

Part 15. Chapter 56 of the City Code (Unified Development Ordinance) is proposed to be amended as follows:

- (1) by adding the words shown in underline and by striking the words shown in strikethrough within Article 1 (Administration), Article 3 (Zoning Districts), Article 4 (Shoreland Zoning), Article 8 (Performance Standards), Article 9 (Street Design and Construction Standards), Article 10 (Stormwater), and Article 11 (Parking), as shown on the following pages;**
- (2) by adopting a new Article 2 (Building Permits) in its entirety, as shown on the following pages;**
- (3) by repealing and replacing Article 6 (Site Plan Development Review) with proposed new Article 6 (Site Plan Development Review), as shown on the following pages; and**
- (4) by adopting Article 7 (Subdivision Review) in its entirety, as shown on the following pages.**

Code of Ordinances, City of Ellsworth

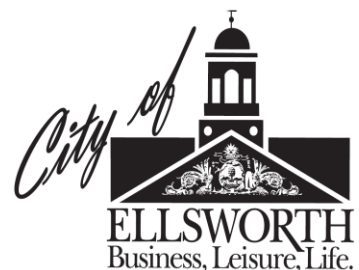
CHAPTER 56

UNIFIED DEVELOPMENT ORDINANCE

A true copy, attest:

Suzanne McLean
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, the 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 409.28 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, the Planning Board, and the City Planner 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 510 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. **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 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 302 (Special Fee).

4. **Request for Additional Studies.** In addition to or in lieu of securing a third-party professional review, the Planning Board may require the applicant to undertake one or more 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.