Uses Projecting Into Water Bodies:

- a. **Temporary** - Structures which remain in the water for less than seven (7) months in any period of twelve (12) consecutive months.
- b. **Permanent** - Structures which remain in the water for seven (7) months or more in any period of twelve (12) consecutive months.

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

Planned Unit Development: A development controlled by a single developer for a mix of residential commercial, and industrial uses. A PUD is undertaken in a manner that treats the developed area in its entirety to promote the best use of land, including the creation of open space, a reduction in the length of road and utility systems, and the retention of the natural characteristics of the land.

Planning Board: The Planning Board of the City of Ellsworth created by the Ellsworth City Charter in accordance with State Statutes.

Preliminary Subdivision Plan: The preliminary drawings indicating the proposed layout of the subdivision to be submitted to the Board for its consideration.

Principal Building: The building in which the primary use of the lot is conducted.

Principal Use: A use other than one which is wholly incidental or accessory to another use on the same premises.

Privy: A pit in the ground in which human excrement is placed.

Professional and Business Offices: The place of business, other than a residential unit, of doctors, lawyers, accountants, financial, architects, surveyors, real estate and insurance agents, psychiatrists, psychologists, counselors, and the like, or in which a business conducts its administrative, financial and clerical operations and also including providers of personal services such as barbers, hairdressers, and beauticians.

Public Utility: Any person, municipal department or other entity organized to furnish water, gas, electricity, waste disposal services, communication facilities, or transportation to the public.

Public Water System: A water supply system that provides water to at least 15 service connections or services water to at least 25 individuals daily for at least 30 days a year.

Recent Floodplain Soils: The following soil series as described and identified by the National Cooperative Soil Survey: Fryeburg; Hadley; Limerick; Lovewell; Medomak; Ondawa; Alluvia; Cornish; Charles; Podunk; Rumney; Saco; Suncook; Sunday; and Winooski.

Recording Plan: A copy of the Final Plan which is recorded at the Registry of Deeds and which need not show information not relevant to the transfer of an interest in the property, such as sewer and water line location and sizes, culverts, and building lines.

Recreational Vehicle: 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.

Residual Basal Area: The average of the basal area of trees remaining on a harvested site.

Restaurant: An establishment where food and drink are prepared and served to the public and where no food or beverages are served directly to occupants of motor vehicles.

Resubdivision: The division of an existing subdivision or any change in the plan for an approved subdivision which affects the lot lines, including land transactions by the subdivider not indicated on the approved plan.

Retail Business: A business establishment engaged in the sale of goods or services to an ultimate consumer for direct use or consumption, and not for resale, not including ~~automobile-oriented~~automobile-oriented businesses and, not including electronic, mechanical, or video game arcades.

River: A free-flowing body of water including its associated floodplain wetlands. For the purposes of this Ordinance Ellsworth's only River is the Union River from the Graham Lake dam to Leonard Lake. The Union River below the Leonard Lake dam is a tidal estuary considered a coastal wetland.

Road: this word is used interchangeably with the word Street.

Rubbish: Any discarded, worn-out abandoned, or non-functioning article or articles or materials including but not limited to tin cans, bottles, used wood products, junk appliances, junk automobiles, or parts thereof, old clothing, or household goods. The word "rubbish" shall include the words "trash," "waste materials," and "refuse."

School: An institution for education or instruction including a college, university, and public or private school conducting classes pursuant to a program approved by the State Board of Education or similar governmental agency, but not including commercially operated schools such as schools of beauty, culture, business, dancing, driving, music or recreation which shall be deemed retail business.

Setback: The horizontal distance from a lot line to the nearest part of a structure.

Setback, Shoreline: The 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, accessway, parking lot or other regulated object or area.

Shoreland Zone: 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, as defined in Chapter 56, Article 4. Shoreland Zoning Regulations and/or streams mapped on the Official Land Use Map.

Sign: An object, device or display, or part thereof, situated outdoors or indoors, which is directed at persons outside the premises, used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including words, letters, figures, design, symbols, fixtures, colors, illumination, or projected images.

Sketch Plan: Conceptual maps, renderings, and supportive data describing the project proposed by the applicant for initial review prior to submitting an application for subdivision approval.

Solar Collector: A device, or combination of devices, structure, or part of a device or structure that transforms direct solar energy into thermal, chemical, or electrical energy and that contributes to a building's energy supply.

Solar Energy System: A complete design or assembly consisting of a solar energy collector, an energy storage facility (when used), and components for the distribution of transformed energy.

Story: That portion of a building contained between any floor and the floor or roof next above it, but not including any portion so contained if more than one half of such portion vertically is below the average mean finished grade of the ground adjoining such building.

Street: A public or private way including but not limited to roads, alley, and other rights- of-way for vehicular and/or pedestrian use.

Structure: 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. The term includes structures temporarily or permanently located, such as decks and patios. Only structures covering more than 10 square feet must comply with the requirements of zoning districts, exclusive of shoreland zoning districts, where all structures, regardless of size, must comply with the shoreland zoning requirements.

The following are not considered structures: fences, poles, wiring and other aerial equipment normally associated with service drops as well as guying and guy anchors, a retractable awning or shade used solely to shade a door or window.

The following are not considered structures outside of shoreland zoning districts: parking lots, driveways, an awning or tent for a temporary event and backyard tents used for sleeping.

Subdivision: ~~“Subdivision,”~~ as that term is defined in 30-A M.R.S.A. § 4401(4).

~~Means the division of a tract or parcel of land into 3 or more lots within any 5 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 3 or more dwelling units within a 5 year period, the construction or placement of 3 or more dwelling 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 3 or more dwelling units within a 5 year period.~~

~~a. ——— In determining whether a tract or parcel of land is divided into 3 or more lots, the first dividing of the tract or parcel is considered to create the first 2 lots and the next dividing of either of these first 2 lots, by whomever accomplished, is considered to create a third lot, unless:~~

~~1. ——— Both dividings are accomplished by a subdivider who has retained one of the lots for the subdivider’s own use as a single family residence that has been the subdivider’s principal residence for a period of at least 5 years immediately preceding the 2nd division; or~~

~~2. ——— The division of the tract or parcel is otherwise exempt under this subchapter.~~

~~b. ——— The dividing of a tract or parcel of land and the lot or lots so made, which dividing or lots when made are not subject to this subchapter, do not become subject to this subchapter by the subsequent dividing of that tract or parcel of land or any portion of that tract or parcel. The municipal reviewing authority shall consider the existence of the previously created lot or lots in reviewing a proposed subdivision created by a subsequent dividing.~~

~~c. ——— A lot of 40 or more acres will be counted as a lot.~~

~~d. ——— A division accomplished by devise does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.~~

~~e. ——— A division accomplished by condemnation does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.~~

f. ~~_____ A division accomplished by order of court does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.~~

g. ~~_____ A division accomplished by gift to a person related to the donor of an interest in property held by the donor for a continuous period of 5 years prior to the division by gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. If the real estate exempt under this paragraph is transferred within 5 years to another person not related to the donor of the exempt real estate as provided in this paragraph, then the previously exempt division creates a lot or lots for the purposes of this subsection. "Person related to the donor" means a spouse, parent, grandparent, brother, sister, child or grandchild related by blood, marriage or adoption. A gift under this paragraph can not be given for consideration that is more than ½ the assessed value of the real estate.~~

h. ~~_____ A division accomplished by a gift to a municipality if that municipality accepts the gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.~~

i. ~~_____ A division accomplished by the transfer of any interest in land to the owners of land abutting that land that does not create a separate lot does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. If the real estate exempt under this paragraph is transferred within 5 years to another person without all of the merged land, then the previously exempt division creates a lot or lots for the purposes of this subsection.~~

j. ~~_____ The division of a tract or parcel of land into 3 or more lots and upon each of which lots permanent dwelling structures legally existed before September 23, 1971 is not a subdivision.~~

k. ~~_____ In determining the number of dwelling units in a structure, the provisions of this subsection regarding the determination of the number of lots apply, including exemptions from the definition of a subdivision of land.~~

l. ~~_____ Notwithstanding the provisions of this subsection, leased dwelling units are not subject to subdivision review if the municipal reviewing authority has determined that the units are otherwise subject to municipal review at least as stringent as that required under this subchapter.~~

m. ~~_____ The grant of a bona fide security interest in an entire lot that has been exempted from the definition of subdivision under paragraphs E to I, or subsequent transfer of that entire lot by the original holder of the security interest or that person's successor in interest, does not create a lot for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.~~

Subdivision – Major: ~~Any division containing more than~~ The division of a tract or parcel of land into more than four lots, ~~or dwelling units, or any subdivision containing a proposed street.~~

Subdivision - Minor: ~~Any division containing~~ The division of a tract or parcel of land into four ~~or fewer~~ lots ~~or less or a subdivision of a new or existing structure which creates, through sale or lease five or six dwelling units,~~ and in which no street is proposed to be constructed.

Subdivision of New and/or Existing Structure: ~~Any division of a new or existing structure which creates, through sale or lease, three (3) or more dwelling units, or three (3) or more units for commercial or industrial use, within a five year period.~~

Subsurface Sewage Disposal System also referred to as Subsurface Wastewater Disposal System: 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.

Terrace: See "Patio."

Theater: A fully enclosed building used for-display or presentation to the public of films, plays, or other kinds of performances.

Timber Harvesting: 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 (2) acres within the shoreland zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to Chapter 56, Article 4, Section 410.14, *Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting*.

Timber Harvesting and Related Activities: Timber harvesting, the construction and maintenance of accessways used primarily for timber harvesting and other activities conducted to facilitate timber harvesting.

Tract (or Parcel) of Land: All contiguous land in the same ownership, whether or not the tract is separated at any point by an intermittent or non-navigable stream, tidal waters where there is no flow at low tide, or a private road established by the abutting land owners.

Trailer: A vehicle without motive power and not intended for human occupancy, designed to be towed by a motor vehicle including a utility trailer, boat trailer, horse trailer, or snowmobile trailer.

Travel Trailer: See "Recreational Vehicle."

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 Chapter 56, Article 4, and only applies to that portion of the tributary stream located within the shoreland zone of the receiving water body or wetland.

Upland edge of a wetland: 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 highest annual 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 6 meters (approximately 20 feet) tall or taller.

Use: The purpose for which land or a building or structure is arranged, designed or intended, or for which it is occupied.

Variance: A realization of the terms of the zoning ordinance which impose restrictions of lot coverage, lot size, or setback as permitted by Article VII of the Ordinance.

Warehouse: A structure or building used primarily for the storage of articles, goods or materials.

Water Body: Any great pond, river, or stream.

Water Crossing: 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 accessways, 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.

Water Dependent Use: A use which, by its nature, requires a shorefront or surface water location, including, without limitation, boat yards, marinas, boat houses, boat launching ramps, ship chandleries and commercial fishing facilities. The location of a use, which does not by its nature require a shorefront or surface water location, on a pier, boat, or barge, shall not qualify it as a water dependent use.

Wetland: A freshwater or coastal wetland.

Wetland, Forested: A freshwater wetland dominated by woody vegetation that is six (6) meters tall (approximately 20 feet) or taller.

Wetland, Freshwater: Freshwater swamps, marshes, bogs and similar areas, other than forested wetlands, which are:

- 1) Of ten or more contiguous acres; or of less than 10 contiguous acres and adjacent to a surface water body, excluding any river, stream or brook, such that in a natural state, the combined surface area is in excess of 10 acres; and
- 2) Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils. Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition.

Wetland, Coastal: 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 that 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.

Wholesaling: A business establishment engaged in the bulk sale of goods or materials not manufactured or processed on the premises.

Yard: On the same lot with a principal building, a space which is open to the sky and unoccupied by any structures except a fence not more than six (6) feet in height.

Yard Sale: Display and sale of property owner's possessions (may include multi-families and their possessions). Yard sales exceeding three (3) consecutive days and/or held more frequently than (3) times in any calendar year will be considered a commercial use and require Site Plan Review.

Article IV Administrative Procedure

4.1 — PURPOSE

~~The purpose of this Article is to establish an orderly, equitable and expeditious procedure for reviewing subdivisions.~~

4.2 — AGENDA

~~In order to avoid unnecessary delays in processing applications for subdivision review, the Board shall prepare an agenda for each regularly scheduled meeting. Applicants shall request to be placed on the Board's agenda by contacting in writing, the Code Enforcement Officer at least two (2) weeks in advance of a regularly scheduled meeting. Applicants who attend a meeting but who are not on the Board's agenda may be heard but only after all agenda items have been completed, and then only if a majority of the Board so votes.~~

APPENDIX 56.7-A SUBMISSION REQUIREMENTS

SUBMISSION REQUIREMENT		PREAPPLICATION MEETING —SKETCH PLAN	MINOR SUBDIVISION —FINAL PLAN	MAJOR SUBDIVISION —PRELIMINARY PLAN	MAJOR SUBDIVISION —FINAL PLAN ¹
Number and Format of Submissions					
	<u>One digital copy of all submissions, in such form as the City Planner requests.</u>	X	X	X	X
	<u>Prior to the Technical Review Team meeting: ~~Twelve~~ Five</u> copies of the <u>sketch plan or</u> subdivision plan <u>sheets</u> , no larger than 24 by 36 inches in size, with a margin of two inches outside of the border line on the left side for binding and a one-inch margin outside the border along the remaining sides. <u>After the Technical Review Team meeting: Eight copies of the sketch plan or subdivision plan sheets, in conformance with the above requirements.</u>	X	X	X	X
	One copy of the <u>sketch plan</u> subdivision plan <u>sheets</u> reduced to a size of 8 ½ by 11 inches or 11 by 17 inches.	X	X	X	X
	Two sets of reproducible, stable base transparent originals of the subdivision plan (one for recording, one for City records).	---	X	---	X
	<u>Prior to the Technical Review Team meeting: Five copies of all other submission requirements.</u> <u>After the Technical Review Team meeting: Eight copies of all other submission requirements.</u>	X	X	X	X
Sketch Plan / General Intent / Deviations from Prior Plans					
	<u>All information provided as part of the sketch plan or, if no sketch plan was submitted, a description of the general intent of the subdivision and the site including its area, shape, and proposed features</u>	---	X	X	---
	<u>A statement clearly identifying all proposed adjustments or modifications from the sketch plan or preliminary plan, if submitted.</u>	---	X	X	X
Location Map					
	A location map drawn to scale and at a size adequate to show the relationship of the proposed subdivision to adjacent properties, and including: — Existing subdivisions in the proximity of the proposed subdivision	X	X	X	---

¹ Include all Planning Board conditions from preliminary plan.

SUBMISSION REQUIREMENT		PREAPPLICATION MEETING —SKETCH PLAN	MINOR SUBDIVISION —FINAL PLAN	MAJOR SUBDIVISION —PRELIMINARY PLAN	MAJOR SUBDIVISION —FINAL PLAN ¹
	— Locations and names of existing and proposed streets — Boundaries and designations of zoning districts — An outline of the proposed subdivision and any remaining portion of the owner's property if the plan submitted covers a portion of the owner's holdings				
Existing Conditions Map					
	One or more maps drawn at a scale of not more than 100 feet to the inch² showing the relation of the proposed subdivision to adjacent properties and the surrounding area and including: — Field surveyed boundaries of the proposed subdivision and all lot lines, giving complete descriptive data by bearings and distances, made and certified by a licensed land surveyor. — The date that the plan was prepared, a north point, and a graphic map scale. — The location of all zoning district boundaries. — The locations, widths, and names of existing roads, streets, highways, paper streets, easements, and rights-of-way. — The locations of all existing structures and buildings. — The locations of all existing sewer lines, water mains, culverts, and drainage ways. — The locations, widths, and names of open spaces, parks, public spaces, and public improvements, including those shown upon the Official Land Use Map and the Comprehensive Plan. — The location of all rivers, streams, brooks, great ponds, water bodies, wetlands, watercourses, farmland, significant wildlife habitat, rare and irreplaceable natural areas, other protected natural resources, and other essential physical features. — Areas within or adjacent to the proposed subdivision which have been identified as High or Moderate Value Wildlife Habitat by the Maine Department of Inland Fisheries and Wildlife or the Comprehensive Plan. — Areas designated as a critical natural area by the Maine Natural Areas Program or the Comprehensive Plan. — The location of mapped aquifers and aquifer recharge areas. — Known archaeological sites.	X	X	X	X

² Plans for subdivisions containing more than 100 acres may be drawn at a scale of not more than two 200 feet to the inch provided all necessary detail can easily be read.

SUBMISSION REQUIREMENT		PREAPPLICATION MEETING —SKETCH PLAN	MINOR SUBDIVISION —FINAL PLAN	MAJOR SUBDIVISION —PRELIMINARY PLAN	MAJOR SUBDIVISION —FINAL PLAN ¹
	— All areas within or adjacent to the proposed subdivision which are either listed on or eligible to be listed on the Local Register of Historic Places, or have been identified in the Comprehensive Plan as sensitive or likely to contain such sites. — Areas with public rights for physical or visual access to the shoreline. — If any portion of the subdivision is in a flood-prone area, the boundaries of any flood hazard areas and the 100-year flood elevation. — Topographic contour lines at elevation intervals specified by the Planning Board.				
Subdivision Plan					
	A subdivision plan, drawn at a scale of not more than 100 feet to the inch³ including: — The proposed name or identifying title of the subdivision, City tax map and lot numbers, and the name of the City. — The date that the plan was prepared, a north point, and a graphic map scale — Names and addresses of the record owner and subdivider — The name, registration number, signature, and seal of the professional consultant who prepared the plan. <u>The Planning Board may not accept or approve a final subdivision plan that is not sealed and signed by the professional consultant under whose responsible charge it was completed.</u> — The number of acres within the proposed subdivision. — Field surveyed boundaries of the proposed subdivision and all lot lines, giving complete descriptive data by bearings and distances, made and certified by a licensed land surveyor. The corners of the tract shall be located on the ground and marked by monuments. The plan shall indicate the type of monument to be set or found at each lot corner. — Names, tax map/lot, and deed references of adjoining property owners — <u>Proposed lot dimensions, lot numbers, lot area (in square feet), buildable area, and minimum setback lines applicable to each proposed lot</u>	---	X	X	X

³ Plans for subdivisions containing more than 100 acres may be drawn at a scale of not more than two 200 feet to the inch provided all necessary detail can easily be read.

SUBMISSION REQUIREMENT		PREAPPLICATION MEETING —SKETCH PLAN	MINOR SUBDIVISION —FINAL PLAN	MAJOR SUBDIVISION —PRELIMINARY PLAN	MAJOR SUBDIVISION —FINAL PLAN ¹
	— If any portion of the subdivision is in a flood-prone area, the boundaries of any flood hazard areas and the 100-year flood elevation. — <u>The locations, widths, and names of existing and proposed roads, easements, and rights-of-way.</u> — <u>The locations of existing and proposed structures and buildings.</u> — <u>The locations of existing and proposed sewer lines, water mains, culverts, and drainage ways.</u> — <u>The locations of existing and proposed vegetative cover, berms, hedges, fencing, and screening.</u> — <u>Locations of trees/vegetation to be preserved or replaced.</u> — <u>The location and dimensions of on-site pedestrian and vehicular access ways, parking areas, loading and unloading facilities, design of entrances and exits of vehicles to and from the site onto public roads, and curb and sidewalk lines.</u> — All parcels of land proposed to be dedicated to public use and the conditions of such dedication. — The location of open space to be preserved and a description of proposed improvements and its management. — Proposed public rights of access to the shoreline of a water body, if any. — Topographic contour lines at elevation intervals specified by the Planning Board, but no less than two feet. — Areas with sustained slopes greater than 25% cover more than one acre. — Space for insertion of conditions of approval and for the Planning Board's endorsement				
	Abutting Property Owners				
	The names and addresses of owners of record of adjacent property, including any property directly across an existing public street from the subdivision.	X	---	X	---
	Roads / Easements / Utilities / Water Crossings				
	<u>All existing and proposed roads, easements, utility lines (water, sewer), and drainage, including detailed road geometry (length, angles, radii, curves, tangent distances, and bearings).</u>	---	X	X	X
	<u>Typical cross-sections of the proposed grading for roads and sidewalks including width, type of pavement, elevations and grades.</u>	---	X	X	X
	<u>Preliminary designs of any proposed bridges or culverts.</u>				

SUBMISSION REQUIREMENT		PREAPPLICATION MEETING —SKETCH PLAN	MINOR SUBDIVISION —FINAL PLAN	MAJOR SUBDIVISION —PRELIMINARY PLAN	MAJOR SUBDIVISION —FINAL PLAN ¹
<u>A description of the road system proposed to serve the subdivision, and an indication of the future probable road system of the remaining portion of the tract if the preliminary subdivision plan submitted covers only part of the applicant's entire holding</u>		---	X	X	X
Waste Disposal					
The location and method of disposal for land clearing and construction debris.		---	X	---	X
The limits of construction disturbance.		---	---	X	X
Water Supply					
Indication of the type of water supply system(s) to be used in the subdivision. — When water is to be supplied by public water supply, a written statement from the Water Department indicating there is adequate supply and pressure for the subdivision and approving the plans for extensions where necessary. — Where the Water Department's supply line is to be extended, a written statement from the Fire Chief, stating approval of the location of fire hydrants, if any, and a written statement from the Water Department approving the design of the extension. — When water is to be supplied by private wells, evidence of adequate ground water supply and quality shall be submitted by a well driller or a hydrogeologist familiar with the area.		---	X	X	---
Sewage / Wastewater Disposal					
Indication of the type of sewage disposal to be used in the subdivision. — When sewage disposal is to be accomplished by connection to the public sewer, a written statement from the City Sewer Department stating it has the capacity to collect and treat the wastewater. — When sewage disposal is to be accomplished by subsurface wastewater disposal systems, an on-site soils investigation report by a licensed site evaluator or engineer. The report must contain the types of soil, a map showing the location of all test pits and proposed location and design of the subsurface wastewater disposal system for the proposed development. — <u>If an engineered system is proposed to serve the subdivision, designs prepared by an engineer and approved by the LPI and DHHS.</u>		---	X	X	---

SUBMISSION REQUIREMENT		PREAPPLICATION MEETING —SKETCH PLAN	MINOR SUBDIVISION —FINAL PLAN	MAJOR SUBDIVISION —PRELIMINARY PLAN	MAJOR SUBDIVISION —FINAL PLAN ¹
Soil Survey					
	A copy of the portion of the Hancock County Soil Survey covering the subdivision. When the medium intensity soil survey shows soils which are generally unsuitable for the uses proposed, the Planning Board may require the submittal of a Class A (high intensity) or Class B (medium-high intensity) soil survey or a report by a Registered Soil Scientist or Registered Professional Engineer experienced in geotechnics indicating the suitability of soil conditions for the proposed uses.	---	X	X	---
	<u>A soil survey (including a soils map, location of soil test pits, soil narrative report, and soil profile log description) of existing soil conditions, conducted by a professional consultant according to the Guidelines for Maine Certified Soil Scientists for Soil Identification and Mapping (Maine Association of Professional Soil Scientists, Mar. 2009). The intensity level of the soil survey within the buildable area of each lot must be based on the land use proposed, the acreage of proposed lots, and whether on-site subsurface wastewater disposal will be used.</u>		---	X	---
Stormwater Management / Erosion & Sedimentation Control					
	<u>A soil erosion and sedimentation control plan prepared in accordance with the Maine Erosion and Sediment Control Best Management Practices (BMPs): Manual for Designers and Engineers (DEP, Oct. 2016)</u>	---	X	X	X
	A stormwater management plan and erosion control management plan prepared in accordance with Article 10 (Stormwater Management Design and Construction Standards).	---	X	X	X
Phosphorus Control					
	A determination as to whether any portion of the proposed subdivision is located, in whole or in part, in the direct watershed of a great pond, indicate which great pond.	---	X	X	X
	If any portion of the proposed subdivision is located in the direct watershed of Branch Lake, a phosphorus control plan.	---	---	X	X
	A phosphorus impact analysis and control plan conducted using the procedures set forth in <u>the Maine Stormwater Management Design Manual: Phosphorus Control Manual, Vol. II (DEP, Mar. 2016).</u>	---	---	X	X
	A long-term maintenance plan for all phosphorus control measures, in accordance with Chapter 56, Article 10 (Stormwater Management Design and Construction Standards).	---	---	X	X
Critical Natural Areas					

SUBMISSION REQUIREMENT		PREAPPLICATION MEETING —SKETCH PLAN	MINOR SUBDIVISION —FINAL PLAN	MAJOR SUBDIVISION —PRELIMINARY PLAN	MAJOR SUBDIVISION —FINAL PLAN ¹
If any portion of the proposed subdivision is within an area designated as a critical natural area by the Comprehensive Plan or the Maine Natural Areas Program, indicate appropriate measures that are proposed to preserve the values that qualify the site for such designation.		---	X	X	X
Hydrogeologic Assessment					
A hydrogeologic assessment prepared by a certified Geologist or Registered Professional Engineer, experienced in hydrogeology, when (i) the subdivision is not served by public sewer; (ii) any part of the subdivision is located over a sand and gravel aquifer, as shown on a map entitled “Hydrogeologic Data for Significant Sand and Gravel Aquifer,” by the Maine Geological Survey, 1981; and (iii) the subdivision has an average density of less than 100,000 square feet per dwelling unit. The Planning Board may require a hydrogeologic assessment in other cases where site considerations or development design indicate greater potential of adverse impacts on ground water quality.		---	X	X	---
Traffic Impact Analysis					
An estimate of the amount and type of vehicular traffic to be generated on a daily basis and at peak hours.		---	X	---	---
Proposed general mitigation, access management, and consideration of pedestrian and non-automotive needs.		---	---	X	---
<u>A traffic impact analysis, upon Planning Board request.</u>		---	---	---	---
Landscaping Plan					
<u>A landscaping plan showing all graded contours and the approximate placement and types of existing and proposed vegetation, berms, hedges, tree lines, fencing, and screening. The plan must identify which existing trees and other vegetation will be preserved and what trees and other vegetation will be replaced.</u>		---	---	X	X
Community Services / Infrastructure Impact					
<u>An evaluation of the availability and suitability of off-site public facilities and services, including public road maintenance and snow removal, police and fire protection, solid waste disposal, recreational facilities, on-site and off-site drainage facilities, and public schools. The analysis must identify (i) the construction and infrastructure elements that will be completed by the applicant prior to the sale of lots, and (ii) the construction and infrastructure elements that are proposed to be borne by the public.</u>		---	---	X	---
Fire Protection Plan					

SUBMISSION REQUIREMENT		PREAPPLICATION MEETING —SKETCH PLAN	MINOR SUBDIVISION —FINAL PLAN	MAJOR SUBDIVISION —PRELIMINARY PLAN	MAJOR SUBDIVISION —FINAL PLAN ¹
<u>A plan for fire protection services, including an evaluation of the availability and suitability of fire hydrants, fire ponds, and other fire protection services, consistent with applicable provisions of NFPA.</u>		---	X	X	---
Construction Schedule					
<u>A construction schedule identifying all major stages of construction and including an estimate of the date when construction will start and be substantially completed.</u>		---	---	X	---
Long-Term Maintenance Plan					
<u>A long-term maintenance plan providing for ongoing monitoring and inspections of all infrastructure. The plan must provide a legally binding method for maintaining sufficient financial and technical resources for performing ongoing maintenance and repair of all infrastructure.</u>		---	X	X	X
Deeds, Restrictive Covenants, Easements, Open Space					
A copy of the deed from which the survey is based, and any existing easements, encumbrances, or other restrictions currently affecting the property.		---	X	X	X
Proposed restrictive covenants, lot deed restrictions, and encumbrances intended to cover all or part of the lots in the subdivision.		---	X	X	X
<u>Homeowners' association bylaws.</u>		---	X	X	X
A description and location of all parcels of land proposed to be dedicated to public use and the conditions of such dedication.		---	X	X	X
Written offers of cession to the City of all public open spaces shown on the subdivision plan, and copies of agreements or other documents showing the manner in which open spaces to be retained by the developer or lot owners. If open space or other land is to be offered to the City, written evidence that the City Council is satisfied with the legal sufficiency of the written offer of cession.		---	X	---	X
Performance Guarantees					
<u>If public utilities are used, a performance guarantee in compliance with the requirements of Section 706.</u>		---	X	---	X
Certification / Engineer & Surveyor					
<u>Certification by an engineer or a land surveyor that all surveys, deeds, restrictive covenants, and supporting information accurately reflect the true conditions existing within the proposed subdivision</u>		---	X	X	X
Governmental Approvals					

SUBMISSION REQUIREMENT		PREAPPLICATION MEETING —SKETCH PLAN	MINOR SUBDIVISION —FINAL PLAN	MAJOR SUBDIVISION —PRELIMINARY PLAN	MAJOR SUBDIVISION —FINAL PLAN ¹
	<u>Copies of all applicable state and federal approvals associated with the proposed subdivision, including MDEP (Site Location, NRPA, stormwater), MaineDOT (Access Management), DHHS (engineered subsurface wastewater/water) approvals.</u>	--	X	X	X

ARTICLE 8 PERFORMANCE STANDARDS

801 GENERAL PERFORMANCE STANDARDS

801.1 Applicability. Notwithstanding any other requirements, all development must meet the minimum performance standards set forth in this section.

801.2 Site Conditions.

- A. During construction, the site shall be maintained and left each day in a safe and sanitary manner, and any condition, which could lead to personal injury, or property damage shall be immediately corrected by the developer upon an order by the Code Enforcement Officer or other authorized personnel. The developer shall make provisions for disposal of oil and grease from equipment, and the site area should be regularly treated to control dust from construction activity.
- B. Developed areas shall be cleared of all stumps, litter, rubbish, brush, weeds, dead and dying trees, roots and debris, and excess or scrap building materials shall be removed or destroyed immediately upon the request of and to the satisfaction of the Code Enforcement Officer prior to issuing an occupancy permit.
- C. No change shall be made in the elevation or contour of any lot or site by the removal of earth to another lot or site other than as shown on an approved site development plan. Minimal changes in elevations or contours necessitated by field conditions may be made only after approval of the Code Enforcement Officer.

801.3 Dust, Fumes, Vapors, Gases, Odors, Glare, and Explosive Materials.

- A. 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 person or property, at any point beyond the lot line of the commercial or industrial establishment creating that emission, shall be prohibited.
- B. No 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.

801.4 Oil and Chemical Storage. All above ground outdoor storage facilities for fuel, chemicals, chemical or industrial wastes and potentially harmful raw materials shall be located on reinforced cement and shall be completely enclosed by an impervious dike monolithically poured, 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 event, 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 fuel and diesel fuel shall be exempted from this requirement.

801.5 Buffers and Screening Standards.

- A. Buffers in the form of fences, landscaping, berms and mounds shall be required to minimize any adverse impacts or nuisance on the site or on adjacent properties.
- B. Buffers shall be considered in the following areas and for the following purposes:
 - i. Along property lines, to shield various uses from each other;
 - ii. Along service or site roads running parallel to roads exterior to the site, to prevent confusion, particularly at night;
 - iii. Parking lot, garbage collection areas, and loading and unloading areas; and
 - iv. To block prevailing wind patterns and to stop wind-borne debris from leaving the site.
- C. Buffers shall be sufficient to shield structures and uses from the view of incompatible abutting properties and public roadway, and to otherwise prevent any nuisances.
- D. Exposed storage areas, service areas, exposed machinery installation, sand and gravel extraction operations, truck-loading areas, utility buildings and structures, and areas used for the storage or collection of discarded automobiles, auto parts, metals or any other articles of salvage or refuse, and similar accessory areas and structures, shall have sufficient setbacks and screening to provide an audio/visual buffer sufficient to minimize their adverse impact on other land uses within the development site and surrounding properties, such as a stockade fence or a dense evergreen hedge 6 feet or more in height.
- E. Where a potential safety hazard to children would be likely to arise, physical screening sufficient to deter small children from entering the premises shall be provided and shall be maintained in good condition.
- F. Natural features shall be maintained wherever possible to provide a buffer between the proposed development and incompatible abutting properties and public roadways. When natural features such as topography, gullies, stands of trees, shrubbery, rock outcrops do not exist or are insufficient to provide a buffer, other kinds of buffers shall be considered.
- G. Evergreens can be used as buffers, provided they are planted properly. An evergreen buffer requires 3 rows of staggered plantings. The rows should be 5 feet apart and the evergreens planted 4 feet on center.
- H. Fencing and screening shall be durable and properly maintained at all times by the owner.
- I. Fencing and screening shall be so located within the property line to allow access for maintenance on both sides without intruding upon abutting properties.
- J. All buffer areas shall be maintained in a neat and sanitary condition by the owner.
- K. Buffers shall not obstruct or conceal Fire Department access to sprinkler and/or standpipe connections for fire protection.

801.6. ~~Stormwater Runoff.~~

- ~~A. All new construction and development shall be designed to minimize stormwater runoff from the site in excess of the natural pre-development 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 stormwater.~~
- ~~B.A. Storm water runoff control systems shall be maintained as necessary to ensure proper functioning.~~

802 BACKYARD LIVESTOCK

802.1 Purpose. Ensure that non-commercial housing of livestock in urban backyards and on small lots does not create a nuisance to neighbors and the animals remain healthy. Livestock are generally accepted outdoor farm animals (i.e. cows, goats, horses, pigs, barnyard fowl, etc.) not to include cats and dogs, and other house pets.

802.2 Applicability. As defined for each type of animal. All housing of animals is prohibited from the Business Park and the Commerce Park zoning districts.

802.3 General.

- A. No owner shall allow or permit livestock to be at large meaning to be found in any place other than the property of the owner of the animals.
- B. Removal of feces should be hygienic and prompt.
- C. All animal open enclosure must be at least 75~~50~~ feet from water bodies.

802.4 Standards for Chickens and Other Poultry.

- A. Roosters are prohibited from the Ellsworth Urban Core Area.
- B. Within the Downtown Zoning Districts chickens must be kept in a chicken coop and/or run.
- C. All chicken coops and run shall be located at least 20 feet from any side and rear lot line of the lot on which it is located, and 50 feet from all windows and doors of dwellings that are located on an abutting property.

802.5 Standards for Pigs, Horses, Cows, and Others.

- A. It shall be unlawful for any person to keep or maintain any horse, cow, goat, sheep, or other livestock unless such animal is kept within an enclosure located within a minimum of 200 feet of any dwelling, except the dwelling of the owner of such animals.
- B. All livestock pens, stables, and enclosures shall be kept in a clean and sanitary condition, shall provide enough space for the number of animals ins houses and shall be open to inspection by the Code Enforcement Officer.
- C. No person shall allow the livestock to run at large.

803 SHOPPING CENTER - BIG BOX

803.1 Applicability. This section shall apply to Big Box Stores as defined.

803.2 Facade. Developments with facade over 100 feet in linear length shall incorporate wall projections or recesses a minimum of ~~3-foot~~3-foot depth and a minimum of 20 contiguous feet within each 100 feet of facade lengths and shall extend over 20% of the facade. Display windows, entry areas, awning, etc. shall be used along at least 60% for the facade.

803.3 Roof. Roof lines shall be varied with a change in height every 100 linear feet in the building length. Parapets, mansard roofs, gable roof, hip roofs, dormers, etc. shall be used to conceal flat roofs and roof top equipment from public view. Alternating lengths and designs may be acceptable.

803.4 Pedestrian flows.

- A. Walkways shall be provided from the public sidewalk or right-of-way to the principal entrance(s) of all principal buildings on the site.

- B. At a minimum, walkways shall connect focal point of pedestrian activity such as, but not limited to, street crossing, building and store entry points.
- C. Walkways shall be provided along the full length of the building along any facade featuring a customer entrance.

~~804~~ ~~ACCESSORY USES AND STRUCTURES (NON-RESIDENTIAL)~~

~~804.1 Purpose.~~ To provide standards for the establishment of non-residential accessory uses and structures.

~~804.2 Applicability.~~ This article applies to any subordinate use of a building or other structure, or use of land that is:

- ~~A. Conducted on the same lot as the principal use to which it is related; and~~
- ~~B. Clearly incidental to, and customarily found in connection with, the principal use or structure.~~

~~804.3 Standards and requirements.~~ The location of permitted accessory uses or structures is governed by the same dimensional regulations as set forth for the principal uses or principal structure(s) in Article 3 Zoning Districts.

~~805~~804 ~~ACCESSORY DWELLING UNIT~~

~~804.1~~ **Purpose.** To provide the community with expanded and more diverse year-round housing options and to provide an opportunity for owners of ~~single-family~~single-family detached dwellings to develop an accessory dwelling unit without having to meet the minimum lot area or density requirements of the applicable zone

~~805.2~~804.2 **Applicability.** This Article applies to any accessory dwelling unit.:

~~805.3~~804.3 **Number Permitted.** Only one accessory dwelling unit is permitted per lot.

~~805~~804.4 **Size.**

- A. The gross floor areas of an accessory dwelling unit shall not exceed 50% of the principal building's floor area or be no larger than 750 sq. ft., whichever is more restrictive.
- B. Each accessory dwelling unit shall have a minimum size of 190 square feet.

~~805~~804.5 **Types of Accessory Dwelling Units.** An accessory dwelling unit may be constructed only:

- 1) Within an existing dwelling unit;
- 2) Attached to a ~~single-family~~single-family or multi-family dwelling unit; or
- 3) As a new structure on the lot or the conversion of an existing accessory structure for the primary purpose of creating an accessory dwelling unit. An accessory dwelling unit may be constructed or established within an accessory structure (e.g. a garage), subject to accessory structure setbacks.

~~805~~804.6 **Accessory Dwelling Unit Requirements and Exemptions.**

1) This section applies to an accessory dwelling unit that:

- A. Is constructed on a lot where ~~single-family~~ or multi-family dwelling units are allowed,
-a ~~single-family~~ or multi-family dwelling unit structure exists, and no other accessory dwelling unit currently exists; and
~~dwelling unit exists, and no other accessory dwelling unit currently exists; and~~

B. Would not be allowed to be constructed on the lot due to dimensional or density requirements of the applicable zone.

2) If the above criteria are met the accessory dwelling unit is exempt from the following:

A. Density and Lot Size. An accessory dwelling unit is exempt from the applicable zoning density and lot size requirements that are in addition to the requirements for the ~~single family~~single-family dwelling on the lot.

B. Parking. An accessory dwelling unit shall not be subject to any additional automobile parking requirements beyond those required for the ~~single family~~single-family dwelling unit on the same lot.

C. Setbacks. An accessory dwelling unit that is built within the same structure as the ~~single family~~single-family dwelling unit or attached to a single-family dwelling unit shall have the same setback requirements and dimensional requirements of the single-family dwelling unit.

For an accessory dwelling unit constructed within an existing accessory structure, existing as of January 1, 2024, the required setback requirements for an accessory structure shall apply.

~~805~~804.7 Short Term Rental Restrictions

An accessory dwelling unit constructed using the density or lot size exemptions of this Article shall not be used for a ~~Short Term~~Short-Term Rental for ten years after the date of the Certificate of Occupancy. As part of the Certificate of Occupancy, the land owner shall indicate their agreement to these terms.

Violations of Section ~~805~~804.7 shall be enforced in the District Court under 30-A M.R.S.A. § 4452 and M.R. Civ. P. 80K. A violation of this ordinance shall be a civil violation punishable by a fine as set out in 30-A M.R.S.A. § 4452. Every night rented as a ~~Short Term~~Short-Term Rental constitutes a separate offense. All fines shall inure to the benefit of the City of Ellsworth.

~~806~~ 805 CAMPGROUNDS

~~806.1~~ **805.1 Purpose and Applicability.** This Section is to establish standards for campground construction and maintenance that promote public health, safety and welfare and shall apply to all campground construction in the City of Ellsworth.

~~806.2~~ **805.2 Administration.** This Section shall be administered according to all administrative and legal provisions of the City of Ellsworth Chapter 56 Unified Development Ordinance and Chapter 4 Fire Protection Ordinance. ~~Administration. This Section shall be administered according to all administrative and legal provisions of the City of Ellsworth Chapter 56 Unified Development Ordinance.~~

~~806.3~~ **805.3 Date.** This Section shall be effective immediately after passage by the City Council.

~~806.4~~ **Application.** ~~Permits required for development under this Section shall be administered according to provisions of the Ellsworth Chapter 56 Unified Development Ordinance.~~

~~806.5~~ **805.4 Management.** The management of the campground shall be responsible for operating the premises in accordance with all City and State regulations. The maintenance of all open space areas, roads, and utilities in a park shall be the responsibility of its management.

~~806.6~~ **805.5 Occupancy** No campsite shall be used as a permanent dwelling place. Permanent occupancy of a dwelling in the campground shall only be allowed for the purpose of housing the owner and/or caretaker of the campground.

~~806.7~~ **805.6 General Design Standards.** Campgrounds shall conform to the minimum requirements imposed under State licensing procedures and those following in this Section. In cases of conflict, the stricter rules shall apply.

~~806.8~~ **805.7 Location and Size.** All campgrounds shall be located on a ~~well drained~~well-drained site properly graded to insure rapid drainage and freedom from stagnant pools of water. Campgrounds shall be located on a parcel not less than 2 acres in size.

~~806.9~~ **805.6 Recreation Area.** No less than 10% of the total developed area of any campground shall be devoted to common recreational areas with facilities, such as playgrounds, trails, swimming pools or community buildings on suitable land for the stated purpose. Areas designated as vegetated buffers do not count toward the minimum recreation area.

~~806.10~~ **Accessways.** ~~Campground accessways serving fewer than ten camp sites are exempt from City of Ellsworth Chapter 56, Article 9 Street Design and Construction Standards. All accessways shall be constructed to allow safe vehicular access and to minimize erosion.~~

~~806.11~~ **805.7 –Landscaping.** Wooded areas and individual trees shall be preserved where practical. Vegetative cover such as grass shall be provided for land area not paved, graveled or occupied by a structure. Other planting shall be established to create an attractive setting for campsites, promote privacy, minimize glare, and provide shade.

~~806.12~~ **805.8-Buffer Strips.** Campgrounds shall be designed to provide a vegetated buffer of at least 50 feet deep between the front boundary of the park and campsites and 25 feet deep between campsites and the side and rear boundaries of the park.

~~806.13~~ **Screening.** ~~Fuel tanks, bottled gas, dumpsters and other utility structures shall be placed in such a way that they are screened and protected from roadways.~~

~~806.14~~ **805.9-Utilities.** All utilities shall be designed by a licensed civil engineer in the State of Maine to applicable state and local codes, installed and maintained by the campground owner.

~~806.15~~ **805.10-Water Supply.** Water supply to campgrounds shall conform to the rules of the Department of Human Services, relating to tent and recreational vehicle parks and wilderness recreational parks. A Campground located within ~~200-600~~ feet of a public water main shall provide a water system connected into the public system.

~~806.16~~ **Fire Protection.** ~~Water supplies for firefighting shall comply with Chapter 4 Fire Prevention and Protection Ordinance Section 7.~~

~~806.17~~ **805.11-Toilet Facilities.** Campgrounds serving primitive campsites (those without self-contained camper units with sanitary hook-ups) shall have adequate toilet facilities in compliance with applicable State plumbing Codes.

~~806.18~~ **805.12-Wastewater Disposal.** Sewage disposal plans shall be designed by a licensed civil engineer in full compliance with the requirements of the Maine Subsurface Wastewater Disposal Rules. A campground located within ~~500-600~~ feet of a public sewer system shall connect into the public system, per Ellsworth Chapter 5 Sewer Ordinance.

~~806.19~~**804.4** **Stormwater.** ~~A campground shall provide a surface water drainage system conforming to applicable provisions of City of Ellsworth Code of Ordinance, Article 10 Stormwater Management Design and Construction Standards.~~

~~806.20~~ **805.13 Campfires.** Open fires shall be permitted only in areas designated on the plan of said park as cooking areas. Facilities for such fires must meet the approval of the City Fire Chief with respect to their location and construction.

~~806.21~~ **805.14 Rubbish Disposal.** Adequate containers with tight fitting covers shall be provided by the campground operator or other means approved by the Code Enforcement Officer.

~~807~~806** SITING FACILITIES POSING RISKS TO DRINKING WATER**

Siting of aboveground and underground oil storage tanks and other facilities that pose a significant risk to drinking water shall comply with 38 MRSA §1391 through §1399 - An Act to Prevent Contamination of Drinking Water Supplies and Maine DEP Chapter 692 (Siting of Oil Storage Facilities) and Chapter 700 (Siting of Facilities that Poses a Significant Threat to Drinking Water).

~~808~~807** SEWER AND WATER CONNECTIONS**

~~808~~**807.1** **Sewer.** Comply with Chapter 5 Sewer Ordinance.

~~808~~**807.2** **Water.** After the effective date of adoption of this ordinance, any property which is developed for commercial, institutional or industrial use or any existing commercial, institutional or industrial building which is enlarged more than fifty percent (50%) and which contains any plumbing fixtures, as that term is defined in the Maine State Plumbing Rules, is required to connect all such fixtures to the public supply, provided that said public supply is located within ~~500-600~~ feet of the developed property. All properties which connect to a public system pursuant to this section shall within thirty (30) days of said connection be disconnected from any private system, and no subsequent connection to a private system shall be made.

~~809~~808** ESSENTIAL SERVICES FACILITIES**

~~809~~**808.1** **Setbacks:** Minimum building setback is 50 feet.

~~809~~**808.2** **Outdoor storage.** Prohibited in the Downtown (D) and Neighborhood (N) zoning districts.

~~809~~**808.3** **Landscaping Buffer.** The lot is suitably landscaped to provide an adequate buffer and soften the appearance. ~~The landscaped buffer shall be 160 plant units per 100 linear feet of frontage; one shade tree equals five plant units, one evergreen or ornamental tree equals five plant units, and each shrub equals one plant unit.~~ The landscape buffer may be comprised in all or in part of natural

vegetation. This section applies to all zoning districts with the exception of the Industrial (I) zoning district.

810809 OPIOID TREATMENT PROGRAM (i.e. METHADONE CLINICS)

810809.1 Applicability. Any opioid treatment program (OTP) registered under 21 U.S.C. 823(g) shall comply with following requirements:

1. Approved by the Planning Board as a Conditional Use regardless of size;
2. Be part of an acute care hospital's main campus (~~hospital-based~~ hospital-based clinic);
3. Be only one OTP per acute care hospital;
4. Be restricted to a maximum of 30 patients - active case load at any one time for the entire OTP; and
5. OTP cannot operate in part of in whole out of a mobile unit.

814810 HEIGHT LIMITS

810.1 The height limits required by this ordinance shall not apply to church spires, belfries, cupolas, domes, monuments, water towers, transmission towers, chimneys, conveyors, derricks, radio and television towers, and similar structures not intended for human occupancy.

810.2 Affordable housing projects shall be granted an additional 14 ft. height bonus, in addition to the base height maximum, with approval from the Fire Chief or their designee. The approval will be based on the capabilities of current fire safety apparatus to respond to an emergency at a structure of that height.

812811 EXTERIOR LIGHTING

812811.1 Purpose. The purpose of this Article is to provide for outdoor lighting that will:

- A. Allow appropriate outdoor lighting levels for nighttime safety, security, productivity, and enjoyment of property; and
- B. Control glare, promote dark sky initiatives, and reduce light trespass by limiting outdoor lighting that is misdirected, excessive or unnecessary.

812811.2 Applicability.

- A. ~~Except where exempt, a~~ All new outdoor lighting fixtures shall meet the requirements of this Article with the exception of maintenance work.
- A.
- ~~B. Some types of outdoor lighting are exempt from meeting the requirements of this Article per section 812.7.~~

812811.3 Lighting Plan Submittal Contents. When outdoor lighting is part of an application to the Ellsworth Planning Board or part of a project located within the Business and Technology Park Zone the applicant shall submit a Lighting Plan for all proposed outdoor lighting to include the following items:

- A. General information including: title block; north arrow; area in square footage specified for each lot, structure and large feature; property lines; scale; topography; and types of abutting uses.

- B. The location of all existing and proposed outdoor lighting fixtures.
- C. The location of all proposed outdoor lighting fixtures in relation to other existing or proposed site features to include, but not limited to, parking lots, walkways, buildings and structures, signs, trees and shrubbery.
- D. Lighting details for each style of lighting fixture including full model number, reflectors, poles, lamp type, optics selected and mounting shown on the side of the Lighting Plan or submitted as ~~“marked-up cut sheets.”~~separate narrative documents.
- A photometric plan that indicates the initial light intensity in foot-candles every 5 feet minimum for the site property out to 10 feet beyond the property line for operational hours and in contour lines showing the contribution of light fixtures. ~~Also submit a table of foot candle data to include minimum, maximum, and averages for the calculated areas as identified in Table 812.5 Maintained Illumination Levels Measured in Foot Candles at Grade.~~
- E.
- F. Other information, as deemed necessary by the Administrator.

~~812.4 Required Number of Submittal Copies:~~

- ~~A. CEO Approved project. The applicant shall submit two copies of all material to the Code Enforcement Office.~~
- ~~B. For Planning Board approved project. The applicant shall submit 13 copies of all material to the City Planner or designee.~~

812811.45 Lighting Standards

- A. Light Nuisance.** All outdoor lighting shall be located, shielded, and maintained so as not to constitute a hazard or nuisance to the traveling public or neighbors. Glare shall be avoided and light trespass minimized to less than 0.1 foot-candles.
- B. Contrast.** Employ evenly distributed transitional light levels which are consistent with the surrounding area to minimize contrast between lit areas and dark surroundings.
- C. Fixture Cut-Off. Full cut-off lighting fixtures are required for all outdoor walkways, parking lots, canopy and building/wall mounted lighting, and all lighting fixtures located within those portions of structures which contain exterior walls that are not fully enclosed between the floor and ceiling. Full cut-off lighting fixtures emit no light at or above the horizontal plane as measured at the light source. Fixtures meeting the full cutoff requirement, as defined by the Illumination Engineering Society (IES), shall be indicated on the cut sheet or lighting plan submitted.
- C.D. Maintained Illumination Levels. All non-exempt lighting shall meet Dark Sky Society compliance to the greatest extent practical for individual fixtures (capped at 1,000 lumens per fixture). Where Dark Sky compliance is not practical, all lighting shall still be downward facing and shielded to reduce light pollution from leaving the property.
- ~~D. Maintained Illumination Levels. In order to minimize glare, potential hazardous conditions, provide for security and safety outdoor lighting illumination levels shall meet the requirements set forth in Table 812.5 for any use permitted in this Article.~~

Table 812.5				
Maintained Illumination Measured in Foot-Candles				
Areas/Uses Activities		Maximum At Any Point*	Average Maximum At Any Point*	Minimum at Any Point*
Inside the Urban Core Area	Parking Lots	10	2	0.5
	Active Building Entrance	20	15	10
	Walkways/sidewalks on private land	10	2	0.5
	Under Service Station Canopies	20	10	5
	Vehicular Sale Display	20	10	5
	Externally Illuminated Sign Surface	10	2	NA
Inside the Growth Area but outside the Urban Core Area	Parking Lots	5	1	0.2
	Active Building Entrance	15	12	8
	Walkways/sidewalks on private land	5	1	0.2
	Under Service Station Canopies	15	8	3
	Vehicular Sale Display	15	8	3
	Externally Illuminated Sign Surface	5	1	NA
Inside the Rural Area but outside the Growth Area	Parking Lots	4	0.5	0.1
	Active Building Entrance	12	8	5
	Walkways/sidewalks on private land	4	0.5	0.1
	Under Service Station Canopies	10	5	2
	Vehicular Sale Display	10	5	2
	Externally Illuminated Sign Surface	3	1	NA
*In instances, where it is difficult for a development to meet the Minimum at Any Point or the Average Maximum at Any Point standards, the following illumination contrast ratios, in foot-candles, will be allowed: 1) the contrast ratio of the Maximum at Any Point to the Minimum at Any Point shall be 20:1 or less, and 2) the contrast ratio of the Maximum at Any Point to the Average Maximum at Any Point shall be 4:1 or less.				

812811.56 Height Limits

A. Pole-Mounting Limit

Lighting mounted onto poles or any structures intended primarily for mounting of lighting shall not exceed the following height as measured from the finish grade:

- i. 35 feet for driveways, parking and transit areas.
- ii. 20 feet for walkways, plazas, and other pedestrian areas.
- iii. 15 feet for all other lighting.

B. Building/Structure-Mounted Limit

Light mounted onto buildings or other structures shall not exceed a mounting height greater than 4 feet higher than the tallest part of the building or structure at the place where the lighting is installed. With the following exceptions:

- i. Lighting for facades may be mounted at any height equal to, or less than the total height of the structure being illuminated.
- ii. For buildings, canopies, or overhang located less than 40 feet from the property line or the sidewalk or public right-of-way, outdoor lighting fixtures shall be mounted to the vertical façade or underside of canopies at 16 feet or less.

812811.67 Exempt Lighting. The following types of outdoor lighting are exempt from the provisions of this Article.

A. Internally illuminated signs. However, it is required that all such signs should have “dark” backgrounds (opaque or colored) and “light” lettering (white or lighter colored than the background) so as to minimize glare or luminous overload.

B. Temporary lighting. Includes, but is not limited to, temporary lighting for theatrical, television, and performance areas; temporary holiday lighting provided that individual lamps are 10 watts or less; and temporary construction lighting used by government-funded projects to perform emergency or construction repair work, or to perform nighttime road construction on major thoroughfares. Temporary lighting per the National Electric Code shall not be in place for greater than 90 days otherwise is to be considered permanent and therefore meet the code requirements as set forth herein.

C. Safety. Exit signs, and lighting for egress pathway stairs and ramps.

D. Federal/State Required Lighting. Lighting required and regulated by the Federal Aviation Administration, U. S. Coast Guard, or other federal or state agency.

E. Street and Sidewalk Lights. Street lights within the public right-of-way and bridges.

F. Single- ~~and Two~~-Family Residential Properties (Attached and Detached). Obtrusive light (spill light) that creates glare, annoyance or obstructs visual ability is prohibited. There shall be no light trespass beyond the property line.

812811.78 Special Lighting. Upon review and determination by the Administrator that the proposed outdoor lighting will not create unwarranted glare, glow, or light trespass, outdoor lighting not complying with the technical requirements of this Article may be installed for the following applications:

A. Recreation. Sport fields, stadiums, and specialized theme parks.

B. Water Features. Lighting in swimming pools, fountains, and other water features.

C. Church and Government. Public monuments, public buildings, and houses of worship.

D. Pole Mounting Height. Industrial areas where higher pole heights are required to avoid interference of vehicle with the pole assembly.

E. National and State Flags. The type of lighting fixture to illuminate National and State flags should be a narrow beam focused. Flag lighting within the Growth Area should be done with spot lights greater than 70 watts but less than 250 watts and within the Rural Area flag with a spot light greater than 40 watts but less than 100 watts.

F. Confinement of Light to Object. Outdoor lighting used to illuminate flags, statues, signs or other objects mounted on a pole, pedestal or platform, spotlighting or floodlighting used for architectural or landscape purposes, must use fully shielded or directionally shielded lighting fixtures that are aimed and controlled so that the directed light is substantially confined to the object intended to be illuminated.

812811.89 Prohibited Lighting

A. Mercury-Vapor Fixture and Lamps. The installation of any mercury-vapor fixture or lamp for use as outdoor lighting is prohibited.

B. Laser Source Light. The operation of laser source light or any similar high-intensity light for outdoor advertising is prohibited.

C. Searchlights. The operation of searchlights for advertising purposes is prohibited.

813812 BUFFERS, SCREENING, AND LANDSCAPING STANDARDS

813812.1 Purpose.

- A. Protect existing trees, natural areas and features.
- B. Support visual screening and creation of privacy.

813812.2 Applicability. In ~~general~~general, this section applies to any of the following activities:

- A. The construction or erection of any new building or structure for which a development approval (building permit, Planning Board approval, etc.) is required.
- B. The enlargement of the exterior dimensions of an existing building or structure for which a development approval is required.
- C. The construction of a new parking lot or expansion of an existing parking lot.
- D. Unless otherwise stipulated the landscaping standards are not cumulative. For example, if both the yard buffer and parking buffer apply then the more stringent of the two shall apply.

813812.3 Expansion. When a building, structure, or parking lot is enlarged, the buffer and landscape requirements apply on an incremental basis. This means that landscaping is required in the same proportion that the enlarged building area or off-street parking area has to the existing development (e.g., a 10% increase requires 10% of the required landscaping).

813812.4 Exemptions. Unless otherwise specified, this section does not apply to the following uses:

- A. Single family attached or detached dwelling units.
- B. Agricultural and forestry uses taking place in the Industrial (I), Rural (R), and Drinking Water (DW) zoning districts.
- C. Commercial and industrial uses that abut other similar uses, respectively.
- D. Contiguous commercial or industrial parcels or land areas under common ownership.

812.5 ~~813.5~~ Acceptable Landscape Materials.

Table 813.6 Minimum Planting Specifications	
Landscape Features	Minimum Caliper/Height at the Time of Planting
Deciduous Trees	▪ Single- trunk trees: minimum of 1.5 inches measured at 6 inches above grade. ▪ Multi-trunk: minimum of 6 feet in height at the time of planting.
Coniferous trees	Minimum of 6 feet in height at the time of planting.
Shrubs	1 foot

A. Plant materials shall comply with the minimum size

requirements at the time of installation. Plant height shall be measured from the average grade level of the immediate planting area to the top horizontal plane of the shrub at planting.

A.

Table 813.6 Minimum Planting Specifications	
Landscape Features	Minimum Caliper/Height at the Time of Planting
Deciduous Trees	▪ Single- trunk trees: minimum of 1.5 inches measured at 6 inches above grade. ▪ Multi-trunk: minimum of 6 feet in height at the time of planting.
Coniferous trees	Minimum of 6 feet in height at the time of planting.
Shrubs	1 foot

B. B. Planting areas should consist of permeable surface areas only.

C. C. Each tree or shrub shall be planted at least 30 inches from the edge of any paved or impervious surface.

813.6 ~~812.67~~ Minimum Planting Specifications Unless Otherwise Specified.

A. Design. Plant materials may be arranged in a way to simulate natural growth pattern rather than spaced at regular intervals.

813.8 ~~812.8~~ Fire Suppression.

A. Landscaping, including but not limited to fences, screenings berms, trees, shrubs, and other plantings shall not visually or physically obstruct emergency equipment and personnel access to any sprinkler and standpipe connections and control valves, public and private fire hydrants and Knox Boxes.

- B. Landscaping shall be kept off to a minimum of 10 feet from compressed gas containers, cylinders, tanks, and systems.

813812.9 Permitted Uses Within the Buffers. No active recreation area, storage of materials, parking or structure, except for necessary utility boxes and equipment, shall be located within the side and rear buffer yards. The buffer yard may be included in the required setback. For the purpose of this article berms are not structures.

813812.10 Maintenance. Landscaping shall be maintained intensively for a minimum of two years to ensure the survival and establishment of all plant materials. The applicant will continue to maintain all landscaping in accordance with the approved plan for the life of the project. Dead and dying plantings shall be replaced as needed.

813812.11 Waivers. The administrator may reduce or waive the standards, require keeping an existing stand of trees and/or require a fence, wall, or berm or any combination thereof, if the administrator finds that there would be no adverse impacts upon the neighboring properties resulting from the reduction of substitution.

813812.12 Line of Sight. Landscaping shall not obstruct drivers' line of sight.

813812.13 Lot Landscaping Standard – DT And U Zoning Districts

- A. **Applicability.** This section applies to all commercial, industrial, and multi-family buildings and structures within the Downtown (DT) and the Urban (U) zoning districts. Lot landscaping should provide screening to mechanical equipment and stormwater relief, and complement streetscape design.
- B. **Exempt from this Standard.**
- i. Buildings fronting on Main Street between the Union River and High Street.
 - ii. If the total footprint of the building is less than 1,000 square feet.
 - iii. If the front setback is less than 20 feet for buildings in the Downtown (DT) zoning district.
 - iv. If the front setback is less than 30 feet for buildings in the Urban (U) zoning district.
- C. **Standard.**
- i. The percentage of required landscaping area is calculated based on the size of the lot or parcel.
 - ii. Downtown (DT) zoning district – if the front setback is more than 20 feet then the developer shall provide a minimum of 15% of landscaping area and/or low impact development cover excluding green roofs.
 - iii. Urban (U) zoning district – if the front setback is more than 30 feet then the developer shall provide a minimum of 20% of landscaping area and/or low impact development cover excluding green roofs.

813812.14 Parking Area Buffer – Road, Residential Use and Loading Areas

- A. **Applicability.**
- i. For any parking lot located within the front yard and having 20 parking spaces or more.
 - ii. For any parking lot abutting an existing residential use and having 20 parking spaces ~~of~~ or more.
 - iii. For any area used exclusively for the display of 20 or more motor vehicles for sale as part of an automobile dealership having a side or rear property line directly abutting an existing residential use.

- iv. For any type of vehicle fleet, automobile service establishment, vehicle storage, etc., having the ability to accommodate 20 cars or more and directly abutting an existing residential use.
- v. Loading areas abutting a road or an existing residential use.

B. Exemptions.

- i. Downtown (DT) zoning district.
- ii. For uses within the Industrial (I) zoning district except when having a side or rear property line directly abutting an existing residential use.
- iii. For any area used exclusively for the display of motor vehicles for sale as part of an automobile dealership fronting the road.

C. Standard. Between the street and existing residential uses and parking areas meeting the applicability threshold, the applicant shall have the following options:

- i. A 10-foot-wide minimum landscaped strip between a street and the parking lot, planted with a minimum of three trees and 25 shrubs for every 100 feet of road frontage, excluding driveway openings;
- ii. A berm that is at least two-and-a-half feet higher than the finished elevation of the parking lot with a maximum of a 3:1 slope planted with a minimum of 15 shrubs for every 100 linear feet of frontage; or
- iii. If existing woodlands are available, the applicant can preserve a ~~20-foot-wide~~20-foot-wide strip in lieu of the landscaping requirement along the frontage.

813812.15 Interior Parking Lot.

A. Applicability. To provide visual breaks, shade, and stormwater management (low impact design) to parking lots with more than 25 parking spaces, as well as assist in defining circulation.

B. Standard.

- i. Interior islands shall contain shade trees based on a minimum ratio 1 tree and 3 shrubs for every 5,000 square feet of parking area. A minimum of 100 square feet of planting area shall be provided per every tree and three shrubs.
- ii. Parking lot island curbing shall have cuts to facilitate stormwater infiltration.
- iii. These landscape islands should be used to assist in defining circulation routes and separating traffic on site for safety as well as for aesthetic purposes.

813812.16 Rear and Side Buffer – Between Residential and Non-Residential Uses.

A. Applicability Rear and Side Buffers. To provide landscaped and screening separation between existing residential and non-residential uses along the side or rear lot lines.

B. Standard. Existing trees and shrubs may contribute to achieving compliance with this standard when their existing locations, species, and sizes are indicated on the site plan, demonstrating that the minimum planting specifications of this Section are met.

- i. Within the Urban Core:
 - a. Minimum buffer width of 10 feet.
 - b. Minimum of 8 trees per 100 linear feet of buffer.
 - c. Minimum of 13 shrubs per 100 linear feet of buffer
- ii. Outside of the Urban Core:
 - a. Minimum buffer width of 50 feet.
 - b. Minimum of 20 trees per 100 linear feet of buffer.
 - c. Minimum of 20 shrubs per 100 linear feet of buffer.

813812.17 Road Buffer – Manufacturing, Industrial, and Heavy Commercial.

- A. **Applicability.** To provide landscaped and screening separation between the road and heavy manufacturing, industrial, and heavy commercial uses as deemed needed by the Administrator for uses such as, but not limited to the manufacturing of asphalt, petroleum or lubricants; chemical products or hazardous substances; glass, clay, cement, concrete or gypsum products; rubber or plastic; leather, textiles or fabric; timber of wood products; fueling and maintenance facilities; road salt storage and loading area, large vehicle fleet storage; auto salvage or recycling; electricity generation or storage; hazardous waste treatment, storage or disposal; landfill; recycling facility; sewage treatment works; warehousing and mineral extraction.
- B. **Standard.** Existing trees and shrubs may contribute to achieving compliance with this standard when their existing locations, species, and sizes are indicated on the site plan, demonstrating that the minimum planting specifications of this Section are met. The developer may use plantings, fences/wall, berms or a combination thereof.
- i. Plantings.
 - a. Minimum buffer width of 50 feet.
 - b. Minimum of 20 trees per 100 linear feet of buffer.
 - c. Minimum of 20 shrubs per 100 linear feet of buffer.
 - ii. Fences and Walls.
 - a. Fences or walls may only be used outside the Ellsworth Urban Core Area.
 - b. Fences or walls shall be 6 feet high when used to meet the buffer yard requirements.
 - c. No fence or wall is required if an existing fence or wall on an abutting property meets the requirements of this section.
 - d. The fence or wall shall be solid and 100% opaque. Corrugated and galvanized steel or metal sheets are not permitted.
 - e. Walls may be concrete, concrete blocks, masonry, stone or a combination of these materials. The support posts shall be placed on and faced toward the inside of the developing property so that the surface of the wall or fence is smooth on the abutting property side.
 - iii. Berms.
 - a. Berms shall have a slope not greater than the slope created in 3 horizontal feet with 1-foot vertical rise (3:1 slope).
 - b. The berm shall be no greater than 6 feet in height above natural grade.
 - c. Berms shall be constructed solely of soil, and shall not contain concrete, brick, tires, or other similar materials.
 - d. To provide visual relief, any berms exceeding 10 feet in length shall be curvilinear and shall vary in height.
 - e. For every 100 linear feet, there shall be planted at least three trees and 30 shrubs. Required trees and shrubs may be exchanged for one another with one tree equaling five shrubs.
 - f. The surface of the berm that is not planted with trees and shrubs shall be covered with grass, perennial ground cover, vines, and woody and herbaceous perennial, with mulch.

813812.18 Screening of Trash Receptacles.

Trash receptacles should be enclosed on all four sides by a continuous visual screen that matches or complements the principal use and surroundings. The screening shall be a minimum of 6 feet or the height of the receptacle, whichever is greater.

814813 PUBLIC AND QUASI-GOVERNMENTAL TRAILER-ABLE BOAT LAUNCHING FACILITIES FOR THE DRINKING WATER ZONING DISTRICT.

- 814813.1** All public and quasi-governmental trailer-able boat launching facilities providing access to Branch Lake shall comply with the following requirements:
- A. The facility shall be gated and locked during off-hours.
 - B. The facility shall be supervised by an attendant during hours of operation.
 - C. The facility shall be equipped with a boat wash-down facility for the sole purpose of washing down boats.
 - D. The facility attendant shall conduct a boat inspection on all watercraft prior to entering Branch Lake.
 - E. A boat inspection includes: a) a ~~visual inspection~~ visual inspection of a boat, motor vehicle, trailer, marine engine, live well, bilge, bait bucket and all other related equipment to ensure that no aquatic invasive plants or animals are introduced into Branch Lake and b) a boat wash down.

815814 STREET NAMING AND PROPERTY NUMBERING

- 815814.1 Purpose.** The Assessor shall establish and maintain a street naming and property numbering system. This is intended to minimize problems of identification for emergency management services and other public services and shall be subject to the requirements set forth in this section.
- A. All streets and properties shall bear a distinctive name and number in accordance with and as designated upon a Street Name and Property Number Designation Map on file with the City's Assessing Office. The Assessor or designee shall establish, maintain and keep current said map.
 - B. The Assessor shall assign all such names and numbers as are necessary to maintain the system.
 - C. In naming streets, the Assessor should avoid the use of the following:
 - i. Duplicate and similar-sounding names.
 - ii. Alphabetical letters.
 - D. The Assessor shall assign numbers that are consistent with the United States Postal Services practices (i.e., even numbers on the left and odd numbers on the right).
 - E. Numbers shall be affixed to the principal structures.
 - F. Numbers shall be located on structures so as to be readily visible from and oriented toward the street from which the address is taken.
 - G. For principal structures more than 50 feet from the street or otherwise not readily visible from the street due to trees, fences or other similar obstructions, there shall be placed and maintained a secure post at the structure's entrance upon which shall be affixed the designated number. Said post must also be readily visible but must not be placed in the right-of-way, and said post must be at least 4 feet in height. In lieu of said post, the number may be affixed to a mailbox.
 - H. For multi-family or apartment complexes, the number shall be consistent with and displayed as outlined in sections E through G above. Each individual unit will be identified by a sub letter (i.e., Apartment A).
 - I. Numbers shall be no less than 3 inches in height. Standard numbers shall be provided by the City upon the request of the homeowner.
 - J. No person shall erect any street name sign or affix any street number different than those approved by the Assessor's Office.

816.15 WASTE MATERIAL ACCUMULATIONS REGULATED.

Deposits or accumulations of rubbish, junk, junk automobiles and parts thereof, discarded articles of any kind, household, industrial or commercial wastes shall not be made in any zoning district except at a dumping place or places designated as such by the City Council, provided, however, that nothing in this Article shall be construed to prohibit the establishment or operation of commercial junk yards and automobile graveyards as permitted under the terms of this ordinance

817.16 MEDICAL MARIJUANA DISPENSARY

817.1 816.1 Purpose and Applicability. This Section is to establish standards for medical marijuana dispensaries and to regulate the cultivation and retailing of medical marijuana in a manner that protects the health, safety and welfare of the residents, merchants, and customers.

817.2 816.2 Authority. This section has been prepared in accordance with the provisions of Title 22, Chapter 558-C § 2421-2429 of the Maine Revised Statutes Annotated (M.R.S.A.), Title 30-A §3001, and the Rules Governing the Maine Medical Use of Marijuana Program (10-144 CMR Chapter 122).

817.3 816.3 Administration. This Section shall be administered according to all administrative and legal provisions of this ordinance, ~~with the following exception:~~

~~A. For the establishment of a new dispensary, the re-location of an existing Ellsworth dispensary to a new location within the City of Ellsworth, or a change from cultivation facility to retail facility or vice versa, the project shall be reviewed by the Planning Board as a major use site development plan regardless of threshold factors such as but not limited to size or change of use that would ordinarily bring the review to the Code Enforcement level.~~

~~Approval of subsequent project phases by the Administrator shall only be given upon satisfactory completion of all approvals/permits pertaining to previous phases having been met.~~

817.4 816.4 Limit on Number of Dispensaries. There shall only be one dispensary within the City of Ellsworth and it shall operate from only one physical location.

817.5 816.5 Not-for-profit Corporation. A dispensary must operate on a not-for-profit basis.

817.6 816.6 Location.

- A. A dispensary shall not locate within 500 feet of the property line of the following pre-existing uses located within or outside the City of Ellsworth:
 - i. Public or private schools;
 - ii. Public facilities such as playgrounds, pools, parks, recreation facilities, and libraries;
 - iii. Substance abuse rehabilitation centers, correctional facilities, and homeless shelters;
 - iv. Places of worship; and
 - v. Day care.
- B. A dispensary may be located in a multi-occupant building unless one or more of the units are housing units.
- C. It is prohibited to co-locate an office that can issue a physician's written certification from the same premise as a dispensary.
- D. A dispensary shall not adversely affect health and safety of the nearby residents or businesses by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.
- E. A dispensary shall not have on-site display of marijuana plants.

- F. Only medical marijuana retail facilities shall sell paraphernalia used for the use or consumption of medical marijuana to registered patients or registered primary caregivers, as defined in the Rules Governing the Maine Medical Use of Marijuana Program (10-144 CMR Chapter 122).
- G. There shall be no window display.
- H. A dispensary shall be operated from a permanent location and shall not be permitted to operate from a moveable, mobile, or transitory location.

817.7 816.7 Zone. A dispensary is allowed only within the Urban (U), Industrial (I), and Commercial (C), zoning districts. A dispensary is strictly prohibited from all other zoning districts.

817.8 816.8 Cultivation. All cultivation of marijuana shall take place in a non-transparent secured building.

817.9 816.9 Parking. Dispensaries shall be prohibited from having off-site parking or satellite parking greater than .25 miles from the entrance of the use.

818817.MEDICAL MARIJUANA PRIMARY CAREGIVER OPERATIONS

818817.1 Applicability.

- A. Medical marijuana primary caregiver operations (cultivation, production, dispensing, and all related activities) outside the primary residence of the primary caregiver and collectives are prohibited in all zoning districts.
- B. Medical marijuana primary caregiver operations (cultivation, production, dispensing, and all related activities) at the primary residence of the primary caregiver are allowed in all zoning districts and shall comply with the Home Occupations section below.

818817.2 Authority. This section and the terms used are in accordance with the provisions of and as defined in Title 22, Chapter 558-C § 2421-2429 of the Maine Revised Statutes Annotated (M.R.S.A.), Title 30-A §3001, and the Rules Governing the Maine Medical Use of Marijuana Program (10-144 CMR Chapter 122).

819-818 HOME OCCUPATIONS

8189.1 Purpose and Findings.

- A. Established criteria for operation of home occupations in dwelling units;
- B. Ensures that such home occupations are compatible with adjacent and nearby residential properties and uses; and
- C. Allows residents of Ellsworth to use their residences as places to enhance or fulfill personal economic goals.

819818.2 Applicability.

- A. Applies to any occupations, profession, or business activity customarily conducted entirely within a dwelling unit and carried on by a member of the family residing in the dwelling unit, and which occupation or profession is clearly incidental and subordinate to the use of the dwelling unit for dwelling purposes and does not change the character of the dwelling unit. A home occupation is an accessory use to a dwelling unit.
- B. No home occupation, except as otherwise provided in this section, may be initiated, established, or maintained in the unit except in conformance with the regulations and performance standards set forth in this section. A home occupation shall be incidental and secondary to the use of a dwelling unit for residential purposes.

819818.3 Exempt Home Occupations.

The activities listed below are not subject to this section, provided that all persons engaged in such activities reside on the premises:

- A. Artists, sculptors, and composers not selling their artistic product to the public on the premises;
- B. Craft work, such as, but not limited to, jewelry-making and pottery, with no sales permitted on the premises;
- C. Home offices with no client visits to the home permitted; and
- D. Telephone answering and message services.

819818.4 Permitted Home Occupations in the Downtown, Industrial, Urban Neighborhood, and Commercial Zoning Districts.

The following home occupations are permitted subject to the performance standards established in table 819818.7 Home Occupation Performance Standards by Zoning Districts:

- A. Accounting, tax preparations, bookkeeping, and payroll services.
- B. Baking and cooking.
- C. Catering.
- D. Child Care.
- E. Computer repair, systems design, and related services.
- F. Drafting services.
- G. Engineering, architecture, and landscape architecture.
- H. Financial planning and investment services.
- I. Fine arts studios.
- J. Hair salon, barbering, hairdressing, and other personal care services.
- K. Legal services.
- L. Musical instruction.
- M. Offices for professional, scientific, or technical services or administrative services.
- N. Photographic services.
- O. Professional services including the practice of law.
- P. Real estate services and appraisal.
- Q. Teaching of crafts.
- R. Tutoring.

8189.5 Permitted Home Occupations in the Drinking Water and Rural zoning Districts.

The following home occupations are permitted subject to the performance standards established in table 819818.7 Home Occupation Performance Standards by Zoning Districts:

- A. Accounting, tax preparations, bookkeeping, and payroll services.
- B. Baking and cooking.
- C. Catering.
- D. Child Care.
- E. Computer repair, systems design, and related services.
- F. Drafting services.
- G. Engineering, architecture, and landscape architecture.
- H. Financial planning and investment services.
- I. Fine arts studios.
- J. Hair salon, barbering, hairdressing, and other personal care services.
- K. Legal services.
- L. Musical instruction.
- M. Offices for professional, scientific, or technical services or administrative services.
- N. Photographic services.
- O. Professional services including the practice of law.

- P. Real estate services and appraisal.
- Q. Teaching of crafts.
- R. Tutoring.
- S. Medical/dental offices.
- T. Motor vehicle and engine repair.
- U. Furniture refinishing.
- V. Recording Studios.
- W. Animal grooming.
- X. Machine shop/metal working.
- Y. Retail sales.
- Z. Contractor and Trade shops.

849818.6 Permitted Home Occupations in All Zoning Districts.

The following home occupations are permitted, subject to the performance standards established in table 849818.7 Home Occupation Performance Standards, in all Zoning Districts:

- A. Medical marijuana primary caregiver operations (production, cultivation, dispensing, and all related activities).

In some cases, a home-occupation may have to comply with the Ellsworth Code of Ordinances Chapter 4, Fire Protection and Prevention. For more information, please contact the Ellsworth Fire Inspector at 669-6612.

849818.7 Performance Standards.

All permitted home occupations shall comply with the criteria of Table 849818.7 Home Occupation Performance Standards.

Table 849818.7 Applicable Home Occupation Performance Standards by Zoning Districts and for Medical Marijuana (MJ)			
Primary Caregiver Operations*			
Performance Standards	DW and R	All Other zoning districts	MJ Primary Caregiver Operations
The use shall be clearly incidental and secondary to residential occupancy.	✓✓	✓✓	✓✓
The use shall be conducted entirely within the interior of the residence.	✓✓	✓✓	NA
Not more than 6 clients per day. Hours for visits shall be between 8:00 AM and 8:00 PM.	✓✓	✓✓	✓✓
Not more than 25% of the gross floor area of the principal dwelling structure shall be utilized for the home occupation.	✓✓	✓✓	✓✓
Music, art, craft, or similar lessons are permitted (12 or few clients per day).	✓✓	✓✓	NA
Child care (maximum of 6 children) is permitted.	✓✓	✓✓	NA
Storage of goods and materials shall be inside and shall not include flammable, combustible, or explosive materials.	✓✓	✓✓	✓✓

Off-street parking shall be provided.	✓✓	✓✓	✓✓
Outside storage of heavy equipment or material shall be prohibited.		✓✓	✓✓
Mechanized equipment shall be used only in a completely enclosed building.		✓✓	✓✓
Electronically amplified sounds shall not be audible from adjacent properties or public streets.	✓✓	✓✓	✓✓
No generation of dust, odors, noise, vibration, or electrical interference or fluctuation shall be perceptible beyond the property line.	✓✓	✓✓	✓✓
Deliveries and pickups shall be those normally associated with residential services, shall not block traffic circulation, and shall occur between 8:00AM and 8:00 PM.	✓✓	✓✓	✓✓
*Medical marijuana primary caregiver operations are allowed, as home occupations, in all zoning districts.			

819818.8 Outdoor Storage

- A. Storage shall be limited to materials related to the business.
- B. Materials shall not be stacked to a height exceeding 4 feet and shall not be visible from the public right-of-way or adjacent lot or parcel occupied by a residence. Any screening required to comply with this subsection shall use wood or masonry fencing or a vegetative hedge;
- C. The storage shall not create any smoke, odors, dust, or noise at a level discernible at any of its lot lines; and
- D. The minimum lot size for outdoor storage shall be 2 acres. In no event shall a home occupation be established on a lot that is nonconforming as to the minimum lot size.

819.9 818.9 Accessory Buildings. Where a home occupation is conducted in an accessory building, such accessory building shall not exceed the square footage of the footprint of the dwelling.

819.10 818.10 Employees. The family member conducting the home occupation may employ at the dwelling a maximum of two nonresident employees to assist in the home occupation. There shall be a maximum of 5 workers including family members.

818.119.11 Unsafe Home Occupations. If any home occupation has become dangerous or unsafe; presents a safety hazard to the public, pedestrians on public sidewalks, or motorists on a public right-of-way; or presents a safety hazard to adjacent or nearby properties, residents, or businesses, the Code Enforcement Office shall issue an order to the dwelling owner and/or tenant on the property on which the home occupation is being undertaken, directing that the home occupation immediately be made safe or terminated. In the event of a failure to do so by the owner and/or tenant, after notice and a reasonable period of time, the Code Enforcement Officer may take any and all available enforcement actions to render the home occupation and dwelling safe. Costs incurred by the Code Enforcement Officer, if forced to take enforcement actions, shall be borne by the property owner and shall be treated as a zoning violation. Safety concerns pertaining to medical marijuana caregiver operations are outside the jurisdiction of the Ellsworth Code Enforcement officer and shall be reported to the Ellsworth Police Department and/or the Maine Department of Health and Human Services, Maine Center for Disease Control and Prevention.

820819 MOBILE HOME PARK STANDARDS

820819.1 Purpose. This Section is intended to promote public health, safety and welfare; to establish standards for Mobile Home Park construction and maintenance; to create construction standards and other regulations of Emergency Mobile Home Parks; and to provide a wholesome community environment. This section is supplementary to the Ellsworth *Subdivision* Ordinance.

82190.2 Applicability. This Section shall apply to all Mobile Home Parks in the City of Ellsworth, Maine. The term “Park” when used herein refers to Mobile Home Parks, as defined. The term “Site” when used herein refers to a Mobile Home Site, as defined.

~~**820.3 Zoning Districts.** Emergency Mobile Home Parks are allowed within any Land Use District other than districts within the Shoreland Zone.~~

820.4 819.3 Authority. This Section is enacted pursuant to 30-A M.R.S.A., ~~Section §~~4358 Regulation of Mobile Home, et. Seq.

820819.45 Supplementary Document. Except as stipulated in this Section, Mobile Home Parks must meet all of the applicable requirements for a residential subdivision, and must conform to all applicable state laws and city ordinances. Where the provisions of this Section conflict with specific provisions of the Ellsworth Subdivision Ordinance provisions of this Section prevail. In particular, Subdivision “Lot” design requirements do not directly apply as Mobile Home “Site” design requirements, which are specified herein and Mobile Home Parks are not reviewed as “cluster” subdivisions.

820819.56 Administration. This Section shall be administered according to all applicable procedures, penalties, remedies and legal provisions stated in the Ellsworth Subdivision Ordinance and the supplementary provisions stated in this Section.

820819.76 Planning Board Review. Proposed Mobile Home Parks, expansions of the number of home sites within a Park or any proposal classified by the Code Enforcement Officer as a major use site development must first be reviewed and approved by the Ellsworth Planning Board in accordance with this Section, the Subdivision Ordinance and any other applicable City ordinances.

~~**820.8 Submittal.** A signed Land Development Permit application to construct a Mobile Home Park shall be submitted to the City Planner with the fee and applicable documentation required by the Ellsworth Subdivision Ordinance. Plans for review shall conform to applicable requirements of the Ellsworth Subdivision Ordinance. Number of copies shall conform to Article 6 Site Development Review Section 602.7.~~

820819.97 Fee. To defray administrative expenses, plans shall be accompanied by a fee in the form of a check payable to the City of Ellsworth. Mobile Home Sites shall be considered subdivision lots for calculating these fees per the Ellsworth Subdivision Ordinance. No fee is required for an Emergency Mobile Home Park.

~~**81920.108**~~ **The Final Plan** shall be certified by a design professional registered in the State of Maine and shall comply with all applicable City Ordinances. The approved, signed park plan must be filed with the City and recorded at the Registry of Deeds within 90 days of signing. It

must include notes or conditions of approval as well as a description of the type of ownership and provisions for management and maintenance of the Park.

~~820.11 **Building Permits.** Following Planning Board approval, building, plumbing and electrical permits may be issued by the Ellsworth Code Enforcement Officer.~~

~~820.12 **Occupancy Permit.** No Mobile Home Park hereafter constructed or expanded shall be used or occupied until a Certificate of Occupancy has been issued by the Code Enforcement Officer certifying that the Park complies with this Section.~~

~~820.13~~ **Conversion.** No Mobile Home Park may be converted to another use without the approval of the Planning Board.

~~820.14~~ **10 Mobile Home Park Management.**

- A. **Compliance.** A Mobile Home Park shall conform to City ordinances and to the rules and regulations of the State of Maine Department of Health and Human Services relating to mobile homes.
- B. **Responsibility.** The Mobile Home Park management shall inform park occupants about DHHS rules and clearly indicate the occupants' responsibilities under them.
- C. **Registration.** Mobile Home Park management shall maintain a register of Park occupants containing names, site numbers, and E-911 street numbers. The register shall be available for inspection by Federal, State, and City authorities upon request during normal business hours.
- D. **Utilities.** Park management shall supply utility connections to mobile home sites. Homes shall be hooked up by professionals with proper City permitting.

~~820.15~~ **819.11 Mobile Home Park General Design Standards.**

- A. **Applicability.** The construction or expansion of a Mobile Home Park and its facilities shall conform to the design standards of this section and other applicable regulations.
- B. **State Regulations.** A Mobile Home Park shall conform to 30-A M.R.S.A., Section 4358 Regulation of mobile homes.
- C. **Park Boundaries.** A Park shall consist of a single parcel of land meeting the minimum lot size requirements in the Rural (R) or Urban (U) zoning district as applicable and all standards set forth in this section.
- D. **Site Layout.** Each mobile home shall be placed on its own site with accessways and other amenities shown on the approved Mobile Home Park Plan meeting all standards to follow in this section. Mobile home sites shall be oriented in regard to natural features where practical.
- E. **Site Identification.** Each mobile home site shall prominently display a street number supplied by the City's E-911 Coordinator.
- F. **Density.** Mobile Home Park shall be allowed to exceed the maximum Net Residential Density permitted in its zoning district per Article 3 Zoning Districts as long as the provisions of this Section are met.
- G. **Landscaping.** Wooded areas and individual trees shall be preserved where practical. Vegetative cover such as grass shall be provided for land area not paved, graveled or occupied by a structure. Other planting shall be established to create an attractive setting for mobile home, promote privacy, minimize glare, and provide shade.
- H. **Buffering.** Vegetative screen shall be used to create a dense visual barrier around the park perimeter and around areas such as refuse storage enclosures and nonresidential areas. Screens should be coniferous trees or shrubs such as white cedar, balsam fir and spruce, since these provide a year-round buffer. If conditions are not suitable for planting coniferous screens, solid fencing not less than 6 feet high may be used.

- I. **Buffer Strip.** A ~~fifty-foot-wide~~fifty-foot-wide vegetated buffer strip (minimum) shall be provided along all property boundaries that abut residential land with a zoned density of less than half of the proposed Mobile Home Park density. No structures, buildings or utilities may be placed in the buffer strip, except that utilities may cross a buffer strip to provide services to a Mobile Home Park.
- J. **Open Space.** Mobile Home Parks shall provide a suitable, accessible common space for recreation equal to 10% of the total space for individual sites. The area required for a common wastewater disposal system may be counted only if it will be suitably landscaped for recreational purposes.
- K. **Infrastructure.** See ~~820819.18-14~~820819.12 Mobile Home Park Infrastructure Standards.

820.16 819.12 Mobile Home Site Standards

- A. **Dimensions.** Mobile Home Sites shall meet the minimum requirements as described in Table 820.16A Mobile Home Site Standards.

820.16A Mobile Home Site Standards		
Type of Mobile Home Site	Minimum Area*	Minimum Width
Site connected to public sewer	~~6,55,000~~ square feet	50 feet
Site contains ~~drinking water well~~ <u>central on-site waste water disposal system</u>	12,000 square feet	75 feet
Site contains individual septic system	20,000 square feet	100 feet
Note: To be included in a Mobile Home Park, a Mobile Home Site shall be served by either a centralized domestic water system or a centralized sewer system or by both.		
*Land within wetlands, flood plains or easements shall not count toward the Minimum Area of a Mobile Home Site.		

- B. **Site coverage.** Enclosed buildings on a site shall not exceed 30% of the site area.
- C. **Depth.** A home site shall be deep enough to provide for minimum structure setbacks and for minimum area requirements in this Section.
- D. **Structure Setbacks.** Minimum setback distances for structures within Mobile Home Parks shall comply with the requirements in Table ~~820819.16B-12D~~820819.12D Mobile Home Park Structure Setbacks.

<u>820819.16-12 B-D</u> Mobile Home Park Structure Setbacks	
Location	Structure Setback Minimum Distance
Park accessway right-of-way line	20 feet (front yard setback)
Side or rear Mobile Home Site line	15 feet (side or rear yard setback)
Mobile Home Park boundary line or street right-of-way line (~~same as required for the Rural (R) zoning district~~)	~~40 feet (front yard setback)~~ ~~15 feet (side yard setback)~~ ~~30 feet (rear yard setback)~~ <u>Refer to the applicable zone in Article 3.</u>

820.17 819.13 Mobile Home and Accessory Structure Standards.

~~A. **Building Permits.** A building permit is required prior to construction or home installation in a Mobile Home Park. Plumbing or electrical permits are also needed. A written permit is also required for removing an installed mobile home from a Mobile Home Park.~~

~~B.A.~~ **Tax Certificates.** A mobile home shall not be removed from a site until a written certificate is obtained from the tax collector of the City of Ellsworth identifying the mobile home and stating that all property taxes applicable to the mobile home, including those for the current tax year, have been paid or that the mobile home is exempt from such taxation.

~~C.B.~~ **Home Standards.** At a minimum, homes shall conform to the Mobile Home Standards of the State of Maine. Mobile homes shall have a minimum living space of ~~500~~ 400 square feet.

~~D.C.~~ **Home Pads.** A mobile home shall be set upon a mobile home pad consisting of at least a ~~12 inch~~ 12-inch thickness of gravel base material. Concrete or other durable pads approved by the Planning Board may be used. The width and length of the mobile home pad shall at least match the dimensions of the mobile home placed upon it.

~~E.D.~~ **Skirting.** The vertical space from the mobile home pad to the mobile home frame shall be enclosed with a durable material.

~~F.E.~~ **Accessory structures** such as a garage shall be allowed upon mobile home sites provided the structure meets the provisions of these ordinances and all other applicable regulations.

~~G.F.~~ **Utility Buildings.** Each occupied mobile home site shall be provided with an accessory building with a minimum size of 64 square feet.

~~H.G.~~ **Screening.** Fuel tanks, bottled gas, dumpsters and other utility structures shall be placed in such a way that they are screened and protected from roadways.

~~I.H.~~ **Ruins.** Ruins caused by fire or other causes are not allowed within a Mobile Home Park. If ruins are created, such ruins shall be removed within 60 consecutive calendar days from the time of their creation.

820.18 819.14 Mobile Home Park Infrastructure Standards.**A. Accessways.**

- i. **Responsibility.** Accessways within the Park shall be constructed, maintained and serviced by the Mobile Home Park management, including snow removal.
- ii. **Design Standards.** Accessways serving home sites within the Park shall, at a minimum, conform to Site Road provisions of City of Ellsworth Chapter 56, Article 9 Street

Design and Construction Standards. Accessways serving other uses shall conform to the appropriate Street Type classification in Article 9.

- iii. Connections. Any park, proposed to generate average daily traffic of 200 trips per day or more must have at least two emergency access connections to public streets.

~~B. Lighting. Streets and intersections shall be illuminated consistent with section 812 Exterior Lighting Standards exterior lighting standards.~~

~~C.B.~~ **Electric Supply**

- i. Design. A Mobile Home Park shall contain an electrical system designed by an Electrical Engineer registered in the State of Maine. The system shall be installed and maintained in accordance with applicable State and City regulations. Electric substations, transformers, transmission lines, distribution line and meters shall be located or screened in such manner that they are not unsightly or hazardous.
- ii. Distribution. Electrical distribution lines within the Mobile Home Park may be installed overhead or underground. All underground lines shall be protected by a rigid conduit or encased in concrete.
- iii. Services. Electric service lines to each mobile home, accessory buildings, and Mobile Home Park service buildings shall be underground. The service lines shall be enclosed in a rigid conduit or encased in concrete.

~~D. Exterior Lighting. Exterior lighting installed on a mobile home or mobile home site shall be installed such that it is not directed toward surrounding property, streets or other mobile home sites or the sky. It shall be consistent with section 812 Exterior Lighting Standards.~~

~~E.C.~~ **Fire Protection.** Water supplies for firefighting shall comply with Chapter 4 Fire Prevention and Protection Ordinance.

~~F.D.~~ **Parking.** At least ~~one~~^{two} off-street parking spaces shall be provided for each mobile home site at a distance less than 100 feet from the home it serves. Off-street parking spaces shall be constructed with a minimum thickness of six inches of gravel base material. Such parking space shall have a minimum dimension of 9 feet width by 20 feet length.

~~G.E.~~ **Refuse.**

- i. The park management shall provide occupied mobile home sites with a conveniently located, watertight, vermin-resistant enclosure for refuse storage.
- ii. Storage of refuse shall be enclosed to prohibit access by animals and to minimize health hazards, rodent harborage, insect breeding areas, accidents, wild fire, obnoxious odors or air pollution.
- iii. Collection of refuse at regular intervals shall be the responsibility of the park management and shall be according to State of Maine and City regulations.

~~H.F.~~ **Signs.** Signs shall be consistent with ~~the City of Ellsworth Sign Ordinance~~ Article 12 of this Ordinance.

~~I. Stormwater. A Mobile Home Park shall provide a surface water drainage system conforming to applicable provisions of Article 10 Stormwater Design and Construction Standards.~~

~~J.G.~~ **Wastewater Disposal.**

- i. Wastewater disposal systems shall comply with the Maine State Plumbing Code and be designed and installed under the direction of a Maine licensed professional.

- ii. A Mobile Home Park located within ~~500-600~~ feet of a public sewer system shall provide an internal sewer system connected into the public system, per the Ellsworth Code of Ordinance Chapter 5 Sewer Ordinance. Any and all expenses incurred will be borne by the developer.
- iii. Where public sewer is not available, a sanitary sewer system designed by an engineer or septic systems designed by a Licensed Site Evaluator shall be provided.
- iv. Wastewater disposal systems serving the Mobile Home Park shall be constructed and maintained under the responsibility of the park management.

~~K.H.~~ **Water Supply.**

- i. Each mobile home shall be provided with an adequate, safe, potable water supply of at least of 90 gallons per day per bedroom.
- ii. Water supply systems shall be installed and maintained in accordance with the State of Maine Plumbing Code.
- iii. The Administrator may require a hydrogeologic assessment in cases where site considerations or development design indicate potential of adverse impacts on ground water quality or supply.
- iv. A Mobile Home Park located within ~~200-600~~ feet of a public water main shall provide a water system connected into the public system. Any and all expenses incurred will be borne by the developer.

~~820.19~~ **819.15 Emergency Mobile Home Parks.**

- A. **Purpose.** Emergency Mobile Home Parks may be constructed for mass emergency housing in the event of a natural or man-made disaster.
- B. **Permitting.** An Emergency Mobile Home Park construction permit shall be issued for one year and may be extended for terms of six months as needed. The Ellsworth Code Enforcement Officer shall be responsible for granting or denying the permit.
- C. **Plan Submittal.** A plan drawing showing the Emergency Mobile Home Park shall be submitted to the Ellsworth Planning Board within 60 calendar days after issuance of the Emergency Mobile Home Park Construction Permit.
- D. **Standards.** Maximum effort must be made to adhere to all Design Standards of this Section and all City Ordinances. However, since time is important in establishing an Emergency Mobile Home Park, facilities may be installed in a temporary manner provided that the public health and safety is not imperiled.
- E. **Location.** Emergency Mobile Home Parks are allowed within any zoning district other than districts within the Shoreland Zone (Article 4).
- F. **Temporary Use.** An Emergency Mobile Home Park shall not be converted to a permanent Mobile Home Park unless all provisions of this ordinance are met.

~~824.820~~ **YARD SALES**

For purposes of this section, a yard sale means a public sale at a dwelling at which personal items belonging to the residents of the dwelling are sold. Yard sale includes garage sales, porch sales, tag sales, and the like. Items purchased elsewhere expressly for resale at a yard sale are prohibited. Commercial outdoor sales activities are prohibited. Yard sales exceeding three consecutive days or held more frequently than three times in a calendar year will be considered a commercial use and require a Site Development Plan review.

822821.VISIBILITY TRIANGLE

822821.1 Visibility Triangle. In all zoning districts, with the exception of Downtown, no obstruction taller than 3 feet which obscure the view of automobile drivers shall be placed on any corner lot within a visibility triangle area as defined below in section 822821.2.

822821.2 Measuring the Visibility Triangle. The visibility Triangle is a triangular area of land on a lot formed by drawing from the edge of the travel way one line perpendicular to and one line parallel to the property line or accessway for a specified length and one line diagonally joining the other two lines per the illustration below using as an example the intersection of a residential street with a commercial road. The specified length of the perpendicular and parallel lines is dependent on the types of intersecting accessways as shown in Table 822821.2 below.

Table 822821.2 Length of Visibility Triangle Perpendicular and Parallel lines in feet per intersecting Accessway Types (per Article 9 Street Design and Construction Standards)											
	Transit and Regional	Rural	Retail	Mixed Use & In-town	Commercial	Alley	Residential	Private Residential	Site	Commercial Driveway	Residential Driveway
Transit and Regional	25*	25*	25*	25*	25*	10	25*	10	10	10	10
Rural	25*	25*	25*	25*	25*	10	25*	10	10	10	10
Retail	25*	25*	25*	25*	25*	10	25*	10	10	10	10
Mixed Use & In-town	25*	25*	25*	25*	25*	10	25*	10	10	10	10
Commercial	25*	25*	25*	25*	25*	10	25*	10	10	10	10
Alley	10	10	10	10	10	10	10	10	10	10	10
Residential	25*	25*	25*	25*	25*	10	25*	10	10	10	10
Private Residential	10	10	10	10	10	10	10	10	10	10	10
Site Road	10	10	10	10	10	10	10	10	10	10	10
Commercial Driveway	10	10	10	10	10	10	10	10	10	10	10
Residential Driveway	10	10	10	10	10	10	10	10	10	10	10

*In the Urban, Industrial, Business Park, and Commercial zoning districts, that measurement is 15 feet.

822821.3 Exception. In certain situations such as, but not limited to, a signalized intersection or if the slope allows for adequate visibility, the administrator may allow an obstruction taller than

three feet to be located within the visibility triangle if it is demonstrated that safety is not impacted.



823.822 SOLAR ENERGY SYSTEMS (SES).

Solar Energy Systems, whether stand-alone or accessory, are energy-collecting structures composed of impervious components and are subject to all applicable regulations as such, except as otherwise provided for below. Applicants shall describe how their systems are designed to perform in order to satisfy the intent of applicable regulations.

823.1 822.1 Level of Review, Application, and Fees.

- A. **Level of Review.** Classification of projects and level of review shall be as required by Article 6, Site Development Plan Review. The amount of impervious surface created by a SES shall be determined as described in this section.
- B. **Application and Submission Requirements.** Applications for SES shall follow the procedures established by Article 2, Plan Approval and Permitting Procedures, and Article 6, Site Development Plan Review. All information required to ensure the performance standards of this section are met shall be depicted on the plan, supported with plan notes or narrative materials as needed. Application fees shall be based on the total area of the solar panels calculated for lot coverage as described below, plus the floor area of any proposed buildings. Site disturbance fees are calculated separately as usual.

823.2 822.2 Dimensional Requirements. Dimensional requirements, including but not limited to front, rear, and side property line setbacks, apply to all structural components of SES.

- A. **Height.** For the purposes of determining building height when SES are mounted on a building roof, the first three feet of additional height contributed by the SES shall be excluded.
- B. **Lot Coverage.** Portions of SES may be exempted from lot coverage standards as follows. If SES are located over live ground cover with sufficient space between the panels and above the ground to allow sunlight for vegetation to grow, half the area of the panels shall be considered structure area for the purpose of calculating lot coverage.

823.3 822.3 Buffers, Screening, and Landscaping. Buffer, screening, and landscaping standards of Sections 801 and 813 apply. Existing vegetation shall be preserved to meet buffering, screening, and landscaping standards insofar as is practicable. SES components shall be located far enough from all

buffers, screening, and landscaping to ensure that existing and/or proposed trees and shrubs will not shade the SES upon reaching maturity.

- A. **Fencing.** Where fencing is desired or required by other codes, fences shall maximize the ability of small wildlife to pass through. At a minimum, this shall mean that perimeter fencing is elevated at least five inches above the ground, and in at least two corners of the enclosed area, wooden poles of at least five inches in diameter will be installed to provide a means for wildlife to escape the enclosed area.

823.4 822.4 Establishment and Maintenance of Vegetation. The establishment and maintenance of new vegetation is of particular concern where SES are proposed on previously undeveloped land or in close proximity to a waterbody. SES proposed to be located entirely over existing impervious surface shall be exempt from the below standards. Those to be located over new impervious surface, or proposed to share space in conjunction with an agricultural use, may be found exempt from some or all of the below standards at the discretion of the Administrator.

- A. All disturbed areas that are not developed with impervious surfaces or planted to meet buffer, screening, and landscaping standards shall be revegetated with seed mixes or plantings appropriate to the soil types and environments found throughout the site, emphasizing a range of native perennial grasses, sedges, legumes, and/or wildflowers, and providing for erosion and sedimentation control as well as heat/drought tolerance and wildlife habitat value. If vegetation requires fertilizing at the time of seeding or at any time thereafter, only non-phosphorous fertilizers shall be used.
- B. Applicants shall consult with the City of Ellsworth Watershed Steward and Code Enforcement Officer during the Technical Review process to establish a timeline of inspections to ensure proper grading, erosion and sedimentation, and seeding procedures as well as the successful establishment of vegetation. The agreed-upon inspection timeline shall cover a period of no fewer than two years post-construction and shall be noted on the final site plan.
- C. Vegetation management, if necessary, shall be accomplished only by mechanical means. The application of herbicides is prohibited, and may be subject to additional penalties if occurring within the Public Water Supply Protection Area.

823.5 822.5 Stormwater. Article 10, Stormwater Management Design and Construction Standards may apply. If SES are constructed over a pervious surface with sufficient space between the panels to allow rainwater to flow through with provision for dispersion of the water on the ground without channeling, only the surface area of racking foundations, roads, and other non-SES structures will be considered impervious for stormwater calculations.

823.6 822.6 Safety. Solar Energy System installations are regulated through the National Fire Protection Association NFPA 850 and NFPA 70 Electrical Code. For example, fencing is required for larger ground systems and dead load structural analysis is required for rooftop systems. The locations of emergency access ways and of all means of shutting down the system shall be clearly marked on the site plan.

823.7 822.7 Signage. Stand-alone SES shall provide signage identifying the system's owner and a 24-hour emergency contact phone number.

823.8 822.8 Operations, Maintenance, and Decommissioning Plan. Applicants for stand-alone SES requiring major use site development plan review shall submit a plan pursuant to Section 825824.

824-823 ENERGY STORAGE SYSTEM (ESS). There are many types of ESS technologies, which may be accessory or stand-alone installations. They are regulated by State and Federal authorities. For example; batteries, which are filled with hazardous materials are regulated through the National Fire Protection Association NFPA 111, NFPA 855, NFPA 1 Fire Code Chapters 11 and 52, and NFPA 70 Electrical Code. Site plans shall clearly indicate locations of ESS, access ways and signage identifying the owner and a 24-hour emergency contact phone number. Applications shall include all means of disabling the system in the event of an emergency. Stand-alone systems shall submit an Operations, Maintenance and Decommissioning Plan per Section 825824.

825-824 FACILITY OPERATIONS, MAINTENANCE, DECOMMISSIONING AND ABANDONMENT.

825.1 824.1 Applicability: This section outlines plans for facility operations, maintenance and decommissioning. These plans shall be provided for all SES requiring major use site development plan review. The Administrator may also require these plans to be provided for approval of facilities serving specialized industries with limited re-use potential for improvements, those with known substantial obsolescence, and/or those where significant amounts of hazardous materials will be present. Abandonment procedures are activated by conditions described below.

825.2 824.2 Operations, Maintenance and Decommissioning Plans shall include:

- A. 24-hour emergency contact name, title, and phone number.
- B. Procedures for safe access and shut down by emergency responders.
- C. General maintenance schedule for the facility, including a removal/replacement plan for major components during the lifespan of the facility.
- D. **Decommissioning Plan.** All SES or ESS requiring major use site development plan review, except for SES subject to the solar energy development decommissioning requirements of Title 35-A MRSA Chapter 34-D, shall submit a decommissioning plan that includes the following elements. SES subject to the solar energy development decommissioning requirements of Title 35-A MRSA Chapter 34-D shall provide copies of the decommissioning plan submitted to the environmental permitting agency. For those projects not subject to the requirements of Chapter 34-D, a decommissioning plan following the best practices for solar decommissioning as set forth by the U.S. Department of Energy, Office of Energy Efficiency & Renewable Energy, with respect to scope of work and cost estimates shall be considered sufficient to meet the requirements of items ii through v below.
 - i. An estimated date of decommissioning of the proposed facility based on the average life span of the major components that would need to be removed per below.
 - ii. Provisions for the removal from the site of all structures, equipment and systems that are not demonstrated to have potential continued use.
 - iii. Provisions for the disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
 - iv. Provisions for the stabilization and re-vegetation of the site as necessary to minimize erosion.
 - v. An estimated cost to implement the decommissioning plan at the estimated date of decommissioning, along with narrative explanation of the methods used to calculate all estimates.

- vi. Financial Assurance of Performance. Based on the estimated cost to implement the decommissioning plan at the estimated date of decommissioning, the Applicant shall demonstrate in the form of a performance bond, surety bond, letter of credit, parent company guarantee or other form of financial assurance as may be acceptable to the Administrator that upon the end of the useful life of the facility, the Applicant will have the necessary financial assurance in place for 100% of the total cost of decommissioning. The funds for decommissioning must also be securely made available for use by the City of Ellsworth in the event of abandonment per below. Financial assurance provisions must be noted on the final site plan and must be transferred with the development if it is sold.

825.3 824.3 Abandonment Provisions:

- A. A facility subject to the decommissioning plan requirement shall be considered abandoned after it ceases to function according to its intended use for more than one year. Determination of abandonment shall be made in writing by the Code Enforcement Officer.
- B. If the owner or operator of the Facility fails to carry out the decommissioning plan within one year of a written determination of abandonment or the proposed date of decommissioning, whichever occurs first, the City retains the right to use any and all legal and available means necessary to decommission the system(s) at the owner/operator's expense.

826-825 AFFORDABLE HOUSING DEVELOPMENT BONUSES

826825.1 Description and Purpose. The purpose of this section is to promote the development of safe, sanitary, and ~~high-quality~~high-quality Affordable Housing as defined in Chapter 56, Article 14. The intent is to allow for greater density bonuses and lower parking requirements to assist in achieving high quality, yet affordable dwelling units within the development. Developments constructed using this Section must comply with all other Ordinances and State regulations.

826825.2 Applicability.

a. The provisions set forth in this Ordinance shall apply to Affordable Housing projects in the designated growth areas as defined in the most recently adopted City of Ellsworth Comprehensive Plan or an area that is served by public water and sewer or a comparable centrally managed water system and comparable sewer system.

b. These provisions are only applicable to Affordable Housing projects that:

- 1) Are approved on or after January 1, 2024;
- 2) Designate 51% of units or more within the development as Affordable Housing;
- 3) Affordable units within the development are restricted by covenant, properly recorded in the Hancock County Registry of Deeds, to remain Affordable Housing for at least 30 years from the date of completed construction;
- 4) Are within designated growth areas where multifamily housing is an allowed use; and
- 5) Meet shoreland zoning requirements, meet minimum lot sizes if using subsurface waste disposal, and prove that water and sewer capacity is adequate for the development.

826825.3 Development Bonuses. If applicability requirements are determined to be met by the Planning Board, the affordable housing development qualifies for the following exceptions to zoning requirements:

- 1) The number of units will be 2.5 times greater than the base density allowed for a development not designated as Affordable Housing within the same zone; and
- 2) ~~The off-street parking requirements will allow for two parking spaces for every three dwelling units within the development.~~ See Chapter 56, Article 11, Section 1107 for Affordable Housing parking bonuses.
- 3) Affordable Housing developments are afforded a height bonus to structures as outlined in Section 810 of this article.

ARTICLE 9 STREET DESIGN AND CONSTRUCTION STANDARDS

901 PURPOSE AND APPLICABILITY

901.1 Purpose. This Article is to promote public health, safety and welfare by establishing design and construction standards for roads and accessways for developments within the City of Ellsworth.

901.2 Applicability. This Article shall apply to:

- A. Developments that generate new trips that utilize roadways and intersections affecting directly or indirectly one or more traffic signals, and
- B. The construction and reconstruction of all streets and accessways except that this Article does not apply to the following, as defined, Commercial Driveways and Residential Driveways except as specifically noted in sections 902.7, 908.1.K, 910.2 A & B, 910.3 A & B, 915, and 916.2 of this Article; Commercial farming activities as defined by M.R.S.A. 17 §2805; and Timber Harvesting as defined in M.R.S.A. 12 under the Forest Practices Act.
- C. State-owned roads are exempt from this Article.

901.3 Interpretation. Nothing in this Article shall be construed to prevent the construction of accessways which meet higher standards or use improved methods or materials of equivalent or higher quality.

902 PLAN SUBMISSIONS

902.1 Submittal Contents. Streets shall be presented on site plans showing, at a minimum:

- A. A location map.
- B. The location, width, typical cross-section, horizontal and vertical alignments (plan & profile) of all proposed streets, accessways, sidewalks, and bikeways.
- C. The location of all existing streets and accessways within 600 feet, walkways and sidewalks within 200 feet, and bikeways within 500 feet of the proposed street or accessway.
- D. The location of any pedestrian ways, easements, rights-of-way, and other areas to be reserved for or dedicated to public use and/or ownership. For any proposed easement or right-of way, the developer shall submit the proposed easement language with a signed statement certifying that the easement will be executed upon approval of the development. In the case of any streets or other ways dedicated to public ownership, the developer shall submit a signed statement that s/he will maintain such streets or ways year-round until they are accepted by the City.
- E. A note describing the property owner association for any accessway serving more than one property owner that is to remain temporarily or permanently in private ownership.

903 INSPECTION AND ENFORCEMENT

903.1 Permit and Notification. Prior to start of the construction or reconstruction of a road, a Road Permit is needed with the following exceptions:

- A. Construction and reconstruction of a public street by the City of Ellsworth.
- B. Road work conducted in response to an emergency when there is a risk of significant property damage or there is an imminent threat to the health, safety or welfare of the citizens. Work conducted under such circumstances shall be reported to the Code Enforcement Officer within 48 hours of its occurrence.

903.2 Additional Permits. Any permit required by this Article shall be in addition to any other permit required by law or ordinance.

903.3 Fee. Road Permit fees shall be set by the City Council in the Permit Fee schedule.

903.4 Inspection. To ensure that all requirements of this Article are met during construction and reconstruction of a road, the developer shall contact the Code Enforcement Officer prior to the following stages of improvement so an inspection can be conducted:

A. Preparation and clearing of right-of-way;	D. Storm water provisions constructed; and
B. Sub-base course;	E. Completed project.
C. Aggregate base course;	

903.5 Inspector. The inspections will be conducted by the Code Enforcement Officer and Highway Foreman and/or a professional retained by the City. If the City retains a professional to inspect the improvements, the applicant shall be assessed a fee to cover the cost of such inspections.

903.6 Sign-off. The Code Enforcement Officer shall approve each of the improvement inspection stages before the developer may continue with the work.

903.7 Modification during Construction. If at any time before or during construction of the road it is demonstrated to the satisfaction of the Code Enforcement Officer and Highway Foreman that unforeseen conditions make it necessary or preferable to make minor modifications to the location or design of the road, the Code Enforcement Officer may allow such changes provided that the modifications are within the spirit and intent of the approval(s) under which it was granted. The Code Enforcement Officer shall issue any authorization under this section in writing and shall provide a copy to the approving authority.

903.8 Noncompliance. If it is found upon inspection of the road improvements that they have not been constructed in accordance with approved plans and specifications, the inspector shall so report to the Code Enforcement Officer. The Code Enforcement Officer shall then notify the applicant and if necessary, the bonding company, and take all necessary steps to preserve the City's rights under the guarantee, security or bond. If, in the opinion of the Code Enforcement Officer, the improvements are not corrected in a timely manner, the City may use any

Financial Security provided by the applicant to correct the improvements to the satisfaction of the City.

904 WAIVERS AND ALTERNATIVE DESIGNS

~~904.1 The Code Enforcement Officer is not authorized to modify the standards of this ordinance. The CEO may grant design waivers only as expressly permitted in this Article.~~

~~904.2 The Planning Board may waive portions of the standards of this Article only as expressly permitted in this Article.~~

~~A. The Planning Board may consider waivers if they will not result in a more adverse impact on public safety than the existing conditions.~~

~~A. The Planning Board shall state the reasons for any waiver or alternative design in its decision.~~

904.1 Alternative design standards proposed by applicants must be compliant with sound engineering practice, as reflected in publications by the Maine Department of Transportation, Americans with Disabilities Act (ADA), American Association of State Highway and Transportation Officials (AASHTO), and/or The Institute of Transportation Engineers (ITE).

~~B.A.~~ The Planning Board may grant necessary waivers of particular design standards for road construction or reconstruction where any of the following conditions exist within the project limits:

- i. Right-of-way width is insufficient to reconstruct the road to meet standards;
- ii. Physical limitations, such as encroaching buildings or steep grades make construction within the appropriate design standards impractical;
- iii. Traffic volumes are less than 400 average daily traffic (ADT).
- iv. The road serves a Special Use, as defined.

904.2 **The City Council.** The City Council has the authority to waive the design standards of this Article by using the following procedure:

- A. **Written Recommendation.** The City Council shall consider written input from the Administrator, the Ellsworth Road Commissioner, and the Highway Foreman as applicable.
- B. **Public Hearing.** The Council shall hold a public hearing.
- C. **Determination.** The City Council shall make a determination that a departure from the design standards of this Article is in conformity with the spirit and the intent of this Article, related to applicable City adopted Plans, based on the particular set of circumstances, and with section 904.

904.3 **Public Safety.** No waivers or departures from the standards of this Article shall be

approved if such modifications will have more adverse impact on public safety than the existing conditions.

904.4 Final Plan Record. All waiver and/or alternative design decisions shall be recorded on the final road plan, site plan and/or subdivision plan.

905 MAINTENANCE, REPAIR AND RECONSTRUCTION OF STREETS

905.1 Private Ways. Maintenance for any private accessway serving more than one property owner shall be managed by written property owner association by-laws. Copies of by-laws shall be submitted with road permit applications when applicable.

905.2 Street Work by the City. The repair or reconstruction by the City of an existing city-owned street should meet or exceed (1) the current road design standards; or (2) the road standards to which the street was last constructed or reconstructed.

905.3 Repair Work by a Developer. The repair by a developer of an existing City-owned street shall meet or exceed (1) the current road design standards; or (2) the road standards to which the street was last constructed or reconstructed.

905.4 Reconstruction of a City-owned Street by a Developer. Reconstruction of a City-owned street by a developer must be approved by the City Council, as follows:

- A. **Scoping Process.** When a development is expected to generate more than 250 ADT, the City Planner, in consultation with the Ellsworth Police Chief and Code Enforcement Officer, shall meet with the developer to determine the scope of the potential traffic impact area to be studied. The area to be studied may include the first major intersection and road segments in between in each direction from the development direct accessway(s) where it is determined that there are potential safety, capacity or other traffic-related issues. The proposed off-site improvements shall meet, to the greatest extent possible, all applicable road construction standards of this Article that can take place within the existing right-of-way.
- B. **Planning Board.** In the approval process, the Planning Board shall state an opinion as to whether the proposed off-site road improvements have a more adverse impact on public safety than the existing conditions or shall cause unreasonable traffic congestion or unsafe condition to the improved street, abutting existing street or to the proposed street. The Planning Board shall present in writing its findings and recommendations to the City Council.

If the Planning Board finds that a proposed road does not meet the design standards of this Article and does not grant a waiver, it may approve an application upon the condition that the road design must be approved by the City Council before any construction may begin.

- C. **City Council Approval.** In making its decision, the City Council shall consider the particular set of circumstances as presented to the Planning Board, the findings and recommendations of the Planning Board, and follow the process established in section 904.3.

906 STREET TYPES AND GENERAL DESIGN PURPOSES

Using the functional classification and criteria presented in Table 906, all new roads and roads proposed for reconstruction shall be assigned a Street Type by the City Planner upon consultation with the Code Enforcement Officer and the Police Chief.

Table 906 STREET TYPES AND GENERAL DESIGN PURPOSES			
Name		Purpose and Special Criteria	Examples
1.	Transit Roads*	To provide long-distance continuous routes between Ellsworth and the surrounding service centers such as Bangor/Brewer, Bucksport, and Bar Harbor. These State-owned roads are designed to move large number of vehicles at high speeds.	Bucksport Rd from the City line to Christian Ridge Rd. Bangor Rd from the City line to the Union River Bridge.
2.	Regional Roads*	To collect traffic from rural areas and surrounding communities and deliver it to the City center and the arterial network. The priority for these roads is vehicle mobility at moderate speed with some pedestrian/ bikeways, especially within the Growth Area.	North St, Surry Rd, Bayside Rd, North Bend Rd, and Mariaville Rd. Main Street from the Fairground Rd to the City line.
3.	Rural Roads*	To collect traffic from rural neighborhoods and deliver it to the City Center and/or to the larger collector and arterial road network. The priority for this type of road is to preserve and enhance the existing rural character of the areas it serves with some pedestrian amenities, especially within the Growth Area.	Buttermilk Rd, Red Bridge Rd, Winkumpaugh Rd, Happytown Rd, Gary Moore Rd and Nicolin Rd. Union St from McDonald Ave to the City line.
4.	Retail Streets*	To serve Ellsworth's retail and service areas. This type of commercial arterial has many intersections and driveways needed to access businesses. The design of these roads considers mobility and access, as well as to provide for other modes of transportation. Pedestrian access is considered secondary to vehicular mobility/access to adjacent businesses.	High St, Myrick St, Downeast Hwy, Douglas Hwy, and High St. State St from Central St to the Fork in the Rd.

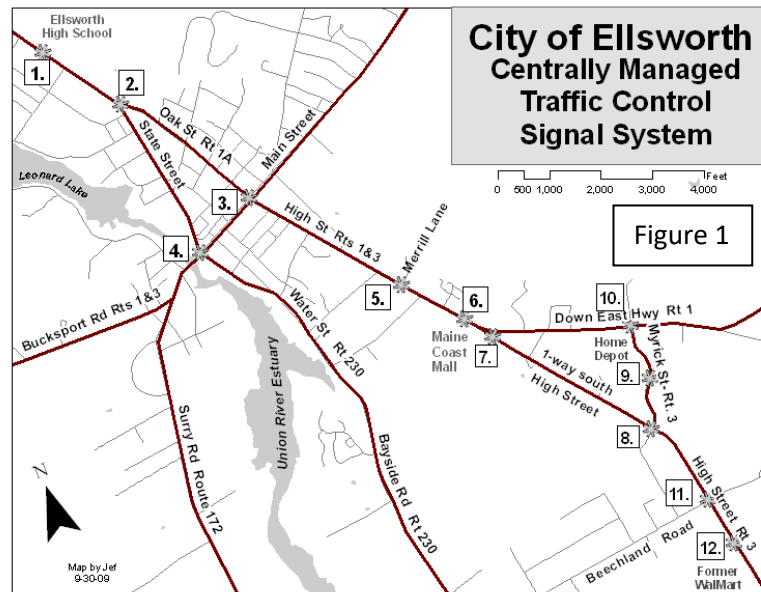
Table 906 STREET TYPES AND GENERAL DESIGN PURPOSES			
Name		Purpose and Special Criteria	Examples
5.	Mixed-Use and In Town Streets*	To connect Ellsworth's retail, service areas and neighborhoods, as well as provide pedestrian-friendly access to these areas. These streets are typically located in mixed-use, commercial, downtown, retail and residential areas with pedestrian activity. These streets may have on-street parking depending on the type and intensity of adjacent commercial land uses. These streets emphasize a variety of travel choices including pedestrian and bicycle.	Oak St, Water St, Foster St Beechland Rd, Christian Ridge Rd, , Washington St, Birch Ave, Park St, Spruce St, Deane St, Franklin St, Elm St, and Hancock St. Bucksport Rd from Christian Ridge Rd to the Surry Rd. Main St from Grant St to the Fairground Rd.
6.	Commercial Streets*	To provide vehicle and heavy truck access to targeted commercial and industrial areas	Commerce St, Vittum Rd, Industrial Rd.
7.	Alleys	To provide a secondary means of access to lots. <i>Designed for 0 to 50 ADT. ~~Pavement may be waived.~~</i>	Store Street.
8.	Residential Streets	To provide an acceptable, if not optimal environment for a residential neighborhood. Such roadway shall be designed to carry no more traffic than is generated on the street itself. The road shall be designed to carry less than 1,000 ADT. <i>Designed for 0 to 999 ADT. ~~Pavement may be waived if in the Rural Area and less than 100 ADT.~~</i>	Altons Avenue
9.	Private Residential Street	To provide for very low volume of traffic at low speed and to provide the safest and most desirable environment for a residential neighborhood. Such roadway shall be designed to carry no more traffic than is generated on the street itself. Streets designated private residential street must serve less than 50 ADT. Roads constructed under these standards shall remain privately-owned and maintained unless the road is improved to standards and accepted by the City Council. <i>0 to 50 ADT. ~~Pavement may be waived.~~ These must remain private unless upgraded to higher standards.</i>	Overlook Way
10.	Site Roads	10.1. Internal: To provide site circulation within a parking lot serving a building, a development site under one ownership, a consolidated development, or a phased development generating more than 100 peak hour trips (PHT) and having more than 100 parking spaces. 10.2. Cross-access: To provide connectivity between parking lots. 10.3. Commercial Access: To provide access to a commercial development not to exceed 100 PHT.	Parking lot of shopping mall or other large place of business Business to business. Public way to business.

***Definition not dependent on ADT**

907 STREET DESIGN STANDARDS (See also Section 916 Accessway Construction Standards)

907.1 General Provisions.

- A. **Minimum Standards.** The design standards are considered minimum standards and shall control the roadway, shoulders, curbs, sidewalks, drainage systems, culverts, and other appurtenances except as otherwise specified.
- B. **Alternative Design Standards.** Proposed street plans may use road design standards other than presented in Table 908 Design Standards if the road will serve infill residential development within the Ellsworth designated Urban Compact area or cluster residential development within the Growth Area serviced by City water and sewer; and will generate a volume of traffic of less than 400 average daily trips, with a maximum speed limit of 25 mile per hour. The minimum right-of-way shall comply with the standard presented in Table 908 Design Standards. This alternative road design shall be approved by the Planning Board and shall be designed by an Engineer per the standards provided in the latest editions of the “Geometric Design of Highway and Streets” and “Guidelines for Geometric Design of Very Low Volume Local Roads” published by the American Association of State Highway and Transportation Officials (AASHTO).
- C. **Additional Right-Of-Way Width** at intersection approaches may be required for such special elements as, but not limited to, raised median channelization and turning lanes.
- D. **Apron.** No connector and/or street apron shall extend into the street farther than the base of the curb or beyond the gutter line.
- E. **The Centrally Managed Traffic Control Signal System (CMS)** (Figure 1) provisions found in this section and in sections 907.1. K and M, and 909.3.B. and C shall apply to developments affecting one or more traffic signals, or developments that generate new trips that utilize roadways and intersections affecting directly or indirectly one or more of the traffic signals.



The City of Ellsworth CMS consists of, but is not limited to, the following traffic signals:

1. State Street at High School
2. State Street and Oak Street
3. High Street and Main Street
4. Water Street and Main Street
5. High Street at Merrill Lane
6. High Street at north entrance to Maine Coast Mall
7. High Street at south entrance to Maine Coast Mall
8. Route 3 at Myrick Street
9. Myrick Street at Home Depot
10. Myrick Street at Route 1
11. Route 3 at Beechland Road
12. Route 3, south of Beechland Road

The goals of the CMS are to reduce delays and manage travel times for vehicles traveling through these intersections by optimizing progression of traffic (minimize stops) on the artery roadways (State Street, High Street, Water Street, Route 1, Route 3, and Myrick Street) and minimizing congestion. Any proposed traffic signals or changes to the CMS shall be reviewed by the City of Ellsworth Traffic Engineer. Review cost shall be borne by the applicant. The City Engineer shall submit a written report to the City Planner for final approval by the Administrator.

- F. **Capacity.** Streets and accessways which can be expected to carry traffic to and from neighboring streets and developments, shall have traffic carrying capacity and be suitably improved to accommodate the amount and types of traffic generated by them. A traffic impact analysis of the proposed project on the capacity, level of service and safety of adjacent streets prepared by an Engineer shall be submitted. The analysis shall include anticipated trip generation, current and impacted Level of Service, sight distance relative to posted speed, crash history and linear distance from adjacent driveways and accessways on the same road. The Administrator may waive this requirement for development generating less than 50 ADT, and for Residential or Private Residential Streets if, in the Administrator's opinion, the impact will be small enough to warrant such a waiver.
- G. **Centerline.** The centerline of the roadway shall be the centerline of the right-of-way unless the Administrator determines there is a logical reason for it to be shifted.
- H. **Corner Easements** may be required to provide and maintain the safety sight distance.
- I. **Driveways Exempt.** Per 901.2 Commercial and residential driveways are exempt from complying with this article unless specified otherwise.
- J. **Emergency Access.** The Ellsworth Fire Department shall be consulted for written approval of proposed perimeter access. Such access shall comply with

Chapter 4 Fire Prevention and Protection Ordinance.

K. Level of Service.

- i. No Development shall cause a reduction in Level of Service, as defined in Table 908.1 Level of Service Definition by more than one grade level and in no case shall the Level of Service be reduced to the level of “D” or below.
- ii. Any proposed changes resulting from the application of the LOS requirements to the CMS such as but not limited to, changes in cycle lengths and offsets, Time-of-Day schedules, phasing, splits, clearance intervals, and other programming or equipment shall comply with the review process in section 907.1.E and be consistent with the goals of the CMS per section 907.1.E. In some ~~eases~~cases, the LOS on the side streets may be programmed to be less than LOS “D” to maintain the overall goals of the CMS, as recommended by the City Traffic Engineer.

Table 908.1 Level of Service Definitions
LOS A: Free flowing traffic. Drivers, passengers and pedestrians have high level of comfort and convenience. Each individual is unaffected by other users and is able to maneuver about safely.
LOS B: Stable flow. Other users are noticeable because there is some affect on behavior. Less freedom to maneuver than in level A.
LOS C: Still in the range of stable flow, but actions of others may significantly affect the individual. Safe speeds are determined by factoring in the behavior of others. Maneuvering about is more difficult and the levels of comfort and convenience decline.
LOS D: High density traffic but still with a stable flow. Maneuverability and speed are restricted by other traffic. Users experience low levels of comfort and convenience. Pedestrians have difficulty at time with crossing.
LOS E: Operations are at or near capacity level and often unstable. All speeds are greatly reduced. Maneuverability is significantly hampered. Levels of comfort, convenience and safety are dangerously low and frustration runs high.
LOS F: Forced or breakdown flow occur because the system is over capacity. Lines queue up and move in a stop-and-go waves that are highly unstable. This can be considered a failing grade for the intersection or road segment. Service breaks down and gridlock can occur.

- L. **Multiple frontages.** Where a lot has frontage on two or more accessways including Residential and Commercial Driveways, the primary access to the lot shall be provided from the accessway where there is less traffic congestion or fewer potential hazards to traffic and pedestrians.

- M. **Queuing.** Intersections shall be of a design and have sufficient capacity to provide for necessary queuing.

- i. Sufficient vehicle storage length shall be based on a determination of the 95th percentile queue (in vehicles), as calculated by the latest Synchro/SimTraffic traffic modeling software used by the MDOT. In determining required vehicle storage lengths for turning lanes, consideration shall also be made for the average

Note: The 95th percentile queue is the queue length (in vehicles) that has only a 5-percent probability of being exceeded during the analysis time period.

(50th percentile queue) for the adjacent through lane in order to assist in maintaining mobility on the through lane. Where feasible, the storage length for turning lanes shall meet the greater of the calculated 95th percentile queue length or the average - 50th percentile queue length, of the adjacent through lane.

- ii. Queuing at traffic control signals located within the CMS shall be designed to minimize congestion on the artery roadways to maintain progression and minimize stops.

- N. **Reserved area.** When a proposed street or accessway borders an existing narrow street (not meeting the width requirements of the standards for streets in these regulations), or when an adopted city plan indicates plans for realignment for widening of a street that will require use of some of the abutting land, the plan shall indicate the reserved area and the subject land deeded to the City of Ellsworth or to the State of Maine.
- O. **Traffic management.** Where necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, provision shall be made for turning elements such as, but not limited to, lanes, traffic directional islands, frontage roads, and traffic controls within public streets.
- P. **Traffic Counts.** Developers may request traffic counts for the signalized intersections from the City Planner or designee. A fee will be charged to the developer based on the number of time periods requested. The fee scheduled is set by the Council.

907.2 Construction Materials/Paving.

- A. **Accessway Paving.** All accessway entering a paved street shall be paved at least within the street right-of-way and preferably to 30 feet beyond the street right-of-way.
- B. **Curbing.** All new accessway entering a curbed street shall be curbed on both sides to a distance of at least 30 feet from the street right-of-way, with materials matching the street curbing. Sloped curbing is required around all raised channelization islands or medians.
- C. **Curbing Within the Urban Core Area.**
 - i. Curbing and gutters are required where subsurface drainage systems are present and recommended along accessways with traffic volumes greater than 100 ADT or high demand of on-street parking.
 - ii. Curbing shall be granite in high use areas and concrete in all other places.
- D. **Paving.** All new roads shall be paved with the exception of the two conditions presented below:

- i. The Planning Board may waive the paving requirement for Private Residential Roads and Alleys if the applicant can demonstrate that potential erosion issues have been adequately addressed; or
- ii. The Planning Board may waive paving requirement if the street or accessway is located in the Rural Area and traffic counts are determined to be less than 100 ADT, and if the proposed road grade will not result in the loss of existing road base or surface, or cause an adverse environmental impact because of erosion, dust, phosphorus loading, sediments or other factors to sensitive areas such as water bodies or significant natural areas.

NOTE: Unpaved roads shall under no circumstance be accepted by the City of Ellsworth as a public road.

908 Street Design Standards.**TABLE 908 Street Design Standards**

<u>Street Designation</u> →	<u>Transit and Regional</u>	<u>Rural</u>	<u>Retail</u>	<u>Mixed Use & In-town</u>	<u>Commercial</u>	<u>Alley</u>	<u>Residential</u>	<u>Private Residential</u>	<u>Site Road</u>
Street Type (#):	1 & 2	3	4	5	6	7	8	9	10
Functional Class	Arterial/Collector	Collector	Collector	Collector	Local	Local	Local	Local	Local
<u>Estimated Ultimate</u> <u>Estimated Ultimate</u> Volume (ADT)	DOT	NA	NA	NA	NA	≤ 50	> 50	≤ 50	NA
Maximum design speed (MPH)	DOT	45	35	30	35	10	30	15	20
Minimum Right-of-way Width (ft)	60	60	50	50	60	20	50	40	NA
Minimum Travel Way Width (ft)	DOT	22	22	22	24	10	20	18	22
Minimum width of shoulders (ft)	DOT	4	4	4	5	NA	3	2	3
Min. Centerline Radius (ft)	DOT	ENG	510	200	510	NA	150	75	100
Minimum Tangent Between Curves of Reverse Alignment (ft)	DOT	ENG or 400	ENG or 300	100	100	NA	50	NA	NA
Min. Angle of Street Intersections (degrees)	DOT	60	60	60	60	60	60	60	60
Minimum Curb/ Entrance Radius (ft)	DOT	40	40	40	60	20	40	20	35
Minimum ROW Radii at Intersections (ft)	20	20	20	20	40	NA	20	NA	20
Minimum Grade (%)	DOT	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
Maximum Grade (%) (may be exceeded for 100' or less)	DOT	11	12	12	12	15	12	14	12
Max. Grade within 50' of Intersection (%)*	DOT	3*	3*	3*	3*	3*	3*	3*	3*
Crown % (Paved)	DOT	2	2	2	2	1	2	1	2
Crown % (Gravel w/o superelevation)	NA	4	NA	NA	NA	4	4	4	NA

Key to Table:

DOT: Overseen by Maine Department of Transportation.

ENG: Must be designed by Professional Engineer

N: Not Required

NA: Not Applicable

R: 3* Max. Grade within 50' of intersection up to 6% may be allowed if road geometric design is properly adjusted to enhance safety. Must be designed by a Professional Engineer if > 3%.

909 STREET SYSTEM DESIGN STANDARDS

909.1 Connectivity. The design of developments requiring Planning Board Approval shall strive to achieve connectivity with other compatible developments to logically extend the street system into surrounding areas. Property owners providing for future connectivity shall record:

- A. An easement allowing access to and from the adjacent development.
- B. The design of the street shall conform to the standards of this Article. The design shall ensure efficient and safe vehicular operation and pedestrian movements for internal circulation and for traffic mobility on the adjacent roadway.
- C. All street stubs shall be provided with temporary turn-around or cul-de-sacs unless specifically exempted by the Planning Board, and the restoration and extension of the street shall be the responsibility of any future developer or abutting landowner.
- D. The Planning Board may waive the requirement for connectivity following recommendation by the City Planner. This recommendation shall be made in consultation with the Ellsworth Police Chief and Code Enforcement Officer.

909.2 Dead-end/Turnaround.

- A. All streets shall provide adequate vehicle turnaround.
- B. Any dead-end street of more than 300 feet in length shall include a vehicle turnaround consisting of a cul-de-sac, a T or a Y ending. At the terminus, a cul-de-sac shall have no less than 120 feet outside diameter of the traveled way. If the T or Y configuration is used, there shall be a minimum length of 70 feet on each leg of the T or Y at the terminus. The 70-foot distance is measured from the centerline of the closed street that is dead-ending. An adequate easement in line with the street to provide continuation of the street where future development is possible should be provided.

909.3 Traffic Control Devices.

- A. **Signs.** Appropriate traffic control signage shall be placed within the site and at intersections, on pavement, on medians and on channelization islands.
- B. **New Traffic Signal.** All new traffic signals shall be equipped with emergency vehicle preemption equipment, traffic counter apparatus, and battery back-up systems, as well as meet the equipment general specifications sheet as provided by the City Engineer.
- C. **Upgraded Traffic Signal.** All traffic signals being upgraded as part of a Maine DOT permit or Planning Board approval shall be equipped with emergency vehicle preemption equipment, traffic counter apparatus, and

battery back-up systems, as well as meet the equipment general specifications sheet as provided by the City Engineer.

- D. **Connection to the CMS.** New, existing, or upgraded traffic signals shall be inter-connected and be coordinated, as deemed necessary by the City of Ellsworth Traffic Engineer.

910 ACCESS MANAGEMENT

910.1 Safety Sight Distance.

A. **General.** Accessways onto City streets shall be designed in profile and location to provide the required safety sight distance measured in each direction.

B. **Standards.** Safety sight distance shall follow standards set out by the Maine Department of Transportation in 17-229 C.M.R. ch. 299, §A-2.1.A (Maine Department of Transportation Chapter 299, Highway, Driveway, and Entrance Rules, Part A: Driveway Rules, Section 2.1.A Sight Distance).

~~A. **Measuring.** Sight distances shall be measured from the driver's seat of a passenger vehicle standing on that portion of the exit with the front of the vehicle a minimum of 10 feet behind the curb line or edge of shoulder, with the height of the eye 3½ feet, to the top of an object 4½ feet above the pavement.~~

~~A. **Sight Distance.** A sight distance of 10 feet for each mile per hour of posted speed limit shall be maintained or provided. For example, a 50 mile per hour posted road will require 500 feet of sight distance.~~

~~B. **Waiver.** The Planning Board may lower the safety sight distance if an Engineer can provide adequate documentation that a shorter sight distance will provide adequate safety and following recommendation by the City Planner, in consultation with the Ellsworth Police Chief and the Ellsworth Code Enforcement Officer.~~

910.2 Functional Area of Intersection

- A. New accessways including Commercial Driveway and Residential Driveways shall not be permitted within the functional area of an intersection unless:
- i. No other reasonable access to the property is available, and
 - ii. The accessway does not create a safety or operational problem, and
 - iii. The applicant agrees in writing to close the accessway if and when alternative accessway becomes available that is more consistent with the standards of this article.

- B. Where no alternatives exist, construction of an accessway including a Commercial Driveway and a Residential Driveway may be allowed as far as possible from the functional area of the road intersection as a non-conforming accessway. Property access will be restricted to the road with the expected lowest traffic and/or lowest functional classification and shall be closed within six months of when any conforming access becomes available.
- C. Accessways shall be at least as wide as required by this ordinance for their entire length.

910.3 Alignment/Offset/Spacing.

- A. **Adjacent Properties** under the same ownership shall be considered as a single property for application of accessway spacing, including the spacing of Commercial and Residential Driveways.
- B. **Multiple Accessways.** One accessway including Commercial and Residential Driveways per development is preferred. Application for multiple accessways for a single development shall conform to the spacing standards of this Article. Multiple accessways may be allowed if one or more of the following criteria are met:
 - i. Separation of standard vehicles from heavy trucks or emergency vehicles;
 - ii. Two one-way accessways that, in combination, serve ingress and egress to the development;
 - iii. Multiple accessways enhance the safety of the abutting roadway and improve on-site traffic circulation.
- C. **Alignment.** To reduce turning movement conflicts, accessways on undivided streets should be aligned with those accessways across the road. If this is not possible, separation between accessways shall provide for maximum safety and mobility.

910.4 Cross and Shared Access.

- A. **Commercial Developments** shall provide for cross access and/or shared access to connect adjacent properties in order to reduce curb cuts and to preserve the capacity and safety of the road system.
- B. **Deeded Access.** Property owners establishing shared and/or cross access shall record:
 - i. An easement allowing cross access to and from the adjacent properties;
 - ii. A joint maintenance agreement defining maintenance responsibilities of property owners of the shared accessway and cross access system.
- C. **Temporary Access.** Property owners that provide shared accessways and/or cross access may be granted a temporary approval, where necessary, to

provide reasonable access until such time as permanent shared access and/or cross access are provided with adjacent properties. Within six months after construction of a joint use or cross access, property owners utilizing such accessway shall close and remove any existing temporary accessway provided for in the interim.

- D. **Future Cross Access.** Developments may be required to construct a paved stub-out to the property line in anticipation of a future accessway. The design of the ~~cross access~~cross-access corridor or joint access shall conform to the standards of this Article. The design shall ensure efficient and safe vehicular operation and pedestrian movements for internal circulation and for traffic mobility on the adjacent roadway.
- E. **Maintenance.** Private cross and shared accessways are not intended to be publicly maintained.
- F. **Parking reduction.** Properties that provide for shared access to commercial lots shall benefit from a 5% reduction in parking spaces and properties that provide cross access (connectivity) shall also benefit from a 5% reduction in parking spaces. The total combined reduction in parking spaces shall not exceed 7% and must be recommended to the Planning Board by the City Planner.
- G. **Service roads.** Subdivisions with frontage on a State Routes 1, 1A, and 3 may be required to be designed with access to the lots from a service road.
- H. **Waivers.** The Planning Board may waive the requirement for cross and/or share access following recommendation by the City Planner. This recommendation shall be made in consultation with the Ellsworth Police Chief and the Ellsworth Code Enforcement Officer.

911 LANDSCAPING AND STREETScape.

- A. Developments requiring Planning Board Approval and located within the City Urban Core Area shall provide for consistent streetscape and landscaping design.
- B. Developments requiring Planning Board Approval located on High Street shall provide for design consistent with the High Street Beautification Study.
- C. Cul-de-sacs located in a wooded area prior to development shall maintain a stand of trees at the center of the cul-de-sac if such trees are healthy and have a diameter at breast height of 8 inch. In the event the trees have been harvested, the proposed development plan should include landscaping of the center of the cul-de-sac.

912 SIDEWALKS AND BIKEWAYS

For developments requiring Planning Board Approval, reasonable and safe provision shall be made to create pedestrian and/or bicycle connections between points intended for, and suitable

for such uses. Provisions including, but not limited to sidewalks, curb ramps, pedestrian crossings and/or bikeways shall be within the development boundary and/or abutting street rights-of-way, and as required below:

- A. Development whose location can clearly further the implementation of Ellsworth pedestrian and/or bicycle facilities per the Ellsworth Downtown Plan - Bicycle-Ped section shall do so by providing for sidewalk and/or bikeway facilities.
- B. Sidewalks and/or bikeways shall be constructed if the development is located within 200 feet of an existing sidewalk or bikeway, in the Ellsworth Downtown Area, or abutting a Street Type # 4 or #5, or when necessary to provide direct or indirect access to public facilities, and retail and financial services.
- C. Sidewalks and/or bikeways easement(s) shall be provided if the development is located within the Ellsworth Urban Core and/or within 500 feet of an existing pedestrian and/or bikeway facility.
- D. Easement provided for pedestrian and bicycle facilities shall be recorded with the Hancock County Registry of Deeds.
- E. Minimum sidewalk width is 5 feet.
- F. The Planning Board may waive part or all of the requirements of this section ~~if there is justification to do so. Financial hardship shall not be considered a justification. See Section 904 Waivers in accordance with Chapter 1, Section 206.4.~~

913 STREET LIGHTING FOR ROADWAYS AND SIDEWALKS

Reserved.

914 STREET NAMING AND PROPERTY NUMBERING

Reserved.

915 ACCESSWAYS IN THE SHORELAND ZONE

- A. Regulation of accessways in the Shoreland Zone pertains to all accessways including Residential Driveways and Commercial Driveways.
- B. New permanent accessways shall be set back at least 100 feet from the normal high-water line of great ponds and the Union River and 75 feet from the normal high-water line of the Union River Estuary and other water bodies and wetlands unless no reasonable alternative exists as demonstrated by the applicant. If no reasonable alternative exists, the accessway shall be set back as far as possible, but no less than 50 feet on slopes up to ten 10%. Where slopes exceed 10%, setback shall be increased by 25 feet for each 10% increase in slope. This paragraph shall not apply to approaches to water crossings nor to accessways that provide access to permitted structures and facilities located nearer to the shoreline due to an operational necessity.

- C. New accessways are prohibited in the Resource Protection District except to provide access to permitted uses within the District, or as approved by the Planning Board upon a finding that no reasonable alternative route or location is available outside the District, in which case the accessway 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.
- D. Existing State and City streets may be expanded within the legal road right-of-way regardless of their setbacks from a water body.

916 ACCESSWAY CONSTRUCTION STANDARDS

(See also Table 908 Design Standards)

The following standards shall apply to the construction and repair of accessways and related features such as drainage systems and culverts.

916.1 General Construction Standards for Streets.

- A. Streets shall be crowned or graded to provide surface drainage.
- B. All plans for new or modified streets shall include an erosion and sedimentation control plan for describing temporary and permanent erosion control measured to be provided. Temporary and permanent maintenance requirements shall be provided in the plan. Final design plans shall reference the erosion and sedimentation plan by note.
- C. In order to prevent road surface drainage from directly entering water bodies, roads shall be designed, constructed, and maintained to empty into an unscarified buffer strip at least 50 feet in width between the outflow point of the ditch or culvert and the normal high-water line of a water body. Where slopes exceed 10%, the buffer strip shall be increased 25 feet for each 10% increase in slope.
- D. Buffer strips less than prescribed above may be approved upon a clear showing by the applicant that an exception is necessary and that appropriate techniques will be used to avoid sedimentation of the water body. 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.
- E. Ditches, culverts, bridges, dips, water turnouts, and other water control installations associated with roads shall be maintained on a regular basis to assure effective functioning.
- F. 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 in the road or ditches gains sufficient volume or head to erode the road or ditch.
- G. Prior to final completion and acceptance of a road, or the issuance of a Certificate of Occupancy, the Engineer shall provide to the Code Enforcement

Officer a letter stating that the site work was evaluated and was built, according to approved plans to the maximum extent possible and will likely function as intended.

- H. The Code Enforcement Officer may request as built-plans.
- I. The laying of the pavement course, where required by this ordinance, for residential developments is optional until one these conditions are met: 1) at least 30% or three of the residential lots are occupied, whichever is greater, or 2) three years has passed since the first Certificate of Occupancy was issued.

916.2 General Construction Standards for Residential and Commercial Driveways.

- A. Commercial and Residential Driveways shall be crowned or graded to provide surface drainage.
- B. Commercial and Residential Driveways shall include an erosion and sedimentation control plan describing temporary and permanent erosion control measured to be provided.
- C. In order to prevent accessway surface drainage from directly entering water bodies, Commercial and Residential Driveways shall be designed, constructed, and maintained to empty into an unscarified buffer strip at least 50 feet in width between the outflow point of the ditch or culvert and the normal high-water line of a water body. Where slopes exceed 10%, the buffer strip shall be increased 25 feet for each 10% increase in slope.
- D. Buffer strips less than prescribed above may be approved upon a clear showing by the applicant that an exception is necessary and that appropriate techniques will be used to avoid sedimentation of the water body. 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.
- E. Ditches, culverts, bridges, dips, water turnouts, and other water control installations associated with roads shall be maintained on a regular basis to assure effective functioning.
- F. 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 in the accessway or ditches gains sufficient volume or head to erode the Commercial Driveway, Residential Driveway, or ditch.

916.3 Minimum Thickness of Material After Compaction.

TABLE 916.3A STREET MATERIALS					
Road Type	Transit and Regional	Rural, Mixed Use/ In-town, and Retail	Commercial and Site Road	Residential Street	Private and Alley
Material	When it is anticipated that a road will carry significant truck traffic or heavy axle loads, an engineer shall design a thicker structure than these minimum standards.				
Aggregate Sub-base	*ENG	18"	18"	16"	12"

Course	Layers of Sub-base shall be placed in 2 equal thickness lifts & compacted.				
Aggregate Base Course	*ENG	3"	3"	3"	3"
Gravel Surface Course	NA	3" (where allowed)	NA	3"	3"

*ENG: Shall be designed by an Engineer
Gravel Course Road: Where a gravel surface course is allowed by other portions of this Article, the above "Gravel Surface Course" may be used instead of hot bituminous pavement.

TABLE 916.3B HOT BITUMINOUS PAVEMENT*				
Road Type	Transit and Regional	Rural, Mixed Use/ In-town, and Retail	Commercial and Site Road	Residential Street, Private**, and Alley**
Material	When it is anticipated that a road will carry significant truck traffic or heavy axel loads, an engineer shall design a thicker structure than these minimum standards.			
Total Thickness	**ENG	3 ¼"	3 ¾"	3 ¼"
Wearing Course	**ENG	1"	1 ¼"	1"
Base Course	**ENG	2 ¼"	2 ½"	2 ¼"

~~*For waiver and alternative provisions refer to 907.2.D and 916.5.F.iii.~~
 **ENG: Shall be designed by an Engineer

916.4 Preparation and Construction.

- A. **Marking.** Before any clearing has started on the right-of-way, the centerline and sidelines of the new street shall be staked or flagged at ~~50-foot~~50-foot intervals.
- B. **Clearing.** Before grading is started, the entire area to be improved within the right-of-way shall be cleared of all tree stumps, roots, branches, ledge, large boulders, and other objectionable material.
- C. **Grubbing.** All organic materials shall be removed to a depth of 2 feet below the sub grade of the roadway. Rocks and boulders visible at sub-grade shall also be removed to a depth of 2 feet below the sub grade of the roadway. On soils which have been identified as not suitable for roadways, the subsoil shall be removed from the street site to a depth of at least 2 feet below the sub grade and replaced with material meeting the specifications for gravel aggregate sub-base course.
- D. **Side Slopes.** Except in a ledge cut, side slopes shall be no steeper than a slope of 3 feet horizontal to 1 foot vertical, and shall be graded, loamed, limed, fertilized, and seeded according to the specifications of the erosion and sedimentation control plan. Unsuccessful seeding must be redone to grow a catch of grass. Where a cut results in exposed ledge, a side-slope no steeper than 4 feet vertical to 1 foot horizontal is permitted.
- E. **Underground Utilities,** when proposed shall be installed prior to paving to avoid cuts in the pavement. Building sewers and water service connections shall be installed to the edge of the right-of-way prior to paving.

- F. **Cleanup.** Following street construction, a thorough cleanup of stumps and other debris from the entire street right-of-way shall be made. If on-site disposal of the stumps and debris is proposed, the site shall be indicated on the plan, and be suitably covered with fill and topsoil, limed, fertilized, and seeded.

916.5 Bases and Pavement

- A. **The Aggregate Sub-base Course** shall be mix of sand and gravel made of hard durable particles free from vegetative matter, lumps or balls or clay and other deleterious substances. Aggregates for sub-base shall not contain particles of rock which will not pass the 6-inch square mesh sieve. The gradation of the part that passes a 3-inch square mesh sieve shall meet the grading requirements in Table 916.5A.
- B. **The Aggregate Base Course** shall be mix of sand and gravel made of hard durable particles free from vegetative matter, lumps or balls or clay and other deleterious substances. Aggregates for sub-base shall not contain particles of rock which will not pass the 2-inch square mesh sieve. The gradation of the part that passes a 3-inch square mesh sieve shall meet the grading requirements in Table 916.5B.
- C. **Gravel Surface Course** shall be a mix of sand and gravel made of hard durable particles free from vegetative matter, lumps or balls of clay and other deleterious substances. The gradation of the part that passes the ~~2-inch~~2-inch square sieve shall meet the grading requirements in Table 916.5C.

Table 916.5A Aggregate Sub-base Course	
Sieve Designation	% By Weight Passing Square Mesh Sieves
6" square mesh	100%
1/4 inch	25-70%
#40	0-30%
#200	0-7%
Table 916.5B Aggregate Base Course	
Sieve Designation	% By Weight Passing Square Mesh Sieves
2" square mesh	100%
1/2 inch	35-75%
1/4 inch	25-60%
#40	0-25%
#200	0-5%
Table 916.5C Surface Course Gravel	
Sieve Designation	% By Weight Passing Square Mesh Sieves
2" square mesh	95 - 100%
1/2 inch	30-65%
#200	7-12%

- D. **Recycled Asphalt Pavement (RAP).** RAP may be used in lieu of a gravel surface course if approved by the Administrator. RAP shall be ground, hot mix asphalt, properly compacted and be a minimum thickness of 3 inches.
- E. **Pavement Joints.** Where pavement joins an existing pavement, the existing pavement shall be cut along a smooth line and form a neat, even vertical joint.

Joints shall be tack coated prior to placement of adjoining pavement.

F. Pavements.

- i. Minimum standards for the base layer of pavement shall be the Maine Department of Transportation specifications for Hot Mix Asphalt, 19.0 mm Superpave or equivalent if wearing course is required or Hot Mix Asphalt, 12.5 mm fine Superpave or equivalent if only one course required.
- ii. Minimum standards for the wearing layer of pavement shall be the Maine Department of Transportation specifications for Hot Mix Asphalt, 9.5 mm Superpave or equivalent.
- iii. Alternatives to the above standards may be approved by the Planning Board if the applicant can demonstrate their ~~long-term~~long-term durability and appropriate application. The intent of this modification is to allow the use of alternative surface covers such as permeable concrete, permeable hot mix asphalt, or other treatments which are intended to reduce the impervious impact on a site. The intent is to encourage the use of Low Impact Development and materials.

G. Sidewalk Material. Concrete sidewalks are preferable. The Planning Board may consider allowing bituminous sidewalks in low use areas. Minimum sidewalks design standards:

i. Concrete Sidewalks:

- a. The sand or crushed aggregate base shall be no less than 6 inches thick.
- b. The concrete shall be reinforced with ~~6-inch~~6-inch square, number 10 wire mesh (or equivalent) and shall be no less than 4 inches thick. Concrete shall have a compressive strength of at least 4000 psi.

ii. Bituminous Sidewalks:

- a. The crushed aggregate base course shall be no less than 8 inches thick.
- b. The hot mix bituminous travel way surface course shall be no less than 2 inches after compaction.
- c. Paved sidewalks shall be Hot Mix Asphalt, 12.5 mm or 9.5 mm Superpave or equivalent.

916.6 Curbs and Gutters.

- A. **Granite Curbing** shall be installed on a thoroughly compacted gravel base of 6 inches minimum thickness. Granite Curb shall be set in concrete.
- B. **Concrete Curbing** may be used in place of granite curbing in locations not directly adjacent to, or meeting existing granite curbing and where approved by the Planning

Board. Concrete curbing shall be poured in place or pre-cast members. Pre-cast members shall be installed on a thoroughly compacted gravel base of 6 inches minimum thickness and the base shall be set with in-place concrete.

- C. **Bituminous Curbing, where allowed,** shall be installed on the base course of the travel way. The specified travel way width above shall be measured between the curbs.

917 STREET ACCEPTANCE AS PUBLIC WAYS

917.1 Intent. This section establishes guidelines and procedures to be followed by the City Council for the acceptance of properly constructed streets for maintenance by the City of Ellsworth. Streets being considered for acceptance must be connected to a public way and be paved.

917.2 Application. A request for street acceptance shall be made to the City Manager and include the information listed below. The City Manager and/or the City Council reserves the right to request additional information, as deemed appropriate, including, but not limited to, professional/peer review, street construction costs, and financial security.

- A. **Request.** A written request from the developer/owner or the abutters to place the street acceptance request on the City Council Agenda.
- B. **Petition.** A petition signed by a simple majority of the property owners who have the legal right to use the road supporting or acknowledging the request.
- C. **Deed.** A copy of the deed(s) with accurate legal description of the subject road.
- D. **Engineering Report.** An engineer's report assuring that the street is built to the standards in effect at the time of construction or Planning Board approval, or description of deficiencies, proposed improvements and standards.
- E. **Construction Plan.** A time schedule and financing plan for any needed construction.
- F. **Financial Security.** The City Council may assess a construction cost or financial security for final construction tasks such as, but not limited to, final course pavement.
- G. **As Built Drawings.** Prior to final acceptance of a street as a public way, the City Council may require detailed "as built" construction drawings showing a plan view, profile, typical cross-section of the street and existing streets within 200 feet of any proposed intersections, as well as all utilities and infrastructure. "As built" construction drawings shall be prepared by an engineer.
- H. **Code Enforcement Officer Report.** The City of Ellsworth Code Enforcement Officer, in conjunction with the City Highway Foreman, shall inspect the road to record its condition, verify the engineer's report, and submit a written report to the City Manager. Inspection by the Code

Enforcement Officer and Highway Foreman should take place between May 1 and November 1.

- I. **Utilities.** If there are any underground utilities, the servicing utility shall certify in writing that they have been installed in a manner acceptable to the utility.
- J. **Professional/Peer Review Cost.** When required, the applicants shall pay any professional/peer review costs to the City who in turn will pay the consultant.

917.3 Decision Criteria.

- A. **City Council Review.** The City Council shall consider all applicable information prior to making a decision, including City street standards, applicant submittals, professional/peer review reports, public benefit criteria, occupation rates and City economic factors.
- B. **Economic Factors.** Given the number of unaccepted streets in Ellsworth and associated maintenance cost in connection with their acceptance, the City Council will make any final acceptance decision dependent on the availability of fiscal resources, budgetary constraints, and other criteria as established in this policy.
- C. **Pre-agreement.** In consideration of economic factors, developers who intend to build a street and desire to ask the City Council to take ownership of the road may submit a Letter of Intent to the City Planner. The letter shall include the road type, location, uses that it will serve, and a construction schedule. The City Council may consider the Letter of Intent at their next regular Council Meeting and whether to take ownership of the road once it has been constructed and to the standards of this Article. The City Council may include a time limit for the adoption of any street.
- D. **Street Standards.** Streets shall meet the following design and Construction Standards.
 - i. For streets approved after May 7, 2009, the City Council will ensure strict compliance with the design standards of this Article.
 - ii. For streets approved between August 20, 2007 and May 7, 2009, the City Council will ensure strict compliance with the design standards of Chapter 35 (repealed on May 7, 2009) in effect at the time of Planning Board Approval.
 - iii. For streets approved between July 19, 1999 and August 19, 2007, the City Council shall aim to have the streets meet the design standards of Chapter 35 in effect at the time of Planning Board approval. In certain exceptional circumstances the City Council may consider alternative standards.
 - iv. For streets built prior to the adoption of Chapter 35 (September 19, 1977) and before July 18, 1999, the council may consider alternative standards.

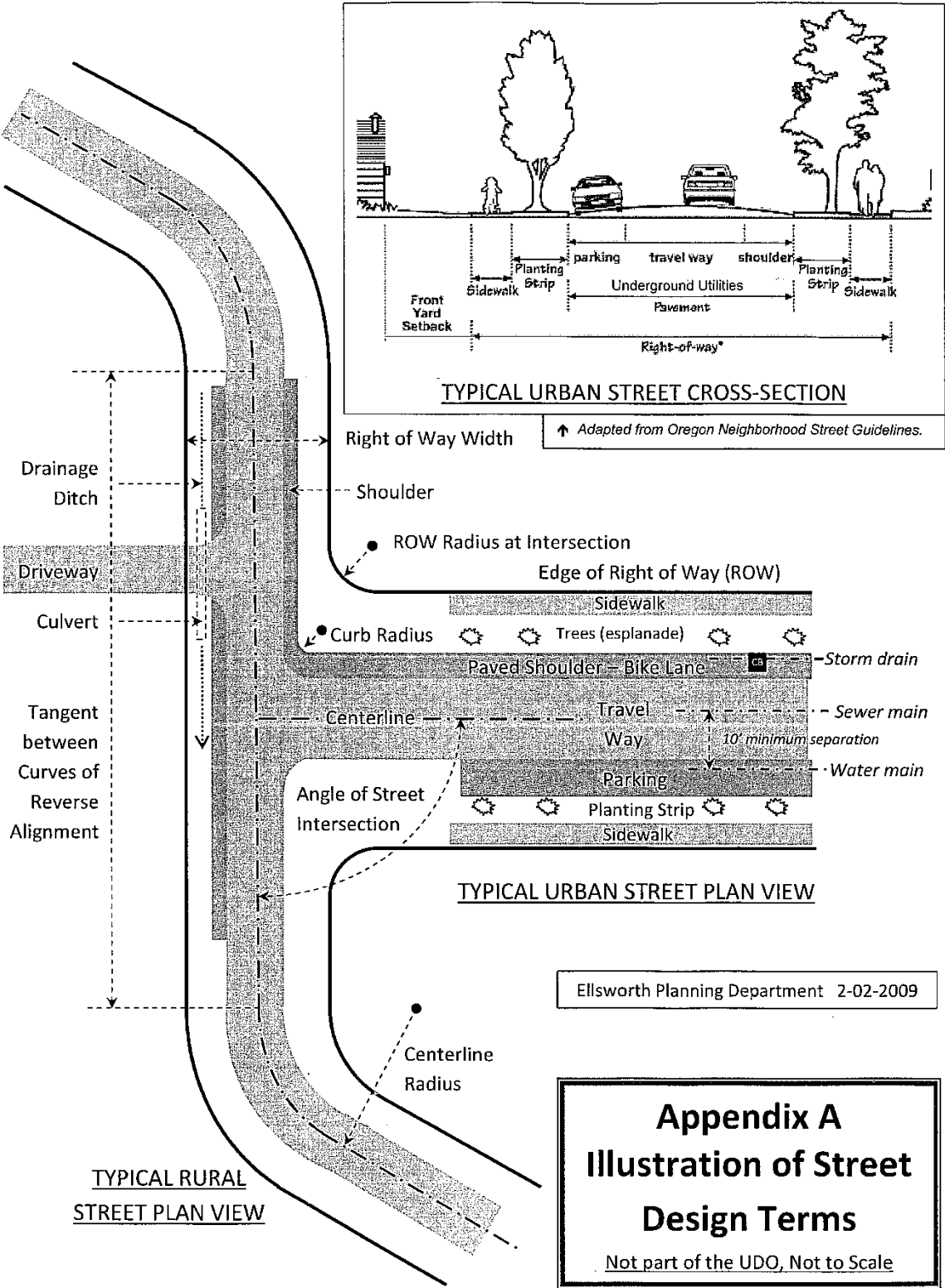
In cases where the creation of a street is not linked to a Planning Board

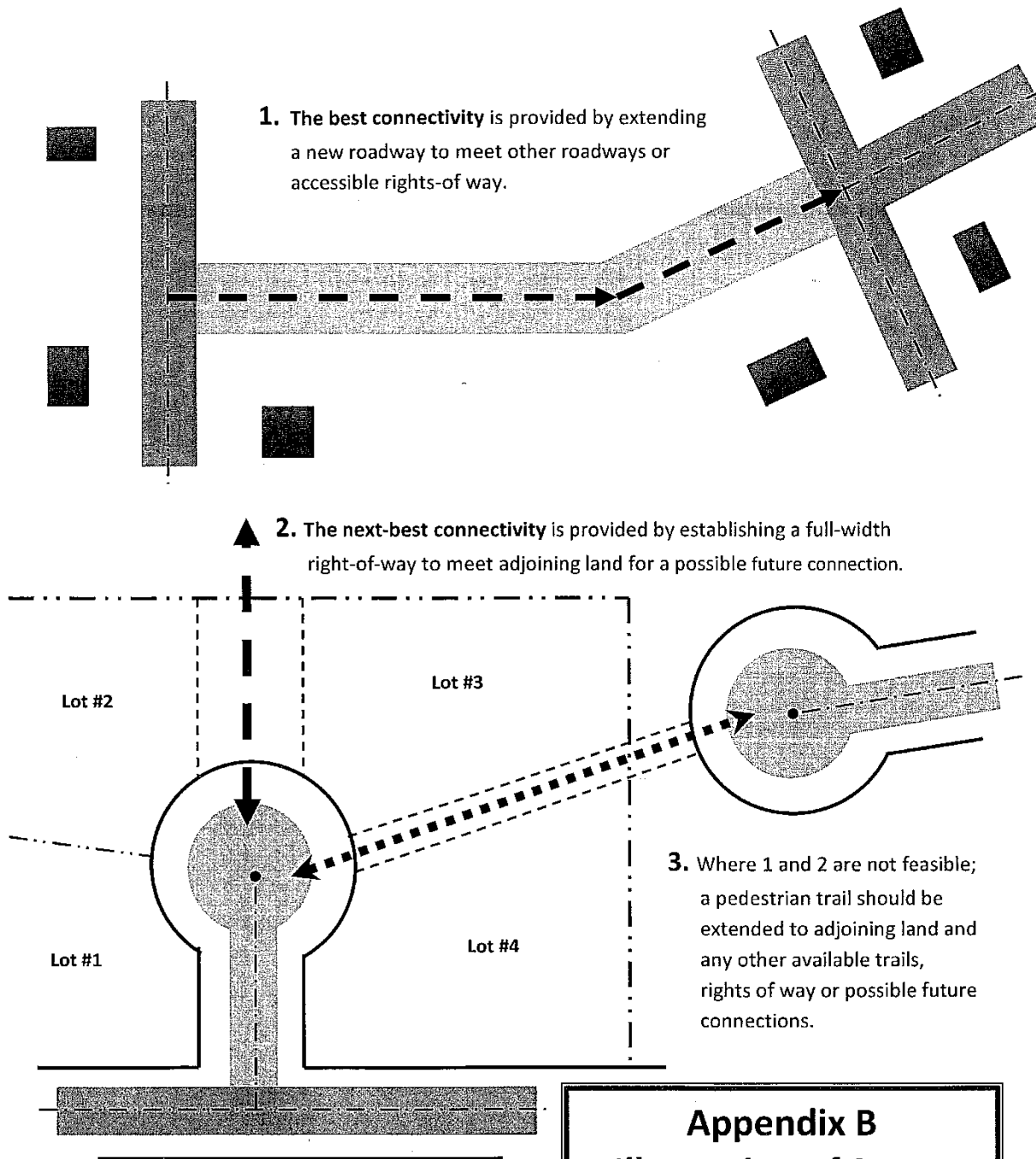
approval, other means will be used to best establish the creation of the road such as but not limited to deeds.

- E. **Alternative Street Standards.** In the event the City Council agrees to consider alternative design standards, it will use the standards published by the *American Association of State Highway and Transportation Officials* (AASHTO) – most recent version. When AASHTO standards are applied, the design of the street shall, in the opinion of the City Council, provide adequate access to public service vehicles (i.e. fire, plow and garbage trucks, school buses, etc.) and shall not pose a threat to the health, safety, and welfare of the residents of Ellsworth. The City Council may assess a construction cost fee and/or financial security for any part of the road.
- F. **Growth Area Streets.** The City Council shall accept Growth Area streets, meeting standards as public ways if they serve commercial or mix-use developments and improve mobility, safety, stormwater runoff, or exemplify smart growth principles as presented in the International City/County Management Association (ICMA) *Getting to Smart Growth* and *Getting to Smart Growth II* publications.
- G. **Occupation.** The City Council shall accept streets meeting standards as public ways when occupied as follows:
- i. Growth Area Streets having at least three lots with occupied dwelling units; having at least 30% of all its residential lots with occupied dwelling units; and having an average road frontage not to exceed 250 feet per lot.
 - ii. Rural Area Streets having at least three lots with occupied dwelling units; having at least 60% of all its residential lots with occupied dwelling units; and having an average road frontage not to exceed 400 feet per lot.

NOTE: Properties abutting the intersection of the street under consideration for acceptance and an existing publicly maintained street do not count toward the occupied legal lot threshold calculations.

- H. **Public Benefit.** The City Council may accept streets meeting standards as public ways when the occupation threshold calculations above are not met if the acceptance of the road will clearly improve mobility, safety, stormwater runoff, or the development exemplifies smart growth principles as presented in the International City/County Management Association (ICMA) *Getting to Smart Growth* and *Getting to Smart Growth II*.





Appendix B Illustration of Street Connectivity

Not part of the UDO, Not to Scale

Ellsworth Planning Department 2-02-2009

ARTICLE 10 STORMWATER MANAGEMENT DESIGN AND CONSTRUCTION STANDARDS

1001 PURPOSE AND APPLICABILITY

1001.1 Purpose. The purpose of this article is to better manage land development in order to protect, maintain, and enhance the public health, safety, and general welfare of the citizens of Ellsworth by establishing requirements and procedures to control the adverse impacts associated with stormwater runoff.

1001.2 Applicability. This Article shall apply to all minor and major use site development plan projects and to subdivisions. See Section 1003.3 for specific applicability thresholds regarding Flooding and Quality Control Standards.

1001.3 Interpretation. Nothing in this Article shall be construed to prevent the construction of stormwater management infrastructure which meet higher standards or use improved methods or materials of equivalents or higher quality.

1002 PLAN SUBMITTALS

1002.1 Documents. The stormwater management system shall be presented in a narrative and ~~on-site~~on-site plans showing at a minimum:

- A. A narrative describing the details of how the stormwater will be managed.
- B. The contour lines shown on the plan shall be at an interval of no more than 2 feet.
- C. For the Basic Standards, refer to the Maine Department of Environmental Protection Chapter 500, Section ~~4.B&C~~ and provide submittal for both the erosion and sedimentation control plan and the inspection and maintenance plan.
- D. For the General Standards, refer to the Maine Department of Environmental Protection Chapter 500, Section ~~4.C&D~~ with the exception of Section ~~4&C.D~~.(5) and as further specified in this Article.
- E. For the Phosphorus Standards, refer to the Maine Department of Environmental Protection Chapter 500, Section ~~4.D.&D~~ with the exception of Section ~~4&C.D~~.(3) and as further specified in this Article. Note that the Phosphorus Standards can be substituted for the General Standards, per Chapter 500, by recommendation of the City Planner.
- F. For the Flooding Standards, provide:
 - i. Pre- and post-development sub-catchments, time of concentration lines, general water flow lines and ground cover.
 - ii. Show all existing and proposed culverts, swales, catch basins, detention or retention area and conveyance devices.
 - iii. Site specific temporary and permanent Best Management Practices

(BMP's) to be used for the project.

- G. A stormwater management system maintenance plan and referring note stated on the plan, as well as a Copy of the Declaration and Covenants for any homeowners association charged with the long-term maintenance of the stormwater system.
- H. Any related State and Federal permits or permit application.
- I. A copy of the Notice of Intent for Construction Activity filled out and submitted to the MDEP.

~~1002.2 Required Submittal Copies.~~

- ~~A. CEO approved project: The applicant shall submit two copies of all material to the Code Enforcement Officer.~~
- ~~B. Planning Board approved project: The applicant shall submit copies of the following material to the Administrator per Article 6 Site Development Plan Section 602.7 unless otherwise specified:~~
 - ~~i. The stormwater management system plan and narrative per this Article.~~
 - ~~ii. Pre and post development conditions and drainage diagrams.~~
 - ~~iii. Documentation of application for all related State and/or Federal permits.~~
 - ~~iv. A summary of the stormwater design calculations.~~
 - ~~v. Three (3) copies of the stormwater calculations and any State or Federal approvals.~~
 - ~~vi. The City Planner reserves the right to request more copies as the need may arise.~~

1003 STORMWATER MANAGEMENT DESIGN STANDARDS

1003.1 Stormwater Management. Adequate provision shall be made for disposal of all stormwater generated, and any drained groundwater through a management system of swales, culverts, under-drains, buffers, storm drains, etc. The stormwater management system shall be designed to conduct stormwater flows to existing drainageways. The intent of this article is for stormwater management systems to provide pollutant removal; cooling; channel protection; and flood control.

Where a street or site is traversed by a stream, river, or surface water drainageway, or where the Administrator determines that surface water runoff to be created should be controlled, there shall be provided easements or drainage rights-of-way with swales, culverts, catch basins or other means of channeling surface water.

1003.2 Professional Design. Stormwater management plans and systems shall be designed

by an engineer registered in the State of Maine.

1003.3 Design Criteria and Applicability Thresholds.

- A. **Design Criteria:** All stormwater management systems required by this Article shall be designed consistent with the following documents, as applicable. The DEP applicability thresholds are not the thresholds of this ordinance:
- i. M.R.S.A 38 § 420-C and 420-D;
 - ii. The most recent version of the Maine Department of Environmental Protection Stormwater Management Rules (Chapters 500 and 502) and with the following MDEP volumes:
 - a. *Volume I: Stormwater Management Manual*,
 - b. *Volume II: Phosphorus Control in Lake Watershed: A Technical Guide to Evaluating New Development*; and
 - c. *Volume III: BMPs Technical Design Manual*.

Wherever regulations specified in this Article differ from the above-listed documents, the standards of the more restrictive applicable standard shall prevail.

~~The objective of the Ellsworth Flooding Control Standard is to limit flooding of neighboring properties and water courses to pre-development levels.~~

B. Flooding Control Standard.

- i. Applicability.
 - a. The Ellsworth Flooding Control Standard (described below) applies to all projects that result in 420,000 s. f. or more of impervious surface, as defined herein, on a parcel of land.
 - b. The Administrator may apply this Flooding Standard to smaller projects where stormwater generated appears to present a threat to neighboring property or water courses. In this decision, the Administrator shall consider the project's proximity to property lines, topography and downstream conditions and whether it would pose any health or safety threats regarding neighboring properties, roads or drainageways.
- ii. Standard – Requirement. The Ellsworth Flooding Control Standard shall be met and requires post-development runoff locations and types to provide the same or less of an impact as those existing in the pre-development condition. Post-development discharge points from a property shall be in the same general location and be of the same type (i.e.: sheet flow, shallow concentrated, etc) as the pre-development discharge locations and types or create an

improvement to existing conditions. The Flooding Standard requires a stormwater management plan designed to limit peak flow to predevelopment levels for 24-hour duration, 10-and 50-year storm events as calculated by the most recent report from the National Oceanic and Atmospheric Administration's Point Precipitation Frequency Data. ~~2.7 inch and 5.4 inch, 24-hour duration, storm events.~~

Where an accessway is to be built or upgraded, and may become a public way, the crossing of the stream by the accessway shall be designed to accommodate a 7.1-inch storm event.

- iii. Exception to the Standard – Requirement. If all downstream drainageways have the capacity and stability to receive the project's runoff plus any off-site runoff also passing through the system, and drainage easement are secured and the Administrator also makes determination that the areas expected to be flooded by the ~~4.62.7 inch and 6.25.4 inch~~ 10- and 50- year, 24-hour storms as described above, do not pose any health and safety issues such as, but not limited to, the flooding of primary access roads to the project and public roads or an undue burden (i.e. significant difficulty or expense) to property owners likely to suffer specific harm.

C. Quality Control Standards:

- i. Applicability Threshold. The Ellsworth Quality Control Standards (described in D and E below), apply to all development and redevelopment projects that are:
 - a. In the Shoreland Zone, or;
 - b. Discharging within the direct watershed of Card Brook, or;

The objective of the Ellsworth Quality Control Standard is to limit degradation of water quality in lakes and streams through treating runoff from Shoreland Zone areas, high pollutant uses and impervious surfaces exceeding 10% of the area of each watershed. The 10% untreated area is allocated by parcel or parcels involved in an applicable project. Studies have shown that watersheds with 10% to 15% impervious cover tend to have impaired water quality.

Associated with High Pollutant Land Uses as defined herein, or;

- c. Resulting in a parcel of land having 10% or more of impervious area as defined herein.
- ii. Excluded Areas. Impervious and other areas of land surface that are not changed during the course of a development or redevelopment project may be excluded from any quality controls required for the project.
- iii. BMP's. Basic Quality Control Standards (described in MDEP documents above) apply to all projects regardless of exemptions described below:

Exemptions.

The following exemptions from Ellsworth Quality Control Standards may be claimed, where applicable. Exempted area shall not include development associated with High Pollutant Land Uses, be within the Shoreland Zone with the exception of the General Development District, or be within the direct watershed of Card Brook.

- a. **10% Exemption.** Up to 10% of any parcel may be exempted from the Ellsworth Quality Control Standards. All previously developed impervious surfaces with untreated stormwater count toward the 10%. After this exemption is claimed, the remainder of the lot may not use the exemption, even if it is divided from the developed parcel. Land subdivision projects may only apply the exemption to lands that will be held in common such as roadways and conservation areas.
- b. **Extended 10% Exemption.** Where on-site treatment is not practical or desired, additional development area may be exempted from the Ellsworth Quality Control Standards similar to the 10% exemption where appropriate development rights are secured and recorded via permanent easement for lands within the same stream watershed at a 9:1 ratio of lands conserved from pervious development to lands with pervious development exempted from the Ellsworth Quality Control Standards.

Where on-site quality treatment and conservation easements are not practical or desired, the developer may pay a fee in lieu of constructing the required quality controls. The fee payment shall be made to the Ellsworth Fund for Improvements to Water Quality to be used for within the same stream watershed, or within an impaired stream watershed. The fee is based on 105% of the estimated cost of constructing quality controls on-site and excludes the costs associated with designing such a system. The developer shall submit to the City calculations determining the proposed fee amount. The cost to the City to hire an engineer to review of the proposed fee amount shall be entirely the responsibility of the developer.

- c. **100% Redevelopment Exemption.** Projects in the Ellsworth Urban Core and within the direct watershed of the Union River Estuary (below the Leonard Lake Dam), as shown on the map entitled “City of Ellsworth Urban Core in the Direct Watershed of the Union River Estuary,” may exempt up to 100% of the existing impervious area with untreated stormwater that is being redeveloped from the Ellsworth Quality Control Standards.
- d. **50% Redevelopment Exemption:** Projects outside of areas eligible for the 100% exemption above may exempt up to 50% of the existing impervious area with untreated stormwater that is being redeveloped from the Ellsworth Quality Control Standards.

Union River/Leonard Lake Water Quality Control: Projects located outside the watershed of a Great Pond or within the watershed of Leonard Lake as shown on the Official City of Ellsworth Watershed Map, shall comply with the most recent version of the Maine Department of Environmental Protection Stormwater Management Rules General Standards, in addition to Basic Standards and the Ellsworth Flooding Control Standards where applicable.

Lake and Stream Water Quality Control: Projects located within the watershed of a Great Pond and outside the watershed of Leonard Lake as shown on the Official City of Ellsworth Watershed Map, shall comply with the most recent version of the Maine Department of Environmental Protection Stormwater management Rules Phosphorus Standards in addition to Basic Standards and the Ellsworth Flooding Control Standards where applicable.

The Planning Board shall not, as part of the required phosphorus control plan, allow an increase in phosphorus loading beyond the level allowed by the Maine Department of Environmental Protection. Furthermore, no phosphorus mitigation credits or compensation are allowed unless the project triggers the Stormwater Law or Site Law.

- 1003.4 **Drainage easements** for existing water courses or proposed drainageways shall be provided at least 30 feet wide, conforming substantially to the lines of existing natural drainage.
- 1003.5 **Upstream drainage.** The stormwater management system shall be designed to accommodate upstream drainage, taking into account existing conditions and approved planned developments not yet built and shall include a surplus design capacity factor of 25% if the potential exists for an increase in upstream runoff.
- 1003.6 **Downstream Capacity.** The storm drainage shall not overload existing or planned storm drainage systems downstream.
- 1003.7 **Catch basins** shall be installed where necessary and located at the curb line of accessways or as required elsewhere.
- 1003.8 **Subsurface drainage.** Where soils require a subsurface drainage system, the drains shall be installed and maintained along with the stormwater drainage system.
- 1003.9 **Outlets** shall be stabilized against soil erosion by using the Maine Department of Environmental Protection Maine Erosion and Sediment Control BMPs (latest edition) such as stone riprap or other suitable materials to reduce stormwater velocity. Outlets shall not be located closer than 20 feet of a property line.
- 1003.10 **Landscaped Buffer:** Detention or retention areas created for the stormwater management system shall be landscaped and buffered from adjacent properties if the total area (including the inside of the embankments) is greater than 10,000 square feet.
- 1003.11 **Level Spreader:** Level spreaders are not permissible if the receiving land of the

diffused stormwater has a grade of 2% or greater.

1003.12 **Erosion Control:** An erosion and sedimentation plan shall be submitted as part of any Stormwater Management Plan and for all projects. The procedures outlined in the plan shall be implemented during the site preparation, construction and clean-up stages of the project. The applicant/owner shall be responsible for implementing the plan.

1003.13 **Safety Standards:** Public safety shall be accounted for when designing and maintaining stormwater ponds, facilities, BMPs, culverts and other related facilities as follows:

- A. **Safety shelf-Shelf and Side Slopes.** There shall be a safety shelf around the perimeter of the detention pond to reduce the risk of someone falling into the pond. The safety shelf requirement may be waived if slopes are 4:1(horizontal:vertical) or gentler.
- B. **Dams and Embankments.** If there are, or there exist the potential for development of, home and businesses in the downstream “dam break” floodplain, then the dams and embankments shall be designed to withstand overtopping during floods larger than they were designed to detain (6-inch rain over 24 hours).
- C. **Outlets.** When feasible, outlets shall be placed away from areas of heavy public use. Outlets are screened so that the public will not be drawn to it. Thick shrubs, grading techniques, and aesthetic fencing or railing can also be used.
- D. **Fencing.** Fencing of ponds is not generally desirable, but may be required by the Administrator. A preferred method is to manage the contours of the pond to eliminate drop offs and other safety hazards.
- E. **Spill Ways.** The principal spillway opening shall not permit access by small children, and end walls above pipe outfalls greater than 48 inches in diameter shall be fenced to prevent a hazard.

1003.14 **State Permitting.** All projects shall meet the requirements of Maine Department of Environmental Protection permitting.

1003.15 **Inspection.** Prior to final completion and acceptance of the site work portion of a project, or the issuance of a Certificate of Occupancy, the Design Engineer of the stormwater management system shall provide to the Code Enforcement officer a letter stating that they have examined the site and are satisfied that the site and storm-water system are built according to approved plans and will function as intended. The Code Enforcement Officer may require as built-plans where changes have been made from original designs.

1004 CONSTRUCTION MATERIALS AND STANDARDS

1004.1 **General.** All Construction shall be done in a workmanlike manner and be free from defects and deficiencies. The Code Enforcement officer shall examine the workmanship and have the authority to require removal or replacement of materials not considered satisfactory.

- 1004.2 Stormwater Management Best Management Practices** (BMP's) shall be designed, built and maintained as specified in the Maine Department of Environmental Protection Maine Erosion and Sediment Control BMPs (latest edition).
- 1004.3 Drain Inlet Alignment** shall be straight in both horizontal and vertical alignment unless specific approval of a curvilinear drain is obtained in writing from the City Highway Foreman.
- 1004.4 Changes in Alignment.** Catch Basins shall be provided at all changes in vertical or horizontal alignment and at all junctions. On straight runs, catch basins shall be placed at a maximum of 400-foot intervals.
- 1004.5 Manholes.** Manholes shall be a precast concrete truncated cone section construction meeting the requirements of ASTM Designation C 478 or precast concrete manhole block construction meeting the requirements of ASTM Designation C 139, radial type. Manhole sections shall have lapped joint construction and support H-20 loading (unless higher loading required for specific application). Bases may be cast in place 3,000 psi ~~28-day~~28-day strength concrete or may be of precast, reinforced concrete, placed on a compacted foundation of uniform density. Metal frames and traps shall be set in a full mortar bed with frames and covers meeting the requirements of ASTM A48 Class 30 for gray iron castings. Covers shall be non-rocking, 24-inch diameter and have 3-inch lettering indicating the use (i.e. DRAIN). Frames and Grates shall be of ~~heavy-duty~~heavy-duty construction weighing not less than 300 pounds and machined on both vertical and horizontal seating surfaces.
- 1004.6 Precast Concrete Catch Basins.** ASTM C 913, precast, reinforced concrete; designed according to ASTM C 890 for A-16 (AASHTO HS20-44), heavy-traffic, structural loading, with provision for Bell-and-spigot or tongue-and-groove joints formed on machine rings to ensure accurate joint surfaces.
- 1004.7 Joint Sealants.** ASTM C 990, bitumen or butyl rubber.
- 1004.8 Grade Rings.** Include 2 or 3 reinforced-concrete rings, of 6-inch to 9-inch total thickness that match 24-inch diameter frame and grate.
- 1004.9 Maximum Trench Width** at the pipe crown shall be the outside diameter of the pipe plus 2 feet.
- 1004.10 Pipe Connectors.** ASTM C 923, resilient, of size required, for each pipe connecting to base section.
- 1004.11 Pipe Sizing.** The minimum pipe size for any culvert or storm drainage pipe shall be 15 inches. Smaller pipes may be incorporated into a storm-water management plan if required for detention or retention requirements. If smaller pipes are used the developer shall provide a maintenance plan and schedule that will allow the pipes to provide adequate flow.

Table 1004.12 Culvert Backfill Material

Sieve Designation	% By Weight Passing Square Mesh Sieves
3-inch square mesh	100%
1/4 inch	25-70%
#40	0-30%

#200	0-7%
- 1004.12 Pipe (culvert) Bedding and Backfill.** Pipes shall be bedded and backfilled in a fine granular material, containing no stones larger than 3 inches, lumps of clay, or organic matter, reaching a minimum of 6 inches below the bottom of the pipe extending to 6 inches above the top of the pipe. Bedding material shall be graded per Table 1004.12.
- 1004.13 Reinforced Concrete Pipe.** Reinforced concrete pipe shall meet the requirements of ASTM Designation C-76 (AASHTO M 170). Pipe classes shall be required to meet the soil and traffic loads with a safety factor of 1.2 on the .01-inch crack strength with a Class B bedding. Joints shall be of the rubber gasket type meeting ASTM Designation C 443-70. Perforated concrete pipe shall conform to the requirements of AASHTO M 175 for the appropriate diameter. Elliptical pipe shall conform to the requirements of AASHTO M207M/M207. Pipe arch shall conform to the requirements of AASHTO M206M/206.
- 1004.14 Corrugated Metal Pipe.** Aluminum coated corrugated steel pipe and special fittings such as elbows, tees, and wyes shall conform to the requirements of the Maine Department of Transportation Standard Specifications, Subsection 707.10 (Type 2), Aluminum Coated (Type 2) Corrugated Steel Pipe. Pipe gauge shall be as required to meet the soil and traffic loads with a deflection of not more than 5%. Fittings shall be fabricated to types required and according to same standards as pipe. Connecting bands shall be standard couplings made for corrugated-steel pipe to form soil-tight joints.
- 1004.15 Corrugated Plastic Pipe.** Pipe culverts and storm drains so designated shall conform to the requirements of Maine Department of Transportation Standard Specifications, Subsection 603 and 706.06 (special provisions). Corrugated Polyethylene pipe will meet the requirements of AASHTO M294 (ASTM F2648 may also be used with regard to pipe materials for all Polyethylene pipe) type S, Dual Wall. Corrugated Polyethylene pipe (and fittings) for Underdrain shall conform to AASHTO M252, slot perforated, for 6-inch diameter and to AASHTO M294 for 12-inch to 30-inch. Pipe to be used for Underdrain Type C shall be perforated in accordance with the applicable requirements of AASHTO M36/M36M Type III, Class I perforations. Pipe shall be corrugated with an integrally formed smooth waterway and be non-perforated or perforated as indicated on the drawings. Installation shall include all necessary boots, gaskets and adapters required to provide a soil-tight connection at all manholes, joints and fittings. Pipe shall have integral bell-and-spigot joint meeting the requirements of ASTM F 477 or approved equal.
- 1004.16 Cast Iron Catch Basin Frames and Covers** shall be cast of material conforming to the requirements of ASTM A48 Grade 30 and be of uniform quality, free from blowholes, porosity, hard spots, shrinkage distortion or other defects. They shall be smooth and well-cleaned by shotblasting or other approved method. They shall be of ~~heavy-duty~~ heavy-duty construction weighing not less than 400 pounds and machined on both vertical and horizontal seating surfaces. Frames shall be 4-flange unless inlet curb inlet is specified, in which case they shall be 3-flange. Grates shall be non-rocking and be of appropriate entry configuration for the intended location.
- 1004.17 System Cleaning.** Upon completion of system construction, each catch basin or manhole shall be cleaned of all accumulation of silt, debris or foreign matter and

shall be kept clean until final acceptance.

1004.18 Alternative Catch Basins and Manholes. Alternative materials for catch basins and manholes may be submitted for approval to the Administrator. Such submittals shall be reviewed on a case-by-case basis and may require an independent professional review to determine applicability and ~~long-term~~long-term durability.

ARTICLE 11 PARKING STANDARDS

1100 PURPOSE AND APPLICABILITY

1100.1 Purpose. The purpose of this Article is to ensure a minimum level of off-street parking to avoid congestion on surrounding streets while avoiding excessive parking and driving up the cost of development. This article also regulates loading space, traffic circulation, and pedestrian access.

1100.2 Applicability. This Article shall apply to new and existing development as follows:

- A. ~~Single and Two-Family~~**Single Family Dwellings (Attached, up to two-units, and Detached)** are exempt from this Article. ~~with the exception of mobile homes in mobile home parks per Article 8 Performance Standards 819.18.~~
- B. **Existing Developments** are exempt from this Article unless the development is physically expanded or changed resulting in more intensive parking needs per Section 1105.1 or unless the existing parking supply is reduced per section E below.
- C. **Development Expansion.** When a development, with a non-compliant number of parking spaces is expanded, additional parking spaces shall be provided only for the area of expansion in conformance with Table 1105.1. ~~except as specifically noted in Section 1102.1 for Downtown Parking.~~
- D. **Change of Use Requiring More Parking Spaces.** When the use of a development is changed to another use that requires more parking spaces or, if the development is vacant, the use that existed immediately prior to such vacancy, parking spaces shall be provided for the proposed use in the amount necessary to conform to this Article; ~~except as specifically noted in Section 1102.1 for Downtown Parking.~~
- E. **Change of Use Requiring Fewer Parking Spaces.** When the use of a development is changed to another use that requires fewer parking spaces ~~per Section 1106~~, the proposed change of use is a permissible change to a non-conforming parking situation provided that parking space requirements will be met to the greatest extent possible. Projects of this nature will be given the option to remove impervious area for excessive parking and replace said area with greenspace or landscaping.
- F. **Parking Lot Expansion.** If an off-street parking lot is being expanded, only the new portion of the parking lot must conform to this Article unless there are safety issues related to, queuing, egress/ingress, internal vehicular circulation, emergency vehicle access, and loading. In such case, the Administrator may require that part of or the entire existing parking lot be brought into compliance with this Article.

1101 GENERAL PROVISIONS

1101.1 Prohibited Use of Parking. Parking that is required for a specific use shall not be dedicated to other uses, including commercial parking or be utilized for non-parking uses.

1101.2 Ingress and Egress. All access to parking lots and loading areas from an accessway shall be designed to ensure the smooth and safe circulation of vehicles to and from the accessway, per Article 9 - Street Design and Construction Standards section 901.

~~1101.2~~ **1101.3**

Backing Out of Vehicles into Road. In general, parking and loading areas shall be provided in a manner that does not require the backing out of vehicles onto a road. Site Roads, as defined in Article 9 - Street Design and Construction Standards section 906, are exempt from this standard.

~~1101.3~~ **1101.4** Off-site Parking Lots.

A. Satellite Parking. If required parking cannot be entirely located on the same lot as the use which it serves, then parking may be located within .25 miles ~~reasonable walking distance~~ of the entrance to the use as satellite parking. ~~The acceptable walking distance between the satellite parking and the use it serves depends on the type of land use and the type of users. The developer must provide the Administrator with documentation establishing the parking agreement and demonstrate that there is sufficient capacity at the satellite location given the current use and available spaces. This report should be in the form of a professional parking study or similar evidence. The Administrator may not make a determination on the fitness of the parking agreement based on information outside of the quantity of available parking. shall determine whether the satellite parking is convenient, safe, and accessible at the location proposed, based on the quality of the pedestrian environment including, but not limited to, sidewalks, crosswalks, topography, lighting, line of site (longer distance are acceptable if people can see their destination), and pedestrian barriers found along the way such as, but not limited to, crossing busy traffic.~~

B. Valet parking or other comparable service shall be provided for satellite parking located beyond .25 miles from the entrance to the use. ~~what the Administrator determines to be a reasonable walking distance.~~

~~1101.4~~1101.5 **Parking Lot Location.** In pedestrian-oriented areas, highly visible areas, and/or in the Commerce Park (CP) of the City of Ellsworth, developers shall strive to locate parking away from the front yard of the use it serves. These areas are: 1) Ellsworth Downtown Zone, 2) along high traffic areas in the Urban Core such as, but not limited, to State-owned roads and the Beechland Road, and 3) along State-owned roads within the Growth Area, and 4) the BTP.

~~1101.5~~1101.6 **Lease Records.** Parking not in the same ownership for the use which it serves shall be under a written use agreement. To avoid the possibility of owner "double leasing" spaces, lease records and agreements shall be provided to the City Planner or designee. To allow for coordination between leases, all leases shall have an opt-out provision on December 31 of each year. If using a lease to satisfy the parking requirement of this Article, a developer must enter into a written lease or other legally binding parking agreement, having a minimum duration of five years plus two consecutive five-year automatic renewal periods, with another property owner to use exclusively or on a shared basis. Private or municipal parking lots that are proximate to the proposed development site and allow overnight and winter parking.

~~1101.6~~1101.7 **Structured Parking.** All garages or other structured space allocated for the parking of vehicles may be considered part of the required parking.

~~1101.7~~1101.8 **Layout and Design.** Parking shall be arranged and marked to provide for orderly and safe loading/unloading and parking. For parking located within the Ellsworth Urban Core Area, individual parking spaces shall be clearly defined and directional arrows and traffic signs shall be provided as necessary for traffic control.

~~1101.8~~1101.9 **Recreational Vehicle and Oversize Parking.** The Administrator may require that some developments provide designated parking spaces for R.V. campers and other oversized passenger vehicles when the proposed use will reasonably attract multiple of such vehicles at a time. These spaces cannot be substituted for regular or passenger car spaces.

~~1101.9~~1101.10 **Handicapped Parking.** All handicap parking spaces must be provided in accordance with the most current state and federal regulations.

~~1101.10~~1101.11 **Snow Storage.** The parking lot design shall provide an adequately sized location for snow storage.

~~1101.11~~1101.12 **Parking Lot Setback.** *RESERVED*

1102 DOWNTOWN PROVISIONS

The City of Ellsworth parking provisions for the Downtown Areas aim to support the vitality and appearance of the Ellsworth Downtown.

1102.1 Parking minimums do not pertain to non-residential uses developed in the Downtown Zone of Ellsworth, except residential developments must provide a minimum of one parking space per dwelling unit. In order to receive approval from the reviewing authority, the development must have a parking management plan that provides adequate estimated parking for the use. The Planning Board may reduce or increase required parking spaces. The applicant shall provide credible evidence—such as parking studies, site-specific use patterns, or agreements for shared parking—showing that the proposed number of spaces will adequately serve the use.

1102.2 To satisfy any parking requirement, public City-owned parking may not be used as a substitute for a developer providing necessary parking without an accepted, written agreement from the City that complies with Section 1101.4 of this Article.

~~They are prescribed according to three sub-areas known as Downtown A, B and C per the City of Ellsworth Downtown Parking Sectors Map. Development shall provide parking, to a minimum, per the requirements of the Downtown sub-area it is in, even if such parking is provided in a different area than the use it serves.~~

~~1102.1—Downtown A.~~

~~A. **Area.** Downtown A consists of a portion of Main Street and the abutting areas typified by parking constraints consistent with the distinctive historic construction patterns with structures built to, or very close to, property lines. This type of intense lot coverage makes the addition of on-site parking difficult and may have a negative impact on the historic character of the neighborhood.~~

~~B. **Requirements.**~~

- ~~i. A change of use taking place within the confines of a building shall not require more parking than required for the use existing immediately prior to such change unless there is a cumulative addition of GFA such as, but not limited to, an entry way, shed, or the use of a rooftop and/or there are 10 or more employees added on the day shift.~~
- ~~ii. The creation of additional GFA will require parking to be created at a flat rate of 3 parking spaces per 1,000 square feet of GFA, 1 space per dwelling unit, and 0.8 parking spaces for every additional employee over 9 new employees on the day shift.~~
- ~~iii. A change of use without the creation of additional square footage but resulting in the creation of 10 or more jobs will require 0.8 parking spaces for every additional employee over 9 new employees on the day shift.~~

~~C. **Parking Reduction** per section 1105, shall not apply for Downtown A.~~

~~D. **Private Parking, Provided as Free Public Parking**, shall supply parking consistent with Section 1102.1.B.i and Section 1102.1.B.ii with the exception that the flat rate will be reduced to 2 parking spaces per 1,000 square feet of GFA.~~

- ~~E. **Satellite Parking** serving Downtown A, shall be located within reasonable walking distance of the use it is serving, per Section 1101.4.A and be well signed per Section E below.~~
- ~~F. **Signing of Free Public Parking.** Way finding signs, consistent with municipal signage design, should clearly indicate where free public parking is available. The signs should be placed in key locations such as, but not limited to, at the business, at the street access point, and inside the lot.~~
- ~~G. **Loss of On-site Parking Spaces** in Downtown A, to a structure expansion for example, shall be re-created at a 1:1 ratio (cannot benefit from any of the above parking reduction provisions) and shall be within reasonable walking distance of Downtown A, per Section 1101.4.A.~~
- ~~H. **Parking Earmarked for Dwelling Units** must be posted as reserved.~~
- ~~I. **Leasing of Parking** existing at the time of the adoption of this Article is prohibited in Downtown A.~~
- ~~J. **Commercial Parking Lots** are prohibited in Downtown A.~~

~~1102.2—Downtown B.~~

- ~~A. **Area.** Downtown B encompasses the area located around Downtown A. For the most part this area is typified by sufficient onsite parking.~~
- ~~B. **New Use or a Change of Use** shall be subject to the parking requirements in Section 1105.~~
- ~~C. **Private Parking, Provided as Free Public Parking,** shall supply parking consistent with Section 1105 with a 25% benefit reduction.~~
- ~~D. **Satellite Parking** serving Downtown B, shall be located within reasonable walking distance of the use it is serving, per Section 1101.4.A and be well signed per Section E below.~~
- ~~E. **Signing of Free Public Parking.** Way finding signs, consistent with municipal signage design, should clearly indicate where free public parking is available. The signs should be placed in key locations such as, but not limited to, at the business, at the street access point, and inside the lot.~~
- ~~F. **Parking Earmarked for Dwelling Units** must be posted as reserved.~~
- ~~G. **Leasing of Parking** existing at the time of the adoption of this Article is allowed.~~
- ~~H. **Commercial Parking Lots** are allowed.~~
- ~~I. **Existing Parking** (in existence at the time of the adoption of this Article) can benefit from the above parking reduction provisions.~~

~~1102.3—Downtown C.~~

- ~~A. **Area.** Downtown C encompasses the area outside Downtown A and B and it is typified by having, in general, adequate parking.~~

- ~~B. New Use or a Change of Use shall be subject to the parking requirements in Section 1105.1.~~
- ~~C. Private Parking, Provided as Free Public Parking, shall supply parking consistent with Section 1105 with a 20% benefit reduction.~~
- ~~D. Satellite Parking serving Downtown C, shall be located within reasonable walking distance of the use it is serving, per Section 1101.4.A and be well signed per Section E below.~~
- ~~E. Signing of Free Public Parking. Way finding signs, consistent with municipal signage design, should clearly indicate where free public parking is available. The signs should be placed in key locations such as, but not limited to, at the business, at the street access point, and inside the lot.~~
- ~~F. Parking Earmarked for Dwelling Units must be posted as reserved.~~
- ~~G. Leasing of Parking existing at the time of the adoption of this Article is allowed.~~
- ~~H. Commercial Parking Lots are allowed.~~
- ~~I. Existing Parking (in existence at the time of the adoption of this Article) can benefit from the above parking reduction provisions.~~

1103 ACCESS AND CIRCULATION

- 1103.1 Interconnection.** Developers shall strive to interconnect adjacent commercial uses unless it is determined by the administrator that it is unsafe, that physical barriers exist, or that it will result in an adverse traffic impact. ~~Developments that provide for shared access to commercial uses shall benefit from a 5% reduction in parking and developments that provide cross access between commercial uses shall benefit 5% reduction in parking. The total maximum combined reduction in parking shall not exceed 7%. The administrator shall determine that the reduction(s) will not result in insufficient parking.~~
- 1103.2 Access.** Each parking lot shall be connected to a street or right-of-way via an accessway meeting Article 9 - Street Design and Construction Standards.
- 1103.3 Walkways.** Safe pedestrian routes shall be provided in off-street parking lots.
- 1103.4 Separation of Street from Parking Spaces.** ~~Accesses~~Pedestrian accesses, walkways, sidewalks and other public rights-of-way shall be protected from vehicular overhang by wheel stops, curbs, or other method approved by the Administrator.

Table 1104 Off-street Parking Standards

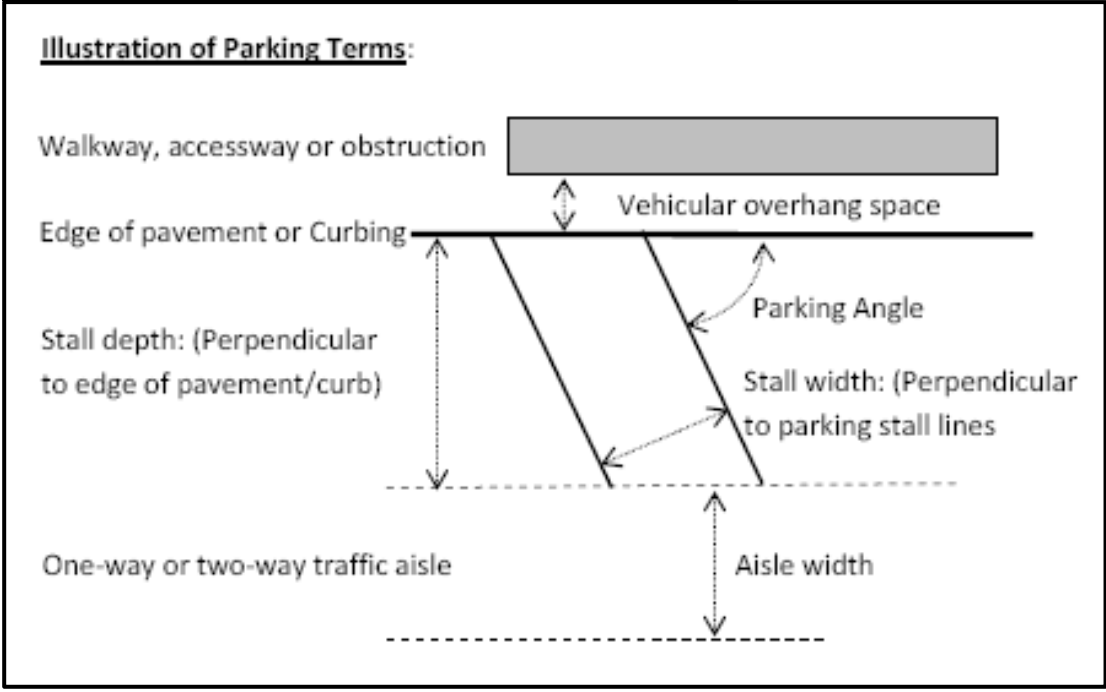
Parking Angle	Stall Width	Stall Depth*	One-Way Aisle Width	Two-Way Aisle Width
0° (parallel)	9.0'	23.0'	12.0'	20.0'
45°	10.0'	18.5'	16.0'	22.0'
60°	10.0'	18.5'	18.0'	22.0'
75°	10.0'	18.5'	18.0'	22.0'
90°	9.0'	18.5'	20.0'	24.0'

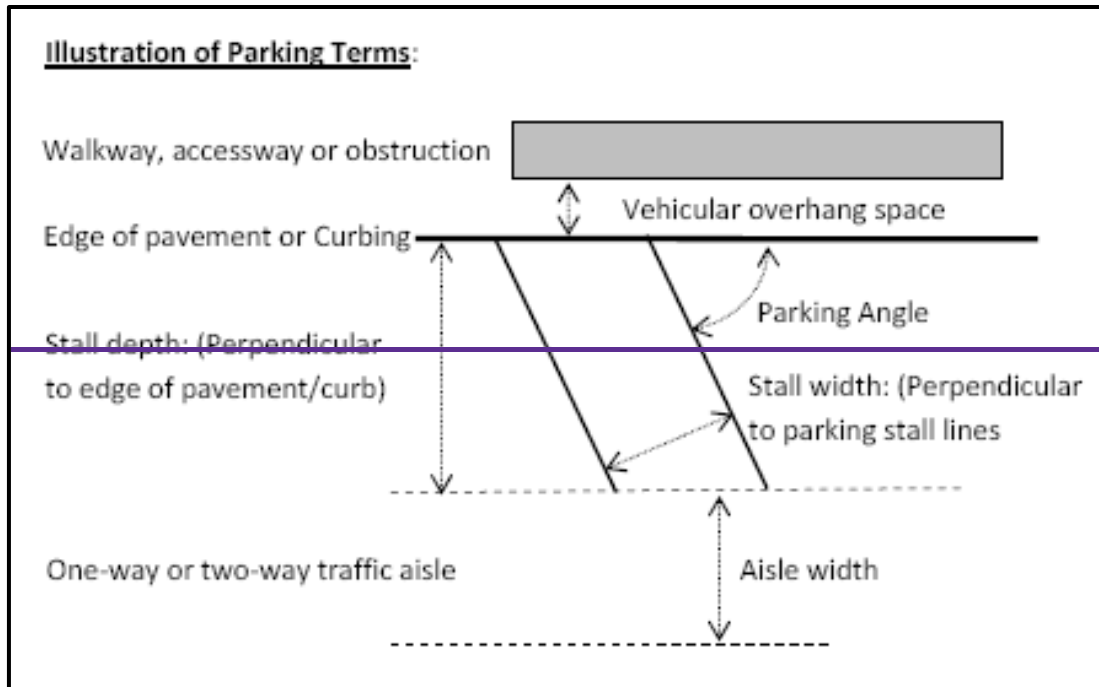
1104 PARKING SPACE DIMENSIONS

Parking shall be designed in conformance with the dimensions presented in adjacent Table 1104 Off-street Parking Standards and the illustration below.

* If a parking lot is designed with a 6-inch curb, then the minimum stall depth may be reduced by 1.5 feet for angled parking and 2 feet for 90° parking, as long as it complies with 1104.4 Separation of Street from Parking Space above.

Table 1104 Off-street Parking Standards				
Parking Angle	Stall Width	Stall Depth*	One-Way Aisle Width	Two-Way Aisle Width
0° (parallel)	9.0'	23.0'	12.0'	20.0'
45°	10.0'	18.5'	16.0'	22.0'
60°	10.0'	18.5'	18.0'	22.0'
75°	10.0'	18.5'	18.0'	22.0'
90°	9.0'	18.5'	20.0'	24.0'
* If a parking lot is designed with a 6-inch curb, then the minimum stall depth may be reduced by 1.5 feet for angled parking and 2 feet for 90° parking, as long as it complies with 1104.4 Separation of Street from Parking Space above.				





1105 SCHEDULE OF OFF-STREET PARKING REQUIREMENTS OUTSIDE OF THE DOWNTOWN ZONE

1105.1 Minimum Amount. The minimum amount of required off-street parking spaces shall be determined in accordance with Table 1105.1 Parking Requirements.:

Table 1105.1 PARKING REQUIREMENTS	
LAND USE	NUMBER OF SPACES
RESIDENTIAL/LODGING	
~~Hotel, Bed and Breakfast, and Motel~~ place of lodging that provide sleeping accommodations and supporting facilities such as restaurants, cocktails lounges, limited recreational facilities (pool and fitness room) and/or retail and service shops, and meeting and banquet rooms able to accommodate a maximum of 200 people.	1.31 spaces/sleeping room, plus parking for staff as determined by the Planning Board0.2 employee spaces/ sleeping room
~~Hotel, Bed and Breakfast, and Motel~~ with meeting space, restaurants, and banquet rooms able to accommodate more than 200 people <u>total between all accessory uses.</u>	1.31 spaces/sleeping room, plus 0.2 employee spaces/ sleeping room, plus 15 spaces/1,000 SF GFA for all <u>space used for accessory uses (e.g. meeting space /banquet/convention space).</u>
~~Business Hotel~~ place of lodging aimed toward the business traveler. These hotels provide sleeping accommodations and other limited facilities, such as a breakfast buffet bar and afternoon beverage bar (no lunch or dinner is server and no meeting facilities are provided). Each unit is a large single room. Business hotels provide very few or none of the supporting facilities provided at hotels; and ~~Motel~~ place of lodging that provide accommodations and often a restaurant. Motels generally offer free on site parking and provide little or no meeting space and few (if any supporting facilities. Exterior corridors accessing rooms immediately adjacent to a parking lot commonly characterize motels.	1 space/room, plus 0.2 employee spaces/ sleeping room
~~Bed & Breakfast and Inn~~	1 space/room, plus 2 spaces
Campsite	1 space/site
Condominiums	2 spaces/dwelling unit <u>outside of the Growth Area. 1 space/unit within the Growth Area</u>
Multi-Family – 3 or more units	1.5 spaces/dwelling <u>outside of the Growth Area. 1 space/unit within the Growth Area</u>
Mobile Home	~~2~~ 1 spaces/dwelling unit
Boarding House <u>or other Co-Living Facility</u>	1 space/ ~~bed~~ room, plus 2 spaces <u>for every four bedrooms</u>
Senior ~~Housing~~ , <u>Housing</u> , Congregate Facility, Nursing Home, and Assisted Living Facility	1.2 spaces/ <u>dwelling unit, and space for staff as determined by the Board</u>
Homeless Shelter	1.5 spaces /1,000 SF GFA plus 2 spaces for staff <u>as determined by the Board</u>

Table 1105.1 continued - INSTITUTIONAL, SOCIAL & PUBLIC SERVICES/FACILITIES	
Day Care	0.205 spaces/student <u>at max capacity, and 1 space for each full-time employee</u>
Elementary and Middle School	0.25-20 spaces/student <u>at max capacity</u>
High School	0.85 space/employee, and 0.4 space per student
Assembly, Theaters, Auditoriums	0.33-25 spaces/seat
Convention Center, Ballrooms, Banquet Center	0.33-25 spaces/seat, plus 1 space per employee
Hospital: Any institution where medical or surgical care and overnight accommodations are provided to non-ambulatory and ambulatory patients, as part of a campus setting. The term hospital includes medical clinics (facilities that provide diagnoses and outpatient care).	2 spaces/1,000SF GFA plus 1 space/employee including visiting staff doctors
COMMERCIAL/INDUSTRIAL USES	
Industrial, manufacturing, warehousing, wholesale	0.83 spaces/employee on maximum shift, plus 1 space per vehicle customarily used in operation of the use or stored on the premises.
Medical/Dental Clinic <u>or Animal Hospital</u>	<u>2.21.5</u> spaces/exam <u>or boarding</u> room plus 1 space/ <u>full-time</u> employee
Automobile repair <u>and gasoline stations</u>	<u>1 space/350 SF or 6 spaces minimum plus parking for staff and vehicle storage when servicing at max capacity</u>
<u>Barber, beauty, nail and tanning shops</u>	<u>1.75 spaces/chair plus 1 space/employee</u>
<u>Animal Hospital</u>	<u>3 spaces/1,000 sq. ft. GFA</u>
Retail Store and <u>Personal or Professional</u> Service Businesses	<u>3.6</u> spaces/1,000 sq. ft. GFA <u>and parking for staff as determined by the Board</u>
Motor Vehicles, ATV, and Boat Sales	2 spaces/employee
Furniture, <u>Large Appliance</u> , and <u>Carpet Other Similar Retail</u> Stores	<u>2.5</u> spaces/ 1,000 sq. ft. GFA
<u>Video Rental Store</u>	<u>2.5 spaces/1,000 sq. ft. GFA or 5 spaces minimum, whatever is greater</u>
Professional Office	<u>3.1</u> spaces/ <u>1,000</u> 500 sq. ft. GFA <u>of actual office space, exclusive of storage or common areas</u>
<u>Convention Center</u>	<u>0.33</u> spaces/seat plus 0.8 space/employee
Bank	<u>5.1</u> spaces/ <u>1,0500</u> sq. ft. GFA
Restaurants, eating/drinking establishments	0.25 spaces/seat, plus 1 space per <u>maximum number of employees on shift</u>
<u>Fast Food restaurant</u>	<u>0.5 space/seat, plus 0.68 spaces/employee</u>

1105.2 Uses Not Cited. If a development does not have a prescribed parking requirement, as listed in Table 1105.1 Parking Requirements above, and it is determined by the Administrator that the development cannot be fairly compared to a use in the above table, then the parking requirement for the development shall be determined, by the Administrator with guidance from the City Planner or designee. The applicant shall provide adequate information by which the proposal can be reviewed, which includes but may not necessarily be limited to the following: 1) types of uses; 2) number of employees; 3) building design capacity; 4) square feet of sales area; 5) parking spaces proposed on site; 6) parking spaces provided elsewhere; and 7) hours of operation.

1105.3 Unit of Measurement. The following measurement units shall be used when determining the required number of parking space.

- A. **Gross Floor Area** of buildings (GFA), as defined.
- B. **Bench Seating:** In calculating bench seating for places of assembly, each 24 inches of benches, pew or other such seating, shall be counted as one seat.
- C. **Stacking spaces:** Each required drive-through waiting or stacking spaces shall be a minimum of 24 feet long and 9 feet wide.
- D. **Fractional Spaces.** When calculations for determining the required number of parking spaced results in a fractional space, any fraction of less than one-half may be disregarded, while a fraction of one-half or more shall be counted as one space.
- E. **Employee Parking.** Parking spaces required for employees shall be based on the maximum number of employees on the premises at any one time. The overlap in shift change is not taken into account.

1105.4 Adjustment and Reduction.

- A. **Parking ~~Deferment~~Reduction.** Where the Administrator finds that the required amount of parking is excessive ~~based on a parking plan provided by the applicant, or there is uncertainty of how much space the use might require,~~ the Administrator may approve a reduction in parking spaces of up to 25%, ~~provided that the land area needed to meet the full requirement is retained. The site plan shall note the area where parking is being deferred with a dotted lot layout. If within a two-year period following issuance of a Certificate of Occupancy the Administrator determines, based on observed usage that the deferred parking is needed, then such parking shall be constructed by the applicant within 12 months of being informed of such request in writing by the Administrator. The Administrator may require the posting of a performance bond or other assurance to cover the estimated construction cost of the deferred parking with a refund or a release in two years if the additional parking is not found to be necessary.~~
- B. **Limits on Excessive Parking.** In order to minimize excessive areas of pavement which depreciate aesthetic standards and contribute to high rates of stormwater runoff, exceeding the minimum parking space requirement by up to 25% shall only be allowed with approval by the Administrator. In granting the additional parking spaces, the Administrator shall determine that such parking is required, based on documented evidence, to accommodate the use on a typical day not a peak period demand.

C. **Overflow Parking.** Any request to exceed the minimum parking space requirements from 25.1% to 38% shall be considered overflow parking and shall comply with the process established in Section B above and shall be constructed in a manner that returns surface water to the ground (~~previous~~^{pervious} surfacing).

D. **Minor Site Review.** The Code Enforcement Officer may waive parking requirements for improvements reviewed under Minor Site Plan Review if it is satisfactorily demonstrated to the CEO by the applicant that there is adequate parking provided for the property without the construction of spaces as required in this article.

~~C. **Shared Parking Reduction.** The Administrator may consider a reduction in the number of parking required for a mixed-use building or when two or more uses share parking because of dissimilar peak time parking demands, as calculated using 1105.4 Shared Parking Reduction Schedule. Parking reduction shall not apply to uses in Downtown A or for mixed-uses that are expressly listed in 1105.1 Parking Requirement Table.~~

~~A reduction in the number of parking spaces is computed by multiplying the minimum amount of parking normally required for each land use by the appropriate percentage as shown in section 1105.4 Shared Parking Reduction Schedule for each of the five time periods shown. The number of parking spaces required is determined by totaling the resulting numbers in each column; the column total that generates the highest number of parking spaces then becomes the parking requirement.~~

Example Two buildings are sharing one parking lot. Building #1 consists of a 2,020 SF of professional office space; 11,000 SF of retail; and a 62-seat restaurant with 6 staff. Building #2 consists of a 280-seat auditorium and a 300-seat church. This project would require 235 parking spaces.

Table 1105.4 Shared Parking Reduction Schedule									
Type of Use	Table 1105.4.A Shared Parking Reduction Schedule - example								
	Type of Use	Total Spaces w/o Reduction	Parking Reduction						
			Weekday		Weekend				
			Daytime (6 am-6 pm)	Evening (6 pm-midnight)	Daytime (6 am-6 pm)	Evening (6 am-midnight)	Nighttime (Midnight-6 am)	Daytime (6 am-6 pm)	Nighttime (Midnight-6 am)
Office/Professional Services	Office/Professional Services	6	100%	10%	10%	5%	5%	100%	5%
			6	0.6	0.6	0.5	0.5		
Industrial	Industrial	0	100%	10%	10%	5%	5%	100%	5%
			0	0	0	0	0		
Food Sales and Service/Restaurant	Food Sales and Service/Restaurant	22	50%	100%	100%	100%	10%	100%	10%
			11	22	22	22	2.2		
Retail	Retail	40	60%	90%	100%	70%	5%	100%	5%
			24	36	40	28	2		
Hotel, Motel, Inn	Hotel, Motel, Inn	0	75%	100%	75%	100%	75%	100%	75%
Indoor/Legitimate Theater, Community Center, Meeting Center	Indoor/Legitimate Theater, Community Center, Meeting Center	92	40%	100%	80%	100%	10%	100%	10%
Indoor/Legitimate Theater, Community Center, Meeting Center	Indoor/Legitimate Theater, Community Center, Meeting Center	36.8	36.8	92	73.6	92	9.2	100%	10%
		0	50%	100%	100%	100%	10%		
Multi-family dwellings	Multi-family dwellings	0	50%	100%	100%	100%	100%	100%	10%
Places of Worship	Places of Worship	99	10%	10%	100%	5%	5%	100%	100%
Other	Other	0	100%	100%	100%	100%	100%	100%	5%
TOTAL	TOTAL	259	87.7	161	235.2	147	19	100%	100%
Other			100%	100%	100%	100%	100%	100%	100%
TOTAL									

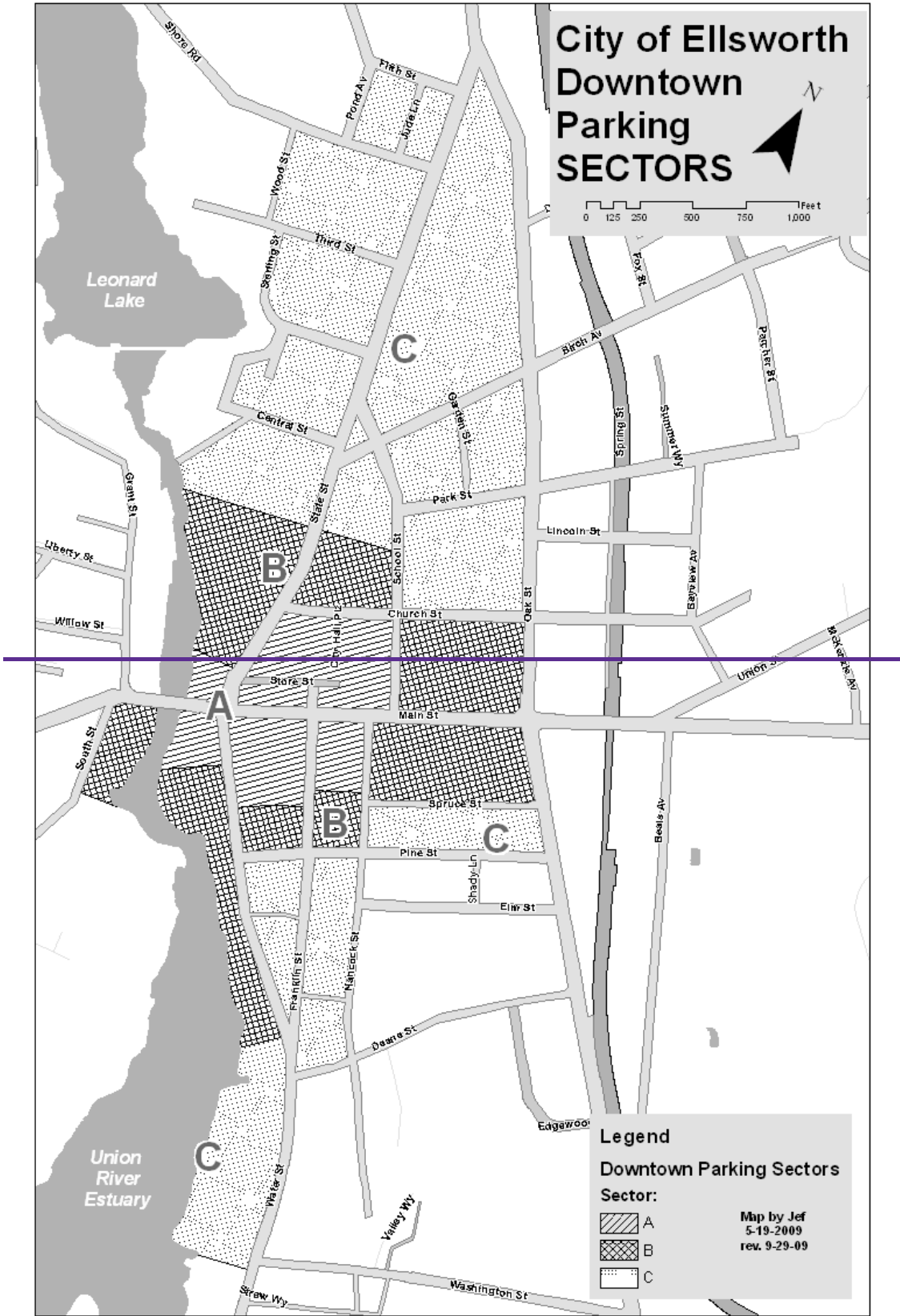
Table 1105.4.A Shared Parking Reduction Schedule—example						
Type of Use	Total Required Spaces w/o Reduction	Parking Reduction				
		Weekday		Weekend		
		Daytime (6 am–6 pm)	Evening (6 pm–midnight)	Daytime (6 am–6 pm)	Evening (6 am–midnight)	Nighttime (Midnight–6 am)
Office/Professional Services	6	100%	10%	10%	5%	5%
		6	0.6	0.6	0.5	0.5
Industrial	0	100%	10%	10%	5%	5%
		0	0	0	0	0
Food Sales and Service/Restaurant	22	50%	100%	100%	100%	10%
		11	22	22	22	2.2
Retail	40	60%	90%	100%	70%	5%
		24	36	40	28	2
Hotel, Motel, Inn	0	75%	100%	75%	100%	75%
		0	0	0	0	0
Indoor/Legit Theater, Com Rec.	92	40%	100%	80%	100%	10%
		36.8	92	73.6	92	9.2
Meeting Center	0	50%	100%	100%	100%	10%
		0	0	0	0	0
Multi-family dwellings	0	50%	100%	100%	100%	100%
		0	0	0	0	0
Places of Worship	99	10%	10%	100%	5%	5%
		9.9	9.9	99	4.95	4.95
Other	0	100%	100%	100%	100%	100%
		0	0	0	0	0
TOTAL	259	87.7	161	235.2	147	19

1106 LOADING SPACE

Loading facilities shall be located entirely on the same lot as the development it serves with the exception of the Downtown Area where there are, in the judgment of the Administrator, practical difficulties in satisfying the requirement for loading. Loading facilities or truck staging area shall not be allowed in the front yard or side yard. In cases where such facilities must be placed in the front yard or side yard, the use of a decorative concrete block screen wall, planting or mature plants and other such landscaping elements shall be required for screening.

1107 Affordable Housing Parking Bonus

See Chapter 56, Article 8, Section 826.3 for Affordable Housing parking bonuses. The off-street parking requirements will allow for two parking spaces for every three dwelling units within the development.



Part 16. The following Chapters of the City Code are proposed to be repealed in their entirety:

1. Chapter 20 of the City Code (Miscellaneous).
2. Chapter 26 of the City Code (Plumbing and Septic System Permit Fees).
3. Chapter 28 of the City Code (Subdivision Ordinance—Relocated to Chapter 56, Article 7).
4. Chapter 56, Article 13 (Board of Appeals) of the City Code.
5. Chapter 65 of the City Code (Overnight Mooring and Anchorage Control).
6. Chapter 67 of the City Code (Unified Building Ordinance).