

**How To Prepare A
LAND USE ORDINANCE**

**A Manual for Local Officials
Maine State Planning Office
August 2011
Prepared With Assistance from Rothe Associates**

HOW TO PREPARE A LAND USE ORDINANCE

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
Purpose Of This Manual	1
How This Manual Is Organized.....	1
How To Use This Manual.....	2
1. GROWTH MANAGEMENT OVERVIEW	
What Is Growth Management.....	4
Maine’s Comprehensive Planning And Land Use Regulation Act	4
2. BEFORE YOU BEGIN	
What Does The Comprehensive Plan Say?	8
What About Existing Ordinances?	9
Who Is Going To Do The Work?	9
Where Do We Begin?	10
Building Public Support	10
3. WHAT IS A LAND USE ORDINANCE?	
Overview.....	12
Types Of Ordinances	13
Form Of The Ordinance.....	13
Map Of Districts	15
4. LEGAL CONSIDERATIONS	
Constitutional Issues	16
Standards/Delegation Of Legislative Authority	16
Reasonableness	16
State Laws	17
Home Rule.....	17
Home Rule Limitations.....	17
Zoning Ordinances.....	18
Zoning Adjustment	20
Impact Fees.....	21
Application Fees	22
Moratoria	22
Community Living Arrangements.....	23
Regulation Of Manufactured Housing.....	23
Source Water Protection Area	23

State Policy Relating To Commercial Landfill Facilities Moratoria.....	24
Rate Of Growth Ordinances	24
Shoreland Zoning Act.....	24
Site Plan Review.....	25
Subdivision Law	25
Minimum Lot Size Law.....	26
Other	26

5. ORDINANCE PREPARATION STEPS

Overview.....	28
Recommended Steps For Preparing A Land Use Ordinance.....	28
1. Review The Comprehensive Plan.....	28
2. Prepare An Outline	28
3. Choose Districts.....	29
4. Determine Land Uses For Each District.....	29
5. Determine Dimensional Requirements.....	30
6. Choose Growth Management Provisions	31
7. Develop Performance Standards.....	34
8. Develop Administrative Provisions.....	35
9. Add Site Plan Review Procedures and Standards.....	36
10. Add Definitions	36
11. Map districts	36

6. ORDINANCE ENACTMENT PROCEDURES

Overview.....	37
Public Input.....	37
Statutory Enactment Procedures.....	38
Availability	39
Revision Of Ordinances.....	39

7. TECHNIQUES, TRENDS AND INNOVATIONS

Overview.....	40
Access Management	41
Affordable Housing – Regulatory Incentives	42
Airport Approach Zone.....	43
Aquifer Protection Zone	44
Cluster Development	46
Conditional Or Contract Zoning.....	47
Density Bonus.....	49
Density Transfer Charge.....	50
Form Based Zoning	51
Good Neighbor Policies.....	53
Harbor Ordinance	55
Home Occupation Standards	56
Impact Fees.....	57

Large Scale Development Standards	59
Minimum Lot Size Ordinance	61
Mixed Use Development	62
Moratorium	63
Open Space Subdivision Requirements	64
Rural Growth Cap	66
Stormwater Management	67
Transfer Of Development Rights	69
Wireless Telecommunication Facilities	71

APPENDIX A. SUGGESTED LAND USE ORDINANCE FORMAT

Article 1 General.....	72
Article 2 Land Use District Requirements.....	75
Article 3 Administration, Enforcement And Penalties	75
Article 4 Site Plan Review.....	79
Article 5 Performance Standards	80
Article 6 Shoreland Zoning	83
Article 7 Subdivision Review	83
Article 8 Flood Plain Management.....	83
Article 9 Non-Conformance	83
Article 10 Appeals	88
Article 11 Definitions	91

APPENDIX B. LAND USE DISTRICTS – SUGGESTED FORMAT

1. Establishment Of Districts.....	92
2. Rules Governing District Boundaries	92
3. Land Use Requirements.....	93
4. District Purposes	93
5. District Requirements	93
Land Use Matrix, Table B-1	94
6. Dimensional Requirements, Table B-2.....	98

APPENDIX C. ENCOURAGING GROWTH IN GROWTH AREAS

Overview.....	101
Example 1: Zero Lot Line Development	102
Example 2: Accessory Apartments.....	103
Example 3: Density Bonus For Developments On Central Water Or Sewer	104
Example 4: Density Bonus For Affordable Housing.....	104
Example 5: Large Scale Development Standards.....	106

APPENDIX D. KEEPING RURAL AREAS RURAL

Overview.....	119
Example 1: Rural Area Growth Cap.....	120
Example 2: Residential Growth Management.....	125

Example 3: Maximum Lot Size And Frontage Requirements..... 128
Example 4: Requirements For Open Space Subdivisions 129
Example 5: Rural District, Large Lot Size, Restricted Uses 142

APPENDIX E. DEFINITIONS

1. Construction Of Language 146
2. Definitions..... 146

INTRODUCTION

Purpose of this Manual

This manual is for local officials, planning committees and others in small to mid-size communities who are interested in preparing a local ordinance to implement their comprehensive plans. It contains the basic information needed to draft a land use ordinance, which legally regulates how people can use their land. How much regulation to put in place, and what to regulate, are individual decisions that have to be made in each municipality. This manual hopes to inform those decisions.

This manual also contains practical suggestions for encouraging future growth in growth areas, and discouraging incompatible development in rural areas. Maine's Growth Management Act, Title 30-A M.R.S.A. Sections 4312 to 4350, requires that if a comprehensive plan is prepared, it must contain provisions for growth and rural areas (see Section 4326, subsection 3-A for exceptions). This manual assumes that a comprehensive plan has already been developed. See the Comprehensive Planning Manual prepared by the State Planning Office (SPO) for a discussion on the designation of growth areas and rural areas and for a general discussion on growth management techniques.

This manual does not contain any State mandates or minimum standards that must be included in the local ordinance. It does, however, contain options that should be considered in developing a land use ordinance. Specific numerical standards appearing in the appendices have been included for purposes of illustration. They are not State minimums.

This manual does not contain a single model ordinance because no single model, or set of models, could address the diverse needs and conditions of communities throughout Maine. Rather, it contains some suggested ordinance language and offers you a number of options and possibilities from which to choose, in order to help you prepare a land use ordinance that is consistent with your community's comprehensive plan.

How This Manual is Organized

This manual contains seven chapters and a series of appendices. The chapters provide the background information you need to structure a good land use ordinance. The appendices allow you to select language appropriate to your needs to incorporate into your community's land use ordinance.

Chapter 1, Growth Management Overview, contains a brief description of Maine's Growth Management Act, Title 30-A M.R.S.A. Sections 4312 to 4350. It includes a summary of requirements for local land use ordinances.

Chapter 2, Before You Begin, includes discussion of a number of issues related to ordinance preparation such as building public support and relying on models and ordinances from other communities.

Chapter 3, What is a Land Use Ordinance?, describes the most common types of land use ordinances in Maine and the laws that govern them.

Chapter 4, Legal Considerations, includes a discussion of basic constitutional principles and legal requirements that need to be considered when drafting an ordinance.

Chapter 5, Ordinance Preparation Steps, includes an explanation of the steps you need to take to prepare an ordinance.

Chapter 6, Ordinance Enactment Procedures, describes the basic legal requirements for enacting an ordinance.

Chapter 7, Techniques, Trends and Innovations, includes a description of growth management techniques used in Maine and elsewhere. Some examples are included in the appendices. In other cases, the reader is referred to other sources for more information.

Appendices. The appendices contain a number of options to consider for inclusion in your ordinance.

Appendix A – Suggested Ordinance Format is a guide that can be used as a basic framework for drafting your land use ordinance. Much of the administrative language you will need for your ordinance (such as purpose, administrative procedures, non-conforming uses, and appeals) can be found in Appendix A.

Appendix B – Land Use Districts – Suggested Format, contains a suggested format that you can consider in drafting basic requirements for land use districts.

Appendix C – Encouraging Growth in Growth Areas, contains examples of specific ordinance provisions that can be considered to encourage and manage growth in growth areas, including provisions to encourage affordable housing and manage large scale developments.

Appendix D – Keeping Rural Areas Rural, contains examples of specific ordinance provisions that can be considered to limit incompatible growth in rural areas, including rural area growth caps and provisions for requiring open space subdivisions.

Appendix E – Definitions, contains suggested definitions for inclusion in a local land use ordinance.

How to Use This Manual

This manual is organized so you can find the information you need easily. Each chapter stands alone and can be read separately. If you are preparing a new ordinance, follow these basic steps:

STEP 1: Read Chapters 1 through 5 to review some of the issues and opportunities that should be considered in drafting your ordinance.

STEP 2: Study, in Chapter 5, the steps for developing a complete ordinance. You will have defined your “growth” and “rural” areas in your comprehensive plan, but Chapter 6 provides you with a checklist of other items, such as what land uses, dimensional requirements and growth control provisions, to incorporate into your ordinance.

The decisions you make regarding the content of the ordinance and the techniques you choose for managing growth are extremely important. All of the major issues raised in Chapters 1 through 5 should be discussed at length by your planning committee. In addition, public work sessions, or other means of soliciting public input, will be necessary to ensure that decisions reflect community consensus.

STEP 3: Use Chapter 7 and the appendices to learn about some of the choices available to you in drafting your ordinance. The examples in the appendices are designed to work in different circumstances. Study the options, consider options not described here, and then work to reach consensus on what’s best for your community.

STEP 4: Begin to structure your ordinance based on the format described in Appendix A. Appendix A guides you through the actual drafting process so you end up with a complete ordinance.

Ordinances are complex, legal documents that must be carefully crafted and properly adopted to withstand challenge (see Chapter 6 for a summary of statutory adoption requirements). Your municipal planner, regional planning council or planning consultant can be of great assistance in drafting a land use ordinance. The Maine Municipal Association may also be able to provide advice and direction as needed. At a minimum, you should review your draft ordinance to ensure that it:

- Complies with relevant State laws and rules;
- Does not conflict with other local ordinances; and
- Does not contain internal conflicts.

If you have questions about this manual, or how the information can be used, please contact the Maine State Planning Office, Land Use Program, at 624-6220.

1. GROWTH MANAGEMENT OVERVIEW

What is Growth Management?

Growth management is a series of local actions aimed at affecting the type, amount, location, quality and/or rate of future development. Collectively, these actions are sometimes referred to as a growth management program. A growth management program includes the goals, policies and strategies adopted by the community, as articulated in an up-to-date comprehensive plan, as well as one or more land use ordinances prepared pursuant to and consistent with the comprehensive plan. A local growth management program can encourage or discourage growth and economic development. It can, for example, promote a “no growth” policy in some areas of the community, and encourage growth in other areas.

Uncontrolled development is often the most expensive form of development in terms of public costs, natural resources consumption, and personal costs. Uncontrolled development can destroy the very character that makes communities attractive places in which to live. The municipality’s growth management program is a tool that can be used to manage future growth, minimize the negative impacts that are associated with unplanned growth and development, and conserve areas that are valued for their natural resources.

This manual focuses on how to prepare a complete land use ordinance. It should be noted that a successful growth management program often involves more than the preparation of land use ordinances. Successful growth management may depend on non-regulatory growth management techniques such as, but not limited to, a capital investment plan, land acquisition, the purchase of development rights, and the use of voluntary programs such as Maine’s tree growth tax law. A municipality’s land use ordinances, combined with non-regulatory techniques such as a capital investment plan, must form a coherent and coordinated strategy for managing growth.

Maine’s Growth Management Act

Maine’s Growth Management Act (Title 30-A MRSA Sections 4312 through 4350) was first enacted in 1988. There have been many changes over the years, but the basic provisions have remained the same, as summarized in the paragraphs below.

Comprehensive planning is voluntary. The preparation of a comprehensive plan is optional. However, if a community decides to prepare a comprehensive plan, it should follow the statutory requirements for preparing a plan found in Title 30-A MRSA Sections 4321 through 4326.

- If a municipality chooses to prepare a comprehensive plan, and if it receives a planning grant from the State Planning Office (SPO) for preparation of the plan, the municipality must submit the plan to SPO for review. Based on its review, SPO prepares written findings as to whether or not it finds that the plan is consistent with the Act.

- If a municipality prepares a plan without financial support from SPO, it may submit the plan to SPO for review. Based on its review, SPO prepares written findings as to whether or not it finds that the plan is consistent with the Act.
- Certification by SPO that the plan is consistent with the law is valid for a period of 12 years.

Preparation of a town-wide land use ordinance is voluntary. Each municipality is required to adopt a shoreland zoning ordinance, and adoption of a flood hazard ordinance is a prerequisite for participation in the national flood insurance program. Municipalities are not required to adopt a town-wide land use ordinance. However, if a municipality chooses to enact a town-wide land use ordinance that contains different standards for different parts of town, the ordinance must be pursuant to and consistent with a comprehensive plan adopted by the municipal legislative body (Title 30-A MRSA Section 4352, subsection 2).

Portions of pre-existing, inconsistent ordinances become invalid. According to the requirements of Title 30-A MRSA Section 4314, after January 1, 2003, any portion of a municipal rate of growth, zoning or impact fee ordinance that is not consistent with a comprehensive plan adopted under the provisions of the law is no longer in effect 24 months after adoption of the plan. If a land use ordinance acts like a zoning ordinance by requiring different development standards in different parts of town, then the land use ordinance is also subject to these provisions. Section 4314 contains a number of exceptions to this requirement, including a grace period of up to four years if the municipality is under contract to SPO to prepare a comprehensive plan.

Required elements of a land use ordinance. If a municipality chooses to prepare a land use ordinance, Title 30-A MRSA Section 4326, subsection 3-A is specific about the types of provisions that must be included in the comprehensive plan and the land use ordinance. Each municipality is required to:

- A. **Growth and rural areas** - identify growth and rural areas as defined in the law. [For the exception to this requirement, see the specific wording of the statute.]

Within growth areas, each municipality is required to:

- Establish development standards;
- Establish timely permitting standards;
- Ensure that needed public services are available;
- Prevent inappropriate development in natural hazard areas, including flood plains and areas of high erosion; and
- Direct a minimum of 75% of its dollars for municipal growth-related capital investments made during the planning period.

Within rural areas, each municipality is required to adopt land use policies and ordinances to discourage incompatible development. The statute explains that “These policies and ordinances may include, without limitation, density limits, cluster or special zoning, acquisition of land or development rights, transfer of development rights pursuant to Section 4328 and performance standards.” The law also states that the municipality...”should also identify which rural areas qualify as critical rural areas as defined in this chapter. Critical rural areas must receive priority

consideration for proactive strategies designed to enhance rural industries, manage wildlife and fisheries habitat and preserve sensitive natural areas.”

- B. **Capital investment plan** - prepare a capital investment plan. This requirement is not directly related to the preparation of a land use ordinance.
- C. **Water quality** - protect, maintain and, when warranted, improve the water quality of each water body and ensure that the water body will be protected from long-term increases in phosphorus from development in great pond watersheds.
- D. **Protection of critical resources** - ensure that municipal land use policies and ordinances are consistent with applicable State law regarding critical resources. The local ordinance may be more stringent than applicable State law.
- E. **Access to coastal waters** - ensure the preservation of access to coastal waters necessary for commercial fishing, commercial mooring, docking and related parking facilities. Municipalities may identify and designate one or more critical waterfront areas and implement policies to ensure protection of those areas or otherwise discourage new development that is incompatible with uses related to the marine resources industry.
- F. **Agricultural and forest resources** – discourage new development that is incompatible with uses related to the agricultural and forest industries.
- G. **Affordable housing** – encourage the siting and construction of affordable housing and comply with the requirements of Section 4358 pertaining to individual mobile homes and mobile home park siting and design requirements. The law sets a goal of having 10% of new residential development meet the definition of affordable housing.

Municipalities are encouraged to seek creative approaches to assist in the development of affordable housing including, but not limited to, cluster housing, reduced minimum lot and frontage sizes, increased residential densities and use of municipally owned land. Your comprehensive plan should provide guidance on how best to promote affordable housing. Alternatives that can be considered if they are not already in the plan include:

- A density bonus when a developer agrees to provide affordable housing (see Appendix C for an example);
 - A provision in the ordinance for an accessory apartment (see Appendix C for an example);
 - Smaller lot size and frontage requirements in one or more growth districts (see Appendix B for an example).
- H. **Historical and archaeological resources** – ensure that the value of historical and archaeological resources are recognized and that protections are afforded to those resources that merit it.

- I. **Outdoor recreation opportunities** – ensure the availability of and access to traditional outdoor recreation opportunities including, without limitation, hunting, boating, fishing and hiking, and the creation of greenbelts, public parks, trails and conservation easements. The law states that each municipality “...shall identify and encourage the protection of undeveloped shoreland and other areas identified in the local planning process as meriting that protection.”

- J. **Great ponds management** – develop management goals for great ponds pertaining to the type of shoreline character, intensity of surface water use, protection of resources of state significance and type of access appropriate for the intensity of use of great ponds within the municipality’s jurisdiction.

2. BEFORE YOU BEGIN

Preparing a land use ordinance is a complex undertaking. It takes a lot of hard work, a lot of thoughtful deliberation by the committee charged with preparing the ordinance, and an outreach effort to keep the public informed of your work and to get their input throughout the process. The following paragraphs contain a summary of some of things you should consider prior to drafting a land use ordinance.

What Does the Comprehensive Plan Say?

The comprehensive plan is the basic foundation on which to build your land use ordinance. Title 30-A MRSA Section 4352 states that if a land use ordinance contains different standards for different parts of town, the ordinance must be pursuant to and consistent with a comprehensive plan adopted by the municipality's legislative body. This manual assumes that your community prepared and adopted a comprehensive plan that the Maine State Planning Office (SPO) has found to be consistent with Maine's Comprehensive Planning and Land Use Regulation Act (Title 30-A MRSA Sections 4312 through 4350). If that is not the case, then one or more of the following may apply:

- **No comprehensive plan.** If you do not have a comprehensive plan, your community can adopt certain types of ordinances including a shoreland zoning ordinance, a flood hazard ordinance, a subdivision ordinance, a minimum lot size ordinance (provided that the same standards are applied town-wide), and a site plan review ordinance. However, your community can legally adopt a land use ordinance that meets the definition of a zoning ordinance in Title 30-A MRSA Section 4352 only if it is pursuant to and consistent with an adopted comprehensive plan. If you do not have a comprehensive plan, you should first take the step of preparing one before you prepare a land use ordinance with zoning provisions in it.
- **Comprehensive plan with findings of inconsistency.** If your community prepared a comprehensive plan and submitted it to SPO for review, and if SPO's review found that the plan contained one or more inconsistencies related to land use, it is important that you work with SPO to resolve these findings. You can begin work on the land use ordinance, as long as you realize you may have to change the plan and the ordinance to address SPO's findings.
- **Comprehensive plan not completed, or being reviewed by SPO.** You can start work on a land use ordinance prior to completion and municipal adoption of the comprehensive plan, as long as you realize you may have to make changes to the ordinance to address changes in the plan.

Taken as a whole, the comprehensive plan provides a vision of the community's future. A good land use ordinance can help a community achieve its vision. For example, the comprehensive plan may call for the expansion of an existing village, or the creation of new one. The plan may or may not address lot size and frontage requirements, and it may contain a list of the types of uses to allow in the village. In general, however, it will not address all the potential uses and regulatory details that need to be considered to make the vision a reality. It is the job of the people drafting the ordinance to address those details, and to ensure that the details of the ordinance are consistent with the vision.

One way to make sure you keep track of what your comprehensive says relative to land use is make a list of all the strategies that need to be addressed in the ordinance. You can then consult the checklist as you proceed with different sections of the ordinance.

What about Existing Ordinances?

Your community may already have a zoning ordinance, a site plan review ordinance and a subdivision ordinance, to name a few, or a single land use ordinance that integrates some combination of these and possibly shoreland zoning and flood hazard management requirements. The task of preparing amendments to existing ordinances may be more straight-forward than preparing a new ordinance from scratch, but there are several issues that should be considered:

- Do existing ordinances have deficiencies that need to be addressed, such as poor administrative and enforcement provisions, inadequate definitions, or an illegible map?
- Do you want to integrate all land use ordinances into a single ordinance, or keep them separate?
- What is the time frame for preparing amendments?
- Do you want to limit your task at this time to adding provisions to implement the comprehensive plan, and tackle other issues at some later date?

Who is going to do the Work?

Writing an ordinance and reviewing its provisions can be very time-consuming and tedious. Completing the task within a reasonable period of time usually requires that one or two experienced people prepare drafts of the various sections, which are then reviewed by the planning board, land use committee or other entity. Ordinance drafting can be undertaken by one or a combination of the following:

- A staff person from the regional council or regional planning commission;
- A town planner or employee;
- An experienced member of the planning board;
- A resident;
- A consultant;
- A municipal attorney.

If the community hires someone to do the work, it will have to appropriate funds and/or apply for an implementation grant from the Maine State Planning Office.

In a small community, the municipal planning board may be the logical entity to oversee preparation of the ordinance. However, the municipal officers may want to create a broader committee composed of one or more municipal officers, other town officials, the planning board, and/or interested members of the public. The board or committee charged with the responsibility of developing the ordinance should be as broadly representative of the public as possible. The municipal officers should formally assign responsibility for preparation of the ordinance so it is clear that the effort is being undertaken on behalf of the municipality.

Where do we Begin?

Ordinances are seldom written in a vacuum. One approach is to gather copies of ordinances from similarly situated communities and modify those ordinances to meet local needs or take provisions from two or more ordinances and combine them as needed to make a local ordinance. It is tempting to use another community's ordinance as a starting point for your own, especially if you don't have funds to hire someone to help you with the work. However, there are a number of pitfalls to this approach:

- Mistakes, conflicts, outmoded or unworkable provisions are incorporated into the new ordinance, if for no other reason than the fact that no one took the time to conduct a careful review and question each provision of the ordinance. For example, many comprehensive plans encourage village scale development, but some ordinances contain lot size requirements that prohibit village type growth.
- You can end up with provisions that you don't need. For example, a small community located on minor roads in a rural part of the State is unlikely to need standards for trucking terminals and shopping centers.
- You may overlook or be unaware of regulatory techniques that would benefit your community, but which were not in the local ordinance you modified for your community.
- When you combine parts of different ordinances, you increase the chances that your ordinance will contain internal conflicts.

This manual contains the building blocks you need to prepare a complete ordinance. It doesn't contain a "fill-in-the-blanks" model because no single model could address the tremendous variation in local conditions that exist throughout Maine. It will help you get started. It is designed to help you think about the decisions that you should make as you prepare the ordinance. You can still add provisions that you like from other ordinances.

If you decide that modifying another community's ordinance is the best course of action for your community, this manual can still be helpful in bringing things to your attention that you might not have otherwise considered. It may also contain some helpful provisions that may be missing in the ordinance that you use as a starting point.

Building Public Support

One of the challenges of writing a land use ordinance is getting public involvement in the process. You can invite people to attend your meetings through notices and announcements, but few people will be interested in attending and listening to or commenting on your deliberations. There is no guarantee of public response to any one approach to obtaining public input. In general, though, the more avenues you use to reach the public, the greater likelihood you have of raising public awareness and getting public feedback. Virtually all of the approaches listed below require time and effort beyond that which is needed to prepare the ordinance.

Suggestions for getting public input are listed below. Many of them are the same ones you may have used to gather public input in the preparation of the comprehensive plan:

- Write articles for the local paper - keep them short and to the point;
- Keep an up-to-date, 3-ring binder on display at the town office – include a one-page explanation on the cover of what it is;
- Hold a public workshop on the land use districts, using the matrix found in Appendix B (most people will be interested in what’s allowed in various districts; they may have less interest in some of the administrative provisions);
- Talk to various groups in town; keep it short – focus on the districts and perhaps one or two provisions that may be controversial, such as a rural growth cap (if that’s being considered);
- Hold a public supper, again focusing on just a few topics such as the land use districts;
- Prepare a brief report for municipal mailings such as the tax bill or notice of a special town meeting; and
- Delete from the ordinance and/or postpone a vote on the one or two items which, if left in the ordinance, could lead to defeat of the ordinance. For example, a rural growth cap or a large increase in the rural area lot size requirement may bring people to your meetings, but may also erode public support for your work. You don’t have to vote on everything at once. If there is a concern that one or more unpopular provisions may result in defeat of the proposed ordinance, you might consider voting separately on the controversial item, or waiting for another day to bring it to a vote.

Statutory Authority

The plan must include a summary of the public participation process used by the planning committee in developing the plan pursuant to 30-A MRSA §4324. The summary must indicate how information gathered during the public process was used to guide the plan’s vision statement, analyses, policies and strategies. (Comprehensive Planning Review Criteria Rule 07 105 Chapter 208): <http://www.maine.gov/spo/landuse/docs/compplanning/spocriteriarule.pdf>

3. WHAT IS A LAND USE ORDINANCE?

Overview

A land use ordinance is a set of locally adopted regulations which prescribe the land uses, development densities, building setbacks, lot sizes, street frontages, etc., that are allowed or prohibited in different designated districts or zones. It may also include provisions for site plan review and other requirements aimed at controlling the quality of development and minimizing its environmental impact. While the terms “land use ordinance” and “zoning ordinance” are often used interchangeably, the term “land use ordinance” is used throughout this manual, as it contains more than zoning provisions. For example, some communities have included their local shoreland zoning, subdivision and floodplain management ordinances in a single land use ordinance. A land use ordinance will have a significant impact on how land is developed.

A land use ordinance implements a comprehensive plan prepared in conformance with the State’s Comprehensive Planning and Land Use Regulation Act. The basic provisions of the ordinance must be linked to the policies and implementation strategies contained in the plan. You should review carefully the contents of your community’s comprehensive plan prior to drafting the land use ordinance. A good comprehensive plan documents the need for a particular provision in a land use ordinance such as the density and the type of uses that should be permitted in different districts. Good documentation in the plan may help the municipality successfully defend the provisions of the ordinance.

In the past, land use ordinances have been used simply to separate incompatible land uses and to establish dimensional requirements. The problem with this conventional approach is that it results in land being developed in a grid or “cookie cutter” pattern with little regard for the topography of the land or the preservation of open spaces, wetlands and flood plain areas. Also, it does not allow historic patterns of growth like traditional New England Villages to continue. Under the provisions of most land use ordinances, there is little room for creativity or innovation.

More recently, communities have adopted land use ordinances that contain environmental standards and flexible techniques such as open space subdivision requirements, that encourage innovation and a better, overall pattern of development. For example, some of these ordinances provide development incentives by allowing smaller lot sizes, setbacks and road frontages in return for public benefits such as the preservation of open space.

A complete land use ordinance includes a text that specifies what requirements apply to each proposed use, and a map that shows the locations of the various land use districts. To withstand court challenge, a land use ordinance should be constructed in the correct manner and should contain a number of basic provisions. The following paragraphs suggest what you should include when you prepare a land use ordinance. Some suggested language is contained in the appendices.

Types of Ordinances

A land use ordinance can be a town-wide zoning ordinance, but it can also be a more specialized type of ordinance or a combination of both. Municipalities in Maine have adopted many different types of ordinances, all or any combination of which can be considered a land use ordinance. The following is a partial list. All of the ordinances listed below typically contain administrative and enforcement provisions, standards and definitions, and may involve far more provisions than indicated by this brief overview.

- Flood hazard ordinance (required for participation in the national flood insurance program) – regulates building and sets standards in flood plain areas.
- Impact fee ordinance – establishes fees for certain impacts created by development.
- Minimum lot size ordinance – establishes a town-wide minimum lot size, usually for areas not served by a centralized sewer system.
- Moratorium – temporarily prohibits development or some types of development.
- Sewer ordinance – establishes requirements for extending sewer lines to new or existing developments.
- Shoreland zoning (mandated by State law) – sets forth uses and applies environmental criteria within 250 feet of tidal water, most lakes, and rivers and wetlands as described in the law, and 75 feet of certain streams as described in the law.
- Site plan review ordinance – regulates the quality of development through standards and a review process, but doesn't stipulate where development should or should not go.
- Subdivision ordinance – regulates the division of a parcel of land or structure into three or more lots or dwelling units as defined in the subdivision law.
- Water supply ordinance – protects water supplies and establishes requirements for extending water lines to new or existing developments.
- Zoning – divides the municipality into districts in conformance with the comprehensive plan, applies different standards to each district, and generally contains performance standards aimed at regulating the quality of development.

Form of the Ordinance

Although a “one-liner” (for example, “No building may be constructed without a permit”) may seem like an effective, simple-to-understand kind of ordinance, it would not contain enough detail to make it easy to administer or enforce. In preparing a land use ordinance, the following checklist can be used to ensure that the ordinance has all the basic provisions:

A general section including provisions for:

- Purpose;
- Statutory authority;
- Interpretation of the ordinance;
- Severability clause explaining what happens to the rest of the ordinance if part is held invalid by a court;
- Inconsistent or conflicting ordinance clause;
- Amendments;
- Effective date.

Administrative section:

- Designation of person or board to make decisions on applications;
- Permit review and approval procedures;
- Fees;
- Designation of who enforces the ordinance;
- Penalties.

Non-conforming uses section for pre-existing uses that don't comply with the ordinance including definition, continuation, and termination clauses.

Establishment of land use districts and map section:

- Permitted uses by districts;
- Development standards (land use, density, setbacks, etc).

Performance standards:

- Growth control provisions;
- Environmental standards such as erosion control;
- Standards for specific uses such as home occupations.

Appeals section:

- What can be appealed and what cannot;
- Right to appeal, to whom and within what time frame.

Definitions section.

Map of Districts

The land use map that is incorporated into the ordinance by reference should be based on the growth and rural areas contained in the comprehensive plan. However, the land use map must define the location of the districts in greater detail. The boundaries of the districts may follow built features such as roads, or natural features such as rivers and streams, or property lines. In some cases, boundaries may be defined by a given distance from a natural feature. For example, the boundary of a shoreland district will generally be 250 feet from the normal high water mark of the water body or wetland, or 75 feet from a stream.

4. LEGAL CONSIDERATIONS

CONSTITUTIONAL ISSUES

While there are many constitutional issues that could have a bearing on the preparation of a land use ordinance, the two that may be most relevant in Maine relate to delegation of legislative authority and reasonableness. There have been a number of Maine court cases upholding the need for standards and dealing with the issue of reasonableness.

Standards/Delegation of Legislative Authority

A land use ordinance must contain specific standards of review if it requires the issuance of a permit or the approval of a development plan. The standards must be something more than “as the board deems in the best interest of the public” or “as the board deems necessary to protect the public health, safety and welfare.”

It is also very important to include language in the land use ordinance that instructs the reviewing board (usually the Planning Board) about the action it shall take. It is not enough merely to say that the board must “consider” or “evaluate” certain information. If an ordinance gives the administrators of the ordinance unlimited discretion to approve or deny an application, it creates two constitutional problems:

- First, it violates the applicant’s constitutional rights of equal protection and due process because 1) it does not give the applicant sufficient notice of what requirements he or she will have to meet and 2) it does not guarantee that every applicant will be subject to the same requirements.
- Second, it also gives the administrators of the ordinance (rather than the legislative body) the power to write and then adopt part of the ordinance. The courts call this “improper delegation of legislative authority.” Legally, only the legislative body can adopt ordinances, unless a statute gives that authority to some other person or board.

Reasonableness

Another constitutional limitation is that the land use ordinance must be a “reasonable” means to protect the public health, safety and welfare. It must also be reasonably related to the public purpose it is intended to achieve and cannot be so restrictive that a landowner is deprived of all reasonable use of the property being regulated. In addition, the regulations must not have the effect of systematically restricting the ability of people to move to or within the community.

If a regulation fails to be reasonable, it could be found to be a taking of private property for public purposes without just compensation. The extent to which this limits a local government’s ability to regulate property for public purposes is often exaggerated. The courts in Maine have upheld a number of regulations as being a valid use of a municipality’s police power. This does not diminish the importance of this issue but regulations that serve a legitimate public purpose should not be foregone for fear of “taking” property.

STATE LAWS

The following is a summary of State laws that will directly or indirectly affect how you draft your ordinance and how it will work.

Home Rule

In 1969, the Maine Legislature adopted a statute (Title 30 MRSA Section 1917) which designated broad “home rule” ordinance powers to cities and towns. This statute was revised and re-numbered in 1989 (Title 30-A MRSA Section 3001) to make it clear that the Legislature intended “home rule” to be a very broad grant of authority. In its present form, the home rule statute reads as follows:

“30-A Section 3001. Ordinance power

Any municipality, by the adoption, amendment or repeal of ordinances or bylaws, may exercise any power or function which the legislature has power to confer upon it, which is not denied either expressly or by clear implication, and exercise any power or function granted to the municipality by the Constitution of Maine, general law or charter.

1. Liberal construction. This section, being necessary for the welfare of the municipalities and their inhabitants, shall be liberally construed to effect its purposes.
2. Presumption of authority. There is a rebuttable presumption that any ordinance enacted under this section is a valid exercise of a municipality’s home rule authority.
3. Standard of presumption. The Legislature shall not be held to have implicitly denied any power granted to municipalities under this section unless the municipal ordinance in question would frustrate the purpose of any state law.
4. Penalties accrue to municipality. All penalties established by ordinance shall be recovered on complaint to the use of the municipality.”

The Home Rule statute provides a basis for the adoption of a broad variety of local land use ordinances that are not expressly authorized by State law as long as they are not expressly prohibited by other statutes (by way of example, see discussion of moratoriums, below).

Home Rule Limitations

The Maine Legislature has adopted a number of express limitations on municipal home rule authority in Title 30-A MRSA Sections 4351 through 4360. Municipalities are bound by the requirements of these sections which are briefly summarized in the following paragraphs.

Section 4351 contains a general statement that this subchapter of Title 30-A (Sections 4351 through 4360) includes express limitations on municipal home rule authority.

Zoning Ordinances

Section 4352 states that a municipal zoning ordinance may provide for any form of zoning consistent with sections 4352-4360 and subject to a number of provisions. These provisions apply whenever an ordinance meets the statutory definition of a zoning ordinance, even if it is called a land use ordinance, a growth control ordinance, or something else. The definition of zoning ordinance is contained in Title 30-A MRSA Section 4301, subsection 15-A: “Zoning ordinance means a type of land use ordinance that divides a municipality into districts and that prescribes and reasonably applies different regulations in each district.” The provisions of Section 4352 include the following:

1. Public participation required. The public shall be given an adequate opportunity to be heard in the preparation of a zoning ordinance (see also number 9 on the next page).
2. Relation to comprehensive plan. The ordinance must be pursuant to and consistent with a comprehensive plan adopted by the municipality’s legislative body. This requirement does not apply to a shoreland zoning ordinance, a flood hazard management ordinance, or an ordinance regulating adult entertainment establishments.
3. Zoning map required. A zoning map must be adopted as part of the ordinance.
4. Exemption for public service corporations. Public service corporations are wholly or partially exempt only when, on petition, notice and public hearing, the Public Utilities Commission determines that the exemption is necessary for public welfare and convenience.
5. Effect on local governments. County and local governments and districts are subject to any zoning ordinance.
6. Effect on State.
 - A zoning ordinance that is not consistent with a comprehensive plan that is consistent with the provisions of Section 4326 (review and a finding of consistency by the State Planning Office) is advisory with respect to the State.
 - A zoning ordinance that is consistent with a comprehensive plan that is consistent the provisions of Section 4326 is binding on a State agency seeking to develop any building, parking facility or other publicly owned structure. The Governor, or the Governor’s designee, may, after public notice and opportunity for public comment, including written notice to the municipality, waive any use restrictions in those ordinances upon a finding that certain conditions are met. These include the fact that the project isn’t allowed anywhere in the municipality, there are no reasonable alternatives, there will be public benefits that extend beyond the municipality, and the project is necessary to protect public health, welfare or the environment.
7. Petition for rezoning; bond. A local zoning ordinance can require that if a person petitions for rezoning of an area for development in accordance with an architect’s plan, the person must post a bond equal to 25% of the cost of the development. The ordinance can stipulate that the bond shall become payable to the municipality if the petitioner fails to begin substantial construction within one year of the effective date of the rezoning.

8. Conditional and contract zoning. A zoning ordinance can contain provisions for conditional or contract zoning provided that any rezoning must:

- Be consistent with the municipality's growth management program;
- Establish rezoned areas that are consistent with the existing and permitted uses within the original zone; and
- Only include conditions and restrictions that relate to the physical development or operation of the property.

There are a number of notice requirements in Section 4352, subsection 8 that must be met before any property is rezoned under this section.

9. Notice; general requirements. Before adopting a new zoning ordinance or map or amending an existing ordinance or map, the municipal reviewing authority must post and publish public notice of the public hearing required under #1, above, in accordance with the following:

- The notice must be posted in the municipal office at least 13 days before the public hearing; and
- The notice must be published at least two (2) times in a newspaper that has general circulation in the community. The date of the first publication must be at least 12 days before the hearing. The date of the second publication must be at least 7 days prior to the hearing.

The notice must be written in plain English, understandable by the average citizen. Notice must also be sent by regular mail to a public drinking water supplier if the area to be rezoned contains its source water protection area.

Subsection 1, above, does not clearly state that a public hearing is required. However the need for a public hearing is clearly affirmed by subsection 9.

10. Additional notice, limited areas. A municipality must provide additional notice beyond that contained in #9, above, when a proposed amendment would result in one of the following:

- An amendment would have the effect of either prohibiting all industrial, commercial or retail uses where any of these uses is currently permitted; or
- An amendment would have the effect of permitting any industrial, commercial or retail uses where any of these uses is currently prohibited.

The notice must contain a copy of the map indicating the portion of the municipality affected by the proposed amendment. The notice must also be sent by first class mail at least 13 days before the public hearing to the owners of any parcels abutting the area proposed for rezoning. The municipal officers are required to keep a list of the people and the addresses to which the notice was sent.

Zoning Adjustment

Section 4353 requires that any municipality that adopts a zoning ordinance shall establish a board of appeals subject to Section 4353.

1. Jurisdiction, procedure. The board of appeals shall have the authority:

- To hear and decide administrative appeals, on an appellate basis, from actions by the Planning Board;
- To hear and decide administrative appeals, on a “de novo” basis, from actions by the Code Enforcement Officer; and
- Any order, requirement, decision, or determination made, or failure to act, in the enforcement of a land use ordinance is not appealable to the Board of Appeals. Appeals regarding enforcement go directly to the Superior Court.

2. Powers. The board of appeals shall have the following powers:

- Interpret provisions of the ordinance that are called into question;
- Approve the issuance of a special exception permit or conditional use permit, unless the ordinance gives that authority to the planning board; and
- Grant a variance in strict conformance with #4, below.

Many local ordinances no longer contain provisions for a special exception permit or a conditional use permit, but instead require that for certain uses, the applicant submit an application for site plan approval to the municipal reviewing authority. The municipal reviewing authority is usually the planning board.

3. Parties. The board of appeals is required to notify the petitioner, the planning board, agency or office and the municipal officers of any hearing, and they shall be considered parties to the action.

4. Variance. The board of appeals may grant a variance to a petitioner when the ordinance would create an undue hardship. An undue hardship is defined as:

- A. The land in question cannot yield a reasonable return;
- B. The need for the variance is due to the unique circumstance of the property and not the general conditions in the neighborhood;
- C. The granting of a variance will not alter the essential character of the locality; and
- D. The hardship is not the result of action taken by the applicant or a prior owner.

Municipalities may adopt additional limitations on granting variances, including a requirement that a variance can only be granted for a use that’s allowed in a particular district.

4-A. Disability variance. The board may grant a variance to the owner of a dwelling for purposes of making the dwelling accessible to a person with a disability who regularly uses the dwelling.

4-B. Setback variance for single family dwellings. This subsection states that the municipality may adopt an ordinance that allows the board of appeals to grant a setback variance for a single family dwelling when the zoning ordinance would cause undue hardship. Undue hardship is defined differently than in #4, above. The statutory language should be consulted prior to including this provision in the local ordinance.

4-C. Setback variance from dimensional requirements. This subsection states that the municipality may adopt an ordinance that allows the board of appeals to grant a variance from dimensional requirements including lot area, lot coverage, frontage and setback requirements. Undue hardship is defined differently than in #4 or 4-B, above. The statutory language should be consulted prior to including this provision in the local ordinance.

5. Variance recorded. This section requires that variances be recorded in the local registry of deeds within 90 days of the final written approval of the variance or the variance is void. Moreover, the variance is not valid until it has been recorded. The Statute is silent about who is responsible for recording the variance.

Subsections 4-B and 4-C, above, are optional, and cannot be used unless language is specifically included in the local ordinance allowing for such variances. Having three different sets of criteria for granting variances may cause confusion, especially for new members of a local board of appeals.

Impact Fees

Section 4354 allows municipalities to require the construction of off-site capital improvements or payment of impact fees instead of the construction. The requirements may apply to expansion or replacement of existing infrastructure facilities, or the construction of new infrastructure facilities.

Infrastructure facilities include, but are not limited to:

- Waste water collection and treatment facilities;
- Municipal water facilities;
- Solid waste facilities;
- Public safety equipment and facilities;
- Roads and traffic control devices;
- Parks and other open space or recreational areas; and
- School facilities.

Ordinances that impose impact fees must meet the following requirements:

- A. The amount of the fee must be reasonably related to the development's share of the cost of infrastructure improvements made necessary by the development, or, if the improvements were constructed at municipal expense prior to the development, the fee must be reasonably related to the portion or percentage of the infrastructure used by the development.

- B. Funds received from impact fees must be segregated from the municipality's general revenues. The municipality shall expend the funds solely for the purposes for which they were collected.
- C. The ordinance must establish a reasonable schedule under which the municipality is required to use the funds in a manner consistent with the capital investment component of the comprehensive plan.
- D. The ordinance must establish a mechanism by which the municipality shall refund impact fees, or that portion of impact fees, actually paid that exceed the municipality's actual costs or that were not expended according to the schedule.

Municipalities that are part of a school administrative district or other single or multi-community school district may deposit collected impact fees in a trust fund to be used to pay their proportionate share of anticipated school capital costs.

Application Fees

Section 4355 states that application fees for any land use permit issued by the municipality may not exceed the reasonable cost of processing, review, regulation and supervision of the application by the municipality and its consultants.

Moratoria

Section 4356 regulates any moratorium adopted by a municipality on the processing or issuance of development permits or licenses.

1. Necessity. The moratorium must be needed:
 - To prevent a shortage or an overburden on public facilities that would otherwise occur or could reasonably be expected to occur as a result of any proposed or anticipated development; or
 - To prevent serious public harm resulting from residential, commercial or industrial development that could occur because of the inadequacy of the comprehensive plan or land use ordinances.
2. Definite term. The moratorium must not be for a period of time exceeding 180 days. However, the moratorium may be extended for additional 180-day periods if the problem giving rise to the need for the moratorium persists and reasonable progress is being made to alleviate the problem. In communities with the town meeting form of government, the selectmen may extend the moratorium after notice and hearing.

Community Living Arrangements

Section 4357-A states that for the purposes of zoning, a community living arrangement is deemed to be a single family use of property. The statute defines community living arrangement as a housing facility for 8 or fewer persons with disabilities that is approved, authorized, certified or licensed by the State.

Regulation of Manufactured Housing

Section 4358 defines the term “manufactured housing” and in subsection 2 requires that municipalities permit manufactured housing to be placed or erected on undeveloped individual house lots in a number of locations (but not necessarily all locations) where single family dwellings are allowed, subject to the same requirements as single family dwellings. The law says that for the locations required by Section 4358, municipal ordinances may not require that manufactured housing be greater than 14 feet in width. Municipalities may establish design criteria including, but not limited to, a pitched, shingled roof, a permanent foundation, and exterior siding that is residential in appearance, provided that the design requirements do not have the effect of circumventing the purposes of this section. Modular homes which are a type of manufactured home must be allowed in all districts where single family homes are permitted.

Section 4358, subsection 3, deals with the regulation of mobile home parks. Subsection 3A includes a requirement that municipalities may not require lot sizes in mobile home parks to be larger than:

- 6,000 square feet or the area of the smallest residential lot permitted in the community, whichever is smaller, for mobile home parks served by a public sewer system;
- 20,000 square feet for mobile home parks with an on-site, subsurface sewage disposal system on each lot;
- 12,000 square feet for mobile home parks served by a central, on-site subsurface waste disposal system.

Subsection 3M requires that a municipality permit mobile home parks to expand and to be developed in a number of environmentally suitable locations in the municipality with reasonable consideration being given to permit existing mobile home parks to expand in their existing locations.

See Section 4358 for additional limitations on the regulation of manufactured housing. Also check with the State Planning Office’s handbook “Maine’s New Mobile Home Park Law, a Guidebook for Local Officials,” for additional assistance on preparing ordinance standards for mobile home parks.

Source Water Protection Area

Section 4358-A states that a municipality must notify a public drinking water supplier if a proposed land use project is within the supplier’s source water protection area and is reviewed by a municipal reviewing authority and, as part of the that review, the municipality notifies abutters.

State Policy Relating to Commercial Landfill Facilities Moratoria

Section 4359 merely affirms the importance of state and municipal control over the establishment and substantial expansion of commercial landfill facilities. The law states that a municipality may, under its home rule authority, enact a moratorium on a new facility or a substantial expansion of an existing facility.

Rate of Growth Ordinances

Section 4360 contains two important provisions relating to rate of growth ordinances:

1. Ordinance review and update. This subsection requires a municipality that enacts a rate of growth ordinance to review and update the ordinance at least every 3 years to determine whether it is still necessary, and how the ordinance can be adjusted to meet current conditions.
2. Differential ordinances. Subsection 2 states that a municipality may enact rate of growth ordinances that set different limits on the number of building or development permits that are permitted in designated growth and rural areas.

Section 4360 also contains ordinance requirements and clearly allows municipalities to establish different growth caps for different areas, or to establish a growth cap in rural areas but no cap in growth areas.

Shoreland Zoning Act

Maine's Shoreland Zoning Act (Title 38 MRSA Sections 435-449) requires that each municipality regulate the land area within 250 feet of the normal high water mark of any great pond, river or salt water body, within 250 feet of the upland edge of a coastal or fresh water wetland (with some exceptions) and within 75 feet of the high water line of a stream. Municipalities are required to administer and enforce local ordinances that are consistent with the State's Shoreland Zoning Guidelines. The law gives the Maine Department of Environmental Protection the responsibility of periodically updating the Guidelines.

You can either include shoreland zoning provisions in the land use ordinance or keep them as a separate ordinance. This manual does not include shoreland zoning provisions, but does include an outline of a town-wide ordinance that would apply to all land areas of your community, including the 250-foot shoreland zone. Your community will have to determine the best method for integrating these two ordinances. For some municipalities, it may be more appropriate to have two separate ordinances that regulate the shoreland area (a shoreland zoning ordinance and a town-wide land use ordinance), while other municipalities may want to integrate the shoreland requirements into their town-wide ordinance.

Check with the Maine Department of Environmental Protection for the latest version of the Shoreland Zoning Guidelines when drafting an ordinance that includes shoreland zoning provisions.

Site Plan Review

Site plan review is an important part of any land use ordinance that is based on the suggested approach for preparing a land use ordinance contained in Chapter 6 and the suggested format contained in Appendix A. Site plan review requirements contain procedures and standards for local review of projects that potentially could have a major impact on the community.

The purposes of site plan review are to:

- A. Provide a level of municipal review, that would not otherwise occur, of projects that potentially could impact the community;
- B. Conserve the Town's natural beauty and visual character by ensuring that structures, signs and other improvements, are sited and developed with due regard to the aesthetic qualities of the natural terrain and that proper attention is given to exterior appearances of structures, signs, and other improvements; and
- C. Sustain the comfort, health, tranquility and contentment of residents, and thus to promote and protect the health, welfare and safety of the Town.

The State Planning Office has prepared a Site Plan Review Handbook. This handbook has suggested procedures and are not State minimums or mandates. Other site plan review provisions may be equally effective in providing for local review of certain projects. The Site Plan Review Manual will be available at <http://www.maine.gov/spo/landuse/>.

Subdivision Law

Title 30-A MRSA Sections 4401-4407 (the Subdivision Law) requires the municipal reviewing authority (usually the planning board) to review proposed subdivisions using the subdivision review criteria spelled out in the law. It also authorizes the municipal reviewing authority to adopt additional reasonable regulations which are related to and supplement the statutory criteria. Some municipalities have gone a step further and adopted a subdivision ordinance approved by their legislative bodies using home rule authority. The Subdivision Law states that the regulations adopted by the municipal reviewing authority shall govern until superseded by local ordinance.

In developing your land use ordinance, consider whether subdivision regulations should be included in the ordinance or whether they should be adopted as a separate ordinance or as planning board regulations.

The subdivision criteria contained in the law are very general and do not address practical considerations such as the types of information that must be submitted to the municipal reviewing authority to allow a thorough review of the proposed development.

The State Planning Office has an on-line model subdivision ordinance originally prepared by the Southern Maine Regional Planning Commission that may be helpful to you in crafting your local subdivision ordinance. This is currently available at: <http://www.smrpc.org/landuse/subord/subord.htm>

Minimum Lot Size Law

Title 12 MRSA Section 4807 establishes a statewide minimum lot size of 20,000 square feet for new single family dwellings that will utilize a subsurface wastewater disposal system. For other land uses, a proportionately greater lot size is required based on a statutory formula.

Other

Other laws that may limit a municipality's home rule authority to adopt ordinances are listed below with their statutory references. These are discussed in greater detail in the Maine Municipal Association's Planning Board Handbook.

1. Condominiums. Local ordinances may not prohibit the condominium form of ownership or otherwise conflict with the Maine Condominium Act (Title 33, Chapter 31).
2. Farm operations. Any municipal ordinance that would impact farm operations must be submitted to the Department of Agriculture at least 90 days prior to enactment.
3. Signs. Municipal regulations must comply with guidelines administered by the Maine Department of Transportation pursuant to Title 23 MRSA Section 1901 and following sections.
4. Solid waste, septage and sludge. Municipalities are prohibited from enacting standards that are stricter than those contained in Title 38 and the Department of Environmental Protection's solid waste management rules.
5. Coastal management policies. Local ordinances affecting land use in coastal areas must contain review standards that will promote coastal policies (Title 38 MRSA Section 1801).
6. Small gravel pits. Title 30-A MRSA Section 3105 establishes minimum standards that a municipality must incorporate into a local ordinance that regulates these pits.
7. Timber harvesting. Title 12 Sections 8868 and 8869 contains definitions and procedures that a municipality must use if it chooses to regulate timber harvesting.
8. Regulation of water levels. Title 30-A MRSA Section 4455 requires that if a municipality regulates water levels, the local ordinance must contain certain provisions and must be reviewed by the Commissioner of the Maine Department of Environmental Protection.
9. Building codes and ordinances. Title 30-A MRSA Sections 4101 to 4104 contains provisions for use at the local level relating to administration and enforcement procedures as well as appeals and variances.
10. Housing for individuals with disabilities. Title 42, sections 3600-3620 of the United State Code preempts local land use regulations that illegally discriminate on the basis of handicap or family status.

11. Antennas, towers and satellite dishes. Federal statute and agency rules of the Federal Communications Commission preempt certain municipal ordinance provisions regulating these facilities. See MMA's Planning Board Manual for more detail.

5. ORDINANCE PREPARATION STEPS

Overview

Preparing and adopting a land use ordinance is an essential part of your community's growth management program. Zoning Ordinances, impact fees, and growth limitation ordinances must be based on, and be consistent with, the policies and implementation strategies contained in the comprehensive plan (most other ordinances do not require a consistent comprehensive plan). Once enacted, the land use ordinance will help shape the future growth patterns in the municipality.

While most municipalities will be able to implement a growth management program with a single ordinance, some will enact several ordinances (for example, a land use ordinance and a separate shoreland zoning ordinance). The advantage of a single, integrated ordinance is that it simplifies ordinance administration and minimizes conflicts and confusion that might otherwise occur between separate ordinances.

If you are preparing a land use ordinance for the first time, you should review the explanatory materials contained in chapters 1 through 5 of this manual. The recommended steps for preparing a complete land use ordinance are outlined in the paragraphs below.

If your community already has a land use ordinance, you may want to review the material contained in this chapter and the other appendices for practical suggestions on other changes that could help implement your community's growth management program.

Recommended Steps for Preparing a Land Use Ordinance

While the following steps are described in a sequential manner, each section of your ordinance is dependent upon other sections. You should read through the entire ordinance when you have completed it to be sure the various sections are consistent with one another. You may find that many changes are needed before you have a complete ordinance.

- 1. Review the comprehensive plan.** You should carefully review the policies and implementation strategies contained in your community's comprehensive plan. You should pay particular attention to the document's land use plan and future land use map. These plan elements should provide you with a specific direction in shaping a land use ordinance and promoting consistencies between the two documents. It may be useful to create an outline of the policies and strategies in the plan to make sure your ordinance addresses all of them. This can also be used to inform the public about the relationship between the plan and the ordinance.
- 2. Prepare an outline.** It is very important to think about the overall format of the ordinance so that you will know where to include certain provisions. Appendix A contains a suggested ordinance format with some recommended, basic administrative provisions. This is a generalized, suggested approach that can be modified to meet your community's needs.

- 3. Choose districts.** One of the most important drafting decisions you will have to make is determining the number and types of districts to include in the land use ordinance. In making this decision, you should carefully follow the recommendations contained in the comprehensive plan, determine whether or not shoreland zoning provisions will be included in your ordinance or in a separate ordinance, and consider the best methods for protecting resource protection areas.

The policies and strategies contained in the comprehensive plan will be critical in determining which district scheme is suitable for your community. Appendix B contains a guide that can be used to establish your districts.

Using the comprehensive plan as a guide, you should develop a clear description of the purpose and intent of each district. This will help you make decisions about the most appropriate requirements for each district.

- 4. Determine land uses for each district.** Once a district scheme has been selected, the next step is to determine the types of uses that are appropriate in each district. Once again, your community's comprehensive plan should provide overall guidance for this task, but it may not be very detailed. Appendix B contains a matrix of possible uses and, if you have only a growth area and rural area, suggestions about which uses should be permitted, which uses should be subject to site plan review, and which ones should be prohibited. These are just examples. The particular situation in your municipality and the recommendations contained in your comprehensive plan may require a substantially different approach. For example, your comprehensive plan may recommend the creation of a number of different growth and rural districts. You will need to determine the most appropriate uses in each of these districts, but you can still use the land use matrix in Appendix B as a guide for determining the uses you want.

In general, the growth area should accommodate virtually all types of anticipated development. The rural area should allow only those uses that are compatible with the rural character of the community. Residential uses should be permitted in the rural area only where land use regulations ensure protection of rural resources.

The matrix of land uses contained in Appendix B is intended to guide you through the process of determining the most appropriate uses for each of the proposed land use districts. The uses do not have to be arranged in a table. You can simply make a list of permitted uses as well as those requiring site plan review and approval.

Issues to consider when determining appropriate uses for each district include:

- What does the comprehensive plan say?
- What uses are compatible with one another?
- Should some uses be in different districts in order to ensure compatibility? Can performance standards, such as limitations on noise, traffic and hours of operation, ensure compatibility?
- Which uses are incompatible with the character of the rural area? Would “big box” retail development or commercial mini-malls be compatible with the rural area?

- Should certain uses be prohibited in certain areas (for example, environmentally sensitive areas such as aquifer recharge areas)?
- How will the ordinance limit or regulate residential uses in the rural district(s) to ensure their compatibility with the purposes of the district(s)?
- Do certain types of development, because of their size or use pose a greater potential impact on the community, and therefore require more detailed review through a site plan review process?

The matrix of land uses contained in Appendix B suggests that certain uses be subject to site plan review and approval by the planning board. Site plan review provides a means by which certain permitted uses that could create substantial adverse land use impacts are controlled by a review process and accompanying standards.

- 5. Determine dimensional requirements.** It is important to set forth, for each district, the dimensional standards that permitted uses will have to meet. Dimensional standards determine the overall intensity to which land is developed as well as the size, shape and dimensions of lots and the size and height of structures and their location on lots. See Appendix B, Table B-2 for an example.

The intensity of residential development is usually regulated by limits on the development's density, either in terms of the maximum number of dwelling units per acre, or the minimum area of land required for each dwelling unit. There are two basic ways to calculate residential density. The first is to divide the total area of the parcel by the number of proposed dwelling units. The second is to take only that portion of the parcel that is suitable for development and divide that by the total number of proposed dwelling units. This latter approach better relates the amount of development allowed on a site to the site's suitability for development. Flood plains, wetlands, steep slopes and the land devoted to roads are excluded from the density calculation. This latter approach is suggested in Appendix B.

Many Maine communities regulate residential development with a single town-wide minimum lot size requirement that applies to all lots. Such an approach, however, does not consider that different areas of town are more (or less) suitable for development than others, nor does it allow the diversity of housing types often needed to ensure that housing remain affordable. For example, requiring that the minimum lot size and frontage requirement be met for each additional unit in a multi-family development is about the same as prohibiting it.

As a general rule, allowing higher densities in designated growth areas is one method to direct growth and development to those areas and away from rural areas where it is more likely to be incompatible with the preservation of a municipality's rural character. In determining the appropriate density standards to apply in different parts of the community, the following questions might be considered:

- What does the comprehensive plan say?
- What are the existing density standards?
- What are the actual residential densities in growth and rural areas?

- What lands within growth areas are most suitable for higher density development because they have suitable soils, are close to sewers and established neighborhoods and have good road access?
- What lands within the growth areas are better suited for lower density development because they have poor soils, are far from public services, have poor road access, contain hazardous areas or are close to sensitive natural areas?
- What lands within the rural areas are least suitable for development because they contain or are close to important resource production areas, contribute significantly to rural character and scenic vistas or contain or are close to sensitive resources?

Road frontage or lot width requirements can often affect the pattern of future development as much or more than lot area standards, and deserve careful consideration in a land use ordinance. Many communities have a large frontage requirement townwide that works against compact development, promotes linear sprawl and discourages the development of internal roads. Generally, smaller road frontage requirements are appropriate in growth areas, and larger frontages are appropriate in rural areas, especially for lots created on the state's arterial highway network. However, there is a growing trend to allow variations in road frontage requirements for developments that will preserve significant open space areas.

Other common dimensional standards are those regulating a structure's height and setback from streets and lot lines. In determining the appropriate lot standards for a district, it is important to consider whether or not the standards will accommodate the types of development expected to occur in the district. For example, in determining the appropriate height standards, it is important to consider the visual impact, whether adequate fire protection can be provided, and the need to exempt certain structures (utility lines, for example). In determining setback standards, it is important to balance the need for actual and visual separation between buildings with the desirability of providing flexibility in site design and promoting new development compatible with existing neighborhoods.

Less common are standards that regulate the portion of a lot that can be covered by buildings or other impervious surfaces such as parking areas, roads and patios. Impervious surfaces increase storm water runoff and may lead to adverse environmental impacts. Used instead of setbacks, or in conjunction with them, impervious surface standards can increase the flexibility allowed in designing a development, yet continue to effectively limit the intensity of the development.

- 6. Choose growth management provisions.** If your community's comprehensive plan was found by the Maine State Planning Office to be consistent with Maine's comprehensive Planning and Land Use Regulation Act, it undoubtedly contains strategies to encourage growth in growth districts, and limit incompatible development in rural districts. Your ordinance should include provisions to implement these strategies. The following is a summary of some growth management techniques that you can include in the ordinance to implement or supplement some of the strategies in your comprehensive plan.

A. Suggestions for encouraging growth in growth districts. The following paragraphs contain some practical suggestions for encouraging growth in growth districts and providing opportunities for the establishment of affordable housing. Before deciding to include any of these approaches in your ordinance, you need to review the comprehensive plan to make sure they are consistent with the plan.

- 1) **Reduce lot area/density requirements.** Reduce lot area requirements relative to lot area requirements in rural districts to allow a greater number of units to be built on a given parcel of land. This can be an effective way to address the affordable housing issue.
 - a) **Infill.** Infill development simply means that new development is encouraged, primarily on vacant land in areas that are mostly developed (for example, in an existing village). Infill development should be allowed at densities similar to the existing development.
 - b) **Expansion of villages.** Allow development patterns adjacent to existing villages that are compatible with existing styles and densities.
 - c) **Multi-family dwellings.** Allow multi-family dwellings at higher densities than an equivalent number of single-family dwellings. For example, if your ordinance requires a lot size of 10,000 square feet in areas served by sewers and 75 feet of road frontage for single family dwellings, allow multi-family dwellings at a fraction of the original lot size after the requirements for one unit have been met, with little or no additional frontage. For example, require 10,000 square feet for the first unit, and 2,500 feet for each additional unit. See Appendix B, Table B-2 for an example.
 - d) **Density bonuses.** Allow density bonuses where developers achieve a certain percentage of affordable housing units, preserve valuable open space, or otherwise provide defined public benefits. A density bonus allows land to be developed at a higher density than that required by the ordinance. See Appendix C for examples of ordinance provisions that encourage the achievement of these objectives.
- 2) **Sewered lots.** Allow smaller lot sizes in areas served by sewer and water lines or provide a density bonus for such development. See Appendix B, Table B-2 for an example.
- 3) **Frontages.** Allow smaller road frontages/widths, keeping in mind the relationship between these dimensions and lot area standards. Allowing a further reduction in road frontage for lots created on new internal roads promotes infill development and discourages strip development along major roadways. Consider eliminating frontage requirements altogether in some areas.
- 4) **Setbacks.** Reduce structure setbacks in growth areas. Many of Maine's villages were developed on small lots with very small setbacks, yet local regulations prohibit a continuation of village-type development.
- 5) **Avoid unnecessary or excessive requirements.** Some requirements can increase costs and thus discourage development. Examples include requirements for granite curbs, wide streets where travel will be light, sidewalks, requirements for off-site improvements or investments, and requirements for numerous studies prior to development approval. One of

the purposes for having land use standards is to protect the public. However, regulations should not be excessive.

- 6) **Allow zero lot line development.** Adopt “zero lot line” provisions that reduce side yard setback requirements in some areas to zero. This allows condominiums, town houses, apartments, and other types of buildings that share common walls. See Appendix C, Example #1.
- 7) **Allow accessory apartments.** Allow the creation of one or more apartments in larger homes that might otherwise be expensive to maintain and heat. See Appendix C, Example #2.
- 8) **Allow taller buildings.** Allow taller buildings to be constructed so that builders can achieve economies of scale and possibly offer less expensive units as long as they are compatible with surrounding uses. The fire chief should be consulted to ensure adequate fire protection.

Appendix C contains five examples of provisions that encourage and/or manage growth in growth areas:

Example 1 contains a zero lot line provision;

Example 2 contains a provision for accessory apartments;

Example 3 contains a density bonus provision for areas served by central water or sewer or both;

Example 4 contains a density bonus provision for affordable housing; and

Example 5 contains large scale development standards.

B. Discouraging incompatible growth in rural districts. Appendix D contains a number of options for limiting the rate and regulating the quality of growth in rural districts. While most of these options are designed to be included in a land use ordinance, some can be adopted as a separate ordinance. Questions to consider prior to choosing any of the options include:

- 1) How will your ordinance limit strip commercial development, particularly in the rural area?
- 2) How will your ordinance limit incompatible residential development in the rural area?
- 3) How will your ordinance ensure the long term integrity of the rural area?

Appendix D contains five examples of provisions that limit incompatible development in rural areas:

Example 1 contains provisions for a rural area growth cap;

Example 2 contains a phased rural area growth cap;

Example 3 contains a maximum lot area requirement;

Example 4 contains suggested requirements for open space subdivisions; and

Example 5 contains a large lot size requirement and restrictions on allowed uses.

All of the options outlined in Appendix D assume that the local ordinance contains at least two districts: a growth district and a rural district or, if the local ordinance contains multiple districts, an indication of which districts are growth districts and which ones are rural districts. Some of the suggested options will need to be modified, depending upon the district scheme you choose or the districts that are already in the municipal ordinance. Provisions similar to one or more of those contained in Appendix D may be necessary to limit incompatible development in rural districts and direct growth to growth districts. Conventional land use and zoning techniques may not be enough to get the job done.

If you decide to include any of the options from Appendices C and/or D, you should review them carefully and make any needed changes before including them in your local ordinance. You will also need to review the language contained in the rest of your proposed ordinance (especially the district requirements) to ensure that the growth management provisions you include are compatible with the provisions you have adapted from Appendices C or D or other sources.

- 7. Develop performance standards.** Performance standards are an important part of any ordinance. They regulate the effects or characteristics of various uses. For example, erosion control and/or storm water management standards can minimize the amount of erosion and runoff created by new development. Some performance standards, such as those for erosion control, apply to all developments, while others, such as gravel extraction standards, apply only to specific uses. The Maine Supreme Court has ruled in a number of cases that local land use ordinances must have clear and definitive standards.

The recommended ordinance outline contained in Appendix A suggests that performance standards be added as Article 5 of the proposed ordinance. Because of space limitations and differing municipal needs, suggested performance standards other than those included in Appendices C, D and E are not included in this manual. However, Appendix A contains a list of performance standards and where they can be found online in various municipal ordinances. You should review the list of standards contained in Appendix A to determine which, if any, may be necessary for your community, and modify them where necessary prior to including them in your proposed land use ordinance.

Additional standards not included in this manual that you may wish to consider include regulations aimed at controlling phosphorus in lake watersheds (contact the Maine Department of Environmental Protection), historic preservation standards (contact the Maine Historic Preservation Commission), and wildlife protection standards (contact the Maine Department of Island Fisheries and Wildlife). Finally, you should include shoreland zoning standards if you wish to integrate your land use ordinance with your shoreland zoning ordinance.

Questions to consider in the development of performance standards for your ordinance include:

- What types of standards should apply to all developments, including single-family developments (for example: driveways and cluster/open space development)?
- What types of standards should apply to specific uses (for example, gravel pits, home occupations and bed and breakfast establishments? And
- Are there standards that should apply to specific areas (for example: certain watershed, aquifers and shorelands)?

8. Develop administrative provisions. You will need to develop administrative procedures such as provisions relating to ordinance adoption and amendment, the issuance of permits, appeals, enforcement and penalties. You will also need to consider the resources, including staff, money and time, available in your community for administering the ordinance. A fairly simple ordinance, such as one based on the provisions suggested in this manual, will be relatively simple to administer. If you choose more sophisticated tools, such as a transfer of development rights provision, you may have to devote more time and money to the administration of the ordinance.

Recommended administrative procedures have been included in Appendix A, Suggested Land Use Ordinance Format. Appendix A includes provisions for the following basic requirements:

- A. All new structures or changes of use require a permit from the code enforcement officer;
- B. Certain uses (or certain sizes of uses, such as those over 5,000 square feet) require site plan approval from the planning board prior to the issuance of a permit from the code enforcement officer;
- C. The code enforcement officer must determine that proposed developments are permitted in the districts in which they are to be located, that they meet the required dimensional requirements, and that they comply with the performance standards contained in the ordinance. In addition, the code enforcement officer must ascertain that all applications are complete. The code enforcement officer can then issue a permit for those structures and uses that require a code enforcement officer permit, or refer the applicant to the planning board for site plan review and approval;
- D. If an applicant seeks and obtains a variance from one or more of the dimensional requirements of the ordinance, the applicant must obtain a permit from the code enforcement officer (and site plan approval of the planning board if site plan review is required) prior to starting construction.

If you decide to use Appendix A, review the administrative provisions and make whatever changes are necessary to suit local needs. The material contained in Appendix A is not a complete ordinance. You will need to add more provisions. The other appendices contain additional material that can be considered as you prepare your ordinance.

If you decide not to use the material contained in Appendix A, you can refer to ordinances adopted by other communities, or other materials that may be available through your regional council, attorney or planning consultant.

- 9. Add site plan review procedures and standards.** The matrix of land uses contained in Appendix B suggests that there should be four categories of land uses: those that are allowed without any permit, those that are allowed with a permit from the code enforcement officer, those that require site plan review and approval by the planning board, and those that are prohibited.

Site plan review procedures and standards provide a way to review the quality of development of certain land uses. You should review the site plan review procedures and standards contained in Appendix E, modify them as necessary, and, if you use the suggested ordinance outline contained in Appendix A, include them in Article 4 of your proposed ordinance. For more details on site plan review, consult the Maine state Planning Office's site plan review handbook.

The site plan review provisions contained in Appendix E create a distinction between two types of projects: major projects (5,000 square feet or more in size) and minor projects (less than 5,000 square feet in size). For major projects, applicants must submit an analysis of the site, including its development limitations, prior to submitting an application for site plan approval.

There are a number of suggested site plan review standards in Appendix E that you should review carefully before deciding to include them in your proposed ordinance. In general, they are broad in scope, and require a certain amount of judgment on the part of the planning board as to whether or not the applicant has met the particular standard.

- 10. Add definitions.** Key terms in your ordinance should be defined. This will eliminate unnecessary confusion by ensuring that the meaning of specific terms is clearly understood by all involved. A number of definitions are contained in Appendix F. You can modify these as necessary for inclusion in your proposed ordinance. In all likelihood, you will have to add more definitions as you develop and refine your proposed ordinance. Appendix F does not include a definition for every term you may encounter.

Only terms that are necessary to carry out the intent of the ordinance should be defined. Any word or phrase to which you want to add a specific meaning should be defined. If a term is not defined in an ordinance, it will usually be interpreted by courts as having its generally accepted meaning.

- 11. Map districts.** The districts in your proposed ordinance should be shown on a base map of the community. Maps should be at a scale that allows the boundaries between districts to be shown with enough precision that it can be located on the ground. District boundaries that coincide with lot lines that are clearly shown on the map will be fairly simple to find on the ground. In addition to the map, you may want to include a description of the district boundaries in the text of the ordinance.

6. ORDINANCE ENACTMENT PROCEDURES

Overview

As a general rule, any land use requirement that the municipality wants to administer and enforce must be adopted by the legislative body of the community in the form of an ordinance.

The basic procedures for adopting an ordinance at an open town meeting are found in Title 30-A Section 3002. If the municipality is governed by a charter (usually this means a town or city that has a council-manager form of government), ordinance enactment procedures would be spelled out there. In addition to the statutory or charter procedures, there also may be local requirements that the municipality has adopted, such as a requirement that a land use ordinance be enacted by a 2/3 majority vote of the legislative body, or be enacted only at the annual town meeting. The rules governing ordinance enactment normally will govern amendments to an ordinance. Some ordinances also contain their own special requirements for adopting amendments.

Public Input and Required Public Notice

The importance of providing for meaningful opportunities for members of the public to influence the process cannot be overstated. Public input should be encouraged early in the drafting process and should be participatory rather than informational. As discussed in more detail in Chapter 2, public participation in the development of a land use ordinance can be obtained through public workshops or meetings and public hearings. In order for such participation to be meaningful, the public must be given adequate notice of the meetings and must be able to obtain copies of materials including any drafts of the ordinance, well in advance of the meetings.

Public participation required. Maine’s general zoning statute, Title 30-A MRSA Section 4352 subsection 1, states that “The public shall be given an adequate opportunity to be heard in the preparation of a zoning ordinance.” While subsection 1 of the law is written very broadly, subsection 9 of the law makes it clear that a public hearing is required.

Notice, general requirements. Subsection 9 requires that “Before adopting a new zoning ordinance or map or amending an existing ordinance or map, including ordinances or amendments adopted under the laws governing growth management contained in chapter 187, subchapter II or the laws governing shoreland zoning contained in Title 38, chapter 3, subchapter I, article 2-B, the municipal reviewing authority must post and publish notice of the public hearing required under subsection 1 in accordance with the following provisions:

- A. The notice must be posted in the municipal office at least 13 days before the public hearing.
- B. The notice must be published at least 2 times in a newspaper that complies with Title 1, section 601 and that has a general circulation in the community. The date of the first publication must be at least 12 days before the hearing and the date of the 2nd publication must be at least 7 days before the hearing. That notice must be written in plain English, understandable by the average citizen.

- C. Notice must be sent by regular mail to a public drinking water supplier if the area to be rezoned contains its source water protection area.”

(subsections C and D have been repealed).

Additional notice, limited areas. Title 30-A MRSA Section 4352, subsection 10 states that “Notice must be given in accordance with this subsection and subsection 9 when a municipality has proposed an amendment to an existing zoning ordinance or map that, within a geographically specific portion of the municipality, has the effect of either prohibiting all industrial, commercial or retail uses where any of these uses is permitted or permitting any industrial, commercial or retail uses where any of these uses is prohibited.

- A. The notice must contain a copy of a map indicating the portion of the municipality affected by the proposed amendment.
- B. For each parcel within the municipality that is in or abutting the portion of the municipality 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. Notice must also be sent to a public drinking water supplier if the area to be rezoned is within its source water protection area. The municipal officers shall prepare and file with the municipal clerk a written certificate indicating those persons to whom the notice was mailed and at what addresses, 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. Notice is not required under this paragraph for any type of zoning ordinance adopted under the laws governing growth management contained in chapter 187, subchapter II or the laws governing shoreland zoning contained in Title 38, chapter 3, subchapter I, article 2-B.”

Enactment Procedures

Title 30-A Section 3002 reads as follows:

“Unless otherwise prohibited by charter or law, a municipality must enact ordinances by the following procedure.

1. **Posted.** The proposed ordinance must be attested and posted in the manner provided for town meetings. If a proposed ordinance or comprehensive plan exceeds 10 pages in length, it is sufficient to satisfy this posting requirement that the warrant and the warrant article related to the adoption of the ordinance or plan includes a statement that copies of the text of the ordinance or plan and map, if any, are available from the town clerk.
2. **Certification.** The municipal officers shall certify one copy of the proposed ordinance to the municipal clerk at least 7 days before the date of the meeting. The clerk shall keep that copy as a public record and shall make copies available for distribution to the voters from the time of certification. Copies shall be made available at the town meeting.

A. No ordinance of any municipality subject to this subsection may be held invalid due to the municipality's failure to comply with this subsection unless the plaintiff is prejudiced or harmed by that failure.

3. **Question.** The subject matter of the proposed ordinance shall be reduced to the question "Shall an ordinance entitled " " be enacted?" and shall be submitted to the town meeting for action either as an article in the warrant or a question on a secret ballot.

4. **Application.** Subsections 1, 2 and 3 do not apply to ordinances which may be enacted by the municipal officers."

Note: Check with Maine Statutes to ensure that you are following the most up-to-date version of the above requirements. The language cited above was in effect as of this writing, but may have been revised since.

Availability

According to Title 30-A MRSA Section 3005, copies of any ordinance adopted by the legislative body must be on file with the municipal clerk, and must be accessible to any member of the general public. Copies also must be made available for a reasonable fee to any member of the public requesting them. The clerk must post a notice regarding the availability of ordinances.

Revision of Ordinances

Title 30-A MRSA Section 3004 states that an ordinance may be revised only by following the procedure for its original enactment.

7. TECHNIQUES, TRENDS AND INNOVATIONS

Overview

This chapter contains a brief summary of land use management techniques, or tools, that you can consider for inclusion in your land use ordinance. Some of these, such as standards for cluster development, are commonly found in municipal ordinances throughout Maine. Others, such as transfer of development rights and form-based zoning, are not widely used in Maine but are in effect in other parts of the country.

The intent of this chapter is to provide you with a brief introduction to these tools. For each tool, there is a description, a summary of how it could work, a statement of its advantages and limitations, and where to go for more information. Examples of some of the tools are included in the appendices. The tools are listed in alphabetical order for ease of reference. You may wish to contact your regional council for more information and/or for assistance in developing ordinance language specific to your community.

The comprehensive plan will help you determine what is relevant for your community. For example, one or more of the strategies might address density bonuses to help achieve one or more public policy purposes such as providing more affordable housing or preserving valuable open space. If the comprehensive plan recommends density bonuses, you should include them in your ordinance. The density bonus language included in the appendix will help you get started, but you may need to change it to implement the goals, policies and strategies contained in the comprehensive plan.

Some tools are very innovative but may not work well in a small to mid-sized community. Contact SPO for more information what may or may not be working in communities similar to yours.

Finally, this chapter can serve as a handy reference for tools that you do not need at this time, but which may become important in the future. Examples include a rural growth cap, impact fee ordinance and moratorium.

In general, you can also find out more about each of these topics on the internet.

ACCESS MANAGEMENT

DESCRIPTION

Access management is the control of driveways, entrances and intersections along main roads in order to maintain highway safety and the traffic carrying capacity of the roadway. The Maine Department of Transportation (MaineDOT) has adopted rules that govern access to State highways and State aid roads, but these do not apply to local roads and urban compact arterials. MaineDOT's rules include standards for such things as sight distances, driveway/entrance spacing and width, slope and drainage.

HOW IT COULD WORK

For roads not subject to MaineDOT's rules, communities can adopt MaineDOT's rules by reference, or modify and include in the performance standards section of the land use ordinance the regulations that meet local needs. Consideration should be given to adopting related parking standards to help ensure that parking lots are laid out in a safe and efficient manner.

ADVANTAGES

Access management regulations can:

- Preserve highway capacity by limiting the number of driveways a vehicle on the highway encounters;
- Reduce the number of slower-turning vehicles on the road;
- Reduce accidents by ensuring that vehicles can safely enter and exit from a site;
- Save tax dollars by minimizing the need for additional traffic lanes and other improvements;
- Minimize traffic problems caused by development.

CAUTIONS/LIMITATIONS

It is important that local regulations are consistent with the access management standards adopted by MaineDOT. Some of MaineDOT's standards, such as the requirements for widely spaced driveways, may be inappropriate for some local streets. Local standards for local roads do not have to be consistent with MaineDOT's standards.

FOR MORE INFORMATION

- Maine State Planning Office Technical Assistance Bulletin #7, Access Management and Parking.
- MaineDOT's Access Management Rules at: <http://www.maine.gov/mdot>

AFFORDABLE HOUSING – REGULATORY INCENTIVES

DESCRIPTION

There are a number of regulatory incentives that communities can use to encourage the construction or creation of affordable housing. These include, but are not limited to the following:

- Allow manufactured housing in areas of the community where single family dwellings are permitted;
- Allow the creation of accessory apartments in or attached to single family dwellings (see Appendix C for an example);
- Allow multi-family dwellings on relatively small lots where central sewers are available;
- Allow density bonuses for the creation of affordable housing (see Appendix C);
- Create areas in the community with relatively small lot sizes and frontages;
- Require that a certain percentage of housing units in new developments be affordable.

HOW IT COULD WORK

Regulatory incentives can be written as specific, permitted uses in a land use ordinance (see Appendix B; accessory apartments, mobile homes and multi-family dwellings are permitted in the suggested Village District, and lot sizes are relatively small), a density bonus (see Appendix C, Examples 1, 2 and 4) or as an exemption to a rural growth cap (see Appendix D, Example 2).

ADVANTAGES

Regulatory incentives can help meet the demand for affordable housing. This, in turn, can encourage young people, the elderly, and families to stay in the community, particularly in high cost housing areas.

CAUTIONS/LIMITATIONS

There are a variety of mechanisms that can be put into place to assure that affordable housing units are sold at affordable prices and that they remain affordable. Examples include deed covenants and conditions of approval. In the absence of any such mechanisms, there will be no guarantee that affordable housing units, once created, will actually be made available to people needing them, or that they will stay affordable.

FOR MORE INFORMATION

- See examples in Appendices B, C and D.
- Maine State Housing Authority, <http://www.mainehousing.org/>
- Coastal Enterprises Inc, <http://www.ceimaine.org/>

AIRPORT APPROACH ZONE

DESCRIPTION

An airport approach Zone is a technique for safeguarding public safety and welfare by placing height restrictions and other regulations on property adjacent to and surrounding aircraft landing fields. This may not apply to many communities.

HOW IT COULD WORK

An airport approach zone can be designed as a separate district in a zoning ordinance or as an overlay district that allows uses in the underlying zone subject to additional requirements. The zone could regulate the various types of air space obstructions and other hazards that may interfere with safe landing and taking off of aircraft including:

- Height of structures and vegetation;
- Conditions and activities that may cause electronic interference with air navigation communication systems;
- Lights that may interfere with airport lighting systems;
- Conditions and activities that produce levels of smoke, dust and glare that would interfere with safe operations; and
- Conditions or activities creating bird strike hazards.

ADVANTAGES

An airport approach zone can result in safer aircraft operations and the protection of people and property in the vicinity of the aircraft landing field.

CAUTIONS/LIMITATIONS

Local regulation of airport approach zones should be consistent with State law (Title 30 MRSA Sections 241-246) and regulations promulgated by the Federal Aviation Administration.

FOR MORE INFORMATION

- <http://www.klickitatcounty.org/planning>
- MaineDOT Airports and Aviation website: <http://maine.gov/mdot/aviation/aviation-home.php>

AQUIFER PROTECTION ZONE

DESCRIPTION

An aquifer protection zone, or wellhead protection area, is a technique for protecting existing and potential ground water supplies and recharge areas from inappropriate development or land use practices that could cause contamination of these resources.

The illustration at right shows a wellhead protection area that is based on aquifer recharge rates.



HOW IT COULD WORK

An aquifer protection zone can be designed as a separate district in a zoning ordinance or as an overlay district. It generally regulates the land immediately over an identified sand and gravel aquifer, as well as land in the immediate vicinity (for example, 500 feet). Examples of restrictions include prohibitions on the disposal or storage of solid waste, sludge, road salting material, gas or other petroleum products, dry cleaning establishments and similar uses that could contaminate the aquifer.

ADVANTAGES

An aquifer protection zone helps protect aquifers from contamination that could occur through improper handling of materials or spills resulting from a fire, accident, or other emergency.

CAUTIONS/LIMITATIONS

Information on the location of sand and gravel aquifers can come from a variety of sources including the Maine Geological Survey, the Maine Geographic Information System, well drilling records, and detailed hydrogeological studies of groundwater resources. Even with multiple data sources, however, it may be difficult to establish the precise boundaries of the aquifer. The aquifer protection zone should therefore include language allowing the planning board or other municipal entity to adjust the boundaries of the zone when applicants submit detailed hydrogeologic evidence of its location.

FOR MORE INFORMATION

- <http://www.holdenmaine.com>
- Maine State Planning Office Technical Assistance Bulletin #1, Groundwater
<http://www.maine.gov/spo/landuse>
- Maine Department of Environmental Protection, Bureau of Land and Water Quality
<http://www.maine.gov/dep/blwq/>

CLUSTER DEVELOPMENT

DESCRIPTION

See also Open Space Subdivision Requirements

Cluster development is defined in State law (Title 30-A MRSA Section 4301) as "...a form of development that allows a subdivision design in which individual lot sizes and setbacks are reduced in exchange for the creation of common open space and recreation areas, the preservation of environmentally sensitive areas, agriculture and silviculture and the reduction in the size of road and utility systems."

HOW IT COULD WORK

Provisions allowing for cluster development are generally included in the land use and/or subdivision ordinance. Traditionally, cluster development has been optional (the open space subdivision standard contained in Appendix D of this manual is mandatory). A developer could proceed with a traditional subdivision application in which the entire parcel is carved into lots, or a cluster development in which some of the land is retained as common open space. The emphasis in the review of cluster development has generally been on the location of homes and infrastructure. The emphasis in an open space subdivision is on the preservation of open space areas.

ADVANTAGES

Cluster development allows a developer to save money by placing houses closer together. The community gains because cluster development maintains open space.

CAUTIONS/LIMITATIONS

Monitoring is needed to ensure that open space areas in a cluster development are not developed at a later time. Controls may include a conservation easement held by the municipality or qualified land trust, deed covenants, ownership by a homeowners' association, specific notes on the recorded plan, or all of the above. There is little gain to the community if the open space areas consist largely of wetlands and similar areas that cannot be developed.

FOR MORE INFORMATION

- Appendix D, Example 4, Requirements for Open Space Subdivisions.
- The Southern Maine Regional Planning Commission has cluster subdivision provision in their Model Subdivision Ordinance. See Article 10.13 at: <http://www.smrpc.org/landuse/subord/subord.htm>
- Article XIII of the Raymond Land Use Ordinance
- Article 5.Q of the Waldoboro Land Use Ordinance
- Towns of Brunswick and Freeport

CONDITIONAL OR CONTRACT ZONING

DESCRIPTION

Conditional zoning and contract zoning are very similar and not typically done in smaller communities. Both involve rezoning a small piece of property that would otherwise be considered spot zoning. Both involve the imposition on conditions on the use of the property, but only one (contract zoning) involves a formal contract between the municipality and the property owner. State law (Title 30-A MRSA Section 4301) defines them as follows:

- Conditional zoning means the process by which the municipal legislative body may rezone property to permit the use of that property subject to conditions not generally applicable to other properties similarly zoned.
- Contract zoning means the process by which the property owner, in consideration of the rezoning of that person's property, agrees to the imposition of certain conditions or restrictions not imposed on similarly zoned properties.

HOW IT COULD WORK

A provision allowing for the creation of conditional or contract zoning is included in the land use ordinance. State law (Title 30-A MRSA Section 4352, subsection 8) requires that any conditional or contract zoning:

- Be consistent with the community's growth management program;
- Establish rezoned areas that are consistent with the existing and permitted uses in the original zone; and
- Only include conditions and restrictions that relate to the physical development and operation of the property.

ADVANTAGES

Either conditional or contract zoning allows a specific use of property deemed to be in the public interest but otherwise prohibited in a district in which it is located. Both techniques allow a specific use without opening up the use of the property to all the uses allowed in the new district.

CAUTIONS/LIMITATIONS

Both techniques can be difficult to administer and may require legal counsel. If there are a large number of requests for conditional or contract zoning, it may be time to consider an overall change in the land use ordinance (for example, a residential district undergoing a transition to commercial uses).

FOR MORE INFORMATION

- <http://www.cityofbath.com>
- <http://www.holdenmaine.com>
- Title 30-A M.R.S.A. Sections 4352 sub 8

DENSITY BONUS

DESCRIPTION

This is an incentive-based tool that allows developers to increase the maximum allowable density on a parcel in exchange for helping the community achieve one or more public policy goals outlined in the comprehensive plan.

HOW IT COULD WORK

Density bonus provisions can be included in a land use, zoning or subdivision ordinance. The ordinance should define the purpose for providing the density bonus, identify the areas where density bonuses are allowed, and set forth the specific policy for allowing the bonus. Density bonuses can be allowed in exchange for amenities provided by the developer such as:

- Affordable housing;
- Protection of valuable open space areas designated in the comprehensive plan;
- Public access to the water;
- Underground parking;
- Waterfront walkways;
- Open spaces, public plazas, and fishing piers;
- Preservation of historic structures.

ADVANTAGES

A density bonus can help a community achieve public policy objectives that it might not otherwise be able to implement. It is a way of minimizing the need to raise money to achieve public policy objectives as development occurs.

CAUTIONS/LIMITATIONS

To withstand challenges from abutting property owners, it is important that density bonuses be directly tied to the goals and objectives of the comprehensive plan.

FOR MORE INFORMATION

- Appendix C, Examples 3 and 4.
- Arendt, Randall, Rural by Design: Maintaining Small Town Character, Planners Press, American Planning Association, Washington, D.C., 1994.

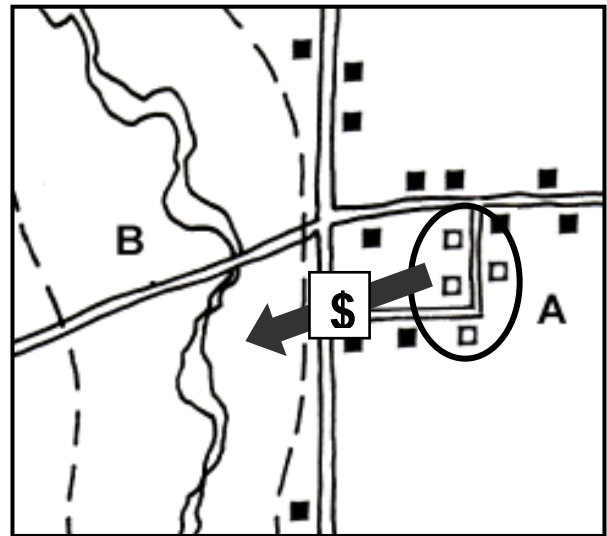
DENSITY TRANSFER CHARGE

DESCRIPTION

This is an incentive-based tool that can be used to acquire open space in rural areas of the community with fees generated by allowing an increased density of development in other areas of the community such as growth areas designated in the comprehensive plan.

HOW IT COULD WORK

The community enacts an ordinance that identifies an overlay zone on the growth area, or some portion of it, where densities may be increased in exchange for the payment of a density transfer charge (DTC). The DTC would then be used to acquire (either directly or through leveraging other dollars) land, development rights or easements in areas the community has designated rural or as a critical area in its comprehensive plan, open space plan, etc. The amount of the charge and the density credit would be calculated based on a methodology established in the ordinance.



Greater density allowed in area A with fee; fee spent in area B on conservation.

ADVANTAGES

This is a workable alternative to transfer of development rights (TDR). It is a way of raising money to achieve public policy objectives as development occurs.

CAUTIONS/LIMITATIONS

While a DTC is easier to design and implement than a TDR program, the difficulty comes in determining the appropriate and defensible charge for the area. The assistance of a land appraiser should be employed. The DTC may need to be adjusted periodically to reflect changes in market value. The DTC is different from an open space impact fee, since it applies only to property that receives an increase in density from the community at the time of building permit approval.

FOR MORE INFORMATION

- <http://www.maine.gov/spo>

FORM BASED ZONING

DESCRIPTION

Form based zoning (also called aesthetic zoning) is a regulatory tool that focuses on the appearance of the built environment, rather than on uses. Form based regulations are prescriptive (they state what you want) rather than proscriptive (what you don't want). The emphasis is to establish guidelines that create a livable physical setting: safe for pedestrians, visually interesting and attractive. Form based zoning generally allows mixed use development. Graphics, supplemented with drawings to clarify regulatory requirements, are an essential component of form-based codes. Form based codes focus on building exteriors (façades), the placement of buildings on lots, the relationship of the buildings to the street and to one another, sidewalks and pedestrian amenities, and landscaping. Form based codes are very place-specific and usually regulate at the neighborhood scale or smaller. Form based zoning has not been used extensively in New England, but is used in higher growth areas of the country such as California and the South. In Maine, some communities have adopted façade guidelines for their downtowns (this is one type of form based zoning). Form based zoning can be used to control the impact of an ultra-modern structure in a community's historic district, or construction of a "monster house" in a neighborhood of small bungalows.

HOW IT COULD WORK

A form based zoning ordinance can be based on the results of a community visioning process so as to gain broad public support for the form based regulations. Form based zoning is often implemented through a parallel approach where the new regulations are applied as an option to the existing regulations. The types of standards can include:

- Minimum and maximum building heights;
- Architectural standards to achieve the community's aesthetic vision (for example: building scale, architectural features, building materials);
- Streetscape standards including paving type, landscape materials, tree species.

ADVANTAGES

It can help a community retain its character and appearance as development occurs, particularly in historic downtown areas.

CAUTIONS/LIMITATIONS

While form based zoning is sometimes used as a replacement for traditional zoning, it may be necessary to prohibit certain undesirable uses without prescribing which specific uses are allowed.

FOR MORE INFORMATION

- <http://www.thelastgreenvalley.org>
- <http://www.formbasedcodes.org>

GOOD NEIGHBOR POLICIES

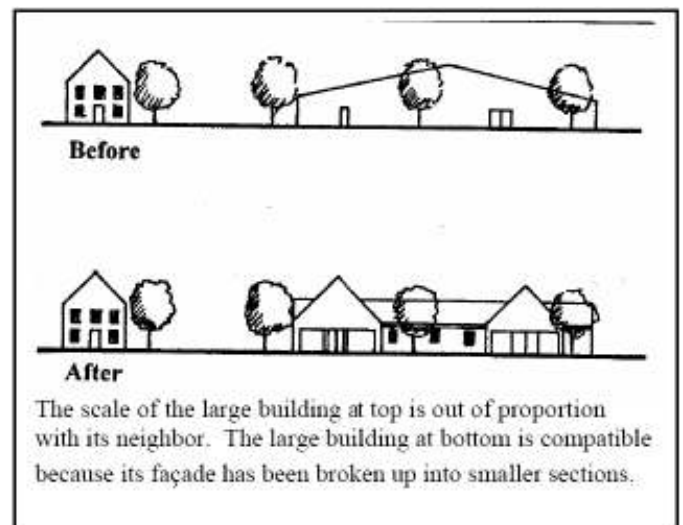
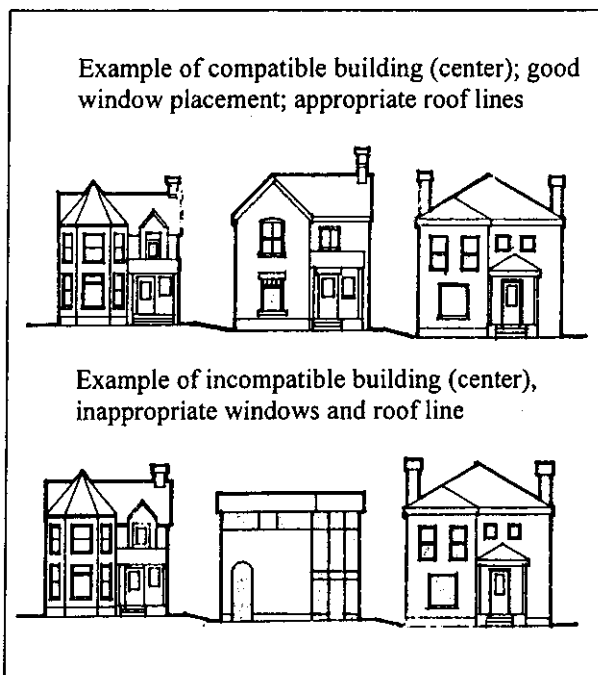
DESCRIPTION

See also Large Scale Development Standards

Good neighbor policies are standards for nonresidential and large residential projects that are administered through a design review process in a local zoning, site plan review or “good neighbor” ordinance. Their purpose is to ensure that development will be an asset to its neighbors and the community as a whole. Examples of good neighbor policies include standards for:

- Buffering;
- Exterior lighting;
- Noise;
- Outdoor storage areas;
- Landscape design;
- Building placement, alignment and setback;
- Off-street parking and loading;
- Business signs;
- Recycling/waste collection.

Good neighbor policies include standards that regulate the aesthetic aspects of nonresidential development. A number of Maine communities include “good neighbor” standards in their ordinances, although they are seldom labeled as such.



HOW IT COULD WORK

Good neighbor standards can be included as performance standards in a land use ordinance or site plan review ordinance.

ADVANTAGES

Good neighbor policies can help ensure good quality development as the community grows.

CAUTIONS/LIMITATIONS

These standards may add costs to developers.

FOR MORE INFORMATION

- Maine State Planning Office Technical Assistance Bulletin #6, Good Neighbor Policies
- Appendix E, Site Plan Review
- Appendix C, Example 5, Large Scale Development Standards

HARBOR ORDINANCE

DESCRIPTION

A harbor ordinance is a tool for regulating the harbors and waterways of the municipality and assigning anchorages. It can be adopted pursuant to State law (Title 38 MRSA Sections 1 – 13) and may include provisions for:

- Appointment of a harbor master and assignment of powers and duties;
- Creation of a harbor committee and assignment of duties and responsibilities;
- Establishment of one or more navigable channels;
- Rule for harbor use;
- Regulation of moorings including:
 - Assignment
 - Procedures for mooring locations
 - Abandonment of moorings
 - Record of moorings
 - Removal/inspection of mooring tackle
- Piers, wharfs, bulkheads, floats;
- Removal of vessels;
- Obstruction of vessels;
- Penalties

HOW IT COULD WORK

A harbor ordinance is generally adopted as a separate ordinance, but could be included as a separate section of a zoning ordinance.

ADVANTAGES

A harbor ordinance can help a community manage its harbors and waterways. It can be an important tool for ensuring that a portion of its harbors and waterways will continue to be available for the commercial fishing industry.

CAUTIONS/LIMITATIONS

See Title 38 MRSA Sections 1 through 13 for laws regulating channel lines and enforcement, mooring sites, waiting lists for mooring sites, removal of vessels obstructing anchorages and abandonment of watercraft.

FOR MORE INFORMATION

- <http://www.westbath.govoffice.com>
- <http://www.kennebunkmaine.org>

HOME OCCUPATION STANDARDS

DESCRIPTION

Home occupation standards are generally aimed at allowing people to undertake certain business activities in their homes or accessory structures, as long as these activities have a minimum adverse impact on the surrounding area. The standards usually include limits on the number of employees, the types of services or goods that can be offered, the percentage of the ground floor area of the residence that can be used, signs, outdoor lighting, truck deliveries and parking. Many local ordinances also limit noise, odors, dust, vibrations and other adverse impacts.

In more compact areas, the standards are usually stricter. For example, Auburn's zoning ordinance allows only one non-family employee, and limits the home occupation to 25% of the residence. In rural areas, the standards may allow for two or three non-family members and may allow the home occupation to be carried on in an accessory structure (see Orrington's land use ordinance).

HOW IT COULD WORK

Home occupation standards are generally included as a set of regulations in a zoning or land use ordinance.

ADVANTAGES

Home occupation standards allow people to work from home but place limits on the nature of the activity to protect the character of the neighborhood. Home occupation standards can prevent a residential area from gradually being degraded by inappropriate commercial uses.

CAUTIONS/LIMITATIONS

One challenge facing local officials is dealing with successful home businesses that grow, resulting in violations of the standards and/or pressure to change the standards or grant a variance to allow for continued growth. Some people may resist the idea of moving their business from their dwelling to a more appropriate commercial location.

FOR MORE INFORMATION

- <http://www.auburnmaine.org>
- <http://www.orrington.govoffice.com>

IMPACT FEES

DESCRIPTION

An impact fee ordinance is defined in Title 30-A MRSA Section 4301 as "...an ordinance that establishes the applicability, formula and means by which impact fees are assessed."

Impact fees are charges assessed against new development that attempt to cover the cost of providing capital facilities needed to serve the development. Impact fees provide one way to help ensure that existing residents will not bear the cost of new facilities necessitated by the new development. Maine law (Title 30-A MRSA Section 4354) requires that the amount of a fee must be reasonably related to the development's share of the cost of infrastructure improvements made necessary by the development, or reasonably related to the portion or percentage of the infrastructure used by the development.

By law, infrastructure improvements include, but are not limited to wastewater collection and treatment facilities, municipal water facilities, public safety equipment and facilities, fire protection facilities, roads and traffic control devices, parks and open space or recreational facilities, and schools.

HOW IT COULD WORK

Impact fees can be part of an existing zoning or other land use ordinance, or they can be adopted as a separate ordinance. The ordinance can establish an actual fee, or authorize the development of the fee by the municipal officers. Impact fees can be determined in advance, or on an individual basis as determined by an analysis of impacts at the time a development is proposed.

ADVANTAGES

Impact fees are an equitable and efficient technique for raising funds for public facility improvements needed to accommodate new growth. They are frequently popular in communities that have seen rapid growth, and they may reduce municipal borrowing and debt costs that otherwise would be necessitated by new growth.

CAUTIONS/LIMITATIONS

Impact fees may not cover the total infrastructure costs necessitated by growth. They are difficult to establish and may be difficult to administer. The imposition of impact fees on residential development may have the effect of increasing housing prices, thus negatively impacting low to moderate income people.

Impact fees must be supported with a comprehensive plan that is consistent with the Growth Management Act Title 30-A MRSA Section 4314.

FOR MORE INFORMATION

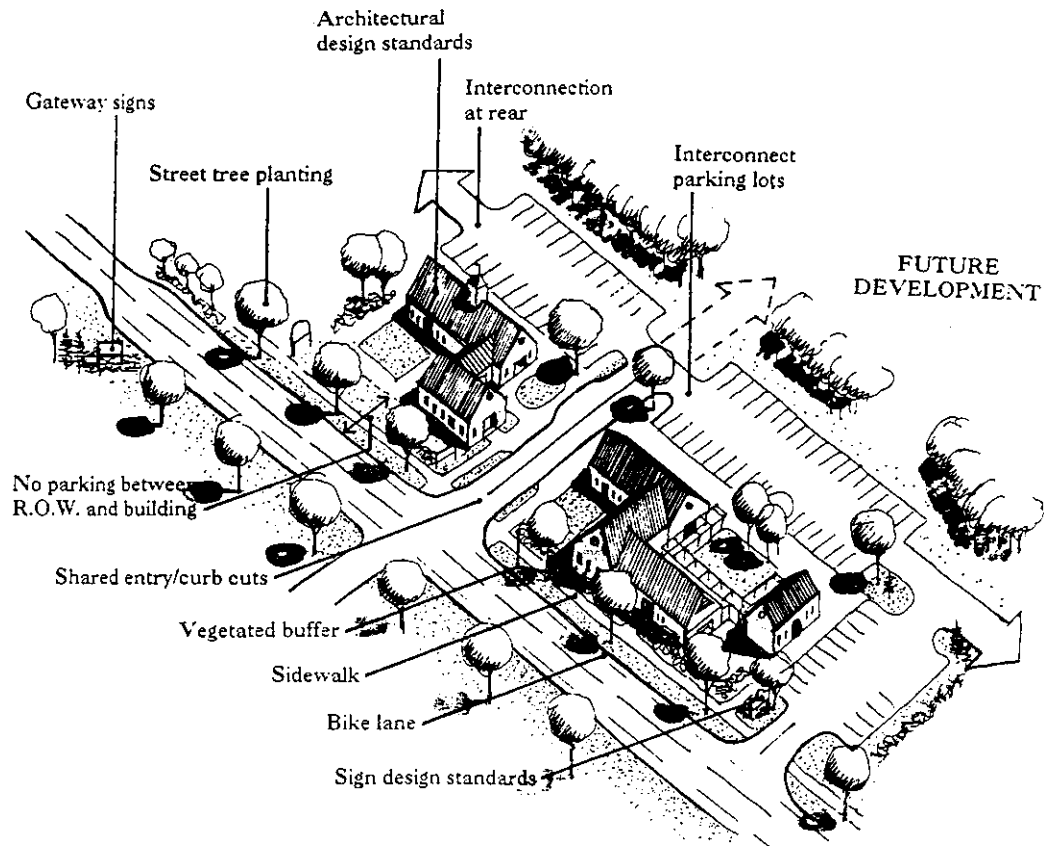
- Financing Infrastructure Improvements through Impact Fees, Maine State Planning Office, January, 2003. Available on line at: <http://www.maine.gov/spo/landuse/>

LARGE SCALE DEVELOPMENT STANDARDS

DESCRIPTION

Large scale development standards were initially aimed at limiting the size of “big box” developments, but have been expanded in scope in many communities to control the quality of retail development along major roads.

Example of Measures to Improve Highway Commercial Development



HOW IT COULD WORK

Large scale development standards can be adopted as a separate ordinance, but are usually included as a performance standard in a land use ordinance. They may address building size, and may include standards for building appearance, parking, landscaping, lighting, screening, outdoor sales, bicycle and pedestrian facilities, building reuse and location. Some municipal ordinances also authorize the planning board to require an economic and fiscal impact analysis.

ADVANTAGES

Large scale development standards can help control the quality of commercial development including “big box” retail developments and help achieve the vision for quality growth articulated in the comprehensive plan. They can go a long way towards improving the aesthetics of otherwise sterile looking roadside commercial developments.

CAUTIONS/LIMITATIONS

These standards do not prevent commercial sprawl, and may initially drive some types of commercial development to other communities that do not have similar controls.

FOR MORE INFORMATION

- Appendix C, Example 5.
- Gateway 1 Performance Standards for Large Scale Developments, June, 2006, MaineDOT Maine State Planning Office, Lincoln County Commission, Robert F. Faunce.

MINIMUM LOT SIZE ORDINANCE

DESCRIPTION

A minimum lot size ordinance generally establishes a town-wide minimum lot size requirement. The minimum may be 30,000 square feet, 40,000 square feet, one acre (43,560 square feet) or larger. Large minimums are often based on the fact that the soils in the community have severe limitations for subsurface wastewater disposal. There may be a different lot size requirement in the municipality's shoreland zoning ordinance.

HOW IT COULD WORK

A minimum lot size ordinance is generally adopted as a separate ordinance. Exceptions are generally made for the use of a lot that existed prior to the effective date of the ordinance. There may be a reference to the community's shoreland zoning ordinance if that ordinance contains a different minimum lot size requirement.

ADVANTAGES

A town-wide minimum lot size ordinance is relatively easy to adopt and administer. It may prevent or minimize public health problems that might otherwise result from failing subsurface wastewater disposal systems. A community is not required to have a comprehensive plan prior to the enactment of the ordinance.

CAUTIONS/LIMITATIONS

A minimum lot size ordinance does not allow for the fact that there may be some areas of the community that could support a higher density of development. Such ordinances generally do not allow for traditional, village type development because traditional villages were not built on large lots. A large, town-wide minimum lot size requirement may lead to sprawl throughout the community.

FOR MORE INFORMATION

- <http://www.townofnaples.org>

MIXED USE DEVELOPMENT

DESCRIPTION

Mixed use development refers to the practice of allowing more than one type of use in a building, a set of buildings, or throughout a zoning district. It usually includes some combination of residential, commercial, industrial, office, institutional or other land uses. A mixed use district will most commonly be the “downtown” of a community.

Single-use zoning came into widespread use in this country to keep people from living next to industrial areas. It later expanded to include commercial uses as well, setting the stage for suburban areas that are common in Maine and much of the United States.

A return to mixed use development can help communities deal with the negative impacts of sprawl. As stated on the smartgrowth.org website “...Smart Growth supports the integration of mixed land uses into communities as a critical component of achieving better places to live. By putting uses in close proximity to one another, alternatives to driving, such as walking and biking, once again become viable.”

HOW IT COULD WORK

One or more districts in the local land use ordinance allow a mixture of residential uses as well as compatible commercial uses such as small shops and offices.

ADVANTAGES

Allowing mixed uses can help reduce urban sprawl and address housing affordability issues by permitting more densely developed communities. Businesses can benefit by having customers living nearby, and residents have the benefit of being able to walk a short distance to get groceries and household items, or see a movie.

CAUTIONS/LIMITATIONS

Some commercial activities may be incompatible with residential development, and some commercial uses may generate a demand for more parking than can be accommodated in the neighborhood.

FOR MORE INFORMATION

- Appendix B, list of suggested uses in the Village District.
- <http://www.smartgrowth.org>

MORATORIUM

DESCRIPTION

For the purposes of land use, a moratorium is an official action of a municipality (for example, the adoption of a referendum or local ordinance) to temporarily halt the issuance of building permits or licenses.

HOW IT COULD WORK

State law (Title 30-A MRSA Section 4356) places limits on the extent to which moratoria can be used in Maine. The moratorium must be needed:

- “To prevent a shortage or an overburden of public facilities that would otherwise occur during the effective period of the moratorium or that is reasonably foreseeable as a result of any proposed or anticipated development; or
- Because the application of existing comprehensive plans, land use ordinances or regulations or other applicable laws, if any, is inadequate to prevent serious public harm from residential, commercial or industrial development in the affected geographical area.”

A moratorium must be of a definite term of not more than 180 days. It may be extended for additional 180-day periods if the problem giving rise to the need for the moratorium still exists, and if reasonable progress is being made to alleviate the problem.

ADVANTAGES

A moratorium can give a community “breathing room” while it addresses the problem through the development of a comprehensive plan and/or land use ordinances.

CAUTIONS/LIMITATIONS

A moratorium must be temporary in nature. It is not a long-range land use management technique to forestall growth or maintain a community’s rural character.

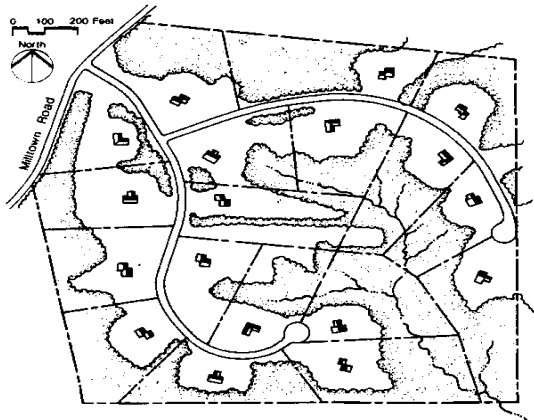
FOR MORE INFORMATION

- Maine Municipal Association: <http://www.memun.org>

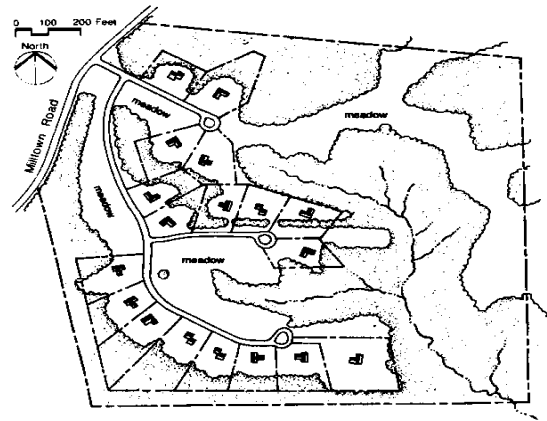
OPEN SPACE SUBDIVISION REQUIREMENTS

DESCRIPTION

This is an incentive-based tool aimed at preserving open space as land is developed through the subdivision review process. It allows developers to create lots that don't meet the municipality's minimum lot size and other dimensional requirement(s), provided that open space is preserved.



Traditional subdivision – development of entire parcel with lots



Open space subdivision - of portion of site with same

of lots

Reprinted with permission from “Growing Greener, Putting Conservation into Local Codes,” by Randall Arendt.

HOW IT COULD WORK

Open space subdivision requirements are generally included as a set of standards in a local subdivision or land use ordinance. State law does not specifically regulate open space subdivisions, so municipalities can choose the types of standards that best meet local conditions. The following is one of many possible approaches:

- The proposed development must be consistent with the town's comprehensive plan;
- The overall density of the parcel must not exceed the density allowable if the parcel were developed conventionally, using the applicable minimum lot size requirements of the municipality;
- Only buildable land can be counted for purposes of calculating minimum lot size (be sure to define 'buildable');

- At least 50% of the parcel must be permanently preserved as open space;
- The Planning Board is authorized to reduce lot size, frontage and other dimensional requirements to achieve the desired open space preservation;
- The developer realizes cost savings (e.g. reduced road frontage and utility investments).

ADVANTAGES

Helps retain valuable open space areas and rural character as land is developed. It also results in an efficient development pattern on the portion of the parcel that is developed.

CAUTIONS/LIMITATIONS

Open space subdivision requirements will not prevent rural development, but can mitigate the impacts of sprawl by preserving valuable open space areas that would otherwise be developed. For best results, local regulations should address:

- The type of open space that should be protected, as set forth in the comprehensive plan or open space plan;
- How the open space will be permanently protected;
- How net residential density must be calculated;
- How structures must be sited on the land;
- How shore frontage and setbacks will be addressed;
- Whether or not utilities can be located in designated open space areas; and
- Who will ultimately own the open space area.

FOR MORE INFORMATION

- Appendix D, Example 4

RURAL GROWTH CAP

DESCRIPTION

This is one of the few growth management tools that can be very effective in directing growth to growth areas, and limiting incompatible growth in rural areas. It allows unlimited growth in the designated growth areas of the community, but restricts, or caps, the amount of growth that can occur in the rural area. State law (Title 30-A MRSA Section 4360) specifically allows municipalities to set different limits on the number of permits that are allowed in designated growth and rural areas.

HOW IT COULD WORK

A rural growth cap can limit rural building permits to a percentage of total permits issued (for example, 30% of total building permits), or it can establish a numerical limit (a number equal to 30% of the average annual number of permits issued during the past 10 years). Permits can be issued on a first come-first serve basis, or they can be drawn by lottery. The Planning Board can be instructed to evaluate the rural growth cap on a regular basis and recommend changes as needed to more effectively manage growth.

ADVANTAGES

This can be a very effective growth management tool – perhaps one of the few that can actually help achieve the goal of directing 70% of a community's growth to the growth area.

CAUTIONS/LIMITATIONS

A rural area growth cap may be controversial, particularly in communities that have not seen a lot of growth and/or where rural land owners do not perceive rural growth to be a problem.

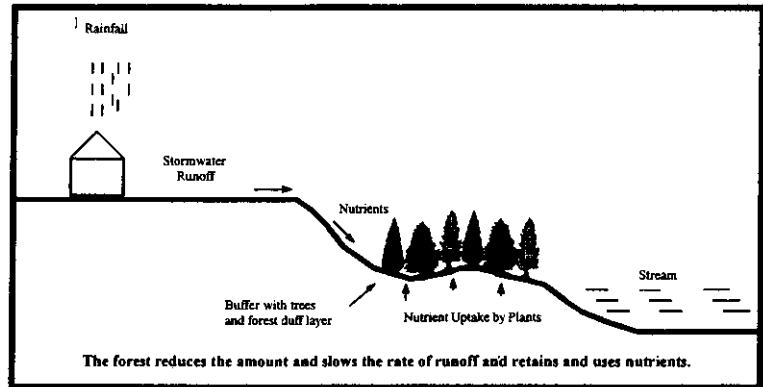
FOR MORE INFORMATION

- Appendix D. Example #1 is presented as a stand-alone ordinance with an immediate 30% rural growth cap. Example #2 is written as an amendment to an existing ordinance, with the rural area growth cap phased in over a number of years.

STORMWATER MANAGEMENT

DESCRIPTION

Stormwater management is the process of controlling and cleansing storm water flow so that it does not harm human health, property or the natural environment. Maine's stormwater management law requires some new projects that are subject to review and approval by the Maine Department of Environmental protection (MaineDEP) to provide stormwater management as part of their design. According to DEP officials, most of Maine's stormwater problems are caused by projects that are too small to be regulated by MaineDEP. Stormwater from smaller projects can only be regulated at the local level.



Androscoggin Valley Council of Governments

HOW IT COULD WORK

Municipalities can include stormwater management regulations in the performance standards section of their land use ordinance. These can include requirements for a stormwater management plan, an erosion and sedimentation control plan, and a phosphorus impact analysis and control plan.

ADVANTAGES

Local stormwater management regulations can:

- reduce flooding;
- minimize erosion;
- reduce the sedimentation of small streams;
- avoid damages to surrounding properties; and
- help protect water bodies from pollutants and nutrients (phosphates and nitrates).

CAUTIONS/LIMITATIONS

Stormwater management regulations can increase the costs of a project.

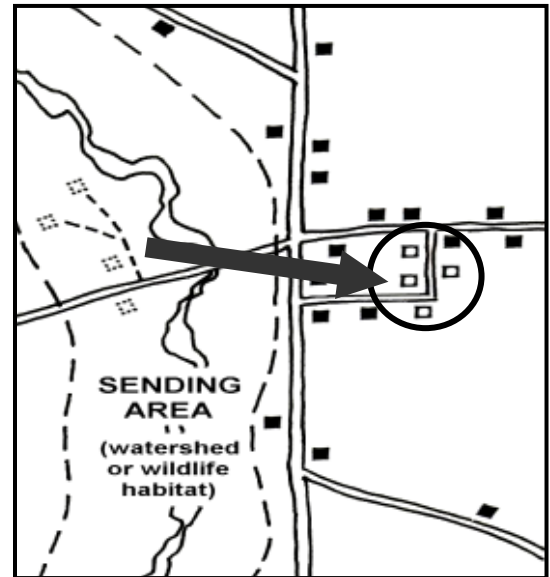
FOR MORE INFORMATION

- Maine State Planning Office Technical Assistance Bulletin #9, Stormwater Management.

TRANSFER OF DEVELOPMENT RIGHTS

DESCRIPTION

Transfer of Development Rights, or TDR, is a tool that encourages the voluntary shift of development from places communities want to preserve, called sending areas, to places that communities have designated for growth, called receiving areas. In a TDR program, the owners of land in sending areas sell their development rights, thus restricting the future development of their properties. The development rights are purchased by developers who wish to build at greater densities in designated receiving areas. Developers in receiving areas have the choice to either build at the density specified in the local regulations or buy TDRs from properties in sending areas and build at greater densities.



HOW IT COULD WORK

The municipality enacts a TDR ordinance that identifies sending areas and receiving areas. The TDR ordinance would typically specify:

- The minimum amount of property rights that would have to be purchased in the sending area to equal one development right (for example, purchase of development rights on five acres of land);
- The maximum increased density that would be allowed in the receiving area by the purchase of one development right (for example, construction of two additional dwelling units/acre); and
- The procedures that would have to be followed to obtain local approval of the transfer of development rights.

ADVANTAGES

In high growth areas with a large demand for high density development, it can help achieve a broad range of public policy objectives such as open space preservation and the provision of affordable housing.

CAUTIONS/LIMITATIONS

There are few TDR programs on the books in Maine. Nationally, very few TDR programs have worked, primarily because there has been limited development pressure or demand for compact development. Much of Maine appears to lack suitable markets for such development. There are several alternatives to TDR that may work better in Maine including density transfer charges and open space impact fees.

FOR MORE INFORMATION

- Maine State Planning Office 2004 TDR study

WIRELESS TELECOMMUNICATIONS FACILITIES SITING ORDINANCE

DESCRIPTION

A wireless telecommunications facilities siting ordinance is a tool that can be used to regulate the placement of telecommunications towers and related facilities. It can be written as a separate ordinance or as a set of standards in a land use or zoning ordinance.

HOW IT COULD WORK

The ordinance can be written to require the review and approval of the planning board for such facilities. Exemptions can be included for facilities used for communications by public officials, amateur radio stations, parabolic antennas, temporary facilities, and residential antennas. Standards can include limits on the districts in which wireless telecommunications facilities can be located, requirements that such facilities be designed to accommodate additional telecommunications providers, as well as standards for height limits (for example, 195 feet), property line setbacks (for example, 105% of its height from all property lines), landscaping, fencing, lighting, color and materials, structural standards and noise. The ordinance can also include provisions relating to abandonment of the facility.

ADVANTAGES

Establishment of a review process and standards for wireless telecommunications facilities can minimize the proliferation of towers in the community and ensure that new facilities are aesthetically pleasing and do not pose a safety threat to nearby properties. Provisions dealing with abandonment can ensure that abandoned towers do not become a municipal liability.

CAUTIONS/LIMITATIONS

The federal Wireless Communications Act of 1996 prohibits municipalities from banning these facilities from the community, but does allow municipalities to limit their location and the number of facilities provided that all functionally equivalent carriers are treated equally. The Maine State Planning Office has prepared a handbook on Wireless Telecommunications Facilities that includes a model ordinance.

FOR MORE INFORMATION

- <http://www.maine.gov/spo>

APPENDIX A. SUGGESTED LAND USE ORDINANCE FORMAT

Note: This outline assumes that the community will include site plan review provisions in its land use ordinance.

ARTICLE 1. GENERAL

1. Title

This Ordinance and the accompanying land use (*zoning*) map shall be known and may be cited as the “Land Use Ordinance of the Town of _____, Maine.”

2. Authority

This Ordinance has been prepared and adopted pursuant to the enabling provisions of Article VIII, Part 2, of the Maine Constitution, the provisions of Title 30-A MRSA Section 3001 (Home Rule), the Comprehensive Planning and Land Use Regulation Act, Title 30-A MRSA, Sections 4312 et. seq., Section 4352, Zoning Ordinances, and the Mandatory Shoreland Zoning Act, Title 38 MRSA Sections 435 et. seq.

Note: Delete the reference to the Mandatory Shoreland Zoning Act if you intend that the Land Use Ordinance will not include shoreland zoning standards.

3. Purposes

The purposes of this Ordinance are:

- A. To implement the provisions of the Town’s (city’s) Comprehensive Plan;
- B. To encourage growth in the identified growth areas of the community, and to limit growth in the rural areas;
- C. To promote the health, safety and general welfare of the residents of the community;
- D. To encourage the most appropriate use of land throughout the community;
- E. To promote traffic safety;
- F. To provide safety from fire and other elements;
- G. To provide an allotment of land area in new developments sufficient for adequate enjoyment of community life;
- H. To conserve natural resources

I. In watershed and shoreland areas:

- to further the maintenance of safe and healthful conditions;
- to prevent and control water pollution;
- to protect fish spawning grounds, aquatic life, bird and other wildlife habitat;
- to protect buildings and lands from flooding and accelerated erosion;
- to protect archaeological and historic resources;
- to protect commercial fishing and maritime industries;
- to protect freshwater and coastal wetlands;
- to control building sites, placement of structures and land uses;
- to conserve shore cover, and visual as well as actual points of access to inland and coastal waters;
- to conserve natural beauty and open space; and
- to anticipate and respond to the impacts of development in shoreland areas.

Note: delete letter I if this ordinance will not include shoreland zoning standards.

4. Applicability

The provisions of this Ordinance shall govern all land and water areas of the Town of _____.

5. Conflicts with Other Ordinances

Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other ordinance, regulation or statute, the more restrictive provision shall control.

This Ordinance supersedes and replaces the _____ Ordinance which became effective on _____ and shall not prevent enforcement of the repealed ordinance with respect to the time periods in which it was in effect.

6. Validity and Severability

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

7. Effective Date of the Ordinance and Ordinance Amendments

A. The effective date of this Ordinance shall be the date of adoption by the legislative body on _____.

B. The shoreland zoning provisions of this Ordinance, having been adopted by the legislative body on _____,¹ Shall be effective upon the date of adoption provided that it is subsequently approved by the Commissioner of the Department of Environmental Protection. A certified copy of the Ordinance, or Ordinance Amendments, attested and signed by the Municipal Clerk, shall be forwarded to the Commissioner of the Department of Environmental Protection for

approval. If the Commissioner fails to act on the shoreland zoning provisions of this Ordinance or Ordinance Amendments, within 45 days of his/her receipt of the Ordinance, it shall be deemed approved.²

¹ *Note: The effective date of shoreland zoning standards is not the effective date of this ordinance but that of the original shoreland zoning ordinance.*

² *Note: Delete paragraph B if your ordinance will not include shoreland standards.*

8. Amendments

- A. This Ordinance may be amended by a majority vote of the legislative body.
- B. For amendments involving the shoreland zoning provisions of this Ordinance, copies of the amendments, attested and signed by the Municipal Clerk, shall be submitted to the Commissioner of the Department of Environmental Protection following adoption by the municipal legislative body and shall not become effective unless approved by the Commissioner. If the Commissioner fails to act on any amendment within 45 days of his/her receipt of the amendment, it shall be deemed approved. Any application for a permit submitted to the municipality within the 45 day period shall be governed by the terms of the amendment, if such amendment is approved by the Commissioner.

Note: Delete paragraph B if your ordinance will not include shoreland standards

9. Availability

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

10. Annual Administrative Review

The Code Enforcement Officer, Planning Board and Board of Appeals each shall report annually, in the month of January, to the (Board of Selectmen/Council/Other) on their respective experience with the administration of this Ordinance during the previous year. Their reports to the _____ shall include any recommended amendments that would:

- A. Enhance their ability to more effectively meet their respective administrative responsibilities under this Ordinance; and
- B. Enhance the implementation of the purposes of this Ordinance contained in Article 1, Section 1, above.

The failure of any person or board to comply with this provision shall not affect the validity or enforceability of this Ordinance in any way.

ARTICLE 2. LAND USE DISTRICT REQUIREMENTS

Note: Include district requirements here (see Appendix B)

ARTICLE 3. ADMINISTRATION, ENFORCEMENT AND PENALTIES

1. Administering Agencies

A. Code Enforcement Officer

Unless otherwise provided in this Ordinance, the Code Enforcement Officer (CEO) shall administer and enforce this Ordinance. No permit application shall be approved by the Code Enforcement Officer except in compliance with the provisions of this Ordinance. The Code Enforcement Officer shall have the following duties, among others, in enforcing this Ordinance:

1. **Applications and fees.** Act upon all applications and collect any fees due; refer/process all applications as required.
2. **CEO Permit approvals.** Act upon permit applications that are under the jurisdiction of the CEO as set forth in Article 2, Land Use Districts.
3. **Site plan review permits.** Review applications which are under the jurisdiction of the Planning Board, as set forth in Article 2, for completeness of submissions and refer such applications to the Planning Board for site plan approval.
4. **Board of Appeals applications.** Refer requests for variances and administrative appeals to the Board of Appeals.
5. **Inspections.** Inspect sites where permit applications have been approved to ensure compliance with local ordinances and State laws or rules.
6. **Complaints and violations.** Investigate complaints and reported violations.
7. **Reports and records.** Keep written inspection reports and thorough records.
8. **Violation notices.** Issue violation notices.
9. **Appeals.** Participate in appeals procedures.
10. **Consent agreements.** Process or act on consent agreements involving violations of this Ordinance and appear in court when necessary.
11. **Agendas.** Prepare agendas for mailing at least seven days before meetings of the Planning Board and Board of Appeals, and attend meetings of the Planning Board and Board of Appeals where applicable.

12. **Permit revocations.** Revoke any permit after notice if it was issued in error or if it was based on erroneous information.
13. **Interpretation.** Refer matters to the Board of Appeals when there is a question concerning the interpretation of this Ordinance.

B. Board of Appeals

The Board of Appeals shall be responsible for deciding administrative and variance appeals in accordance with the requirements of Section _____ of this Land Use Ordinance. Following the issuance of any decision favorable to the applicant, the applicant shall return to the Code Enforcement Officer for approval of any applicable building permit notification application.

The role of the Board of Appeals is limited to ensuring that required procedures are followed and that variances are granted in strict conformity with the requirements of this Ordinance. The Board of Appeals shall have no authority to substitute its judgment for that of the Planning Board or Code Enforcement Officer in the substantive review (define) of development proposals.

C. Planning Board

The Planning Board shall be responsible for reviewing and acting upon applications for site plan approval as set forth in Article 2, as well as acting upon applications for subdivision review, as set forth in Article 7.

Note: Delete the reference to subdivision review if you do not intend to include subdivision review in your local land use ordinance.

Following approval by the Planning Board, the applicant shall return to the Code Enforcement Officer for issuance of any applicable permits.

2. Permits Required

It shall be unlawful, without first obtaining a permit from the appropriate reviewing authority, to engage in any activity or use of land or structure requiring approval in the district in which such activity or use would occur; or expand, change, or replace an existing use or structure; or renew a discontinued nonconforming use. Approval shall be required for:

- A. **Activities requiring Code Enforcement Officer approval.** Any activity listed in Article 2, Land Use Districts, as requiring approval from the Code Enforcement Officer.
- B. **Activities requiring site plan approval.** Any activity listed in Article 2, Land Use Districts, as requiring approval from the Planning Board.

3. **Permit Application**

- A) Written application.** Every applicant for a permit shall submit a written application, including a scaled site plan, on a form provided by the municipality, to the Code Enforcement Officer. The following items, when appropriate, shall be included on the application.
- 1) The shape, size and location of the lot to be built upon and structure(s) to be erected, altered or removed.
 - 2) Any structure(s) already on the lot.
 - 3) Depth of front yards of structure(s) and adjoining lots.
 - 4) Statement of intended use.
 - 5) Documentation that the applicant has right, title or interest in the property.
- B. Signature.** All applications shall be signed by the owner of the property or the owner's legal agent, certifying that the information on it is complete and accurate. If the person signing the application is not the owner or lessee of the property, then that person shall submit a letter of authorization from the owner or lessee.
- C. Application to be dated.** All applications shall be dated, and the Code Enforcement Officer or Planning Board, as appropriate, shall note upon each application the date and time of its receipt.
- D. Plumbing permit.** A valid plumbing permit or a completed application for a plumbing permit, including the site evaluation approved by the Local Plumbing Inspector, shall be submitted whenever the nature of the proposed structure or use would require the installation of a subsurface wastewater disposal system.
- E. Fees.**
- 1) **Applications for Code Enforcement Officer approval.** Applications for a permit from the Code Enforcement Officer shall be accompanied by a fee of _____. This application fee shall be made by check payable to the Town. No application shall be found complete until the fee is paid. This fee shall not be refundable.
 - 2) **Applications for Planning Board approval.** Applications for a permit requiring approval by the Planning Board shall be accompanied by a fee of _____. This application fee shall be made by check payable to the Town. No application shall be found complete until the fee is paid. This fee shall not be refundable.

- 3) **Modifications.** Any modification to the description, scale drawing, or site plan of the proposed structure(s) shall require a revised application, payment of an additional one-half of the application fee, and approval in accordance with the provisions of Article 2, Land Use District Requirements, prior to beginning the work.

Note: The fee should be high enough to cover the community's actual or estimated administrative costs. Since the needs of each community will vary, no attempt has been made to recommend a fee. Many communities base a fee for structures on the square feet of the building. If your community has a building code with a fee system, you may wish to reference it and establish additional fees for non-structural activities requiring CEO or site plan approval.

4. Procedure for Administering Permits

A. Submission of Permit applications to Code Enforcement Officer

- 1) **Determination of complete application.** Within 30 days of the date of receiving a written application for approval of either the Code Enforcement Officer or the Planning Board, the Code Enforcement Officer shall notify the applicant in writing either that the application has been accepted as a complete application or, if the application is incomplete, that specific additional material is needed to make the application complete.
- 2) **Action on complete application.** Within seven (7) working days of the date of receipt of a complete application the Code Enforcement Officer shall examine such application and physically examine the premises to determine whether or not the proposed building, structure or use would be in compliance with this Ordinance.
- 3) **Referrals.** All applications which require site plan approval of the Planning Board or action by the Board of Appeals shall within a period of thirty (30) days be referred to the applicable board for action and public notice shall be given. After approval, with or without conditions by such Board, the Code Enforcement Officer shall issue a permit within seven (7) working days after being notified of such approval.
- 4) **Building permit approvals.** In all other cases involving approval by the Code Enforcement Officer, the Code Enforcement Officer shall within a period of seven (7) working days approve or deny such applications in accordance with the provisions of this Ordinance.
- 5) **Written notification.** If approval is either denied or approved with conditions, the reasons as well as conditions shall be stated in writing. No approval shall be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance or regulation or any State law which the municipality is responsible for enforcing.

B. Applicant Responsibility

- 1) 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 Ordinance.
- 2) Posting.** Within seven (7) working days of receiving the approval, the applicant shall conspicuously post any approval issued, on the lot where the activity will occur, at a location clearly visible from the public street or road.

C. Expiration of Approval

If no substantial progress (**Make sure you define this in your ordinance**) of construction has been made within one (1) year from the date the approval is granted, the approval becomes invalid. The Code Enforcement Officer shall renew the approval within 30 days after the expiration of the approval upon payment of a fee as specified in this Ordinance. Otherwise the permit becomes invalid and the application process must begin anew.

5. Enforcement

- A. Violations.** It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance. If the Code Enforcement Officer shall find that any provision of this Ordinance is being violated, he or she shall notify in writing the person responsible for such violation.
- B. Penalty.** Any person, including but not limited to a landowner, a landowner's agent or a contractor, who orders or conducts any activity in violation of this Ordinance shall be penalized in accordance with Title 30-A, MRSA Section 4452. Each day that the violation occurs shall constitute a separate offense, beginning with the day following notification by the Code Enforcement Officer of such violation.
- C. Other remedies.** If any building is constructed, altered, removed, or any building or land is used in violation of this Ordinance the Code Enforcement Officer or any other appropriate authority or any person who would be damaged by such violation, in addition to other remedies, may institute appropriate legal procedures to prevent such violation.
- D. Unsafe buildings** Any building or structure that may be or shall at any time hereafter become dangerous or unsafe, shall, unless made safe and secure, be taken down and removed, in accordance with provisions of Title 17 MRSA Section 2851

ARTICLE 4. SITE PLAN REVIEW

Note: include site plan review provisions here. See the State Planning Office's Site Plan Review Handbook for an example of site plan review provisions. The Site Plan Review Handbook also has additional information including other site plan review provisions.

ARTICLE 5. PERFORMANCE STANDARDS

Note: include performance standards here

Due to space limitations and differing municipal needs, performance standards are not included in this manual. However, the following table contains a list of performance standards that are available on-line from six municipal web sites. The list has been included as an illustration of what you can find online. Some of these standards may address specific needs in your community, but you should carefully review any that you intend to include in your ordinance. There are no State requirements that you include any of these in your municipal ordinance.

Key to municipal abbreviations:		
Symbol	Municipality	Web Site Address
BREW	Brewer	http://www.brewerme.org
BRUN	Brunswick	http://www.brunswickme.org
GAR	Gardiner	http://www.gardinermaine.com
GOR	Gorham	http://www.gorham-me.org
HOL	Holden	http://www.holdenmaine.com
RAY	Raymond	http://www.raymondmaine.org

Illustrative List of on-line Performance Standards						
Municipal Standard	Municipality					
	BREW	BRUN	GAR	GOR	HOL	RAY
Access and parking layout				X	X	
Accessory apartments				X		
Accessory living quarters	X					
Accessory building			X			
Adult entertainment establishments		X				
Agricultural use						X
Air pollution				X		
Animal husbandry			X			
Archaeological/historic sites	X					
Automobile dealerships	X	X				
Automobile junkyard		X	X			
Back lots						X
Bed and breakfast					X	
Buffer areas			X	X	X	
Campground	X		X	X	X	
Clustered residential development				X		
Commercial vehicles in residential district	X					

Illustrative List of on-line Performance Standards

Municipal Standard	Municipality					
	BREW	BRUN	GAR	GOR	HOL	RAY
Conversions					X	
Corner clearances				X		
Day care centers for children or adults	X	X				
Drive-through as principal use		X				
Driveway construction						X
Earth-moving activity	X		X			
Electromagnetic radiation	X					
Erosion and sedimentation control					X	
Fire and safety	X					
Floodplain management				X		
Future roads				X		
Gasoline sales canopies		X				
Ground water protection					X	
Home occupations	X	X	X		X	X
Hotels, motels, inns, boarding houses, restaurants, nursing homes and hospitals in residential districts						X
Impact fees				X		
Individual mobile homes and travel trailers						X
In-law apartment	X					
Junkyards		X			X	
Kennels			X			
Land not suitable for development	X				X	
Large retail establishments		X				
Light industry			X			
Lighting			X		X	
Lot coverage	X					X
Manufactured housing				X		
Manufactured housing and manufactured housing parks			X			
Marine activities		X				
Mineral exploration and extraction		X	X	X	X	X
Mobile homes on individual lots		X				
Mobile homes and mobile home parks					X	X
Mobile homes for disabled persons on individual lots		X				
Modular housing		X				
Multi-family housing						
Multiple uses on a single lot	X				X	
Municipal services/facilities		X				
Noise	X		X	X		
Non-residential development			X			
Nuclear facilities			X			

Illustrative List of on-line Performance Standards

Municipal Standard	Municipality					
	BREW	BRUN	GAR	GOR	HOL	RAY
Odor	X		X			
Off-street parking and loading			X	X	X	X
Oil and chemical storage					X	
On-site circulation					X	
Outdoor recreation facility lighting			X			
Outdoor sales		X				
Outdoor storage and display of goods					X	
Outside storage	X					
Parking and loading	X					
Planned residential development	X		X			
Pollution levels					X	
Preservation and enhancement of the landscape					X	
Prevention of erosion				X		
Private rights of way					X	
Public boat launch facilities						
Public paths			X			
Protection of agriculture from potentially incompatible uses		X				
Recycling	X					
Residential back lot development					X	
Re-use of agricultural structures in rural districts		X				
Ruins			X			
Sanitary standards			X			
Shipping containers	X					X
Shoreland area protection				X		
Signs and billboards			X	X	X	X
Site conditions					X	
Soil suitability				X		X
Special events					X	
Street design and construction				X		
Temporary storage enclosures					X	
Temporary structures	X		X			
Trailer parks and campgrounds						X
Two-family dwelling			X			
Utilities					X	
Vibration	X					
Waste material accumulation						X
Waste water pollution				X		
Wildlife and natural areas preservation	X					
Wireless telecommunication facilities			X			X
Yard sales/garage sales			X			

ARTICLE 6. SHORELAND ZONING

Note :Include shoreland zoning provisions here if you wish to include shoreland zoning requirements in the town-wide land use ordinance. This manual does not contain suggested shoreland zoning regulations. Check with the Maine Department of Environmental Protection for the latest version of the State’s Shoreland Zoning Guidelines. If you do not wish to include shoreland zoning regulations, skip this article and renumber the remaining articles.

ARTICLE 7. SUBDIVISION REVIEW

Note: Include subdivision review provisions here if you wish to include subdivision regulations in the town-wide land use ordinance. This manual does not contain suggested subdivision review standards. Check with your regional council or review the model subdivision ordinance on the State Planning Office’s web site. If you do not wish to include subdivision regulations, skip this article and renumber the remaining articles.

ARTICLE 8. FLOOD PLAIN MANAGEMENT

Note: Include flood plain management provisions here if you wish to include your community’s flood plain ordinance in the town-wide land use ordinance. This manual does not contain suggested flood plain management standards. Check with your regional council or review the model flood plain management ordinance on the State Planning Office’s web site. If you do not wish to include flood plain management provisions, skip this article and renumber the remaining articles.

ARTICLE 9. NON-CONFORMANCE

1. Purpose

It is the intent of these provisions to promote land use conformities, except that non-conforming conditions that legally existed before the effective date of this Ordinance, or any amendment thereto, shall be allowed to continue, subject to the requirements set forth in this section.

2. General Requirements

- A. 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 Ordinance.
- B. Repair and maintenance.** This Ordinance allows, without a permit, the normal upkeep and maintenance of non-conforming uses and structures including repairs and renovations that do not involve expansion (**You will need to define how much expansion is allowed. Some towns do not allow any, others allow 30%, etc.**) of the non-conforming use or structure, and such other change in a non-conforming use or structure as federal, state or local building and safety codes may require.

3. Non-Conforming Structures

A. Expansions. A non-conforming structure may be added to or expanded after the owner has obtained a permit from the same permitting authority as that for a new structure, provided such addition or expansion does not increase the non-conformity of the structure.

- 1) Foundations. Construction or enlargement of a foundation beneath the existing structure shall not be considered an expansion of the structure provided:
 - a) That the structure and new foundation are placed such that the setback and other dimensional requirements are met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria listed in subsection B, Relocation, below;
 - b) That the completed foundation does not extend beyond the exterior dimensions of the structure for the portion of the structure that is non-conforming.

B. 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 setback requirements to the greatest practical extent as determined by the Planning Board, and provided that the applicant demonstrates that the present subsurface wastewater disposal system meets the requirements of State law and State of Maine Subsurface Wastewater Disposal Rules or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be relocated in a manner that causes the structure to be more non-conforming.

In determining whether the building relocation meets the setback or other dimensional requirements to the greatest practical extent, the Planning Board shall base its decision on:

- 1) The size of the lot;
- 2) The slope of the land;
- 3) The potential for soil erosion;
- 4) The location of the septic system and other on-site soils suitable for septic systems; and
- 5) The type and amount of vegetation to be removed to accomplish the relocation.

C. Reconstruction or replacement. Any non-conforming structure that is located less than the required setback from the normal high water mark of a water body, tributary stream or upland edge of a wetland, or from the property line, or which otherwise fails to meet the dimensional requirements of this Ordinance, and which is removed, or damaged or destroyed by more than 50 percent of the market value of the structure before such damage, destruction or removal may be reconstructed or replaced provided that a permit is obtained within one year of the date of said damage, destruction or

removal and provided that such reconstruction or replacement is in compliance with the setback or other dimensional requirements to the greatest practical extent as determined by the Planning Board, and provided that the applicant demonstrates that the present subsurface wastewater system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules, or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity.

Any non-conforming structure that is damaged or destroyed by 50 percent or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place with a permit from the Code Enforcement Officer.

In determining whether the building reconstruction or replacement meets the setbacks to the greatest practical extent, the Planning Board shall consider, in addition to the criteria in subsection B, above, the physical condition and type of foundation present, if any.

- D. Change of use of a non-conforming structure (shoreland areas only).** 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 or wetland, or on the subject or adjacent properties and resources than the existing use.

In determining that 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, flood plain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

Note: Delete paragraph D if your ordinance will not include shoreland standards.

4. Non-Conforming Uses

- A. Expansions.** Expansion of nonconforming uses may be allowed provided the Planning Board after reviewing written application determines that no greater adverse impacts would occur as the result of the expansion as defined below.
1. The expansion of a nonconforming use will be in accordance with any applicable Performance Standards set forth in this Ordinance.
 2. The expansions of the nonconforming use will not encroach further on the required setbacks.
 3. The proposed expansion is of the same character or less noxious than the current nonconforming use.
 4. The expansion use will not create a traffic hazard nor increase an existing traffic hazard.

5. That the amount of parking required to meet the minimum requirements for the proposed use exists on the site or will be otherwise provided in accordance with this Ordinance.
6. The amount of noise, odors, vibrations, smoke, dust and air discharges of the proposed expansion shall be equal to or less than the present use.
7. The hours of operation of the proposed expansion will be compatible with the existing, surrounding land uses.
8. The proposed use will not increase the adverse impact on surrounding properties.

B. Resumption prohibited. A lot, building or structure in or on which a non-conforming use is discontinued for a period exceeding one year, or that 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.

C. Change of use. An existing non-conforming use may be changed to another non-conforming use provided that the Planning Board finds after receiving a written application, that the proposed use is equally or more appropriate to the district than the existing non-conforming use, and that the proposed use will have no greater adverse impact on adjacent properties than the former use.

The determination of appropriateness shall be based on the probable changes in traffic (volume and type), parking, noise, potential for litter, wastes or by-products, fumes, odors, or other nuisances likely to result from such change of use. The performance standards of this Ordinance shall apply to such requests to establish new non-conforming uses.

5. Non-Conforming Lots

A. Non-conforming lots. A vacant, non-conforming lot of record legally existing on the effective date of this Ordinance 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 Ordinance except lot size and frontage can be met. Variances relating to setback or other requirements not involving lot size or frontage shall be obtained by action of the Board of Appeals. If more than one residential dwelling unit or other use is built, located or created on a non-conforming lot of record, the minimum lot size requirement of the district in which it is located shall be met for each residential dwelling unit and the frontage requirements of the district shall be met. The minimum side setback may be reduced by two-thirds for nonconforming lots of record which were created and built upon prior to the effective date of this Ordinance.

- B. Contiguous built lots.** If two or more contiguous lots or parcels are in the same ownership of record at the time of adoption or amendments of this Ordinance, and if all or part of the lots do not meet the dimensional requirements of this Ordinance, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that, where on-site subsurface wastewater systems are used, lots of at least 20,000 square feet are created and provided further that all such lots meet the requirements of the State of Maine Wastewater Disposal Rules.

If two or more principal uses or structures existed on a single lot of record on the effective date of this Ordinance, each may be sold as a separate lot provided that the above-referenced law and rules are followed. When such lots are divided, each lot thus created shall be as conforming as possible to the dimensional requirements of this Ordinance.

- C. 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 adoption or amendment of this Ordinance, and if any of these lots do not individually meet the dimensional requirements of this Ordinance or subsequent amendments thereto, and if one or more of the lots are vacant or contain no principal structure, the lots shall be combined to the extent necessary to meet the dimensional requirements.

This provision shall not apply to two or more contiguous lots, at least one of which is non-conforming, owned by the same person or persons on the effective of this Ordinance and recorded in the registry of deeds if the lot is served by a public sewer or can accommodate a subsurface wastewater disposal system in conformance with the State of Maine Subsurface Wastewater Disposal Rules and:

- 1) Each lot contains at least 100 feet of shore frontage and is at least 20,000 square feet in size; or
- 2) Any lots that do not meet the frontage and lot size requirements of paragraph 1) are reconfigured or combined in such a way that each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

Note: Delete items 1) and 2) if your ordinance will not include shoreland standards.

6. Vested Rights

Non-conforming use rights cannot arise by the mere filing of a notice or intent to build, or an application for required State permits and approvals. Such rights usually arise when actual substantial construction has begun or, in the case of pending applications, when the substantive review process to determine compliance with substantive performance standards on a complete application commences. Such construction must be legal at the time it is commenced and the owner must be in possession of and in compliance with all validly issued permits, both State and local.

ARTICLE 10. APPEALS

1. Appointment and Composition

- A. The municipal officers shall appoint members of the Board of Appeals in accordance with the requirements of Title 30-A MRSA Section 2691.
- B. The Board shall consist of five members serving staggered terms of three years.

Note: Boards in communities of less than 1,000 people can have three members

- C. The Board shall elect annually a chairman and secretary from its membership. The secretary shall provide for the keeping of the minutes of the proceedings of the Board of Appeals, which shall show the vote of each member upon each question. All minutes of the Board shall be a public record.

2. Powers and Duties

- A. **Administrative Appeals.** The board of appeals shall have the authority:
 - To hear and decide administrative appeals, on an appellate basis, from actions by the Planning Board;
 - To hear and decide administrative appeals, on a “de novo” basis, from actions by the Code Enforcement Officer; and
 - Any order, requirement, decision, or determination made, or failure to act, in the enforcement of a land use ordinance is not appealable to the Board of Appeals. Appeals regarding enforcement go directly to the Superior Court.
- B. **Variance Appeals.** To authorize variances upon appeal, within the limitations set forth in this Ordinance.
 - 1) **Dimensional variances only.** Variances may be granted only from dimensional requirements including frontage, lot area, lot width, structure height, percentage of lot coverage, and setback requirements.
 - 2) **No use variances.** Variances shall not be granted for establishment of any uses otherwise prohibited by this Ordinance.
 - 3) **Limitations.** The Board of Appeals shall not grant a variance unless it finds that:
 - a) The proposed structure or use would meet the performance standards of this Ordinance except for the specific provision which has created the non-conformity and from which relief is sought; and

- b) The strict application of the terms of this Ordinance to the petitioner and the petitioner's property would cause undue hardship. The term "undue hardship" as used in this subsection means:
- i. The land in question cannot yield a reasonable return unless a variance is granted; and
 - ii. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and
 - iii. The granting of a variance will not alter the essential character of the locality; and
 - iv. The hardship is not the result of action taken by the applicant or a prior owner.

- 4) **Disability variance.** The Board of Appeals may grant a variance to a property owner for the purpose of making that property accessible to a person with a disability who is living on the property. The Board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the property by the person with the disability. The Board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives on the property.

For the purposes of this subsection, a disability has the same meaning as a physical or mental handicap under Title 5 MRSA Section 4553 and the phrase "structures necessary for access to or egress from the property" is defined to include railing, wall or roof systems necessary for the safety or effectiveness of the structure.

- 5) **Conditions.** The Board of Appeals shall limit any variances granted as strictly as possible in order to ensure conformance with the purposes and provisions of this Ordinance to the greatest extent possible, and in doing so may impose such conditions on the variances as it deems necessary.
- 6) **Certificate.** If a variance is granted under this section, the Board shall prepare a certificate, prepared in recordable form, 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. The certificate must be recorded by the property owner in the local registry of deeds within 30 days of final approval of the variance or the variance is void. The variance is not valid until recorded as provided in this subsection.

3. Appeal Procedure

- A. Time limit.** 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. Such appeal shall be taken within 30 days of the date of the decision that is the subject of the appeal.
- B. Written notice.** Such appeal shall be made by filing with the Board of Appeals a written notice of the appeal that includes:
- 1) A concise written statement indicating what relief is requested and why it should be granted;
 - 2) A sketch plan drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief requested.
- C. Record of case.** Upon being notified of an appeal, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision from which the appeal is made.
- D. Public hearing.** The Board of Appeals shall hold a public hearing on the appeal within 35 days of its receipt of an appeal request.
- E. Decision by Board of Appeals.**
- 1) **Quorum.** A majority of the Board shall constitute a quorum for the purpose of deciding an appeal. A member who abstains shall not be counted in determining whether a quorum exists.
 - 2) **Majority vote.** The concurring vote of a majority of the members of the Board of Appeals present and voting shall be necessary to reverse an order, requirement, decision or determination of the Code Enforcement Officer, or Planning Board, to remand the matter to the Code Enforcement Officer or Planning Board, or to decide in favor of the applicant on any matter which it is required to decide under the provisions of this Ordinance, or to affect any variation in the application of this Ordinance from its stated terms.
 - 3) **Burden of proof.** The person filing the appeal shall have the burden of proof.
 - 4) **Action on appeal.** Following the public hearing on an appeal, the board may affirm, affirm with conditions, or reverse the decision of the Code Enforcement Officer or Planning Board only upon a finding that the decision, or failure to act, was clearly contrary to specific provisions of this Ordinance. When errors of administrative procedure or interpretations are found, the case shall be remanded back to the Code Enforcement Officer or Planning Board for correction.

- 5) **Time frame.** The Board shall decide all appeals within 35 days after the close of the hearing, and shall issue a written decision on all appeals.
- 6) **Findings.** All decision shall become a part of the record and shall include a statement of findings and conclusions as well as the reasons or basis for the decision, and the appropriate order, relief or denial.
- F. **Appeal to superior court.** Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may appeal to superior court in accordance with State laws within 30 days from the date of any decision of the Board of Appeals.
- G. **Reconsideration.** The Board of Appeals may reconsider any decision reached within 30 days of its prior decision. The Board may conduct additional hearings and receive additional evidence and testimony.

ARTICLE 11. DEFINITIONS

Note: Include definitions here. Appendix F contains a number of definitions that you may wish to consider.

APPENDIX B. LAND USE DISTRICTS – SUGGESTED FORMAT

Appendix B contains suggested language and a land use matrix that you can use to develop land use district requirements that are consistent with your community’s comprehensive plan. You should review your comprehensive plan and read the explanatory materials contained in Chapters 1 through 7 of this manual before creating the districts to include in your land use ordinance. In particular, you should review the discussion on choosing land use districts contained in Chapter 6.

Definitions are important to ensure a clear understanding of terms used in the ordinance. Some of the terms used in the land use matrix, below, will need to be defined. Appendix F has examples of some definitions.

If you are using the suggested ordinance format contained in Appendix A as the outline for your land use ordinance, the land use district requirements should be inserted into Article 2.

The land use categories and the dimensional requirements contained in this Appendix are examples and are not State minimums. You should determine the uses and dimensional requirements that are appropriate for your community. The matrix shown on the following pages has been completed for only two districts – a village district and a rural district. You can add other growth and rural districts to the table as needed to be consistent with your community’s comprehensive plan.

You do not have to use a matrix to delineate uses. You can simply list the uses that are allowed with or without a permit. In that case, the matrix can be a useful tool for ensuring that you consider whether or not specific uses would be consistent with your comprehensive plan and appropriate for your community.

ARTICLE 2. LAND USE DISTRICT REQUIREMENTS

1. Establishment of Districts

For the purposes of this Ordinance, the Town of _____ is hereby divided into the following land use districts:

Village District
Rural District

Note: list others as appropriate

2. Rules Governing District Boundaries

The location and boundaries of the land use districts are established as shown on the “Town of _____ Land Use Map,” which is hereby made a part of this Ordinance. This map shall be on file in the office of the Town Clerk.

Unless otherwise set forth on the Town of _____ Land Use Map, district boundary lines are property lines, the centerlines of roads, streets and rights-of-way or such lines extended, and the center lines of water courses or such lines extended, or the Town boundary lines. Boundaries indicated as following or parallel to shore lines shall be construed to follow or be parallel to the normal high water mark of such shore lines, and in the event of changes in the shore line shall be construed as moving with the actual shore line.

Where uncertainty exists as to the exact location of the district boundary lines, the Board of Appeals shall be the final authority as to location.

Exclusive of lands subject to shoreland zoning requirements, where a land use district boundary line divides a lot or parcel of land of the same ownership of record at the time such line is established by adoption or amendment of this Ordinance, the regulations applicable to the less restricted portion of the lot may be extended not more than 100 feet into the more restricted portion of the lot.

3. Land Use Requirements

Except as hereinafter specified, no building, structure or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, expanded, moved, or altered and no new lot shall be created except in conformity with all of the regulations herein specified for the district in which it is located, unless a variance is granted.

4. District Purposes

The purpose of these district requirements is to implement the municipality's Comprehensive Plan and to provide for orderly growth and development.

- A. Village District.** The purpose of the Village District is to encourage efficient land development patterns and to provide for anticipated growth and development by allowing a range of uses in appropriate areas of the community.
- B. Rural District.** The purpose of the Rural District is to provide protection to rural resources from incompatible development by restricting the nature and extent of development in the Rural District.

Note: If the Comprehensive Plan includes a purpose statement for each district, include the statement here instead of the above language. If you intend to include other districts in the ordinance, add a purpose statement for each and include it here.

5. District Requirements

Permitted uses and uses subject to site plan review and approval of the Planning Board shall conform to all dimensional requirements and other applicable requirements of this Ordinance. A plumbing permit and/or building and use permit shall be required for all buildings, uses and sanitary facilities according to the provisions of Article _____ Section _____ of

this Ordinance. All uses shall comply with the land use standards of Article _____ of this Ordinance.

Land uses permitted in each of the districts, in accordance with the land use standards of this Ordinance, are shown in Table B-1.

Key

Districts

Village District

Rural District

Note: Add other districts, as appropriate

Permit Symbols

YES Yes, allowed without a permit, but must comply with land use standards

CEO Code Enforcement Officer permit required

PB Site plan review and approval of the Planning Board is required (see CEO)

NO No, not allowed

Note: The assumption used in this matrix is that site plan review is based on use. Site plan review can also be required based on the size of development (see Appendix E). Some of the uses listed in the matrix below are not permitted in either the village or rural district. It is assumed that they would be permitted in another, locally designated district such as a commercial or industrial district. This is a sample. When filling completing the uses should be clearly consistent with those in the comprehensive plan.

Table B-1

Uses	Growth Districts			Rural Districts		
	Village	Other	Other	Rural	Other	Other
Resource Extraction and Rural Uses						
1. Agriculture						
2. Agricultural products processing						
3. Animal breeding or care						
4. Boarding and riding stables						
5. Campground						
6. Extractive industry						
7. Firewood processing						
8. Outdoor recreation such as parks, playgrounds and golf courses						
9. Roadside produce stand (define)						
10. Earth materials extraction or storage for road purposes only, affecting an area of less than						

Uses	Growth Districts			Rural Districts		
	Village	Other	Other	Rural	Other	Other
two acres in size.						
11. Earth materials extraction or storage for road purposes only, affecting an area of two acres or greater in size.						
12. Accessory structure, uses, or services that are essential for the exercise of uses listed above.						
Residential Uses						
1. Single-family dwelling						
2. Single family mobile home						
3. Duplex (two family)						
4. Multi-family dwelling (3 or more families)						
5. Mobile home park						
6. Home Occupation						
7. Accessory apartment						
8. Accessory structures, uses or services that are essential for the exercise of uses listed above.						
Institutional Uses						
1. Cemetery						
2. Church, synagogue, parish house						
3. Civic, convention center						
4. Community center						
5. Community living arrangement						
6. Day care center						
7. Essential services						
8. Fraternal order and service club						
9. Governmental facilities and grounds						
10. Hospital						
11. Medical clinic, nursing home, convalescent facility						
12. Museum						
13. Public or private school						
14. Public facility utility						
15. Accessory structures, uses or services that are essential for the exercise of uses listed above.						
Commercial Uses						
1. Amusement facility, commercial recreation						

Uses	Growth Districts			Rural Districts		
	Village	Other	Other	Rural	Other	Other
2. Art gallery/craft shop/gift shop						
3. Auction barn						
4. Automobile sales lot						
5. Automobile service station and repair garage						
6. Bed and breakfast						
7. Boarding and lodging facility (define)						
8. Boat building, repair						
9. Building materials, retail sales						
10. Commercial complex						
11. Commercial greenhouse, garden						
12. Commercial removal of earth materials						
13. Commercial school						
14. Communication facility						
15. Communication tower						
16. Financial institution						
17. Fisheries processing, storage						
18. Funeral home						
19. Grocery and variety store						
20. Health spa, fitness club, gym						
21. Hotel, motel						
22. Indoor entertainment and recreation						
23. Kennel-boarding site						
24. Laundry, dry cleaning establishment						
25. Liquor store						
26. Motel, hotel						
27. Neighborhood convenience store						
28. Off-street parking and loading facility						
29. Outdoor storage business						
30. Planned unit development						
31. Professional offices, office building						
32. Publishing, printing						
33. Redemption center						
34. Restaurant						
35. Repair service (other than auto) (define)						
36. Retail business						

Uses	Growth Districts			Rural Districts		
	Village	Other	Other	Rural	Other	Other
Commercial Uses (continued)						
37. Self storage building						
38. Service business						
39. Signs						
40. Take-out food service						
41. Veterinary clinic						
42. Wholesale business						
43. Accessory structures, uses or services that are essential for the exercise of uses listed above.						
Industrial Uses						
1. Automobile graveyard/junkyard						
2. Airport, air transportation dependent use						
3. Bulk oil and fuel storage, in excess of 50 gallons except for on site purposes (define)						
4. Construction equipment storage						
5. Demolition, waste disposal						
6. Light manufacturing assembly plant						
7. Lumber yard						
8. Manufacturing						
9. Newspaper facility						
10. Pulp mill						
11. Saw mill						
12. Sewage treatment facility						
13. Solid waste transfer station						
14. Transportation facility and terminal						
15. Warehouse						
16. Wholesale business facility						
17. Accessory structures, uses or services that are essential for the exercise of uses listed above.						

6. Dimensional Requirements

All structures and uses shall meet or exceed the following minimum requirements. Additional lot area or setbacks may be required by other provisions of this Ordinance. See notes following the table for additional requirements.

Note: The dimensional requirements shown in the table below are examples of ones that might be found in a small town. They may or may not be appropriate for your community. While dimensional requirements are useful in achieving a number of public purposes, such as ensuring land owners protection from neighboring uses, they can have a significant impact on the pattern of development. For example, large frontage requirements can sprawl development along roads, whereas smaller frontages can result in a more compact pattern of development.

Table B-2

Minimum Dimensional Requirements	Growth Districts			Rural Districts		
	Village	Other	Other	Rural	Other	Other
Minimum lot area (square feet)*						
With public sewer						
Without public sewer						
Minimum land area per dwelling unit (square feet)						
With public sewer						
Without public sewer						
Minimum street frontage (in feet)						
Minimum setbacks (in feet)						
Front setback						
Side setback						
Rear setback						
Maximum lot coverage (structure percentage)						
Maximum lot coverage (impervious surface percentage)						
Maximum building height (in feet)						
<p>*The minimum area of a mobile home park lot shall be 6,500 square feet where served by a public sewer system, and 12,000 square feet where served by a central, on-site subsurface wastewater disposal system, and 20,000 square feet with individual, on-site subsurface wastewater disposal systems.</p>						

NOTE: Minimum land area per dwelling unit establishes density requirements for multi-family and cluster developments. Density requirements for mobile home parks are derived from the mobile home park law's minimum park area requirements (Title 30-A MRSA Section 4358, subsection 3).

NOTE: Maximum lot coverage is a method of controlling the size and bulk of a building(s). Another approach is to limit the size and bulk of buildings (see Appendix C, Example 5 for an example).

Notes to table:

- A. Lot size calculation.** All lots created after the effective date of this Ordinance shall be based on a net acreage calculation standard as follows:

The net acreage shall be calculated by taking the total area of the lot or parcel and subtracting, in order, the following:

- 1) 15% of the area of the lot to account for roads and parking;
- 2) Portions of the lot which, because of existing land uses or lack of access, are isolated and unavailable for building purposes or for use in common with the remainder of the lot, as determined by the Planning Board;
- 3) Portions of the lot shown to be in a floodway or a coastal high hazard area as designated on the Flood Insurance Rate Map prepared by the Federal Emergency Management Agency;
- 4) Portions of the parcel that are unsuitable for development in their natural state due to topographical, drainage or subsoil conditions such as, but not limited to:
 - Slopes greater than 20%;
 - Hydric soils;
 - 50% of the poorly drained soils not categorized as hydric soils, unless the applicant can demonstrate specific engineering techniques to overcome the limitations to the satisfaction of the Planning Board;
 - Coastal sand dunes.
- 5) Portions of the lot subject to right-of-way;
- 6) Portions of the lot located in the Resource Protection District;
- 7) Portions of the lot covered by surface waters; and
- 8) Portions of the lot utilized for storm water management facilities.

- B. Multiple structures.** If more than one principal building is constructed on a single parcel of land, the "minimum land area per dwelling" requirement shall apply, and all structures shall meet the front, side, and rear setback requirements. If more than one non-residential structure is constructed on a lot, the minimum land area per dwelling requirement shall be met for each additional structure, even if such structures are connected. The minimum street frontage requirement shall be doubled.

- C. Required frontage.** All lots hereinafter created shall possess frontage on (1) a public road, or on (2) a private road or other thoroughfare or access route which meets the specifications for road construction in the Town's _____.

- D. Cul-de-sac frontage.** New building lots located at the end of cul-de-sacs or along curves in a street where the radius of the curve at the front lot line is less than 90 feet, may be designed so that they have a minimum of 35 feet of street frontage along the front lot line, so long as lot width at the location where the principal building is to be constructed is at least equal to the distance normally required for street frontage in that district. The lot width shall be measured along a line that is parallel to a tangent of the mid-point of the curve.
- E. Setback measurements.** The front setback along a public road shall be measured from the edge of the right-of-way line to the nearest part of the building. All side and rear setbacks shall be measured from the property line to the nearest part of the building.
- F. Driveways, parking areas.** Driveways and parking areas may be located within any required setback area provided that they shall not be located within six (6) feet of the side or rear lot lines.
- G. Accessory structures.** When located beyond the rear of the principal building, accessory buildings no larger than 150 square feet in floor area may be located within the required side or rear setbacks provided that no structure shall be located within 6 feet from a side or rear lot line.
- H. Corner lots.** The front setback requirement shall be observed along all roads abutting the lot.
- I. Corner lot obstructions.** All corner lots shall be kept free from visual obstruction for a distance of twenty-five (25) feet measured along the street lines.
- J. Structures on abutting lots.** Where a proposed structure would be abutted on both sides by existing structures, either on the same lot or adjoining lots, whose front setbacks are less than the required setback, the setback of the proposed structure may be reduced to that of the structure with the greatest front setback.

APPENDIX C. ENCOURAGING GROWTH IN GROWTH AREAS

Overview

Your comprehensive plan should contain strategies to encourage growth in identified growth areas, and to limit incompatible growth in rural areas. Growth area strategies may include the establishment of one or more areas in the community where a wide variety of uses will be allowed at reasonable densities. In larger communities, the growth area may include areas where there are a range of services such as police and fire protection, central water and sewer, parks, sidewalks/trail systems and shopping facilities. In smaller communities, there may be fewer services and facilities but with careful planning, growth can still be accommodated at reasonable densities.

The comprehensive plan will provide the overall vision and framework for your growth area(s), but it probably won't include a discussion of all the regulatory details that will have to be considered. The suggested land use matrix and dimensional requirements contained in the previous appendix (Appendix B) can be a useful guide in helping you develop regulations for the growth area.

Appendix C contains the following:

Example 1: Zero Lot Line Development, page C-2. Example 1 provides a format for allowing zero lot line development in certain portions of the growth district. The suggested dimensional requirements in Example 1 are identical to those for the village district contained in Table B-2 of Appendix B, except that language has been added to allow zero lot line development in certain portions of the district. Alternatively, you can allow zero lot line development throughout the entire district. Zero lot line development allows for condominiums and other forms of attached buildings that contain individual units in separate ownership.

Example 2: Accessory Apartments, page C-3. Example 2 contains language allowing the creation of one accessory apartment in a single-family dwelling in designated areas of the community without a required increase in lot size. Example 2 can be incorporated into the performance standards section of your land use ordinance (Article 5, if you are using the suggested format contained in Appendix A). Example 2 is one way to encourage the construction of affordable housing units.

Example 3: Density Bonus for Developments on Central Water, Sewer, page C-4. Example 3 contains language that allows for a density bonus if a development is to be served by a public water or sewer system or both. It is a way of encouraging connection to one or more central systems when such systems are reasonably available. The language can be included in the performance standards section of your ordinance (Article 5, if you are using the suggested format contained in Appendix A).

Example 4: Density Bonus for Affordable Housing, page C-4. Example 4 contains language that allows for a density bonus if at least 10% of the units will be affordable to persons meeting the federal definition of low to moderate income people. The language can be included in the performance standards section of your ordinance (Article 5, if you are using the suggested format contained in Appendix A).

Example 5: Large Scale Development Standards, page C-5. Example 5 contains suggested standards for controlling the quality of retail development along major roads. Example 5 doesn't necessarily encourage growth in growth areas, but it addresses the question of unplanned, roadside commercial sprawl affecting so many communities. The language can be included in the performance standards section of your ordinance (Article 5, if you are using the suggested format contained in Appendix A).

Example 1: Zero Lot Line Development

Minimum Dimensional Requirements	Growth Districts			Rural Districts		
	Village	Other	Other	Rural	Other	Other
Minimum lot area (square feet)*						
With public sewer	5,000					
Without public sewer	20,000					
Minimum land area per dwelling unit (square feet)						
With public sewer	4,000					
Without public sewer	20,000					
Minimum street frontage (in feet)	50					
Minimum setbacks (in feet)						
Front setback	25					
Side setback	10**					
Rear setback	10**					
Maximum lot coverage (percentage)	50					
Maximum building height (in feet)	50					

** The side setback and the rear setback shall be zero in the following areas: *(describe them)*

Example 2: Accessory Apartments

1. Accessory Apartments

The purpose of the provisions concerning accessory apartments is to provide a diversity of housing for residents while protecting the single family character of residential neighborhoods. Accessory apartments may be utilized for rental purposes as well as in-law accommodations.

- A. Allowed areas.** Accessory apartments are allowed following site plan approval by the CEO in the following areas:

(list or describe areas)

- B. Site plan required.** Any request for an accessory apartment shall include a site plan showing the following:

- 1) Lot boundaries and dimensions at scale;
- 2) Land use district;
- 3) Date of plan;
- 4) Property owner with deed reference;
- 5) Lot area;
- 6) Location and setback of all buildings;
- 7) Rights of way, public and private;
- 8) All easements;
- 9) Street names;
- 10) Sewerage facilities;
- 11) Off-street parking spaces.

- C. Building plan required.** Any request for an accessory apartment shall include a building plan showing the following:

- 1) Separate floor layout of all finished levels;
- 2) All plumbing facilities, kind and location;
- 3) Use of all rooms;
- 4) All entrances/exits;
- 5) All partitions, temporary or permanent;
- 6) Location and type of all appliances;
- 7) Parking area.

- D. Subsurface wastewater disposal.** Any request for an accessory apartment shall conform to all provisions of the Maine Subsurface Wastewater Disposal Rules and no dwelling that is served by an on-site wastewater disposal system shall be modified to create an accessory apartment until a site evaluation has been conducted by a licensed site evaluator which demonstrates that a new system can be installed to meet the disposal needs of both dwelling units.

- E. Entrance.** The dwelling shall have only one front entrance and all other entrances shall be on the side or in the rear of the dwelling. An entrance leading to a foyer with entrances leading from the foyer to the two dwelling units is permitted. No open or enclosed outside stairways shall be permitted above the first story.
- F. Size.** After completion, the main dwelling unit shall have at least fifteen hundred (1500) square feet of floor area. The accessory apartment shall have at least five hundred (500) square feet of floor area but shall not exceed fifty (50) percent of the floor area of the main dwelling unit. Floor area measurements shall not include unfinished attic, basement or cellar spaces, nor public hallways or other common areas.
- G. Number of units, connection to main unit.** Only one accessory apartment shall be permitted per lot. It shall be made part of the main residence or attached to the main residence by a fully enclosed breezeway not exceeding twenty (20) feet in length.
- H. Prohibitions.** Accessory apartments shall not be permitted for any nonconforming structure or use, where the nonconformity is due to the use of the premises, as opposed to nonconforming dimensional requirements.

Example 3: Density Bonus for Developments on Central Water or Sewer

1. Density Bonus for Public Water, Sewer

Many parts of the _____ District have public water available and public sewerage is planned in limited areas. Since the availability of these utilities reduces the development limitations imposed by soil characteristics, provision is made for a density bonus if one or both public utilities will be utilized in the development.

- A. Public water or sewer provided.** If public water or public sewer is utilized in the development, one additional dwelling unit may be constructed for each three net residential acres of the site. Individual lot sizes and frontage requirements may be reduced by 25 percent.
- B. Public water and sewer provided.** If public water and public sewer is utilized in the development, one additional dwelling unit may be constructed for each 1.5 net residential acres of the site. Individual lot sizes and frontage requirements may be reduced by 50 percent.

Example 4: Density Bonus for Affordable Housing

Affordable Housing Incentive

1. Purpose. The purpose of the affordable housing incentive is to encourage developers of residential subdivisions and multi-family developments to provide lots or units which are affordable to very low, low and median income households as defined by the United States Department of Housing and Urban Development and comply with the policies of the _____ Comprehensive Plan.

2. Incentive. The Planning Board may, in approving a residential subdivision (but not a mobile home park) and multi-family development, allow for an increase of up to 10 percent in the total number of lots or units if the applicant can meet the following criteria and provisions:
- a. Documentation is provided to the Planning Board that subsurface sewage disposal systems will be sufficient to meet the increased density;
 - b. The Planning Board shall require all provisions of this Ordinance and the Subdivision Ordinance to be met except provisions relating to density;
 - c. The applicant shall provide the Planning Board with information as to the upper income limits for very low, low and median family incomes prepared and published by the Department of Housing and Urban Development and affordability formulas and data used to calculate rents and prices;
 - d. Prior to the initial occupancy of any multi-family dwelling and prior to any occupancy thereafter of any multi-family dwelling unit which the affordable housing incentive created, the Code Enforcement Officer shall be provided proof that the occupant(s) meet the very low, low or median income criteria;
 - e. The Planning Board shall require the applicant to provide proof that upon transfer, sale or disposition of the multi-family unit and/or complex, those units created as the result of the affordable housing incentive shall continue to be occupied by very low, low or median income households;
 - f. Prior to the initial sale of any lot or lot and dwelling which the affordable housing incentive created the Code Enforcement Officer shall be provided proof that the purchaser meets the very low, low or median income criteria; and
 - g. The Planning Board shall at time of subdivision approval require the deed to the lot(s) or lots and dwelling units which the affordable housing incentive created contain a transfer, sale or disposition clause that provides legally enforceable assurances that upon transfer, sale or disposition that the property sale remains affordable to very low, low or median income households. The Planning Board shall require, at a Minimum, the following provisions to be contained in the deed.

- 1) Transfer shall be to a very low, low or median income household;
- 2) Upon death of the owner, the property may be transferred to the following:
 - i) spouse;
 - ii) child or children;
 - iii) members of the household who have resided on the premises for at least one year;
 - iv) future sale prices of lots and dwellings which the affordable housing incentive created shall be based upon an inflation factor based upon the Consumer Price Index or if no longer published an equivalent index, improvement factors and wear and tear factor.

h. The term of such deed restrictions shall be 40 years.

Example 5: Large Scale Development Standards

Note: Some of the standards contained in Example 5 may conflict with standards suggested for site plan review in Appendix E.

1. Large Scale Development

- A. Applicability.** This standard shall apply to a retail sales establishment that exceeds 2,500 square feet of gross floor area, a non-residential development that exceeds 10,000 square feet of gross floor area, a non-residential development with a drive-thru facility or outdoor fuel sales, or a formula restaurant. Large scale development does not include agricultural buildings or commercial greenhouses and nurseries accessory to a retail or wholesale sales establishment.
- B. General requirement.** In addition to any other applicable standards or requirements of this Ordinance, large-scale developments shall also conform to the following performance standards. This section shall not apply to large scale development constructed prior to _____ except that additions to such structures constructed after _____ shall comply with this section when such additions, either individually or cumulatively within a ten (10)-year period, meet the threshold for large scale development. The Planning Board may modify or waive specific performance standards for such additions if it finds that, due to the design, location, function or layout of the principal structure, the application of specific performance standards is impractical or inappropriate.
- C. Standards**
 - 1) Building appearance.** The building shall employ varying setbacks, heights, roof treatments, doorways, window openings, and other structural or decorative elements to reduce apparent size and scale of the building.

- a) A minimum of twenty (20) percent of the structure's façades that are visible from a public street shall employ actual protrusions or recesses with a depth of at least six feet. No uninterrupted façade shall extend more than 50 feet.
- b) A minimum of twenty (20) percent of all of the combined linear roof eave or parapet lines of the structure shall employ differences in height, with such differences being six (6) feet or more as measured eave to eave or parapet to parapet.
- c) Pitched roofs with a minimum pitch of 5/12 may be required by the Planning Board to complement existing buildings or otherwise establish a particular aesthetic objective.
- d) Building façades shall include a repeating pattern that includes no less than three (3) of the following elements: (i) color change, (ii) texture change, (iii) material module change, (iv) expression of architectural or structural bay through a change in plane no less than twenty four (24) inches in width, such as an offset, reveal or projecting rib. At least one of these elements shall repeat horizontally. All elements shall repeat at intervals of no more than thirty (30) feet, either horizontally or vertically.
- e) Any rear or side building façade that is visible from a public street, residential neighborhood or property within the _____ Districts shall be designed to complement the architectural treatment of the primary façade.
- f) Building façade colors shall be non-reflective, subtle, neutral, or earth tone. The use of high intensity colors, metallic colors, fluorescent colors or black on façades shall be prohibited. Building trim and architectural accent elements may feature colors or black, but such colors shall be muted, not metallic, not fluorescent, and not specific to particular uses or tenants. Standard corporate and trademark colors shall be permitted only on signage.
- g) Exterior building materials shall be of comparable aesthetic quality on all sides. Building materials such as glass, brick, tinted and decorative concrete block, wood, stucco, and exterior insulation and finish systems (EIFS) shall be used. Decorative architectural metal with concealed fasteners or decorative tilt-up concrete panels may be approved if incorporated into the overall design of the building.
- h) Ground floor façades that face public streets shall have arcades, display windows, entry areas, awnings, or other such features along no less than fifty (50) percent of their horizontal length. The integration of windows into building design is required, and shall be transparent glass between three (3) to eight (8) feet above the walkway along any façades facing a public street. The use of blinds shall be acceptable where there is a desire

for opacity. Any blinds shall comply with the color standard of subsection 1)f), above. If large areas of plate glass are proposed, the Planning Board may require the applicant to demonstrate that glare from such glass will not create safety concerns for vehicles.

- i) Ground floor façades of retail buildings that face public streets or contain the principal access to the building and which exceed 150 feet in length shall be designed to appear as a series of attached, individual storefronts even though the building itself may consist of a single retail occupancy.
- j) Public building entryways shall be clearly defined and highly visible on the building's exterior design, and shall be emphasized by on-site traffic flow patterns. Two (2) or more of the following design features shall be incorporated into all public building entryways: canopies or porticos, overhangs, projections, arcades, peaked roof forms, arches, outdoor patios, display windows, distinct architectural details. Where additional stores will be located in the principal building, each additional store that exceeds 2,500 square feet in floor area shall have at least one exterior customer entrance that shall conform to the above requirements.
- k) The building's architecture shall reflect traditional New England building forms including, but not limited to, pitched roofs, dormers, windows (rather than plate glass), and clapboard or brick siding. Freestanding accessory structures, such as ATM's, gas pump canopies, sheds, etc., shall be treated as architectural elements and meet the same design standards as the principal structures on the site.

2) Parking

- a) Parking areas shall provide safe, convenient, and efficient access for vehicles and pedestrians. They shall be distributed around large buildings in order to shorten the distance to other buildings and public sidewalks and to reduce the overall scale of the paved surface.
- b) Parking lots over 100 spaces shall be segmented visually and functionally into distinct parking areas of no more than 60 spaces by landscaped and curbed medians with a minimum curb to curb width of 10 feet. Curbed landscaped islands shall be sited at the end of each parking aisle and within parking aisles at intervals no greater than one island per every twenty (20) spaces. Islands at the ends of aisles shall be counted toward meeting this requirement. Each required landscaped island shall be a minimum of three hundred sixty (360) square feet in landscaped area.
- c) No more than 10% of off-street parking shall be sited between the front façade of the principal building and the primary abutting streets with the exception of parking areas used for the display of vehicles for sale. The Planning Board may increase this limit up to 50% if it determines

that the building and parking are screened from view by out-lot development consisting of buildings less than 10,000 square feet of floor area and by the use of additional tree plantings, berms, fencing, low walls, shrubs and/or perennials.

3) Landscaping

- a) The applicant shall submit a site landscaping plan that presents the location and quantity of all project plantings. The applicant shall also submit a planting schedule keyed to the site landscaping plan that lists the botanical and common names, size at planting and quantity of all project plantings. Landscaping shall be considered an integral component of the approved project. The applicant shall replace within 30 days, or as seasonally required by the species, any landscaping that dies, is removed or otherwise requires replacement. Such replacement landscaping shall be equivalent in species and size to the original landscaping unless the applicant can demonstrate to the satisfaction of the Planning Board that site conditions require an alternative species of comparable size.
- b) A minimum of 30% of the building's total foundation, including a minimum of 50% along the building's front façade, shall be planted with landscaping consisting of one 2.5" caliper tree native to Maine and 4 shrubs per ten (10) linear feet of foundation. This landscaping shall be near entrances and façades facing public streets, as well as in parking areas. If the building will be located in a village area and there will be no setback between the building and a public sidewalk or street right of way, landscaping along the building's front façade is not required.
- c) One 2.5" caliper canopy tree native to Maine, one 4-foot high understory tree native to Maine, and five 12" high evergreen or 15" high deciduous shrubs shall be planted within each parking lot island.
- d) Landscaping consisting of three 2.5" caliper street trees, six 4-foot high understory trees, ten 12" high evergreen or 15" high deciduous shrubs and five 3-foot evergreen trees shall be planted every 50' along and within a minimum 30-foot wide green strip buffer adjacent to all public streets and along and within a minimum 20-foot wide green strip buffer adjacent to all private streets and drives including parking lot connectors, circulation drives (including those adjacent to the building) and loading areas. If the building will be located in a village area and there will be no setback between the building and a public sidewalk or street right of way, landscaping adjacent to the public sidewalk or street right of way is not required.
- e) Where the building site abuts property with at least one residence, a six-foot high berm shall be provided and planted with double offset row of 4-foot high evergreens spaced 15' on center.

4) **Lighting**

- a) Plans shall be submitted for all proposed exterior lighting drawn to a scale of 1" = 20' and shall include the location and type of lighting equipment, manufacturer's specification sheets and point-by-point calculated illuminance values noted on a 10-foot grid.
- b) The following lighting criteria shall not be exceeded:
 - i. Parking lots: an average of 1.5 foot-candles throughout, a maximum of 6 foot-candles and a maximum-to-minimum uniformity ratio of 20:1 foot-candles;
 - ii. Intersections: an average of 3 foot-candles throughout, a maximum of 6 foot-candles and a maximum-to-minimum uniformity ratio of 20:1 foot-candles; and
 - iii. Maximum at property lines: 0.1 foot-candles.
- c) The maximum height of freestanding lights shall be the same as the principal building, but shall not exceed 20 feet. Lighting fixtures including poles shall be compatible with the design of the principal structure.
- d) All lights shall have shielding to provide a beam cut-off at no more than 75 degrees nadir.
- e) The applicant shall demonstrate to the satisfaction of the Planning Board that the proposed lighting is appropriate for the intended use. The Planning Board shall consider the hours of operation, characteristics of the neighborhood and the specific activities proposed in making its determination. When the activity is not in use, lighting shall be turned off unless there is a demonstrated need for illumination as determined by the Planning Board.
- f) Lighting shall be located along streets, parking areas, at intersections and crosswalks and where various types of circulation systems merge, intersect or split.
- g) Pathways, sidewalks and trails shall be lighted with low or mushroom-type standards.
- h) Flag poles may not be illuminated by lights pointing upward or at any angle above horizontal.
- i) Where lights along property lines will be visible to adjacent properties, the lights shall be appropriately shielded.

5) Screening

- a) Ground and wall-mounted mechanical equipment, refuse containers and permitted outdoor storage must be fully concealed from on- and off-site ground level views with materials identical to those on the building exterior.
- b) All trash collection areas that are not within an enclosed building or underground must be screened or recessed so that they are not visible from public streets, public sidewalks, internal pedestrian walkways, or adjacent residential properties and at least 50 feet from any lot line. Screening and landscaping of these areas shall conform to the predominant materials used on the site.
- c) Rooftop equipment must be screened by parapets, upper stories or exterior walls from view from public streets within 1,000.’
- d) Gates and fencing may be used for security and access but not for screening. Chain link, wire mesh or wood fencing is not acceptable.
- e) Loading docks must be screened from surrounding roads and developed properties by walls matching the building’s exterior or fully opaque landscaping.

6) Outdoor sales

Additional standards applicable only to large scale development consisting of retail establishments greater than 10,000 square feet of floor area.

The Planning Board may modify or waive one or more of the following standards for vehicle display areas if it finds that the application of such standards is impractical or inappropriate.

- a) Areas for outdoor sales of products may be permitted if they are extensions of the sales floor into which patrons are allowed free access. Such areas shall be incorporated into the overall design of the building and the landscaping and shall be permanently defined and screened with walls and/or fences. Materials, colors and design of screening walls and/or fences shall conform to those used as predominant materials and colors on the building. If such areas are to be covered, then the covering shall be similar in materials and colors to those that are predominantly used on the building façade.
- b) Except for agricultural, landscaping, nursery and similar products normally stored outdoors, outdoor storage of products for sale in an area where customers are not permitted is prohibited unless it is visually

buffered from adjacent streets and abutting developed properties. This prohibition includes outdoor storage sheds and containers.

- c) Outdoor sales areas must be clearly depicted on the site plan. They must be at least 10 feet from motor vehicle routes and protected by a physical barrier.

7) Bicycle and pedestrian facilities

Additional standards applicable only to large scale development consisting of retail establishments greater than 10,000 square feet in floor area.

- a) Pedestrian walkways internal to the development shall be no less than five (5) feet in width, and shall be provided from the public sidewalk or right-of-way to the principal customer entrance of all large commercial buildings on the site. At a minimum, walkways shall connect focal points of pedestrian activity such as, but not limited to, transit stops, street crossings, and building and store entry points, and shall feature adjoining landscaped areas that include trees, shrubs, benches, flower beds, ground covers or other such materials for no less than fifty (50) percent of the length of the walkway.
- b) Sidewalks at least five (5) feet in width shall be provided along all sides of the lot that abut a public street.
- c) Sidewalks at least five (5) feet in width, shall be provided along the full length of the building along any façade featuring a customer entrance, and along any façade abutting public parking areas. Such sidewalks shall be located at least six (6) feet from the façade of the building to provide planting beds for foundation landscaping, except where features such as arcades or entryways are part of the façade. Weather protection features such as awnings or arcades are required within thirty (30) feet of all customer entrances.
- d) All internal pedestrian walkways and crosswalks shall be distinguished from driving surfaces through the use of durable, low maintenance surface materials such as pavers, bricks or scored concrete to enhance pedestrian safety and comfort, as well as the attractiveness of the walkways.
- e) The development shall provide exterior pedestrian furniture in appropriate locations at the rate of one seat for every 5,000 square feet of gross floor area and secure, integrated bicycle parking at the rate of three bicycle rack spaces for every 50 vehicle parking spaces.

8) Building reuse

Additional standards applicable only to large scale development consisting of retail establishments greater than 20,000 square feet in floor area.

- a) A form of surety approved by the Planning Board must be established by the applicant to ensure the building and all amenities on the site are maintained if the building becomes vacant. The amount of such surety shall be based on estimates prepared by a registered professional engineer of the cost of four years of maintenance of all site improvements plus the cost of razing the building and removing all demolition materials. The surety must be of a form that cannot lapse or be discontinued without consent of the Board of Selectmen.
- b) The estimates shall be increased by 50% to reflect inflation. If the building remains vacant for a period of one (1) year and site improvements are not maintained over this period, the selectmen may vote to exercise the surety to pay for site maintenance.
- c) If the building remains vacant for a period of four (4) years, the selectmen may vote to exercise the surety to remove the building from the site.
- d) Where the building will replace an existing building within the community, the applicant shall submit evidence that there will be no private prohibition on the type or reuse of the previously occupied building through conditions of sale or lease.

9) Location

Additional standards applicable only to large scale development consisting of retail establishments greater than 20,000 square feet in floor area.

These standards are intended to ensure that such large buildings are placed in suitable locations and that they are not prominently visible from designated roads as listed in subsection 9)c), below, unless they are sited close to the road in a manner similar to traditional village commercial development.

- a) Retail buildings over 20,000 square feet in floor area that are set back more than 50 feet from a designated road shall not be prominently visible from such road. This may be accomplished by existing vegetation and topography as well as proposed site improvements such as landscaping, berms and similar site design features. In determining if existing vegetation and/or proposed landscaping will satisfy this standard, the Planning Board may consider the projected height and substance of such vegetation and/or landscaping seven years after construction of the large retail building is completed.

- b) Alternatively, the standard in subsection 9)a), above, may be satisfied by the siting of smaller commercial buildings on pads or out-lots between the large scale retail building and the designated road. This technique shall be employed for the full width of the development site along the road that provides its principal vehicular access except for access locations and landscaped public open spaces that the Planning Board determines will provide effective visual buffering of the large retail building.
- c) The following are designated roads within the meaning of subsections 9)a) and 9)b), above.

Note: list roads here
- d) For large scale developments that are sited in conformance with subsections a) or b), above, the maximum size of freestanding signs as provided for in Section _____ of the Land Use Ordinance shall be increased by 100%.

10) Community impacts

The Planning Board may require an Economic and Fiscal Impact Analysis for a proposed large scale development. The applicant shall provide adequate funding to the town to retain a consultant of its choice with appropriate experience to complete and present such analysis.

- a) The impact statement shall include the following elements:
 - i. Identification and assessment of the impacts of the proposed project, including positive, negative, and indirect impacts.
 - ii. Proposed measures to mitigate adverse impacts and/or maximize positive impacts including provision of infrastructure or public service improvements sufficient to support the project. Any adverse impacts that cannot be mitigated shall be identified. Mitigation measures to be implemented by the applicant shall be identified.
- b) The impact statement shall assess the following areas of potential impact:
 - i. Types of jobs created.
 - ii. Number of full-time (40 hrs/wk) and part time (less than 40 hrs/wk) jobs created.

- iii. Estimate of the amount of local labor to be used in the construction of the project and in employment. Local is defined as town or county residents or businesses.
- iv. Evaluation of the market and financial feasibility of the project. Include a Trade Area analysis indicating the market proposed for the project and the area from which patrons will be attracted, and any plans for phased construction. Include any further market studies prepared for the project by the applicant.
- v. Evaluation of the potential for the proposed project to create an over-supply of retail space in the town using industry-accepted standards for commercial floor area per resident.
- vi. Evaluation of the impact of the proposed project on commercial vacancy rates in the town and the county.
- vii. Estimate to what extent the proposed project would reduce the diversity of the town's economic base by eliminating smaller businesses.
- viii. Comparison and evaluation of the projected costs and benefits to the town resulting from the project including:
 - Projected costs arising from increased demand for and required improvements to public services and infrastructure,
 - Value of improvements to public services and infrastructure to be provided by the project,
 - Projected tax revenues to the town to be generated by the project and the need for increased financial support for infrastructure improvements and protective services,
 - Projected impact of the project on land values (both residential and commercial) and potential loss or increase in tax revenues to the town,
 - Short-term and long-term projection of increased revenues to the town, and costs resulting from the proposed project,
 - Estimate of the difference between how much of the revenue generated by the proposed project will be retained and re-directed back into the economy of the community compared to other retail chain stores and locally owned, independent retailers in the town.

11) Definitions

In addition to the definitions presented in Section _____, the following definitions apply specifically to large scale developments.

Arcade. A series of outdoor spaces located under a roof or overhang and supported by columns or arches.

Bay. As applied to large scale development, a spatial division element in a building defined by beams or ribs and their supports.

Berm. An earthen mound designed to provide visual interest on a site, screen undesirable views, reduce noise or provide a buffer from adjoining uses.

Buffer. As applied to large scale development, an area provided to reduce the conflict between two different land uses. Buffers are intended to mitigate undesirable views, noise and glare, effectively providing greater privacy to neighboring land uses. Typical buffers include, but are not limited to, plant materials, walls, fences and/or significant land area to separate the uses.

Canopy. As applied to large scale development, a projection over a niche or doorway, often decorative or decorated; a roof over an accessory structure including but not limited to gasoline pumps and an ATM.

Column. A vertical support, usually cylindrical, consisting of a base, shaft and capital, either monolithic or built up of drums the full diameter of the shaft.

Eave. The overhang at the lower edge of the roof, which usually projects out over the exterior walls of the structure.

Façade. The portion of any exterior elevation on the building extending from grade to the top of the parapet, wall or eaves and extending the entire length of the building.

Footcandle. A measure of light falling on a surface. One (1) footcandle is equal to the amount of light generated by one (1) candle shining on one (1) square foot surface located one (1) foot away.

Formula restaurant. An eating place that is one of a chain or group of three (3) or more establishments and which satisfies at least two of the following three descriptions:

- a) It has the same or similar name, trade name, or trademark as others in the chain or group;

- b) It offers either of the following characteristics in a style which is distinctive to and standardized among the chain or group:
 - i. exterior design or architecture;
 - ii uniforms, except that a personal identification or simple logo will not render the clothing a uniform;
- c) It is a fast food restaurant.

Landscaping. The combination of natural elements such as trees, shrubs, groundcovers, vines, or other organic and inorganic materials, which are installed for purposes of creating an attractive and pleasing environment, screening unsightly views, reducing environmental impacts, and filtering matter from air.

Large scale development. Unless otherwise described, a retail sales establishment that exceeds 2,500 square feet of gross floor area, a non-residential development that exceeds 10,000 square feet of gross floor area, a non-residential development with a drive-thru facility or outdoor fuel sales, or a formula restaurant; large scale development does not include agricultural buildings or commercial greenhouses and nurseries accessory to a retail or wholesale sales establishment.

Nadir. The angle pointing directly downward (0°) from the lighting fixture. 75° nadir, for example, is the angle pointing 75° above nadir.

Parapet. The portion of a wall that extends above the roofline.

Pedestrian walkway. A surfaced walkway, separate from the traveled portion of a public or private right-of-way, parking lot or driving aisle.

Pitch. The slope of a roof commonly expressed in terms of inches of vertical rise per foot of horizontal run.

Portico. A porch or walkway with a roof supported by columns, often leading to the entrance to a building.

Scale. The size or proportion of a building element or space relative to the structural or functional dimension of the human body.

Screen. See also “buffer”. The sole purpose of a screen is to block views. A screen should be constructed of opaque materials and be of such height that will be effective in obstructing unwanted views.

Storefront. The traditional “main street” façade bound by a structural pier on either side, the sidewalk on the bottom and the lower edge of the upper façade at the top.

Texture. The visual and tactile quality of a surface apart from its color and form. A building texture refers to the variations in the exterior façade and may be described in terms of roughness of the surface material, the patterns inherent in the material or the patterns in which the material is placed.

APPENDIX D. KEEPING RURAL AREAS RURAL

Overview

Appendix D contains a number of suggested techniques for guiding development in rural districts in accordance with the provisions of the State's Comprehensive Planning and Land Use Regulation Act. Most of the techniques suggested here can be incorporated into your municipality's land use ordinance. However, the language should first be reviewed carefully to ensure that the suggested provision meets local needs and conditions.

Appendix D contains the following:

Example 1: Rural Area Growth Cap, page D-2. Example 1 is included in this manual to illustrate one method of controlling growth in the rural district. It must be adopted in combination with other provisions which designate the rural district or its equivalent. Example 1 as written is intended to be adopted as a separate ordinance, rather than part of the land use ordinance. It is designed to limit growth in the community's rural district, and can be adopted as an alternative or in combination with other provisions, such as the open space subdivision requirement that's included as Example 4.

State law (Title 30-A MRSA Section 4360) allows municipalities to enact rate of growth ordinances, but requires that they be reviewed and updated at least every three years. Municipalities are required to review whether the rate of growth ordinance is still necessary and how the rate of growth ordinance may be adjusted to meet current conditions. The law specifically allows municipalities to set different limits on the number of building or development permits that can be issued in designated growth and rural areas. This example does not set any limits in growth areas, but ties the permits in the rural area to the amount of growth that takes place in the growth area.

Example 2: Residential Growth Management, page D-7, is a phased rural growth cap, based on an ordinance amendment adopted by the Town of Raymond. It phases in the growth cap over a period of years and exempts certain types of residential growth from the cap (affordable housing, elderly housing, the first lot in an open space subdivision). Example 2 is written as an amendment to an existing ordinance, rather than a stand-alone ordinance. Example 2 might work in a community where support for an immediate rural growth cap is not strong.

Example 3: Maximum Lot Size and Frontage Requirement, page D-11. Example 3 is included as a way of prohibiting one type of sprawl – the creation of large house lots with large frontages, sometimes as large as 10 to 20 acres or more with frontages as large as 500 feet or more. Large house lots create privacy for the home owners, but result in open space that can't easily be used for traditional rural uses such as farming and forestry.

Example 4: Requirements for Open Space Subdivisions, page D-12. Example 4 is included in this manual because of its potential for minimizing sprawl in rural areas. It could also be employed in some growth areas that have the potential for subdivision activity. There are two important components to Example 4. The first is an administrative requirement that is adapted from Freeport's subdivision ordinance. It establishes pre-application procedures that must be followed prior to submitting a

subdivision application. It includes a pre-application conference, a site visit and an analysis of site conditions so that potential problems and site opportunities can be identified before survey stakes are set in the ground.

The second part consists of the actual requirements for creating the open space subdivision. It allows the same density that could be achieved with a conventional subdivision, but requires that 50% of the land that is suitable for development be preserved as open space. These standards do not prevent rural area subdivisions, but they help ensure that significant areas of open space are retained as land is developed. The example included in this manual contains a density bonus when the proposed subdivision would achieve certain public purposes such as the provision of affordable housing or provision of public access to open space.

Example 5: Rural District, Large Lot Size, Restricted Uses, page D-25. This is a restrictive, large-lot district that can be adopted as a new district if your community already has a zoning ordinance. It can also replace the rural district provisions set forth in Appendix B.

The numerical standards contained in this example should not be construed as being State minimums. A restrictive rural district may or may not be appropriate for your community, depending upon the nature and extent of agricultural and forestry activities, and the areas which have been identified as rural districts in the comprehensive plan. For example, if your community does not have any active farms or prime forest land, this rural district may not be an appropriate district to include in the land use ordinance. Provisions that are similar in effect to Example 5 have been in effect in the rural area of Auburn for many years and have been effective in maintaining the rural character of that area.

Example 1: Rural Area Growth Cap
(Alternative Name: Rural Area Rate of Growth Ordinance)
note: such provisions must be consistent with a consistent comprehensive plan

1. Title

This Ordinance shall be known as the "Rural Area Growth Cap Ordinance of the Town of _____, Maine" and will be referred to herein as "this Ordinance."

2. Legal Authority

This section is adopted pursuant to Home Rule Powers as provided for in Article VIII-A of the Maine Constitution and 30-A M.R.S.A. §3001 et seq., and as provided for in 30-A M.R.S.A. §4323 and §4360.

3. Definitions

Growth Permit: a permit to create a new dwelling unit, issued by the Code Enforcement Officer after ascertaining that the proposed dwelling unit would meet all of the relevant requirements of this Ordinance.

Dwelling Unit: a room or group of rooms designed and equipped exclusively for use as living quarters for only one family, including provisions for living, sleeping, cooking and eating. The term shall include manufactured homes, but shall not include recreational vehicles.

Family: one or more persons occupying a premise and living as a single housekeeping unit, as distinguished from a group occupying a boarding house, lodging house or hotel.

4. Purpose

- A. To maintain the predominantly rural character of the Town, and to implement the Comprehensive Plan.
- B. To provide for the local housing needs of the community's existing residents.
- C. To ensure fairness in the allocation of Growth Permits.
- D. To allow growth in the rural district of the Town at a rate which would not impose an undue burden upon the provision of community services (including education, fire protection, road maintenance, waste disposal, health services and welfare) and which would be compatible with the orderly and gradual expansion of said services.
- E. To guide the Town's growth and development so that the annual increase in dwelling units in the rural district shall not exceed (30%) of the permits issued in any one year.

NOTE: paragraph E is aimed at concentrating growth around the existing village or city center; it will be effective in controlling the pattern of growth only if the rural district is applied to a relatively large portion of the community. The 30 percent figure is suggested, not mandated, as a way of ensuring that over the 10-year period projected by the comprehensive plan, no more than 30 percent of the growth will occur in the rural district.

Towns can use a number of techniques for allocating permits. The system described here allocates permits on a monthly basis such that for every 3 permits issued in the rural area, 7 permits must be issued in the growth area. Another method would be to link this ordinance to the rate of growth in the community over a specified time period (for example, 3 to 5 years) and use it to calculate a figure representing the average annual number of permits that were issued in that time period. The ordinance could then allow on an annual basis 30% of the average annual figure to occur in the rural district. Establishing a number, rather than a percentage, requires frequent monitoring of permit activity to ensure that the ordinance is having its desired effect.

5. Existing Structures

This Ordinance shall not apply to the repair, replacement, reconstruction or alteration of any existing structure as long as no additional dwelling units are created by such construction.

6. General Requirements

All new dwelling units within the Town of _____, whether permanent or seasonal, shall be in conformity with the provisions of this Ordinance and the Land Use Ordinance.

7. Administration

The procedure for applicants shall be as follows:

- A. The Code Enforcement Officer shall administer the "Growth Permit Selection System" described in Section 8 below in the case of all Growth Permit applications.
- B. The Code Enforcement Officer shall ensure that all of the endorsements on the Growth Permit application form have been completed before issuing any Building Permit.
- C. Every Growth Permit shall be displayed with the Building Permit in a conspicuous place on the premises under construction, and shall not be removed until all work covered by the permit has been approved.

8. Growth Permit Selection System

- A. No more than (30%) of the Growth Permits shall be issued in the rural district in each calendar year.
- B. Applications will be ranked on a first come, first served basis.

9. Appeals

The appeals procedure for appealing the grant or denial of a Growth Permit under this Ordinance shall be the same as specified in Section _____ of the Town of _____ Land Use Ordinance, as revised. The jurisdiction of the Board of Appeals shall be limited to determining whether or not the Code Enforcement Officer erred in the granting or denial of a Growth Permit.

NOTE: See Appendix A for more detail on appeal procedures.

10. Expiration of Permits

Growth Permits selected and issued in accordance with this Ordinance shall expire after three (3) months, unless a building permit has been issued. This time period may be extended by the Code Enforcement Officer if issuance of a building permit is delayed due to technical problems.

NOTE: Three months is provided as an example. Your town may want to extend the period.

11. Non-Transferability

Growth Permits shall be site-specific and shall be valid for construction only on the lot specified on the application.

12. Exemptions

The Planning Board (or Code Enforcement Officer) shall grant an exemption from the terms of this Ordinance to a resident who wishes to move from his present dwelling in the rural district into a new one which he proposes to build within the rural district when the applicant has demonstrated bona fide intentions to reside in the house indefinitely. Such an exemption enables the recipient to apply for and to receive a Growth Permit from the Code Enforcement Officer, provided that his proposal meets the requirements of the Land Use Ordinance and Town lot area and dimensional regulations.

13. Conflict with Other Ordinances

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

14. 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.

15. Effective Date

The effective date of this Ordinance is the date of adoption by Town vote.

16. Amendment Procedure

An amendment to this Ordinance may be initiated by:

- A. The Planning Board, provided a majority of the Board has so voted;
- B. The municipal officers; or
- C. Written petition to the municipal officers of a number of voters equal to at least 10% of the number of votes cast in the municipality at the last gubernatorial election.

The Planning Board shall hold a public hearing on the proposed amendment at least seven (7) days prior to the Town Meeting at which it will be voted upon. Notice of the hearing shall be posted at least ten (10) days in advance in a newspaper of general circulation in the area. If the amendment is to be by referendum, the provisions of Title 30-A MRSA, Section 2528, shall control.

17. Violations

- A. A violation of this Ordinance shall be deemed to exist when any person, firm or corporation engages in any construction activity directly related to the erection or placement of a dwelling unit upon any land within the Town of _____ without having first obtained a Growth Permit from the Code Enforcement Officer.
- B. If a dwelling has been constructed or placed without a Growth Permit, it shall also be deemed a violation for any person, firm or corporation to sell, lease, rent or convey such dwelling or for any person or family to occupy such dwelling until such permit has been duly issued.

18. Penalties

Any person, firm or corporation being the owner or having control or use of any residential building constructed in violation of any of the provisions of this Ordinance, shall be fined in accordance with the penalty provisions of Title 30-A MRSA Section 4452.

Example 2: Residential Growth Management

Note: such provisions must be consistent with a consistent comprehensive plan

1. Purpose

The purpose of this section is to establish a Residential Growth Management Program in order to provide for orderly and reasonable growth in the town, to direct the majority of residential growth to the designated growth areas of town, to slow the rate of growth in the rural areas, and to maximize the efficient use of town services, infrastructure and facilities.

2. Legal Authority

This section is adopted pursuant to Home Rule Powers as provided for in Article VIII-A of the Maine Constitution and 30-A M.R.S.A. §3001 et seq., and as provided for in 30-A M.R.S.A. §4323 and §4360.

3. Definitions

The following definitions apply to this section.

- A. Annual average permits issued** - The average number of building permits issued in the Town of _____ per year for new dwelling units, not including permits for affordable housing, over the previous ten year period. The previous ten year period shall run from December 1st of the tenth year previous to the current year, to November 30th of the current year. As an example, the annual average calculated on or before December 31st 2006, would be calculated from the building permits issued from December 1, 1996 to November 30, 2006.
- B. Growth Area** - Those areas of town contained within the _____ Districts as depicted on the Town of _____ Zoning Map.
- C. Rural Area** - Those areas of town contained within the _____ Districts as depicted on the Town of _____ Zoning Map.
- D. Person related to the applicant** - A spouse, parent, grandparent, sibling, child, or grandchild related to the applicant for a building permit by blood, marriage or adoption.
- E. Lot of record** - A lot shown on a deed or subdivision plan recorded in the _____ County Registry of Deeds.

4. Applicability

This section applies to building permits in the Rural Area for the construction of new dwelling units, the winterization of seasonal dwelling units, or the conversion of any commercial/Industrial use to one or more dwelling unit(s). This section does not apply in the Growth Area.

5. Exemptions

The following are exempt from the provisions of this section.

- A. The repair, replacement, reconstruction or alteration of any existing building or structure, so long as no additional dwelling units are created thereby and no seasonal dwelling units are winterized.
- B. The construction or alteration of a nonresidential building or structure, so long as no additional dwelling units are created thereby.
- C. A single-family dwelling to be built on a lot created by a conveyance to the applicant from a person related to the applicant unless the intent of the conveyance was to avoid the objectives of this section.
- D. Affordable Housing, as defined in Article _____ of the Land Use Ordinance.
- E. Elderly Housing, as defined in Article _____ of the Land Use Ordinance.
- F. Apartments in a residential zone that do not contain more than 700 square feet of living space, excluding stairways.
- G. Open Space Subdivision Lot. Within any calendar year the first building permit application submitted for a lot in an open space subdivision, approved pursuant to Article _____ of this Ordinance, is exempt.
- H. Farm labor housing

6. Determination of Annual Average Permit Issued

The Building Inspector shall track the number of building permits issued for new dwelling units, not including permits for affordable housing, over the previous ten year period in the Town of _____ and shall use that data to determine, no later than December 31st of each year, the annual average permits issued. The Building Inspector shall submit the annual building permit report to the Planning Board on or before January 1st of each year.

7. Limit on Building Permits

Building permits subject to this section shall be limited on an annual basis to 105% of the annual average permits issued.

The number of building permits for new residential dwelling units allowed under this ordinance shall be recalculated every three years.

8. Order for Processing Applications

Applications for building permits subject to this section shall be processed in the order that the Building Inspector receives complete applications. In the event two or more applications are received simultaneously, the Building Inspector shall determine their order by random selection. Any building permit application filed in any given year that is not issued as a result of this Ordinance may be carried over to the following year and shall be considered in the date order in which it was received.

9. Transferability

Building permits subject to this section are site-specific, and shall be valid for construction only on the lot specified in the application. However, those building permits shall be transferable to new owners of the lot, if the property is sold or otherwise legally transferred.

10. No Carry Over

If the allowed number of building permits subject to this section are not issued within the calendar year, they shall not be carried over to the next year.

11. Periodic Review

The Planning Board shall review the building permit report submitted by the Building Inspector under Paragraph 6 of this ordinance at least every three years to determine if the ordinance continues to be needed to control the pace, timing, and location of development in accordance with the purposes of this section and to determine if it needs to be adjusted to meet current conditions. The Board shall hold a public hearing pursuant to Article _____ of the Land Use Ordinance and submit a report of their findings to the Board of Selectmen on or before March 1 of each year it conducts a review. If conditions warrant, the Board may review the ordinance more frequently.

12. Conflict with Other Provisions

This section shall not repeal, annul or in way impair or remove the necessity of compliance with any other rule, regulation, bylaw, permit or provision of law.

13. Appeals

Any person or entity aggrieved by an action or decision of the Building Inspector to approve or deny a building permit based on the provisions of this section may appeal the action or decision to the Board of Appeals in accordance with the process outlined in Article _____ of the Land Use Ordinance.

Example 3: Maximum Lot Size and Frontage Requirements

Note: Changes from Table B-2 in Appendix B are shown in bold face type.

Minimum Dimensional Requirements	Growth Districts			Rural Districts		
	Village	Other	Other	Rural	Other	Other
Minimum lot area (square feet)*						
With public sewer						
Without public sewer						
Minimum land area per dwelling unit (square feet)						
With public sewer						
Without public sewer						
Maximum lot size (square feet)						
Minimum street frontage (in feet)						
Maximum street frontage (in feet)						
Minimum setbacks (in feet)						
Front setback						
Side setback						
Rear setback						
Maximum lot coverage (percentage)						
Maximum building height (in feet)						

The minimum area of a mobile home park lot shall be 6,500 square feet where served by a public sewer system, and 12,000 square feet where served by a central, on-site subsurface wastewater disposal system, and 20,000 square feet with individual, on-site subsurface wastewater disposal systems.

***The maximum lot size and frontage requirement shall apply to all residential lots created after the effective date of this Ordinance. This provision shall not apply to lots in an open space subdivision (if your community has an open space subdivision requirement – see Example 4).**

Example 4: Requirements for Open Space Subdivisions

Note: Example 4 is designed to be included in a municipality's subdivision ordinance

ARTICLE 1. PREAPPLICATION PROCEDURES

1. Purpose

The purpose of the pre-application process is for the applicant to present general information regarding the proposed subdivision to the Code Enforcement Officer (CEO) and Planning Board and receive the CEO's and Planning Board's comments prior to the expenditure of substantial sums of money on surveying, engineering, and the preparation of a subdivision application by the applicant.

2. Procedure

The pre-application phase consists of the following three activities:

- A. The submission to and review by the Planning Board of a Site Inventory Analysis;
- B. Planning Board site inspection;
- C. A pre-application conference.

3. Submission of Site Inventory and Analysis

All applicants for subdivision approval shall submit a Site Inventory and Analysis to the Code Enforcement Officer. This requirement shall apply to new subdivisions, amendments to existing subdivision and re-subdivision of land within an existing subdivision. Submission of the site inventory and analysis shall not cause the plan to be a pending application or proceeding under Title 1 M.R.S.A. §302.

A. Purpose

The Site Inventory and Analysis is intended to provide the applicant, the Planning Board, and the CEO with a better understanding of the site and the opportunities and constraints imposed on its use by both the natural and built environments, and to provide a complete and factual reference for the Planning Board in making its site inspection. It is anticipated that this analysis will result in a subdivision plan that reflects the conditions of the site; those areas most suitable for conservation and open space will be preserved to the maximum extent possible, and those areas most suitable for the proposed use will be utilized. Therefore, the submission requirements provide that the applicant submit basic information about the site. The Planning Board's focus during this phase will be primarily on the location of open space.

B. Submission requirements

The Site Inventory and Analysis shall include the following information:

- 1) The name of the property owner and the name of the applicant, if different;
- 2) Evidence that the applicant has right, title or interest in the property;
- 3) An aerial photograph enlarged to a scale not less detailed than 1 inch = 400 feet, to show the relationship of the proposed area to be subdivided to adjacent properties and to the total areas owned in whole or in part by the applicant. The aerial photograph shall include:
 - a) Property boundaries in the area;
 - b) Locations and names of existing streets;
 - c) Boundaries and designations of zoning districts;
 - d) Mapped wetlands;
 - e) The boundaries of the 100-year floodplain;
 - f) Public land; and
 - g) Land protected under conservation easements.
- 4) One or more maps of the site at the same scale as the aerial photograph showing:
 - a) Topographic, physical and cultural features including fields, pastures, meadows, wooded areas, trees with a diameter of 15 inches or more, steep slopes over 25%, rock outcrops, soil types, ponds, ditches, drains, streams; and
 - b) Cultural features such as all structures, foundations, walls, wells, trails and abandoned roads.

C. Review of site inventory and analysis by CEO

Upon receipt of a Site Inventory and Analysis, the Code Enforcement Officer (CEO) shall give the applicant a dated receipt. Within ten (10) days of the receipt of a site inventory and analysis submission, the CEO shall review the material and determine whether the submission is complete. If the submission is determined to be complete, the Code Enforcement Officer shall place the item on the agenda for review by the Planning Board at the next available meeting.

If the submission is determined to be incomplete, the CEO shall notify the applicant in writing of this finding and shall specify the additional material required to make the submission complete. The CEO shall advise the applicant that, unless the applicant applies for a waiver or reduction of the submission requirements, the application will not be considered by the Board until the additional information is submitted. These steps shall be repeated until the application is found to be complete. When the submission is determined to be complete, or when the applicant has submitted a written, signed request for a waiver or reduction of submission requirements, the Code Enforcement Officer shall place the item on the agenda for review by the Planning

Board at the next available meeting. The Planning Board shall have the final say on the completeness of the Site Inventory and Analysis and/or whether or not to grant a waiver or reduction of requirements.

D. Waiver or reduction of site inventory and analysis requirements

Upon written appeal by the applicant, the Planning Board may waive the submission requirements set forth in 3.B., above, or reduce the amount of information required for the revision of previously approved plans, upon a finding that the analysis provided by this process is not necessary due to the scale of the project and the absence of any significant natural resources or development constraints on the site. Requests for waivers from a submission requirement must be submitted in writing by the applicant. Unless waived by the Board, this review must be completed prior to the preparation and submission of a subdivision application and supporting documentation.

E. Review of Site Inventory and Analysis by Planning Board

Unless the requirements for a Site Inventory and Analysis are waived or reduced, the Planning Board shall review the Site Inventory and Analysis with the applicant to determine if the information provides a clear understanding of the site and identifies opportunities and constraints that will help determine how it should be used, areas that are appropriate for conservation areas, and areas that are appropriate for development.

4. Site Inspection

The Planning Board may conduct an on-site inspection of the site, and may invite members of the Conservation Commission to be present during the inspection. Applicants, their site designers, and the landowner(s) are encouraged to accompany the Planning Board. The purpose of the visit is to familiarize local officials with the property's existing conditions and special features, to identify potential site design issues, and to provide an informal opportunity to discuss the general layout of land to be preserved as open space (if applicable). Comments made by the Planning Board, the CEO, and other local officials shall be interpreted as being only suggestions. It shall be understood by all parties that no formal recommendations can be offered, and no official decisions can be made, at the site inspection. The site inspection shall not cause the plan to be a pending application or proceeding under Title 1 M.R.S.A. §302.

If a review is pending during a period when there is snow cover, the deadline by which the Planning Board shall take final action on the site inventory and analysis may be extended, which extension shall not exceed thirty (30) days after the Board is able to conduct an on-site inspection.

Review of the Site Inventory and Analysis shall be considered complete upon a finding by the Planning Board that the appropriate areas have been determined for conservation or open space.

5. Pre-application Conference

Following the site inspection and prior to submission of a sketch plan, the applicant shall meet with the Planning Board to discuss the findings of the site inspection and to develop a mutual understanding of the general approach for subdividing and/or developing the tract. At its discretion, this conference can be combined with the site inspection.

The Board shall also consider any input received from the CEO and the Conservation Commission. The outcome of the review process shall be the identification by the Board of the issues and constraints that must be addressed in the formal subdivision application and the classification by the Board of the project as a Major or Minor Subdivision (which classification may later be revised if the scope of the project changes). The Board shall also act on any requests for waivers at this time, except that the Board may postpone action on a request for a waiver if the Board has determined that additional information is needed.

ARTICLE 2. OPEN SPACE SUBDIVISION REQUIREMENTS

1. Policy

It is the policy of the Town of _____ to encourage the use of open space subdivisions in order to preserve a sense of space, provide for sustainable agriculture and forestry as well as recreational land, preserve other resources identified in the Town of _____ Comprehensive Plan, and harmonize new development with the traditional open, wooded, agricultural, rural and village landscapes of the Town.

This performance standard is intended to implement that policy by providing incentives that afford flexibility to landowners in road and lot layout and design and road frontage requirements and by allowing the Planning Board to expedite procedure and to waive or reduce certain otherwise applicable standards and provisions of this Subdivision Ordinance if such landowners commit to the permanent preservation of important open space resources. These incentives are designed to encourage greater flexibility and more innovative approaches to housing and environmental design for the development of single and multi-family residential areas that will promote the most appropriate use of land and will preserve, as permanent open space, agricultural or forestry land, important natural features, wildlife habitat, water resources, ecological systems, and historic and scenic areas for the benefit of present and future residents.

2. Purposes

To qualify as an open space subdivision, the Planning Board must find that the subdivision will achieve all of the following purposes that are applicable to its specific circumstances:

- A. Long term protection and conservation of existing natural and other resources and landscapes identified in the Comprehensive Plan including but not limited to:
 - 1) State/local-defined critical areas, and unique natural features located on the parcel to be subdivided;
 - 2) Historic land use patterns and historic structures;

- 3) Points of visual access to or from water bodies, scenic vistas, and points of access to water bodies;
- 4) Contiguous stands of mature trees;
- B. Maintenance or establishment of compatibility with surrounding land uses and the overall rural character of the Town as defined by the Comprehensive Plan;
- C. Provision of adequate buffers for adjoining properties where needed;
- D. Contribution to Town-wide open space planning by creating a system of permanently preserved open space, both within large parcels of land and among such parcels throughout the Town, and by encouraging linkages between open space areas;
- E. Conservation of land suitable or actively used for agriculture and forestry uses, particularly where the open space subdivision borders active agricultural or forestry land or land suitable for the same;
- F. Conservation of traditional land uses;
- G. Creation of choices in the type of environment (business or residential) and type of housing available that will be a long-term asset to the Town of _____;
- H. Construction of affordable housing;
- I. Provision of recreation facilities, including active and passive recreational space, in the most suitable locations for use consistent with the other purposes of this performance standard; and
- J. Attainment of planned variety and coordination in the location of structures, architectural styles, and building forms and relationships.

3. Grouping Contiguous Parcels

In order to increase design flexibility, two or more contiguous parcels of land under the same or different ownership, including parcels separated by a public or private road, may be grouped together as one open space subdivision, if the Planning Board finds that such grouping will benefit the Town and that it helps achieve the purposes set forth in section 2.

4. Planning Board Review

A. Pre-application

An individual may apply for approval of an open-space subdivision as part of the pre-application conference described in Article 1.

B. Application procedure

1) Required plans

The submissions for an open space subdivision shall include, as appropriate unless any of the same is waived, all plans and materials required for a conventional subdivision.

2) Waiver of submission and review requirements

The Planning Board may grant appropriate waivers of submission requirements for an open space subdivision in order to expedite and make the review process more efficient where the number of lots proposed for development in a parcel, is five or fewer within any five-year period.

C. General requirements

1) Use and district requirements

All open space subdivisions shall meet the use standards of the districts in which they are located.

2) Allowable density

a) The allowable density for a proposed development of no more than three lots within any five-year period of a parcel of land under one ownership or a grouping of contiguous parcels as described in section 3 shall be determined by the gross lot area of the portion of each parcel proposed for development without reference to net residential acreage, divided by the minimum lot size of the applicable district without reference to net residential acreage.

b) The allowable density for all other developments shall be based on net residential density, and shall be calculated in the following manner:

i. Determine the buildable area of the parcel according to the definition of "net residential area" contained in Article _____ ; then

ii. Divide the reduced net residential area by the minimum lot size required in the _____ Ordinance to obtain the net residential density allowable.

iii. When the Planning Board determines that a density bonus is warranted for the provision of affordable housing or public

access to required open spaces, multiply the result by 1.2 and round to the nearest whole number. A density bonus may be awarded for:

- Affordable housing that meets the current definition of affordable housing published by the Maine State Housing Authority when at least 10% of the housing units in the proposed subdivision will be affordable and mechanisms are or will be established to ensure that such units will continue to be affordable; or
 - Public access to usable open space is provided by the developer such as, but not limited to, public access to trails, recreation areas or water bodies; or
 - The dedication of land to the Town of _____ to meet a public purpose such as the construction of a municipal building. This provision shall not be met by offerings or dedication of land for roads, utilities and similar facilities serving the development.
- c) A lot for a dwelling unit created as part of an open space subdivision shall not be further subdivided.
- d) A lot for a principal structure created as part of an open space subdivision where such lot shall have within its bounds designated open space shall not be further subdivided unless the original approved plan shall have reserved future development of such lot, but any such further subdivision shall only be made in accordance with this performance standard.
- e) Any affordable housing density bonus provision provided for in the Land Use Ordinance shall also apply within clustered residential projects.

3) Layout and siting standards

In planning the location and siting of residential or business structures in an open space subdivision, lot dimension and frontage should not be the primary considerations. Priority should be given to the preservation of the open space for its natural resource value, with human habitation and business activity located and sited on the lower valued natural resource portion of a parcel, taking into account the contours of the land and the reasonableness of slopes.

The building lots on a parcel shall be laid out and the residences and business structures shall be sited so as to maximize the following principles. The Board in its discretion shall resolve conflicts between these principles as applied to a particular site.

- a) In the least suitable agricultural soils and in a manner which maximizes the useable area remaining for the designated open space use, where agricultural, forestry, or recreational, existing or future uses, are particularly sought to be preserved.
- b) In locations least likely to block or interrupt scenic, historic, and traditional land use views, as seen from public roadways and great ponds.
- c) Within woodlands, or along the far edges of open agricultural fields adjacent to any woodland to reduce encroachment upon agricultural soils, to provide shade in the summer, and shelter as well as solar gain in the winter, and to enable new residential development to be visually absorbed by natural landscape features;
- d) In such manner that the boundaries between residential or business lots and active agricultural or forestry land are well buffered by vegetation, topography, roads, or other barriers to minimize potential conflict between residential or business and agricultural or forestry uses;
- e) In locations where buildings may be oriented with respect to scenic vistas, natural landscape features, topography, and natural drainage areas, in accordance with an overall plan for site development;
- f) In locations that provide compatibility in terms of physical size, visual impact, intensity of use, proximity to other structures, and density of development with other permitted uses within the land use district;
- g) In locations such that diversity and originality in lot layout and individual building, street, and parking layout is encouraged.
- h) So that individual lots, buildings, streets and parking areas shall be designed and situated to minimize alterations of the natural site, to avoid the adverse effects of shadows, noise and traffic on the residents of the site, to conserve energy and natural resources, and to relate to surrounding properties, and to improve the view from and of buildings.

4) Space standards

- a) Shore frontage and shore setback requirements shall not be reduced below the minimum shore frontage or shore setback required in the land use district.
- b) Distances between residential structures in multi-family open space subdivisions shall be a minimum of the height of the tallest structure.

- c) In areas outside of the shoreland zone, the required minimum lot size or minimum land area per dwelling unit for the building envelope may be reduced in open space subdivisions to no less than one-half acre. If the lot area is reduced, the total open space in the development shall equal or exceed the sum of the areas by which the building lots are reduced below the minimum lot area normally required in the _____ Ordinance as modified, if any, by section 4.C.2), above.
- d) Minimum road frontage requirements of the _____ Ordinance may be waived or modified by the Planning Board provided that:
 - i Any applicable provisions regarding roads in the _____ Ordinance are satisfied.
 - ii Adequate access and turnaround to and from all parcels by fire trucks, ambulances, police cars and other emergency vehicles can be ensured by private roads and /or common driveways.
 - iii No common driveway shall provide access to more than three (3) lots.
- e) A reduction of required setback distances may be allowed at the discretion of the Board, provided that the front, side and rear setbacks shall be no less than twenty-five feet or that required for the applicable land use district, whichever shall be less. For the perimeter of a multi-family open space subdivision, site setback shall not be reduced below the minimum front, side and rear setbacks required in the land use district unless the Planning Board determines a more effective design of the project can better accomplish the purposes of this performance standard.
- f) The designated open space shall represent at least 50% of the total parcel area.

5. Utilities

At the discretion of the Planning Board, in order to achieve the most appropriate design and layout of lots and open space, utilities, including individual wells and septic systems, may be located on designated portions of the open space, if necessary, provided the same shall not unreasonably interfere with the open space purposes to be achieved under this performance standard and for the particular parcel(s) that is the subject of the application for open space subdivision.

- a) The Planning Board may waive or modify hydrogeological reviews or studies, if the applicant demonstrates that due to the specific placement of wells and septic systems:

- i. adequate groundwater is available at all locations proposed for individual water systems; and
 - ii. there is no reasonable likelihood that the domestic water supply for any proposed lot will exceed 10mg/l of nitrates.
- b) If a private collection septic system is proposed for a single family or multi-family open space subdivision, the applicant must show either that at least one (1) designated site for each lot, in the open space or on the lot, has adequate soils and land area suitable for subsurface waste disposal for each lot in accordance with the minimum standards set forth in the Maine Subsurface Wastewater Disposal Rules, and that a second designated site on the parcel has the size, location and soil characteristics, to accommodate a system similar to the one originally proposed.
- c) If a private central collection system is proposed, the system shall be maintained by a homeowners association or under an agreement of the lot or unit owners in the same fashion required for maintenance of the open space by a home owners' association or the lot or unit owners in common and written evidence of said maintenance agreement shall be submitted to the Planning Board.

D. Open space requirements

In Planning Board review and approval of an open space subdivision, the following requirements shall apply and shall supersede any inconsistent or more restrictive provisions of this Subdivision Ordinance or the _____ Ordinance.

Open space set aside in an open space subdivision shall be permanently preserved as required by this performance standard, except as allowed under this provision for flexible open space and the substitution for and/or the addition to the same, or where open space is dedicated by a landowner under contract with the Town for a term of years as set forth below. Land set aside as permanent open space may, but need not be, a separate tax parcel. Such land may be included as a portion of one or more large parcels on which dwellings are permitted, provided that a conservation easement or a declaration of covenants and restrictions is placed on such land pursuant to section 4.D.3) and provided that the Planning Board approves such configuration of the open space.

1) Open space uses

On all parcels, open space uses shall be appropriate to the site. Open space shall include natural features located on the parcel(s) such as, but not limited to, stream beds, significant stands of trees, individual trees of significant size, agricultural land, forested acreage, wildlife habitat, rock outcroppings and historic features and sites. Open space shall be preserved and maintained subject to the following, as applicable:

- a) On parcels that contain significant portions of land suited to agricultural production, open space shall be conserved for agriculture or other consistent open space uses such as forestry, recreation (active or passive), and resource conservation.
- b) When the principal purposes of conserving portions of the open space is the protection of natural resources such as wetlands, aquifers, steep slopes, wildlife and plant habitats, and stream corridors, open space uses in those portions may be limited to those which are no more intensive than passive recreation.
- c) Open space areas, shall be contiguous, where possible, to allow linking of open space areas throughout the Town.
- d) If the open space is to be devoted, at least in part to a productive land use, such as agriculture or forestry, the developer shall submit to the Planning Board a plan of how such use is to be fostered in the future. Such plan may include, for example, a long-term timber management plan.
- e) The Planning Board may limit the use of any open space at the time of final plan approval where the Board deems it necessary to protect adjacent properties or uses, or to protect sensitive natural features or resources. A proposed change in use of open space land, other than that specified at the time of plan approval, shall be reviewed by the Planning Board as an amendment to the approved plan.
- f) Further subdivision of open space or its use for other than agriculture, forestry, recreation or conservation, except for easements for underground utilities, shall be prohibited and shall be so stated by deed restrictions except as provided in section 4.D.3). Structures and buildings accessory to agriculture, recreation or conservation uses may be erected on open space, subject to Planning Board approval of these provisions for open space subdivisions.

2) Notations on plan

Open space must be clearly labeled on the Final Plan as to its use or uses with respect to the portions of the open space that such use or uses apply, ownership, management, method of preservation, and the rights, if any, of the owners in the subdivision to such land or portions thereof. The Plan shall clearly show that the open space land is permanently reserved for open space purposes, is subject to a reservation for future development and shall contain a notation indicating the book and page of any conservation easements or deed restrictions required to be recorded to implement such reservations or restrictions.

3) Preservation in perpetuity

An owner of a parcel of land may designate all or a portion of the parcel for open space use in perpetuity if the purposes set forth in section 2 are achieved and all other requirements of this performance standard are met subject to the following conditions:

- a) A perpetual conservation easement, or declaration of covenants and restrictions, restricting development of the open space land must be incorporated in the open space plan.
- b) The conservation easement may be granted to or the declarations may be for the benefit of a private party, third party or other entity, the Town, with the approval of the Board of Selectmen, or to a qualified not-for-profit conservation organization acceptable to the Planning Board.
- c) Such conservation easement or declaration of covenants and restrictions shall be reviewed and approved by the Planning Board and be required as a condition of plan approval hereunder.
- d) The Planning Board may require that such conservation easement, or declaration of covenants and restrictions, be enforceable by the Town of _____ if the Town is not the holder of the conservation easement or beneficiary of the declarations.
- e) The conservation easement or declarations shall prohibit residential, industrial, or commercial use of such open space land (except in connection with agriculture, forestry, and recreation), and shall not be amendable to permit such use.
- f) The conservation easement or declarations shall be recorded in the _____ County Registry of Deeds prior to or simultaneously with the filing of the Open Space Subdivision final plan in the _____ County Registry of Deeds.

4) Ownership of open space land

Open space land may be held in private ownership including an appropriate third party not the applicant; or owned in common by a homeowner's association (HOA); dedicated to the Town, County or State governments or agencies; transferred to a non-profit organization such as a conservation trust, or association, acceptable to the Planning Board; or held in such other form of ownership as the Planning Board finds adequate to achieve the purposes set forth in section 2 and under the other requirements of this Ordinance.

The appropriate form of ownership shall be determined based upon the purpose of the open space reservation as stated pursuant to section 4.D.1) above. Unless so determined, or unless deeded to the Town of _____ and accepted by the citizens of the Town at Town Meeting, common open space shall be owned in common by the owners of the lots or units in the development. Covenants for mandatory membership in the association setting forth the owners' rights and interest and privileges in the association and the common land, shall be approved by the Planning Board and included in the deed for each lot.

5) Maintenance Standards

Maintenance standards for open space land, where appropriate, shall be in accordance with other requirements of this Ordinance.

**Example 5: Rural District
Large Lot Size, Restricted Uses**

1. Purpose

The purposes of this district are to allow for conservation of natural resources and open space land, and to encourage agricultural, forestry, and certain types of recreational uses. It is intended to provide local citizens the means by which agricultural and forest land may be protected from non-agricultural and forestry development pressures. It is declared to be in the public interest that these areas should be protected and conserved because of their natural, aesthetic and scenic value, and their economic contribution to the community. Furthermore, because of the rural nature of these areas, uncontrolled growth could result in an economic burden on the Town and its inhabitants. This section shall be construed so as to achieve the purposes outlined here and to prevent any attempt to establish uses which are inconsistent with these purposes or any attempt to evade the provisions of this Section.

2. Use Regulations

A. Permitted uses. The following uses are permitted:

- 1) Single-family detached dwellings, including manufactured housing, subject to the following restrictions:
 - a) No permit shall be issued for any residence until the barns, livestock pens, silos, or other such buildings or structures which are to be erected in connection with the proposed agricultural or forestry use as shown on the plans and specifications presented to the municipal officer charged with enforcement are substantially completed.
 - b) Any residence constructed under this Section shall not be converted to non-farm or non-forestry residential use except by permission of the Planning Board based upon a finding that the abandonment or reduction in such use resulted from causes beyond the control of the applicant and not from any intention to circumvent the requirements of this Section.
- 2) Agriculture and agricultural-related uses including but not limited to buildings, equipment and machinery accessory to the principal use, barns, silos, storage areas, garages, seed and feed dealers, home occupations.
- 3) Forestry and forestry-related uses including but not limited to products raised for harvest, forest reserves, and storage areas for equipment and lumber.
- 4) Specialized horticultural activities including orchards, truck gardens, plant and tree nurseries, Christmas tree farms, greenhouses and vegetable farms, and field or row crop farms.

- 5) Handling, storage and sale of agriculture produce and processed agricultural products derived from produce grown on the premises.
- 6) Livestock operations including poultry farms, cattle farms, dairy farms, stud farms, hog farms, sheep ranches, stables, other animal farms, including farms for raising fur-bearing animals.
- 7) Roadside stands.

B. Site plan review. The following uses are subject to site plan review and approval by the Planning Board:

- 1) Sawmills and their customary accessory land uses and buildings incidental to the harvesting of forest products, subject to the following conditions:
 - a) The sawmill and accessory activity shall not be detrimental to the neighborhood or the municipality, by reason of special danger of fire or explosion, pollution of rivers or perennial streams, lakes or accumulation of refuse.
 - b) Wood processing operations shall be located no closer than 75 feet from any river or perennial stream, or 250 feet from any zoning district boundary or residential dwelling.
 - c) Where natural vegetation is removed, it shall be replaced within six months with other vegetation which will be equally effective in retarding erosion and preserving natural beauty.
- 2) Veterinary hospitals where operated by licensed veterinarians including offices and facilities for temporarily boarding animals.
- 3) Handling, storage and sale of agricultural or forestry services, equipment, and supplies accessory to the farming and forestry use.
- 4) Bona fide residences required for farm or forest labor. Any residence constructed for farm or forest labor shall not be converted to non-farm or non-forest residential use except by permission of the Planning Board based upon a finding that the abandonment or reduction in such use resulted from causes beyond the control of the applicant and not from any intention to circumvent the requirements of this Section. The findings and the conditions upon which such altered use may be continued shall be made a part of the permanent records.

- 5) Recreational uses of land intended or designed for public use subject to the following conditions:
 - a) No such recreational use shall be expanded or extended so as to occupy additional land area greater than 20 percent of the original area or one acre, whichever is less; or by the construction of a structure or an addition to an existing structure by more than 900 square feet of additional floor space unless the owner or occupant first obtains approval of the Planning Board in the manner and upon the same terms as approval of initial recreational uses.
 - b) Any proposed new or expanded recreational use shall be completed on or before the estimated completion date except that the Planning Board may grant reasonable extension of time where good cause for the failure to complete is shown.
- 6) Any legally nonconforming dwelling unit may be rebuilt if destroyed by fire or other casualty, subject to the following conditions:
 - a) Such reconstruction shall comply with all ordinances applicable to new construction.
 - b) In cases where no minimum setback is established, an open yard space of at least 10 feet between the building as reconstructed and each of the property lines shall be maintained.
- 7) Rifle, pistol, skeet or trap shooting ranges, public or private.
- 8) Cemeteries, subject to the following conditions:
 - a) At least 20 acres in area.
 - b) Not located over any known aquifer as identified in the Comprehensive Plan.
- 9) Municipal sanitary landfill, subject to the following conditions.
 - a) Not located over any aquifer identified in the Comprehensive Plan.
 - b) Provisions shall be made to avoid surface and groundwater pollution.
 - c) Provisions shall be made for frequent covering of deposited wastes with earth to counteract vermin, insects, odors, and windblown debris.
- 10) Radio, radar, television and radio telephone transmitting or broadcasting towers, but not studios or offices for such transmitting or broadcasting, provided that:

- a) Every such tower shall be installed in a location and manner that assures its safe operation and the safety of the surrounding residents, building occupants, land uses and properties.

3. Dimensional Regulations

All structures in this district, except as noted, shall be subject to the following dimensional regulations:

- A. **Minimum lot area, width and depth.** No lot shall be created and/or no building shall be erected on a lot containing less than 10 acres; exclusive of any bodies of water having a surface area of 1/4 acre or more, and measuring not less than 250 feet in width at the street frontage, and 200 feet in depth.

A building may be erected on a lot containing not less than 50,000 square feet and possessing the required minimum frontage width provided it is contiguous with other lots or parcels of land in the same ownership containing an aggregate of not less than ten acres, notwithstanding the separation of the said other lots or parcels of land by a road, stream, private right-of-way or other natural boundary from the lot on which the building is to be constructed. This subsection shall not be construed to prevent the construction of non-residential accessory farm buildings on any such lot.

- B. **Density.** Where more than one dwelling is built on a parcel of land, the density of dwelling units shall not exceed an average of one dwelling per ten acres.

- C. **Setback requirements**

- 1) **Rear.** There shall be a minimum distance of 25 feet between any building and the rear property line.
- 2) **Side.** There shall be a minimum distance of 15 feet between any building and the side property line.
- 3) **Front.** There shall be a minimum distance of 25 feet between any building and the front property line.

- D. **Height.** The height of all dwelling structures shall be limited to two and one-half stories or 35 feet, whichever is less.

Accessory buildings and structures may have a maximum height of 65 feet from grade, provided that the front yard, rear yard and each of the side yards shall be increased by one foot for each foot in height in excess of 35 feet, whichever is less.

APPENDIX F. DEFINITIONS

Note: the following paragraphs contain language that can be included in the definitions section of your land use ordinance. If you are following the suggested ordinance format contained in Appendix A, insert this language in Article 11. You may need to modify these definitions to meet your local needs. You may also need to add additional definitions. Unless otherwise noted, these are not statutory definitions so they can be modified to meet local conditions. Statutory definitions are underlined.

1. Construction of Language

In the interpretation and enforcement of this Ordinance, all words other than those specifically defined in the Ordinance shall have the meaning implied by their context in the Ordinance or their ordinarily accepted meaning. In the case of any difference of meaning or implication between the text of this Ordinance and any map, illustration or table, the text shall control.

The word “person” includes a firm, association, organization, partnership, trust, company or corporation, as well as an individual or other legal entity.

The present tense includes the future tense, the singular number includes the plural, and the plural numbers include the singular.

The words “shall” and “will” are mandatory; the word “may” is permissive.

The word “lot” includes the words “plot” and “parcel.”

The word “building” includes the word “structure.”

The word “used” or “occupied” as applied to any land or building, shall be construed to include the words “intended, arranged, or designed to be used or occupied.”

The words “Town” or “municipality” means the Town of _____, Maine.

2. Definitions

In this Ordinance, the following terms shall have the following meanings:

Abutter: The owner of any property with one or more common boundaries, or across the street or stream from the property involved in an application or appeal.

Accessory use or structure: A use or structure that is customarily both incidental and subordinate to the principal use or structure on the same lot. The term “incidental” in reference to the principal use or structure shall mean both a) subordinate and minor in significance to the principal use or structure, and b) attendant to the principal use or structure. Such accessory uses, when aggregated, shall not subordinate the principal use of the lot.

Affordable housing: A decent, safe and sanitary dwelling, apartment or other living accommodation for a household whose income does not exceed 80% of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 412, 50 Stat. 888, Section 8, as amended.

Agriculture: The cultivation of soil, producing or raising crops including gardening as a commercial operation. The term shall also include greenhouses, nurseries and versions thereof, but these two terms, when used alone, shall refer specifically to a place where flowers, plants, shrubs and/or trees are grown for sale.

Alteration: Any change or modification in construction, or change in the structural members of a building or structure such as bearing walls, columns, beams or girders, or in the use of a building. The term shall also include change, modification, or addition of a deck, dormer, staircase, or roof of a building.

Aggrieved party: A person whose land is directly or indirectly affected by the grant or denial of a permit or variance under this Ordinance, or a person whose land abuts or is across the road or street or body of water from 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.

Amusement facility: Any private, commercial premises which are maintained or operated primarily for the amusement, patronage, or recreation of the public, containing four (4) or more table sports, pinball machines, video games, or similar mechanical or electronic games, whether activated by coins, tokens, or discs, or whether activated through remote control by the management.

Animal breeding or care: The keeping or raising of four or more animals, including domestic animals and pets, for any commercial use. This definition also includes kennels.

Authorized agent: An individual or a firm having written authorization to act on behalf of a property owner. The authorization shall be signed by the property owner(s).

Automobile repair shop: A business establishment engaged in general repair, engine rebuilding, or parts replacement. Automotive repair shall not mean body, frame or fender straightening and repair or painting and undercoating, nor the sale of gasoline, other motor fuels or motor oil.

Automobile graveyard, junkyard: A place where three or more unregistered, unserviceable, discarded, worn-out, or junked automotive vehicles, or bodies, or engines thereof are gathered together.

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

Bed and breakfast: Any dwelling in which transient lodging or boarding and lodging are provided and offered to the public by the owner for compensation for less than one week. This dwelling shall also be the full-time, permanent residence of its owner. Otherwise, it shall be classified as a hotel/motel. There shall be no provisions for cooking in any individual guest room.

Boarding, lodging facility: Any residential structure where lodging and/or meals are provided for compensation for a period of at least one week, and where a family residing in the building acts as proprietor or owner. When the criteria for a family residing in the building cannot be met, the building shall be classified as a hotel/motel. There shall be no provisions for cooking in any individual guest room.

Building: Any three-dimensional enclosure by any building materials or any space for any use or occupancy, temporary or permanent, including swimming pools, foundations, or pilings in the ground, and all parts of any kind of structure above ground including decks, railings, dormers and stairs, and excluding sidewalks, fences, driveways, parking lots, electrical transmission and distribution lines, and field or garden walls or embankment retaining walls.

Building height: The vertical distance between the highest point of the roof and the average grade of the existing or original ground adjoining the building, whichever distance is greater.

Business and professional offices: The place of business of doctors, lawyers, accountants, financial advisors, architects, surveyors, real estate and insurance businesses, psychiatrists, counselors, and the like or in which a business conducts its administrative, financial or clerical operations including banks and other financial services, but not retail sales nor activities utilizing trucks as part of the business operation.

Campground: Land upon which one or more tents are erected or trailers are parked for temporary use for a fee on sites arranged specifically for that purpose. The word “campground” shall include the words “camping ground” and “tenting grounds.”

Cemetery: Property used for the interring of the dead.

Church: A building or structure, or group of buildings or structures, designed, primarily intended and used for the conduct of religious services, excluding school.

Civic, convention center: A building or complex of buildings that house municipal offices and services, and which may include cultural, recreational, athletic, convention and entertainment facilities owned and/or operated by a government agency.

Club: Any voluntary association of persons organized for social, religious, benevolent, literary, scientific, or political purposes, whose facilities, especially a clubhouse, are open to members and guests only and not the general public, and not engaged in activities customarily carried on by a business or for pecuniary gain. Such term shall include fraternities, sororities, and social clubs generally.

Cluster development: A form of development that allows a subdivision design in which individual lot sizes and setbacks are reduced in exchange for the creation of common open space and recreation areas, the preservation of environmentally sensitive areas, agriculture and silviculture and the reduction in the size of road and utility systems.

Code enforcement officer: A person appointed by the municipal officers to administer and enforce this Ordinance.

Commercial recreation: Any commercial enterprise that receives a fee in return for the provision of some recreational activity including but not limited to: campgrounds, racquet and tennis clubs, health facility, amusement parks, golf courses, gymnasiums and swimming pools, etc., but not including amusement facility, as defined herein.

Commercial school: An institution that is operated for profit, but is not authorized by the State to award baccalaureate or higher degrees, that offers classes in various skills, trades, professions, or fields of knowledge.

Commercial use: Any activity carried out for pecuniary gain.

Community center: A building that provides a meeting place for local, non-profit community organizations on a regular basis. The center shall not be engaged in activities customarily carried on by a business.

Community living arrangement: A housing facility for 8 or fewer persons with disabilities that is approved, authorized, certified or licensed by the State. A community living arrangement may include a group home, foster home or intermediate care facility.

Comprehensive Plan: The Comprehensive Plan of the Town of _____.

Conditional zoning: The process by which the municipal legislative body may rezone property to permit the use of that property subject to conditions not generally applicable to other properties similarly zoned.

Conforming: A building, structure, use of land or portion thereof, that complies with the provisions of this Ordinance.

Constructed: Built, erected, altered, reconstructed, moved upon, or any physical operations on the premises that are required for construction. Excavation, fill, drainage and the like shall be considered a part of construction.

Contract zoning: The process by which the property owner, in consideration of the rezoning of that person's property, agrees to the imposition of certain conditions or restrictions not imposed on other similarly zoned properties.

Critical rural area: A rural area that is specifically identified and designated by a municipality's or multi-municipal region's comprehensive plan as deserving maximum protection from development to preserve natural resources and related economic activities that may include, but are not limited to, significant farmland, forest land or mineral resources; high-value wildlife or fisheries habitat; scenic areas; public water supplies; scarce or especially vulnerable natural resources; and open lands functionally necessary to support a vibrant rural economy.

Day care: Homes and centers licensed as such by the Maine Department of Health and Human Services.

Density: The number of dwelling units per area of land.

Development: A change in land use involving alteration of the land, water or vegetation, or the addition or alteration of structures or other construction not naturally occurring.

District: A specified portion of the municipality, delineated on the land use map, within which certain regulations and requirements or various combinations thereof apply under the provisions of this Ordinance.

Dwelling: Any building or structure or portion thereof designed or used for residential purposes.

1. **Dwelling unit** – a room or suite of rooms used by a family as a habitation that is separate from other such rooms or suites of rooms, and which contains independent living, cooking, sleeping, bathing and sanitary facilities.
2. **Single-family dwelling** – any structure containing only one (1) dwelling unit for occupation by not more than one (1) family.
3. **Two-family dwelling** – A building containing only two (2) dwelling units, for occupation by not more than two (2) families.
4. **Multi-family dwelling** – A building containing three (3) or more dwelling units, such buildings designed exclusively for residential use and occupancy by three (3) or more families living independently of one another, with the number of families not exceeding the number of dwelling units.

Essential services: Facilities for the transmission or distribution of water, gas, electricity or essential communications, 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.

Extractive industries: The excavation, processing or storage of soil, topsoil, peat, loam, sand, gravel, rock or other mineral deposits, not including:

1. The excavation of material incidental to and at the site of approved construction of buildings, driveways or parking areas;

2. The excavation of material incidental to and at the site of construction or repair of streets; and
3. The excavation, processing or storage of less than ten (10) cubic yards of material on a lot within a one-year period.

Family: One or more persons occupying a dwelling and living as a single housekeeping unit, as distinguished from a group occupying a tourist home, rooming house, hotel, motel or inn.

Filling: Depositing or dumping any matter on or into the ground or water.

Flood or flooding:

1. A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - a. The overflow of inland or tidal waters;
 - b. The unusual and rapid accumulation or runoff of surface waters from any source.
2. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or changes in water levels of a water body accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similar unusual and unforeseeable event that results in flooding as defined in paragraph 1 of this definition.

Flood insurance rate map: The official map of a community, on which the Administrator of the Federal Emergency Management Agency has delineated both the special hazard areas and the risk premium zones.

Flood plain: The land areas susceptible to being inundated by water from any source.

Floodway or regulatory floodway: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot, and in Zone A is considered to be the channel of a river or other water course and the adjacent land areas to a distance of one-half the width of the flood plain, as measured from the normal high water mark to the upland limit of the flood plain.

Forestry: The operation of timber tracks, tree farms, forest nurseries, the gathering of forest products, or the performance of forest services.

Frontage, road: The horizontal, straight-line distance between the intersections of the side lot lines with the road right-of-way.

Frontage, shore: The horizontal distance, measured in a straight line, between the intersections of the lot lines with the shoreline at normal high water elevation.

Garage: An accessory building, or part of a principal building, including a car port, used primarily for the storage of motor vehicles as an accessory use.

Gasoline service station: Any place of business at which gasoline, other motor fuels or motor oil are sold to the public for use in a motor vehicle, regardless of any other business on the premises.

Growth area: An area that is designated in a municipality's or multi-municipal region's comprehensive plan as suitable for orderly residential, commercial or industrial development, or any combination of those types of development, and into which most development projected over 10 years is directed.

Hardship: See undue hardship.

Hazardous material: Any gaseous, liquid or solid materials, either in pure form or incorporated into other materials, designated as hazardous by the Maine Department of Environmental Protection.

Home occupation: An occupation or profession that is carried on in no more than 25% of the ground flood area of a detached, single-family dwelling unit by the full-time, permanent occupant of the dwelling, that is clearly incidental and secondary to the use of the dwelling for residential purposes, and that does not change the character thereof (by way of illustration and not of limitation, the term home occupation shall include foods such as breads, cookies or preserves, rugs, birdhouses, fishing flies, and quilts). The term "home occupation" shall include both professional and personal services, within the limits on number of employees established in other sections of this Ordinance. A retail sales outlet does not qualify as a home occupation unless the item sold is a product of the owner's labor (for example: manufactured, produced, created, grown).

Hospital: An institution providing, but not limited to, overnight health services, primarily for in-patients, and medical or surgical care for the sick or injured, including as an integral part of the institution such related facilities as laboratories, out-patient departments, training facilities, central service facilities, and staff offices.

Hotel/motel: A commercial building or group of buildings built to accommodate for a fee travelers and other transient guests who are staying for a limited duration, with sleeping rooms without cooking facilities, each rental unit having its own private bathroom and its own separate entrance leading either to the outdoors or to a common corridor or hallway. A hotel may include restaurant facilities where food is prepared and meals served to its guests and other customers.

Impact fee: A charge or assessment imposed by a municipality against a new development to fund or recoup the cost of new, expanded or replacement infrastructure facilities necessitated by and attributable to the new development.

Impact fee ordinance: An ordinance that establishes the applicability, formula and means by which impact fees are assessed.

Kennel: An establishment in which more than four (4) dogs or four (4) cats are sold, housed, bred, boarded, or trained for a fee.

Land use ordinance: An ordinance or regulation of general application adopted by the municipal legislative body which controls, directs or delineates allowable uses of land and the standards for those uses.

Lot: An area of land in one ownership, or one leasehold, with ascertainable boundaries established by deed or instrument of record, or a segment of land ownership defined by lot boundary lines on a land subdivision plan duly approved by the Planning Board and recorded in the county registry of deeds.

Lot area: The total horizontal areas within the lot lines, minus land below the normal high water line of a water body or upland edge of a wetland and areas beneath roads serving more than two lots.

Lot, minimum area: The required lot area within a district for a single use. The lot area shall be determined on the basis of the “net residential acreage calculation,” contained in this Ordinance.

Lot, corner: A lot with at least two contiguous sides abutting upon a street or right-of-way.

Lot coverage: The percentage of a lot covered by all structures.

Lot lines: The lines bounding a lot as defined below:

1. **Front lot line:** interior lots - the line separating the lot from a street right-of-way; corner or through lots - the line separating the lot from either street right-of-way. Where a right-of-way does not exist or cannot be determined, the front lot line shall be the edge of the paved or graveled area of the road.
2. **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 and the front lot line, not less than ten (10) feet long, lying farthest from the front lot line. On a corner lot, the rear lot line shall be opposite the front line of least dimension.
3. **Side lot line:** any lot line other than the front lot line or rear 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 county registry of deeds.

Lot, shorefront: Any lot abutting a body of water that is regulated by the shoreland zoning ordinance.

Lot, through: Any interior lot having frontages on two more or less parallel streets or rights-of-way or between a street and a body of water, or a right-of-way and a body of water, or between two bodies of water, as distinguished from a corner lot. All sides of through lots adjacent to streets, rights-of-way and bodies of water shall be considered frontage, and front yards shall be provided as required.

Lot width: The distance between the side boundaries of the lot measured at the front setback line.

Manufactured housing: A structural unit or units designed for occupancy and constructed in a manufacturing facility and transported, by use of its own chassis or an independent chassis, to a building site.

Mobile home park: A parcel of land under unified ownership approved by the municipality for the placement of three (3) or more manufactured homes.

Moratorium: A land use ordinance or other regulation approved by a municipal legislative body which temporarily defers development by withholding any authorization or approval necessary for development.

Neighborhood convenience store: A store of less than 1,500 square feet of floor space intended to serve the convenience of a residential neighborhood primarily with the sale of merchandise including such items as, but not limited to, basic foods, newspapers, emergency home repair articles, and other household items, that may include “sit down,” “dining” or “eat-in” foods or take out windows.

Net acreage: The area of a lot or lots that is usable for determining allowable densities, as set forth in the “net acreage calculations” standard of this Ordinance.

Net residential density: The number of dwelling units per net acreage.

Non-conforming: A building, structure, use of land, or portion thereof, legally existing on the effective date of adoption or amendment of this Ordinance which thereafter fails to conform to all applicable provisions of this Ordinance.

Nursing home: A privately operated establishment where maintenance and personal or nursing care are provided for persons who are unable to care for themselves.

Parks and recreation: Non-commercially operated recreation facilities open to the general public including, but not limited to playgrounds, parks, monuments, green strips, open space, mini-parks, athletic fields, boat launching ramps, piers and docks, picnic grounds, swimming pools, and wildlife nature preserves, along with any necessary accessory facilities, rest rooms, bath houses, and the maintenance of such land and facilities. The term shall not include campgrounds, or commercial recreation and amusement centers.

Permitted use: A use that is listed as a permitted use in one or more of the districts established by this Ordinance. The term shall not include any prohibited uses.

Planned unit development: A development of land that is under unified control and is planned and developed as a whole in a single development operation or programmed series of development stages. The development often includes a mixture of uses and may include streets, buildings, open spaces and other site features.

Planning Board: The Planning Board of the Town of _____.

Principal use: The primary use and chief purpose of a lot or structure.

Public and private schools: Primary and secondary schools, or parochial schools, which satisfy either of the following requirements: the school is not operated for profit or as a gainful business; or the school teaches courses of study that are sufficient to qualify attendance in compliance with State of Maine compulsory education requirements.

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

Recreational vehicle: A self-propelled or drawn vehicle or vehicular attachment designed for temporary sleeping or living quarters for one or more persons, that is not a dwelling, and that may include a pick-up camper, travel trailer, tent trailer or motor home.

Restaurant: An establishment where meals are prepared and served to the public for consumption on the premises entirely within a completely enclosed building; and where no food or beverages are served directly to occupants of motor vehicles or directly to pedestrian traffic from an exterior service opening or counter, or any combination of the foregoing; and where customers are not permitted or encouraged by the design of the physical facilities, by advertising, or by the servicing or packaging procedures, to take food or beverage for consumption outside the enclosed building.

Retail business: A business establishment engaged in the sale, rental or lease of goods or services to the ultimate consumer for direct use or consumption and not for resale.

Right-of-way: All public or private roads and streets, state and federal highways, private ways (now called public easements), and public land reservations for the purpose of public access, including utility rights-of-way.

Road: An existing state, county or town way or a street dedicated for public use and shown on a plan duly approved by the Planning Board and recorded in the county registry of deeds or a road dedicated for public use and shown on a plan duly recorded in the county registry of deeds prior to the establishment of the Planning Board and the grant to the Planning Board of its power to approve plans. The term shall also include private, undedicated roads that are described in a recorded document. The term "road" shall not include those ways that have been discontinued or abandoned.

Rural area: A geographic area that is identified and designated in a municipality's or multi-municipal region's comprehensive plan as an area that is deserving of some level of regulatory protection from unrestricted development for purposes that may include, but are not limited to, supporting agriculture, forestry, mining, open space, wildlife habitat, fisheries habitat and scenic lands, and away from which most development projected over 10 years is diverted.

Setback: The minimum horizontal distance from a lot line to the nearest part of a building, including porches, steps and railings.

Shopping center: Any concentration of two or more retail stores or service establishments under one ownership or management containing 15,000 square feet or more of gross floor space.

Structure: Anything constructed or erected, the use of which requires a fixed location on or in the ground or in the water, or an attachment to something having a fixed location on the ground, including buildings, billboards, signs, commercial park rides and games, carports, porches, and other building features including stacks and antennas, but not including sidewalks, fences, driveways, parking lots, and field or garden walls or embankment retaining walls.

Swimming pool: An outdoor, man-made receptacle or excavation designed to hold water to a depth of at least twenty-four (24) inches, primarily for swimming or bathing, whether in the ground or above the ground.

Undue hardship: As used in this Ordinance, the words "undue hardship" shall mean all of the following:

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

A variance is not justified unless all elements are present in the case.

Use: The manner in which land or a structure is arranged, designed or intended, or is occupied.

Variance: A relaxation of the terms of this Ordinance where such relaxation will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicants, a literal enforcement of the Ordinance would result in undue hardship as defined in this Ordinance. Variances permissible under this Ordinance are limited to height of buildings, structures, lot size, yard and open space sizes, frontage and setbacks.

Zoning ordinance: A type of land use ordinance that divides a municipality into districts and that prescribes and reasonably applies different regulations in each district.